H.T. HARVEY & ASSOCIATES
Ecological Consultants

27 August 2014

Heidi de Guzman
Prime Group Construction Inc.
3045 Wilson Road
Bakersfield, CA 93304

Subject: Holiday Inn & Suites Milpitas Biological Resources Report (HTH # 3612-01)

Dear Ms. Guzman:

Per your request, this biological resources report provides H. T. Harvey & Associates' assessment of potential impacts on sensitive biological resources as a result of the proposed construction of a Holiday Inn & Suites in Milpitas, California. This assessment is based on the Preliminary Site Plan and Project description that you provided on 13 August 2014.

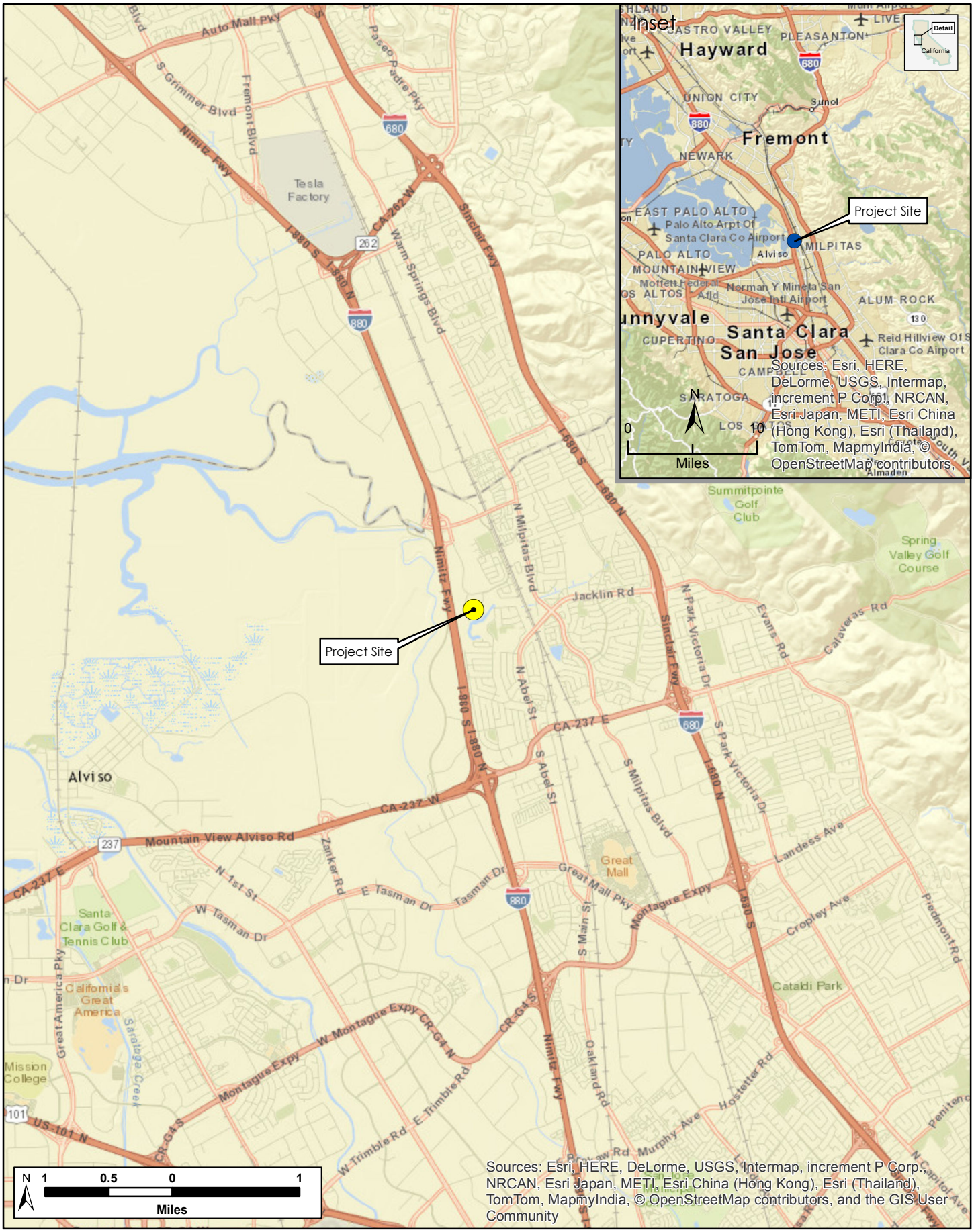
Project Description and Location

The 3.3-acre (ac) proposed Project site is located at 1100 Cadillac Court in Milpitas, California, southeast of the intersection of Cadillac Court and Fairview Way (Figure 1). Commercial development surrounds the currently vacant site, Interstate 880 lies approximately 580 feet (ft) to the west, and Lower Penitencia Creek lies approximately 670 ft to the east.

