MEMORANDUM

To:	Nolan Granberry Second Harvest NGranberry@shfb.org	**From:**	Molly Matson molly.matson@wra-ca.com Justin Semion semion@wra-ca.com
cc:	Kirstin Gidzinski		
Date:	September 15, 2021		
Subject:	Cisco Site 6 Due Diligence Report		

The purpose of this memorandum is to provide an analysis of biological constraints for an approximately 10.5-acre property located at 4553 and 4653 North First Street (Study Area) in the City of San Jose, Santa Clara County, California. This memo identifies potential biological constraints to development of the Study Area, with a focus on species previously identified in the Cisco Systems, Inc. (Cisco) Site 6 Environmental Impact Report (EIR; 2000). This memorandum provides this analysis based on the professional experience and judgment of WRA, Inc. (WRA) and the information available at the time of this analysis.

Background and Existing Conditions

The Study Area is an approximately 10.5-acre area surrounded on all sides by developed land, with the exception of a small section along the southwestern boundary adjacent to the Guadalupe River. The Study Area is bordered by a four-lane, divided roadway (North 1st Street) to the north, commercial office buildings to the east and southeast, and a Topgolf facility to the west and southwest. Guadalupe River runs parallel to the Study Area, approximately 600 feet to the south. The Study Area consists entirely of ruderal herbaceous vegetation.

The Study Area is within the larger Cisco Site 6 Project Area, as assessed in the Cisco Site 6 EIR (2000). Since 2000, the majority of the Cisco Site 6 Project Area has been developed. The Study Area has been subject to ongoing disturbance since at least 1948, including agriculture, paving, and grading[1]. The Study Area has been graded on several occasions, including most recently in 2019[2]. It was also mowed at some point in 2021 prior to the site visit.

Methods

This evaluation is based on a review of literature and database sources as well as a site visit completed by WRA on September 10, 2021. Prior to the site visit, WRA biologists reviewed literature resources and performed database searches to assess the potential for sensitive biological communities (e.g., wetlands) and special-status species (e.g., endangered plants), including:

[1] *Nationwide Environmental Title Research (NETR). 2021. Historic Aerials. Available online at: https://historicaerials.com/viewer. Most recently accessed: September 2021.*

[2] *Google Earth. 2021. Aerial Imagery 1985-2021. Most recently accessed: September 2021.*

- California Natural Diversity Database hosted by the California Department of Fish and Wildlife
- California Native Plant Society's Electronic Inventory of Rare and Endangered Plants
- Consortium of California Herbaria database
- U.S. Fish and Wildlife Service Information for Planning and Consultation database
- Biological Resources Mitigation and Monitoring Plan Cisco Site 6 (Zander Associates 2000)
- Cisco 6 EIR Certificate of Resolution (No. 69636)
- Biological and Wetlands Evaluation of Cisco Systems Parcels 3 and 4 (ESA 2012)
- 237 @ First Street Office Project Western Burrowing Owl Repeat Survey Results (ESA 2015)
- 237 @ First Street Office Project White-tailed Kite, Northern Harrier, and Western Burrowing Owl Initial Survey Results (ESA 2014)
- Integrated Final Environmental Impact Report Cisco Systems, Inc. Site 6 (2000)

On September 10, 2021, two WRA biologists conducted a field assessment of the Study Area to observe conditions for presence of sensitive biological communities and potential to support habitat for special status plant and wildlife species. Potentially jurisdictional areas and sensitive habitats, if present, were mapped using a combination of mapping-grade GPS devices and hand-drawn boundaries on high-resolution aerial imagery. The site visit focused on all species and habitats identified as potentially present in the project EIR, with particular focus on those species and habitats that can occur on disturbed sites in the vicinity, given the history of disturbance at the site.

Biological Constraints

Table 1 summarizes the potential biological constraints for the Study Area.

Table 1. Biological Resources within the Study Area

Biological Resource	Potential Impacts Identified in Cisco Site 6 Final EIR (2000)	Potential Impacts from development within the Study Area (2021)
Congdon's tarplant (*Centromadia parryi ssp. congdonii*)	Direct disturbance or removal	None. This species was not observed during a focused survey on September 10, 2021.
Steelhead (*Oncorhynchus mykiss irideus*)	Potential increase of pollutants in runoff from site could impact Guadalupe River	None. The Study Area is over 500 feet from the Guadalupe River, and is separated from the Guadalupe River by an approximately 10 foot berm along the Guadalupe River Trail. Construction within the Study Area is unlikely to result in an increase of pollutants in the Guadalupe River.
White-tailed kite (*Elanus leucurus*)	Impacts to nesting white-tailed kites	None. No trees or shrubs are present within the Study Area. The surrounding land is developed and subject to a high level of anthropogenic disturbance. This species is unlikely to nest within or adjacent to the Study Area.

