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**Charcot Avenue Extension over I-880
Biological Resources Report**

Project # 4129-01

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Section 1. Introduction

This report describes the biological resources present in the area of the proposed Charcot Avenue Extension over Interstate 880 (I-880) project, as well as the potential impacts of the proposed project and measures necessary to reduce impacts to less-than-significant levels under the California Environmental Quality Act (CEQA).

Project Description

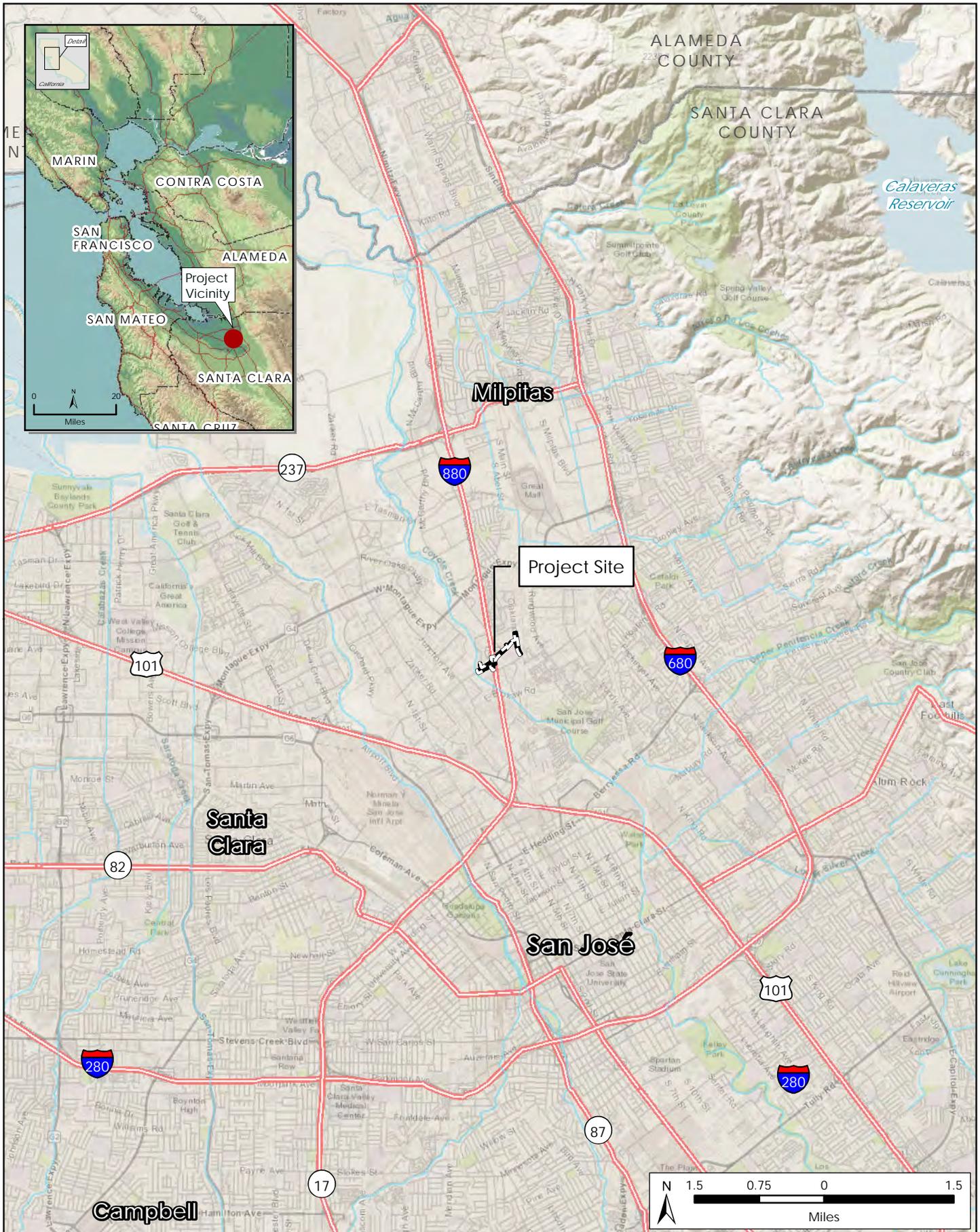
The proposed project entails the construction of a two-lane extension of Charcot Avenue from Paragon Drive on the west to Oakland Road on the east, a distance of approximately 0.6 mile, and includes the construction of an overcrossing across O'Toole Avenue and I-880 and the construction of bicycle/pedestrian facilities on Charcot Avenue. The purpose of the project is to provide a safe, multi-modal facility to (1) improve connectivity between residential areas on the east side of I-880 and the North San José commercial area on the west side, (2) increase the capacity for east/west travel across the I-880 corridor, and provide a safe bicycle/pedestrian facility over I-880.

The 16.8-acre project site is located between Paragon Drive and Oakland Road in the City of San José, California (Figure 1), in the *Milpitas, California* 7.5-minute U.S. Geological Survey (USGS) quadrangle. It is surrounded by commercial, school, and residential land uses (Figure 2). The project will not be a Santa Clara Valley Habitat Plan (VHP) covered project.

