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**BIOLOGICAL RESOURCES ANALYSIS
REDWOOD ROW PROJECT
COTATI, CALIFORNIA**

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Prepared for

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1. INTRODUCTION

On behalf of Cotati 2 Inv LLC (the applicant), Monk & Associates, Inc. (M&A) has prepared this Biological Resources Analysis in accordance with the California Environmental Quality Act (CEQA) (Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs §§ 15000 et seq) for the proposed Redwood Row Project (hereinafter, the project) located at the corner of Highway 116 and Redwood Drive (herein the project site) in Cotati, California (Figures 1, 2, and 3). The purpose of our analysis is to provide a description of existing biological resources on the Redwood Row project site and to identify potentially significant impacts that could occur to sensitive biological resources from the construction of a proposed mixed-use housing development and public park (the project).

Biological resources include common plant and animal species, and special-status plants and animals as designated by the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), National Marine Fisheries Service (NMFS), and other resource organizations including the California Native Plant Society. Biological resources also include waters of the United States (U.S.) and State, as regulated by the U.S. Army Corps of Engineers (Corps), California Regional Water Quality Control Board (RWQCB), and CDFW.

This Biological Resources Analysis was prepared in accordance with CEQA Guidelines Section 15183, which provides a streamlined review of the environmental impacts of the project by tiering from the program level analysis prepared for the City of Cotati General Plan and its certified Environmental Impact Report (EIR), thereby focusing the analysis to potential environmental impacts of the project relative to the impacts analyzed in the program level EIR. Section 15183 of the CEQA Guidelines mandates that projects which are determined to be consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. The analysis provided herein relies upon the program level analysis prepared for the 2013 City of Cotati General Plan and its EIR (SCH No. 2013082037), which was certified in 2015. This CEQA Analysis describes the project and its environmental setting, including the project site's existing conditions and applicable regulatory requirements, and provides an assessment of the project's consistency with the City of Cotati General Plan. All adopted mitigating General Plan policies and mitigation measures identified in the 2013 General Plan EIR that apply to the project are identified herein and imposed as environmental conditions of approval.

The project is required to incorporate or comply with all applicable mitigation measures identified in the 2013 General Plan EIR, uniformly applied development standards, and environmental conditions of approval. Section 14 of this document contains recommended conditions of project approval to be imposed to ensure implementation of General Plan policies and mitigation measures from the 2013 General Plan EIR which have been identified to avoid, reduce, or offset potential environmental impacts. *As presented herein, the project is consistent with the General Plan and its certified EIR and qualifies for a General Plan Exemption pursuant to CEQA Guidelines Section 15183.*



2. PROJECT LOCATION AND SETTING

The approximately 10.6-acre Redwood Row Project Site (hereinafter “project site”) is located west of Highway 101 and east of Alder Avenue in the City of Cotati, California (Figures 1, 2, and 3). The project site is less than 0.2-mile west of Highway 101 and is best reached from the Gravenstein Highway (Hwy 116) exit. The project site is bounded by Hwy 116 on the south, Redwood Drive to the east, Lowe’s Hardware to the north, and an undeveloped parcel that supports ruderal (weedy) grassland to the west. The undeveloped land immediately to the west of the project site is slated for mixed use development as Phase I of the Cotati Village project. Finally, a recently built residential townhouse development called the Cotati Cottages subdivision is located northwest of the project site, west of Lowe’s.

Historical land use of the project site has been mainly ranching activities dating back to the turn of the 21st century. Up until the early-1990s, the project site was used as horse pasture. However, due to the long-standing existence of the adjacent streets and the quick urbanization of the area, the site began to be affected by both onsite and offsite non-ranching activities in the late 1960s. During the 1970s and 1980s, improvements to Hwy 116 and surrounding flood control measures altered the existing topography, hydrology, and soil conditions of the project site. In the 1980s, plans for site development were drawn up and several different development scenarios were proposed. In the early 2000s, one of these development plans was fully authorized by the City of Cotati and the state and federal resources agencies, see Section 2.1 below and Appendix A for complete details.

2.1 Previous Permitting History

The Redwood Row project site is one portion of the former, fully mitigated and permitted South Sonoma Business Park (SSBP) project site which was approximately 34 acres¹ (see Figure 1 in Appendix A). The SSBP project was approved by the City of Cotati and fully permitted by the state and the federal resources agencies² and mass graded in June 2002 (Appendix A). To obtain the aforementioned state and federal resource agency permits and the City grading permit, the SSBP applicant purchased all necessary mitigation bank credits and mitigation property as required for the SSBP project’s proposed impact on the state and federally listed Sebastopol meadowfoam (*Limnanthes vinculans*) and the California tiger salamander (*Ambystoma californiense*). The CDFW is now in control (owner) of those mitigation properties. Subsequent to the SSBP mass grading in 2002, portions of the SSBP project site were fully developed (e.g., townhomes and Lowes) and other portions, including the Redwood Row project site, were only graded and the wetlands filled with imported clean dirt, but the site was not developed.

Development of the Redwood Row site was initiated in June 2002 with an approved stockpile and drainage plan (State Water Resources Control Board Facility ID: 1_49C337161) which allowed placement of approximately 10,000 cubic yards of clean fill on the site in accordance

¹ The former SSBP project site consisted of six existing parcels which totaled approximately 34.00 acres. Approximately 30.30 acres of that project site consisted of the former Sonoma Associates project site (also known as the Bennett Consolidated project site). The SSBP applicant purchased the remaining 4.27 acres from the Trebino family (the Trebino Parcel) shortly after the Sonoma Associates site was purchased. The Trebino site is immediately adjacent and north of the northeastern corner of the Sonoma Associates site.

² Discussion regarding state and federal permitting included in Appendix A.



with the City’s approved stockpile and drainage plan (permit numbers 25090, 25154, 25027) and the creation of drainage swales on the property, but the site was not fully developed at that time due to delays from the anticipated CalTrans Highway 116 expansion and then due to the Great Recession. Although the site has not been built out, it has been actively managed over the past 20+ years to facilitate site drainage and for fire control; annual disking and mowing have been part of the management regime.

The fully permitted 10.63-acre Redwood Row project site has been actively maintained and the landowner has been paying annually into an Assessment District which was established for the SSBP. ***This Assessment District was established to finance all resource agency required mitigation.*** To satisfy the requirements of the CDFW 1802 Agreement, the USFWS Biological Opinion and related City of Cotati CEQA Approvals, the “South Sonoma Business Park Assessment District” was established by the City of Cotati in 1996 and subsequently modified in 1999 and 2001. The Assessment District included all six parcels of the SSBP project site. Assessments in the amount of \$5,875,000 were levied. The purpose of the Assessment District and of the Bonds was: “...to finance the purchase by the City of three parcels of land, approximately 16 acres in total area, outside of the Assessment District in an unincorporated area of Sonoma County, and to provide for the design and construction thereon of a wetlands mitigation project including seasonal pools and swales and associated uplands and including habitat for an endangered plant species; to fund wetlands mitigation and preserve credits; and finance the acquisition and enhancement of offsite California tiger salamander replacement habitat...”³ The costs also included the establishment of a maintenance fund and a permanent capital endowment with CDFW for its operation and maintenance of the project.

To date, the total estimated payments made towards the mitigation improvements including the interest financing costs exceed \$8,740,000. These assessment bonds have been payable semi-annually since March 2002 and the costs are allocated to the property on an area basis. The owners of the Redwood Row property have paid \$2,722,208.14 to date and expect to pay approximately \$1,027,000.00 in future payments until full maturity in 2033.

3. PROPOSED PROJECT

The proposed project is a mixed-use housing development and public park. The project’s Site Plan is provided as Attachment A. The proposed project would result in direct impacts to the entire 10.6-acre project site.

4. ANALYSIS METHODS

Prior to preparing this Biological Resources Analysis, M&A researched the most recent version of California Department of Fish and Wildlife’s (CDFW) Natural Diversity Database (CNDDDB) (RareFind 6 application) for records of special-status plants and wildlife within five miles of the project site (CNDDDB 2023). The CNDDDB is a database maintained by the CDFW that provides historic and recent records of special-status plant and animal species known from the state of California. M&A also reviewed past EIRs and other resource agency permitting documents

³ Text taken from Indenture By and Between the City of Cotati and Union Bank of California of and relating to the City of Cotati. Limited Obligation Improvement Bonds, Series 2001. South Sonoma Business Park Assessment District.



related to this project site and the SSBP's long permitting history. All special-status species records were compiled in tables. M&A examined all known record locations for special-status species to determine if special-status species could occur on the project site or within an area of affect.

M&A biologists Ms. Sarah Lynch and the late-Geoff Monk conducted surveys on the project site off and on over a period of 15 years as part of their studies related to the SSBP, with Ms. Lynch's most recent surveys occurring in January 2022, January 23, 2024, February 28, 2024, March 13, 2024, April 8, 2024, and finally on April 30, 2024.

5. RESULTS OF RESEARCH AND PROJECT SITE ANALYSES

5.1 Topography and Hydrology

As stated above, development of the Redwood Row site was initiated in June 2002 with placement of approximately 10,000 cubic yards of clean fill on the site and the creation of artificial drainage swales on the property, but the site was not fully developed at that time due to delays from the anticipated CalTrans Highway 116 expansion and then due to the Great Recession. Although the site has not been developed, it has been actively managed over the past 20+ years to facilitate site drainage and for fire control; annual disking and mowing have been part of the management regime. The overall topography of the project site is relatively flat, with the long-term soil stockpile forming the only significant hillslope in the northwestern corner of the project site. There is also a slightly elevated area in the southeast portion of the project site, gently sloping down to the northeast and directing stormwater flows offsite to the northeast.

The project site is located within the Russian River Hydrologic Unit Code (HUC)-8 watershed (NRCS 2017). Predominantly, precipitation falls as rainfall with an annual average precipitation of 30.13 inches. Precipitation-bearing weather systems are predominantly from the west and south with most rain falling between November and March, with a combined average of 24.75 inches (WRCC 2022).

No mapped blue line streams are present within the project site, nor any other existing wetlands or aquatic resources mapped in the California Aquatic Resource Inventory (Shimabuku 2017) or National Wetland Inventory (NWI; USFWS 2023) databases. The nearest blue line stream is the Laguna de Santa Rosa, a tributary to the Russian River, approximately 0.3-mile north of the project site. As discussed above, the historical hydrology of the site was altered by the 2002 filling of jurisdictional seasonal wetlands within the project site under permits issued by the Corps and the RWQCB in anticipation of development of the SSBP. The project site is relatively flat, with only a one to two-foot change in site elevations overall, and precipitation is the only source of hydrology. The addition of the large soil pile in the northwest corner of the site was initiated in anticipation of development, and the City of Cotati required the construction of artificial drainage swales, draining surface water eastward towards drain inlets tied to the City's storm drain system. These drainage features are still well maintained and do not exhibit surface inundation for extended periods of time.



5.2 Plant Communities

A complete list of plant species observed on the project site is presented in Table 1. Nomenclature used for plant names follows *The Jepson Manual* Second Edition (Baldwin 2012) and changes made to this manual as published on the Jepson Interchange Project website (<http://ucjeps.berkeley.edu/interchange/index.html>). Table 2 is a list of wildlife species observed on the project site. Nomenclature for wildlife follows the CDFW's *Complete List of Amphibian, Reptile, Bird, and Mammal Species in California* (2016) and any changes made to species nomenclature as published in scientific journals since the publication of the CDFW's list.

The project site is located on the southwestern boundary of the Santa Rosa Plain. Historically this area was characterized by a mosaic of oak and riparian woodlands and seasonal wetlands including vernal pools. The distribution of these natural communities and habitats has been significantly reduced, and much of the remaining area has been reduced in quality as a result of agriculture, rural residential and business development. Due to mass grading of the project site in 2002 and the annual maintenance (disking) of the project site since then, there are only two remaining plant communities onsite: ruderal herbaceous, and seasonal/constructed wetlands.

5.2.1 RUDERAL HERBACEOUS

The project site is dominated by ruderal herbaceous habitat. Ruderal (weedy) communities are assemblages of plants that thrive in waste areas, roadsides and other sites that have been disturbed by human activity. Typically, hardpacked soils of roadsides, parking lots, industrial areas and construction sites support communities of ruderal species. Ruderal vegetation is adapted to high levels of disturbance and persists almost indefinitely in areas with continuous disturbance.

Almost all vegetation within the project site consists of non-native, ruderal herbaceous grasses and forbs (i.e., broad-leaved plants) though there are several valley oak trees (*Quercus lobata*) lining parts of the southern and eastern borders, with a couple of mature valley oaks standing in the middle of the site. Dominant vegetation includes wild oat (*Avena barbata*), Italian rye grass (*Festuca perennis*), Mediterranean barley (*Hordeum marinum gussoneanum*), and bur medic (*Medicago polymorpha*). The vegetation within this ruderal herbaceous community was highly disturbed at the time of an August 2022 site visit due to recent disking.

5.2.2 SEASONAL WETLANDS

As discussed in Section 2.1 above, development of the Redwood Row site was initiated in June 2002 with an approved stockpile and drainage plan which included placement of approximately 10,000 cubic yards of clean fill on the site in accordance with the City's approved stockpile and drainage plan (permit numbers 25090, 25154, 25027) and the creation of artificial drainage swales on the property, but the site was not developed at that time. These swales are dominated by Italian rye grass (*Festuca perennis*) and annual semaphore grass (*Pleuropogon californicus* var. *californicus*).

During a wetland delineation conducted by the property owner's consultant, WRA Environmental Consultants (WRA) in August 2022, a total of roughly 0.27 acre of seasonal wetlands (five seasonal swales) were mapped on the Redwood Row project site. These five



seasonal wetlands are artificial ditches related to interim construction measures and upland drainage maintenance of the property that has been ongoing since 2002. They were created to increase runoff on the project site and reduce ponding related to the previous mass grading and stockpiling of the project site (Attachment B). These wetlands cover 0.27 acre of the project site and are considered to be “construction-related features” and do not fall under the Corps’ jurisdiction pursuant to Section 404 of the Clean Water Act (pers. comm. between WRA consultants and the Corps in 2022). However, the California Regional Water Quality Control Board (RWQCB) has stated that these construction-related features may fall under this agency’s jurisdiction pursuant to the Porter-Cologne Water Quality Control Act (WRA consultants pers. comm. with Ms. Kaete King of the RWQCB).

5.3 Associated Wildlife Habitats

The site has been highly disturbed through maintenance activities over the years, particularly disking and maintenance of onsite drainage features. On September 25, 2023, the landowner’s consultant, WRA, visited the site to assess its capacity to support wildlife. The site, as already described above, is disturbed due to maintenance activities, particularly disking and maintenance of the drainage features. Due to the site’s setting within a developed landscape, the site is a fragment of altered landscape that provides limited capacity to support wildlife. However, the site does still support fossorial mammals, particularly gophers, and their burrows are prevalent on the site. Resident and migratory birds may use the site for foraging and some of the trees on the site provide suitable nesting habitat for some species. The created drainage features on the site are not inundated long enough to support breeding by special status amphibians, specifically California red-legged frog or California tiger salamander. California tiger salamander was documented on the site prior to it being mass graded in 2002 which removed all suitable aquatic and upland habitat (and any salamanders residing underground at the time the site was graded would have been killed). Thus, potentially suitable breeding habitats on the site were removed long ago and access to the site is increasingly difficult due to surrounding developments and busy roads which has resulted in the fragmentation of habitat. See the section on California tiger salamander in the Special-Status Animals section below for further details.

5.4 Wildlife Corridors

Wildlife corridors are linear and/or regional habitats that provide connectivity to other natural vegetation communities within a landscape fractured by urbanization and other development. Wildlife corridors have several functions: 1) they provide avenues along which wide-ranging animals can travel, migrate, and breed, allowing genetic interchange to occur; 2) populations can move in response to environmental changes and natural disasters; and 3) individuals can recolonize habitats from which populations have been locally extirpated (Beier and Loe 1992). All three of these functions can be met if both regional and local wildlife corridors are accessible to wildlife. Regional wildlife corridors provide foraging, breeding, and retreat areas for migrating, dispersing, immigrating, and emigrating wildlife populations. Local wildlife corridors also provide access routes to food, cover, and water resources within restricted habitats.

The proposed project will not interfere with the movement of native wildlife. The project site has no aquatic features such as a stream or river that would serve as a wildlife movement corridor. Similarly, due to the site’s setting within a developed landscape, the site is a fragment of altered landscape that provides limited capacity to serve as even a local, let alone a regional wildlife



movement corridor since it is surrounded by roads and development on three sides. Deer fawning grounds are not expected onsite, canid denning is not expected onsite; this site provides only minimal value to local wildlife for movement.

6. SPECIAL-STATUS SPECIES

6.1 Definitions

For purposes of this analysis, special-status species are plants and animals that are legally protected under the California and Federal Endangered Species Acts (CESA and FESA, respectively) or other regulations, and species that are considered rare by the scientific community (for example, the CNPS). Special-status species are defined as:

- plants and animals that are listed or proposed for listing as threatened or endangered under the CESA (Fish and Game Code §2050 *et seq.*; 14 CCR §670.1 *et seq.*) or the FESA (50 CFR 17.12 for plants; 50 CFR 17.11 for animals; various notices in the Federal Register [FR] for proposed species);
- plants and animals that are candidates for possible future listing as threatened or endangered under the FESA (50 CFR 17; FR Vol. 64, No. 205, pages 57533-57547, October 25, 1999); and under the CESA (California Fish and Game Code §2068);
- plants and animals that meet the definition of endangered, rare, or threatened under the CEQA (14 CCR §15380) that may include species not found on either CESA or FESA lists;
- plants occurring on Ranks 1A, 1B, 2A, 2B, 3, and 4 of the CNPS' electronic *Inventory* (CNPS 2001). The CDFW recognizes that Ranks 1A, 1B, 2A and 2B of the CNPS inventory contain plants that, in the majority of cases, would qualify for State listing, and the CDFW requests their inclusion in EIRs. Plants occurring on CNPS Ranks 3 and 4 are "plants about which more information is necessary," and "plants of limited distribution," respectively (CNPS 2001). Such plants may be included as special-status species on a case by case basis due to local significance or recent biological information (more on CNPS Rank species below);
- migratory nongame birds of management concern listed by the USFWS (Migratory Nongame Birds of Management Concern in the United States: The list 1995; Office of Migratory Bird Management; Washington D.C.; Sept. 1995);
- animals that are designated as "species of special concern" by the CDFW (2023);
- animal species that are "fully protected" in California (Fish and Game Codes 3511, 4700, 5050, and 5515).
- bat species that are designated on the Western Bat Working Group's (WBWG) Regional Bat Species Priority Matrix as: "RED OR HIGH." This priority is justified by the WBWG as follows: "Based on available information on distribution, status, ecology, and



known threats, this designation should result in these bat species being considered the highest priority for funding, planning, and conservation actions. Information about status and threats to most species could result in effective conservation actions being implemented should a commitment to management exist. These species are imperiled or are at high risk of imperilment.”

In the paragraphs below we provide further definitions of legal status as they pertain to the special-status species discussed in this report or in the attached tables.

Federal Endangered or Threatened Species. A species listed as endangered or threatened under the FESA is protected from unauthorized “take” (that is, harass, harm, pursue, hunt, shoot, trap) of that species. If it is necessary to take a federally-listed endangered or threatened species as part of an otherwise lawful activity, it would be necessary to receive permission from the USFWS prior to initiating the take.

State Threatened Species. A species listed as threatened under the CESA (§2050 of California Fish and Game Code) is protected from unauthorized “take” (that is, harass, pursue, hunt, shoot, trap) of that species. If it is necessary to “take” a State-listed threatened species as part of an otherwise lawful activity, it would be necessary to receive permission from the CDFW prior to initiating the “take.”

California Species of Special Concern. These are species in which their California breeding populations are seriously declining and extirpation from all or a portion of their range is possible. This designation affords no legally mandated protection; however, pursuant to the CEQA Guidelines (14 CCR §15380), some species of special concern could be considered “rare.” Pursuant to its rarity status, any unmitigated impacts to rare species could be considered a “significant effect on the environment” (§15382). Thus, species of special concern must be considered in any project that will, or is currently, undergoing CEQA review, and/or that must obtain an environmental permit(s) from a public agency.

CNPS Rank Species. The CNPS maintains an “Inventory” of special-status plant species. This inventory has four lists of plants with varying rarity. These lists are: Rank 1, Rank 2, Rank 3, and Rank 4. Although plants on these lists have no formal legal protection (unless they are also State or federally-listed species), the CDFW requests the inclusion of Rank 1 species in environmental documents. In addition, other State and local agencies may request the inclusion of species on other lists as well. The Rank 1 and 2 species are defined below:

- Rank 1A: Presumed extinct in California;
- Rank 1B: Rare, threatened, or endangered in California and elsewhere;
- Rank 2A: Plants presumed extirpated in California, but more common elsewhere;
- Rank 2B: Rare, threatened, or endangered in California, but more common elsewhere.

All of the plants constituting Rank 1B meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 of the Fish and Game Code and are eligible for State listing (CNPS 2001). Rank 2 species are rare in California, but more common elsewhere. Ranks 3 and 4 contain species about which there is some concern and are reviewed by the CDFW and maintained on “watch lists.”



Additionally, in 2006, the CNPS updated their lists to include “threat code extensions” for each list. For example, Rank 1B species would now be categorized as Rank 1B.1, Rank 1B.2, or Rank 1B.3. These threat codes are defined as follows:

- .1 is considered “seriously endangered in California (over 80% of occurrences threatened/high degree and immediacy of threat)”;
- .2 is “fairly endangered in California (20-80% of occurrences threatened)”;
- .3 is “not very endangered in California (less than 20% of occurrences threatened or no current threats known).”

Under the CEQA review process only CNPS Rank 1 and 2 species are considered since these are the only CNPS species that meet CEQA’s definition of “rare” or “endangered.” Impacts to Rank 3 and 4 species are not regarded as significant pursuant to CEQA.

Fully Protected Birds. Fully protected birds, such as the White-tailed Kite (*Elanus leucurus*), are protected under California Fish and Game Code (§3511). Fully protected birds may not be “taken” or possessed (i.e., kept in captivity) at any time.

6.2 Potential Special-Status Plants on the Project Site

Figures 4A and 4B provide graphical illustrations of the closest known records for special-status species within three and five miles of the project site and helps readers visually understand the number of sensitive species that occur in the project vicinity. There were historic occurrences of Sebastopol meadowfoam adjacent to the project site on the former SSBP project site, of which this 10.63-acre project site is a part of, and the project site was determined to have suitable habitat for this species prior to mass grading that occurred onsite in 2002 (see below for further details). However, according to the CDFW’s CNDDDB, a total of 14 special-status plant species are known to occur in the region of the project site (Table 3). Most of these plants occur in specialized habitats such as vernal pools, serpentine grasslands, wet meadows, or coastal prairie, none of which occur on the project site. Additionally, owing to the excessively disturbed and unnatural conditions found at the project site, special-status plants would not likely occur.

The project site is located within the geographic region known as the Santa Rosa Plain in Sonoma County, which is known to support three federal and state listed vernal pool plant species: Sonoma sunshine (*Blennosperma bakeri*), Burke’s goldfields (*Lasthenia burkei*), and Sebastopol meadowfoam (*Limnanthes vinculans*). According to the *Recovery Plan for the Santa Rosa Plain* (USFWS 2016), the project site is located at the southern boundary of the “Core Area” for the federally and State-listed Sebastopol meadowfoam (*Limnanthes vinculans*) (Figure 5). The project site is well outside the Core and Management Areas for Sonoma sunshine (*Blennosperma bakeri*) and Burke’s goldfields (*Lasthenia burkei*) (Figures 6-7). Regardless, due to the project site’s location within the Santa Rosa Plain Conservation Strategy’s designated listed plant area, these species are discussed in more detail below.

