

Appendix C: Biological Resources Assessment

Biological Resources Study
San Ramon City Center Project
City of San Ramon, Contra Costa County, California

Diablo, California, USGS 7.5-minute Topographic Quadrangle Map
Township 2 South, Range 1 West, Section 15
APN number(s) 213-133-063, -086 and 213-120-009, -013

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SECTION 1: SUMMARY

A biological resources study was conducted to document the existing biological conditions within the San Ramon City Center Project, hereafter referred to as the project site or site, located in the City of San Ramon, Contra Costa County, California. Totalling approximately 39.09 acres, the proposed project includes a city center with a mixed use development.

The project site contains suitable nesting habitat for ground-nesting avian species protected by the Migratory Bird Treaty Act and California Fish and Game Code Section (§) 3503. A pre-construction nesting bird survey will be required prior to any vegetation removal or ground disturbance during the nesting season. A focused burrowing owl survey will also be required prior to any ground-disturbing activities.

No potentially jurisdictional drainage features or wetlands were observed onsite during the survey; therefore, a formal jurisdictional delineation will not be required.

The project site is not located within a significant wildlife movement corridor. The project site is not located within any federally designated critical habitat.

SECTION 2: INTRODUCTION

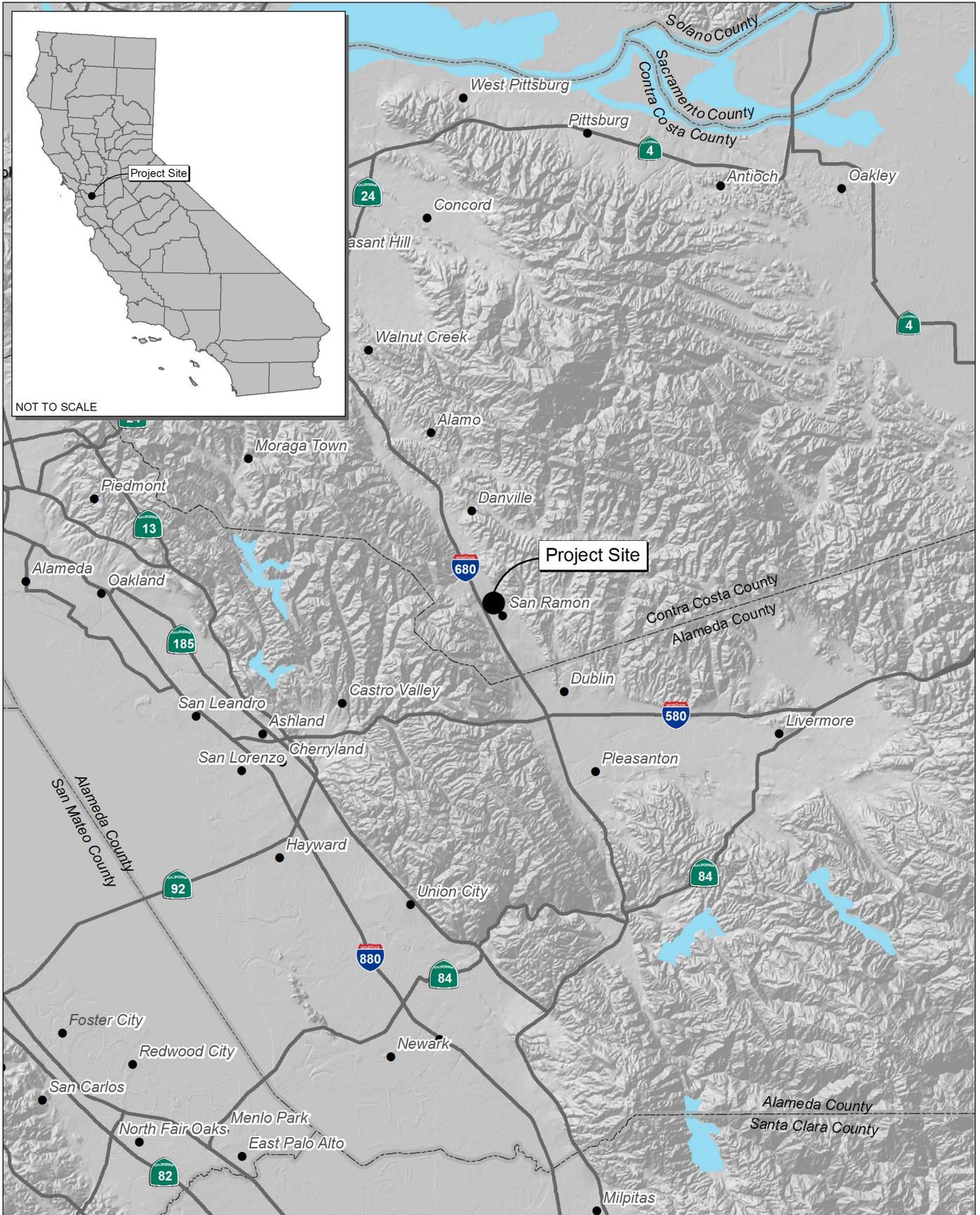
At the request of the City of San Ramon, Michael Brandman Associate (MBA) conducted a biological resources study to document the existing conditions within the 39.09-acre San Ramon City Center Project, located in the City of San Ramon, Contra Costa County, California. For the purposes of this report the surveyed area includes the roads surrounding the existing parcels. The total surveyed area is approximately 48.6 acres. This report provides a detailed description of existing conditions. The information contained herein is intended to provide a baseline for which subsequent evaluations can be made of potential biological resource impacts associated with future projects, based upon the environmental policies and regulations discussed in Appendix D, including the Clean Water Act (CWA), the Federal Endangered Species Act (ESA), the California Endangered Species Act (CESA), and California Environmental Quality Act (CEQA). An approved project site plan was not completed prior to the preparation of this document, and, therefore, it does not include a project-specific impact analysis.

2.1 - Project Site Location

The project site is located north of Interstate 580, south of State Route (SR-) 4, and east of Interstate (I-) 680 (Exhibit 1). It can be found on the Diablo, California, United States Geological Survey (USGS) 7.5-minute topographic quadrangle map, with the San Ramon (Norris) Land Grant portion of Township 2 South, Range 1 West (Exhibit 2). The site is specifically located north of Chevrontexaco Way, south of Bishop Drive, east of Sunset Drive and west of the Iron Horse Trail (Exhibit 3). The project site consists of Assessor's Parcel Numbers (APNs) 213-133-063, 213-133-086, 213-120-009, and 213-120-013.

2.2 - Project Description

The City of San Ramon and Sunset Development Company is proposing to develop approximately 2,168,000 square feet of mixed-use development as part of the San Ramon City Center Project. The project will include a new transit-oriented development within the existing Bishop Ranch Business Park. The major components of the mixed-use development include residential units; a lifestyle retail center including arts, cinema, restaurants, a premium "boutique" hotel, three Bishop Ranch Class A office buildings; a new City Hall with Council Chamber; a City Library; and a transit hub.



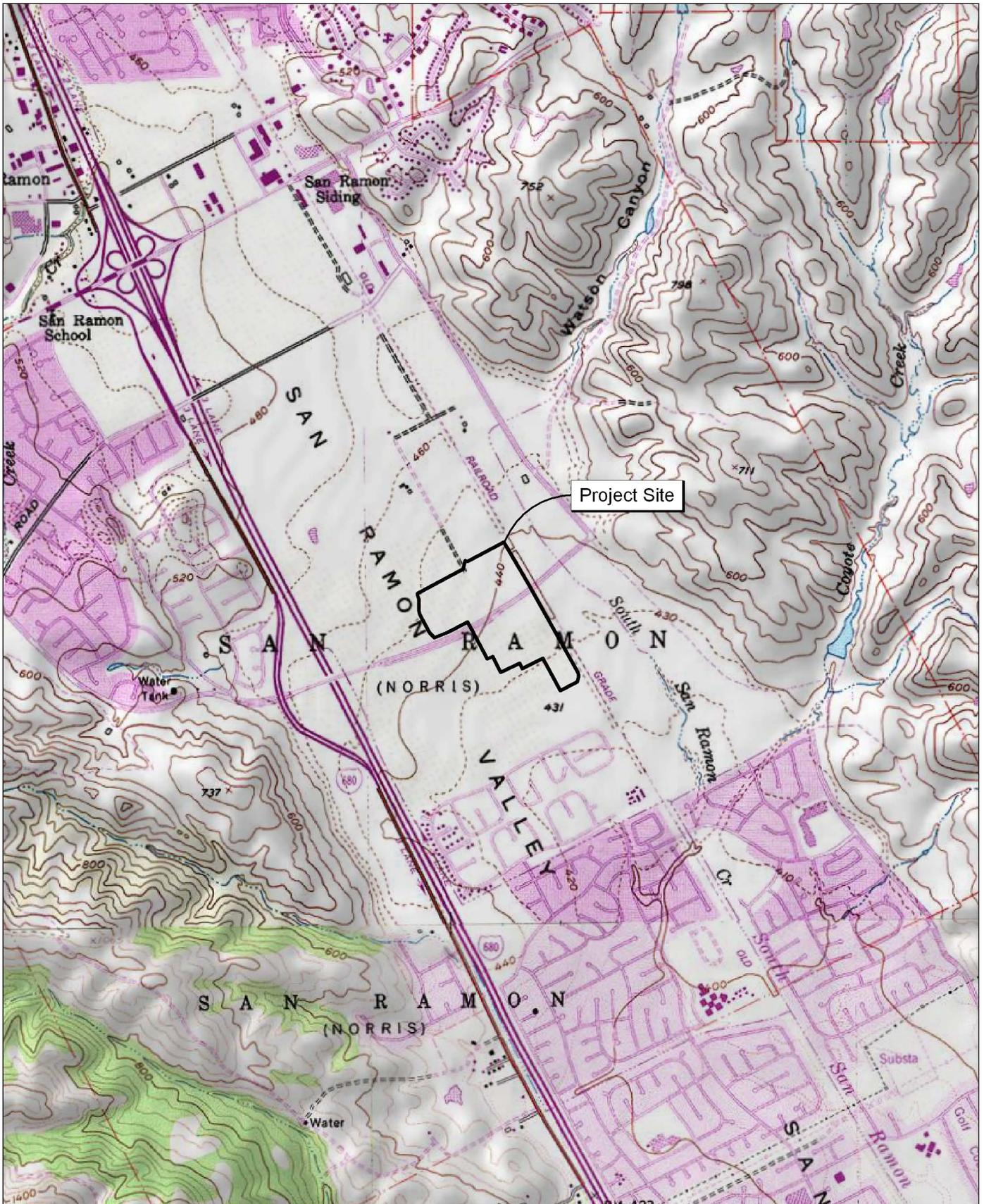
Source: Census 2000 Data, The CaSIL, MBA GIS 2007.



