

Appendix A
Biological Assessment



LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

April 28, 2017

Mr. Reyad Katwan
King Property Partners
5655 Silver Creek Valley Road, #305
San Jose, CA 95138-1706

**RE: Biological Technical Study of the site at 4349 San Felipe Road, San Jose, California
(PN: 2097-02)**

Dear Mr. Katwan:

Per your request, Live Oak Associates, Inc. (LOA) conducted a biological assessment and riparian edge delineation of the approximately 1-acre parcel located at 4349 San Felipe Road, San Jose, California (Figure 1). The primary intent of this study is to describe the existing conditions of the site including the habitat types of the site, the edge of riparian vegetation, and observed species, and to discuss the Santa Clara Valley Habitat Plan (ICF International 2012; “SCVHP”) including any applicable measures of the SCVHP to which the proposed project may be subject. In addition, this study addresses applicable ordinances/policies of the City of San Jose that would pertain to this project and addresses protected species that could occur on or near the site.

LOA ecologist, Nathan Hale, conducted a site visit on November 15, 2016, during which the habitats of the site, including delineation of the edge of riparian vegetation, were identified and constituent species therein were documented. Mr. Hale assessed the external portions of the residential structure of the site for potentially suitable habitat (e.g., for bats, birds, and fossorial mammals), and inspected the property for habitats including any that could support special status species. LOA ecologist, Katrina Krakow, conducted an additional site visit on April 25, 2017 to look for potential habitat for tricolored blackbird, including active nesting and potential evidence of prior nesting. The following sections document the findings of this site visit.