6.2.1 SEBASTOPOL MEADOWFOAM (*LIMNANTHES VINCULANS*)

Sebastopol meadowfoam is a federally and state-listed endangered species. It is also a CNPS Rank 1B.1 species. This annual member of the meadowfoam family blooms April through May,



and is found in wet meadows and seeps, seasonally wet grasslands, and vernal pools. Although the first leaves are narrow and undivided, leaves on the mature plant have three to five undivided leaflets along each side of a long stalk (petiole). The shape of the leaves distinguishes Sebastopol meadowfoam from other members of the *Limnanthes* genus. It is threatened by urbanization, agriculture, grazing, non-native plants, and vehicles.

Historically, according to the Recovery plan for the Santa Rosa Plain, Sebastopol meadowfoam was documented at 40 occurrences in Sonoma County and one in Napa County at the Napa River Ecological Reserve (USFWS 2016). In Sonoma County, all occurrences were found in the central and southern portions of the Plain with the exception of two occurrences: one located at Atascadero Creek Marsh west of Sebastopol and another in the vicinity of Knights Valley northeast of Windsor. Many of these historic occurrences are now extirpated. The current known range of the species includes Knights Valley to the north, the Napa River Ecological Reserve near Yountville to the east, an occurrence near Sonoma to the south, and an occurrence near Sebastopol to the west. Of the three occurrences located outside of the Plain, the Atascadero Marsh occurrence has been presumed to be extirpated since 1969; the Knights Valley occurrence has not been visited since 1994 but is presumed to be extant; and the Napa River Ecological Reserve occurrence is presumed extant (USFWS 2016).

Sebastopol meadowfoam was formerly found on the SSBP project site, prior to its mass grading. This is CNDDDB Occurrence No. 35 (M&A is listed as one of the sources) which documents 30 plants observed in 1997 in the area that has since been developed into townhomes; accordingly, this record is now listed as being extirpated by development.

As discussed in Section 2.1 above and discussed in further detail in Appendix A, the project site is one portion of the former, fully mitigated and permitted South Sonoma Business Park project site. Sebastopol meadowfoam was identified on the SSBP project site in the late-1990s and appropriate permits were acquired for impacts to this plant species which included mitigation at a 3:1 ratio for project impacts to 0.12-acre of for Sebastopol meadowfoam. In March 1998, M&A submitted an Individual Permit Application with Alternatives Analysis and Mitigation Plan pursuant to the provisions of Section 404 of the Clean Water Act to the Corps on behalf of Bennett Consolidated (File No. 18518N96). On November 5, 1998, the Corps approved this application and issued a Section 404 permit (File No. 23540N) to Bennett Consolidated. This gave the applicant authorization to fill 2.5 acres of seasonal wetlands with 5,050 cubic yards of material to facilitate development on the South Sonoma Business Park property. The project proposal included the construction of residential housing, retail and commercial buildings, and the associated infrastructure.

In compliance with the Corps' Individual Permit which incorporated USFWS' BO, the waiver of water quality from the RWQCB, a 2081 Agreement with CDFW, and with a grading permit issued by the City of Cotati, in June of 2002 the SSBP applicant graded 100 percent of the 34-acre project site (which includes the 10.6-acre Redwood Row Project Site) removing all Corps' jurisdictional features, and all of the 0.12 acre of Sebastopol meadowfoam habitat on the project site.



Prior to mass grading and filling of wetlands on the project site in 2002 under the appropriate permits issued by the CDFW, USFWS, the Corps, and the California RWQCB, Sebastopol meadowfoam was known to occur on the SSBP project site. However, since the project site was mass graded and all wetlands were filled in 2002, there is no longer Sebastopol meadowfoam habitat onsite. Finally, spring 2024 surveys conducted on the project site between March and May did not identify this plant onsite. The remaining seasonal wetlands on the project site were constructed to facilitate site drainage and are heavily degraded; these features do not provide suitable habitat conditions for vernal pool plant species, specifically Sebastopol meadowfoam. Regardless, all Sebastopol meadowfoam impacts were previously mitigated for as approved by the CDFW and the USFWS. ***No impacts to this species from the proposed project are anticipated.***

6.2.2 SONOMA SUNSHINE (*BLENNOSPERMA BAKERI*)

Sonoma sunshine is a federal and state-listed endangered plant species protected pursuant to the FESA and the CESA, respectively. It is also a CNPS Rank 1B.1 species. This annual member of the sunflower family is found in vernal pools and grassland habitats in the Santa Rosa Plain and from the Sonoma area. Sonoma sunshine flowers from March through May and is threatened by urbanization, grazing, and agriculture.

The closest CNDDDB record of Sonoma sunshine documents a colony observed in 1987 in shallow vernal pools along Stony Point Road approximately 2.1 miles northwest of the project site (Occurrence No. 20); this record is from 26 years ago. Sonoma sunshine is typically known to occur in vernal pool habitats in the northern part of the Santa Rosa plain and not in the Cotati area. The project site is outside the expected range of this species and outside of the USFWS' Core and Management Areas designated for this plant. Surveys conducted on the 34-acre SSBP project site prior to its permitted mass grading activities did not identify Sonoma sunshine onsite. Further, continuous maintenance of the 10-acre project site in the form of disking for fire control has heavily degraded the "construction-related" wetlands on the project site that were constructed as part of a master drainage plan. Finally, spring 2024 surveys conducted on the project site between March and May did not identify this plant onsite. ***Thus, due to an absence of suitable habitats onsite, no impacts to this species from the proposed project are anticipated.***

6.2.3 BURKE'S GOLDFIELDS (*LASTHENIA BURKEI*)

Burke's goldfields is a federally and state-listed endangered species protected pursuant to the FESA and the CESA, respectively. It is also a CNPS Rank 1B.1 species. This small, slender annual member of the sunflower family is found in meadows, seeps, and vernal pools. The yellow flowers of the Burke's goldfields bloom from April through June. Burke's goldfields is endemic to the central California Coastal Range region and has been reported historically to be located within Mendocino, Lake, and Sonoma counties (USFWS 2016). Historically, approximately 18 to 20 occurrences were known from the Santa Rosa Plain in Sonoma County. Two occurrences were recorded from Lake County, (1) at Manning Flat and (2) at a winery on Highway 29. Both of these occurrences and three additional occurrences in Lake County are presumed extant. A single occurrence of Burke's goldfields, located near the town of Ukiah, is the only known occurrence in Mendocino County. This occurrence was thought to be extirpated but was rediscovered in 2010 (CNDDDB 2013). Within Sonoma County, one occurrence is known from north of Healdsburg (USFWS 2016). One occurrence is located outside of the Santa Rosa



Plain east of the City of Sonoma. The core of the current range of Burke's goldfields is in the Plain north of the Town of Windsor to east of the City of Sebastopol, with three occurrences south of Highway 12. Burke's goldfield occurrences continue to become increasingly fragmented in the area of the Town of Windsor and are now nearly extirpated from that area (USFWS 2016). It is threatened by agriculture, urbanization, development, grazing, road widening, road maintenance, and non-native plants.

The nearest CNDDDB record of Burke's goldfields (Occurrence #29) is from an unknown date and documents a colony observed along Stony Point Road roughly 2.1 miles northwest of the project site in the same location as the Sonoma sunshine occurrence described above. This record is also listed as extirpated by development. The next nearest CNDDDB record (Occurrence #41) documents thousands of plants seeded at a created mitigation wetland in 2009 roughly 2.5 miles north of the project footprint. In the Santa Rosa Plain, most seasonal wetlands are regarded by the USFWS as "suitable habitat" for listed vernal pool plants. However, as discussed above, the remaining seasonal wetlands on the project site are incidentally constructed and heavily degraded seasonal drainages which do not provide suitable habitat conditions for vernal pool plant species. Additionally, Burke's goldfields are typically known to occur in vernal pool habitats in the northern part of the Santa Rosa plain and not in the Cotati area. The project site is outside the expected range of this species and outside of the USFWS' Core and Management Areas designated for this plant. Finally, spring 2024 surveys conducted on the project site between March and May did not identify this plant onsite. *No impacts to this species from the proposed project are anticipated.*

6.3 Potential Special-Status Animals on the Project Site

Figures 4A and 4B provide graphical illustrations of the closest known records for special-status species within 3 and 5 miles of the project site and helps readers visually understand the number of sensitive species that occur in the vicinity of the project site. A total of 11 special-status animal species are known to occur in the region of the project site (Table 4). One special-status animal was historically known from the SSBP project site: California tiger salamander (*Ambystoma californiense*). This record is prior to the site's mass grading back in 2002. Due to the project site being mass graded, the more recent residential and commercial development surrounding the project site, and the heavy traffic along Highway 116, it is very unlikely that any special-status animal currently resides on the project site. In the section below is a discussion on two special-status animal species known from the area that warrant inclusion in this biological resources document: American badger (*Taxidea taxus*) and California tiger salamander.

6.3.1 CALIFORNIA TIGER SALAMANDER

The project site is located within the known range of the Sonoma County "Distinct Population Segment" (DPS) of the California tiger salamander (CTS). Under the FESA, the USFWS emergency listed the Sonoma County DPS as endangered on July 22, 2002. The USFWS formalized the listing of the Sonoma County DPS of the California tiger salamander as endangered on March 19, 2003 (USFWS 2003b). The USFWS determined that this population is significantly and immediately imperiled by a variety of threats including habitat destruction, degradation, and fragmentation due to urban development, road construction, pesticide drift, collection, and inadequate regulatory mechanisms. In addition, it was determined that this population could face extinction because of naturally occurring events (e.g., fires, droughts) due



to the small and isolated nature of the remaining breeding sites combined with the small number of individuals in the population.

Finally, in 2011, the USFWS designated revised critical habitat for the Sonoma County DPS. In total, approximately 47,383 acres (19,175 hectares) of land were designated as critical habitat for the Sonoma County DPS of the California tiger salamander under the revised Final Rule (USFWS 2011). *The project site is within this mapped critical habitat (Figure 8).*

On March 4, 2010, the California tiger salamander was also state listed as a threatened species under the CESA. Proposed projects may not impact the California tiger salamander without incidental take authority from both the USFWS and the CDFW. Prior to impacting habitat that supports the California tiger salamander, the USFWS must prepare an incidental take permit pursuant to either Section 7 or Section 10 of the Federal Endangered Species Act. Similarly, projects that impact the California tiger salamander also require incidental take authority from the CDFW.

CTS occur in grasslands and open oak woodlands that provide suitable over-summering and/or breeding habitats. M&A has worked with populations that are almost at sea level (Pacific Commons in the City of Fremont) to almost 2,900 feet above sea level (Kammerer Ranch, East Santa Clara County). California tiger salamanders spend most their lives underground. They typically only emerge from their subterranean refugia for a few nights each year during the rainy season to migrate to breeding ponds. While 1.3 miles is typically considered the maximum migration distance of California tiger salamanders to/from their breeding pools to upland over-summering habitat, there is literature suggesting that California tiger salamanders could migrate up to 1.5 miles from their breeding pools. This migration distance is reported by the USFWS' Recovery Plan for the Santa Rosa Plain (USFWS 2016) where it states: *Based on distances travelled per night, Searcy and Shaffer (2011) estimated that Central California tiger salamanders are physiologically capable of moving up to 2.4 km (1.5 mi) each breeding season, with an average dispersal distance estimated to be 0.56 km (1,840 ft). Orloff (2007) found that the majority of California tiger salamanders dispersed at least 0.5-mile (0.8 km) from the breeding site, with a smaller number of salamanders appearing to move even farther—from 1.2 to 2.2 km (0.75 to 1.3 mi) between breeding ponds and upland habitat.* M&A biologists, the late-Mr. Geoff Monk and Ms. Sarah Lynch have observed California tiger salamanders migrating up to 0.6-mile and further from their underground refugia to breeding ponds (personal data from Livermore, California; Monk & Lynch 1997). As such, unobstructed migration corridors are important component of California tiger salamander habitat.

In Sonoma County, California tiger salamanders emerge during the first heavy, warm rains of the year, typically in late November and early December. In most instances, larger movements of California tiger salamanders do not occur unless it has been raining hard and continuously for several hours. Typically, for larger movements of California tiger salamanders to occur, nighttime temperatures also must be above 48° F (G. Monk and S. Lynch pers. observations). Other factors that encourage larger movements of California tiger salamanders to their breeding ponds include flooding of refugia (observed by G. Monk in Springtown, east Alameda County in 1997) as occurs after significant rainfall events.



During the spring, summer, and fall months, most known populations of the California tiger salamander throughout this species range in California predominately use California ground squirrel (*Otospermophilus beechyi*) burrows as over summering habitat. However, in Sonoma County where California ground squirrel populations are scarce to non-existent, subterranean refugia likely include Botta's pocket gopher (*Thomomys bottae*) burrows, deep fissures in desiccated clay soils, and debris piles (e.g., downed wood, rock piles) (G. Monk personal observation).

Stock ponds, seasonal wetlands, and deep vernal pools typically provide most of the breeding habitat used by California tiger salamanders. In such locations, California tiger salamander attach their eggs to rooted, emergent vegetation, and other stable filamentous objects in the water column. Eggs are gelatinous and are laid singly or occasionally in small clusters. Eggs range in size from about $\frac{3}{4}$ the diameter of a dime to the full diameter of a dime.

Occasionally, California tiger salamanders are found breeding in slow moving streams or ditches. In 1997, Mr. G. Monk observed California tiger salamanders breeding in large, still ditches in Fremont, California. Similarly, in 2001/2002, Mr. D. Wooten observed California tiger salamanders breeding in a roadside ditch in Cotati, California (D. Wooten, formerly of USFWS, pers. comm. w/ Mr. G. Monk). Ditches and/or streams that are subject to rapid flows, even if only on occasion, typically will not support or sustain California tiger salamanders egg attachment through hatching, and thus, are not usually used successfully by California tiger salamanders for breeding (G. Monk and S. Lynch, pers. observations). Similarly, streams and/or ditches that support predators of California tiger salamanders or their eggs and larvae such as fish, bullfrogs (*Rana catesbeiana*), red swamp crayfish (*Procambarus clarkii*), or signal crayfish (*Pacifastacus leniusculus*), almost never constitute suitable breeding habitat.

In most of the range of the California tiger salamander, seasonal wetlands that are used for breeding typically must hold water into the month of May to allow enough time for larvae to fully metamorphose. Typically, in Sonoma County, pools that are 16 inches or deeper in the peak winter months will remain inundated long enough to provide good breeding conditions for California tiger salamanders. In dry years, seasonal wetlands, especially shallower pools, may dry too early to allow enough time for California tiger salamander larvae to successfully metamorphose. Under such circumstances, desiccated California tiger salamander larvae are often found in dried pools. In addition, as pools dry down to very small areas of inundation, California tiger salamander larvae become concentrated and are very susceptible to predation.

6.3.1.1 CNDDDB Occurrences of CTS Within 1.3 Miles

Below is a discussion of the other known CNDDDB records of California tiger salamander west of US Highway 101 (which serves as a migration barrier for this species) within 1.3 miles of the project site, which is the known migration distance of an adult California tiger salamander. These records are all shown on Exhibit A, attached.

There is a known CNDDDB record of this species (Occurrence #12; M&A record) on the SSBP project site of which this 10-acre project site is a part of. This occurrence documents three larvae found in a vernal pool on the project site during surveys conducted in April 1995. CTS was last observed on the SSBP project site in April 2002 when larvae were salvaged from their breeding



pool prior to permitted mass grading. All the SSBP wetlands were filled, and the entire site was mass graded in June 2002 under appropriate permits issued by the City (grading permit), the CDFW, the USFWS, the Corps, and the RWQCB.

As part of the South Sonoma Business Park (SSBP) development project discussed above and in more detail in Appendix A, the developer was also required by the USFWS and CDFW to salvage California tiger salamanders presumed to be migrating from adjacent properties to the former (now developed) breeding pools on the South Sonoma Business Park project site. This salvage was conducted under the assumption that all adult California tiger salamanders and their breeding habitat had been removed from the South Sonoma Business Park project site when it was mass graded in June 2002. The recovery/salvage project was implemented under expectation that the balance of the South Sonoma Business Park and the parcel to the north (then called the Nibe project site and now known as the Cotati Cottages) and the west (then called the Reds project site and now known as Phase II of the Cotati Village) would be developed under a master development project.

Please note that there are no California tiger salamander breeding pools within 500 feet of the project site. In fact, there are no extant potential breeding pools within 1.3 miles of the project site. ***There has been no confirmed breeding habitat in the vicinity of the project site since the only two confirmed breeding habitats were filled over 20 years ago:*** (1) the South Sonoma Business Park seasonal wetlands (CNDDDB Occurrence #12) and (2) another known breeding pool approximately 1.0 mile to the west along the south side of SR 116 in the vicinity of Larsen's Feed Store (CNDDDB Occurrence #5).

Other CNDDDB occurrences within 1.3 miles of the project site include:

Occurrence #82 and #85, which are the Reds and Nibe properties, are believed to be extirpated. There was no breeding habitat on these sites, only over-summering habitat. This occurrence is of a pitfall trapping salvage effort fully authorized and coordinated with CDFW and USFWS and conducted by M&A back in 2003-2004. This recovery/salvage project was implemented under expectation that the balance of the South Sonoma Business Park project site and the parcel to the north and west of South Sonoma Business Park project site would be developed under a master development project. Approximately 82 adult and juvenile California tiger salamander were live-trapped and transferred by Mr. Bill Cox of CDFW to the Gobbi and Alton Lane Mitigation Sites. This occurrence is believed to be extirpated because one of the properties (Nibe) has been developed and the Reds property is annually disked and maintained.

Occurrence #9. This record documents one male and one female adult observed by Mr. Dave Cook crossing Helman Lane toward large grassy fields southwest of the road roughly 0.6-mile northwest of the project site. Future surveys of this location documented CTS eggs found in roadside ditches along Helman Lane; seven adults found dead on the road in the December of 2001, and 46 larvae and one juvenile observed in roadside ditches and vernal pools in March 2019. It is unknown if these ditches held water long enough for CTS larvae to reach metamorphosis.



Occurrence #58. This is an M&A sighting (M. Scheele and G. Thomas, M&A observers) south of SR 116 approximately 0.09-mile to the west. One California tiger salamander juvenile was observed in a shallow pool on this property. This pool was deemed unsuitable for breeding due to its shallow depth, small size, and duration of ponding. This property remains in its current state.

Occurrence #55. Believed to be extirpated. This is a sighting by Mr. Dave Cook from December 2001 of California tiger salamander eggs in the Alder Avenue roadside ditch (this is approximately 0.10-mile west of the project site on Alder Avenue). At the time Mr. Cook found the California tiger salamander eggs this ditch did not have a functioning drain inlet and retained pooled water. This ditch has since been improved and now no longer holds water for duration but rather water drains into the city storm drain system; thus, this ditch no longer serves as viable breeding habitat.

Occurrence #69. This sighting is 0.5-mile west of the project site along Derby Lane, Cotati. This California tiger salamander record was of a single adult reported by Mr. Dave Cook in 2007 along Derby Lane, Cotati. In that same CNDDDB record, Mr. Cook stated that vernal pools located 100 meters to the northeast of the record location is a “likely breeding site.” However, it is unknown whether the pools on this private property hold water for long enough duration to support a California tiger salamander breeding attempt. M&A is unaware if anyone has sampled these pools north of Derby Lane (there are no records in the CNDDDB). Additionally, while it is recorded that California tiger salamanders move up to 1.3 miles, this movement distance does not likely take into account navigating buildings and heavily traveled roads residing inbetween Point A and Point B. There are many buildings and two roads inbetween the project site and the vernal pools Mr. Cook refers to north of Derby Lane (see Occurrence No. 69 on Exhibit A) and these are all impediments to salamander movement.

Occurrence #57. This is a 2003 record (M. Fawcett) for an adult in a grassy swale at the Highway 101 on-ramp at Highway 116. The grassy swale at Highway 101 is not suitable breeding habitat and it is presumed this adult CA tiger salamander was migrating in search of breeding pools.

Occurrence #68. This sighting is along Stony Point Road south of the project site and slightly greater than 1.3 miles away. This record is for adult California tiger salamander found along the road (dead and alive).

The remaining created (construction-related) drainage features on the project site are not deep enough or hold water long enough to support California tiger salamander larvae to metamorphosis. These shallow swale features were constructed to allow site drainage each winter until the site is developed. M&A biologist Ms. Sarah Lynch surveyed these pools between February and April 30th, 2024, when the pools dried completely, and did not find California tiger salamander larvae in these pools. These created drainage swales do not hold water for long enough duration to support larvae through metamorphosis. ***Accordingly, there is no wetland on the project site that is deep enough or that has sufficient ponding duration to support breeding***



California tiger salamanders to metamorphosis; hence, no impacts to California tiger salamander breeding and larval development habitat are expected from the proposed project.

Additionally, there is no upland over-summering habitat for this species on the project site, since, as discussed above, there are no extant CTS breeding pools on the project site or within 1.3 miles (the known maximum dispersal distance for this species). *There has been no confirmed breeding habitat nearby since the only two confirmed breeding habitats were filled over 20 years ago.*

In a February 3, 2023, call with Mr. Ryan Olah, Chief of the Coast/Bay/Delta Branch of the Sacramento Endangered Species Office of the USFWS, Mr. Olah told M&A (S. Lynch) and WRA (M. Richmond) that no additional mitigation would be required for the Redwood Row project since all mitigation for the project's effects on Sebastopol meadowfoam and the California tiger salamander was completed in 2002. No impacts to this species from the proposed project are anticipated and prior impacts to this species have been fully mitigated.

6.3.2 AMERICAN BADGER

The American badger is a California “species of special concern.” It has no federal status. This species is found in a variety of habitats, especially in open habitats such as oak-savannah and grasslands where its presence is typically identified by its distinctive, large underground dens (burrows) excavated in friable (loose) soils. This nocturnal mammal is rarely observed. In the region, this animal is uncommon. When present, this animal would be expected to prey upon Botta's pocket gopher, California ground squirrel, and several species of mice common in the area. Except during breeding, badgers are typically highly solitary and have vast home ranges.

There are four CNDDDB records of American badger within 3 miles of the project site. The nearest record (Occurrence #407) documents one adult badger found dead on the southbound side of Highway 101 along a non-native annual grassland with scattered oaks roughly 2.4 miles southeast of the project site. Due to the extensive commercial and residential development surrounding the project site, heavy traffic along Highway 116, and the long history of annual disking onsite for fire control, the project only contains marginal (at best) foraging habitat for this species. Therefore, it is very unlikely that development of the project could result in impacts to American badgers. However, in an abundance of caution and to ensure that there are no impacts to this California species of special concern, preconstruction surveys for American badger are necessary prior to future development. ***Thus, impacts to American badger are regarded as potentially significant pursuant to the CEQA.*** Mitigation could be implemented to reduce these impacts to levels regarded as less than significant pursuant to the CEQA. The recommended Conditions of Project Approval below contain measures that, if implemented, will reduce these impacts to levels regarded as less than significant pursuant to the CEQA.

6.3.3 NESTING BIRDS

Passerine birds (songbirds) and raptors (i.e., birds of prey), their active nests, eggs, and young are protected under California Fish and Game Code (§3503 and §3503.5). Thus, prior to any tree removal or earthwork that would be conducted during the nesting season (February 1 through September 1) that could disturb nesting birds (for example, ground vibrations from grading equipment will cause some birds to abandon their nests), M&A recommends that preconstruction nesting bird surveys be conducted within 7 days prior to any proposed ground disturbance



(grading, paving, building demolition) or vegetation removal (including grubbing and brush clearing) on subject parcels requiring nesting bird surveys as indicated on Table A if this disturbance would occur between February 1st and September 1st (the nesting season).