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Exhibit 1 Regional Location Map

CITY OF SAN RAMON • SAN RAMON CITY CENTER PROJECT
BIOLOGICAL RESOURCES STUDY



Source: TOPO! USGS Diablo (1980) 7.5' DRG.

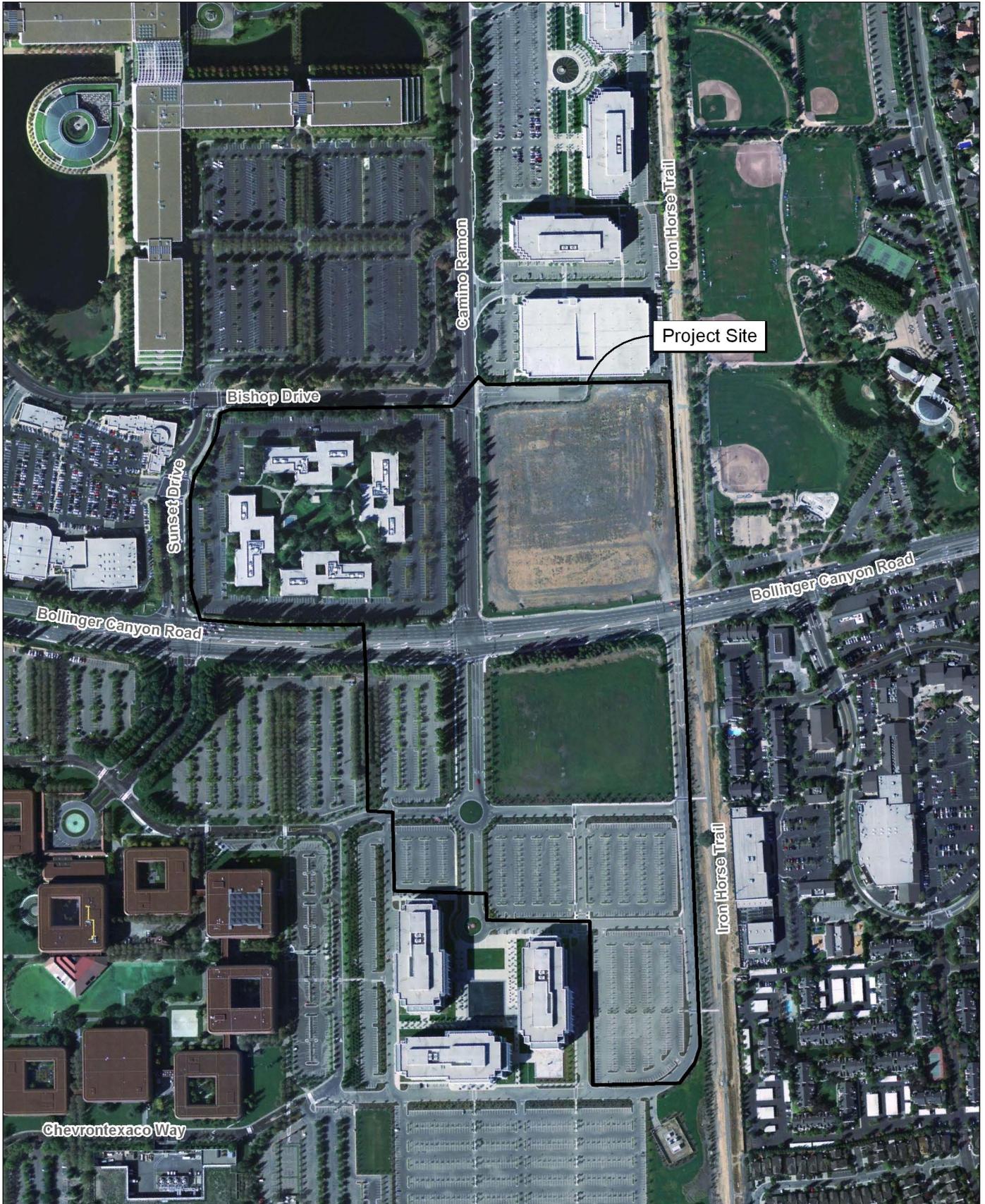


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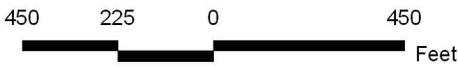
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Exhibit 2 Local Vicinity Map Topographic Base



Source: Terraserver.



Michael Brandman Associates

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Exhibit 3 Local Vicinity Map Aerial Base

SECTION 3: METHODOLOGY

Analysis of the biological resources associated with the project site began with a thorough review of relevant literature followed by a reconnaissance-level field survey. The primary objective of the survey is to document existing site conditions and determine the potential presence of sensitive biological resources.

For the purpose of this report, sensitive species refers to all species formally listed as threatened and/or endangered under the ESA and CESA, California Species of Special Concern, designated as Fully Protected by CDFG; given a status of 1A, 1B, or 2 by the California Native Plant Society (CNPS); or designated as sensitive by City, County, or other regional planning documents. Federal and State listed threatened and/or endangered species are legally protected under the ESA. The remaining species mentioned above have no direct legal protection but require a significance analysis under CEQA guidelines.

3.1 - Literature Review

The literature review provides a baseline from which to evaluate the biological resources potentially occurring on the project site as well as the surrounding area.

3.1.1 - Existing Environmental Documentation

As part of the literature review, MBA examined existing environmental documentation for the project site and local vicinity. This documentation included biological studies for the area, literature pertaining to habitat requirements of special status species potentially occurring in the vicinity of the site, as well as federal register listings, protocols, and species data provided by the USFWS and CDFG. These and other documents are listed in Section 7 of this study.

3.1.2 - Topographic Maps and Aerial Photographs

MBA reviewed current USGS 7.5-minute topographic quadrangle maps and aerial photographs as a preliminary analysis of the existing conditions within the project site and immediate vicinity. Information obtained from the review of the topographic maps included elevation range, general watershed information, and potential drainage feature locations. Aerial photographs provide an aerial perspective of the most current site conditions about on- and offsite land-use, plant community locations, and potential locations of wildlife movement corridors.

3.1.3 - Soil Surveys

Many sensitive plant species have a limited distribution based exclusively on soil type. The United States Department of Agriculture (USDA) has published soil surveys that describe the soil series within a particular area. A soil series is a group of soils with similar profiles. These profiles include major horizons with similar thickness, arrangement, and other important characteristics. These series are further subdivided into soil mapping units, which provide specific information about soil

characteristics. Pertinent USDA soil survey maps were reviewed to determine the existing soil mapping units within the project site and to establish if soil conditions onsite are suitable for any sensitive plant species.

3.1.4 - Sensitive Species Database Search

MBA compiled a list of threatened, endangered, and otherwise sensitive species previously recorded to occur near the project site. The list was based on a search of the CDFG's California Natural Diversity Database (CNDDDB), a sensitive species and plant community account database and the CNPS's Electronic Inventory of Rare and Endangered Vascular Plants of California database for the USGS 7.5-minute topographic quadrangle maps containing the project site and immediate vicinity.

The CNDDDB GIS database along with ArcGIS software was used to determine the distance between known recorded occurrences of sensitive species and the project site.

3.2 - Reconnaissance-Level Field Survey

MBA biologist Eric Guzman conducted the reconnaissance-level field survey on April 19, 2007. Special attention was paid to sensitive habitats or those areas potentially supporting sensitive floral and faunal species.

The reconnaissance-level survey was conducted on foot during daylight hours. The object of the survey was not to extensively search for every species occurring within the project site, but to ascertain general site conditions and identify potentially suitable habitat areas for various sensitive plant and wildlife species.

3.2.1 - Plant Community Mapping

Plant communities were mapped using 7.5-minute USGS topographic base maps and recent aerial photography. Sensitive or unusual biological resources identified during the literature review were ground-truthed during the reconnaissance-level survey for mapping accuracy. The plant communities within the project site were classified according to Holland's *Preliminary Descriptions of the Terrestrial Natural Communities of California* (1986 and 1996 update) and cross-referenced with CDFG's List of Terrestrial Natural Communities (2003). Modifications were made by MBA's biologists where appropriate. Acreages for each plant community are included as part of the discussion's heading as well as in the discussion.

3.2.2 - Plant Species

Common plant species observed during the reconnaissance-level survey were identified by visual characteristics and morphology in the field and recorded in a field notebook. Uncommon and less familiar plants were identified offsite using taxonomical guides. A list of all species observed on the project site was compiled from the survey data (Appendix A). Taxonomic nomenclature used in this study follows Hickman (1993). Common plant names, when not available from Hickman (1993),

were taken from other regionally specific references. In this report, scientific names are provided immediately following common names of plant species for the first reference only.

3.2.3 - Wildlife Species

Wildlife species detected during the reconnaissance-level survey by sight, calls, tracks, scat, or other signs were recorded in a field notebook. Notations were made regarding suitable habitat for those sensitive species determined to potentially occur within the project site. Appropriate field guides were used to assist with species identification during surveys. Common names of wildlife species are standard; however, scientific names are provided immediately following common names for the first reference only. Appendix A lists all wildlife species observed or detected on the site during the survey.

3.2.4 - Jurisdictional Waters and Wetlands

Prior to conducting the site visit, MBA's biologists reviewed USGS topographic maps and aerial photography to identify any potential natural drainage features and water bodies. In general, all surface drainage features indicated as blue-line streams on USGS maps and linear patches of vegetation expected to exhibit evidence of flows are considered potentially subject to State and federal regulatory authority as "waters of the US and/or state." The assessment was not intended as a formal delineation of waters of the U.S. or State but, rather, to identify areas that may require a formal delineation.

3.2.5 - Wildlife Movement Corridors

Wildlife movement corridors link areas of suitable wildlife habitat that are otherwise separated by rugged terrain, changes in vegetation, or human disturbance. The fragmentation of open space areas by urbanization creates isolated "islands" of wildlife habitat, separating different populations of a single species. Corridors effectively act as links between these populations.

The project site was evaluated for evidence of a wildlife movement corridor. However, the scope of the biological resources study did not include a formal wildlife movement corridor study utilizing track plates, camera stations, scent stations, or snares. The focus of this study was to determine if the alteration of current land use on the site would have significant impacts on the regional movement of wildlife. These conclusions are based on the information compiled from the literature review, including aerial photographs, USGS topographic maps, and resource maps for the vicinity; the field survey; and knowledge of desired topography and resource requirements for wildlife potentially utilizing the project site and vicinity.

3.3 - Problems and Limitations

The reconnaissance-level survey was conducted in mid-spring during a year with minimal rainfall. This lack of available moisture can have substantial affects on the density and diversity of plant and

wildlife species observed onsite. Because of the dry conditions in the region, plant and wildlife abundance is considered less than average for this time of year.

Many amphibians, reptiles, and mammals are secretive by nature and some are nocturnally active, making diurnal observations problematic. Observations of diagnostic sign may provide evidence of occurrence of these species. Otherwise, conclusions about potential occurrence are based on consideration of habitat suitability factors.