The proposed Project consists of the construction of a 74,073 ft^2, four-story Holiday Inn & Suites with 129 suites and approximately 177 associated parking spaces. The Project is currently in the design phase, and will be designed to meet or exceed the 2013 California Building Standards Code, the State Energy Resources Conservation and Development Commission's 2013 Building Energy Efficiency Standards, and the 2013 Building Energy Efficiency Standards, which include the updated California Green Building Standards Code. Green building design features will include designated parking for fuel-efficient vehicles, electric vehicle charging stations, bicycle parking, water-efficient landscaping, use of renewable and low-emitting materials, LED lighting fixtures, and lighting and HVAC occupancy sensors.

Methods

H. T. Harvey & Associates wildlife ecologist Robin Carle, M.S., and plant ecologist Élan Alford, Ph.D., characterized the existing biotic conditions on the Project site, including the presence and distribution of biotic habitats, regulated habitats, and special-status species. This assessment involved a review of relevant



N:\Projects3600\3612-01\Reports\Figure 1 Vicinity Map.mxd

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Figure 1: Vicinity Map
Holiday Inn & Suites Milpitas (3612-01)
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background information, as described below, combined with reconnaissance-level surveys conducted on 8 August 2014. During the reconnaissance-level survey, Ms. Carle conducted a focused survey for burrowing owls (*Athene cunicularia*) and their habitat (i.e., burrows of California ground squirrels [*Spermophilus beecheyi*]). She walked the entirety of the Project site searching for burrows of California ground squirrels, burrowing owls, or evidence of recent owl presence (e.g., the presence of feathers, whitewash, or pellets). In addition, she surveyed for evidence of previous raptor nesting activity (i.e., large stick nests) on the site. Dr. Alford conducted a reconnaissance-level wetlands assessment of the site during the survey.

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 (CNDDB) and its associated species accounts (CNDDB 2014)
- Species list information for the vicinity from the website of the Sacramento office of the U.S. Fish and Wildlife Service (USFWS) (http://www.fws.gov/sacramento/es/spp_list.htm)
- California Native Plant Society (CNPS) *Inventory of Rare and Endangered Plants of California* (CNPS 2014)
- *Jepson Manual Second Edition* (Baldwin et al. 2012)
- Calflora (2014)
- Consortium of California Herbaria (2014)
- Relevant scientific literature, technical databases, and resource agency reports

The search of CNDDB Rarefind published accounts (CNDDB 2014) was conducted for special-status plant and wildlife species occurring in the *Milpitas*, *California* U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle within which the site is located, as well as the eight surrounding quadrangles (*Niles*, *La Costa Valley*, *Calaveras Reservoir*, *San Jose East*, *San Jose West*, *Cupertino*, *Mountain View*, *and Newark*). In addition, for plants, we reviewed the *Online Inventory of Rare Plants* (CNPS 2014) 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 the CNPS does not maintain quadrangle-level records for CRPR 4 species.

Existing Biological Conditions

General Habitat Conditions and Wildlife Use

Vegetation. The Project site is located in a developed urban setting with many multi-unit business complexes situated around the site. Based on historic aerials, this site had a large building on it until 2006 (Google Earth 2014) when it was removed. Currently, the Project site is composed primarily of ruderal grassland (Figure 2). However, evidence of prior development on the site (e.g., soil disturbance from vehicle traffic, grading, and gravel placement) remains to such a degree that plant density within the ruderal grassland is moderate to low. Non-native annual grasses including wild oats (*Avena* sp.) and soft chess (*Bromus hordeaceus*) are the dominant

N:\Projects3600\3612-01\Reports\Figure 2 Biotic Habitats.mxd

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Figure 2: Biotic Habitats
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grasses. The grassland had been mowed and most grasses were approximately 2 inches tall or shorter at the time of the survey (Photo 1). Small coyote brush (*Baccharis pilularis*) shrubs also occur at the site and are invading the grassland.

A topographical depression, likely the result of previous excavation, is present in the western portion of the site, but no evidence of ponding water or hydrophytic vegetation communities were observed. The depression is largely covered by gravel fill and supports few plants. The existing plants are consistent with the surrounding ruderal grassland. Landscaped berms line the Project site to the north and west. The berms are lined by mature blackwood acacia trees (*Acacia melanoxylon*) and do not appear to be regularly maintained. The understory in this area supports Bermuda grass (*Cynodon dactylon*) and has a dense layer of tree fruit and seed litter where blackwood acacia seedlings are establishing.