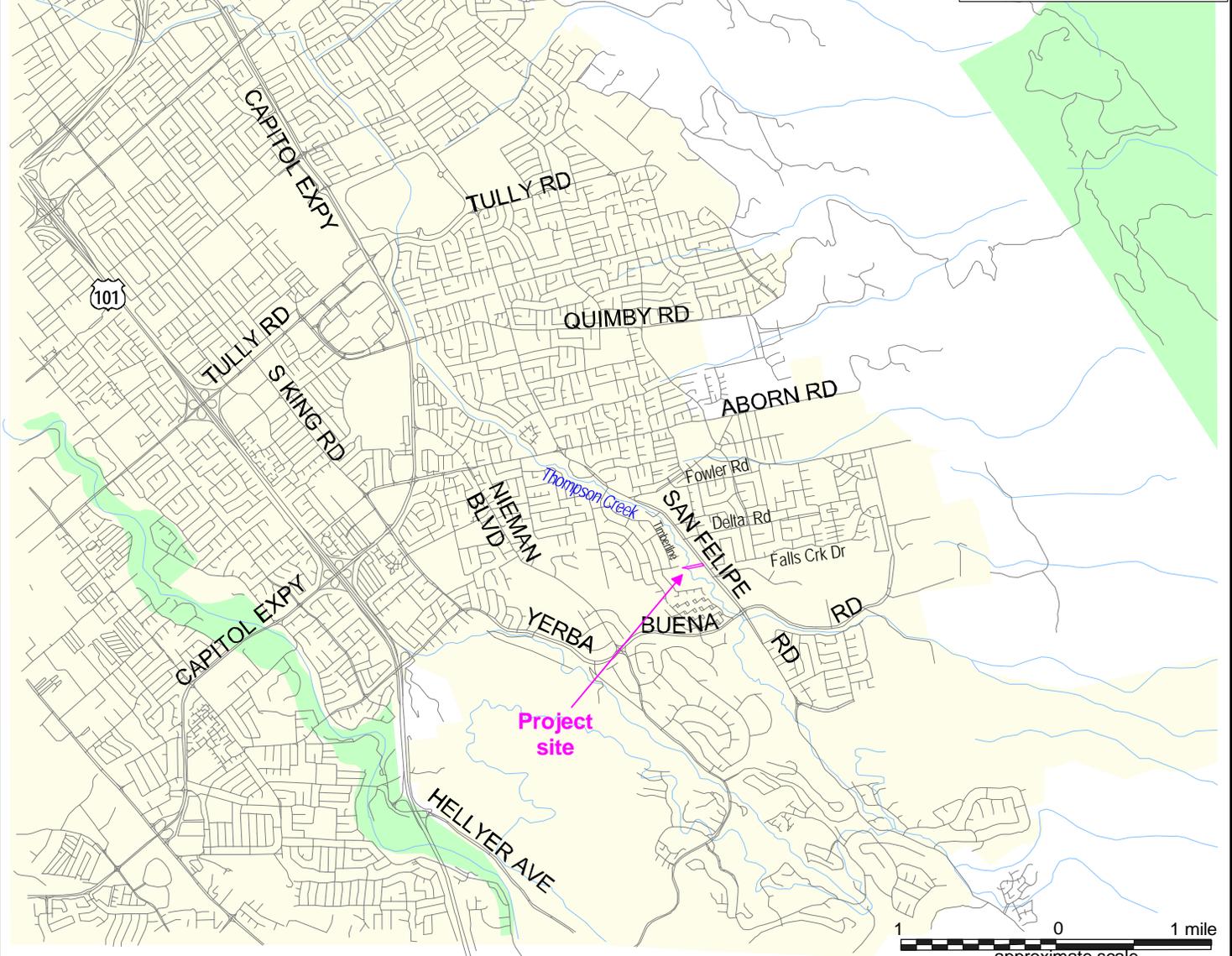
Project Description

As we understand it, the property is the subject of a proposed project to subdivide the property into two lots in order to develop up to 2 residential units. It is our understanding also that the new development would maintain a 100-foot minimum riparian setback and would not impact the channel or riparian habitat of Thompson Creek.

San Jose: 6840 Via Del Oro, Suite 220 • San Jose, CA 95119 • Phone: (408) 224-8300 • Fax: (408) 224-1411
Oakhurst: P.O. Box 2697 • 33930 Sierra Way, Suite B • Oakhurst, CA 93644 • Phone: (559) 642-4880 • (559) 642-4883
Truckee: 11050 Pioneer Trail, Suite 203 • Truckee, CA 96161 • Phone: (530) 214-8947

www.loainc.com

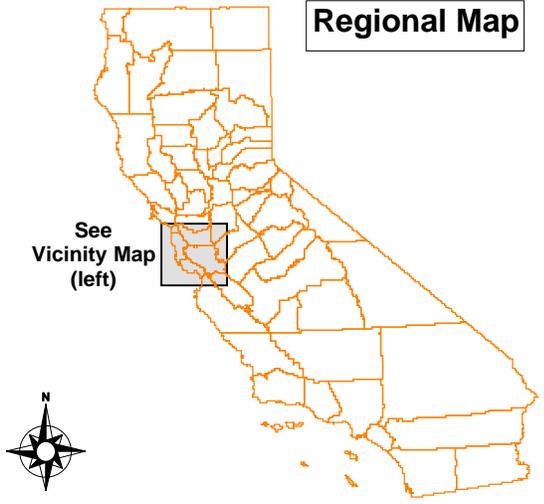
Site Location Map



Vicinity Map



Regional Map



 Live Oak Associates, Inc.		
4349 San Filipe Road Site / Vicinity Map		
Date	Project #	Figure #
12/09/2016	2097-01	1

Existing Conditions

The property consists of a single family home, a gravel area used for parking in the eastern portion of the site just off of San Felipe Road, and an adjacent section of the riparian corridor of Thompson Creek, including a small reach of channel (Figure 2). The home lot of the site consists of one large house, a small shed, a large landscaped yard that includes a maintained lawn, planted trees and shrubs, an abandoned garden area, some fencing, and hardscaped areas.

The site is bordered by residential development to the north, San Felipe Road to the east, a senior living facility to the south, and Thompson Creek to the west. The site is located within the San Jose East 7.5" USGS quadrangle in the N ½ of the SW ¼ of Section 20, Township 7 S, Range 2 East. Average annual precipitation in the general vicinity of the study area averages 15 inches, approximately 90% of which falls between October and April. Virtually all precipitation falls in the form of rain. Stormwater runoff readily infiltrates the soils of the upland portions of the site, but when field capacity has been reached, water sheet flows into Thompson Creek.