If active bird nests are identified onsite during preconstruction surveys, then mitigation would need to be implemented. The recommended Conditions of Project Approval listed below contain measures that, if implemented, will address these impacts.

7. REGULATORY FRAMEWORK FOR NATIVE WILDLIFE, FISH, AND PLANTS

This section provides a discussion of those laws and regulations that are in place to protect native wildlife, fish, and plants. Under each law its relevance to the proposed project is discussed.

7.1 Federal Endangered Species Act

The FESA forms the basis for the federal protection of threatened or endangered plants, insects, fish, and wildlife. FESA contains four main elements, they are as follows:

Section 4 (16 USCA §1533): Species listing, Critical Habitat Designation, and Recovery Planning: outlines the procedure for listing endangered plants and wildlife.

Section 7 (§1536): Federal Consultation Requirement: imposes limits on the actions of federal agencies that might impact listed species.

Section 9 (§1538): Prohibition on Take: prohibits the "taking" of a listed species by anyone, including private individuals, and State and local agencies.

Section 10: Exceptions to the Take Prohibition: non-federal agencies can obtain an incidental take permit (ITP) through approval of a Habitat Conservation Plan (HCP).

In the case of saltwater fish and other marine organisms, the requirements of FESA are enforced by the NMFS. The USFWS enforces all other cases. Below, Sections 9, 7, and 10 of FESA are discussed since they are the sections most relevant to the proposed project.

Section 9 of FESA as amended, prohibits the "take" of any fish or wildlife species listed under FESA as endangered. Under federal regulation, "take" of fish or wildlife species listed as threatened is also prohibited unless otherwise specifically authorized by regulation. "Take," as defined by FESA, means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." "Harm" includes not only the direct taking of a species itself, but the destruction or modification of the species' habitat resulting in the potential injury of the species. As such, "harm" is further defined to mean "an act which actually kills or injures wildlife; such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering" (50 CFR 17.3). A December 2001 decision by the 9th Circuit Court of Appeals (Arizona Cattle Growers' Association, Jeff Menges, vs. the U.S. Fish and Wildlife Service and Bureau of Land Management, and the Southwest Center for Biological Diversity) ruled that the USFWS must show that a threatened or endangered species is present on a project site and that it would be taken by the project activities. According to this ruling, the



USFWS can no longer require mitigation based on the probability that the species could use the site. Rather they must show that it is “reasonably certain to occur.”

Section 9 applies to any person, corporation, federal agency, or any local or State agency. If “take” of a listed species (other than a plant species) is necessary to complete an otherwise lawful activity, this triggers the need to obtain an ITP either through a Section 7 Consultation as discussed further below (for federal actions or private actions that are permitted or funded by a federal agency such as the Corps), or through Section 10 of FESA which requires preparation of an HCP (for State and local agencies, or individuals, and projects without a federal “nexus”; for example, projects that do not need a Corps permit).

Section 7(a)(2) of the Act requires that each federal agency consult with the USFWS to ensure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat for listed species. Critical habitat designations mean: (1) specific areas within a geographic region currently occupied by a listed species, on which are found those physical or biological features that are essential to the conservation of a listed species and that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a listed species that are determined essential for the conservation of the species.

The Section 7 consultation process only applies to actions taken by federal agencies that are considering authorizing discretionary projects. Section 7 is by and between the NMFS and/or the USFWS and the federal agency contemplating a discretionary approval (that is, the federal “action agency,” for example, the Corps or the Federal Highway Administration). Private parties, cities, counties, etc. (i.e., applicants) may participate in the Section 7 consultation *at the discretion of the federal agencies conducting the Section 7 consultation*. The Section 7 consultation process is triggered by a determination of the “action agency” – that is, the federal agency that is carrying out, funding, or approving a project - that the project “may affect” a listed species or critical habitat. If an action is likely to adversely affect a listed species or designated critical habitat, formal consultation between the nexus agency and the USFWS/NMFS is required. As part of the formal consultation, the USFWS/NMFS may resolve any issues informally with the nexus agency or may prepare a formal Biological Opinion assessing whether the proposed action would be likely to result in “jeopardy” to a listed species or if it could adversely modify designated critical habitat. If the USFWS/NMFS prepares a Biological Opinion, it will contain either a “jeopardy” or “non-jeopardy” decision. If the USFWS/NMFS concludes that a proposed project would result in adverse modification of critical habitat or would jeopardize the continued existence of a federally-listed species (that is, it will issue a jeopardy decision), the nexus federal agency would be most unlikely to authorize its discretionary permit. If the USFWS/NMFS prepares a “non-jeopardy” Biological Opinion, the nexus federal agency may authorize the discretionary permit making all conditions of the Biological Opinion conditions of its discretionary permit. A non-jeopardy Biological Opinion constitutes an “incidental take” permit that allows applicants to “take” federally-listed species while otherwise carrying out legally sanctioned projects.



For non-federal entities, for example private parties, cities, and counties that are proposing a project that might result in incidental take, Section 10 provides the mechanism for obtaining that take authorization. Under Section 10 of FESA, for the applicant to obtain an ITP, the applicant is required to submit a "conservation plan" to the USFWS or NMFS that specifies the impacts that are likely to result to federally-listed species, and the measures the applicant will undertake to minimize and mitigate such impacts, and the funding that will be available to implement those steps. Conservation plans under FESA have come to be known as "habitat conservation plans" or "HCPs" for short. The terms incidental take permit, Section 10 permit, and Section 10(a)(1)(B) permit are used interchangeably by the USFWS. Section 10(a)(2)(B) of FESA provides statutory criteria that must be satisfied before an ITP can be issued.

7.1.1 RESPONSIBLE AGENCY

FESA gives regulatory authority to the USFWS for federally-listed terrestrial species and non-anadromous fish. The NMFS has regulatory authority over federally-listed marine mammals and anadromous fish.

7.1.2 APPLICABILITY TO THE PROPOSED PROJECT

The project site does not provide fisheries habitat and implementation of a RWQCB-approved Storm Water Management Plan will ensure that the project does not result in impacts to receiving waters where federally listed fish species could occur. Thus, the project would not result in impacts to federally-listed fish species. As such, consultation with the NMFS for the proposed project is not warranted.

While there are several, federally listed plant and wildlife species known to occur in the region of the project site, these species are not expected to occur within the footprint or be impacted by the proposed development. As discussed in Section 2.1 above, this fully permitted project has already received a Biological Opinion from USFWS to address potential impacts to Sebastopol meadowfoam and California tiger salamander and the current property owner has paid \$2,722,208.14 to date and expects to pay an approximate \$1,027,000.00 in future payments until the bond reaches full maturity in 2033 to mitigate for potential impacts to these federally listed species. There are no other federally-listed plant or wildlife species of concern on this project site.

7.2 California Endangered Species Act

7.2.1 SECTION 2081 OF THE CALIFORNIA ENDANGERED SPECIES ACT

In 1984, the State legislated the CESA (Fish and Game Code §2050). The basic policy of CESA is to conserve and enhance endangered species and their habitats. State agencies will not approve private or public projects under their jurisdiction that would impact threatened or endangered species if reasonable and prudent alternatives are available. Because CESA does not have a provision for "harm" (see discussion of FESA, above), CDFW considerations pursuant to CESA are limited to those actions that would result in the direct take of a listed species.

If the CDFW determines that a proposed project could impact a State-listed threatened or endangered species, the CDFW will provide recommendations for "reasonable and prudent" project alternatives. The CEQA lead agency can only approve a project if these alternatives are



implemented, unless it finds that the project's benefits clearly outweigh the costs, reasonable mitigation measures are adopted, there has been no “irreversible or irretrievable” commitment of resources made in the interim, and the resulting project would not result in the extinction of the species. In addition, if there would be impacts to threatened or endangered species, the lead agency typically requires project applicants to demonstrate that they have acquired “incidental take” permits from the CDFW and/or USFWS (if it is a federally-listed species) prior to allowing/permitting impacts to such species.

If proposed projects would result in impacts to a State-listed species, an “incidental take” permit pursuant to §2081 of the Fish and Game Code would be necessary (versus a federal ITP for federally listed species). The CDFW will issue an ITP only if:

- 1) The authorized take is incidental to an otherwise lawful activity;
- 2) the impacts of the authorized take are minimized and fully mitigated;
- 3) measures required to minimize and fully mitigate the impacts of the authorized take:
 - a) are roughly proportional in extent to the impact of the taking on the species;
 - b) maintain the project applicant’s objectives to the greatest extent possible; and,
 - c) capable of successful implementation; and,
- 4) adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with, and the effectiveness of, the measures.

If an applicant is preparing an HCP as part of the federal 10(a) permit process, the HCP might be incorporated into the §2081 permit if it meets the substantive criteria of §2081(b). To ensure that an HCP meets the mitigation and monitoring standards in Section 2081(b), an applicant should involve CDFW staff in development of the HCP. If a final Biological Opinion (federal action) has been issued for the project pursuant to Section 7 of the FESA, it might also be incorporated into the §2081 permit if it meets the standards of §2081(b).

No §2081 permit may authorize the take of a species for which the Legislature has imposed strict prohibitions on all forms of “take.” These species are listed in several statutes that identify “fully protected” species and “specified birds.” See Fish and Game Code §§ 3505, 3511, 4700, 5050, 5515, and 5517. If a project is planned in an area where a “fully protected” species or a “specified bird” occurs, an applicant must design the project to avoid all take.

Fish and Game Code §2080.1 allows an applicant who has obtained a “non-jeopardy” federal Biological Opinion pursuant to Section 7 of the FESA, or who has received a federal 10(a) permit (federal ITP) pursuant to the FESA, to submit the federal opinion or permit to the CDFW for a determination as to whether the federal document is “consistent” with CESA. If after 30 days the CDFW determines that the federal ITP is consistent with state law, and that all State-listed species under consideration have been considered in the federal Biological Opinion, then no further permit or consultation is required under CESA for the project. However, if the CDFW determines that the federal opinion or permit is not consistent with CESA, or that there are State-listed species that were not considered in the federal Biological Opinion, then the applicant must apply for a CESA permit under Section 2081(b). Section 2080.1 is of no use if an affected species is State-listed, but not federally-listed.



State and federal ITPs are issued on a discretionary basis and are typically only authorized if applicants are able to demonstrate that impacts to the listed species in question are unavoidable and can be mitigated to an extent that the reviewing agency can conclude that the proposed impacts would not jeopardize the continued existence of the listed species under review. Typically, if there would be impacts to a listed species, mitigation that includes habitat avoidance, preservation, and creation of endangered species habitat is necessary to demonstrate that projects would not threaten the continued existence of a species. In addition, management endowment fees are usually collected as part of the agreement for the ITP(s). The endowment is used to manage any lands set-aside to protect listed species, and for biological mitigation monitoring of these lands over (typically) a five-year period.

7.2.2 APPLICABILITY TO THE PROPOSED PROJECT

As discussed above, the state listed plant Sebastopol meadowfoam and the state listed California tiger salamander are known from the project site region. The former project applicant for the South Sonoma Business Park (SSBP) project obtained a 2081 agreement for that project's impact to Sebastopol meadowfoam (which includes the current project site), an 1802 agreement (Attachment C) for that project's impacts to California tiger salamander and purchased mitigation property and preserved it to mitigate the impacts to both species; 34.13 acres of mitigation land for the project's impact on California tiger salamander and 16.4 acres for the project's impact on Sebastopol meadowfoam (Appendix A). Additionally, the current owner of the Redwood Row property has paid \$2,722,208.14 in bond payments to date and is expected to pay roughly \$1,027,000.00 more until bond maturity in 2033. *Thus, all impacts to state-listed plants and animals associated with this project site have been fully mitigated.*

7.3 Federal Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (16 U.S.C. §§ 703-712, July 3, 1918, as amended 1936, 1960, 1968, 1969, 1974, 1978, 1986 and 1989) makes it unlawful to "take" (kill, harm, harass, shoot, etc.) any migratory bird listed in Title 50 of the Code of Federal Regulations, Section 10.13, including their nests, eggs, or young. Migratory birds include geese, ducks, shorebirds, raptors, songbirds, wading birds, seabirds, and passerine birds (such as warblers, flycatchers, swallows, etc.).

7.3.1 APPLICABILITY TO THE PROPOSED PROJECT

Raptors such as White-tailed Kite, Red-tailed Hawk, and Red-shouldered Hawk could nest in trees on the project site. These raptors (birds of prey) would be protected by the Migratory Bird Treaty Act. Also, common songbirds would be protected pursuant to this Act. As long as there is no direct mortality of species (including their eggs or young) protected pursuant to this Act caused by development of the project site, there should be no constraints to development. To comply with the Migratory Bird Treaty Act, preconstruction surveys would have to be conducted for nesting birds (including raptors) if any work is proposed during the nesting season (February through August) and all active nest sites (nests with viable eggs or young) would have to be avoided while such birds were nesting. Upon completion of nesting, the work could commence as otherwise planned. Please review specific requirements for avoidance of nest sites for potentially occurring species in the Recommended Conditions of Project Approval section below.



7.4 California Fish and Game Code § 3503, 3503.5, 3511, and 3513

California Fish and Game Code §3503, 3503.5, 3511, and 3513 prohibit the “take, possession, or destruction of birds, their nests or eggs.” Disturbance that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered “take.” Such a take would also violate federal law protecting migratory birds (Migratory Bird Treaty Act).

All raptors (that is, hawks, eagles, owls) their nests, eggs, and young are protected under California Fish and Game Code (§3503.5). Additionally, “fully protected” birds, such as the white-tailed kite and golden eagle, are protected under California Fish and Game Code (§3511). “Fully protected” birds may not be taken or possessed (that is, kept in captivity) at any time.

7.4.1 APPLICABILITY TO THE PROPOSED PROJECT

Raptors that could be impacted by the project include White-tailed Kite, Red-tailed Hawk, and Red-shouldered Hawk. These raptors and common passerine birds could nest on the project site. If any tree removal or site work would happen between February 1 and September 1st, preconstruction surveys would have to be conducted for nesting birds (including raptors) to ensure that there is no direct take of these birds, or their eggs or active nests, as applicable, during the construction of the proposed project. Any active nests that are found during preconstruction surveys would have to be avoided by the proposed project. Suitable non-disturbance buffers would be established around nest sites until the nesting cycle is complete. More specifics on the size of buffers are provided below in the Recommended Conditions of Project Approval section below.

7.5 City of Cotati General Plan – Conservation Element

The City of Cotati’s General Plan was adopted on March 24, 2015. Under State law, many actions, such as development projects, specific plans, master plans, community plans, zoning, subdivisions, public agency projects and other decisions must be consistent with the General Plan. State law requires that the City’s ordinances regulating land use be consistent with the General Plan. The Land Use Code, individual project proposals, and other related plans and ordinances must be consistent with the goals and policies in this General Plan. Below is a discussion of the General Plan’s Conservation Element which is the element that pertains to natural communities and biological resources such as plants and wildlife.

Conservation Goal CON 1: Protect and Enhance Cotati’s Ecosystem and Natural Habitats

Policy CON 1.1: Sensitive habitats afforded protection and special consideration in this General Plan include wetlands, vernal pools, riparian areas, wildlife and fish migration corridors, native plant nursery sites, waters of the U.S., sensitive natural communities, and other habitats designated by state and federal agencies and laws.

Policy CON 1.2: Preserve and enhance those biological communities that contribute to the City’s and the region’s rich biodiversity including, but not limited to, annual grasslands, freshwater marshes, wetlands, vernal pools, riparian areas, aquatic habitat, oak woodlands, and agricultural lands.



Policy CON 1.3: Attempt to resolve conflicts between sensitive habitat areas and adjoining urbanized lands in a manner which recognizes the public interests in both resource protection and the need to provide for residential and job-generating land uses.

Policy CON 1.4: Focus conservation efforts on high priority conservation areas that contain suitable habitat for endangered, threatened, migratory, or special-status species and that can be managed with minimal interference with nearby urban land uses.

Policy CON 1.5: Conserve existing native vegetation where possible and integrate plant species native to the region into development and infrastructure projects where appropriate.

Policy CON 1.6: Avoid removal of large, mature trees that provide wildlife habitat or contribute to the visual quality of the environment to the greatest extent feasible through appropriate project design and building siting. If full avoidance is not possible, prioritize planting of replacement trees on-site over off-site locations.

Action CON 1a: Require development project proposals, infrastructure projects, long-range planning projects, and other projects that may potentially impact special-status species and sensitive resources to submit a biological resources evaluation which determines whether significant adverse impacts will occur. Evaluations shall be carried out under the direction of the Community Development Department and consistent with applicable state and federal guidelines. Projects shall be designed to avoid or reduce impacts to the maximum extent feasible. Where adverse impacts cannot be feasibly reduced or avoided through project design, projects shall include the implementation of site-specific or project-specific effective mitigation strategies developed by a qualified professional in consultation with state or federal resource agencies with jurisdiction (if applicable) that may include, but are not limited to, the following strategies:

- a. Preservation of habitat and connectivity of adequate size, quality, and configuration to support the special-status species. Connectivity shall be determined based on the specifics of the species' needs.
- b. Project design measures, such as clustering of structures or locating project features to avoid known locations of special-status species and/or sensitive habitats.
- c. Provision of supplemental planting and maintenance of grasses, shrubs, and trees of similar quality and quantity to provide adequate vegetation cover to enhance water quality, minimize sedimentation and soil transport, and provide adequate shelter and food for wildlife.
- d. Protection for habitat and the known locations of special-status species through adequate buffering or other means.
- e. Provision of replacement habitat of like quantity and quality on or off site for special-status species. Preference shall be given to the preservation of habitat as close to the area of impact as feasible, so long as that habitat is of comparable quality.



- f. Enhancement of existing special---status species habitat values through restoration and replanting of native plant species.
- g. Provision of temporary or permanent buffers of adequate size (based on the specifics of the special---status species) to avoid nest abandonment by nesting migratory birds and raptors associated with construction and site development activities.
- h. Incorporation of the provisions or demonstration of compliance with applicable recovery plans for federally listed species.
- i. Monitoring of construction activities by a qualified biologist to avoid impacts to onsite special status species.

Action CON 1b: Where sensitive biological habitats have been identified on or immediately adjacent to a project site, the project shall include appropriate mitigation measures identified by a qualified biologist, which may include, but are not limited to the following:

- a. Preconstruction surveys for species listed under the State or Federal Endangered Species Acts, or species identified as special---status by the resource agencies, shall be conducted by a qualified biologist;
- b. Construction barrier fencing shall be installed around sensitive resources and areas identified for avoidance or protection; and
- c. Employees working on the project site shall be trained by a qualified biologist to identify and avoid protected species and habitat.

Action CON 1c: Develop CEQA Thresholds of Significance to assist staff, project applicants, and decision-makers in determining whether a project may have a significant effect on the environment under Section 21082.2 of the California Environmental Quality Act (CEQA).

Action CON 1d: Through coordination with the U.S. Fish and Wildlife Service, California Department of Fish and Game, and Sonoma County develop and maintain a map of sensitive biological communities and habitat within the Cotati Urban Growth Boundary. Ensure that this map and associated information is readily available to potential developers and the public.

Action CON 1e: Revise the Zoning Map to add the coordinated planning overlay zone to the Commercial/Industrial and General Commercial areas south of Helman Lane that are located within the critical habitat designation for the California tiger salamander.

Objective CON 1B Protect and Enhance Local Riparian, Wetland and Aquatic Habitat



Policy CON 1.7: Consult with all the resource agencies during the CEQA review process for proposed developments to help identify wetland and vernal pool habitat that has candidacy for restoration, conservation, and/or mitigation. Focus restoration and/or conservation efforts on areas that would maximize multiple beneficial uses for such habitat and provides opportunities for mitigation banking.

Policy CON 1.8: Conserve riparian habitat along local creeks, including but not limited to the Laguna de Santa Rosa and Cotati Creek, in order to maintain suitable habitat for native fish and plant species.

Action CON 1f: Utilize existing regulations and procedures, including but not limited to the Land Use Code, Design Review, and the environmental review process (CEQA) to conserve wetlands and riparian habitat within the City and the Urban Growth Boundary. Comply with the federal and state requirements, including no net loss of wetlands using mitigation strategies such as:

- a. Avoidance of wetlands and riparian habitat through site design;
- b. Clustered development;
- c. Transfer of development rights; and/or
- d. Compensatory mitigation, such as habitat restoration or habitat creation.

Action CON 1g: Coordinate with the California Department of Fish and Game and Sonoma County to identify potentially impacted aquatic habitat within the City and the Urban Growth Boundary and to develop riparian management guidelines to be implemented by development, recreation, and other projects adjacent to creeks, streams and other waterways.

Action CON 1h: Periodically review, and update if necessary, Chapter 17.56 of the Cotati Municipal Code to ensure that the most appropriate requirements and best management practices are implemented to protect and restore wetland resources in the Planning Area.

Action CON 1i: Provide a Conservation Page (or similar page) on the City's website provides links to resource agencies (CDFG, USFWS, USACE, etc.) and provides information regarding local and regional conservation and environmental programs, to the extent the City has readily available information.

Objective CON 1C Protect Areas with High Water Recharge Capability and Surface Water Quality in the City's Creeks, Streams, and Waterways

Policy CON 1.9: Protect and enhance streams, channels, seasonal and permanent marshland, wetlands, sloughs, riparian habitat, and vernal pools through sound land use planning, community design, and site planning.

Policy CON 1.10: Support rehabilitation of open existing channelized waterways, as feasible, to remove concrete linings and allow for a connection with the stream channel and the natural water table. Avoid creating additional open channelized waterways, unless no other alternative is available to protect human health, safety, and welfare.



Policy CON 1.11: Where feasible, support restoration of existing channelized waterways to a more natural condition. Restoration efforts should provide for naturalized hydraulic functioning. Restoration should also promote the growth of riparian vegetation to effectively stabilize banks, screen pollutants from runoff entering the channel, enhance fisheries, and provide other opportunities for natural habitat restoration.

Policy CON 1.12: Require discretionary projects, as well as new flood control and stormwater conveyance projects, to integrate best management practices (BMPs) and natural features to the greatest extent feasible, while ensuring that these features adequately convey and control stormwater to protect human health, safety, and welfare.

Policy CON 1.13: Prioritize the use of natural features such as bioswales, vegetation, retention ponds, and other measures to remove surface water pollutants prior to discharge into surface waters.

Policy CON 1.14: New development adjacent to creeks and streams should include opportunities for beneficial uses, such as flood control, ecological restoration activities, public access trails, and walkways.

Action CON 1j: Coordinate with interested public and private entities to create new and expanded public access trails along creeks and streams that connect to parks and open space areas within the Urban Growth Boundary.

Action CON 1k: Continue to identify which stormwater and drainage facilities are in need of repair and address these needs through the CIP process.

Action CON 3k: Continue implementing the City Tree Preservation and Protection Ordinance (Chapter 17.54 of the Municipal Code).

Action CON 3l: Periodically undertake a citywide notification program to notify the citizens and arborists doing business within the City limits of the tree preservation requirements.

Action CON 3o: During the development review process, discourage the loss of native trees in accordance with the Tree Preservation and Protection Ordinance (Chapter 17.54 of the Municipal Code).

Action CON 3p: The City shall continue to implement the landscape and tree ordinance to give preference to native and drought tolerant species. The Planning Division shall review and revise as necessary.

Action CON 3q: Design Review criteria shall be prepared to require that creeks, trees, views and features unique to the site be preserved and incorporated into design proposals. The Design Review Committee shall insure that new development meets the criteria.



Action CON 3r: Through the use of public funds, where available, provide educational plant and tree labeling in City parks and City--- maintained plant demonstration areas to educate and inform residents of native plant and tree species planted and maintained in Cotati.