Photo 1. Ruderal grassland/developed habitat.

Wildlife. Wildlife use of the ruderal grassland/developed habitat on the site is limited by the simple structure of the vegetation, high levels of human disturbance that occur in the urban matrix surrounding the site, small size of the Project site, and its isolation from more extensive grasslands and other natural areas in the region. As a result, wildlife species associated with more extensive habitats in the region, such as the grasshopper sparrow (*Ammodramus savannarum*), are absent from this small patch of habitat, and many of the species that occur on the site are species that occur in adjacent urban areas and use the site for foraging. Such species include the American crow (*Corvus brachyrhynchos*), California towhee (*Melozone crissalis*), American robin (*Turdus migratorius*), mourning dove (*Zenaida macroura*), dark-eyed junco (*Junco hyemalis*), bushtit (*Psaltriparus minimus*), and western scrub-jay (*Aphelocoma californica).* Few birds are likely to nest in the ruderal grasslands due to its limited extent and structural simplicity, but species such as the Anna's hummingbird (*Calypte anna*), American crow, American robin, and western scrub-jay may nest in the acacia trees along the site perimeter or in the coyote brush shrubs on the site. During winter and migration, common nonbreeding species such as the white-crowed sparrow (*Zonotrichia leucophrys*) and golden-crowned sparrow (*Zonotrichia atricapilla*) will forage on the site regularly.

No nests of raptors (e.g., hawks, eagles, falcons, and owls) were observed on the site or in adjacent areas during the focused survey. However, raptors that nest in natural areas in the region, such as along Coyote Creek west of Interstate 880, may forage on the site occasionally. A white-tailed kite (*Elanus leucurus*) was

observed perched in a tree on the site during the site survey and was likely hunting for prey. Additional raptor species that may forage on the site include the red-tailed hawk (*Buteo jamaicensis*) and Cooper's hawk (*Accipiter cooperii*).

Common reptiles, such as the western fence lizard (*Sceloporus occidentalis*) and gopher snake (*Pituophis catenifer*), may forage on the Project site. Burrows of Botta's pocket gophers (*Thomomys bottae*) were observed on the site during the survey, but burrows of California ground squirrels were absent. Other common mammal species that inhabit surrounding urban areas, such as the native raccoon (*Procyon lotor*) and striped skunk (*Mephitis mephitis*) and nonnative Virginia opossum (*Didelphis virginiana*), will also forage on the site occasionally.

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 biologists. 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 CNDDB'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 (mi) radius. These generalized maps are valuable on a historic basis, but do not necessarily represent current conditions. While these records are not definitive, they show areas where special-status species occur or have occurred previously.

Special-status Plants. The CNPS identifies 70 special-status plant species that occur in Santa Clara County (for CRPR 4 species) or in at least one of the nine quadrangles that contain or surround the Project site (for CRPR 1A, 1B, 2A, 2B, or 3 species). All 70 of these special-status species were determined to be absent from the Project site due to one or more of the following reasons:

- specific habitat and/or or edaphic requirements for the species in question are absent,
- the species is known to be extirpated from the area,
- the Project site is outside the highly endemic range of the species in question,
- the elevation range of the species is outside of the range on the Project site,
- degraded habitat conditions on the Project site are not likely to support the species in question, and/or
- the species was not observed during a reconnaissance-level site visit.

In addition, the CNDDB identifies several additional special-status plant species as occurring within the Project vicinity (Figure 3). According to CNDDB records, these occurrences are either known to be extirpated, are historic records that have not been observed recently, or have edaphic requirements (e.g. mesic habitats) that are not present on the Project site. Therefore, these species were determined to be absent from the Project site.