Mixed Riparian Forest and Woodland

The eastern-most section of the site includes the riparian corridor of Thompson Creek. The existing home lot includes minor landscaping up to the edge of the riparian corridor, which in this case is primarily the top of the east bank of Thompson Creek.

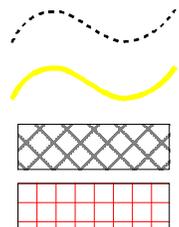
The riparian habitat of the site transitions from a shrub canopy, dominated by California sagebrush (*Artemisia californica*), poison oak (*Toxicodendron diversilobum*), and coyote brush (*Baccharis pilularis*), into a more densely canopied tree canopy down the slope. The more dense canopy of Thompson Creek is dominated by native trees, including coast live oak (*Quercus agrifolia*), valley oak (*Quercus lobata*), California buckeye (*Aesculus californicus*), California bay-laurel (*Umbellularia californica*), California black walnut (*Juglans californica*), and blue elderberry (*Sambucus nigra* ssp. *caerulea*). Understory plant species of Thompson Creek are comprised of native and non-native shrubs and forbs, including a non-native species of prickly-pear cactus (*Opuntia* sp.), coyote brush, poison oak, poison hemlock (*Conium maculatum*), fennel (*Foeniculum vulgare*), Italian thistle (*Carduus pycnocephalus*), prickly lettuce (*Lactuca serriola*), curly dock (*Rumex crispus*), and wild cucumber (*Marah* sp.), as well as several unidentified grass species.

Several animal species are also supported by the riparian habitat of Thompson Creek. While no amphibians or reptiles were observed during the November 2016 site visit, leaf litter and decaying woody material within the riparian habitat of the site provides a moist microclimate suitable for amphibians such as the ensatina (*Ensatina eschscholtzii*), arboreal salamander (*Aneides lugubris*), California slender salamander (*Batrachoseps attenuatus*), and western toad (*Bufo boreas*). Reptiles that may utilize riparian systems include the western fence lizard (*Sceloporus occidentalis*), western skink (*Eumeces skiltonianus*), southern alligator lizard (*Elgaria multicarinata*), California legless lizard (*Anniella pulchra*), gopher snake (*Pituophis catenifer catenifer*), and common garter snake (*Thamnophis sirtalis*).

Many bird species, both residents and winter migrants, depend on riparian plant communities for foraging and breeding habitat. Bird species observed in the Thompson Creek riparian habitat include the black phoebe (*Sayornis nigricans*), mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), dark-eyed junco (*Junco hyemalis*), and bushtit (*Psaltriparus minimus*).



LEGEND

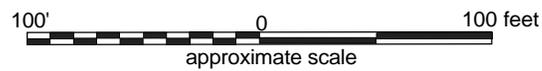


Edge of Riparian

100 Foot Riparian Setback

Mixed Riparian Forest and Woodland (Thompson Creek)

Developed / Landscaped



	Live Oak Associates, Inc.		
	4349 San Filipe Road Biotic Habitats & Riparian Setback		
Date	Project #	Figure #	
12/09/2016	2097-01	2	

The riparian areas would also provide habitat for a variety of mammalian species, such as the coyote (*Canus latrans*), the evidence of which was observed on the site in the form of scat. Animal species of the Thompson Creek riparian corridor could include the deer mouse (*Peromyscus maniculatus*), several bat species including the little brown myotis (*Myotis lucifugus*) and the Mexican free-tail bat (*Tadarida brasiliensis*), western gray squirrel (*Sciurus griseus*), eastern gray squirrel (*S. carolinensis*), raccoon (*Procyon lotor*), opossum (*Didelphis virginiana*), striped skunk (*Mephitis mephitis*), gray fox (*Urocyon cinereoargenteus*), feral cat (*Felis catus*), and black-tail deer (*Odocoileus hemionus columbianus*).