Applicability to the Proposed Project

The elements of the City's Tree Ordinance will be followed in regard to tree removal (if required) and other impacts associated with protected trees. There is one large oak in the center of the project site (within the large ruderal herbaceous field) and a single eucalyptus roughly 150 feet southwest of that large oak, plus a handful of oak trees along Hwy 116 and along the southeast boundary of the site between the site and the paved parking lot for the China Village Restaurant. The large oak tree and the eucalyptus tree near the center of the project are marked for avoidance on the Site Plan (Attachment A). A tree permit will be obtained from the City of Cotati prior to the removal of any trees on the project site and any trees that cannot be preserved will be replanted in accordance with the City's Tree Ordinance. See Section 7.6 below for further details on the City's tree permit and replacement process.

There are no riparian areas, native plant nursery sites, or sensitive natural communities on the project site. The project site has a long and complex history of mitigation for wetland impacts. See the section on Regulatory Requirements Pertaining to Waters of the United States and State below for further details. As discussed in Section 5.4 above, the proposed project will not interfere with the movement of native wildlife. The project site has no aquatic features such as a stream or river that would serve as a wildlife movement corridor and the uplands are surrounded by development which fragments this site from other natural areas and removes it from being a regional wildlife corridor.

Potential impacts to special status species are discussed in Section 6 above and in the Impact Assessment and Recommended Conditions of Approval section below. That section also includes discussions of the City of Cotati's General Plan's Conservation Element which is the element that pertains to natural communities and biological resources such as plants and wildlife. That section also discusses Conditions of Project Approval that, if implemented, will address potential impacts to biological resources on the project site. The *General Plan's Policies and Actions that Mitigate Impacts* that are relevant to each Condition of Project Approval are also listed to show how each condition is consistent with these Policies and Actions.

7.6 City of Cotati Tree Ordinance - Chapter 17.54 Tree Preservation and Protection

Below are key provisions of the City of Cotati's Tree Ordinance. Since the project will impact both native and non-native (i.e., landscape) trees, this ordinance will apply.

7.6.1 APPLICABILITY (17.54.020)

A. Applicability of Requirements. The provisions of this chapter shall apply in all zoning districts to the removal or relocation of any tree with a circumference of twelve inches or more, measured at fifty-four inches above natural grade.

B. Tree Permit Required.

1. Activities Requiring a Permit. A tree permit shall be required prior to:



- a. The relocation, removal, cutting-down, or other act that causes the destruction of a tree;
 - b. Prior to any grading, paving, or other ground-disturbing activity within the protected zone of a tree; and
 - c. The approval of a use permit, minor use permit, variance, minor variance, or subdivision, hereafter referred to as “discretionary projects.”
2. Permit Issuance. The procedure and review authority for a tree permit is as follows:
- a. Developed Parcel. A tree permit for the removal of other than a native oak from a developed parcel shall be issued as follows:
 - i. A permit for a parcel developed with one single-family dwelling may be issued by the director after a site inspection. In this case, the director may waive the prior submittal of a site plan.
 - ii. A permit for a parcel developed with multiple dwellings or a nonresidential structure may be issued by the director after the review of a complete tree permit application in compliance with Section 17.54.030 (Tree permit application requirements) of this chapter.
 - b. Vacant Parcel. A tree permit for the removal of other than a native oak from a vacant parcel shall require commission approval, and shall not be granted except in conjunction with:
 - i. The approval of a discretionary project for the same site;
 - ii. The approval of a building permit for the same site; or
 - iii. The approval of improvement plans for a subdivision of the same property.

C. Native Oak Removal. The removal of a native oak with a trunk circumference of twelve inches measured at fifty-four inches above natural grade shall be prohibited, except where approved by the council after a public hearing in compliance with Chapter 17.88 (Public Hearings) of this title, in conjunction with the approval of a subdivision or other specific development project.

D. Timing of Removal of Large-Stature Trees. The removal of a tree with a height of fifty feet or more shall not occur between April 15 and June 15 of any year, to provide for the nesting and stopover patterns of raptors, migratory birds, and other bird species.

E. Exceptions. The removal or relocation of a tree that would otherwise require a tree permit is exempt from the provisions of this chapter only in case of emergency, where the director, city engineer, a member of a law enforcement agency, or the fire district determines that a tree poses an imminent threat to the public safety, or general welfare. (Ord. 766 § 2 Exh. A (part), 2004).

7.6.2 TREE PERMIT APPLICATION REQUIREMENTS (17.54.030)

A. Application Contents. Each tree permit application shall include the information and materials required by the department, and:

1. Shall be accompanied by the application fee required by the city fee schedule;



2. The application may be required to include an arborist's report, at the discretion of the director; and
3. If the site is subject to conditions, covenants, and restrictions (CC&Rs) that address tree removal and are administered by an active homeowners' association, the application shall include a letter from the homeowners' association authorizing the tree removal.

B. Application Filing. An application for a tree permit involving a discretionary project shall be included as part of the application for the discretionary project. An application for a tree permit not associated with a discretionary project shall be filed with the department separately. (Ord. 766 § 2 Exh. A (part), 2004).

7.6.2.1 Protection of Trees to Be Retained

A. Purpose. The purpose of this section is to define procedures necessary to protect the health of affected protected trees. Great care must be exercised when work is conducted upon or around trees that are not authorized for removal.

B. Applicability. The requirements of this section shall apply to all encroachments into the protected zone of a tree that is not authorized for removal from a site when approved grading or other construction is to occur. All tree permits shall be deemed to incorporate the requirements of this section except as a tree permit may otherwise specifically provide.

C. Trenching Procedure. Trenching within the protected zone of a protected tree, when permitted, may only be conducted with hand tools or as otherwise directed by the city, to avoid root injury.

D. Cutting Roots.

1. Minor roots less than one inch in diameter may be cut, but damaged roots shall be traced back and cleanly cut behind any split, cracked or damaged area.
2. Major roots over one inch in diameter may not be cut without the director's approval. Depending upon the type of improvement being proposed, bridging techniques or a new site design may need to be employed to protect the root and the tree.

E. Irrigation Systems. An independent low-flow drip irrigation system may be used for establishing drought-tolerant plants within the protected zone of a tree to be protected.

F. Plant Materials Under Oaks. Planting live material under native oak trees is generally discouraged, and it will not be permitted within six feet of the trunk of a native oak tree with a circumference of less than twelve inches measured at fifty-four inches above natural grade, or within ten feet of the trunk of a native oak tree with a circumference of twelve inches or more measured at fifty-four inches above natural grade. Only drought-tolerant plants will be permitted within the protected zone of native oak trees.

G. Protective Fencing.



1. **Type of Fencing.** A minimum five-foot high chain link or substitute fence approved by the director shall be installed at the outermost edge of the protected zone of each protected tree or groups of protected trees. Exceptions to this policy may occur in cases where protected trees are located on slopes that will not be graded. However, approval must be obtained from the department to omit fences in any area of the project.
2. **Fence Installation.** The fences shall be installed in accordance with the approved fencing plan prior to the commencement of any grading operations or such other time as determined by the review authority. The developer shall call the city engineer for an inspection of the fencing prior to grading operations.
3. **Signing.** Signs shall be installed on the fence in four equidistant locations around each individual protected tree. The size of each sign must be a minimum of two feet by two feet and must contain the following language: “WARNING, THIS FENCE SHALL NOT BE REMOVED OR RELOCATED WITHOUT WRITTEN AUTHORIZATION FROM THE COTATI PLANNING AND BUILDING DEPARTMENT.” Signs placed on fencing around a grove of protected trees, shall be placed at approximately fifty-foot intervals.
4. **Fence Removal.** Once approval has been obtained, the fences shall remain in place throughout the entire construction period and shall not be removed without obtaining written authorization from the department.

H. **Retaining Walls and Root Protection.** Where a tree permit has been approved for construction of a retaining wall within the protected zone of a protected tree, the developer shall provide for the immediate protection of exposed roots from moisture loss during the time prior to completion of the wall. The retaining wall shall be constructed within seventy-two hours after completion of grading.

I. **Preservation Devices.** If required, preservation devices such as aeration systems, oak tree wells, drains, special foundation systems, special paving and cabling systems must be installed per approved plans.

J. **Grading.**

1. Every effort shall be made to avoid cut and/or fill slopes within or in the vicinity of the protected zone of any protected tree.
2. No grade change shall cause water to drain into an area around a protected tree equal to twice the longest radius of the protected zone.
3. No grade changes are permitted that will lower or raise the ground on any side of the tree.



K. Chimney Locations. A chimney for a wood burning fireplace or stove shall not be located within the canopy of a tree or in any location that sparks emitted from the chimney may damage a tree.

L. On-site Information. The following information shall be on-site while any construction activity is ongoing for a project requiring a tree permit:

1. Any applicable arborist's report and any subsequent modifications to the arborist's report;
2. Tree location map with a copy of the tree fencing plan;
3. Tree permit and approved construction plans;
4. Approved planting and irrigation drawings.

M. Information on Standards. The developer shall be responsible for informing all subcontractors and individuals who will be performing work around protected trees of the requirements of this section for working around trees and conditions of approval for the project. This information shall be provided in writing to the subcontractors and employees by the general contractor or applicant.

N. Utility Trenching Pathway Plan. In the event trenching is proposed, the tree permit application shall include a utility trenching pathway plan for approval following approval of the project improvement or civil plans.

1. Contents. The trenching-pathway plan shall depict all of the following systems: storm drains, sewers, easements, water mains, area drains, and underground utilities. Except in lot sale subdivisions, the trenching-pathway plan must show all lateral lines serving buildings. To be completely effective, the trenching-pathway plan must include the surveyed locations of all protected trees on the project as well as an accurate plotting of the protected zone of each protected tree.
2. Standards for Plan. The trenching-pathway plan shall be developed considering the following general guidelines:
 - a. The trenching-pathway plan shall be developed to avoid trenching in the protected zone of any protected tree on its path from the street to the building.
 - b. Where it is impossible to avoid the protected zone, the design shall minimize the extent of trenching within the protected zone. The required arborist's report shall include mitigation measures for any trenching within the protected zone.

O. Final Certification of Tree Work. All of the tree preservation measures required by the conditions of the discretionary project approval, and/or the tree permit, as applicable, shall be



completed, and certified by an arborist selected by the director prior to city issuance of a final building inspection or certificate of occupancy. (Ord. 766 § 2 Exh. A (part), 2004).

7.6.3 TREE PLANTING AND REPLACEMENT (17.54.050)

The City’s principal objective for the tree permit process is the preservation of native oaks and other significant trees, particularly in groves. Where the review authority determines that preservation is infeasible, replacement plantings may be allowed in compliance with this section.

- A. Extent of Replacement Required. The review authority may condition any tree permit for the removal of a tree to require tree replacement, as shown in Table 5-2 (taken from the ordinance). The review authority may approve a replacement program using one of the methods identified in subsection B or C of this section, or any combination of the methods.

**Table 5-2
 Minimum Required Replacement Trees**

Species of Tree to be Removed	Circumference of Tree to be Removed	Mitigation Value (required number of replacement trees)	Required Size and Species of Replacement Trees for Mitigation Value
Oaks (Black, Valley Live)	12 to 49 inches	5	15-gallon, oak of the same species removed
	50 to 79 inches	10	
	80 or more inches	20	
Other	12 to 49 inches	2	15-gallon, of species determined by city
	50 to 79 inches	4	
	80 or more inches	6	

Notes:

- (1) Circumference shall be measured at a point fifty-four inches above the natural grade at the base of the tree.

B. Location and Specifications for Replacement Trees. The replacement trees required by Table 5-2 shall be planted on-site (the City’s preferred method of mitigation), except that the review authority may authorize other areas where maintenance to ensure survival of the trees will be guaranteed.

- 1. All replacement trees shall be of the same species as the trees being replaced, propagated from locally gathered seeds, except in the case where a replacement tree is approved in a location characterized by nonnative species (for example, within a narrow roadway



median where existing trees are ornamental non-natives), or where the review authority otherwise determines that native species are inappropriate.

2. The review authority may allow up to fifty percent of the required replacement trees to have a five-gallon container size, where it determines that long-term tree health and survival will be improved by starting with a smaller container size, and that each tree with a container size less than fifteen gallons will not be planted where it will be subject to damage while becoming established.
3. The review authority may require fewer and/or larger replacement trees than required by Table 5-2 where it determines that fewer but significantly larger trees are appropriate because of the size of the site, or on-site environmental resources or terrain constraints.
4. Replacement trees shall be in addition to any trees required by provisions of this land use code other than this chapter (e.g., required parking lot landscaping or street trees).

C. In-lieu Mitigation Fee. The review authority may determine that the remedies described above are not feasible or desirable and may instead require the payment of an in-lieu fee for the cost of purchasing, planting, irrigating, and maintaining each tree for a period of ten years. The in-lieu fee shall be as required by the city fee schedule. The in-lieu fee shall be deposited into the city's tree fund. (Ord. 766 § 2 Exh. A (part), 2004).

7.6.4 TREE PERMIT APPROVAL FINDINGS AND CONDITIONS (17.54.060)

A. Required Findings. The approval of a tree permit shall require that the review authority first make all the following findings:

1. The approval of the tree permit will not be detrimental to the public health, safety or welfare, and approval of the tree permit is consistent with the provisions of this chapter;
2. Measures have been incorporated into the project or permit to mitigate impacts to remaining trees or to replace the trees removed in compliance with this chapter;
3. The removal of a healthy tree cannot be avoided by:
 - a. Reasonable redesign of the site plan prior to construction, or
 - b. Trimming, thinning, tree surgery, or other reasonable treatment, as determined by the director;
4. Adequate provisions for drainage, erosion control, land stability, windscreen, buffers along the road and between neighbors have been made where these problems are anticipated as a result of the removal; and,
5. The tree to be removed does not contain an active nest that has been identified through the environmental process or is otherwise known to the review authority as the nest of a migratory bird, except where a qualified professional has determined that the nest can be relocated without damage to the nestlings.



B. Conditions of Approval. The approval of a tree permit shall include conditions of approval as necessary to ensure compliance with Section 17.54.050 (Tree planting and replacement) of this chapter. (Ord. 766 § 2 Exh. A (part), 2004).

7.6.5 APPLICABILITY TO THE PROPOSED PROJECT

The project may impact both native oaks and non-native trees subject to the City of Cotati's Tree Protection Ordinance. *The applicant shall submit an arborist's report and an application for a tree permit as part of the application for the development project. In compliance with the Tree Protection Ordinance, tree replacement species and numbers are presented in Table 5-2, above, or as otherwise required by the City of Cotati.*

7.7 Santa Rosa Plain Conservation Strategy

The Federal listing of California tiger salamander resulted in uncertainty for many local jurisdictions, landowners, and developers about its effects on their current and proposed activities. Because of this uncertainty, local private and public interest groups met with the USFWS to discuss a cooperative approach to protecting California tiger salamander, while allowing currently planned and future land uses to occur within its range. The result of these discussions was the creation of the *Final Santa Rosa Plain Conservation Strategy* ("*Conservation Strategy*") (USFWS 2005).

The purpose of the *Conservation Strategy* is threefold: (1) to establish a long-term conservation program sufficient to mitigate potential adverse effects of future development on the Santa Rosa Plain, and to conserve and contribute to the recovery of the listed species and the conservation of their sensitive habitat; (2) to accomplish the preceding in a fashion that protects stakeholders' (both public and private) land use interests, and (3) to support issuance of an authorization for incidental take of Sonoma County California tiger salamander and listed plants that may occur in the course of carrying out a broad range of activities on the Santa Rosa Plain. The *Conservation Strategy* establishes interim and long-term mitigation requirements and designates conservation areas where mitigation will occur. It describes how habitat preserves will be established and managed. It also includes guidelines for translocation, management plans, adaptive management, and funding.

The *Conservation Strategy* identifies areas within the Santa Rosa Plain that should be conserved to benefit the listed plants and Sonoma County California tiger salamander. Their designation was based upon the following factors: 1) known distribution of the California tiger salamander; 2) the presence of suitable habitat; 3) presence of large blocks of natural or restorable land; 4) proximity to existing Preserves; and 5) known location of the listed plants. The designation of conservation areas also generally attempted to avoid future development areas established by urban growth boundaries and city general plans. The objective of these conservation areas is to ensure that preservation occurs throughout the distribution of the species.

The goal of the *Conservation Strategy* is to preserve a large enough area of suitable habitat to ensure the conservation of California tiger salamander and listed plants and contribute to their recovery. To do this, areas are identified within the Santa Rosa Plain that currently or potentially support California tiger salamander and listed plants, as well as the areas that currently or likely



will support development. This information was used to develop appropriate “conservation areas” and requirements as well as mitigation guidelines and requirements, in order to “provide consistency, timeliness and certainty for permitted activities.”

Proposed projects within the potential California tiger salamander range will fall into one of three categories:

- a.) Projects within 1.3 miles of a known California tiger salamander breeding site, and likely to impact California tiger salamander breeding and/or upland habitat; or
- b.) Projects beyond 1.3 miles from a known California tiger salamander breeding site, but within the “Potential for Presence of California tiger salamander” or “Potential for Presence of California tiger salamander and Plants”; or
- c.) Projects where “Presence of California tiger salamander is Not Likely.”

Different mitigation ratios are recommended for each of these categories.

The *Conservation Strategy* recommends that projects filling potential listed plant habitat should mitigate these impacts via the preservation of existing occupied habitat at a 1:1 ratio, and projects filling *known* listed plant habitat should mitigate these impacts via the preservation of existing occupied habitat at a 2:1 ratio, as per a Programmatic Biological Opinion (USFWS 1998) in effect at the time of the *Conservation Strategy* was prepared in 2005. The USFWS’ 2020 Programmatic Biological Opinion (USFWS 2020) has since superseded the 2007 and 1998 Programmatic Biological Opinions and the mitigation ratios have changed as discussed below and in the 2020 Programmatic Biological Opinion.

The *Conservation Strategy* recommends that projects filling wetlands should mitigate these impacts via the preservation of wetlands at a minimum of a 1:1 replacement ratio, depending on the quality of the filled wetlands, as per a Programmatic Biological Opinion (USFWS 1998) in effect at the time of the *Conservation Strategy* was prepared in 2005. The 1998 Programmatic Biological Opinion was superseded by a Programmatic Biological Opinion prepared by the USFWS for the Corps in 2007 (USFWS 2007) and again in 2020 (USFWS 2020).

7.7.1 APPLICABILITY TO THE PROPOSED PROJECT

The USFWS released a revised *Programmatic Biological Opinion* (USFWS 2020) which replaced the USFWS’ earlier Biological Opinion (USFWS 1998 and 2007). Mitigation ratios established in the earlier Programmatic Biological Opinion were revised. Thus, while the objectives for the Conservation Strategy remain unchanged today, mitigation ratios for impacts to listed plants should be derived from the USFWS’s 2020 *Programmatic Biological Opinion*. As stated above, in a February 3, 2023, call with Mr. Ryan Olah, Chief of the Coast/Bay/Delta Branch of the Sacramento Endangered Species Office of the USFWS, Mr. Olah told M&A (S. Lynch) and WRA (M. Richmond) that no additional mitigation would be required for the Redwood Row project since all mitigation for the project’s effects on Sebastopol meadowfoam and the California tiger salamander was completed in 2002. All mitigation for previous impacts to onsite wetlands was completed as part of the SSBP project. See section 8 below for more details.



7.8 USFWS Recovery Plan for the Santa Rosa Plain (USFWS 2016)

In December 2016, the USFWS adopted a formal Recovery Plan for the Santa Rosa Plain addressing recovery efforts necessary to protect and otherwise eventually recover the federally listed Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) and three vernal pool plants: Sonoma sunshine (*Blennosperma bakeri*); Burke's goldfields (*Lasthenia burkei*); and Sebastopol meadowfoam (*Limnanthes vinculans*) (USFWS 2016). All four species are confined almost entirely to the Santa Rosa Plain. The Recovery Plan and its objectives are implemented through cooperative CEQA lead agencies, and through federal nexus agency consultations (e.g., Corps consultations) with the USFWS via Section 7 of the FESA. Any federal nexus agency that consults with the USFWS pursuant to Section 7 will obtain a letter of no effect or a Biological Opinion that provides or denies "incidental take authority." Pursuant to the FESA, Incidental take would include loss of a listed species habitat or harm that could occur to a federally listed species. An Incidental Take Permit allows an otherwise legally sanctioned activity to proceed even if there is a collateral impact to a federally listed species. Similarly, any Section 10 FESA consultation with the USFWS, which is allowed for in the FESA for all non-federal entities, which results in Incidental Take authority granted by the USFWS to the non-federal entities, would otherwise include provisions for compliance with the objectives of the Recovery Plan.

The USFWS has determined that the primary threats to the three listed vernal pool plants and the California tiger salamander on the Santa Rosa Plain is the reduction and fragmentation of habitat due to urban development, agricultural land conversion, and habitat degradation that modifies vernal pool hydrology, and colonization of seasonal wetlands by competitive invasive plants. Consequently, the Recovery Plan focuses on these threats. To downlist or delist the four species that are imperiled in the Santa Rosa Plain, the threats to the species' habitat must be reduced or eliminated. The USFWS criteria for downlisting are based upon preservation of extant vernal pools systems and attending uplands that support wetland complexes. The USFWS has segmented the Santa Rosa Plain into "Core" and "Management Areas" (shown in Figures 5 through 7 for plants, Figure 9 for CTS, and for the entire Santa Rosa Plain Study Area in Figure 10) where species preservation, and habitat enhancement and management must occur to recover these four listed species.

[The following information has been obtained from various personal communications in 2016 and 2017 between Mr. G. Monk and Mr. Vincent Griego and/or Mr. Ryan Olah of the Sacramento Endangered Species Office of the USFWS]: The USFWS is now requiring that projects that impact federally listed plant species in Core habitats, and/or California tiger salamander Core habitat, mitigate through preservation and enhancement of extant listed species habitats in the same Core Area where the impacts will occur. Mitigation for Core area species always takes precedence over Management area species. The USFWS is also now requiring that impacts to specific federally listed species' Management Areas, be mitigated in the affected species Core Areas or its Management Areas as designated in the USFWS' 2016 Santa Rosa Plain Recovery Plan (USFWS 2016). Impacts to California tiger salamander outside of Core and Management Areas may be mitigated in any Core or Management Area designated in the Santa Rosa Plain (Ryan Olah pers. comm. with G. Monk, January 18, 2017).

7.8.1 APPLICABILITY TO PROPOSED PROJECT



The project site is located outside and south of the designated Core and Management Areas for Burke's goldfields and Sonoma sunshine; thus, there should be no further regard for these plants given that they were never historically found onsite nor are there any extant records of them in the vicinity. The project site, however, is located within Sebastopol meadowfoam and California tiger salamander Core Area (see Figures 7 and 9). Regardless, both of these species were fully mitigated for prior to site grading in 2002. In fact, in a February 3, 2023, call with Mr. Ryan Olah, Chief of the Coast/Bay/Delta Branch of the Sacramento Endangered Species Office of the USFWS, Mr. Olah told M&A (S. Lynch) and WRA (M. Richmond) that no additional mitigation would be required for the Redwood Row project since all mitigation for the project's effects on Sebastopol meadowfoam and the California tiger salamander was completed in 2002.