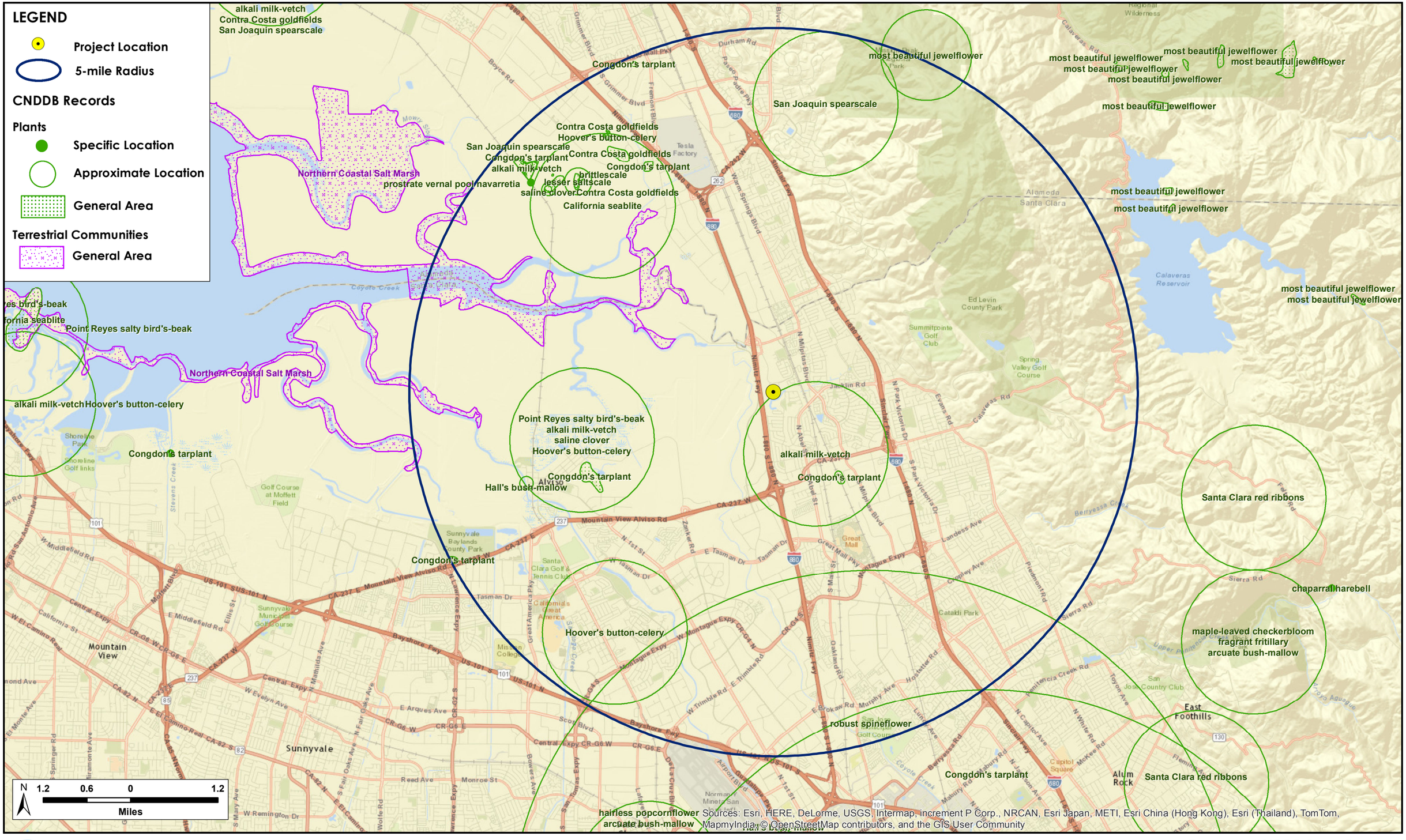

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Figure 3: CNDDB Plant Records
Holiday Inn & Suites Milpitas (3612-01)
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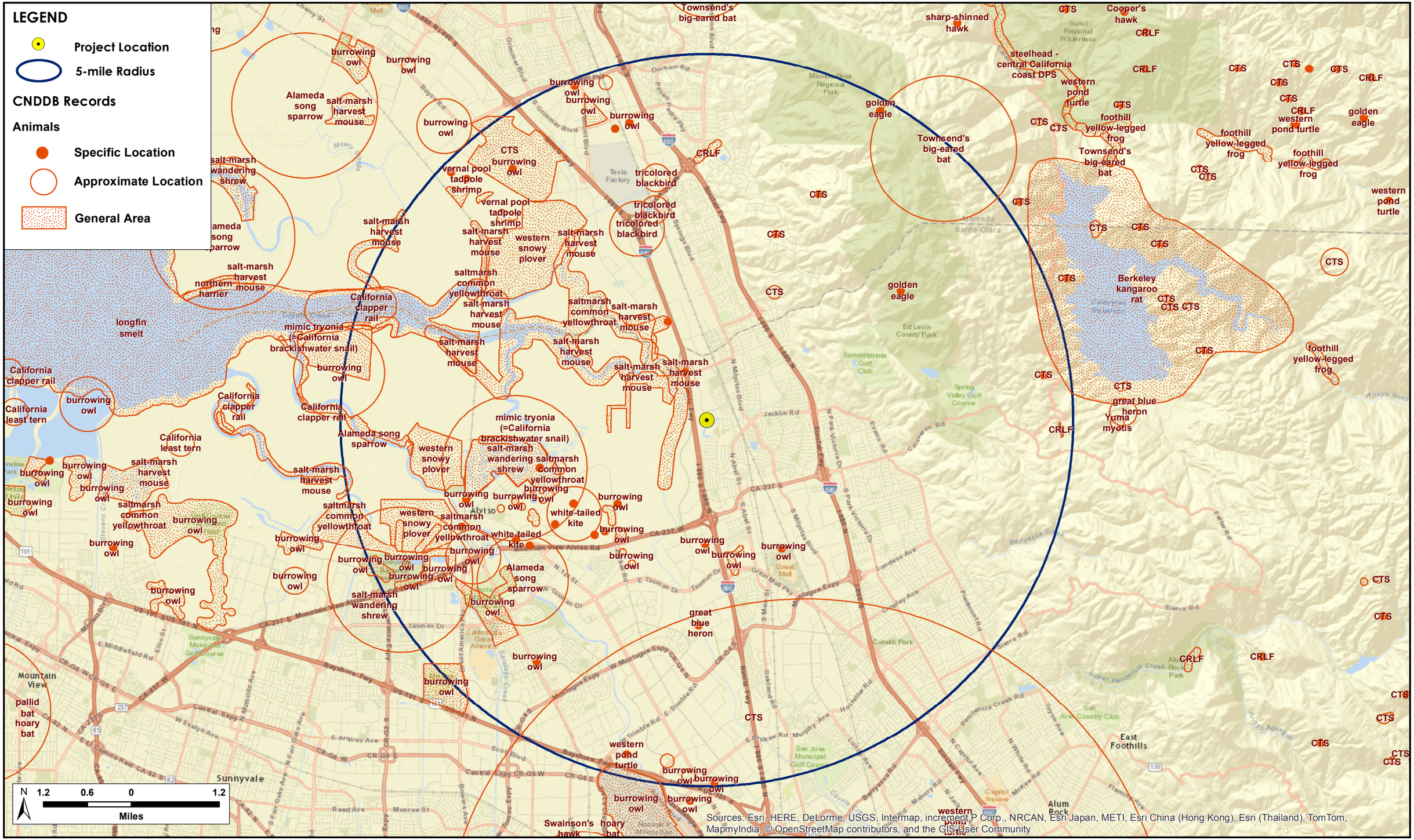

N:\Projects\3600\3612-01\Reports\Figure 4 CNDDB Animals.mxd

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

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Figure 4: CNDDB Animal Records
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Special-status Animals. Based on our review of current CNDDB (2014) records (Figure 4) and other data sources, several special-status animal species are known to occur in the Project region. However, the majority of these species were determined to be absent from the Project site due to a lack of suitable habitat or to 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 (among others):

- The California tiger salamander (*Ambystoma californiense*) and the California red-legged frog (*Rana draytonii*) occurred historically in the Project region. However, over the past 150 years California tiger salamanders and California red-legged frogs have been largely extirpated from the majority of the urbanized Santa Clara Valley floor in northern Santa Clara County, including the Project site and surrounding vicinity. Further, there are no known occurrences of California tiger salamanders or California red-legged frogs within potential dispersal distance of the Project site for either species (i.e., 1.2 mi for the tiger salamander and 1.0 mi for the red-legged frog), and the Project site is separated from the nearest known occurrences of these species by both Interstate 680 and dense urbanization within the City of Milpitas (Figure 4). Thus, California tiger salamanders and California red-legged frogs are not expected to occur on the Project site.