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SECTION 4: EXISTING CONDITIONS

The reconnaissance-level field survey was conducted on April 19, 2007, between 0900 and 1200. Weather conditions during the field survey included a temperature of 49 degrees Fahrenheit, with sunny, clear skies and an average wind speed of 3.5 miles per hour. There had been no rain in the region for at least four days.

4.1 - Environmental Setting

The project site is located within a previous development area known as the Bishop Ranch Business Park. The majority of the project site is developed and consists of office-buildings and parking lots. There are two undeveloped areas within the proposed project site.

Adjacent land use consists of office buildings and parking lots to the north; parking lots and residential development to the south; a sports complex, a dry creek bed, and residential development to the east; and a shopping center and business complexes to the west.

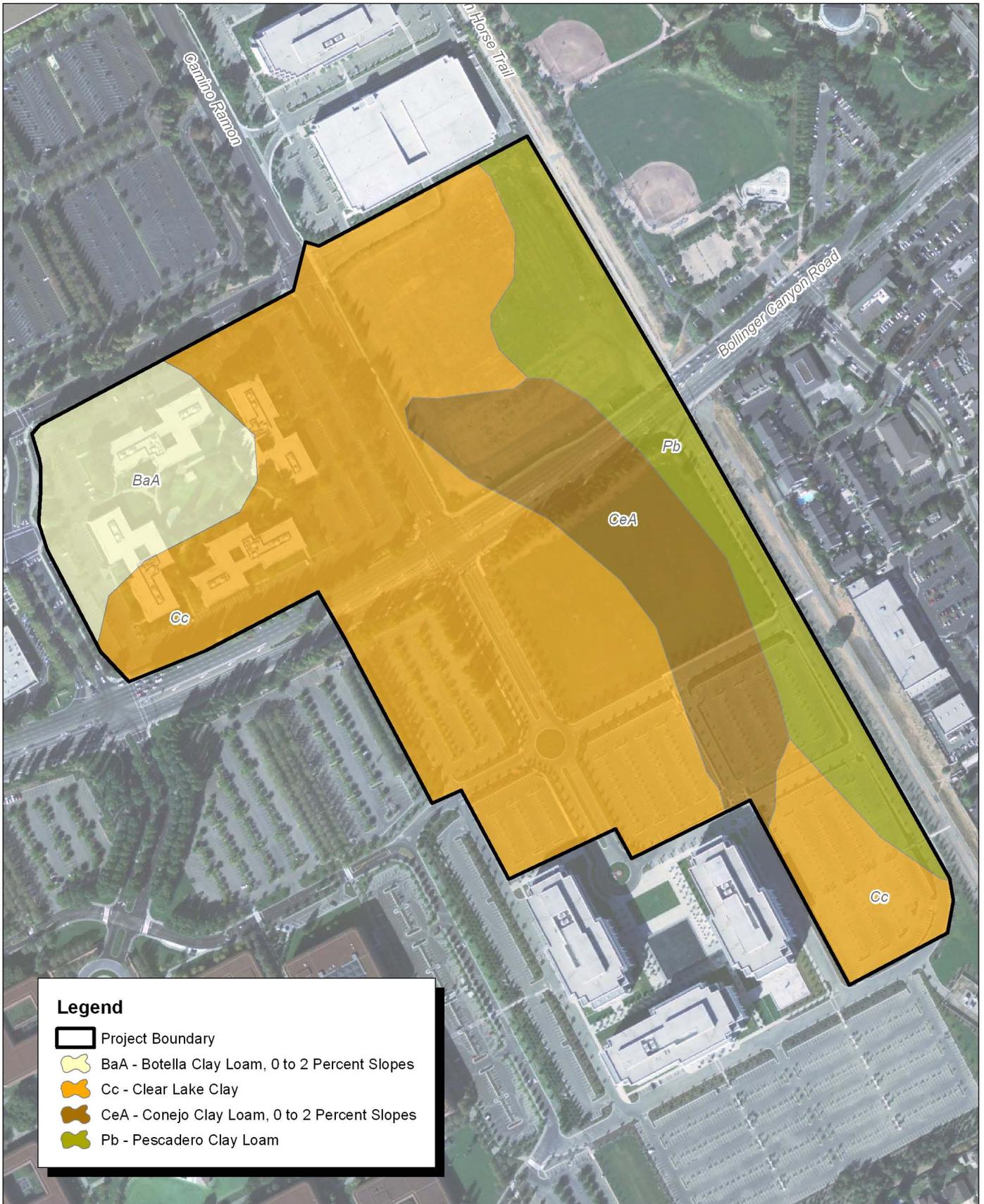
Overall, the project site is considered developed if it contains a few areas that are heavily disturbed. The project site contains a building complex, paved parking lots, and a few open fields. Ornamental landscaping occurs throughout the developed portions of the project site.

4.1.1 - Topographic Features

Topographically, the project site is located on a relatively flat plain in the San Ramon Valley. The project site has a gradual slope from north to south with an elevation of approximately 440 feet above sea level.

4.1.2 - Soils

Based on the Contra Costa County, soils survey (USDA 1979), the project site contains four distinct soil mapping units: Botella Clay Loam, Clear Lake Clay, Conejo Clay Loam, and Pescadero Clay Loam (Exhibit 4).



Source: Terraserver and USDA Soils (NRCS).



Exhibit 4 USDA Soils Map

4.2 - Plant Communities

The plant communities that occur within the project site include non-native grassland and urban/developed (Exhibit 5). Table 1 below provides a summary of the plant community acreages. Representative photos of the communities can be found in Appendix B.

4.2.1 - Non-Native Grassland (18.2 Acres)

Non-native grassland, a prevalent community throughout California, is characterized by a dense to sparse cover of non-native, annual grasses often associated with numerous weedy species as well as native annual forbs (wildflowers), especially in years of plentiful rain. Seed germination occurs with the onset of winter rains. Some plant growth occurs in winter, but most growth and flowering occurs in the spring. Plants then die in the summer and persist as seeds in the uppermost layers of soil until the next rainy season. Dominant plant genera typically found within non-native grasslands include bromes (*Bromus* spp.), wild oats (*Avena* spp.), fescues (*Vulpia* spp.), and barleys (*Hordeum* spp.).

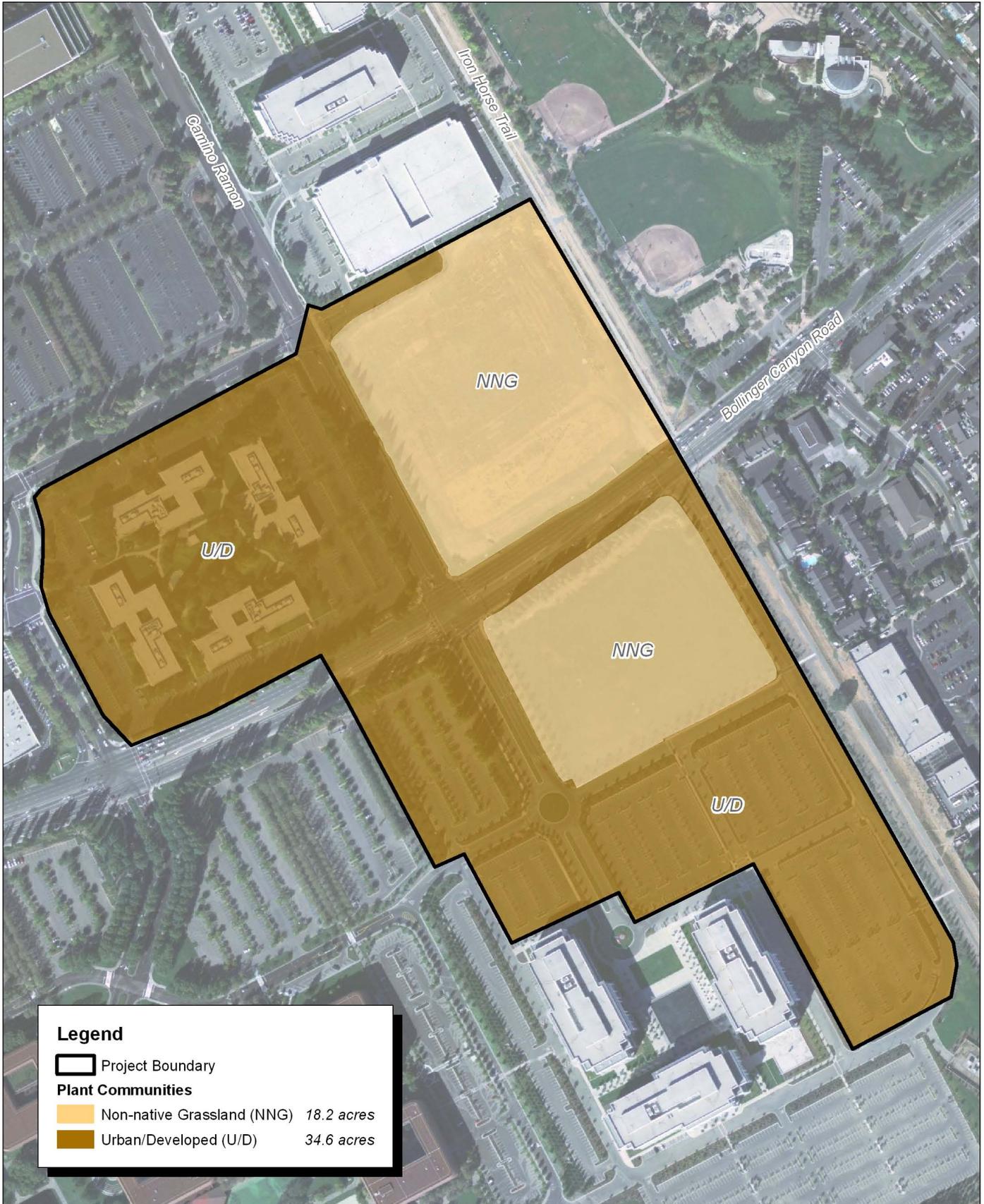
The non-native grasslands occur in the eastern portion of the project site, north and south of Bollinger Canyon Road. Highly utilized paved roads surround both grassland areas. The northern portion of the non-native grasslands is a well irrigated, maintained lawn and is dominated by weedy species such as hare barley (*Hordeum murinum*), wild oats (*Avena fatua*), red-stem filaree (*Erodium cicutarium*), and bristly ox-tongue (*Picris echioides*). A few trees are spread out sporadically around the perimeter of the northern non-native grassland along the north, south, and west sides of the grassland area. Tree species observed onsite include coast live oak (*Quercus agrifolia*) and redwoods (*Sequoia sempervirens*).

The southern section of the non-native grasslands consists of a well-irrigated and maintained grassland containing such species as soft brome (*Bromus hordeaceus*), vetch (*Vicia disperma*), and ox-eye daisy (*Leucanthemum vulgare*). There are several ornamental shrubs and trees located around the perimeter of the southern non-native grasslands, including redwoods (*Sequoia sempervirens*) and Fremont cottonwoods (*Populus fremontii*). Paved parking lots lie to the south and west of the southern non-native grassland.