Project Components

Traffic Improvements. Charcot Avenue would be extended as a two-lane roadway from Paragon Drive on the west to Oakland Road on the east. Although Charcot Avenue presently exists between Paragon Drive and O'Toole Avenue, that segment would be reconstructed and widened up to 170 feet west of the Paragon Drive/Charcot Avenue intersection, as described below. This includes approximately 170 feet of curb, gutter, bikeway, road pavement, and road striping work west of the intersection. The westerly project limit extends another 115 feet beyond this western extent of the Paragon Drive work area, where no work will occur (Figure 2).

- The Charcot Avenue/Paragon Drive intersection would be reconstructed with single eastbound and westbound through lanes and an eastbound left turn-lane. A traffic signal would also be installed at this intersection.
- The existing Charcot Avenue/O'Toole Avenue intersection would be eliminated. Access to O'Toole Avenue from eastbound Charcot Avenue would be maintained via a new slip ramp along the south side of Charcot Avenue. Access to Charcot Avenue from O'Toole Avenue would not, however, be provided. Instead, access from O'Toole Avenue to Charcot Avenue would be provided via Paragon Drive and its new signalized intersection with Charcot Avenue.



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Figure 1. Vicinity Map
Charcot Avenue Extension over I-880 Biological Resources Report (4129-01)
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N:\Projects\4100M\28-01\Reports\Fig 2 Project Site.mxd



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Figure 2. Project Site
Charcot Avenue Extension over I-880 Biological Resources Report (4129-01)
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- A segment of O'Toole Avenue under the proposed Charcot Avenue overcrossing would be reconstructed and reconfigured to accommodate bridge columns for the overcrossing to have single northbound and southbound lanes, and a sidewalk in the southbound direction.
- A new overcrossing structure, approximately 70 feet in width and 720 feet in length, would be constructed over O'Toole Avenue and I-880. The bridge columns would be supported on large diameter cast-in-drilled-hole (CIDH) pilings. The bridge would accommodate one lane of traffic, one shoulder, one Class IV Bikeway,¹ and one sidewalk in each direction.
- On the east side of I-880, Charcot Avenue would utilize the swath of land between the Super Micro Computer Inc. office buildings that has been set aside for the Charcot Avenue extension. At the easterly end of the proposed extension, the roadway would utilize the current alignment of Silk Wood Lane between Oakland Road and Silk Wood Lane.
- A new pedestrian-only signal such as a high-intensity activated crosswalk (HAWK) beacon would be installed along Charcot Avenue at Silk Wood Lane. A median would be constructed along Charcot Avenue at Silk Wood Lane to restrict left-turn movements.
- The existing unsignalized Charcot Avenue/Oakland Road intersection would be replaced by a new signalized intersection. The proposed lane configurations at that intersection would consist of one left-turn and one shared left-right-turn lane on eastbound Charcot Avenue, and two northbound left-turn lanes and six through lanes on Oakland Road. To receive the traffic turning left from northbound Oakland Road, the segment of Charcot Avenue between Silk Wood Lane and Oakland Road would have two westbound through lanes, which would merge into one lane after the Silk Wood Lane intersection.
- Between Paragon Drive and O'Toole Avenue, access to adjacent commercial properties from Charcot Avenue would not be provided. Access would be via other existing streets. There is no existing access to properties along Silk Wood Lane from the segment of Silk Wood Lane that will become Charcot Avenue.

Bicycle Improvements. The project proposes to construct 6-foot wide Class IV bikeways along the Charcot Avenue extension between Paragon Drive and Oakland Road. The bikeways would be separated from the vehicular roadways by 2-foot wide buffers and would include the following features:

- The separated bikeways would be on both sides of the single eastbound and westbound through lanes between Paragon Drive and Oakland Road.
- The bikeways on the Charcot Avenue overcrossing structure would be 7 feet wide.
- An additional Class II bike lane² would extend on the south side of the existing Charcot Avenue along the new slip ramp right-turn lane to O'Toole Avenue.

¹ A Class IV bikeway is also known as a protected bike lane or separated bikeway. It is physically separated from the vehicle travel lane by more than a white strip. This separation can entail flexible bollards, permanent barriers, and/or vertical separation.

² A Class II bike lane is a striped land for one-way bike travel on a street or highway adjacent to auto travel lanes.

The separated bikeways would connect to the existing bike lanes on Charcot Avenue to the west of the project limits, as well as to the existing bike lanes on Oakland Road. The existing and new bicycle facilities associated with this project would also provide for potential connection opportunity to the planned pedestrian/bicycle trail along Coyote Creek, which would cross under Charcot Avenue just west of Paragon Drive.