Developed/Landscaped

The developed portion of the property consisted of an unoccupied residence, a gravel parking area apparently used by surrounding properties as overflow parking, and landscaped areas. A few scattered trees occur in the developed areas of the site including mature trees such as the wattle tree (*Acacia* sp.), mature orange tree (*Citrus x sinensis*), crepe myrtle (*Lagerstroemia* sp.), lemon (*Citrus x limon*), almond (*Prunus dulcis*), coast live oak, silver dollar gum (*Eucalyptus polyanthemos*), and Pacific redwoods (*Sequoia sempervirens*). Shrubs consisted of landscape species, including oleander (*Nerium oleander*), camelia (*Camelia* sp.), privot (*Ligustrum* sp.), and jasmine (*Jasminum* sp.) to name a few. The majority of the back yard area of the residence was kept as a grass lawn with a fairly high occurrence of non-native weedy species. Species of wild weeds observed in the landscaping included but were not limited to wild oat (*Avena* sp.), ripgut brome (*Bromus diandris*), Italian thistle, stinkwort (*Dittrichia graveolens*), annual fireweed (*Epilobium brachycarpum*), bristly ox-tongue (*Helminthotheca echioides*), and cut leaved geranium (*Geranium dissectum*).

The farthest sections of the landscaped area includes a fenced area that appears to have served as a garden in the past, based on the presence of the fencing and irrigation materials. A shed is located near the garden area adjacent to planted redwood trees.

Several animal species could use the developed portion of the site for habitat from time to time, but most would be animals moving into the landscaped and developed portions of the site from the Thompson Creek riparian corridor. Animal species observed within the developed/ landscaped areas of the site included birds such as the mourning dove, black phoebe (*Sayornis nigricans*), white-crowned sparrow (*Zonotrichia leucophrys*), and Anna's hummingbird. In addition, evidence of Botta's pocket gopher (*Thomomys bottae*), was observed in the back yard area of the site.

Jurisdictional Waters

Thompson Creek would be considered to be a Water of the U.S. and a Water of the State and would be jurisdictional to the Regional Water Quality Control Board, U.S. Army Corps of Engineers, and California Department of Fish and Wildlife. This feature, including all associated riparian habitat, is planned for avoidance. There are no additional wetland habitats on the site.

Special Status Species

A brief review of special status species occurring within the 9 local USGS quadrangles in the project vicinity, including, San Jose East, Calaveras Reservoir, Lick Observatory, Los Gatos, Milpitas, Morgan Hill, Mt. Day, San Jose West, and Santa Teresa Hills, reveals that several species could occur within the project vicinity.

Soils and habitats of the site are unsuitable for any of the special status plant species that occur regionally. Therefore, special status plants are considered to be absent from the site.

Of the special status species animals that occur regionally, species that could occur within the property as residents, regular forager, or as part of migratory movements include the western pond turtle (*Actinemys marmorata*; California Species of Special Concern), white-tailed kite (*Elanus leucurus*; California protected species), loggerhead shrike (*Lanius ludovicianus*; California Species of Special Concern), tricolored blackbird (*Agelaius tricolor*; California Species of Special Concern), California yellow warbler (*Dendroica petechial*; California Species of Special Concern), pallid bat (*Antrozous pallidus*; California Species of Special Concern), Townsend's big-eared bat (*Corynorhinus townsendii*; California Endangered [proposed]), and ringtail (*Bassariscus astutus*; California protected species). These species either occur on the site incidental to home range and migratory movements, thus using the site infrequently, or may forage on the site year-round or during migration.

In addition to special status species listed above, the property provides suitable habitat for other nesting migratory birds. Also, non-listed bat species could forage and day-roost within the riparian areas of the site. Bats may also forage within the developed portions of the site from time to time, but breeding habitat for bats was not observed within the site. Nesting migratory birds and non-listed bats are also protected by federal and state laws.

The western pond turtle and ringtail would only be expected to occur within the riparian corridor of Thompson Creek. Avoidance of impacts to the creek and observance of the 100-foot riparian setback, which are proposed measures of the project, would ensure there are no impacts to western pond turtles or their habitat.