In summary, since California tiger salamanders were dip-netted, trapped and removed from the project site decades ago, Sebastopol meadowfoam seed was removed (vacuumed up and transported to mitigation properties) and the two known California tiger salamander breeding pools and all Sebastopol meadowfoam pools on the South Sonoma Business Park project site were graded/removed in June 2002 (in accordance with agency issued permits), and the surrounding area has almost completely been developed in the last 20 years, it is thus concluded that currently, 22 years later, that ***the likelihood of California tiger salamanders occurring on the project site today is extremely low since there is little suitable upland area for them to over-summer in and no suitable breeding habitats within 1.3 miles. Similarly, there are no Sebastopol meadowfoam pools to support dispersal of the seeds in the area.***

7.8.2 MITIGATION FOR IMPACTS TO THE CALIFORNIA TIGER SALAMANDER

The Applicant for the South Sonoma Business Park entered into an 1802 Agreement with the CDFW and received a Biological Opinion from the USFWS for project impacts and mitigated for the loss of habitat to the satisfaction of both agencies; the 13.4-acre Walker Avenue mitigation land and the 8.8-acre Arshi mitigation land were purchased, preserved, and deeded over to the CDFW (the then CDFG). Lowes' was then built where one of the former breeding pools were located and the Cotati Cottages were built.

The USFWS's GIS layer, shows a "zero mitigation" requirement for the majority of the project site. However, a 3:1 mitigation ratio is shown for a small portion of the project site parcel where one of the California tiger salamander breeding pools was once found (and filled under issued permits). This ratio as stated on this GIS layer should not pertain to this particular project site as the project impacts were fully mitigated at the time an 1802 Agreement and USFWS Biological Opinion were issued for the South Sonoma Business Park project and there is no longer breeding habitat within 500 feet of the project site (a 3:1 mitigation ratio applies for projects within 500 feet of breeding habitat). Additionally, the 2007 Santa Rosa Plain Conservation Strategy map (Figure 10) shows the project site being classified as "Already Developed" or no effect to the species which typically means that no mitigation is required or the impacts on the site were previously mitigated.

The closest presumed breeding habitat (as stated in a CNDDDB record) is over 0.5-mile to the west and this presumed breeding site is only suspected to support wetlands that *may* (or may not) inundate for long enough to support a breeding/larval attempt; there has been no data collected from this location (i.e., Derby Road pools). ***Thus, there is no justification for a 2:1***



mitigation ratio since there are no known breeding pools within 1.3 miles as discussed in Section 5.1.3, above.

Finally, and most importantly, Number 14 of the 2001 1802 Mitigation Agreement states that the CDFW will not seek further mitigation or compensation for the California tiger salamander or its habitat for potential impacts *within* the South Sonoma Business Park area. Verbatim text below:

“14. It is acknowledged that the purpose of this Agreement is to set forth the obligations and rights of the Parties with respect to the South Sonoma Business Park and the mitigation of potential significant environmental impacts on the California tiger salamander and its habitat. The Department will not seek further mitigation or compensation for the California tiger salamander or its habitat from 101 Sonoma Capital Partners for potential impacts within the South Sonoma Business Park area.”

8. REGULATORY REQUIREMENTS PERTAINING TO WATERS OF THE UNITED STATES AND STATE

This section presents an overview of the criteria used by the Corps, the RWQCB, the State Water Resources Control Board (SWRCB), and the CDFW to determine those areas within a project area that would be subject to their regulation.

8.1 U.S. Army Corps of Engineers Jurisdiction and General Permitting

Congress enacted the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” (33 U.S.C. §1251(a)). Pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344), the Corps regulates the disposal of dredged or fill material into “waters of the United States” (33 CFR Parts 328 through 330). This requires project applicants to obtain authorization from the Corps prior to discharging dredged or fill materials into any water of the United States.

On November 18, 2021, the U.S. EPA and the Corps (the “agencies”) announced the signing of a proposed rule to revise the definition of “waters of the United States.” On December 7, 2021, the proposed rule was published in the Federal Register. The intent of the proposed rule was to put back into place the pre-2015 definition of “waters of the United States,” (40 CFR 230.3(s)). The final Revised Definition of “Waters of the United States” was published in the Federal Register on January 18, 2023 (33 C.F.R. § 328.3) (the final “Rule”). The 2023 Rule conforms to the limits expressed in the 2006 Rapanos decision, in the plurality opinion and Justice Kennedy’s concurring opinion. Additionally, the agencies are in receipt of the U.S. Supreme Court’s May 25, 2023 decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies will interpret the phrase “waters of the United States” consistent with the Supreme Court’s decision in the *Sackett* case. In *Sackett*, the Supreme Court adopted the Rapanos plurality’s test for adjacent wetlands: only those wetlands with a continuous surface connection to other regulated waters, such that the two are indistinguishable.

In the published 2023 rule from the Federal Register, the term “waters of the United States” is defined as:



1. Waters which are:
 - a. currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 - b. The territorial seas; or
 - c. Interstate waters;
2. Impoundments of waters otherwise defined as waters of the United States under the definition, other than impoundments of waters identified under paragraph (a)(5) of this section;
3. Tributaries of waters identified in (a)(1) or (2), (4), or (6) of this section that are relatively permanent, standing or continuously flowing bodies of water;
4. Wetlands adjacent to the following waters:
 - i. Waters identified in paragraph (a)(1) of this section; or
 - ii. Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3) of this section and with a continuous surface connection to those waters;
5. Intrastate lakes and ponds not identified in paragraphs (a)(1) through (4) of this section that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3) of this section.

Waters of the United States do not include:

1. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.
2. Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.
3. Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water.
4. Artificially irrigated areas that would revert to dry land if the irrigation ceased;
5. Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;
6. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking dry land to retain water for primarily aesthetic reasons;
7. Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the



construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States; and

8. Swales and erosional features (e.g., gullies, small washes) characterized by low volume, infrequent, or short duration flow.

Definitions:

1. *Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
2. *Adjacent* means having a continuous surface connection.
3. *High tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.
4. *Ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as 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.
5. *Tidal waters* means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

Limits of Corps' jurisdiction:

- a) Territorial Seas. The limit of jurisdiction in the territorial seas is measured from the baseline in a seaward direction a distance of three nautical miles. (See 33 CFR 329.12)
- b) Tidal Waters of the United States. The landward limits of jurisdiction in tidal waters:
 - (1) Extends to the high tide line, or
 - (2) When adjacent non-tidal waters of the United States are present, the jurisdiction extends to the limits identified in paragraph (c) of this section.



- c) Non-Tidal Waters of the United States. The limits of jurisdiction in non-tidal waters:
 - (1) In the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark (“OHWM”), or
 - (2) When adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands.
 - (3) When the water of the United States consists only of wetlands the jurisdiction extends to the limit of the wetland.

The OHWM on a non-tidal water is:

the “line on 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 or debris; or other appropriate means that consider the characteristics of the surrounding areas” (33 CFR Section 328.3[e]).

Wetlands are defined as: “...those areas that are inundated or saturated by surface or ground water at a frequency and duration to support a prevalence of vegetation adapted for life in saturated soil conditions” (33 CFR Section 328.8 [b]). Wetlands usually must possess hydrophytic vegetation (i.e., plants adapted to inundated or saturated conditions), wetland hydrology (e.g., topographic low areas, exposed water tables, stream channels), and hydric soils (i.e., soils that are periodically or permanently saturated, inundated or flooded) to be regulated by the Corps pursuant to Section 404 of the Clean Water Act.

The Agencies jointly prepared an Instructional Guidebook to aid Corps field staff in completing the “Approved Jurisdictional Determination Form,” taking into account judicial decisions (i.e., *Rapanos v. United States*, *Carabell v. U.S. Army Corps of Engineers* and *U.S. v. Riverside Bayview Homes*, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*) interpreting the extent of Corps jurisdiction, and is intended to be used as the U.S. Army Corps of Engineers Regulatory National Standard Operating Procedures for conducting an approved jurisdictional determination. This Approved Jurisdictional Determination Form will be updated to reflect the 2023 Rule.

8.2 Permitting Corps Jurisdictional Areas

To remain in compliance with Section 404 of the CWA, project proponents and property owners (applicants) are required to be permitted by the Corps prior to discharging or otherwise impacting waters of the United States. In many cases, the Corps must visit a proposed project area (to conduct a “jurisdictional determination”) to confirm the extent of area falling under their jurisdiction prior to authorizing any permit for that project area. Typically, at the time the jurisdictional determination is conducted, applicants (or their representative) will discuss the appropriate permit application that would be filed with the Corps for permitting the proposed impact(s) to “waters of the United States.”

Pursuant to Section 404, the Corps normally provides two alternatives for permitting impacts to the type of waters of the United States found in the project area. The first alternative would be to use Nationwide Permit(s) (NWP). The second alternative is to apply to the Corps for an



Individual Permit (33 CFR Section 235.5(2)(b)). The application process for Individual Permits is extensive and includes public interest review procedures (i.e., public notice and receipt of public comments) and must contain an “alternatives analysis” that is prepared pursuant to Section 404(b) of the Clean Water Act (33 U.S.C. 1344(b)). The alternatives analysis is also typically reviewed by the federal EPA and thus brings another resource agency into the permitting framework. Both the Corps and EPA take the initial viewpoint that there are practical alternatives to the proposed project if there would be impacts to waters of the U.S., and the proposed permitted action is not a water dependent project (e.g., a pier or a dredging project). Alternative analyses therefore must provide convincing reasons that the proposed permitted impacts are unavoidable. Individual Permits may be available for use if discharges into regulated waters fail to meet conditions of NWP(s).

NWPs are a type of general permit administered by the Corps and issued on a nationwide basis that authorize minor activities that affect Corps regulated waters. Under NWP, if certain conditions are met, the specified activities can take place without the need for an individual or regional permit from the Corps (33 CFR, Section 235.5[c][2]). In order to use NWP(s), a project must meet 27 general nationwide permit conditions, and all specific conditions pertaining to the NWP being used (as presented at 33 CFR Section 330, Appendices A and C). It is also important to note that pursuant to 33 CFR Section 330.4(e), there may be special regional conditions or modifications to NWPs that could have relevance to individual proposed projects. Finally, pursuant to 33 CFR Section 330.6(a), Nationwide permittees may, and in some cases must, request from the Corps confirmation that an activity complies with the terms and conditions of the NWP intended for use (i.e., must receive “verification” from the Corps).

Prior to finalizing design plans, the applicant needs to be aware that the Corps maintains a policy of “no net loss” of wetlands (waters of the United States) from project area development. Therefore, it is incumbent upon applicants that propose to impact Corps regulated areas to submit a mitigation plan that demonstrates that impacted regulated areas would be recreated (i.e., impacts would be mitigated). Typically, the Corps requires mitigation to be “in-kind” (i.e., seasonal wetlands would be filled, mitigation would include seasonal wetland mitigation), and at a minimum of a 1:1 replacement ratio (i.e., one acre or fraction thereof recreated for each acre or fraction thereof lost). Often a 2:1 replacement ratio is required if the Permittee is responsible for the mitigation. In some cases, the Corps allows “out-of-kind” mitigation if the compensation site has greater value than the impacted site. Finally, there are many Corps approved wetland mitigation banks where wetland mitigation credits can be purchased by applicants to meet mitigation compensation requirements. Mitigation banks have defined service areas, and the Corps may only allow their use when a project would have minimal impacts to wetlands.

8.2.1 APPLICABILITY TO THE PROPOSED PROJECT

During a wetland delineation conducted by WRA Environmental Consultants (WRA) in August 2002, a total of roughly 0.27 acre of seasonal wetlands (five seasonal swales) were mapped on the Redwood Row project site. These five seasonal wetlands are artificial ditches related to interim construction measures and upland drainage maintenance of the property that has been ongoing since 2002. These wetlands cover 0.27 acre of the project site and are dominated by Italian rye grass (*Festuca perennis*) and annual semaphore grass (*Pleuropogon californicus* var. *californicus*). WRA confirmed with the Corps that these are incidental construction-related



wetlands created in dry land and are exempt from permitting requirements under the Clean Water Act as construction related features (Section 328.3(c)). They were created to increase runoff on the project site and reduce ponding related to the previous mass grading and stockpiling of the project site (Attachment B). These isolated waters (wetlands) are exempt from Corps jurisdiction. A Wetland Delineation of the project site which shows these features as being non-federal waters (i.e., not subject to the Corps' jurisdiction) has been submitted to the Corps for confirmation and is pending.

8.3 California Regional Water Quality Control Board (RWQCB)

8.3.1 SECTION 401 OF THE CLEAN WATER ACT

The SWRCB and RWQCB regulate activities in "waters of the State" (which includes wetlands) through Section 401 of the Clean Water Act. While the Corps administers a permitting program that authorizes impacts to waters of the U.S., including wetlands and other waters, any Corps permit authorized for a proposed project would be inoperative unless it is a NWP that has been certified for use in California by the SWRCB, or if the RWQCB has issued a project specific certification of water quality. Certification of NWPs requires a finding by the SWRCB that the activities permitted by the NWP will not violate water quality standards individually or cumulatively over the term of the permit (the term is typically for five years). Certification must be consistent with the requirements of the federal Clean Water Act, the CEQA, the CESA, and the SWRCB's mandate to protect beneficial uses of waters of the State. Any denied (i.e., not certified) NWPs, and all Individual Corps permits, would require a project specific RWQCB certification of water quality. Where a project will result in dredge or fill of non-federal waters of the State, the RWQCB will authorize those fills through waste discharge requirements issued under the Porter Cologne Water Quality Control Act.

On April 2, 2019, the SWRCB adopted a State-level definition of "wetlands," which definition is broader than the federal definition in that unvegetated areas may be considered a wetland water of the State. As a part of the same policy, the SWRCB adopted permit procedures and standards governing the discharge of dredged or fill material into wetlands and other waters of the State. The policy includes, among other things, requirements for analyses to identify the least environmentally damaging practicable alternative (LEDPA) and compensatory mitigation standards including a minimum 1:1 ratio for wetlands and streams, and full functional replacement of all waters on top of this minimum where applicable.

8.3.2 PORTER-COLOGNE WATER QUALITY CONTROL ACT

The uncontrolled discharge of pollutants into impaired water bodies is considered particularly detrimental. According to the EPA, **sediment is one of the most widespread pollutants contaminating U.S. rivers and streams**. Sediment runoff from construction sites is 10 to 20 times greater than from agricultural lands and 1,000 to 2,000 times greater than from forest lands (EPA 2005). Consequently, the discharge of stormwater from large construction sites is regulated by the RWQCB under the Clean Water Act and California's Porter-Cologne Water Quality Control Act.

The Porter-Cologne Water Quality Control Act, Water Code § 13260, requires that "any person discharging waste, or proposing to discharge waste, that could affect the waters of the State to



file a report of discharge” with the RWQCB through an application for waste discharge (Water Code Section 13260(a)(1)). The term “waters of the State” is defined as any surface water or groundwater, including saline waters, within the boundaries of the State (Water Code § 13050(e)). It should be noted that pursuant to the Porter-Cologne Water Quality Control Act, the RWQCB also regulates “isolated wetlands,” or those wetlands considered to be outside of the Corps’ jurisdiction (see Corps Section above).

The RWQCB generally considers filling in waters of the State to constitute “pollution.” Pollution is defined as an alteration of the quality of the waters of the State by waste that unreasonably affects its beneficial uses (Water Code §13050(1)). The RWQCB litmus test for determining if a project should be regulated pursuant to the Porter-Cologne Water Quality Control Act is if the action could result in any “threat” to water quality.

The RWQCB requires complete pre- and post-development Best Management Practices (BMPs) for any portion of the project site that is developed. This means that a water quality treatment plan for the pre- and post-developed project site must be prepared and implemented. Preconstruction requirements must be consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES). That is, a *Stormwater Pollution Prevention Plan* (SWPPP) must be developed prior to the time that a site is graded (see NPDES section below). In addition, a post construction BMPs plan, or a Stormwater Management Plan (SWMP) must be developed and incorporated into any site development plan.

8.3.2.1 Applicability to the Proposed Project

In June 2001, M&A submitted an application on behalf of the then landowner, Sonoma Associates, requesting a CWA Section 401 Water Quality Certification (permit). On August 27, 2001, the North Coast Region of the California Regional Water Quality Control Board (RWQCB), issued a 401 Conditional Certification (No. 1B01052WNSO) authorizing the fill of 3.503 total acres of wetland and swale habitat (Appendix A). This included 2.5 acres on the site now owned by Sonoma Capital Partners LLC, and 1.003 acres on the site owned by the Trebino family (this “Trebino Site” is irrelevant to the remaining piece of land discussed in this report and will not be further considered). Twenty additional conditions were outlined within the 401 permit and have since been complied with. All waters of the State on the project site in 2001 were filled under permits issued at the time.

As discussed in the previous section, all of the seasonal wetlands on the project site currently are construction-related features constructed after the site was mass graded and all project site wetlands filled pursuant to permits issued by the Corps and RWQCB. No further federal permitting or mitigation is necessary for this project site. *However, construction-related drainage features still fall under State jurisdiction and any impacts to them will need to be authorized by the RWQCB.*

Any impacts to these waters of the State would have to be mitigated to the satisfaction of the RWQCB prior to the time this resource agency would issue a permit for impacts to such features. Prior to filling these isolated wetlands, the applicant will need to apply to the RWQCB to obtain authorization pursuant to the Porter-Cologne Water Quality Control Act.



9. STATE WATER RESOURCES CONTROL BOARD (SWRCB)/RWQCB – STORMWATER MANAGEMENT

9.1 Construction General Permit

While federal Clean Water Act NPDES regulations allow two permitting options for construction related stormwater discharges (individual permits and General Permits), the SWRCB has elected to adopt only one statewide Construction General Permit at this time that will apply to all stormwater discharges associated with construction activity, except from those on Tribal Lands, in the Lake Tahoe Hydrologic Unit, and those performed by the California Department of Transportation (CalTrans).

The Construction General Permit requires all dischargers where construction activity disturbs greater than one acre of land or those sites less than one acre that are part of a common plan of development or sale that disturbs more than one acre of land surface to:

1. Develop and implement a SWPPP which specifies BMPs that will prevent all construction pollutants from contacting stormwater with the intent of keeping all products of erosion from moving off site into receiving waters.
2. Eliminate or reduce non-stormwater discharges to storm sewer systems and other waters of the nation. Achieve quantitatively-defined (i.e., numeric) pollutant-specific discharge standards, and conduct much more rigorous monitoring based on the project's projected risk level.
3. Perform inspections of all BMPs.

This Construction General Permit is implemented and enforced by the nine RWQCBs. It is also enforceable through citizens' suits and represents a dramatic shift in the SWRCB's approach to regulating new and redevelopment sites, imposing new affirmative duties and fixed standards on builders and developers.

Types of Construction Activity Covered by the Construction General Permit

- clearing,
- grading,
- disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least one acre or more of total land area.

Construction activity that results in soil disturbances to a smaller area would still be subject to this General Permit if the construction activity is part of a larger common plan of development that encompasses greater than one acre of soil disturbance, or if there is significant water quality impairment resulting from the activity.

Construction activity does not include:

- routine maintenance to maintain original line and grade,
- hydraulic capacity, or original purpose of the facility,



- nor does it include emergency construction activities required to protect public health and safety.

The Construction General Permit includes several “post-construction” requirements. These requirements entail that site designs provide no net increase in overall site runoff and match pre-project hydrology by maintaining runoff volume and drainage concentrations. To achieve the required results where impervious surfaces such as roofs and paved surfaces are being increased, developers must implement non-structural off-setting BMPs, such as landform grading, site design BMPs, and distributed structural BMPs (bioretention cells, rain gardens, and rain cisterns). This “runoff reduction” approach is essentially a SWRCB-imposed regulatory requirement to implement Low Impact Development (“LID”) design features. Volume that cannot be addressed using non-structural BMPs must be captured in structural BMPs that are approved by the RWQCB.

Improving the quality of site runoff is necessary to improve water quality in impaired and threatened streams, rivers, and lakes (that is, water bodies on the EPA’s 303(d) list). The RWQCB prioritizes the water bodies on the 303(d) list according to potential impacts to beneficial uses. Beneficial uses can include a wide range of uses, such as nautical navigation; wildlife habitat; fish spawning and migration; commercial fishing, including shellfish harvesting; recreation, including swimming, surfing, fishing, boating, beachcombing, and more; water supply for domestic consumption or industrial processes; and groundwater recharge, among other uses. The State is required to develop action plans and establish Total Maximum Daily Loads (TMDLs) to improve water quality within these impaired water bodies. The TMDL is the quantity of a pollutant that can be safely assimilated by a water body without violating the applicable water quality standards.

Pursuant to the Clean Water Act, the RWQCB regulates construction discharges under the NPDES. The project sponsor of construction or other activities that disturb more than one acre of land must obtain coverage under NPDES Construction General Permit Order 2009-0009-DWQ, administered by the RWQCB⁴.

9.1.1 APPLICABILITY TO THE PROPOSED PROJECT

To obtain coverage under the SWRCB administered Construction General Permit, the applicant (typically through its civil engineer) must electronically file a number of permit-related compliance documents (Permit Registration Documents (PRDs), including a Notice of Intent (NOI), a risk assessment, site map, signed certification, SWPPP, Notice of Termination (NOT), NAL exceedance reports, and other site-specific PRDs that may be required. The PRDs must be prepared by a Qualified SWPPP Practitioner (QSP) or Qualified SWPPP Developer (QSD) and filed by a Legally Responsible Person (LRP) on the RWQCB’s Stormwater Multi-Application Report Tracking System (SMARTS). (QSDs are typically civil engineers, professional hydrologists, engineering geologists, or landscape architects.) Once filed, these documents

⁴ CGP Order 2009-0009-DWQ remains in effect but has been amended by CGP Order 2009-0014-DWQ, effective February 14, 2011, and CGP Order 2009-0016-DWQ, effective July 17, 2012. The first amendment merely provided additional clarification to Order 2009-0009-DWQ, while Order 2009-0016-DWQ eliminated numeric effluent limits on pH and turbidity (except in the case of active treatment systems), in response to a legal challenge to the original order.



become immediately available to the public for review and comment. At a minimum, the SWPPP shall identify BMPs for implementation during project construction that are in accordance with the applicable guidance and procedures contained in the California Stormwater Quality Association's *California Stormwater Best Management Practices Handbook* (2015).

10. STORM WATER LOW IMPACT DEVELOPMENT (SWLID)

The SWRCB and RWQCB adopted new design requirements and an updated LID Manual effective May 3rd, 2017. The 2017 Storm Water Low Impact Development (SWLID) guidelines are provided to better facilitate the processing of Clean Water Act permits. California's North Coast RWQCB routinely uses the SWLID Design Manual as an example program on how post-construction BMPs should be implemented.

The 2017 SWLID provides technical guidance for project designs that require the implementation of permanent storm water BMPs. This 2017 SWLID supersedes both the 2005 SUSMP guidelines and the 2011 version of the SWLID manual. To reduce storm water pollution, protect water quality of local waterways, and promote groundwater recharge, SWLID integrates specialized landscape features into an urban environment and directs runoff into these features where it can soak into the ground. This design approach mimics the storm water benefits of the natural environment. Specialized swales, planters, and raingardens provide beauty while also slowing runoff and removing pollutants. Plants and microbes that live in healthy soil use pollutants as nutrients, removing them from runoff.

The SWLID is formally defined as:

A development site design strategy with a goal of maintaining or reproducing the predevelopment hydrologic system through the use of design techniques to create a functionally equivalent hydrologic setting. Hydrologic functions of storage, infiltration, and groundwater recharge, as well as the volume and frequency of discharges are maintained through the use of integrated and distributed small-scale storm water retention and detention areas, reduction of impervious surfaces, and the lengthening of flow paths, and runoff time.

The SWLID Design Manual is intended to satisfy the specific requirements of "Order No. R1-2015-0030, NPDES No. CA-0025054 NPDES permit and waste discharge requirements for discharges from the municipal separate storm sewer systems." Additional design requirements imposed by governing agencies, such as local grading ordinances, CAL Green, CEQA, 401 permitting, and hydraulic design for flood control still apply as appropriate.