Pedestrian Improvements. The project would include sidewalks along both sides of the Charcot Avenue extension between Paragon Drive and Oakland Road. The sidewalks would connect to existing sidewalks at the intersections on Silk Wood Lane and Oakland Road. There are currently no sidewalks along Paragon Drive, Charcot Avenue, and O'Toole Avenue. The sidewalks proposed as part of the project include the following features:

- An additional sidewalk would extend along the south side of the eastbound slip-ramp right turn lane from Charcot Avenue to O'Toole Avenue. There would also be a segment of sidewalk on the west side of O'Toole Avenue under the Charcot Avenue overcrossing.
- As noted above, to facilitate the crossing of Charcot Avenue, a new pedestrian-only signal such as a HAWK beacon, would be installed along Charcot Avenue at Silk Wood Lane.
- To enhance pedestrian access to/from Orchard Elementary School, the width of the sidewalk on the south side of Charcot Avenue at Silk Wood Lane would widen to 11 feet. In addition, a 9-foot wide paved pedestrian path would be constructed next to the 11-foot wide sidewalk to connect to a gate at the school playground.
- The 11-foot wide sidewalk would narrow back to an 8-foot width along the segment of Charcot Avenue between Silk Wood Lane and Oakland Road and extend around the northeastern corner of the existing Orchard School ball field.

Retaining Walls. The project would require the installation of retaining walls at the following locations along the proposed Charcot Avenue extension:

- Because Charcot Avenue would be elevated over O'Toole Avenue and I-880, the profile of the roadway would be raised on both sides of the overcrossing. Traveling from west to east, the profile would begin to rise just east of Paragon Drive, would reach its highest point over I-880, and would descend back to the existing grade just west of Silk Wood Lane. This would require retaining walls on both sides of Charcot Avenue ranging in height from approximately 3 feet to up to approximately 18 feet to the west of the overcrossing and from approximately 3 feet up to approximately 19 feet to the east of the overcrossing.
- An additional retaining wall would extend along the south side of the proposed slip ramp right-turn lane from Charcot Avenue to O'Toole Avenue.
- The retaining wall on the south side of the extension would extend to Oakland Road around the northeast corner of the Orchard School Ball Field along the proposed sidewalk.

Utility Relocation. There are existing utility lines within the footprint of the proposed Charcot Avenue extension, the majority of which are underground. These include water, storm drain, sanitary sewer, natural gas, electric, and communication facilities. These utilities would be relocated along the alignment, as necessary, to accommodate the construction of the project.

Right of Way Requirements. The proposed project would largely be constructed within the existing City-owned right-of-way both west and east of I-880. The project, however, would require additional right-of-way from a number of parcels located along the proposed alignment. In addition, temporary easements for construction and permanent easements for utilities and retaining walls would also be required. The right-of-way and easement requirements are summarized in Table 1.

Table 1. Right-of-Way and Easement Requirements

Assessor's Parcel Number	Owner/Parcel Address	Right of Way (square feet)	Temporary Construction Easement (square feet)	Retaining Wall Easement (square feet)	Utility Easement (square feet)
237-02-064	PS Business Park, LP 832 Charcot Avenue	9,400	1,000	5,600	--
237-02-084	PSB No. CA Industrial Portfolio, LLC 2033 O'Toole Avenue	13,200	--	4,500	20,500
237-15-189	Super Micro Computer, Inc. 980 Rock Avenue	6,000	2,800	--	--
237-15-201	Orchard School District 921 Fox Lane	5,000	3,400	--	--
237-15-202	Orchard School District 921 Fox Lane	16,300	4,500	--	--

All values are rounded up to the nearest 100 square feet.

Values are preliminary and are subject to change during final design.

Section 2. Methods

H. T. Harvey & Associates ecologist Matthew Timmer, M.S., characterized the existing biological conditions on the project site, including the presence and distribution of biotic habitats, potentially regulated habitats, and special-status species. This assessment involved a review of the project plans and description provided by David J. Powers & Associates and BKF Engineers (BKF 2017) combined with a reconnaissance-level survey conducted on February 1, 2018. Focused surveys for evidence of previous raptor nesting activity (i.e., large stick nests) and bat roosting habitat were also conducted on this date. Information concerning threatened, endangered, or other special-status species that could occur in the project region was reviewed, including information from the following sources:

- California Natural Diversity Database (CNDDDB) and its associated species accounts (CNDDDB 2018)
- Species list information for the vicinity from the website of the U.S. Fish and Wildlife Service (USFWS) (<https://ecos.fws.gov/ipac/>)
- California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants of California (CNPS 2018)
- Relevant scientific literature, technical databases, and resource agency reports

A search of CNDDDB Rarefind published accounts (CNDDDB 2018) was conducted for special-status plant and wildlife species occurring in the *Milpitas, California* USGS 7.5-minute topographic quadrangle within which the site is located, as well as the eight surrounding quadrangles (*Mountain View, Newark, Niles, La Costa Valley, Calaveras Reservoir, San Jose East, San Jose West, and Cupertino*). In addition, for plants we reviewed the Online Inventory of Rare Plants (CNPS 2018) for information regarding the distribution and habitats of vascular plants designated as California Rare Plant Rank (CRPR) 1A, 1B, 2A, 2B, or 3 that occur in any of the nine USGS quadrangles listed above. We also considered the CNPS plant list for Santa Clara County, as CNDDDB and CNPS do not maintain quadrangle-level records for all CRPR 3 and 4 species.