The white-tailed kite and loggerhead shrike, could forage and/or breed within the site. While the site is atypical for these species, trees and shrubs of the site could provide potential breeding habitat for either of these protected bird species. Marginal foraging habitat is present within the site. Nesting migratory bird avoidance surveys and construction-free buffering (as determined by a qualified biologist), which are proposed measures of the project, would ensure there are no impacts to these species. Development of the site, which includes redevelopment of a developed and landscaped area and providing for a 100-foot development-free riparian buffer would have a less-than-significant effect on habitat for these species as the potential habitat onsite does not represent high quality or unique habitat for either of these species, and similar or higher quality habitat for these species is abundantly available regionally, and, in fact, will be replaced in kind with residential development with landscaping following construction.

The tricolored blackbird and California yellow warbler are not expected to breed within the developed portions of the site or within the riparian setback of the site due to the absence of typical nesting substrate and/or aquatic habitats. Potentially suitable foraging habitat is present onsite, and marginal breeding habitat is present within the riparian corridor adjacent to the site. The breeding habitat of the riparian corridor is considered to be of marginal quality as the riparian habitat adjacent to the site does not support vegetation typically used by these species (e.g., willow thickets, emergent rushes, wide inundated vegetation areas, etc.). Furthermore, no evidence of nesting was observed during a background review of published breeding data for the tri-colored blackbird or site surveys for tricolored blackbirds, which would have also identified the presence of nesting California yellow warblers, which was conducted by LOA on April 25, 2017. No records for nesting tricolored blackbirds identify breeding habitat within the vicinity

of the site. (The nearest recorded occurrence of tricolored blackbird is documented as occurring approximately three miles to the northwest of the site at Cunningham Lake [CNDDDB 2017]).

However, as the tricolored blackbird and California yellow warbler are volant species that could colonize marginal sites, they could nest within the riparian corridor vegetation adjacent to the site in the future. As the SCVHP requires a 250-foot buffer from the outer edge of any aquatic habitat that is potential nesting substrate for the tricolored blackbird, which extends from the channel of Thompson Creek into the proposed project footprint, preconstruction surveys for nesting birds within the project vicinity, including the riparian channel, and avoidance buffering of any active nests, are proposed measures of the project, which would ensure there are no direct impacts to these species. Condition 17 of the SCVHP requires that the pre-construction surveys for tri-colored blackbirds conclude no more than 2 days prior to initial project construction disturbances. Also, development of the site, which includes redevelopment of a developed and landscaped areas and providing for a 100-foot development-free riparian buffer would have a less-than-significant effect on habitat for these species as the potential foraging habitat that would be developed on the site does not represent high quality or unique habitat for either of these species, and similar or higher quality habitat for these species is abundantly available regionally, and, in fact, will be replaced in kind with residential development with landscaping following construction.

Preconstruction surveys for all nesting migratory birds, including for the white-tailed kite, tricolored blackbird, loggerhead shrike, and California yellow warbler, would ensure that any active nests are identified and properly avoided during buildout. Surveys for nesting birds should be conducted within 14 days of initial site disturbances associated with the project grading permit if such disturbances are proposed to commence between February 1 and August 31. Between September 1 and January 31, no pre-construction surveys for these species would be required. If surveys were to detect active nests and/or raptor nests, avoidance measures, in the form of construction buffers the size and dimensions of which would be defined by the qualified surveying biologist, would apply. Per requirements of Condition 17 of the SCVHP, a survey for active tricolored blackbird in the potentially suitable riparian habitat adjacent to the project area would need to conclude no more than 2 calendar days prior to initial construction disturbances.

Pallid and Townsend's big-eared bat as well as other bat species could fly through the site from time to time, and they may utilize the riparian corridor more extensively as part of their habitat. No bat species would be expected to reside or breed within the developed/landscaped portions of the property. The buildings of the site were without suitable roof access, and there was no evidence of bat use.

City of San Jose Riparian Policy

The City of San Jose relies on two guiding documents in determining allowable development in relationship to riparian habitats. These include the Envision 2040 General Plan (City of San Jose 2001; "2040 Plan") and the City of San Jose Riparian Corridor Policy Study (City of San Jose 1999; RCPS). The RCPS addresses several issues that relate to the identification, management, and protection of riparian resources within the City's Urban Service Area (USA). The City's RCPS provides a basis for the City in developing consistent conditions on new projects, including in making determinations about a project's required setback from the edge of riparian habitat (as measured from the top of bank or the edge of riparian vegetation, whichever is greater). The RCPS riparian setback guidelines have been included here (below) based on the 2040 Plan's reliance on measures of the RCPS. In addition to these City of San Jose policies, the

SCVHP includes requisite conditions on projects with regard to riparian setbacks. In this situation, the City's policies regarding riparian setbacks ensure compliance with the SCVHP policies, which are less restrictive as it relates to setback requirements for this project.