The intention of the Design Manual is to promote the following SWLID goals:

- Minimize the adverse impacts from storm water runoff on water quality, the biological integrity of receiving waters, and the beneficial uses of water bodies.
- Minimize the percentage of impervious surfaces on land development projects and implement mitigation measures to mimic the pre-development water balance through infiltration, evapotranspiration, and capture and reuse of storm water.
- Minimize pollutant loadings from impervious surfaces such as roof tops, parking lots, and roadways through the use of properly designed, technically appropriate BMPs,



including source control BMPs or good housekeeping practices, SWLID planning and design strategies, and treatment control BMPs.

- Proper selection, design and maintenance of treatment control BMPs, and hydromodification control BMPs to address pollutants generated by land development, minimizing post-development surface flows and velocities, assuring long-term functionality of BMPs, and avoiding the breeding of vectors.

10.1 Projects That Trigger Requirements

Geographic Areas

The requirements set forth in this SWLID Design Manual apply to projects within the jurisdiction of City of Santa Rosa, City of Healdsburg, Town of Windsor, City of Cotati, City of Sebastopol, City of Cloverdale, City of Ukiah, and City of Rohnert Park as well as the portions of the County of Sonoma as shown in the NPDES MS4 Permit Order No. R1-2015-0030.

This SWLID manual does not apply to the areas south of the Russian River/Laguna De Santa Rosa watershed boundary, including portions of Petaluma, Sonoma, and the southern portion of the County of Sonoma as they are outside the jurisdiction of the North Coast RWQCB and have distinct design requirements.

Project Triggers and Exemptions

Since SWLID features are designed to mitigate for the permanent impacts caused by impervious surfaces, the total amount of impervious surface must be considered when determining whether or not a project triggers SWLID requirements. This evaluation must include the built-out project condition (including homes or structures that will be completed under separate building permits) as well as all phases of a phased project. Note that tributary areas where no impervious surface will be added or replaced are not required to install BMPs.

Impervious Surface

Impervious surfaces are defined as an area that has been modified such that storm water percolation into underlying soils is reduced or prevented. Examples of surfaces include concrete, asphalt, and roof tops. Existing gravel on a project site prior to the proposed project is considered to be pervious unless documentation is provided that demonstrates that it is impervious. Gravel placed as part of the proposed project is considered to be impervious unless documentation is provided to verify that it is pervious.

Site Determination

For the purposes of this Manual, the impacts that must be accounted for in the SWLID design includes everything within the project site of all improved parcels as well as all offsite or associated public improvements, such as trenching and repaving for utility connections.

10.1.1 APPLICABILITY TO THE PROPOSED PROJECT

The City of Cotati will require that an engineer prepare and submit SWLID Plan that integrates the 2017 SWLID Design Manual guidelines. The proposed project will create more than one acre of impervious surface and will therefore be conditioned to meet treatment and hydromodification control requirements. The hydromodification control design goal requires the project to capture and/or infiltrate and/or reuse one hundred percent of the post project volume.



The proposed project will be designed to implement permanent water quality treatment and hydro-modification control BMPs set forth in the 2017 SWLID; such as treatment of all runoff generated by a one-inch rainfall event in a 24-hour time period falling on all impermeable surfaces, and the exit off the project site of all such storm water at flow rates similar to predevelopment conditions.

11. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE PROTECTIONS

11.1.1 SECTION 1602 OF CALIFORNIA FISH AND GAME CODE

Pursuant to Section 1602 of the California Fish and Game Code: “An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur:

- (1) CDFW receives written notification regarding the activity in the manner prescribed by CDFW. The notification shall include, but is not limited to, all of the following:
 - (A) A detailed description of the project’s location and a map.
 - (B) The name, if any, of the river, stream, or lake affected.
 - (C) A detailed project description, including, but not limited to, construction plans and drawings, if applicable.
 - (D) A copy of any document prepared pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.
 - (E) A copy of any other applicable local, State, or federal permit or agreement already issued.
 - (F) Any other information required by CDFW” (Fish & Game Code 2023).

Please see Section 1602 of the current California Fish and Game Code for further details as to the next steps once a written notification is submitted.

Please also note that while not stated in the regulations above, the CDFW typically considers its jurisdiction to include riparian vegetation (that is, the trees and bushes growing along the stream). Thus, any proposed activity in a natural stream channel that would substantially adversely affect an existing fish and/or wildlife resource, including its riparian vegetation, would require entering into a Streambed Alteration Agreement (SBAA) with the CDFW prior to commencing with work in the stream. However, prior to authorizing such permits, the CDFW typically reviews an analysis of the expected biological impacts, any proposed mitigation plans that would be implemented to offset biological impacts and engineering and erosion control plans.

11.1.2 APPLICABILITY TO THE PROPOSED PROJECT

There are no streams or tributaries on the project site nor is there any riparian vegetation. Roadside ditches, excavated from uplands, occur along Hwy 116. These two ditches flow into the City’s storm drain system through a series of underground pipes, eventually flowing out through another pipe to the Laguna de Santa Rosa. Thus, there are no streams or drainages on the



project site that provide wildlife or fisheries habitat and that would meet the definition of a Section 1600 regulated stream.

12. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REGULATIONS

A CEQA lead agency must determine if a proposed activity constitutes a project requiring further review pursuant to the CEQA. Pursuant to CEQA, a lead agency would have to determine if there could be significant adverse impacts to the environment from a proposed project. Typically, if within the city limits, the city would be the CEQA lead agency. If a discretionary permit (i.e., conditional use permit) would be required for a project (e.g., an occupancy permit must be issued), the lead agency typically must determine if there could be significant environmental impacts. This is usually accomplished by an “Initial Study.” If there could be significant environmental impacts, the lead agency must determine an appropriate level of environmental review prior to approving and/or otherwise permitting the impacts. In some cases, there are “Categorical Exemptions” that apply to the proposed activity; thus, the activity is exempt from CEQA. The Categorical Exemptions are provided in CEQA. There are also Statutory Exemptions in CEQA that must be investigated for any proposed project. If the project is not exempt from CEQA, the lowest level of review typically reserved for projects with no significant effects on the environment would be for the lead agency to prepare a “Negative Declaration.” If a proposed project would have only minimal impacts that can be mitigated to a level of no significance pursuant to the CEQA, then a “Mitigated Negative Declaration” (MND) is typically prepared by the lead agency. Finally, those projects that may have significant effects on the environment, or that have impacts that can’t be mitigated to a level considered less than significant pursuant to the CEQA, typically must be reviewed via an Environmental Impact Report (EIR). All CEQA review documents are subject to public circulation, and comment periods.

Section 15380 of CEQA defines “endangered” species as those whose survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. “Rare” species are defined by CEQA as those who are in such low numbers that they could become endangered if their environment worsens; or the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered “threatened” as that term is used in FESA. The CEQA Guidelines also state that a project will normally have a significant effect on the environment if it will “substantially affect a rare or endangered species of animal or plant or the habitat of the species.” The significance of impacts to a species under CEQA, therefore, must be based on analyzing actual rarity and threat of extinction to that species despite its legal status or lack thereof.

12.1.1 APPLICABILITY TO THE PROPOSED PROJECT

This report has been prepared as a Biology section that is suitable for incorporation by the CEQA lead agency (in this case, City of Cotati) into a Consistency Determination pursuant to CEQA Section 15183. This document addresses potential impacts to species that would be defined as endangered or rare pursuant to Section 15380 of the CEQA.



13. IMPACTS ANALYSIS

Below the criteria used in assessing impacts to Biological Resources is presented.

13.1 Significance Criteria

A significant impact is determined using CEQA and CEQA Guidelines. Pursuant to CEQA §21068, a significant effect on the environment means a substantial, or potentially substantial, adverse change in the environment. Pursuant to CEQA Guideline §15382, a significant effect on the environment is further defined as a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. Other federal, State, and local agencies' considerations and regulations are also used in the evaluation of significance of proposed actions.

Direct and indirect adverse impacts to biological resources are classified as “significant,” “potentially significant,” or “less than significant.” Biological resources are broken down into four categories: vegetation, wildlife, threatened and endangered species, and regulated “waters of the United States” and/or stream channels.

13.1.1 THRESHOLDS OF SIGNIFICANCE

13.1.1.1 Plants, Wildlife, Waters

In accordance with Appendix G (Environmental Checklist Form) of the CEQA Guidelines, implementing the project would have a significant biological impact if it would:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS.
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS.
- Have a substantial adverse effect on state or federally protected “wetlands” (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted HCP, Natural Community Conservation Plan, or other approved local, regional, or State HCP.



13.1.1.2 Waters of the United States and State.

Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), the Corps regulates the discharge of dredged or fill material into waters of the U.S., which includes wetlands, as discussed in the bulleted item above, and also includes “other waters” (stream channels, rivers) (33 CFR Parts 328 through 330). Substantial impacts to Corps regulated areas on a project site would be considered a significant adverse impact. Similarly, pursuant to Section 401 of the Clean Water Act, and to the Porter-Cologne Water Quality Control Act, the RWQCB regulates impacts to waters of the State. Thus, substantial impacts to RWQCB regulated areas on a project site would also be considered a significant adverse impact.

13.1.1.3 Stream Channels

Pursuant to Section 1602 of the California Fish and Game Code, the CDFW regulates activities that divert, obstruct, or alter stream flow, or substantially modify the bed, channel, or bank of a stream which the CDFW typically considers to include riparian vegetation. Any proposed activity that would result in substantial modifications to a natural stream channel would be considered a significant adverse impact.

14. IMPACT ASSESSMENT AND RECOMMENDED CONDITIONS OF APPROVAL

In this section we discuss potential impacts to sensitive biological resources including special-status plant and animal species, trees, and waters of the State that would occur from project development as shown on the Site Plan (Attachment A). We follow each impact with a condition of project approval that, when implemented, would reduce impacts to the greatest extent possible. Each condition of project approval is then followed by a list of the relevant Mitigating Policies and Actions from the City of Cotati’s 2013 General Plan EIR that illustrate how the EIR adequately addresses each impact.

Checklist Items are listed below. Where there would be significant impacts to checklist categories, these impacts and required mitigation measures are fully discussed in the sections below.

Would the Proposed Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS?

Yes. American badger and nesting birds could be impacted by the proposed project. See the impacts and recommended conditions of project approval detailed below.

Would the Proposed Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS?

No. There is no riparian habitat or sensitive natural community on the project site that has been identified in local or regional plans, policies, regulations, or by the CDFW or USFWS. Therefore, the proposed project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community.



Would the Proposed Project have a substantial adverse effect on state or federally protected “wetlands” (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

Yes. The Proposed Project would impact approximately 0.27 acre of potential non-federal waters of the State.

Would the Proposed Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

No. The Proposed Project would not adversely impact or interfere with wildlife movement corridors. The project site is an anthropogenic habitat that is surrounded by developed properties on all sides except for one side in which there is a small parcel that is slated for development.

Would the Proposed Project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Yes, there is a City of Cotati tree ordinance and tree removal must be addressed. Additionally, measures to comply with the City of Cotati’s General Plan, Santa Rosa Plain Conservation Strategy and the USFWS Recovery Plan for the Santa Rosa Plain are discussed in the sections above. There are no other local policies or ordinances with which this project would conflict.

Would the Proposed Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

No, there are no Habitat Conservation Plans or Natural Community Conservation Plans in force in the City of Cotati or Sonoma County.

14.1 Impact BIO-1: Development of the Proposed Project May Have a Potentially Significant Impact on Nesting Raptors and Passerine Birds (Potentially Significant)

Nesting raptors (birds of prey) and passerine (perching) birds are protected pursuant to California Fish and Game Code (Sections 3503, 3503.5, 3513), and the Federal Migratory Bird Treaty Act. The oaks present on the project site provide suitable nesting habitat for raptors and passerine birds. In addition, the grassland on the project site provides suitable nesting habitat for ground-nesting birds. Since, typically, most birds can fly out of harm’s way, development of the project site would not be expected to harm adult birds. However, nesting birds are susceptible to take through disturbance that harms eggs or young. The project proponent can avoid impacts to nesting birds by conducting preconstruction nesting bird surveys and implementing avoidance measures. *As such, pursuant to the CEQA, development of the proposed project could result in potentially significant impacts to nesting birds.* Such impacts could be mitigated to a level considered less than significant with implementation of Condition of Approval BIO-1 below.



14.2 Condition of Approval BIO-1. Nesting Birds

To avoid impacts to nesting raptors and passerines, a nesting bird survey should be conducted within 7 days prior to commencing with construction work if this work would begin between February 1 and August 31. The nesting bird survey shall be conducted on the project site and within a zone of influence around the project site. The zone of influence includes those areas off the project site where raptors could be disturbed by earth-moving vibrations or noise. The nesting bird survey should include examination of all suitable nesting habitats within 300 feet of the entire project site. A nesting bird survey report should be prepared upon completion of the survey and provided to the City of Cotati with any recommendations required for establishment of protective buffers as necessary to protect nesting birds.

If birds are identified nesting on or within the zone of influence of the construction project, a qualified biologist shall establish a temporary protective buffer around the nest(s). The buffer must be of sufficient size to protect the nesting site from construction-related disturbance and shall be established by a qualified ornithologist or biologist with extensive experience working with nesting birds near and on construction sites. Typically, adequate nesting buffers are 75 feet from the nest site or nest tree dripline for small birds and up to 300 feet for sensitive nesting birds that include several raptor species known from the region of the project site. The nest buffer should be staked with orange construction fencing or orange lath staking.

No construction or earth-moving activity shall occur within any established nest protection buffer prior to September 1 unless it is determined by a qualified ornithologist/biologist that the young have fledged (that is, left the nest) and have attained sufficient flight skills to avoid project construction zones, or that the nesting cycle is otherwise completed. In the region of the project site, most species complete nesting by mid-July. This date can be significantly earlier or later and would have to be determined by the qualified biologist. At the end of the nesting cycle, or abandonment of the nest by its occupants, as determined by a qualified biologist, temporary nesting buffers may be removed, and construction may commence in established nesting buffer areas without further regard for the nest site.

As conditioned, the Project is consistent with the City's General Plan policies and actions listed below.

When implemented, this condition of project approval would reduce project impacts to nesting raptors and passerine birds to a level considered less than significant pursuant to CEQA.

14.2.1 RELEVANT 2013 GENERAL PLAN EIR MITIGATING POLICIES AND ACTIONS

Policy CON 1.2: Preserve and enhance those biological communities that contribute to the City's and the region's rich biodiversity including, but not limited to, annual grasslands, freshwater marshes, wetlands, vernal pools, riparian areas, aquatic habitat, and agricultural lands.

Action CON 1a: Require development project proposals, infrastructure projects, long-range planning projects, and other projects that may potentially impact special-status species and sensitive resources to submit a biological resources evaluation which determines whether significant adverse impacts will occur. Evaluations shall be carried out under the direction of the Community Development Department and consistent with applicable state and federal



guidelines. Projects shall be designed to avoid or reduce impacts to the maximum extent feasible. Where adverse impacts cannot be feasibly reduced or avoided through project design, projects shall include the implementation of site-specific or project-specific effective mitigation strategies developed by a qualified professional in consultation with state or federal resource agencies with jurisdiction (if applicable) that may include, but are not limited to, the following strategies:

- a. Preservation of habitat and connectivity of adequate size, quality, and configuration to support the special-status species. Connectivity shall be determined based on the specifics of the species' needs.
- b. Project design measures, such as clustering of structures or locating project features to avoid known locations of special-status species and/or sensitive habitats.
- d. Protection for habitat and the known locations of special-status species through adequate buffering or other means.
- e. Provision of replacement habitat of like quantity and quality on or off site for special-status species. Preference shall be given to the preservation of habitat as close to the area of impact as feasible, so long as that habitat is of comparable quality.
- f. Enhancement of existing special status species habitat values through restoration and replanting of native plant species.
- g. Provision of temporary or permanent buffers of adequate size (based on the specifics of the special-status species) to avoid nest abandonment by nesting migratory birds and raptors associated with construction and site development activities.

Action CON 1b: Where sensitive biological habitats have been identified on or immediately adjacent to a project site, the project shall include appropriate mitigation measures identified by a qualified biologist, which may include, but are not limited to the following:

- a. Preconstruction surveys for species listed under the State or Federal Endangered Species Acts, or species identified as special-status by the resource agencies, shall be conducted by a qualified biologist;

Action CON 1c: Develop CEQA Thresholds of Significance to assist staff, project applicants, and decision-makers in determining whether a project may have a significant effect on the environment under Section 21082.2 of the California Environmental Quality Act (CEQA).

14.3 Impact BIO-2. Development of the Proposed Project Would Have a Potentially Significant Impact on American Badger

The American badger is a CDFW designated species of special concern. It has no federal status. The nearest record (Occurrence #407) documents one adult badger found dead on the southbound side of Highway 101 along a non-native annual grassland with scattered oaks



roughly 2.4 miles southeast of the project site. Due to the long history of disturbance, the project site only provides marginal habitat for this species. Therefore, it seems unlikely that this secretive mammal would be found onsite. Regardless, in the absence of surveys, development of the project could result in impacts to American badgers.

Accordingly, impacts to American badger are regarded as potentially significant pursuant to the CEQA. Mitigation could be implemented to reduce these impacts to levels regarded as less than significant pursuant to the CEQA.

14.4 Condition of Approval BIO-2. Mitigation for Potentially Significant Impacts to American Badger

To ensure there are no direct impacts to American badger, a qualified biologist will conduct a preconstruction den survey no more than 14 days prior to site grading. If a potential den is located, infrared camera stations will be set up and maintained for three (3) consecutive nights at the potential den openings prior to initiation of grading/work activities to determine the status of the potential dens. If American badger is not found to be using the den, the burrow (den) will be filled, and site grading may proceed in the vicinity of this burrow(s) unhindered. However, if American badger is found to be using a den within the area of proposed ground disturbance, provided it is not a natal den, the badger will be passively and humanely evicted from its den if it could be impacted by grading or other ground disturbing activities; a one-way eviction door placed at the den opening is the least invasive option. If a natal den is found, eviction will not take place until the young are no longer dependent on the burrow. The project proponent will consult with CDFW regarding the natal den and to discuss a suitable eviction plan. The final eviction plan will be submitted to the City of Cotati prior to implementation. Any American badger found onsite will be reported to CDFW's CNDDDB.

As conditioned, the Project is consistent with the City's General Plan policies and actions listed below.

Implementation of this condition of approval would reduce impacts to American badger to a level considered less than significant pursuant to CEQA.

14.4.1 RELEVANT 2013 GENERAL PLAN EIR MITIGATING POLICIES AND ACTIONS

Action CON 1a: Require development project proposals, infrastructure projects, long-range planning projects, and other projects that may potentially impact special-status species and sensitive resources to submit a biological resources evaluation which determines whether significant adverse impacts will occur. Evaluations shall be carried out under the direction of the Community Development Department and consistent with applicable state and federal guidelines. Projects shall be designed to avoid or reduce impacts to the maximum extent feasible. Where adverse impacts cannot be feasibly reduced or avoided through project design, projects shall include the implementation of site-specific or project-specific effective mitigation strategies developed by a qualified professional in consultation with state or federal resource agencies with jurisdiction (if applicable) that may include, but are not limited to, the following strategies:



- a. Preservation of habitat and connectivity of adequate size, quality, and configuration to support the special-status species. Connectivity shall be determined based on the specifics of the species' needs.
- b. Project design measures, such as clustering of structures or locating project features to avoid known locations of special-status species and/or sensitive habitats.
- c. Provision of supplemental planting and maintenance of grasses, shrubs, and trees of similar quality and quantity to provide adequate vegetation cover to enhance water quality, minimize sedimentation and soil transport, and provide adequate shelter and food for wildlife.
- d. Protection for habitat and the known locations of special-status species through adequate buffering or other means.
- e. Provision of replacement habitat of like quantity and quality on or off site for special-status species. Preference shall be given to the preservation of habitat as close to the area of impact as feasible, so long as that habitat is of comparable quality.

14.5 Impact BIO-3. Development of the Proposed Project Would Have a Significant Impact on Protected Trees

In accordance with Appendix G (Environmental Checklist Form) of the CEQA Guidelines, implementing the project would have a significant biological impact if it would: conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

Trees present on the project site are comprised primarily of valley oaks, but also several non-native (ornamental) tree species along Highway 116 and the eastern project site boundary. Pursuant to the City of Cotati Tree Ordinance, mitigation is required for impacts to protected trees. *As such, pursuant to the CEQA, development of the proposed project could result in significant impacts to protected trees.* Such impacts could be mitigated to a level considered less than significant with implementation of Condition of Approval BIO-3 below.

14.6 Condition of Approval BIO-3. Protected Trees

The project will impact both native and non-native trees subject to the City of Cotati's Tree Protection Ordinance. Tree replacement mitigation measures are derived from the City of Cotati's *Tree Impact and Mitigation Policy Derived from City of Cotati Tree Mitigation and Protection Ordinance, Article 5, Chapter 17.54 of the City of Cotati Municipal Code Title 17 Land Use Code. Tree mitigation replacement numbers derived from Section 17.54.050 (Tree Required Replacement Trees. Planting and Replacement) Table 5-2.* The applicant shall submit an arborist report with a tree permit application as part of the application for the development project. The applicant shall mitigate impacts to trees as required by the City of Cotati.

14.6.1 RELEVANT 2013 GENERAL PLAN EIR MITIGATING POLICIES AND ACTIONS



Policy CON 1.5: Conserve existing native vegetation where possible and integrate plant species native to the region into development and infrastructure projects where appropriate.

Policy CON 1.6: Avoid removal of large, mature trees that provide wildlife habitat or contribute to the visual quality of the environment to the greatest extent feasible through appropriate project design and building siting. If full avoidance is not possible, prioritize planting of replacement trees on-site over off-site locations.

Action CON 1a: Require development project proposals, infrastructure projects, long-range planning projects, and other projects that may potentially impact special-status species and sensitive resources to submit a biological resources evaluation which determines whether significant adverse impacts will occur. Evaluations shall be carried out under the direction of the Community Development Department and consistent with applicable state and federal guidelines. Projects shall be designed to avoid or reduce impacts to the maximum extent feasible. Where adverse impacts cannot be feasibly reduced or avoided through project design, projects shall include the implementation of site-specific or project-specific effective mitigation strategies developed by a qualified professional in consultation with state or federal resource agencies with jurisdiction (if applicable) that may include, but are not limited to, the following strategies:

- c. Provision of supplemental planting and maintenance of grasses, shrubs, and trees of similar quality and quantity to provide adequate vegetation cover to enhance water quality, minimize sedimentation and soil transport, and provide adequate shelter and food for wildlife.

Action CON 3k: Continue implementing the City Tree Preservation and Protection Ordinance (Chapter 17.54 of the Municipal Code).

Action CON 3l: Periodically undertake a citywide notification program to notify the citizens and arborists doing business within the City limits of the tree preservation requirements.

Action CON 3o: During the development review process, discourage the loss of native trees in accordance with the Tree Preservation and Protection Ordinance (Chapter 17.54 of the Municipal Code).

Action CON 3p: The City shall continue to implement the landscape and tree ordinance to give preference to native and drought tolerant species. The Planning Division shall review and revise as necessary.

Action CON 3q: Design Review criteria shall be prepared to require that creeks, trees, views and features unique to the site be preserved and incorporated into design proposals. The Design Review Committee shall insure that new development meets the criteria.

Action CON 3r: Through the use of public funds, where available, provide educational plant and tree labeling in City parks and City-maintained plant demonstration areas to educate and inform residents of native plant and tree species planted and maintained in Cotati.