- The Bay checkerspot butterfly (*Euphydryas editha bayensis*) occurs approximately 12 mi to the southeast of the Project site at Coyote Ridge (CNDDB 2014). However, the Project site lacks serpentine grasslands and the butterfly's two larval food plants: California plantain (*Plantago erecta*) and owl's clover (*Orthocarpus densiflorus*). Thus, the Bay checkerspot butterfly is not expected to occur on the Project site.
- The Project site lacks suitable marsh habitat for the San Francisco common yellowthroat (*Geothlypis trichas sinuosa*), Alameda song sparrow (*Melospiza melodia pusillula*), California black rail (*Laterallus jamaicensis*), California Ridgway's rail (*Rallus obsoletus obsoletus*)[1], California least tern (*Sterna antillarum browni*), western snowy plover (*Charadrius alexandrinus nivosus*), tricolored blackbird (*Agelaius tricolor*), salt-marsh wandering shrew (*Sorex vagrans halicoetes*), and salt-marsh harvest mouse (*Reithrodontomys raviventris*). Thus, these species are not expected to occur on the Project site.
- The limited extent of the Project site and its isolation from more extensive grasslands and marshes in the region preclude the presence of several sensitive wildlife species that are associated with extensive open habitats. These are the grasshopper sparrow, loggerhead shrike (*Lanius ludovicianus*), and northern harrier (*Circus cyaneus*).
- The Project site lacks aquatic habitat for the Central California Coast steelhead (*Oncorhynchus mykiss*), Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*), and western pond turtle (*Actinemys marmorata*). Thus, these species are determined to be absent.
- The Project site lacks suitable structures or trees with crevices and cavities that would provide roosting habitat for bats. Thus, roosting bats, including the pallid bat (*Antrozous pallidus*) and Townsend's big-eared bat (*Corynorhinus townsendii*), are determined to be absent.