4.2.2 - Urban/Developed (30.4 Acres)

Although not considered a natural plant community, this habitat often includes a mixture of ornamental vegetation associated with existing structures, roads, residential and commercial buildings, and parking lots. Vegetation within this community typically include lawns, golf courses, road shoulders, and airports and park facilities surrounded by or located near residential/commercial development. Many secondary dirt access roads also are included in this category.

The urban/developed area occurs on the northwestern portion of the project site, consisting of several commercial buildings. There are also paved parking lots located in the southeastern and central portions of the project site. Vegetation within the urban/developed area includes ornamental trees such as redwood (*Sequoia sempervirens*) and cottonwoods (*Populus fremontii*).



Source: Terraserver and MBA Field Survey 2007.



Exhibit 5 Plant Communities Map

4.3 - Wildlife

The plant communities discussed above provide habitat for a number of local wildlife species. The following are brief discussions of wildlife species observed within the project site during the field survey, separated into taxonomic groups. Each discussion contains representative examples of a particular taxonomic group either observed onsite or expected to occur. A complete list of wildlife species observed within the site during the field survey is presented in Appendix A.

4.3.1 - Invertebrates

The project site contains non-native grasslands that provide suitable habitat for a variety of invertebrate species. No invertebrate species were observed within the project site during the field survey. Common species expected to occur within the site include painted lady (*Vanessa cardui*), harvester ant (*Pogonomyrmex* sp.), and stink beetle (*Eleodes* sp.).

4.3.2 - Fishes

The project site does not contain any aquatic habitat types that could provide habitat for any fish species. No fishes are expected to occur within the site.

4.3.3 - Amphibians

The project site does not contain any suitable habitat for amphibian species. No amphibian species are expected to occur within the site. Some amphibians are known to forage in upland areas. The closest potential amphibian habitat is San Ramon Creek just east of the project site, which is currently dry. This feature does not currently provide habitat for amphibian species. The closest suitable habitat is Coyote Creek, approximately 1 mile east of the project site.

4.3.4 - Reptiles

The project site contains non-native grasslands that provide suitable habitat for reptile species such as western fence lizard (*Sceloporus occidentalis*) and side-blotched lizard (*Uta stansburiana*), which commonly occur in disturbed habitats. No reptile species were observed onsite.

4.3.5 - Birds

The project site contains non-native grasslands and ornamental trees that provide suitable foraging and nesting habitat for several avian species, such as year-round residents, seasonal residents, and migrating songbirds. Species observed during the survey within these communities include rock dove (*Columba livia*), morning dove (*Zenaidura macroura*), common raven (*Corvus corax*) and Canada goose (*Branta canadensis*).

Some of the habitat within the project site provides potential foraging opportunities for raptors. There were several potential perching locations within the project site. There was no evidence of nesting raptors within the site and, because of the proximity to existing commercial development, it is not likely that any raptors will nest onsite. Additionally, there were no raptors observed during the survey.

4.3.6 - Mammals

The non-native grasslands onsite provide suitable habitat for mammal species that are better adapted to frequent human disturbance, such as deer mouse (*Peromyscus maniculatus*) and pocket gopher (*Thomomys bottae*). California ground squirrel (*Spermophilus beecheyi*) was the only mammal species observed onsite. A few deer mouse-sized burrows were observed onsite.

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SECTION 5: SENSITIVE BIOLOGICAL RESOURCES

Based on the results of the literature review and reconnaissance-level field survey, MBA documented existing site conditions and determined if sensitive biological resources occur or potentially occur within the project site.

5.1 - Sensitive Plant Communities

Plant communities are considered sensitive biological resources based on federal, State, or local laws regulating their development, limited distributions, and habitat requirements of sensitive plants or wildlife species that occur within them.

The project site contains urban/developed and non-native grasslands, which are not considered sensitive plant communities by any regulatory agency. No sensitive plant communities were observed onsite.

5.2 - Sensitive Plant Species

The Sensitive Plant Species table (Table 1) identifies the federal and State listed threatened, endangered plant species, and CNPS sensitive species that have a high, moderate, or low potential to occur within the project site. The table also includes the species' status and required habitat. All sensitive plant species that have been determined not likely to occur onsite, primarily based on the absence of suitable habitat and a recorded occurrence in the vicinity of the site, have been excluded from further analysis within this study.

Based on MBA's literature review, 16 sensitive plant species have been previously recorded within 7 miles of the site. No sensitive plant species were observed during the reconnaissance-level survey. Because of the disturbed nature of the site and lack of suitable habitat, the project site does not provide suitable habitat for 15 of these sensitive plant species. Therefore, these species have been excluded from further analysis within this study.

5.2.1 - Threatened or Endangered Species

No threatened or endangered wildlife species were found to have a high, moderate, or low potential to occur onsite.

5.2.2 - California Native Plant Society List Species

No CNPS listed plants were found to have a high or moderate potential to occur onsite. Of the CNPS listed plants that have a low potential to occur onsite, one was a 1B plant.

Mt Diablo Buckwheat

Mt Diablo Buckwheat (*Eriogonum truncatum*) is a CNPS listed 1B plant species. This plant can be found in bare sandy to clayey soil between non-native grassland and chaparral. The Mt. Diablo buckwheat was known to occur within the vicinity of Mt. Diablo and marsh creek in Contra Costa County and in the City of Suisun in Solano County.

The non-native grassland onsite provides marginally suitable habitat for the Mt Diablo buckwheat. Because of the highly disturbed nature of the site and the proximity to adjacent urban development, the Mt. Diablo buckwheat had a low potential to occur onsite.

5.3 - Sensitive Wildlife Species

The Sensitive Wildlife Species table (Table 1) identifies the federal and State listed threatened, endangered wildlife species, and species of special concern that have a high, moderate, or low potential to occur within the project site. The table also includes the species' status and required habitat.

Based on MBA's literature review, 16 sensitive wildlife species have been previously recorded within the vicinity of the site. No sensitive wildlife species were observed during the reconnaissance-level survey. The project site contains marginally suitable habitat for burrowing owl (*Athene cunicularia*)

A discussion of each sensitive wildlife species recognized by the CNDDDB and MBA as potentially present on the site is presented in Table 1. All sensitive wildlife species that have been determined not likely to occur onsite, primarily based on the absence of suitable habitat and a recorded occurrence on the project site, have been excluded from further analysis within this study.

5.3.1 - Threatened or Endangered Species

No threatened or endangered wildlife species were found to have a high, moderate, or low potential to occur onsite.

San Joaquin Kit Fox

Largely due to widespread habitat loss, the San Joaquin kit fox (*Vulpes macrotis mutica*) is federally listed as endangered and State listed as threatened. The kit fox is often found in grasslands, open shrubs, and scrub habitats. The San Joaquin kit fox is a small, grayish fox about 2.5 feet in length and weighing up to 5.5 pounds. The kit fox occurs from the San Joaquin Valley, north to Contra Costa and Alameda counties. The prey of the San Joaquin kit fox includes rodents, rabbits, and lizards.

The closest occurrence of the San Joaquin kit fox to the project site is over 1.5 miles away. No suitable denning habitat occurs within the project site. The non-native grasslands onsite may provide minimal foraging habitat. However, because of the development within the vicinity of the project site

and the highly disturbed nature of the site and surrounding areas, it is unlikely that the San Joaquin kit fox will occur within the project site.

Alameda Whipsnake

Alameda whipsnake (*Masticophis lateralis euryxanthus*) is federally and State listed as threatened. Alameda whipsnakes are typically found in chaparral—northern coastal sage scrub and coastal sage habitats. Rock outcrops are important features to the Alameda whipsnake that provide retreat opportunities. The western fence lizard (*Sceloporus occidentalis*) appear to be the most important prey item of whipsnake's diet; other prey taken include skunks, frogs, snakes, and birds. Grassland habitats are also used by male whipsnakes, most extensively during the mating season in spring. Female whipsnakes use grassland areas most extensively after mating, possibly in their search for suitable egg-laying sites.

Although the project site does fall within a recorded occurrence of the Alameda whipsnake, the urban/developed habitat and the non-native grasslands onsite does not currently provide suitable foraging or breeding habitat for the this species. Therefore, the Alameda whipsnake is not likely to occur within the project site.

California Tiger Salamander

California tiger salamander (*Ambystoma californiense*) is federally listed as threatened and is listed by CDFG as a species of concern. The California tiger salamander usually breeds between December and February in vernal pools and other seasonal ponds within the grassland habitats of California. Eggs are laid on pool bottoms, larvae hatch within approximately 3 weeks, and larvae develop into adults within 10 to 12 weeks. Adult California tiger salamanders spend a majority of time aestivating in subterranean refugia. Rodent burrows in grasslands onsite also provide aestivation habitat for the California tiger salamander.

The closest recorded occurrence within the vicinity of the project site is over 3.5 miles to the east. The urban/developed habitat and the non-native grasslands onsite do not provide any suitable foraging, breeding, or aestivation sites for this species; therefore, California tiger salamander is not likely to occur within the project site.

California Red-Legged Frog

The California red-legged frog (*Rana aurora draytonii*) is a federally threatened species that typically occurs in lowlands and foothills in or near permanent sources of deep water with dense, shrubby, or emergent riparian vegetation. California red-legged frogs have been discovered in areas completely denuded of vegetation and sometimes use upland areas for foraging (CDFG 2006).

The closest occurrence is approximately 2 miles northwest of the project site. The urban/developed habitat and the non-native grasslands onsite do not provide any suitable foraging, breeding, or

aestivation sites for the California red-legged frog; therefore, this species is not likely to occur within the project site.

5.3.2 - California Species of Special Concern

Of the sensitive plant species that have a high or moderate potential to occur on the project site, one is a California Species of Special Concern.

Burrowing Owl

Typical habitat associated with burrowing owls includes short-grass prairies, grasslands, lowland scrub, agricultural lands (particularly rangelands), prairies, coastal dunes, desert floors, and some artificial, open areas as a year-round resident. The primary requirement for suitable burrowing owl foraging habitat appears to be low vegetation cover that allows visibility and access to prey.

Kleinfelder, Inc. conducted a non-protocol survey for burrowing owl on May 2, 2007 (Appendix D). The area surveyed included 12 acres of the non-native grassland habitat onsite. No owls or signs of owls were observed during this survey.

Typically, burrowing owls require approximately 6.5 acres to support a pair of nesting owls. The project site contains non-native grasslands and California ground squirrel burrows that provide marginally suitable habitat for burrowing owl. The NNG associated with the project site is considered isolated from adjacent habitat, however there has been a recently recorded occurrence in 2004 within the boundaries of the project site. Therefore, burrowing owl has a moderate potential to occur onsite.