14.7 Impact BIO-4. Development of the Proposed Project Would Have a Significant Impact on Waters of the State.

As discussed above, all seasonal wetlands on the project site have been determined by the Corps to be construction-related wetlands outside of federal jurisdiction. However, these construction-related features still fall under the jurisdiction of the RWQCB as waters of the State. Any impacts to these waters of the State would have to be mitigated to the satisfaction of the RWQCB prior to the time this resource agency would issue a permit for impacts to such features. Prior to filling these isolated wetlands, the applicant will need to apply to the RWQCB to obtain a Notice of Applicability (NOA) pursuant to the Porter-Cologne Water Quality Control Act or to obtain a Conditional Waiver of Waste Discharge Requirements for Specific Categories of Low Threat Discharge in the North Coast Region (Order No. R1-2022-0031).

As such, pursuant to the CEQA, development of the proposed project would result in significant impacts to waters of the State. Such impacts could be mitigated to a level considered less than significant.

14.8 Condition of Approval BIO-4. Waters of the United States and/or State

Impacts to waters of the State can be reduced to less-than-significant levels with incorporation of mitigation that includes avoidance, minimization of impacts, and/or mitigation compensation.

Under the proposed project design, the project will impact roughly 0.27 acre of non-federal waters of the State. The applicant will need to compensate for the loss of waters of the State via the purchase of wetland credits from a RWQCB-approved wetland mitigation bank at no less than a 1:1 impacts to mitigation ratio. This is the minimum mitigation acreage. Wetland credits will be purchased at the RWQCB's required mitigation ratios in compliance with the terms and conditions of the "permit" authorized for the project. Proof of the purchase of wetland mitigation credits shall be provided to the City of Cotati, and the RWQCB in advance of grading activities on the project site. This credit acreage may be modified by the RWQCB and will appear as a condition of issued permits from these agencies. Should the mitigation requirements differ in the conditions of the issued RWQCB permit, these conditions must be implemented by the project.

Implementation of this condition of approval would reduce project impacts to waters of the State to a level considered less than significant pursuant to CEQA.

14.8.1 RELEVANT 2013 GENERAL PLAN EIR MITIGATING POLICIES AND ACTIONS

Policy CON 1.1: Sensitive habitats afforded protection and special consideration in this General Plan include wetlands, vernal pools, riparian areas, wildlife and fish migration corridors, native plant nursery sites, waters of the U.S., sensitive natural communities, and other habitats designated by state and federal agencies and laws.

Policy CON 1.2: Preserve and enhance those biological communities that contribute to the City's and the region's rich biodiversity including, but not limited to, annual grasslands, freshwater marshes, wetlands, vernal pools, riparian areas, aquatic habitat, oak woodlands, and agricultural lands.



Policy CON 1.7: Consult with all the resource agencies during the CEQA review process for proposed developments to help identify wetland and vernal pool habitat that has candidacy for restoration, conservation, and/or mitigation. Focus restoration and/or conservation efforts on areas that would maximize multiple beneficial uses for such habitat and provides opportunities for mitigation banking.

Policy CON 1.9: Protect and enhance streams, channels, seasonal and permanent marshland, wetlands, sloughs, riparian habitat, and vernal pools through sound land use planning, community design, and site planning.

Policy CON 1.13: Prioritize the use of natural features such as bioswales, vegetation, retention ponds, and other measures to remove surface water pollutants prior to discharge into surface waters.

Action CON 1f: Utilize existing regulations and procedures, including but not limited to the Land Use Code, Design Review, and the environmental review process (CEQA) to conserve wetlands and riparian habitat within the City and the Urban Growth Boundary. Comply with the federal and state requirements, including no net loss of wetlands using mitigation strategies such as:

- a. Avoidance of wetlands and riparian habitat through site design;
- b. Clustered development;
- c. Transfer of development rights; and/or
- d. Compensatory mitigation, such as habitat restoration or habitat creation.

As conditioned, the Project is consistent with this policy.

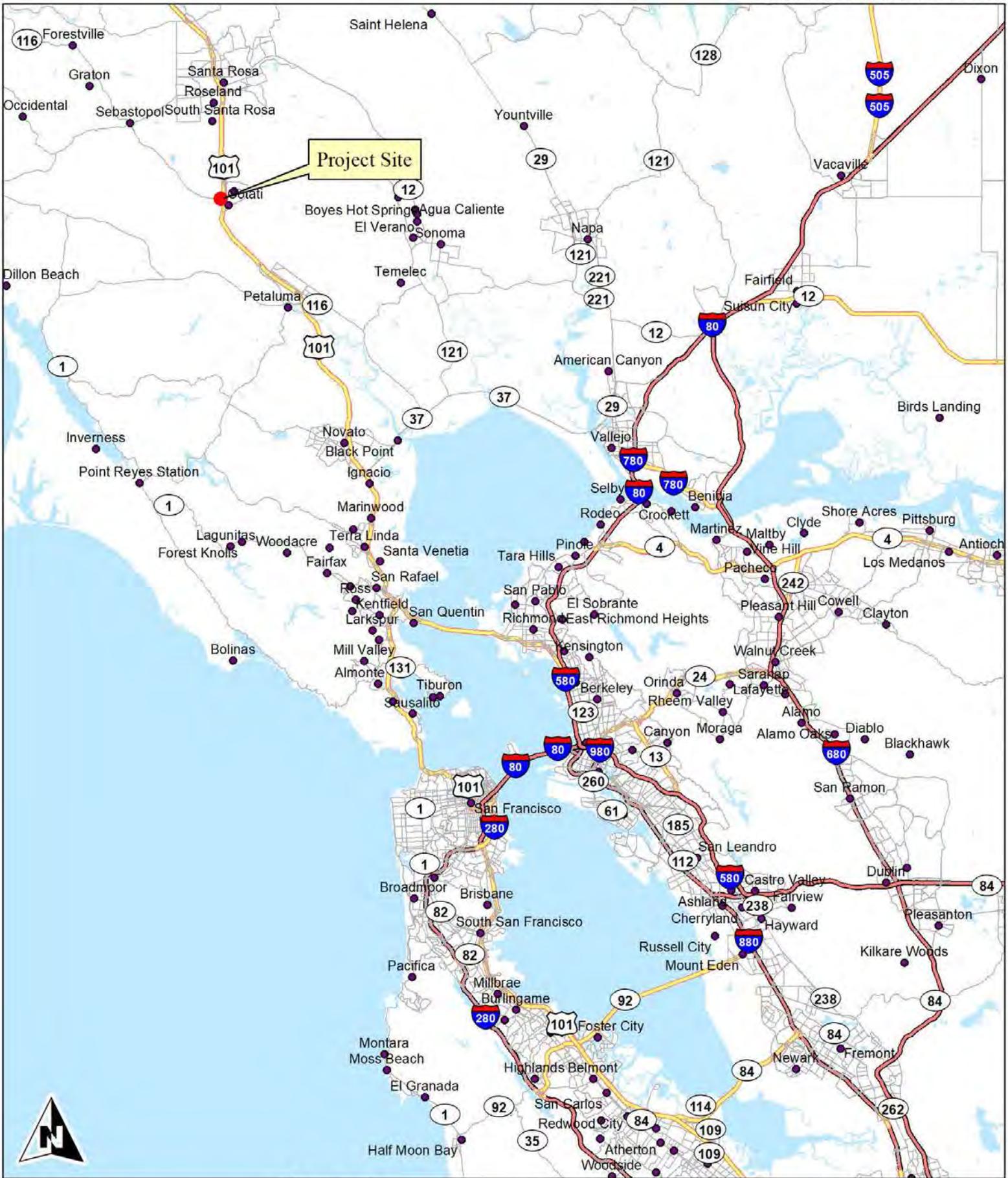


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Figure 1. Redwood Row Project Site
 Regional Map
 City of Cotati, California

County: Sonoma
 Map Preparation Date: January 8, 2024

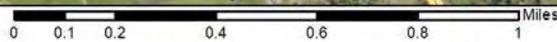


Figure 2. Redwood Row Project Site
Location Map
City of Cotati, California

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38.332692 -122.716815
Section: 26; T6N R8W
7.5-Minute Cotati quadrangle
Aerial Photograph Source: ESRI
Map Preparation Date: January 8, 2024



Project Site

Highway 116

Redwood Dr

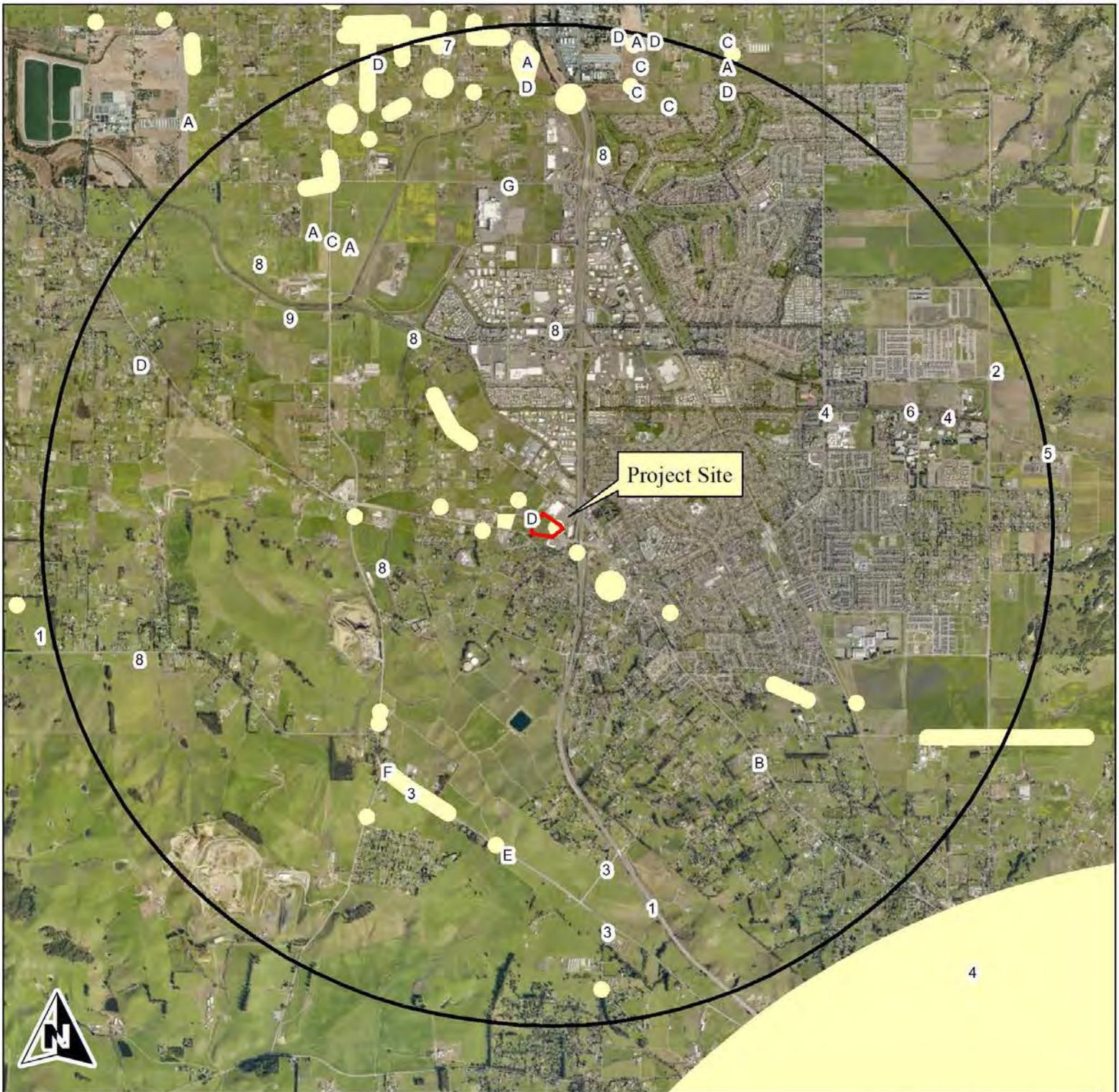
W Cobalt Ave

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0 50 100 200 300 400 500 Feet

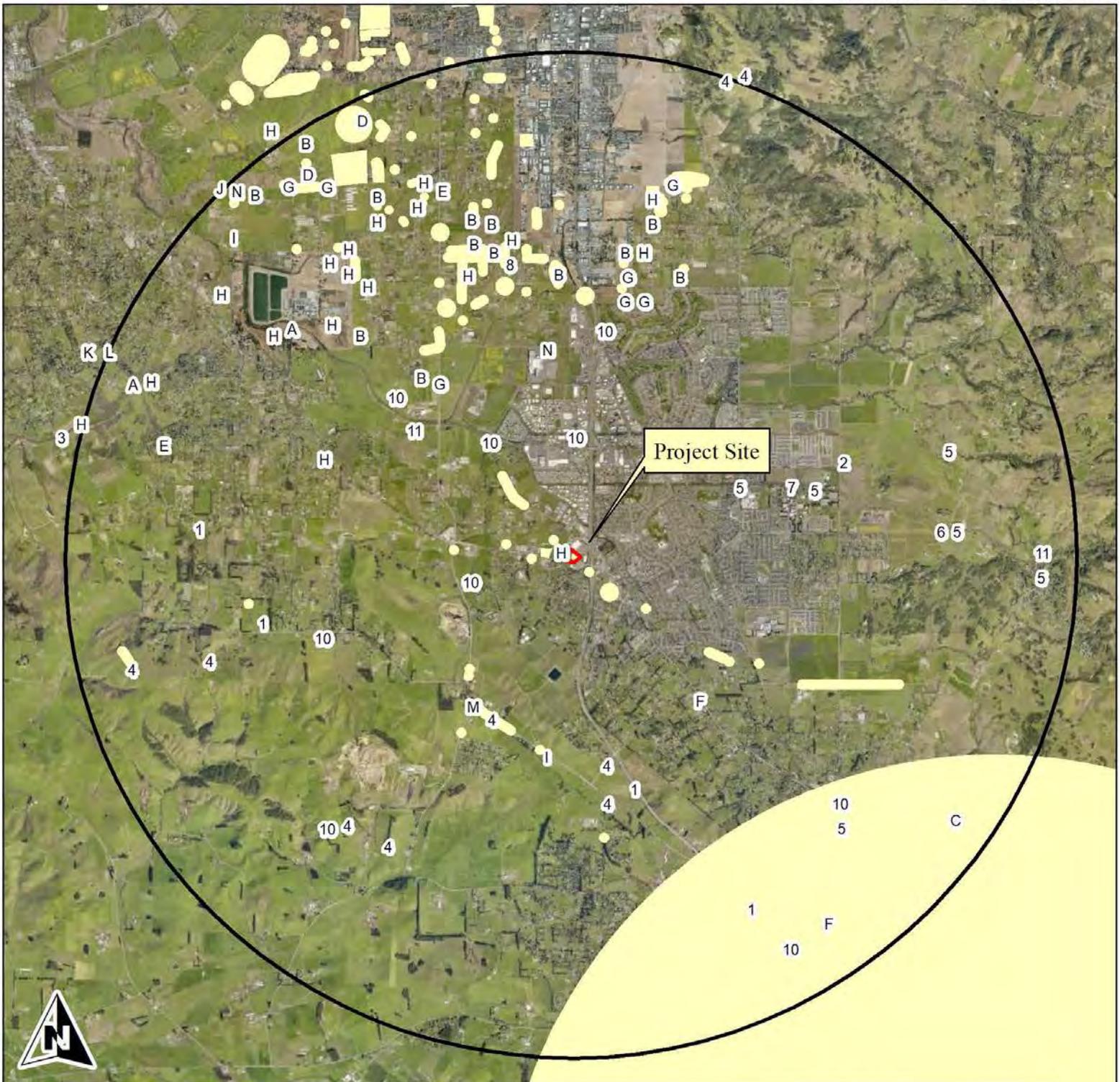
Figure 3. Aerial Photograph of the Redwood Row Project Site City of Cotati, California

Aerial Photograph Source: ESRI
Map Preparation Date: January 8, 2024



- | | | |
|---|---|--------------------------------|
| 1 American badger | 6 Tricolored Blackbird | C <i>Lasthenia burkei</i> |
| 2 Burrowing Owl | 7 Western bumble bee | D <i>Limnanthes vinculans</i> |
| 3 California red-legged frog | 8 Western pond turtle | E <i>Microseris paludosa</i> |
| California tiger salamander | 9 Western Yellow-billed Cuckoo | F <i>Trifolium amoenum</i> |
| 4 Foothill yellow-legged frog - north coast DPS | A <i>Blennosperma bakeri</i> | G <i>Trifolium hydrophilum</i> |
| 5 Steelhead - central California coast DPS | B <i>Hemizonia congesta ssp. congesta</i> | |

Figure 4A. Known Records for Special-Status Species
 Within 3 Miles of the
 Redwood Row Project Site



1 American badger	9 Western pond turtle	G <i>Lasthenia burkei</i>
2 Burrowing Owl	10 Western Yellow-billed Cuckoo	H <i>Limnanthes vinculans</i>
3 California freshwater shrimp	A <i>Alopecurus aequalis</i> var. <i>sonomensis</i>	I <i>Microseris paludosa</i>
4 California red-legged frog	B <i>Blennosperma bakeri</i>	J <i>Navarretia leucocephala</i> ssp. <i>bakeri</i>
California tiger salamander - Sonoma County DPS	C <i>Centromadia parryi</i> ssp. <i>parryi</i>	K <i>Potentilla uliginosa</i>
5 Foothill yellow-legged frog - north coast DPS	D <i>Downingia pusilla</i>	L <i>Rhynchospora californica</i>
6 Steelhead - central California coast DPS	E <i>Fritillaria liliacea</i>	M <i>Trifolium amoenum</i>
7 Tricolored Blackbird	F <i>Hemizonia congesta</i> ssp. <i>congesta</i>	N <i>Trifolium hydrophilum</i>
8 western bumble bee		

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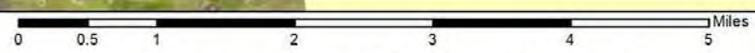


Figure 4B. Known Records for Special-Status Species
 Within 5 Miles of the
 Redwood Row Project Site

Map Preparation Date:
 January 8, 2024
 — 5-Mile Radius
 Source: CDFW, California
 Natural Diversity Data Base, 2024

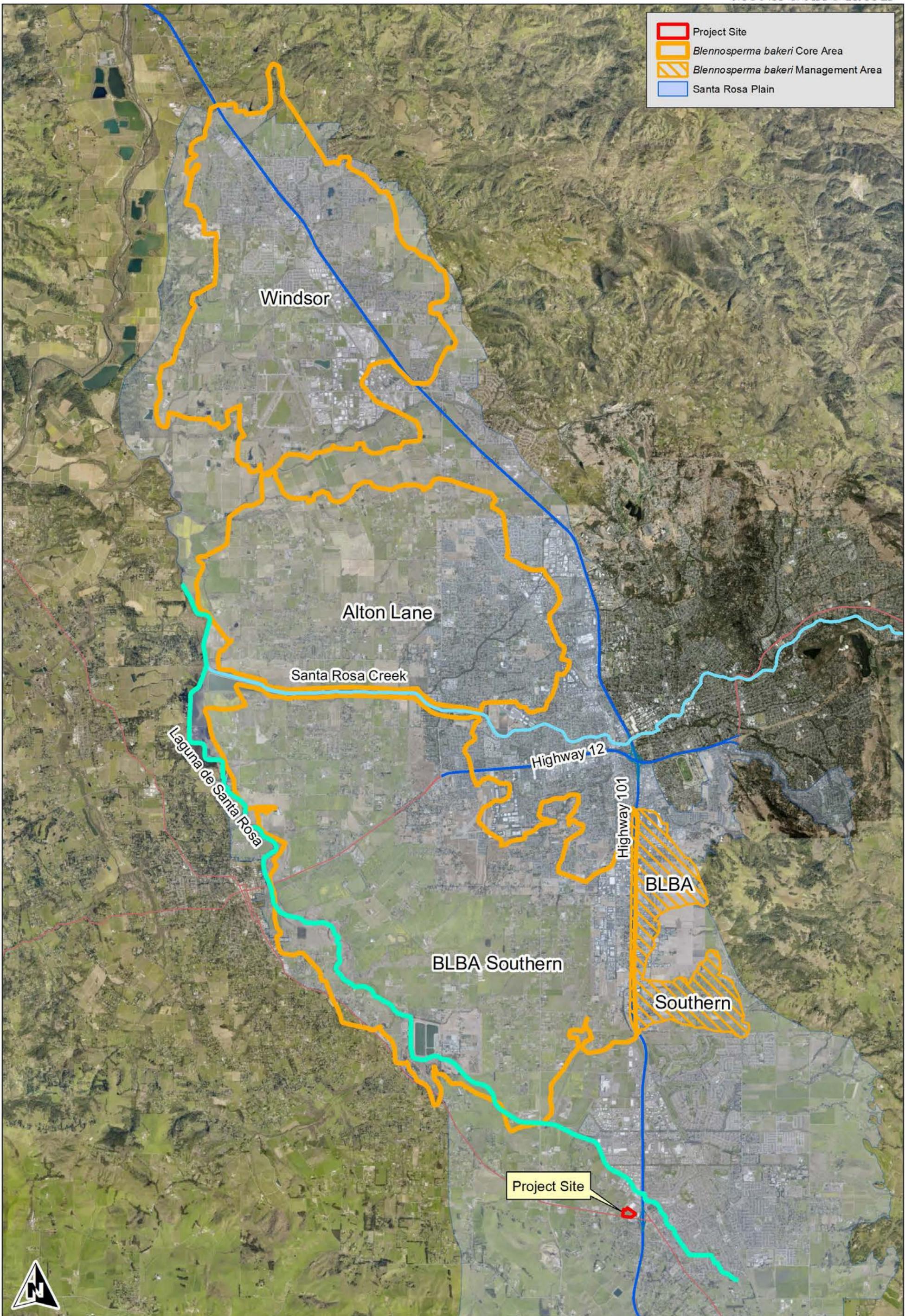


Figure 5. *Blennosperma bakeri* Core and Management Areas (from USFWS 2016) in the Vicinity of the Redwood Row Project Site