[1] Formerly the California clapper rail (*Rallus longirostris obsoletus*)

The burrowing owl, a California species of special concern, and the white-tailed kite, a State fully protected species, may forage on the site occasionally. These species are discussed in detail below.

Burrowing owl (*Athene cunicularia*). Federal Listing Status: None; State Listing Status: Species of Special Concern. Burrowing owls are small, terrestrial owls of open country. They occur year-round in the Santa Clara Valley (Trulio 2007), and are commonly present in open, agricultural, or grassland areas with active burrows of California ground squirrels. Owls use the abandoned burrows of ground squirrels for shelter and nesting. The nesting season as recognized by the California Department of Fish and Wildlife (CDFW) extends from 1 February through 31 August (California Department of Fish and Game 2012). After nesting is completed, adult owls may remain in their nesting burrows or in nearby burrows, or they may migrate (Rosenberg et al. 2007); young birds disperse across the landscape from 0.1 mi to 35 mi from their natal burrows (Rosier et al. 2006).

The nearest extant occurrence of a burrowing owl is located approximately 1.5 mi to the southwest of the Project site (CNDDB 2014). A focused survey of the Project site for burrowing owls and suitable habitat for burrowing owls (i.e., burrows of California ground squirrels) detected no burrowing owls, sign of burrowing owl use of the site (e.g., whitewash, feathers, or pellets), or burrows of California ground squirrels. Due to the lack of ground squirrel burrows on the site, burrowing owls are not expected to roost or breed there. In addition, no adjacent parcels support grassland habitat with ground squirrel burrows, and ground squirrels are therefore unlikely to colonize the site and create nesting and roosting habitat for burrowing owls in the future. However, this possibility cannot be ruled out completely.

Burrowing owls may also occasionally forage on the site, but no use of the site by burrowing owls was observed during the survey. The high levels of previous disturbance on the site (i.e., the presence of a building that was demolished) and current disturbance adjacent to the site (i.e., the presence of surrounding commercial development) suggests that the site does not provide high-quality foraging habitat for burrowing owls. Thus, although burrowing owls could forage on the site occasionally, they are not expected to do so frequently or in large numbers, if at all.

White-tailed kite (*Elanus leucurus*). Federal Listing Status: None; State Listing Status: Fully Protected. White-tailed kites are year-round residents that nest in grasslands, agricultural fields, cismontane woodlands, and other open habitats with healthy prey populations and suitable snags, shrubs, trees, or other substrates for nesting (Polite 1990, Dunk 1995, Erichsen et al. 1996). Nonbreeding birds typically remain in the same area over the winter, although some movements do occur (Polite 1990). The presence of white-tailed kites is closely tied to the presence of prey species, particularly voles, and prey base may be the most important factor in determining habitat quality for white-tailed kites (Dunk and Cooper 1994, Skonieczny and Dunk 1997).

A white-tailed kite was observed perched in an acacia tree on the Project site during the reconnaissance-level survey on 8 August 2014. No existing raptor nests were observed within or adjacent to the site during the

survey, indicating that white-tailed kites are not currently nesting in the area. While trees on the site and in the site vicinity provide ostensibly suitable nesting substrates for white-tailed kites, the site does not support sufficient prey species to support a nesting pair. This is due to the site's small size and because the site is maintained by mowing, which reduces available food (e.g., grasses and forbs) for prey species. Evidence of small numbers of Botta's pocket gophers (i.e., gopher burrows) was observed during the site survey, but these gophers were not present in high enough densities to support a nesting pair of white-tailed kites. It is likely that the white-tailed kite that was observed on the site during the survey nests east of Interstate 880, where extensive natural habitats are present, and occasionally forages on the Project site.

Sensitive and Regulated Habitats

The 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 CNDDB. 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 the California Environmental Quality Act (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.

CDFW Sensitive Habitats. Based on a query of Rarefind (CNDDB 2014) for sensitive habitats in the *Milpitas*, *California* 7.5-minute USGS quadrangle, no sensitive habitats were identified on the Project site. Further, no sensitive habitats were found to be present during the reconnaissance-level survey.