Of the sensitive plant species that have a low potential to occur on the project site, one is a California Species of Special Concern.

Prairie Falcon

Prairie falcon (*Falco mexicanus*) is a California species of special concern. Prairie falcons are found throughout the western United States within open grasslands and shrub-steppe deserts. Ground squirrels are the mainstay of the prairie falcons' diet; other sources of food include reptiles and insects. Horned larks and western meadowlarks are important prey items in winter. Prairie falcons nest primarily on cliff ledges, crevices, or cavities. These raptors do not build a nest structure; instead, they scrape loose debris to form a small depression to hold eggs within the nest site.

An occurrence of prairie falcon has been recorded within the boundaries of the project site. The project site does not contain any suitable nesting habitat. The non-native grasslands and the presence of California ground squirrels provide marginally suitable foraging habitat. However, because of the highly disturbed nature of the site and the surrounding areas, the prairie falcon has a low potential to occur onsite.

Table 1: Sensitive Plant Species

Species		Status			Preferred Habitat	Blooming Period	Potential to Occur/ Known Occurrence/ Suitable Habitat
Scientific Name	Common Name	ESA	CESA	CNPS			
Herbaceous Annuals							
<i>Eriogonum truncatum</i>	Mt. Diablo Buckwheat	—	—	1B	Chaparral, coastal scrub, valley and foothill grassland. Dry, exposed clay or sandy substrates. 100-600m.	April–September	Low Potential to Occur. Documented occurrence within 2.5 miles of site. Marginally suitable habitat.
ESA FE Federally listed endangered FT Federally listed threatened FPE Federally proposed endangered FPT Federally proposed threatened FC Federal candidate		CESA SE State listed endangered ST State listed threatened SR State listed rare			CNPS 1A Presumed extinct in California. 1B Rare, threatened, or endangered in California and elsewhere. 2 Rare, threatened, or endangered in California, but more common elsewhere.		
<p>Species Present - The species was observed on the project site at the time of the survey or during a previous biological survey.</p> <p>High Potential to Occur - There is both suitable habitat associated with the species and a historical record of the species on or in the immediate vicinity of the project site, within 3 miles.</p> <p>Moderate Potential to Occur - The diagnostic habitats associated with the species occur on or in the immediate vicinity of the project site, but there is not a recorded occurrence of the species within the immediate vicinity, within 3 miles. Some species that contain extremely limited distributions may be considered moderate, even if there is a recorded occurrence in the immediate vicinity.</p> <p>Low Potential to Occur - There is a historical record of the species in the vicinity of the project site and potentially suitable habitat onsite, but existing conditions, such as density of cover, prevalence of non-native species, evidence of disturbance, limited habitat area, isolation, substantially reduce the possibility that the species may occur. The site is above or below the recognized elevation limits for this species.</p>							

Table 2: Sensitive Wildlife Species

Species		Status			Preferred Habitat	Potential to Occur/ Known Occurrence/ Suitable Habitat
Scientific Name	Common Name	ESA	CESA	Other		
Birds						
<i>Athene cunicularia</i>	Burrowing owl	—	—	CDFG: CSC	Burrow sites. open, dry annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. Subterranean nester, dependent upon burrowing mammals, most notably the California ground squirrel.	Moderate Potential to Occur Documented occurrence onsite. Marginally suitable habitat highly disturbed. CA ground squirrel burrows were observed onsite.
<i>Falco Mexicanus</i>	Prairie falcon	—	—	CDFG: CSC	Inhabits dry, open terrain, either level or hilly. Breeding sites located on cliffs. Forages far afield, even to marshlands and ocean shores.	Low Potential to Occur Documented occurrence onsite. Marginally suitable foraging habitat present onsite. No suitable nesting habitat
ESA		CESA			Other	
FE	Federally listed endangered	SE	State listed endangered	CDFG:CSC	California Species of Concern	
FT	Federally listed threatened	ST	State listed threatened	CDFG:FP	Fully Protected Species	
FPE	Federally proposed endangered			CDFG:P	Protected Species	
FPT	Federally proposed threatened					
FC	Federal candidate					
<p>Species Present - The species was observed on the project site at the time of the survey or during a previous biological survey.</p> <p>High Potential to Occur - There is both suitable habitat associated with the species and a historical record of the species on or in the immediate vicinity of the project site, within 3 miles.</p> <p>Moderate Potential to Occur - The diagnostic habitats associated with the species occur on or in the immediate vicinity of the project site, but there is not a recorded occurrence of the species within the immediate vicinity, within 3 miles. Some species that contain extremely limited distributions may be considered moderate, even if there is a recorded occurrence in the immediate vicinity.</p> <p>Low Potential to Occur - There is a historical record of the species in the vicinity of the project site and potentially suitable habitat onsite, but existing conditions, such as density of cover, prevalence of non-native species, evidence of disturbance, limited habitat area, isolation, substantially reduce the possibility that the species may occur. The site is above or below the recognized elevation limits for this species.</p>						

5.4 - Nesting Birds

The project site contains a variety of habitats that provide suitable nesting habitat for a number of different avian species. The urban/developed areas onsite contain trees that could provide nesting habitat for tree-dwelling avian species such as northern mockingbird (*Mimus polyglottos*) and western scrub-jay (*Aphelocoma californica*). The non-native grasslands contain suitable nesting habitat for ground-nesting species such as western meadowlark (*Sturnella neglecta*) and burrowing owl.

5.5 - Wildlife Movement Corridors

The project site is surrounded by residential development, office complexes, shopping centers, and parking lots. Interstate 680 lies to the east of the project site. The surrounding development to the north, south, east, and west currently prohibit any wildlife movement in the area. In addition, the project site does not occur within a narrow corridor that links large areas of undeveloped open space. Therefore, the site is not located within a significant wildlife movement corridor. Common wildlife species such as coyotes can be expected to travel through the site and neighboring developed areas, but the site does not provide a narrow connectivity between large areas of open space on a local or regional scale.

5.6 - Jurisdictional Waters and Wetlands

There are no potentially jurisdictional waters or wetlands found within the project site. Therefore, a formal jurisdictional delineation will not be required.

SECTION 6: RECOMMENDATIONS

This report was prepared to document the existing conditions within the project site and to provide a baseline to further analyze a proposed project under CEQA guidelines. Once the locations of all permanent and temporary impacts associated with the project design have been determined, a Biological Resources Impact Analysis can be completed. The recommendations below are necessary to prepare that report.

6.1 - Sensitive Plant Communities

No sensitive plant community occurs within the project site; therefore, no further action concerning sensitive plant communities is required.

6.2 - Sensitive Plant Species

Focused surveys are typically recommended for sensitive plant species that are federally or State listed as endangered or threatened and have moderate to high potential to occur on the project site. The site currently contains no suitable habitat for any sensitive plant species; therefore, no focused surveys will be required for sensitive plants.

6.3 - Sensitive Wildlife Species

Focused surveys are typically recommended for sensitive wildlife species that are federally or State-listed as endangered or threatened and have moderate to high potential to occur on the project site. The site contains suitable habitat for one sensitive wildlife species, which is not federally or State listed as threatened or endangered.

6.3.1 - California Species of Concern

The project site contains marginally suitable habitat for burrowing owl, a California species of concern that is legally protected by the MBTA and CFG Code. Despite the negative findings of the May 2007 survey conducted by Kleinfelder, Inc., there has been a recent documented occurrence of burrowing owl within the project site. Therefore, before any ground-disturbing activities on the project site begin, a qualified biologist should conduct a focused protocol survey to determine the presence or absence of this species onsite. The survey will be conducted according to the standard protocol established by CDFG and the Burrowing Owl Consortium (BOC). If burrowing owls are determined to be present on the site, mitigation for potential impacts to owls should follow the guidelines outlined by the BOC, including passive relocation.

6.4 - Nesting Birds

The project site contains suitable nesting habitat for several tree- and ground-dwelling avian species. Therefore, pursuant to the MBTA and CFG Code, removal of any grasslands or any other potential

nesting habitat should be conducted outside the avian nesting season. The nesting season generally extends from early February through August, but it can vary slightly from year to year based upon seasonal weather conditions.

If suitable nesting habitat must be removed during the nesting season, a qualified biologist should conduct a nesting bird survey to identify any nesting activity. If any active nests are observed, a qualified biological monitor will be required during any construction activity that may potentially cause a nest failure, including soil disturbance and tree removal. Construction activity may occur within the vicinity of an active nest at the discretion of the biological monitor. Monitoring should be conducted until the nestlings have fledged.

If construction activity must proceed during the nesting season and an active nest requires removal, an MBTA Special Purpose Permit from USFWS will be needed prior to nest removal or disturbance.

6.5 - Wildlife Movement Corridors

The project site does not provide a corridor for regional wildlife movement. Therefore, no additional action is required for potential impacts to wildlife movement corridors.

6.6 - Jurisdictional Waters and Wetlands

Based upon MBA's findings for the proposed project site, there are no drainage features that fall under the jurisdiction of the U.S. Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), and/or CDFG. Therefore, no further action is required for impacts to jurisdictional drainage features.

SECTION 7: CERTIFICATION

I hereby certify that the statements furnished above and in the attached exhibits present data and information required for this biological evaluation, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Date: June 1, 2007

Signed:



Eric Guzman
Michael Brandman Associates

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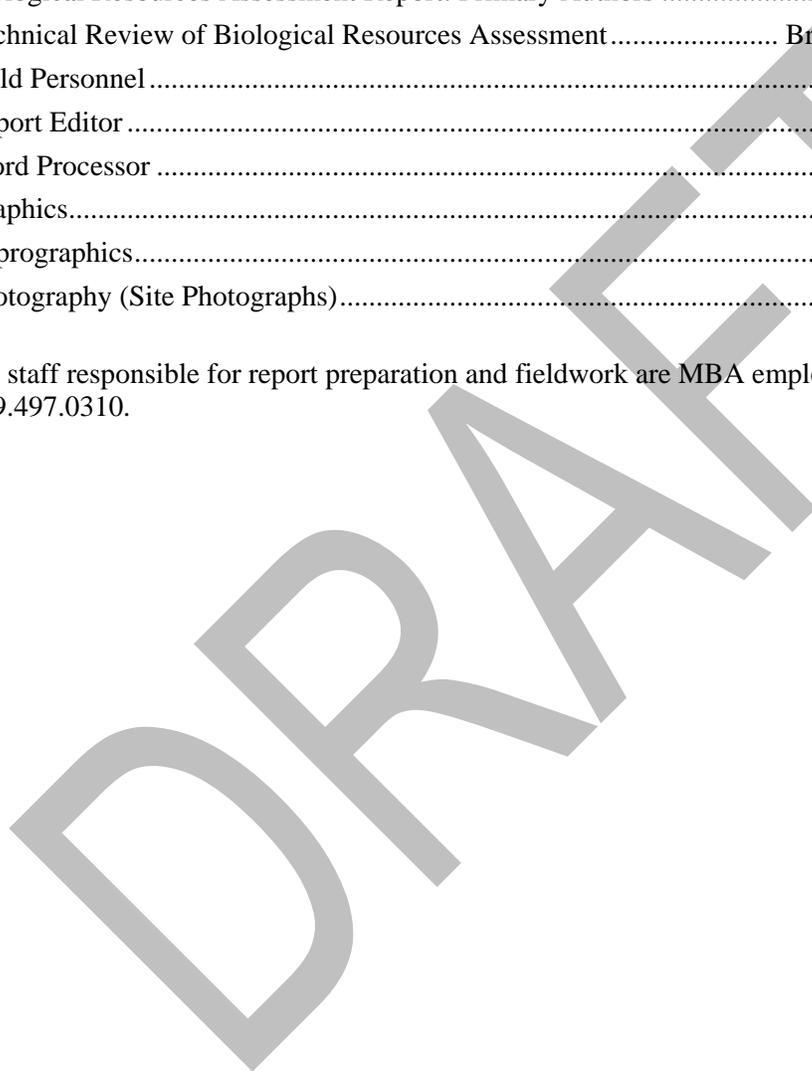
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SECTION 9: PROJECT RESPONSIBILITY