Biological Resource	Potential Impacts Identified in Cisco Site 6 Final EIR (2000)	Potential Impacts from development within the Study Area (2021)
Northern harrier (*Circus hudsonius*)	Impacts to nesting northern harriers	None. The Study Area does not provide tall, dense vegetation to support nesting by this species.
Burrowing owl (*Athene cunicularia*)	Impacts to individual burrow owls and impacts to burrowing owl nesting or foraging habitat	The site visit found low quality potentially suitable habitat, with no evidence of nesting or over-wintering burrowing owl. While it is unlikely that burrowing owls would be present, impacts to this species still may occur if individuals occupy the area prior to construction. Adhering to survey requirements from the Santa Clara Valley Habitat Plan described further below would avoid and mitigate for potential impacts to this species.
Saltmarsh wandering shrew (*Sorex vagrans halicoetes*) and salt marsh harvest mouse (*Reithrodontomys raviventris*)	Potential runoff due to development could result in impacts to adjacent habitat	None. The Study Area does not contain suitable habitat for these species and is over 500 feet from the Guadalupe River and any associated salt marsh vegetation, and is separated from the Guadalupe River by an approximately 10 foot berm along the Guadalupe River Trail. Construction within the Study Area is unlikely to result in an increase of pollutants in salt marsh habitat.
Jurisdictional wetlands	Development would fill 0.45 acres of wetlands on the site. Development would increase potential for runoff to jurisdictional waters.	None. No jurisdictional wetlands are present within the Study Area.
Heritage Trees or other trees protected by the City of San Jose Tree Ordinance	Development would result in the removal of 14 ordinance size trees.	None. No trees are present within the Study Area.

Biological Resource	Potential Impacts Identified in Cisco Site 6 Final EIR (2000)	Potential Impacts from development within the Study Area (2021)
Guadalupe River	Development could increase potential for stormwater runoff and contribute to pollutants into the Guadalupe River.	None. The Study Area is over 500 feet from the Guadalupe River, and is separated from the Guadalupe River by an approximately 10 foot berm along the Guadalupe River Trail. Construction within the Study Area is unlikely to result in an increase of pollutants in the Guadalupe River. Adherence to City and State requirements for stormwater management during and after construction would avoid potential water quality impacts.
Tricolored blackbird (*Agelaius tricolor*)	None. Breeding habitat not present.	None. Breeding habitat is not present within or adjacent to the Study Area. However, the southern extent of the Study Area is within the tricolored blackbird survey area, as mapped in the Santa Clara Valley Habitat Plan.

Many of the biological resources identified in the Cisco Site 6 EIR (2000) are not likely to occur in the Study Area under current conditions. Biological resources with potential to be impacted by development in the Study Area are discussed further below.

Burrowing Owl

Extensive grading and surrounding development have reduced the quality and extent of suitable habitat within the vicinity. Burrowing owl has not been documented within the Study Area[3]. However, several scattered ground squirrel burrows were observed in the western portion of the Study Area during the September 10, 2021 survey. To avoid impacts to burrowing owl, two preconstruction surveys should be conducted within 14 days and 48 hours, respectively, of initiation of construction activities as described in the Santa Clara Valley Habitat Plan (2012). A 250-foot non-disturbance buffer should be placed around any occupied burrows found during the breeding season (February 1 through August 31). A reduced buffer may be allowed during the non-breeding season if a qualified biologists monitors the owls and finds no haven in behavior in response to construction activities. Once the burrow is no longer active and after receiving approval from the Habitat Agency, the buffer zone may be removed.

The Study Area may also be suitable foraging habitat for burrowing owl. Impacts to burrowing owl habitat within the Cisco Site 6 Project Area assessed in the 2000 EIR were mitigated through preservation and enhancement of a 21.4-acre preserve. The site is also within the Burrowing Owl Habitat Overlay for the

[3] *California Department of Fish and Wildlife. 2021. California Natural Diversity Database. Biogeographic Data Branch, Vegetation Classification and Mapping Program, Sacramento, California. Available online at: https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data; most recently accessed: September 2021;*
Cornell Lab of Ornithology. 2021. eBird: An online database of bird distribution and abundance. Available online at: Ithaca, NY. http://www.ebird.org. Most recently accessed: September 2021.