The 2040 Plan addresses, amongst other things, protection of riparian habitat as it relates to new development. Specifically, the 2040 Plan seeks to ensure that new development projects conform to both the City of San Jose's Riparian Corridor Policy Study (RCPS) as well as any relevant Habitat Conservation Plans (e.g., the SCVHP). The 2040 plan recommends "that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur," (Chapter 3, pp. 28; City of San Jose 2011). The 2040 Plan also advises that new development projects are designed to protect adjacent riparian habitat from the biological impacts of night lighting, exotic landscaping, noise, and toxic substances into the riparian zone, and endorses restoration of riparian habitat through planting of native plants and removal of exotic/invasive species.

The RCPS recommends the following riparian setback dimensions:

"All buildings, other structures (with the exception of bridges and minor interpretative node structures), impervious surfaces, outdoor activity areas (except for passive or intermittent activities) and ornamental landscaped areas should be separated a minimum of 100 feet from the edge of the riparian corridor" (pp. 31; City of San Jose 1999).

While the RCPS recommends a 100-foot setback along riparian systems within the USA, it also provided for exceptions to the 100-foot setback guideline. Exceptions include, for example:

- Urban infill locations where most properties are already developed and parcels are generally small;
- Sites with unusual geometric characteristics and/or disproportionately long riparian frontages; and
- Instances where implementation of the project includes measures which can protect and enhance the riparian value of the corridor more than could a 100 foot setback.

In addition to considerations about the size of the riparian setback, the RCPS also provides guidance on the construction of a proposed project so as to ensure protection of the biological resources of the adjacent riparian corridor. Additional biologically relevant recommendations of the Policy that pertain to residential development projects such as the proposed project include:

- Guideline 2B: Windows on new structures should not have mirrored surfaces that glare into the riparian corridor;
- Guideline 2E: Night lighting should not be oriented directly into riparian areas to avoid light impacts on wildlife;
- Guideline 2F: Operation of mechanical equipment adjacent to the riparian corridor should not exceed open space noise levels as specified in the City of San Jose's General Plan. Stationary, noise-making mechanical equipment should be placed as far from the riparian corridor as necessary to maintain ambient levels within the corridor;
- Guidelines 3A and 4G: Landscaped areas adjacent to the riparian corridor, including vegetated barriers between the corridor and development (4G), should utilize locally adapted native vegetation, and invasive species should not be used;
- Guideline 3B: Irrigation systems within 100-feet of the riparian corridor should be designed so as to avoid negative impacts to the riparian system;

- Guideline 4F: If fences are used between riparian areas and development, they should be designed so that wildlife is not hindered (no higher than 3 or 4 feet).
- Guideline 7B: On-site runoff retention areas should be sited at least 25 feet from the edge of riparian areas.
- Guideline 7E: During project construction, temporary fencing or some other solid barriers should be installed outside of the riparian area to protect riparian habitat from project build-out.

The SCVHP includes one condition that specifically addresses riparian corridor setbacks. Condition 11 of the SCVHP provides requirements for stream and riparian setbacks; as the development area for this project is within the USA, stream setbacks measured from the top of the stream bank should be 35 feet from the top-of-bank or edge of riparian vegetation (whichever is further from the channel), based on the current category rating of Thompson Creek (Category II) and the slope class of the property. Category 2 streams should have a setback of 35 feet.

Project Compliance with Riparian Setback Policies

As mentioned above, the proposed residential project would maintain a riparian setback of 100-feet from the top of bank and/or edge of riparian vegetation. This complies with the Envision 2040 plan, the RCPS, and the SCVHP Condition 11.