Principal-In-Charge	Thomas J. McGill, Ph.D.
Senior Project Biologist.....	Brian Hoffman
Project Manager	Jason Brandman
Project Biologist.....	Eric Guzman
Biological Resources Assessment Report: Primary Authors	Eric Guzman, Dena Gonzalez
Technical Review of Biological Resources Assessment.....	Brian Hoffman, Scott Crawford
Field Personnel.....	Eric Guzman
Report Editor	Ed Livingston
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Graphics.....	Eric Osterling
Reprographics.....	Mike Serrano
Photography (Site Photographs).....	Eric Guzman

All staff responsible for report preparation and fieldwork are MBA employees and can be contacted at 559.497.0310.



Appendix A: Floral and Faunal Compendia

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FLORAL COMPENDIUM

Asteraceae	Sunflower Family
<i>Cirsium ochrocentrum</i>	yellowspine thistle
<i>Leucanthemum vulgare</i>	ox-eye daisy
* <i>Picris echioides</i>	bristly ox-tongue
Brassicaceae	Mustard Family
<i>Raphanus sativus</i>	wild radish
Fabaceae	Legume Family
* <i>Melilotus indica</i>	sourclover
* <i>Vicia disperma</i>	vetch
Fagaceae	Oak Family
<i>Quercus agrifolia</i>	coast live oak
Geraniaceae	Geranium Family
* <i>Erodium cicutarium</i>	red stem filaree
Geraniaceae	Geranium Family
* <i>Erodium cicutarium</i>	red stem filaree
Hamamelidaceae	Witch hazel Family
* <i>Liquidambar orientalis</i>	Oriental sweet gum
Papaveraceae	Poppy Family
<i>Eschscholzia californica</i>	California poppy
Pinaceae	Pine Family
<i>Erodium cicutarium</i>	red stem filaree
Poaceae	Grass Family
* <i>Avena fatua</i>	wild oat
* <i>Hordeum murinum</i>	hare barley
* <i>Bromus hordeaceus</i>	soft brome
Salicaceae	Willow Family
<i>Populus fremontii</i>	Fremont cottonwood
Taxodiaceae	Bald Cypress Family
<i>Sequoia sempervirens</i>	redwood

* Indicates Non-Native Species

FAUNAL COMPENDIUM

Birds

Anatidae

Branta canadensis

Swans and Geese

Canada goose

Columbidae

Zenaida macroura

Pigeons and Doves

mourning dove

Corvidae

Corvus corax

Jays and Crows

common raven

Sturnidae

Sturnus vulgaris

Starlings

European starling

Mammals

Sciuridae

Spermophilus beecheyi

Squirrels

California ground squirrel

Appendix B: Site Photographs

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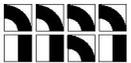


Photograph 1: Looking northwest at the maintained lawn from the southeast corner of northern non-native grassland



Photograph 2: Looking north at the maintained grassland from the southwest corner of southern non-native grassland

Source: Michael Brandman Associates, 2007.



Michael Brandman Associates

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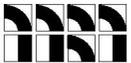
Appendix B Site Photographs 1 & 2

CITY OF SAN RAMON • SAN RAMON CITY CENTER PROJECT
BIOLOGICAL RESOURCES STUDY



Photograph 3: Looking south from southern end of the southern non-native grassland at landscape vegetation associated with the parking areas

Source: Michael Brandman Associates, 2007.



Michael Brandman Associates

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Appendix B Site Photograph 3

**Appendix C: California Natural Diversity Database
Search Results**

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California Department of Fish and Game

Natural Diversity Database

Selected Elements by Scientific Name - Portrait

Diablo and surrounding Walnut Creek, Clayton, Antioch South, Las Trampas Ridge, Tassajara, Hayward, Dublin and Livermore.

Scientific Name/Common Name	Element Code	Federal Status	State Status	GRank	SRank	CDFG or CNPS
1 Accipiter striatus sharp-shinned hawk	ABNKC12020			G5	S3	SC
2 Agelaius tricolor tricolored blackbird	ABPBXB0020			G2G3	S2	SC
3 Ambystoma californiense California tiger salamander	AAAAA01180	Threatened		G2G3	S2S3	SC
4 Amsinckia grandiflora large-flowered fiddleneck	PDBOR01050	Endangered	Endangered	G1	S1.1	1B.1
5 Amsinckia lunaris bent-flowered fiddleneck	PDBOR01070			G2	S2.2	1B.2
6 Andrena blennospermatis A vernal pool andrenid bee	IIHYM35030			G2	S2	
7 Anniella pulchra pulchra silvery legless lizard	ARACC01012			G3G4T3T4 Q	S3	SC
8 Anomobryum julaceum slender silver-moss	NBMUS80010			G4	S1.3	2.2
9 Antrozous pallidus pallid bat	AMACC10010			G5	S3	SC
10 Aquila chrysaetos golden eagle	ABNKC22010			G5	S3	SC
11 Arctostaphylos auriculata Mt. Diablo manzanita	PDERI04040			G2	S2.2	1B.3
12 Arctostaphylos manzanita ssp. laevigata Contra Costa manzanita	PDERI04273			G5T2	S2	1B.2
13 Ardea herodias great blue heron	ABNGA04010			G5	S4	
14 Astragalus tener var. tener alkali milk-vetch	PDFAB0F8R1			G1T1	S1.1	1B.2
15 Athene cucularia burrowing owl	ABNSB10010			G4	S2	SC
16 Atriplex cordulata heartscale	PDCHE040B0			G2?	S2.2?	1B.2
17 Atriplex depressa brittlescale	PDCHE042L0			G2Q	S2.2	1B.2
18 Atriplex joaquiniana San Joaquin spearscale	PDCHE041F3			G2	S2.1	1B.2
19 Balsamorhiza macrolepis var. macrolepis big-scale balsamroot	PDAST11061			G3G4T2	S2.2	1B.2
20 Blepharizonia plumosa big tarplant	PDAST1C011			G1	S1.1	1B.1
21 Branchinecta lynchi vernal pool fairy shrimp	ICBRA03030	Threatened		G3	S2S3	
22 Buteo regalis ferruginous hawk	ABNKC19120			G4	S3S4	SC
23 California macrophyllum round-leaved filaree	PDGER01070			G3	S3.1	1B.1

California Department of Fish and Game

Natural Diversity Database

Selected Elements by Scientific Name - Portrait

Diablo and surrounding Walnut Creek, Clayton, Antioch South, Las Trampas Ridge, Tassajara, Hayward, Dublin and Livermore.

Scientific Name/Common Name	Element Code	Federal Status	State Status	GRank	SRank	CDFG or CNPS
24 Callophrys mossii bayensis San Bruno elfin butterfly	IILEPE2202	Endangered		G4T1	S1	
25 Calochortus pulchellus Mt. Diablo fairy-lantern	PMLL0D160			G2	S2.1	1B.2
26 Calystegia atriplicifolia ssp. buttensis Butte County morning-glory	PDCON04012			G5T3	S3.2	1B.2
27 Campanula exigua chaparral harebell	PDCAM020A0			G2	S2.2	1B.2
28 Centromadia parryi ssp. congdonii Congdon's tarplant	PDAST4R0P1			G4T3	S3.2	1B.2
29 Circus cyaneus northern harrier	ABNKC11010			G5	S3	SC
30 Cordylanthus nidularius Mt. Diablo bird's-beak	PDSCR0J0F0		Rare	G1	S1.2	1B.1
31 Cordylanthus palmatus palmate-bracted bird's-beak	PDSCR0J0J0	Endangered	Endangered	G1	S1.1	1B.1
32 Corynorhinus townsendii Townsend's big-eared bat	AMACC08010			G4T3T4	S2S3	SC
33 Cryptantha hooveri Hoover's cryptantha	PDBOR0A190			GH	SH	1A
34 Delphinium californicum ssp. interius Hospital Canyon larkspur	PDRAN0B0A2			G3T2?	S2?	1B.2
35 Dendroica petechia brewsteri yellow warbler	ABPBX03018			G5T3?	S2	SC
36 Didymodon norrisii Norris' beard-moss	NBMUS2C0H0			G2G3	S2.2	2.2
37 Dipodomys heermanni berkeleyensis Berkeley kangaroo rat	AMAFD03061			G3G4T1	S1	
38 Efferia antiochi Antioch efferian robberfly	IIDIP07010			G1G3	S1S3	
39 Elanus leucurus white-tailed kite	ABNKC06010			G5	S3	
40 Emys (=Clemmys) marmorata western pond turtle	ARAAD02030			G3G4	S3	SC
41 Eremophila alpestris actia California horned lark	ABPAT02011			G5T3	S3	SC
42 Eriastrum brandegeeeae Brandegee's eriastrum	PDPLM03020			G3	S3.2	1B.2
43 Eriogonum truncatum Mt. Diablo buckwheat	PDPGN085Z0			G1	S1.1	1B.1
44 Eschscholzia rhombipetala diamond-petaled California poppy	PDPAP0A0D0			G1	S1.1	1B.1
45 Eumops perotis californicus western mastiff bat	AMACD02011			G5T4	S3?	SC
46 Falco mexicanus prairie falcon	ABNKD06090			G5	S3	SC

California Department of Fish and Game

Natural Diversity Database

Selected Elements by Scientific Name - Portrait

Diablo and surrounding Walnut Creek, Clayton, Antioch South, Las Trampas Ridge, Tassajara, Hayward, Dublin and Livermore.