Santa Clara Valley Habitat Plan. This overlay means that the site may be subject to fees for burrowing owl mitigation, despite the previous establishment of the burrowing owl preserve. These fees are described in more detail below as part of the discussion of the Habitat Plan.

Nesting Birds

While tricolored blackbird, northern harrier, and white-tailed kite are unlikely to nest within the Study Area, non-special status nesting birds may nest in disturbed or developed areas including areas with minimal vegetation. In addition to the sensitive biological resources described above, most nesting birds in California are protected by the Migratory Bird Treaty Act and California Fish and Game Code. As a result of these protections, the removal and disturbance of active nests is prohibited. While no specific permit is required for nesting bird protection, avoidance and minimization measures are typically required under the California Environmental Quality Act (CEQA) to avoid impacts to nesting birds. To avoid impacts to nesting birds, typical avoidance and minimization measures include pre-construction surveys for nesting birds prior to construction during the breeding season (between February 15 and August 31). If nesting birds are found, a non-disturbance buffer should be placed around the nests until after the young have fledged or the nest otherwise becomes inactive.

Congdon's Tarplant

Congdon's tarplant is an annual herb that blooms from May to November. During initial mapping of Congdon's tarplant within the Cisco Site 6 Project Area in 1998, the species was only observed north of North First Street, with the densest population at the north east extent of the Cisco Site 6 Project Area, approximately 1000 feet from the Study Area. Much of this area has since been developed, with the exception of a 21-acre preserve located approximately 1600 feet north of the Study Area. A survey for Congdon's tarplant was conducted within the Study Area on September 10, 2021. This date corresponds to the blooming period for this species. Also on September 10, 2021, Congdon's tarplant was observed in bloom at a nearby reference site located approximately 2 miles from the Study Area. No individuals were observed within the Study Area, and impacts to this species from development of the site are not anticipated.

No potential habitat is present in the Study Area for other special status plant species addressed in the EIR.

Special Considerations for the Santa Clara Valley Habitat Plan

The Santa Clara Valley Habitat Plan provides a framework for the protection and recovery of endangered species and other natural resources within certain geographic areas in Santa Clara County. The Habitat Plan covers 18 species present within the Plan Area. Projects proposed within the area covered by the Habitat Plan are required to pay development fees that fund protection of priority conservation areas identified within the Plan Area. The Study Area lies within the Santa Clara Valley Habitat Plan Area. The City of San Jose typically requires participation in the plan and payment of all applicable fees as a prerequisite to project approval.

The Study Area is within the Fee Zone A (Ranchlands and Natural Lands) and within the burrowing owl fee zone. The development fees are $22,518 per acre within Zone A, and $64,845 per acre within the

burrowing owl fee zone[4]. For a 10.5 acre parcel in these zones, the associated fee would be approximately $917,311.

While applicants are not required by federal and State laws to participate in the Habitat Plan, the City typically requires participation for projects located within the Plan Area. Given that the project has already mitigated for potential impacts through establishment of biological preserves, the City may be willing to provide flexibility in its typical requirements to participate in the Habitat Plan. However, there is no guarantee that the City would provide this flexibility, and the payment of this Habitat Plan fee remains a risk that should be accounted for in the decision to develop on the property.

The entire Study Area is mapped as western burrowing owl wildlife survey area. In addition, approximately 0.5 acre in the southern extent of the Study Area is within the tricolored blackbird wildlife survey area. As such, the project would be required to implement conditions 15 (western burrowing owl) and conditions 17 (tricolored blackbird) as summarized below.

Burrowing owl

For projects within the burrowing owl survey area, a habitat survey must be conducted by a qualified biologist. If suitable burrow habitat is present at a site, one survey is required during the breeding season (between February 1 and August 31), and one surveys is required during the non-breeding season (between September 1 and January 31). WRA's survey on September 10, 2021 could be relied upon as a non-breeding season survey if a site plan sufficient to support City and Habitat Plan permitting were available sometime prior to mid-2022. The site visit found low quality potentially suitable habitat, with no evidence of nesting or over-wintering burrowing owl. No indication of use by burrowing owl (tracks, feathers, pellets, excrement) was observed. A ground squirrel burrow complex was located along the western perimeter, and along the northern perimeter across from Tony P. Santos Street. A few scattered and isolated burrows were present along the interior of the site.