Section 3. Existing Biological Conditions

General Habitat Conditions and Wildlife Use

Vegetation. The reconnaissance-level field survey identified one biotic habitat type on the project site, developed/landscaped. The project site is currently occupied by existing roads, sidewalks, a parking lot, landscaped lawns and planting beds, a baseball field, and vacant land. The developed areas on the project site consist of existing roadways, parking lots, sidewalks, and other hardscapes and do not contain vegetation. Landscaped habitat occupies the remainder of the project site. Both Charcot Avenue and O'Toole Avenue to the west of I-880 are lined by a variety of non-native, mature trees including shamel ash (*Fraxinus uhdei*), coast redwood (*Sequoia sempervirens*), and deodar cedar (*Cedrus deodara*) (Photo 1). Many of the trees are planted in raised berms between the streets and parking lots for local businesses. Beneath the trees, the berms are landscaped with mulch and planted with shrubs, such as New Zealand flax (*Phormium* sp.) or other groundcover. East of I-880, Silk Wood Lane to Oakland Road is also lined by non-native street trees, including cork oak (*Quercus suber*), Chinese pistache (*Pistacia chinensis*), London planetree (*Platanus × hispanica*), crepe myrtle (*Lagerstroemia* sp.), pine (*Pinus* sp.), Canary Island date palm (*Phoenix canariensis*), and fan palm (*Washingtonia robusta*). In general, the street trees along Silk Wood Lane in the eastern portion of the project site are less mature than those along the western portion of the project site because the area was developed more recently (Photo 2). The portion of the project site between Silk Wood Lane and I-880 consists of a gravel lot, paved lot, and lawns dominated by turf grass and lined by ornamental trees, shrubs, and hedges (Photo 3), including a patch of planted bamboo (*Bambusa* sp.).



Photo 1. Developed/landscaped habitat along Charcot Avenue west of I-880



Photo 2. Developed/landscaped habitat along Silk Wood Lane east of I-880

Wildlife. The wildlife most often associated with developed/landscaped areas are those that are tolerant of periodic human disturbances, including introduced species such as the European starling (*Sturnus vulgaris*), rock

pigeon (*Columba livia*), eastern gray squirrel (*Sciurus carolinensis*), house mouse (*Mus musculus*), and Norway rat (*Rattus norvegicus*). Numerous common, native species are also able to utilize these habitats, especially the buildings and landscaped areas, including the western fence lizard (*Sceloporus occidentalis*), striped skunk (*Mephitis mephitis*), and a variety of birds such as the Anna's hummingbird (*Calypte anna*), American crow (*Corvus brachyrhynchos*), bushtit (*Psaltriparus minimus*), and chestnut-backed chickadee (*Poecile rufescens*), which were observed foraging on the project site during the reconnaissance survey. Foliage and furrows in the bark of mature trees could attract small numbers of individual bats,

but an examination of the trees on the site failed to find any large cavities that might provide suitable habitat for a large roosting or maternity colony of bats. The mature trees on the project site also provide food and nesting opportunities for a variety of native and non-native species, including the fox squirrel (*Sciurus niger*), Anna's hummingbird, lesser goldfinch (*Spinus psaltria*), California scrub-jay (*Apbelocoma californica*), and American crow. In addition, the mature trees provide potential nesting habitat for raptors such as the Cooper's hawk (*Accipiter cooperii*); however, no old nests of raptors were observed on the site during the reconnaissance survey.



Photo 3. Landscaped area along the project site east of I-880

Section 4. Special-Status Plant and Animal Species

As described in Methods above, information concerning threatened, endangered, or other special-status species that could occur on the project site was collected from several sources and reviewed by H. T. Harvey & Associates ecologists. The specific habitat requirements and the locations of known occurrences of each special-status species were the principal criteria used for inclusion in the list of species potentially occurring on the site. Figures 3 and 4 are maps of the CNDDDB's special-status plant and animal species records in the general vicinity of the project site, defined for the purposes of this report as the area within a 5-mile radius. These generalized maps are valuable on a historic basis, but do not necessarily represent current conditions. Although these records are not definitive, they show areas where special-status species occur or have occurred previously.

Special-Status Plants. A list of special-status plants with some potential for occurrence in the San José vicinity was compiled using CNPS lists (CNPS 2018) and CNDDDB records (CNDDDB 2018) and reviewed for their potential to occur on the project site (Figure 3). Based on an analysis of the documented habitat requirements and occurrence records associated with these species, all were determined to be absent from the project site. These species were considered absent from the project site because of its entirely developed/landscaped condition, which does not support any natural habitat types.

Special-Status Animals. Based on our review of current CNDDDB (2018) records (Figure 4) and other data sources, as well as our extensive experience with other projects in the San José area, several special-status animal species are known to occur in the project region. However, all were determined to be absent from the project site because of a lack of suitable habitat or evidence that the species does not occur in the project vicinity. Species considered for occurrence but rejected, as well as the reasons for their rejection, include the following:

- The project site and vicinity lack suitable marsh or Bay shoreline habitat for species associated with San Francisco Bay. These species include the federal and/or state listed California Ridgway's rail (*Rallus obsoletus obsoletus*), California black rail (*Laterallus jamaicensis coturniculus*), California least tern (*Sterna antillarum browni*), western snowy plover (*Charadrius alexandrinus nivosus*), and salt marsh harvest mouse (*Reithrodontomys raviventris*), as well as California species of special concern such as the San Francisco common yellowthroat (*Geothlypis trichas sinuosa*), Alameda song sparrow (*Melospiza melodia pusillula*), and salt marsh wandering shrew (*Sorex vagrans halicoetes*). Therefore, these species are not expected to occur on the project site or close enough to the site to be affected by project activities.
- The California tiger salamander (*Ambystoma californiense*), federally and state listed as threatened, and the California red-legged frog (*Rana draytonii*), federally listed as threatened and a California species of concern, occurred historically in the project region. However, the project site lacks suitable aquatic breeding habitat for these species. In addition, California tiger salamanders and California red-legged frogs have been largely extirpated from the majority of the urbanized Santa Clara Valley floor in Santa Clara County, including the project site and surrounding vicinity. Therefore, these species are determined to be absent.