City of San Jose Tree Ordinance

The City of San Jose has a Tree Ordinance (Chapter 13.32 of the Municipal Code), which regulates the removal of trees. The City’s Tree Ordinance seeks to:

Promote the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city, significantly reduce the erosion of topsoil, contribute to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of draining systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems.

An “ordinance-size tree” is defined as any native or non-native tree with a circumference of 56 inches (diameter of 18 inches) at 24 inches above the natural grade of slope. For multi-trunk trees, the circumference is measured as the sum of the circumferences of all trunks at 24 inches above the natural grade of slope. The ordinance covers both native and non-native species. A tree removal permit is required from the City prior to the removal of any trees covered under the ordinance. Prior to the issuance of a removal permit, the City requires that a formal tree survey be conducted which indicates the number, species, trunk circumference and location of all trees which will be removed or impacted by the project.

This study did not include a formal tree survey of the site. If any ordinance-sized trees are removed or harmed as part of project buildout, the project is required to ensure compliance with this ordinance. This would include retention of a certified arborist to conduct a formal tree survey of the site and mitigating for the loss of trees if those losses reach the thresholds of the City of San Jose Tree Ordinance.

Santa Clara Valley Habitat Plan

The project will be subject to conditions and fees required by the Santa Clara Valley Habitat Conservation Plan. Six local partners (the County of Santa Clara, Santa Clara Valley Transportation Authority; SCVWD; and the Cities of San Jose, Gilroy, and Morgan Hill) and two wildlife agencies (the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service) prepared and adopted this multi-species habitat conservation plan, which primarily covers southern Santa Clara County, as well as the City of San Jose with the exception of the bayland areas. The SCVHP addresses listed species and species that are likely to become listed during the plan's 50-year permit term. The eighteen covered species include nine plants and nine animals. The animal species covered include, but are not limited to, the California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), western pond turtle, and tri-colored blackbird (*Agelaius tricolor*). The SCVHP requires that the agencies comment on reportable interim projects and recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value. Funding sources for the SCVHP include development fees based on land cover types (natural, agricultural or small vacant sites surrounded by urban development). Additional fees are charged based on the occurrence of certain sensitive habitat types such as serpentine and wetlands.

Applicable Fees of the SCVHP

Chapter 9 of the SCVHP identifies fees that may be required by this project. Fees of the SCVHP are adjusted annually; therefore, the fees described below are those fees that are current as of the date of this letter report. Actual fees would be assessed at the time of pulling the grading permit, and would be those fees that are current at that time. Therefore, the fees described below are approximations.

The project footprint falls entirely within the developed portion of the project site. The SCVHP classifies this area as “Urban – Suburban” a land type that does not have a fee associated with it. Given that the project would not impact the riparian habitat of the site, no land cover fees or habitat surcharge fees apply. If the project were to impact the riparian corridor, fees would apply. Specifically, the impacts to the riparian area would be charged a land zone fee per acre of \$13,283 plus a habitat surcharge fee of \$151,739 per acre for impacts to the riparian habitat. The project would be charged an additional surcharge of \$638 feet per linear foot for impacts to stream channels (if any).

As proposed, the project would only be responsible for a nitrogen deposition fee of \$44.69 per residential unit developed (based on current fees). However, under the SCVHP, the project is also required to comply with other SCVHP conditions.

Applicable SCVHP Conditions

Conditions that are expected to be applicable to the San Felipe Road project include Conditions 1, 3, 11, and 17, which are summarized here. The summarized content below should not be relied upon for a full understanding of the listed conditions and required measures. The SCVHP should be referenced for a complete understanding of the requirements of these conditions:

- **Condition 1 (page 6-7). Avoid Direct Impacts on Legally Protected Plant and Wildlife Species-** Condition 1 instructs developers to avoid direct impacts on legally protected plant and wildlife species, including federally endangered Contra Costa goldfields and fully protected wildlife species including the golden eagle, bald eagle, American peregrine falcon, southern bald eagle, white-tailed kite, California condor, and

ring-tailed cat. Several of these species are likely to occur on or forage over the site (golden eagle, bald eagle, white-tailed kite, and ringtail). Condition 1 also protects bird species and their nests that are protected under the Migratory Bird Treaty Act (MBTA); additionally, golden eagles and bald eagles are protected under the Bald and Golden Eagle Protection Act. Additionally, page 6-94 and Table 6-8 identify required surveys for breeding habitat of select covered wildlife species.