Waters of the U.S./State. 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.

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. The Act defines "significant effect on the environment" as "a substantial adverse change in the physical conditions which exist in the area affected by the proposed project." 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 Game 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"

No Impact

Impacts on Special-status Plants. As described above, suitable habitat is not present on the Project site for any special-status plant species. Therefore, there would be no impact on special-status plants due to this Project.

Impacts on Protected Trees. The Project may result in the removal of several trees during lot development. The City of Milpitas protects approved street trees within a street right-of-way or easement and trees that are 37-inches in circumference or larger. Protected street trees include only specifically listed species that are planted and maintained by the City. The blackwood acacia trees that line the street on the Project site are not considered approved street trees because this species is not on the City maintained list. The remaining trees on the Project site are smaller than 37-inches in circumference and do not meet protected tree size requirements. Therefore, Project tree removal does not conflict with the City's tree protection ordinance and there would be no impact on protected trees because of this Project.

Less-than-significant Impacts

Impacts on Common Upland Habitats (Ruderal Grassland/Developed) and Associated Common Wildlife Species. Construction activities related to the proposed Project may result in the loss of up to 3.3 ac of ruderal grassland/developed areas. Impacts on these habitats during construction would reduce or alter their extent on the Project site and would result in a reduction in abundance of some of the common plant and wildlife species that use the site. These habitats are relatively abundant and widespread regionally, and are not particularly sensitive, valuable (from the perspective of providing important plant or wildlife habitat), or exemplary occurrences of these habitat types. Similarly, the site supports only a very small proportion of the regional populations of common wildlife species, and the loss of these habitats would not measurably affect regional wildlife populations. Thus, these impacts do not meet the CEQA standard of having a *substantial* adverse effect, and would not be considered significant.

Impacts on White-tailed Kites. Project activities would result in the loss of up to 3.3 ac of foraging habitat for white-tailed kites. However, the loss of 3.3 ace of foraging habitat is not expected to result in a substantial effect on populations of these species given the local and regional abundance of suitable foraging habitat, and the very small proportion of suitable habitat that would be impacted. Further, because white-tailed kites do not nest on or immediately adjacent to the Project site, the Project would not result in any impacts on active nests or individual white-tailed kites. Therefore, Project-related impacts on white-tailed kites would not be considered significant under CEQA.

Impacts Found to Be Less than Significant with Mitigation

Impacts on Burrowing Owls. The ruderal grassland/developed habitat on the Project site provides 3.3 ac of ostensibly suitable foraging habitat for burrowing owls. However, extensive grasslands similar to those on the Project site are present throughout Santa Clara County, but burrowing owl distribution is much more limited, indicating that the presence of grassland habitat alone is not sufficient evidence to determine that burrowing owls are likely to occur on a site. Given the lack of observations of burrowing owls or burrowing owl sign during the focused survey of the site, the absence of suitable burrows, and the isolation of the site from known occupied owl habitat in the region, burrowing owls are not expected to forage on the site frequently or in large numbers, if at all. Therefore, the loss of 3.3 ac of potential foraging habitat would not result in a substantial adverse effect on foraging habitat for burrowing owls in the region and would be considered less than significant under CEQA.

Because no burrows of California ground squirrels were observed on or near the site, burrows are unlikely to be present on the site during construction and thus we do not expect the Project to result in any impacts on occupied burrows or individual burrowing owls. Nevertheless, although this probability is low, ground squirrels could move onto the site at any time, and the potential for owls to nest or roost on the site in the future cannot be ruled out. Due to the rarity of the burrowing owl in the region and the effects on burrowing owl populations of the loss of any individuals, the loss of individual burrowing owls or active burrowing owl burrows would be significant under CEQA. Implementation of the following measures would reduce

potential impacts on nesting and roosting burrowing owls during Project construction to a less-than-significant level.

Mitigation Measure 1a: Conduct Pre-construction Surveys for Burrowing Owls. Pre-construction surveys for burrowing owls will be conducted prior to the initiation of all Project activities within suitable burrowing owl nesting and roosting habitat (i.e., ruderal grassland habitat with burrows of California ground squirrels). Pre-construction surveys will be completed in conformance with the CDFW's 2012 guidelines (California Department of Fish and Game 2012). An initial habitat assessment will be conducted by a qualified biologist to determine if suitable burrowing owl habitat is present in a given area. During the initial site visit, a qualified biologist will survey the entire activity area and (to the extent that access allows) the area within 250 ft of the site for suitable burrows that could be used by burrowing owls for nesting or roosting. If no suitable burrowing owl habitat (i.e., ruderal grasslands with burrows of California ground squirrels) is present within a given area, no additional surveys will be required. If suitable burrows are determined to be present within 250 ft of work areas, a qualified biologist will conduct three additional surveys to investigate each burrow within the survey area for signs of owl use and to determine whether owls are present in areas where they could be affected by proposed activities. The final survey shall be conducted within the 24-hour period prior to the initiation of Project activities in any given area.