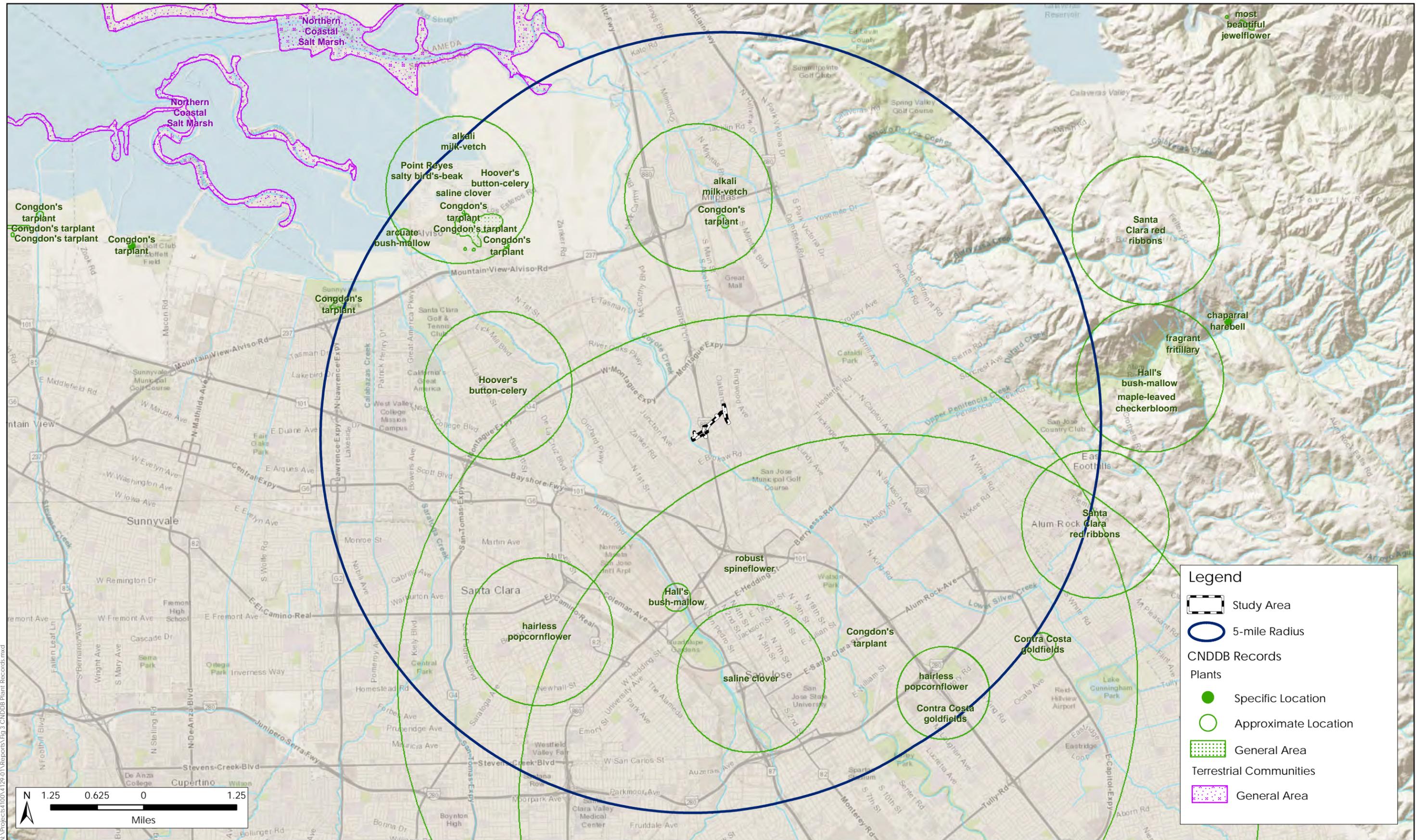


Figure 3. California Natural Diversity Database Map of Special-Status Plants
 Charcot Avenue Extension over I-880 Biological Resources Report (4129-01)
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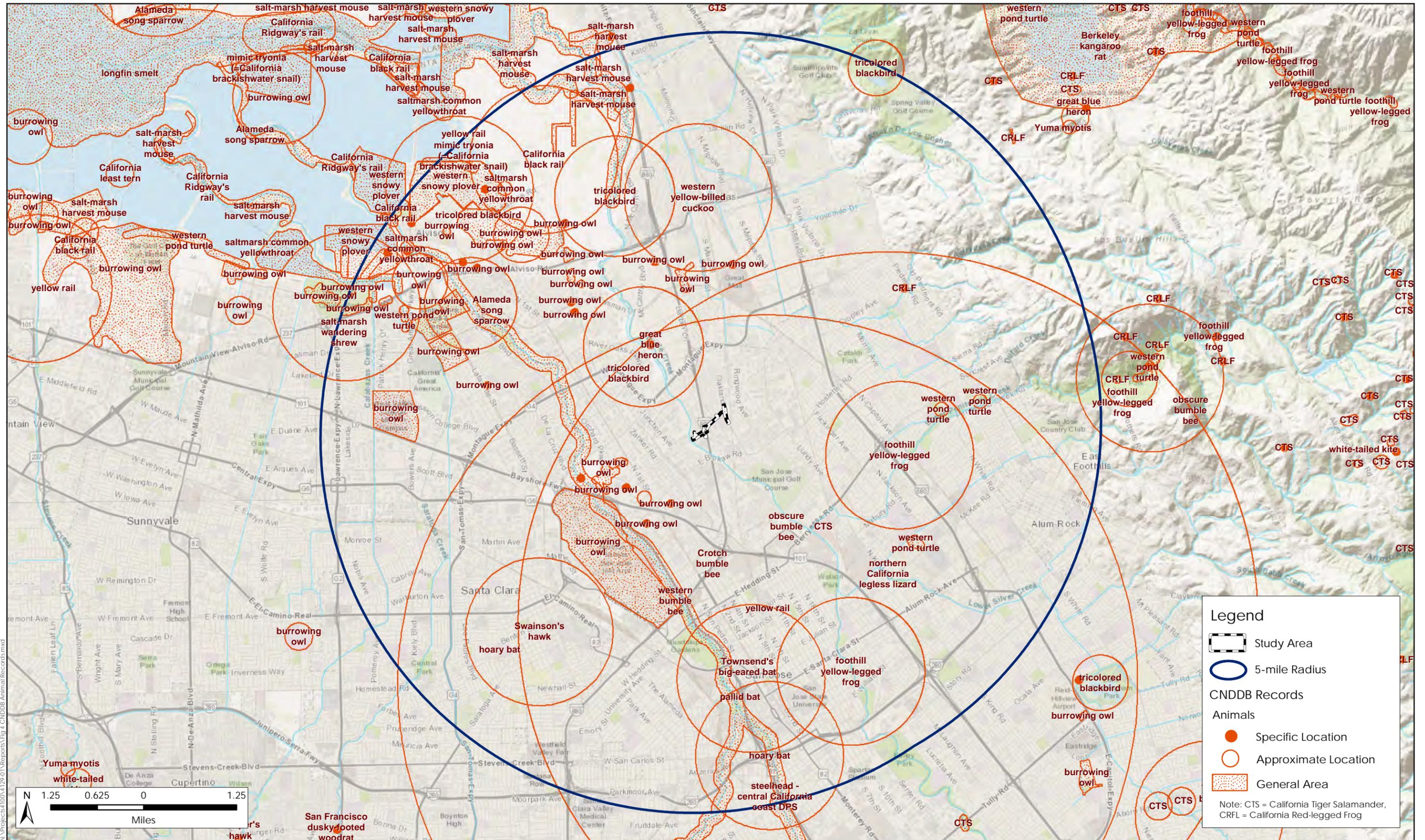


Figure 4. California Natural Diversity Database Map of Special-Status Animals
 Charcot Avenue Extension over I-880 Biological Resources Report (4129-01)
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- The burrowing owl (*Athene cunicularia*), a California species of special concern, is known to winter and breed in suitable habitat in the vicinity of the project (CNDDDB 2018). However, the project site lacks appropriate open habitat that could be used by foraging, nesting, or wintering burrowing owls and no burrows suitable for use by the burrowing owl were present on the project site at the time of the survey. Further, the project site is separated from the nearest known occurrence of this species, which is located approximately 1.0 mile to the west, by several major roads and extensive Valley floor commercial development. Thus, the burrowing owl is determined to be absent.
- The tricolored blackbird (*Agelaius tricolor*), a California species of special concern and state and federal candidate for listing, has a patchy distribution in the Santa Clara Valley, reflecting the patchy nature of its nesting habitat (Rottenborn 2007), which consists of emergent vegetation, grain fields, fallow fields, and extensive thickets of blackberry, usually near extensive open areas such as marshes, grassland, or agricultural areas that provide foraging habitat. Tricolored blackbirds have not been recorded nesting on the project site or in adjacent areas (CNDDDB 2018, Rottenborn 2007) and no suitable nesting or foraging habitat is present on the project site. Although some tricolored blackbird colonies in Santa Clara County have been located in areas where young willows (*Salix* spp.) and