Scientific Name/Common Name	Element Code	Federal Status	State Status	GRank	SRank	CDFG or CNPS
47 <i>Fritillaria liliacea</i> fragrant fritillary	PMLIL0V0C0			G2	S2.2	1B.2
48 <i>Helianthella castanea</i> Diablo helianthella	PDAST4M020			G3	S3.2	1B.2
49 <i>Helminthoglypta nickliniana bridgesi</i> Bridges' coast range shoulderband (snail)	IMGASC2362			G2T1	S1	
50 <i>Hesperolinon breweri</i> Brewer's western flax	PDLIN01030			G2	S2.2	1B.2
51 <i>Holocarpha macradenia</i> Santa Cruz tarplant	PDAST4X020	Threatened	Endangered	G1	S1.1	1B.1
52 <i>Juglans hindsii</i> Northern California black walnut	PDJUG02040			G1	S1.1	1B.1
53 <i>Lasthenia conjugens</i> Contra Costa goldfields	PDAST5L040	Endangered		G1	S1.1	1B.1
54 <i>Lepidurus packardi</i> vernal pool tadpole shrimp	ICBRA10010	Endangered		G3	S2S3	
55 <i>Linderiella occidentalis</i> California linderiella	ICBRA06010			G3	S2S3	
56 <i>Lytta molesta</i> molestan blister beetle	IICOL4C030			G2	S2	
57 <i>Madia radiata</i> showy madia	PDAST650E0			G2	S2.1	1B.1
58 <i>Malacothamnus hallii</i> Hall's bush mallow	PDMAL0Q0F0			G1Q	S1.2	1B.2
59 <i>Masticophis lateralis euryxanthus</i> Alameda whipsnake	ARADB21031	Threatened	Threatened	G4T2	S2	
60 <i>Metapogon hurdi</i> Hurd's metapogon robberfly	IIDIP08010			G1G3	S1S3	
61 <i>Microcina lumi</i> Lum's micro-blind harvestman	ILARA47050			G1	S1	
62 <i>Monardella villosa</i> ssp. <i>globosa</i> robust monardella	PDLAM180P7			G5T2	S2.2	1B.2
63 <i>Myotis yumanensis</i> Yuma myotis	AMACC01020			G5	S4?	
64 <i>Perognathus inornatus inornatus</i> San Joaquin pocket mouse	AMAFD01061			G4T2T3	S2S3	
65 <i>Phacelia phacelioides</i> Mt. Diablo phacelia	PDHYD0C3Q0			G1	S1.2	1B.2
66 <i>Phrynosoma coronatum</i> (frontale population) Coast (California) horned lizard	ARACF12022			G4G5	S3S4	SC
67 <i>Plagiobothrys glaber</i> hairless popcorn-flower	PDBOR0V0B0			GH	SH	1A
68 <i>Rana aurora draytonii</i> California red-legged frog	AAABH01022	Threatened		G4T2T3	S2S3	SC
69 <i>Sanicula saxatilis</i> rock sanicle	PDAPI1Z0H0		Rare	G2	S2.2	1B.2

California Department of Fish and Game

Natural Diversity Database

Selected Elements by Scientific Name - Portrait

Diablo and surrounding Walnut Creek, Clayton, Antioch South, Las Trampas Ridge, Tassajara, Hayward, Dublin and Livermore.

Scientific Name/Common Name	Element Code	Federal Status	State Status	GRank	SRank	CDFG or CNPS
70 Senecio aphanactis rayless ragwort	PDAST8H060			G3?	S1.2	2.2
71 Serpentine Bunchgrass	CTT42130CA			G2	S2.2	
72 Streptanthus albidus ssp. peramoenus most beautiful jewel-flower	PDBRA2G012			G2T2	S2.2	1B.2
73 Streptanthus hispidus Mt. Diablo jewel-flower	PDBRA2G0M0			G1	S1.2	1B.3
74 Sycamore Alluvial Woodland	CTT62100CA			G1	S1.1	
75 Taxidea taxus American badger	AMAJF04010			G5	S4	SC
76 Trifolium depauperatum var. hydrophilum saline clover	PDFAB400R5			G5T2?	S2.2?	1B.2
77 Triquetrella californica coastal triquetrella	NBMUS7S010			G1	S1.2	1B.2
78 Tropidocarpum capparideum caper-fruited tropidocarpum	PDBRA2R010			G1	S1.1	1B.1
79 Valley Needlegrass Grassland	CTT42110CA			G1	S3.1	
80 Valley Sink Scrub	CTT36210CA			G1	S1.1	
81 Viburnum ellipticum oval-leaved viburnum	PDCPR07080			G5	S2.3	2.3
82 Vulpes macrotis mutica San Joaquin kit fox	AMAJA03041	Endangered	Threatened	G4T2T3	S2S3	

Appendix D: May 2007 Burrowing Owl Letter

DRAFT



May 18, 2007
File No. 83401

Mr. Michael Fanelli
City of San Ramon
Recreation-Facilities Coordinator
3180 Crow Canyon Place, Suite 140
P.O. Box 5148
San Ramon, California 94583

Via Facsimile (925) 830-5162

SUBJECT: Letter of Findings for a Focused Breeding Season Burrowing Owl Survey, City of San Ramon Civic Center Site, Bollinger Canyon Road and Camino Ramon, City of San Ramon, Contra Costa County, California

Dear Mr. Fanelli,

This letter documents Kleinfelder's findings for a focused burrowing owl (*Athene cunicularia hypugaea* [BUOW]) survey conducted on May 2, 2007 at the City of San Ramon's (City) Civic Center Site, Contra Costa County, California. The purpose of this pre-disturbance survey was intended to address the potential presence of the BUOW at the subject property during the species breeding season (April 15-July 15), a California Department of Fish and Game (CDFG) requirement for establishing presence/absence for the species. BUOW are listed by the CDFG as a California Special Concern species and their nesting burrows are considered a protected resource.

The (future) City Center site consists of an approximately 12-acre, City-owned vacant parcel used for Special Event parking, located at Bollinger Canyon Road and Camino Ramon. Vegetation within the site had been recently mowed and was approximately one-half foot-tall and supported scattered ruderal (weedy) species such as: non-native annual grasses (*Lolium* sp.), wild oats (*Avena fatua*), field bindweed (*Convolvulus arvensis*), Russian thistle (*Salsola tragus*), farmer's foxtail (*Hordeum murinum*), and black mustard (*Brassica nigra*).

A qualified Kleinfelder biologist conducted a single (non-protocol) focused BUOW survey at the subject site between the hours of 15:00 and 20:00 on May 2, 2007. The entire site was inspected by walking meandering transects spaced approximately 40-feet apart, and was visually inspected using 8x42-power hand-held binoculars to

identify potential BUOW's present. California ground squirrel (*Spermophilus beecheyi*) burrows on-site were inspected for evidence of BUOW presence, such as pellets, whitewash or feathers. Areas of suitable habitat were also searched on adjacent accessible undeveloped lands within a 200-foot radius of the site boundary, where possible.

No BUOW's or their sign were observed during the subject survey, either on-site or on adjacent lands. Subsequently, BUOW are presumed to be absent from the site during the 2007 breeding season. No further surveys are warranted at this time to establish the species absence prior to the sites utilization for City-sponsored special-events parking.

Should you have any questions concerning the results presented within this letter, please feel free to contact Bill Goggin at (831) 755-7900.

Sincerely,

KLEINFELDER, INC.


Bill Goggin
Project Biologist/Wildlife Biologist


for: Nathan Stoopes
Location Manager

Appendix E: Regulatory Framework

DRAFT

REGULATORY FRAMEWORK

SENSITIVE PLANT AND WILDLIFE SPECIES

Sensitive species are native species that have been accorded special legal or management protection because of concern for their continued existence. There are several categories of protection at both federal and state levels, depending on the magnitude of threat to continued existence and existing knowledge of population levels.

Federal Endangered Species Act

The United States Fish and Wildlife Service (USFWS) administers the Federal Endangered Species Act (ESA). The ESA provides a process for listing species as either threatened or endangered, and methods of protecting listed species. The ESA defines as “endangered” any plant or animal species that is in danger of extinction throughout all or a significant portion of its known geographic range. A “threatened” species is a species that is likely to become endangered. A “proposed” species is one that has been officially proposed by the USFWS for addition to the federal threatened and endangered species list.

Per § 9 of the ESA, “take” of threatened or endangered species is prohibited. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. Take can include disturbance to habitats used by a threatened or endangered species during any portion of its life history. The presence of any federally threatened or endangered species in a project area generally imposes severe constraints on development, particularly if development would result in “take” of the species or its habitat. Under the regulations of the ESA, the USFWS may authorize “take” when it is incidental to, but not the purpose of, an otherwise lawful act.

California Endangered Species Act

The California Department of Fish and Game (CDFG) administers the California Endangered Species Act (CESA). The State of California considers an “endangered” species one whose prospects of survival and reproduction are in immediate jeopardy. A “threatened” species is one present in such small numbers throughout its range that it is likely to become an endangered species in the near future in the absence of special protection or management. A “rare” species is one present in such small numbers throughout its portion of its known geographic range that it may become endangered if its present environment worsens. The rare species designation applies to California native plants. State threatened and endangered species are fully protected against take, as defined above. The term “species of special concern” is an informal designation used by CDFG for some declining wildlife species that are not state candidates for listing. This designation does not provide legal protection, but signifies that these species are recognized as sensitive by CDFG.

California Native Plant Society

The California Native Plant Society (CNPS) is a California resource conservation organization that has developed an inventory of California's sensitive plant species. This inventory summarizes information on the distribution, rarity, and endangerment of California's vascular plants. The inventory is divided into four lists based on the rarity of the species. In addition, the CNPS provides an inventory of plant communities that are considered sensitive by the state and federal resource agencies, academic institutions, and various conservation groups. Determination of the level of sensitivity is based on the number and size of remaining occurrences as well as recognized threats.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) protects all common wild birds found in the United States (U.S.) except the house sparrow, starling, feral pigeon, and resident game birds such as pheasant, grouse, quail, and wild turkey. Resident game birds are managed separately by each state. The MBTA makes it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird including feathers, parts, nests, or eggs.

California Fish and Game Code - § 3503 and § 3511

The CDFG administers the California Fish and Game Code (CFG Code). There are particular sections of the CFG Code that are applicable to natural resource management. For example, § 3503 of the CFG Code states it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird that is protected under the MBTA. CFG Code § 3503.5 further protects all birds in the orders Falconiformes and Strigiformes, birds of prey such as hawks and owls, and their eggs and nests from any form of take. CFG Code § 3511 lists fully protected bird species where the CDFG is unable to authorize the issuance of permits or licenses to take these species.

JURISDICTIONAL WATERS AND WETLANDS

Impacts to natural drainage features and wetland areas are regulated by the United States Army Corp of Engineers (USACE), Regional Water Quality Control Board (RWQCB), and CDFG based upon the policies and regulations discussed below.