Mitigation Measure 1b: Implement Buffer Zones for Burrowing Owls. If burrowing owls are present during the nonbreeding season (generally 1 September to 31 January), a 150-ft buffer zone shall be maintained around the occupied burrow(s), if feasible. If maintaining such a buffer is not feasible, then the buffer must be great enough to avoid injury or mortality of individual owls, or else the owls should be passively relocated as described in Mitigation Measure 3c below. During the breeding season (generally 1 February to 31 August), a 250-ft buffer, within which no new Project-related activities will be permissible, will be maintained between Project activities and occupied burrows. Owls present between 1 February and 31 August will be assumed to be nesting, and the 250-ft protected area will remain in effect until 31 August. If monitoring evidence indicates that the owls are no longer nesting or the young owls are foraging independently, the buffer may be reduced or the owls may be relocated prior to 31 August, in consultation with the CDFW.

Mitigation Measure 1c: Monitor Owls during Construction. Any owls occupying the Project site are likely habituated to frequent human disturbances. As a result, they may exhibit a tolerance of greater levels of human disturbance than owls in more natural settings, and work within the standard 250-ft buffer during the nesting season may be able to proceed without disturbing the owls. Therefore, if nesting owls are determined to be present on the site, and Project activities cannot feasibly avoid disturbance of the area within 250 ft of the occupied burrow during the nesting season (i.e., 1 February through 31 August) due to other seasonal constraints, a qualified biologist will be present during all activities within 250 ft of the nest to monitor the owls' behavior. If in the opinion of the qualified biologist, the owls are unduly disturbed (i.e., disturbed to the point of harm or reduced reproductive success), all work within 250 ft of the occupied burrow will cease, and Mitigation Measure 1d shall be implemented.

Mitigation Measure 1d: Passively Relocate Burrowing Owls. If construction will directly impact occupied burrows, a qualified biologist will passively evict owls from burrows during the nonbreeding season (1 September to 31 January). No burrowing owls will be evicted during the nesting season (1 February through 31 August) except with the CDFW's concurrence that evidence demonstrates that nesting is not actively occurring (e.g., because the owls have not yet begun nesting early in the season, or because young have already fledged late in the season). Eviction will occur through the use of one-way doors inserted into the occupied burrow and all burrows within impact areas that are within 250 ft of the occupied burrow (to prevent occupation of other burrows that will be impacted). One-way doors will be installed by a qualified biologist and left in place for at least 48 hours before they are removed. The burrows will then be back-filled to prevent re-occupation.

Although relocation of owls may be necessary to avoid the direct injury or mortality of owls during construction, relocated owls may suffer predation, competition with other owls, or reduced health or reproductive success as a result of being relegated to more marginal habitat. However, the benefits of such relocation, in terms of avoiding direct injury or mortality, would outweigh any adverse effects.

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

Regulatory Overview for Nesting Birds

Construction disturbance during the nesting season (1 February through 31 August, 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 due to the local and regional abundances of these species and/or the low magnitude of the potential impact of the Project on these species (i.e., the Project is only expected to impact one or two individual pairs of these species, which is not a significant impact to their regional populations). However, we recommend that the following measures be implemented to ensure that Project activities comply with the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code:

Measure 2a. 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 1 February through 31 August.

Measure 2b. Pre-construction/Pre-disturbance Surveys. If it is not possible to schedule construction activities between 1 September and 31 January, then pre-construction surveys for nesting birds should be conducted by a qualified ornithologist to ensure that no nests will be disturbed during Project implementation. We recommend that these surveys be conducted no more than seven days prior to the initiation of construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g.,

shrubs, ruderal grasslands, and 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 ft for raptors and 100 ft 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 2c. Inhibition of Nesting. If construction activities will not be initiated until after the start of the nesting season, we recommend 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 1 February). This will preclude the initiation of nests in this vegetation, and prevent the potential delay of the Project due to the presence of active nests in these substrates.

Please contact me by email at gbolen@harveyecology.com or by phone at (408) 458-3246 if you have any questions regarding this report. Thank you very much for contacting H. T. Harvey & Associates regarding this Project.

Sincerely,

Ginger Bolen, Ph.D.
Project Manager – Senior Wildlife Ecologist

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