cottonwoods (*Populus fremontii*) intermix with herbaceous emergent vegetation, these colonies have been abandoned once the woody plants have grown to become dominant. As a result, Santa Clara County tricolored blackbird colonies have not been observed in areas that would be identified as riparian forest, and Coyote Creek, which occurs adjacent to the project site, does not provide suitable nesting habitat for this species. Therefore, tricolored blackbirds are not expected to occur on the project site.
- The pallid bat (*Antrozous pallidus*), a California species of special concern, historically occurred in the project region. However, pallid bat populations were essentially extirpated from developed areas throughout the project region by the 1990s. In addition, a focused search for bat roosting habitat located no suitable habitat for large pallid bat maternity roosts or day roosts within the project site, and no evidence of roosting bats (i.e., guano or urine staining) was detected. Therefore, this species is not expected to occur on the project site.
- The Townsend's big-eared bat (*Corynorhinus townsendii*), a California species of special concern, historically occurred in the project region. Unlike other bat species which seek refuge in crevices, the Townsend's big-eared bat normally roosts in open, cavernous spaces, hanging in the top of a natural cavity, or in the top corner of ceilings and walls of an undisturbed room (this species is easily disturbed while roosting in buildings). Due to the amount of ongoing disturbance in and around the buildings adjacent to the project site, Townsend's big-eared bats are not expected to occur on the project site.
- The project site lacks appropriate open habitat that could be used by nesting white-tailed kites (*Elanus leucurus*), a California fully protected species, and loggerhead shrikes (*Lanius ludovicianus*), a California species of special concern. Thus, these species are not expected to occur on the project site.