- **Condition 3 (page 6-12). Maintain Hydrologic Conditions and Protect Water Quality-** Condition 2 provides design requirements for the urban-reserve system interface. Some of the design requirements included in Condition 2 are installing non-permeable fences between urban and reserve areas, fencing public roads that run adjacent to reserve areas, minimizing the length of shared boundaries between urban and reserve areas, outdoor lighting limitations, and landscaping requirements.
- **Condition 11 (page 6-44). Stream and Riparian Setbacks-** Condition 11 provides requirements for stream and riparian setbacks; as the development area is within the Urban Service Area, stream setbacks measured from the top of the stream bank should be 35 to 150 feet depending on the category rating of the stream and the slope class. Setbacks for Category 2 streams should have a setback of 35 feet.
- **Condition 17 (page 6-69) Tricolored Blackbird-** While LOA conducted a breeding habitat assessment for Tricolored blackbirds and concluded that the site and riparian setback area of the site does not support tricolored blackbird habitat, the riparian habitat adjacent to the project area supports potentially suitable habitat for tricolored blackbirds, albeit of marginal quality. Pre-construction survey requirements of Condition 17 requires surveys for the tricolored blackbird prior to construction activities and provides avoidance and construction monitoring measures.

Compliance with the SCVHP Conditions

In order to comply with SCVHP conditions 1 and 17, the project would need to ensure that surveys for protected species (i.e., special status bird species and nesting migratory birds) are conducted in accordance with protocols defined in the SCVHP. This includes surveys for the tricolored blackbird (condition 17) in accordance with the SCVHP.

In general, condition 17 requires that a qualified ecologist conduct a background review of appropriate information on known tricolored blackbird nesting records to determine if the site or immediate vicinity of the site has been documented as providing habitat to this species. Subsequently, the ecologist would conduct a tricolored blackbird assessment. In accordance with the methods defined in the SCVHP, LOA ecologist Katrina Krakow conducted a background review and visited the site on April 25, 2017, to specifically conduct the tricolored blackbird assessment. She found that the proposed project site and the riparian setback area do not support suitable nest substrates for the tricolored blackbird. LOA also determined that the riparian corridor itself supported potentially suitable breeding habitat, albeit of marginal quality, within the riparian corridor. Background review identified that the nearest documented occurrence of nesting tricolored blackbird habitat was recorded approximately three miles to the northwest of the site at Cunningham Lake (CDFW 2017); therefore, LOA concludes that the site does not support and is not adjacent to known/historic breeding habitat for this species.

Compliance with condition 3 is mostly resolved through compliance with a City approved SWPPP for the project. However, requirements of the SCVHP condition 3 (including measures outlined in Table 6-2 of the SCVHP) would need to be captured by the project construction plan.

Compliance with condition 11 of the SCVHP is provided by maintaining a minimum 35-foot setback from the edge of riparian habitat of Thompson Creek. Compliance with the City of San Jose's riparian policies ensures this measure is met. A review of condition 11 of the SCVHP should be conducted to ensure all measures of condition 11 are met in the project plan and implementation.

Please let me know if you have any questions or comments about the content of this biological study.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan Hale". The signature is fluid and cursive, with the first name "Nathan" and the last name "Hale" clearly distinguishable.

Nathan Hale, M.S.
Project Manager
Staff Ecologist

Literature Cited

California Department of Fish and Wildlife (CDFW). 2017. California Natural Diversity Database, Rarefind5. The Resources Agency, Sacramento, CA.

City of San Jose. 1999. Riparian Corridor Policy Study. Prepared by: The Habitat Restoration Group and Jones and Stokes Associates, Inc. San Jose, California.

City of San Jose. 2011. Envision San Jose 2040 General Plan. Prepared by the City of San Jose. Approved November 1, 2011. Retrieved from www.sanjoseca.gov/index.aspx?nid=1737 on August 19, 2014.

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