United States Army Corp of Engineers Regulations

Federal Clean Water Act - § 404

The USACE administers § 404 of the federal Clean Water Act (CWA). This section regulates the discharge of dredge and fill material into waters of the U.S. USACE has established a series of nationwide permits that authorize certain activities in waters of the U.S., if a proposed activity can demonstrate compliance with standard conditions. Normally, USACE requires an individual permit for an activity that will affect an area equal to or in excess of 0.5 acre of waters of the U.S. Projects that result in impacts to less than 0.5 acre can normally be conducted pursuant to one of the nationwide permits, if consistent with the standard permit conditions. USACE also has discretionary

authority to require an Environmental Impact Statement for projects that result in impacts to an area between 0.1 and 0.5 acre. Use of any nationwide permit is contingent on the activities having no impacts to endangered species.

Waters of the United States

Waters of the U.S., as defined in the Code of Federal Regulations (CFR) § 328.3, include all waters or tributaries to waters such as lakes, rivers, intermittent and perennial streams, mudflats, sand-flats, natural ponds, wetlands, wet meadows, and other aquatic habitats. Frequently, waters of the U.S., with at least intermittently flowing water or tidal influences, are demarcated by an ordinary high water mark (OHWM). The OHWM is defined in CFR § 328.3(e) as the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. In this region, the OHWM is typically indicated by the presence of an incised streambed with defined bank shelving.

In June 2001 the USACE South Pacific Division has issued *Guidelines for Jurisdictional Delineations for Waters of the United States in the Arid Southwest*. The purpose of this document was to provide background information concerning physical characteristics of dryland drainage systems. These guidelines were reviewed and used to identify jurisdictional drainage features within the Project Site.

Wetlands

According to the USACE Wetlands Delineation Manual, Technical Report, three criteria must be satisfied to classify an area as a jurisdictional wetland:

A predominance of plant life that is adapted to life in wet conditions (hydrophytic vegetation)

Soils that saturate, flood, or pond long enough during the growing season to develop anaerobic conditions in the upper part (hydric soils)

Permanent or periodic inundation or soils saturation, at least seasonally (wetland hydrology)

Wetland vegetation is characterized by vegetation in which more than 50 percent of the composition of dominant plant species are obligate wetland, facultative wetland, and/or facultative species that occur in wetlands. As a result of the 2001 Solid Waste Agency of North Cook County (SWANCC) case, a wetland must show connectivity to a stream course in order for such a feature to be considered jurisdictional. Although wetland criteria was used to identify if areas were considered wetlands, the exact limits of jurisdiction were not measured based on the standard wetland delineation protocol as described in the 1987 USACE manual.

United States Army Corp of Engineers Regulated Activities

The USACE regulates the discharge of dredged or fill material including, but not limited to, grading, placing of rip-rap for erosion control, pouring concrete, laying sod, and stockpiling excavated material. Activities that generally do not involve a regulated discharge, if performed specifically in a manner to avoid discharges, include driving pilings, drainage channel maintenance, temporary mining and farm/forest roads, and excavating without stockpiling.

Regional Water Quality Control Board Regulations

Clean Water Act - § 401

In connection with notification to the USACE under Section 404 of the Clean Water Act (CWA), pursuant to 33 CFR Part 330, a written request for Section 401 water quality certification must be submitted to the RWQCB to ensure that no degradation of water quality will result from the proposed project. Subject to CWA section 401(a)(1), the Army Corps of Engineers cannot issue a section 404 dredge/fill permit until such time as a CWA section 401 Water Quality Certification (WQC) has been approved by the applicable RWQCB.

In order to meet the requirements of the RWQCB for issuance of a 401-water quality certification, the project proponent must provide assurances that the project will not adversely affect the water quality of receiving water bodies. A written request for 401 water quality certification will be prepared and submitted to the RWQCB for review. The request will include a detailed project description, a description of proposed impacts, identification and discussion of beneficial uses of affected receiving waters (as described within the appropriate Basin Plan), a water quality plan identifying project-specific Best Management practices (BMPs), discussion of other approvals and certifications being obtained, a conceptual restoration plan, and a completed notification form.

CEQA COMPLIANCE: Pursuant to Title 23, Section 3856(f) of the California Code of Regulations (CCR), the Regional Water Quality Control Board (RWQCB) may not issue a Clean Water Act (Section 401) Water Quality Certification (WQC) for a project before being provided with (and having had ample time to review) a copy of the final CEQA documentation prepared for the project. Upon formal request for certification, water quality certification should be forthcoming within 90-120 days of completion of the CEQA process.

FEE STRUCTURE: Subject to California Code of Regulations (CCR), Title 23, §3833, a section 401 application must be accompanied by an initial deposit of not less than \$500.00. If the initial deposit does not cover the agency's application review costs, the RWQCB may require an additional (one-time) amount using the calculus set forth in section 2200(e), Title 23, of the California Code of Regulations.

Porter-Cologne Water Quality Act

Section 13260(a) of the California Water Code ("Water Code", or "Porter Cologne") requires that any person discharging waste or proposing to discharge waste within any region, other than to a

community sewer system, which could affect the quality of the waters of the State, file a report of waste discharge (ROWD). The discharge of dredged or fill material may constitute a discharge of waste that could affect the quality of waters of the State (Defined in Water Code §13050(e)).

Typically, the State of California relies upon its authority under section 401 of the Federal Clean Water Act (CWA (33 U.S.C. §1341) to regulate discharges of dredged or fill material to California waters that are also within the jurisdiction of the United States Army Corps of Engineers (USACE). Given the water quality certification (WQC) process employed under section 401, waste discharge requirements under Porter Cologne are typically waived for those projects requiring a water quality certification. In 2001 the U.S. Supreme decision in *Sold Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (“SWANCC”) invalidated the Army Corp’s use of the “Migratory Bird Rule” to establish federal jurisdiction over isolated waters. Since 2001, the State of California has reasserted its authority under state law to assert jurisdiction over isolated waters for water quality purposes by requiring a ROWD.

REGULATION OF ISOLATED WATERS

Dredging, filling, or excavation of “isolated” waters constitutes a discharge of waste to waters of the State, and prospective dischargers are required to submit a report of waste discharge to the RWQCB and comply with other requirements of the State Porter Cologne Water Quality Act (Water Code).

SCOPE OF REGULATION: With respect to isolated waters, discharges and/or dredging of wetlands, active channels, or beds of water bodies are regulated. Discharges to riparian or areas in proximity to a waterbody are regulated when such activity will directly or indirectly result a change to water quality. Such changes may include discharge of stormwater pollutants and runoff; change in the nature of vegetation that could affect water quality (e.g., affecting pollutant removal, stream shading or bank stability), or change to the hydrological or geomorphic characteristics of the waterbody.

APPLICATION OF REGULATION: Whenever the USACE issues a jurisdictional disclaimer (Concurs with a finding of no federal jurisdiction), the respective RWQCB is notified of the disclaimer. Typically, the RWQCB will issue a letter notifying the project proponent that a ROWD must be filed. A ROWD must be submitted in one of two forms, depending on the anticipated impacts.

(GENERAL WASTE DISCHARGE REQUIRMENT (GWDR): The GWDR program is substantively set forth in SWRCB Water Quality Order No. 2004-0004-DWQ. GWDRs are generally prescribed for a category of discharges (either temporary or permanent) involving earth, rock, or similar solid materials if the discharge will not be greater than 0.2 acres and 400 linear feet (for fill or excavation) or 50 cubic yards (for dredging). The type of projects that may be covered under these General WDRs include land development, detention basins, disposal of dredged material, bank stabilization, revetment, channelization, and other similar projects. GWDRs do not apply to discharges that adversely impact, directly or through habitat modification, any plants or animals

identified as candidate, sensitive, or special status species in local or regional plans, or by the CDFG (Including NCCPs), or USFWS (Including HCPs). Similarly, GWDRs do not apply to discharges impacting significant historical, archaeological, or paleontological resources.

REQUIREMENTS: The GWDR typically requires submittal of the following items: (1) A Notice of Intent (NOI), (2) Any CEQA documents that have been prepared for the project, (3) A fee pursuant to Title 23, section 2200 of the CCR, (4) A Mitigation Plan demonstrating that the discharger will sequentially avoid, minimize, and compensate for the adverse impacts to the affected water bodies, and beneficial uses (as set forth in the applicable Basin Plan), (5) Any other relevant information requested by the SWRCB or RWQCB. A copy of the application must be submitted to both the applicable RWQCB and to the SWANC-ROWD, Water Quality Certification Unit in Sacramento.

TIMING: Pursuant to the requirements of the California Permit Streamlining Act, RWQCB has 30 days to deem the application complete. Upon receipt of a complete submittal, the RWQCB has 45 days in which to issue a Notice of Applicability (NOA) (authorizing the activity) or a Notice of Exclusion (NOE) (denying authorization). The discharge activity is operationally authorized if no NOE is issued within the 45-day evaluation period, provided that the proposed activity is not a prohibited activity.

INDIVIDUAL WASTE DISCHARGE REQUIREMENTS (IWDR): Projects not qualifying for the GWDRs will need to satisfy individual waste discharge requirements, typically requiring submittal of 401 Water Quality Certification forms and supporting documentation as set forth by the respective RWQCB. Such submittals are subject to fees as set forth in California Code of Regulations Title 23 Section 2200(a)(2). Pursuant to the Water Code the project proponent is required to file with the appropriate Regional Water Quality Control Board (RWQCB) a Report of Waste Discharge describing the proposed discharge at least 140 days before it occurs (Water Code §§ 13260, 13264).

California Department of Fish and Game Regulations

California Fish and Game Code - § 1602

In the public interest of protection and conservation of fish and wildlife resources of the state (§1600), Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify the California Department of Fish and Game (CDFG) before beginning any activity that will do one or more of the following: 1) substantially obstruct or divert the natural flow of a river, stream, or lake; 2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake; or 3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake. Fish and Game Code section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state. In the interest of protecting biological resources associated with riparian communities, CDFG jurisdiction is commonly extended to the outer drip-line of associated riparian vegetation.

A Section 1602 Streambed Alteration Notification will be prepared and submitted to the CDFG for review. The request will include a detailed project description, a description of proposed impacts, a conceptual mitigation plan, and completed notification forms. Typically, CDFG will be able to complete the agreement within 60-90 days of the completion of the CEQA process.

CEQA COMPLIANCE: It should be noted that CDFG must also comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000, et seq.) before it may issue a final Lake or Streambed Alteration Agreement. Issuance of a final Lake or Streambed Alteration Agreement occurs after the Department receives a draft Lake or Streambed Alteration Agreement from the applicant and the Department signs it. In many instances, the Department will receive a signed draft Lake or Streambed Alteration Agreement from an applicant before the lead agency has fully complied with CEQA. In those instances, the Department must wait for the lead agency to fully comply with CEQA before it may sign the draft Lake or Streambed Alteration Agreement, thereby making it final.

FEE STRUCTURE: Pursuant to California Code of Regulations (CCR), Title 14 §699.3, CDFG assesses a fee to cover the cost of reviewing §1602 applications. The fee calculus is based on the sum cost of the proposed activities within the streambed or riparian community.