Although aquatic habitat for the Central California Coast distinct population segment (DPS) of steelhead (*Oncorhynchus mykiss*), a federally threatened species, is not present on the project site, the species is known to occur in Coyote Creek (CNDDDB 2018), which lies immediately adjacent to the westerly project limit and has

been designated as critical habitat for the steelhead. Similarly, the project site lacks suitable habitat for the western pond turtle (*Actinemys marmorata*), a California species of special concern. However, pond turtles are known to occur just west of the project limits in Coyote Creek.

Sensitive and Regulated Habitats

The California Department of Fish and Wildlife (CDFW) ranks certain rare or threatened plant communities, such as wetlands, meadows, and riparian forest and scrub, as ‘threatened’ or ‘very threatened’. These communities are tracked in the CNDDDB. Impacts on CDFW sensitive plant communities, or any such community identified in local or regional plans, policies, and regulations, must be considered and evaluated under CEQA (California Code of Regulations: Title 14, Div. 6, Chap. 3, Appendix G). Furthermore, aquatic, wetland and riparian habitats are also afforded protection under applicable federal, state, or local regulations, and are generally subject to regulation, protection, or consideration by the U.S. Army Corps of Engineers, Regional Water Quality Control Board, CDFW, and/or the USFWS.

Waters of the U.S./State. The Coyote Creek corridor is located entirely outside the project limits to the west. No habitat observed on the project site possesses the field characteristics used by the federal and state resource/regulatory agencies in defining their jurisdiction (i.e., waters of the U.S., under the Clean Water Act, or waters of the State, under the Porter-Cologne Water Quality Control Act). Therefore, no jurisdictional or regulated waters or aquatic habitats were found to occur on the project site.

CDFW Sensitive Habitats. To identify other potentially occurring natural communities of special concern, a CNDDDB (2018) search within the nine USGS 7.5-minute quadrangles that contain or surround the project site was performed. The CNDDDB identified two sensitive habitats as occurring within this nine-quadrangle area: northern coastal salt marsh and sycamore alluvial woodland. Based upon historical imagery, the entire project site has been developed with attendant landscaping since 2006, when Silk Wood Lane and the residential subdivision to the north were built. However, the remainder of the project site has been in its current developed state with attendant landscaping since at least 1993 (Google Inc. 2018). Additionally, none of the dominant species that form these habitat types were present within the site. Because of these conditions, and because the location of Coyote Creek corridor is entirely outside the project site, none of the sensitive habitats tracked by CNDDDB occur on the project site.

CDFW maintains a list of vegetation alliances and associations within the state of California (CDFG 2010). This list includes global (G) and state (S) rarity ranks for associations and alliances. Alliances and associations currently ranked as S1-S3 are considered highly imperiled. Within the project site, all habitats are altered and consist entirely of landscaped lawn, mostly non-native trees and shrubs, or developed areas with pavement or buildings. Therefore, no sensitive alliances or associations as defined by the CDFW are present.

Section 5. Biotic Impacts and Mitigation

Overview

The CEQA and the State CEQA Guidelines provide guidance in evaluating impacts of projects on biological resources and determining which impacts will be significant. CEQA defines “significant effect on the environment” as “a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.” Under State CEQA Guidelines section 15065, a project's effects on biotic resources are deemed significant where the project would:

- A. “substantially reduce the habitat of a fish or wildlife species”
- B. “cause a fish or wildlife population to drop below self-sustaining levels”
- C. “threaten to eliminate a plant or animal community”
- D. “reduce the number or restrict the range of a rare or endangered plant or animal”

In addition to the section 15065 criteria that trigger mandatory findings of significance, Appendix G of State CEQA Guidelines provides a checklist of other potential impacts to consider when analyzing the significance of project effects. The impacts listed in Appendix G may or may not be significant, depending on the level of the impact. For biological resources, these impacts include whether the project would:

- E. “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”
- F. “have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service”
- G. “have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act”
- H. “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”
- I. “conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance”
- J. “conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan”

Following is a brief summary of potential project impacts on biological resources.

No Impact

Impacts on Special-Status Plants. As described above, no special-status plant species are considered to have potential to occur on the project site. Therefore, the proposed project would have no impact on special-status plants.