Based on the site visit, preconstruction surveys would also be required under the Santa Clara Valley Habitat Plan. Two surveys would be required within 14 days prior to construction, the second survey occurring within 48 hours of construction. A 250-foot non-disturbance buffer is required around any occupied burrows found during the breeding season (February 1 through August 31). A reduced buffer may be allowed during the non-breeding season if a qualified biologists monitors the owls and finds no haven in behavior in response to construction activities. Once the burrow is no longer active and after receiving approval from the Habitat Agency, the buffer zone may be removed. Avoidance measures including construction monitoring and passive relocation are described in further detail in the Santa Clara Valley Habitat Plan.

Tricolored blackbird

A habitat survey for tricolored blackbird must be conducted if the project is within 250 feet of riparian, marsh, or pond habitat. A pond is present approximately 200 feet south of the Study Area. During the September 10, 2021 site visit, the pond was surveyed from the Study Area with binoculars for the presence of nesting substrate. The pond did not have suitable dense vegetation (i.e. cattails, bulrushes) to support a nesting colony. Nesting has not been documented in the feature. Based on the lack of nesting habitat

[4] *Based on the July 2021-June 2022 Fee Schedule*

within and adjacent to the Study Area, development of the Study Area would not impact tricolored blackbird.

Summary

Key considerations for development within the Study Area include:

- The project may affect burrowing owl. Impacts to burrowing owl may require preconstruction surveys and/or mitigation.
- The project should anticipate developing a Stormwater Pollution and Prevention Plan (SWPPP) as part of construction and a post construction Stormwater Management Plan (SMP) to prevent impacts to nearby sensitive habitats as a result of potential stormwater pollutants. The SWPPP is required during construction for any project disturbing more than one acre of land, and is typically prepared by the construction contractor. The SMP is required as part of City engineering review for the project and is typically prepared by the project's engineers during the design process.
- The project may be required to conduct preconstruction nesting bird surveys if work is initiated during the nesting bird season (February 15 through August 31).
- The City may require payment of approximately $917,311 to the Santa Clara Valley Habitat Plan based on the location within the Plan Area, Zone A development fee category, and presence within the Burrowing Owl fee overlay area.

Attachments

Attachment 1 – Parcel Map

Attachment 2 – Burrowing Owl Habitat Assessment

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK 15 PAGE 39

1" = 300'

GRAND BOULEVARD

DETAIL 1"= 100'

NORTH FIRST STREET (FMLY. TAYLOR ST. & FMLY. SAN JOSE–ALVISO RD.)

TONY P. SANTOS STREET (FMLY. SCHOOL STREET)

DISK DRIVE

NORTECH PARKWAY

MOFFAT ST.

VICTORIA ST.

WASHINGTON ST.

ULISTAC RANCHO

LOS ESTEROS RANCHO

R.O.S. 88/31

R.O.S. 533/9

PCL. 2 0.43 AC. NET

PCL. 1 0.42 AC. NET

P.M. 741–M–8

P.M. 549–M–9

P.M. 535–M–52

P.M. 901–M–28

27 GTE MOBILNET LEASE S.B.E. 2559–43–(21)387 PCL.1 SEE DETAIL

26 (24.13 Ac Net)

56 PCL. 2 10.475 Ac Gr 10.413 Ac Net

41 40

45 PCL. 2 11.452 AC.

33 PCL. 3 3.80 AC.

44 PCL. 1 10.500 AC.

57 PCL.B 1.159 Ac

58 PCL.C 1.159 Ac

24

42 P.G.&E. 2.09 AC.

53 PCL. A 3.500 Ac.

PCL. A 14.456 Ac Gr 14.437 Ac Net

CITY OF SANTA CLARA 0.869 Ac Calc. –4495 N 1st ST.–

COMMON AREA

"ISLAND FARM"

20 10.38Ac

19 S.C.V.W.D.

11.17 Ac

14 6.67 Ac Net

STATE OF CALIFORNIA

29 SCVWD

R.O.S. 619/43

Guadalupe River

Dry Slough

LOS ESTEROS EMBARKADERO DE SANTA CLARA RCHO.

(SEE PAGE 34)

S.B.E. 135–43(01)–95 PCL. 1

TRACT NO. 8749

L.L.A.22371081

P. M. 888–M–1 to 11 L.L.A. 16896117

(FMLY. MT. VIEW – ALVISO RD.) SOUTH BAY FREEWAY

R. O. S. 753/16

237

BOOK 97

TRA DET. MAP 092, 102

LAWRENCE E. STONE – ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2018–2019

Burrowing Owl Habitat Assessment

09.10.2021

Legend

- Burrow complex
- Study Area

N 1st St

Balaji Temple

N 1st St

Nortech Pkwy

N 1st St

Google Earth

Rambus

300 ft