Less-than-Significant Impacts

Impacts on Developed/Landscaped Habitats and Associated Common Plant and Animal Communities. The proposed project would impact up to 16.8 acres of developed/landscaped habitat. As described above, this habitat type is dominated by non-native plants, and the wildlife species that occur here are common, urban-adapted species. Developed/landscaped habitat and associated plant and wildlife species are common and widespread in the San Francisco Bay area. Because the site supports only a very small proportion of the regional populations of common plant and wildlife species, the proposed project would have very limited impacts on the regional abundance of these species. Furthermore, landscaping associated with the project would include vegetation and other habitat characteristics that would continue to support many of the animals currently using the site. As a result, project impacts on the plant and animal communities in developed/landscaped habitats do not meet the CEQA standard of having a substantial adverse effect and would be considered less than significant under CEQA.

Impacts on Aquatic and Riparian Habitats and Species, including the Central California Coast Steelhead and Western Pond Turtle. Wetlands and other waters do not occur within the project limits. Thus, the project would not cause the temporary or permanent loss of any federally protected wetlands or Waters of the U.S.

Although Coyote Creek is located immediately west of the project limits (Figure 2), there is little potential for the project to adversely affect water quality within Coyote Creek or its riparian habitat. This statement is based on the fact that any construction activities that could result in pollutants entering the creek will be a minimum of 300 feet from this resource. Further, the project will include a standard complement of best management practices (BMPs) during construction to prevent pollutants from entering the waterway. The BMPs will comply with State requirements to control the discharge of stormwater pollutants under the National Pollutant Discharge Elimination System (NPDES)/Construction General Permit. The project will also comply with the City of San Jose's Grading Ordinance, which requires the use of erosion and sediment controls to protect water quality while the site is under construction.

Although the riparian habitat at the Coyote Creek corridor is located entirely outside the project site, projects that are adjacent to riparian corridors are subject to the City of San Jose Riparian Corridor Policy. According to the policy riparian setbacks should be measured 100 feet from the outside edges of riparian habitat or the top of bank, whichever is greater. Because no new hardscape would be placed within 100 feet of the existing

riparian corridor, the project is fully compliant with City policy and would result in no impact to riparian habitats and no mitigation is required.

Less-than-Significant Impacts with Mitigation

Tree Removal. The urban forest consists of planted landscape trees along residential and commercial streets and in landscaped areas at residences, local parks, in parking lots, and the perimeter of commercial and industrial developments. Within the City of San José, the urban forest is considered an important biological resource because most mature trees provide some nesting, cover, and foraging habitat for a variety of birds (including raptors) and mammals, as well as providing necessary habitat for beneficial insects. Although the urban forest is not the best environment for native wildlife, trees in the urban forest are often the only or the best habitat commonly or locally available within urban areas.

According to the current project design and the February 2018 Tree Assessment prepared by HortScience, there are 85 trees along the proposed Charcot Avenue alignment that would require removal during construction of the project. Consistent with the General Plan FEIR (as amended), any tree removed as a result of the project would be required to be replaced in accordance with all applicable laws, policies or guidelines, including:

- City of San Jose Tree Protection Ordinance
- San Jose Municipal Code Section 13.28
- General Plan Policies MS-21.4, MS-21.5, and MS-21.6

Avoidance and Minimization/ Mitigation Measure 1a: Protect Trees not Designated for Removal.

Trees to remain in place and to be avoided will be clearly marked in project plans and have tree protection zones established around the canopy drip line zone to avoid serious injury or loss.

Avoidance and Minimization/Mitigation Measure 1b: Obtain Tree Removal Permit. All trees to be removed will be replaced in accordance with the City's standard tree replacement ratios, as listed in Table 2.

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

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

Table 2. City of San Jose Standard Tree Replacement Ratios

Circumference of Tree to Be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or greater ³	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

¹As measured 4.5 feet above ground level

² x:x = tree replacement to tree loss ratio

³Ordinance-sized tree

Notes:

Trees greater than 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

A 38-inch tree equals 12.1 inches in diameter.

One 24-inch box tree = two 15-gallon trees.

Section 6. Compliance with Additional Laws and Regulations Applicable to Biotic Resources of the Project Site

Regulatory Overview for Nesting Birds

Construction disturbance during the breeding season (February 1 through August 31, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests or indirectly by causing the abandonment of nests. This type of impact would not be significant under CEQA for the species that could potentially nest on the project site because of the local and regional abundances of these species and/or the low magnitude of the potential impact of the project on these species. However, such an impact would be considered a violation of California Fish and Game Code and the Migratory Bird Treaty Act (MBTA). Implementation of the following measures will ensure that project activities do not violate the MBTA and California Fish and Game Code:

Measure 1. Avoidance. To the extent feasible, construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31.

Measure 2. Preconstruction Surveys. If it is not possible to schedule construction activities between September 1 and January 31, then preconstruction surveys for nesting birds should be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. It is recommended that these surveys be conducted no more than seven days prior to the initiation of construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.

Measure 3. Inhibition of Nesting. If construction activities will not be initiated until after the start of the nesting season, it is recommended that all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the project be removed prior to the start of the nesting season (e.g., prior to February 1). This will preclude the initiation of nests in this vegetation and reduce the potential for the presence of an active nest to delay project construction.

Section 7. Literature Cited

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