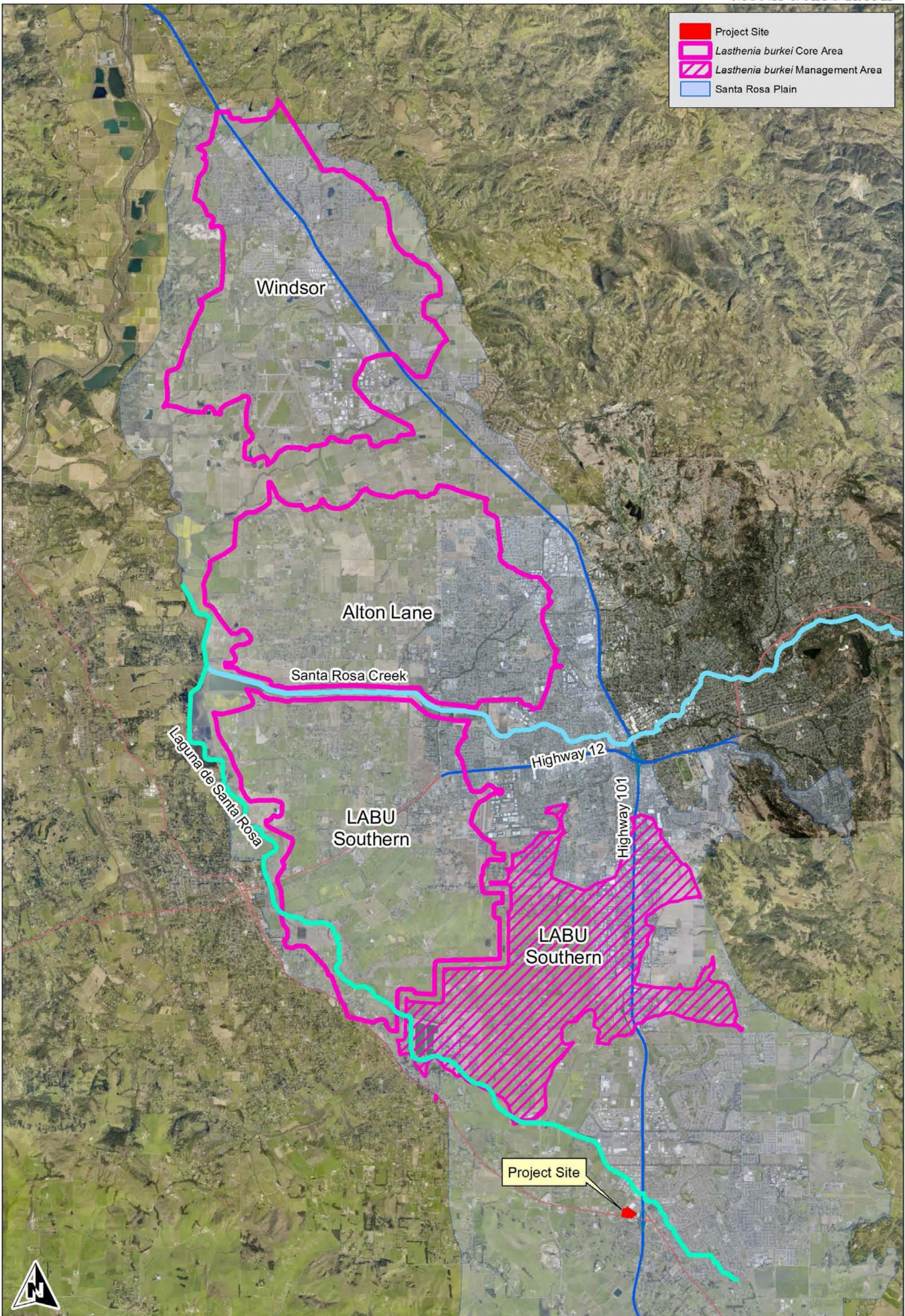


Figure 6. *Lasthenia burkei* Core and Management Areas (from USFWS 2016) in the Vicinity of the Redwood Row Project Site

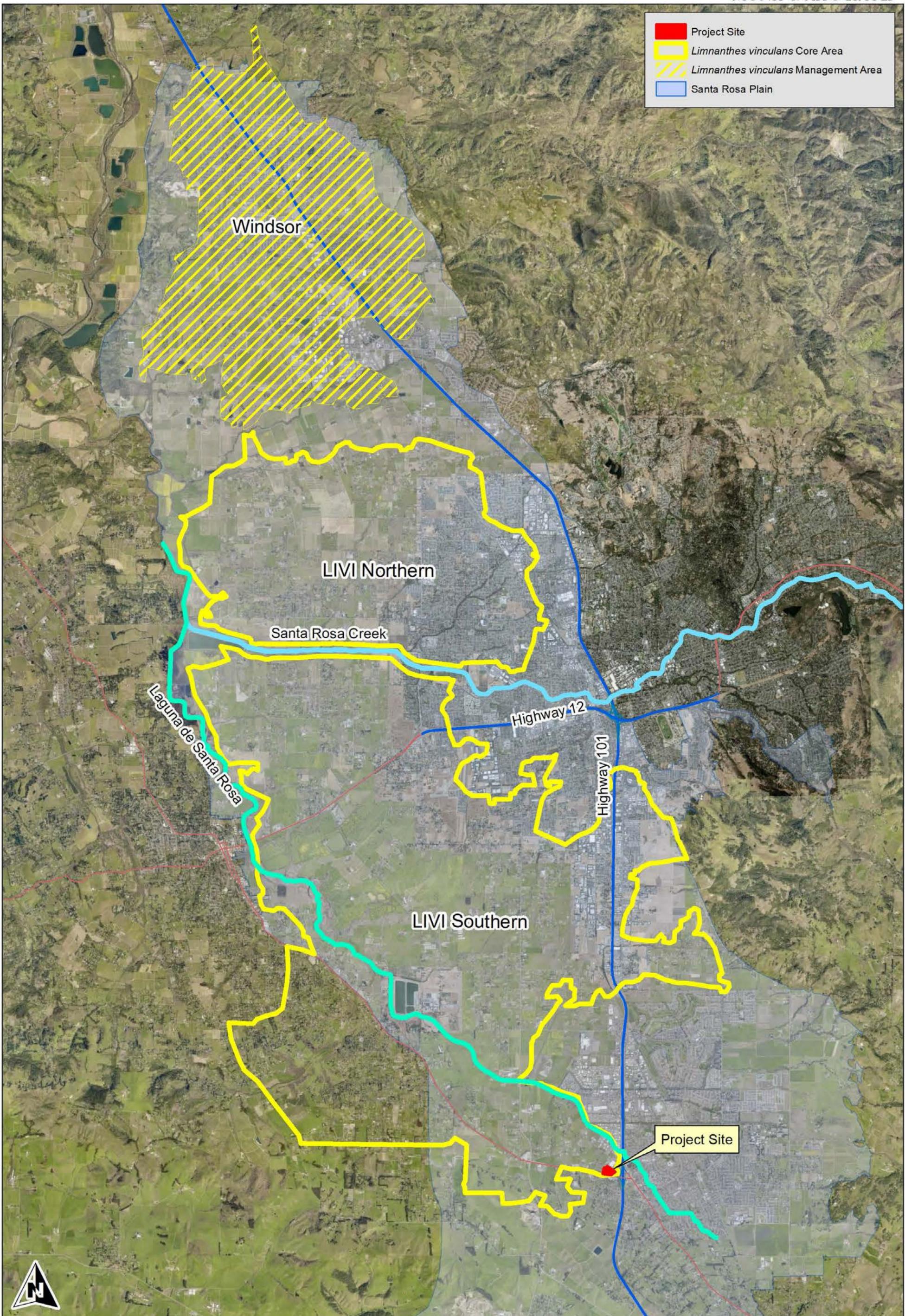


Figure 7. *Limnanthes vinculans* Core and Management Areas (from USFWS 2016) in the Vicinity of the Redwood Row Project Site

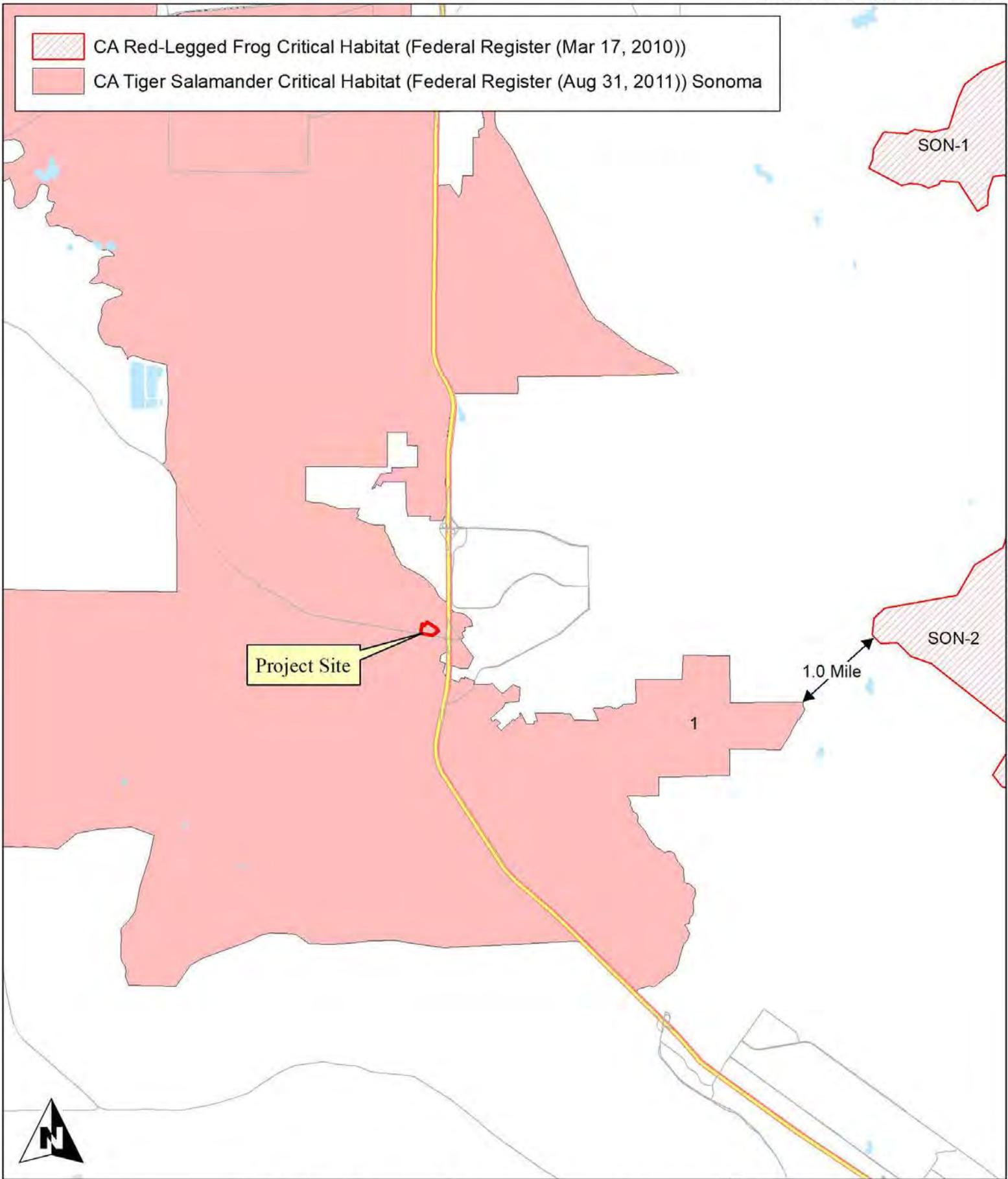


Figure 8. USFWS Critical Habitat
in the Vicinity of the
Redwood Row Project Site

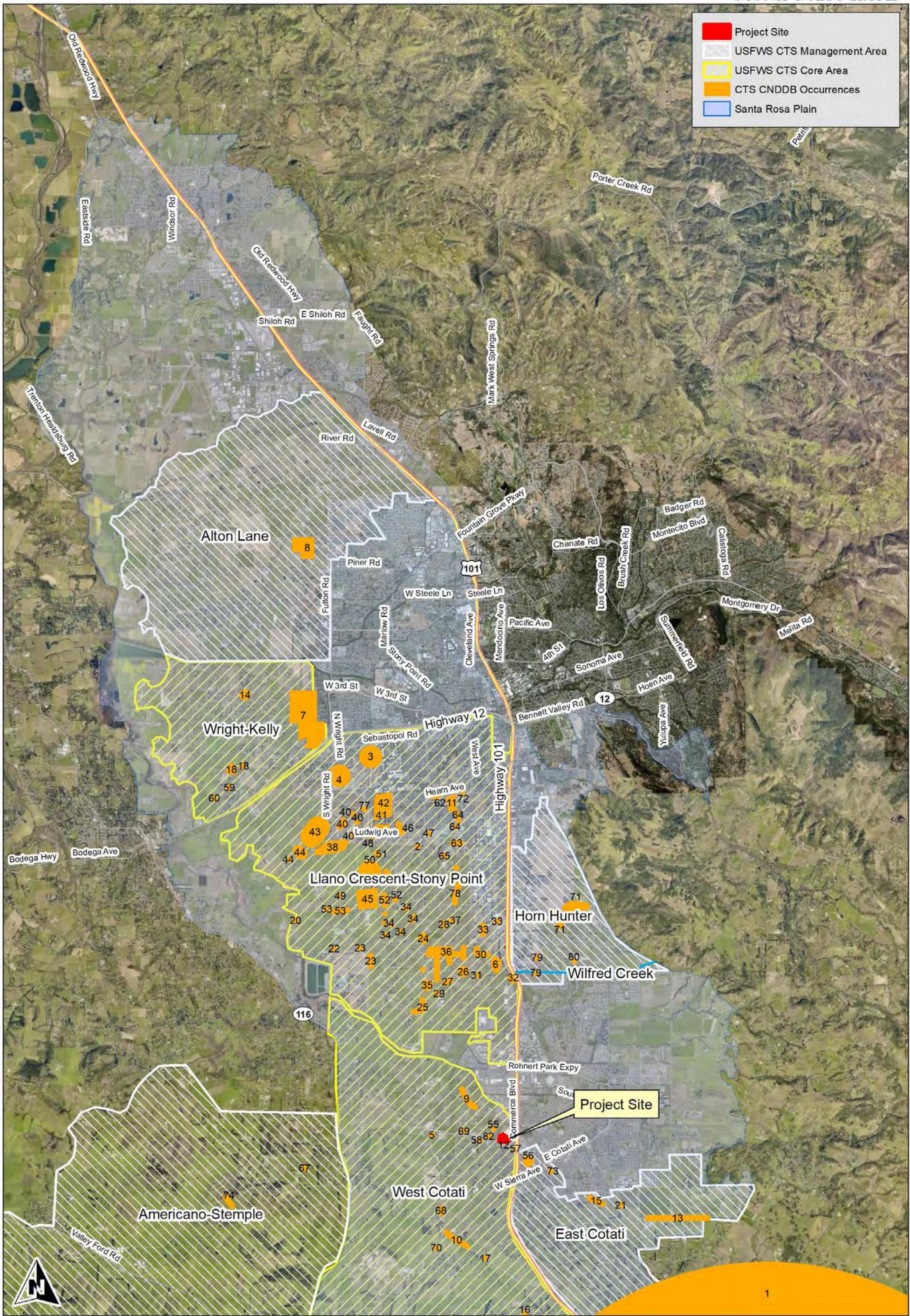


Figure 9. Santa Rosa Plain California Tiger Salamander Core and Management Areas (USFWS 2016) in the Vicinity of the Redwood Row Project Site

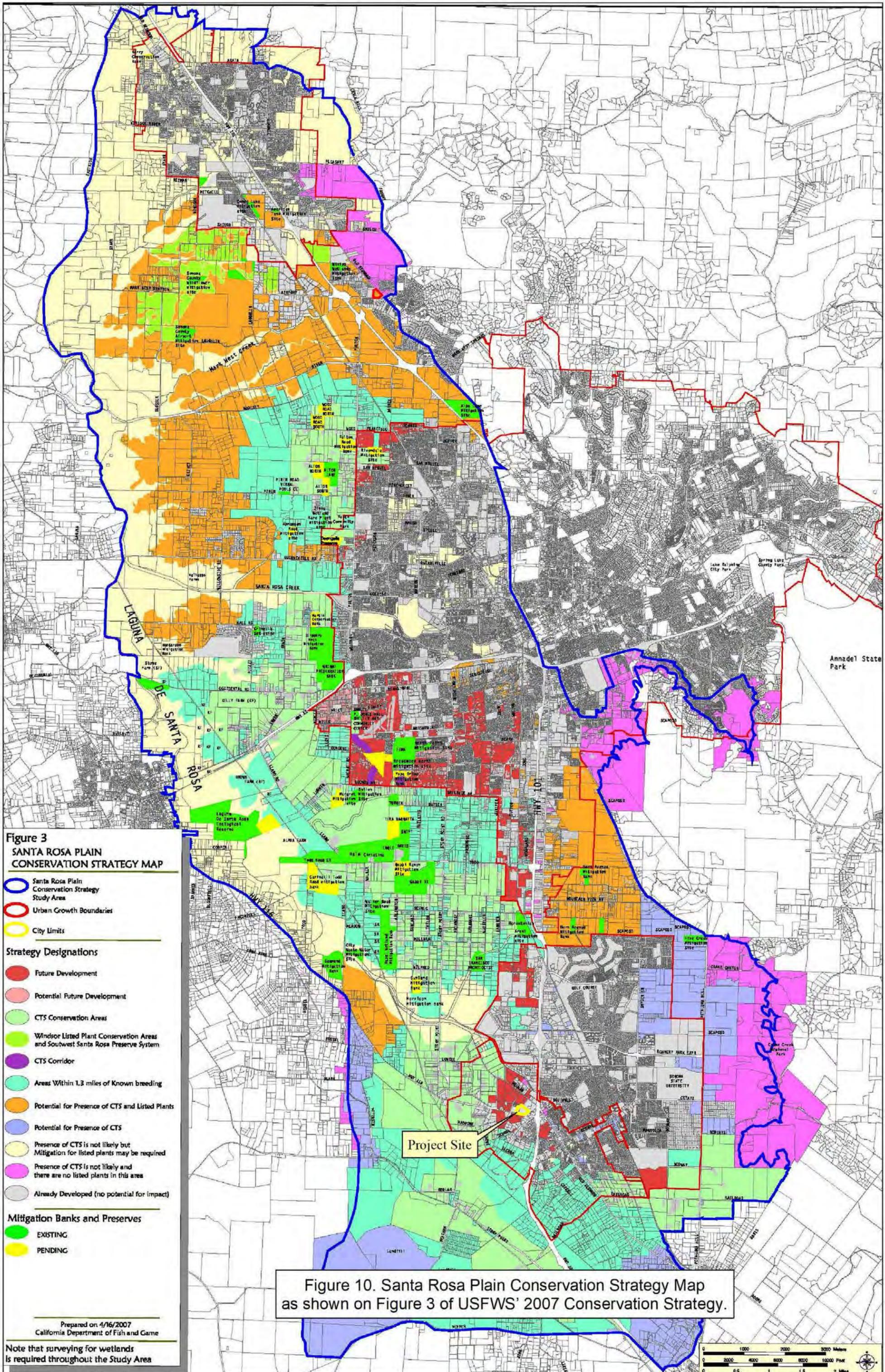


Figure 3
SANTA ROSA PLAIN
CONSERVATION STRATEGY MAP

- Santa Rosa Plain Conservation Strategy Study Area
 - Urban Growth Boundaries
 - City Limits
- Strategy Designations**
- Future Development
 - Potential Future Development
 - CTS Conservation Areas
 - Windsor Listed Plant Conservation Areas and Southwest Santa Rosa Preserve System
 - CTS Corridor
 - Areas Within 1.3 miles of Known breeding
 - Potential for Presence of CTS and Listed Plants
 - Potential for Presence of CTS
 - Presence of CTS is not likely but Mitigation for listed plants may be required
 - Presence of CTS is not likely and there are no listed plants in this area
 - Already Developed (no potential for impact)
- Mitigation Banks and Preserves**
- EXISTING
 - PENDING

Project Site

Figure 10. Santa Rosa Plain Conservation Strategy Map as shown on Figure 3 of USFWS' 2007 Conservation Strategy.

Prepared on 4/16/2007
 California Department of Fish and Game
 Note that surveying for wetlands is required throughout the Study Area



Table 1
Plant Species Observed on the Redwood Row Project Site

Angiosperms - Dicots

Apiaceae

* <i>Daucus carota</i>	Queen Anne's lace
* <i>Foeniculum vulgare</i>	Sweet fennel

Asteraceae

<i>Baccharis pilularis subsp. consanguinea</i>	Coyote brush
<i>Erigeron canadensis</i>	Horseweed
* <i>Helminthotheca echioides</i>	Bristly ox-tongue
* <i>Hypochaeris radicata</i>	Rough cat's-ear
* <i>Lactuca serriola</i>	Prickly lettuce
* <i>Leontodon saxatilis subsp. longirostris</i>	Long-beaked hawkbit
<i>Madia elegans</i>	Common madia
* <i>Sonchus asper subsp. asper</i>	Prickly sow-thistle

Brassicaceae

* <i>Raphanus sativus</i>	Wild radish
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Convolvulaceae

* <i>Convolvulus arvensis</i>	Bindweed
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Fabaceae

<i>Acmispon americanus var. americanus</i>	Spanish-clover
* <i>Lathyrus latifolius</i>	Perennial sweet pea
<i>Lupinus bicolor</i>	Bicolored lupine
<i>Lupinus nanus</i>	Sky lupine
* <i>Medicago polymorpha</i>	California burclover
* <i>Trifolium hirtum</i>	Rose clover
* <i>Vicia sativa</i>	Common vetch
* <i>Vicia sativa subsp. sativa</i>	Spring vetch

Fagaceae

<i>Quercus agrifolia var. agrifolia</i>	Coast live oak
<i>Quercus lobata</i>	Valley oak

Geraniaceae

* <i>Erodium botrys</i>	Broad-leaf filaree
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Lamiaceae

* <i>Mentha pulegium</i>	Pennyroyal
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Limnanthaceae

<i>Limnanthes douglasii subsp. douglasii</i>	Douglas meadowfoam
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Lythraceae

* <i>Lythrum hyssopifolia</i>	Hyssop loosestrife
-------------------------------	--------------------

Myrsinaceae

* <i>Lysimachia arvensis</i>	Scarlet pimpernel
------------------------------	-------------------

Onagraceae

<i>Epilobium brachycarpum</i>	Summer cottonweed
-------------------------------	-------------------

* Indicates a non-native species

Table 1
Plant Species Observed on the Redwood Row Project Site

Orobanchaceae	
* <i>Parentucellia viscosa</i>	Yellow glandweed
<i>Triphysaria versicolor subsp. faucibarbata</i>	Yellow owl's-clover
Papaveraceae	
<i>Eschscholzia californica</i>	California poppy
Plantaginaceae	
* <i>Kickxia elatine</i>	Sharppoint fluellin
Polygonaceae	
* <i>Rumex acetosella</i>	Sheep sorrel
* <i>Rumex crispus</i>	Curly dock
Ranunculaceae	
<i>Ranunculus aquatilis</i>	Aquatic buttercup
Rosaceae	
* <i>Rubus armeniacus</i>	Himalayan blackberry
Solanaceae	
* <i>Physalis philadelphica</i>	Tomatillo
Angiosperms -Monocots	
Juncaceae	
<i>Juncus bufonius</i>	Toad rush
<i>Juncus bufonius var. bufonius</i>	Toad rush
<i>Juncus effusus subsp. pacificus</i>	Pacific rush
<i>Juncus patens</i>	Spreading rush
Juncaginaceae	
<i>Triglochin scilloides</i>	Flowering quillwort
Poaceae	
* <i>Aira caryophyllea</i>	Silver European hairgrass
* <i>Avena barbata</i>	Slender wild oat
* <i>Briza maxima</i>	Rattlesnake grass
* <i>Briza minor</i>	Small quaking grass
* <i>Bromus diandrus</i>	Ripgut grass
* <i>Bromus hordeaceus</i>	Soft chess
* <i>Cynodon dactylon</i>	Bermudagrass
* <i>Festuca perennis</i>	perennial ryegrass
* <i>Hordeum marinum subsp. gussoneanum</i>	Mediterranean barley
* <i>Hordeum murinum subsp. leporinum</i>	Hare barley
* <i>Phalaris aquatica</i>	Harding grass
<i>Pleuropogon californicus var. californicus</i>	Annual semaphore grass
* <i>Poa annua</i>	Annual bluegrass
* <i>Polypogon monspeliensis</i>	Annual beard grass

Table 2
Wildlife Observed in 2023 on the Redwood Row Project Site

Amphibians

Sierran treefrog	<i>Pseudacris sierra</i>
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Reptiles

Western fence lizard	<i>Sceloporus occidentalis</i>
California red-sided garter snake	<i>Thamnophis sirtalis infernalis</i>

Birds

Turkey Vulture	<i>Streptopelia decaocto</i>
Red-shouldered Hawk	<i>Buteo lineatus</i>
Red-tailed Hawk	<i>Buteo jamaicensis</i>
Eurasian Collared-Dove	<i>Streptopelia decaocto</i>
Anna's Hummingbird	<i>Calypte anna</i>
California Scrub Jay	<i>Aphelocoma californica</i>
Cliff Swallow	<i>Petrochelidon pyrrhonota</i>
Western Bluebird	<i>Sialia mexicana</i>
European Starling	<i>Sturnus vulgaris</i>
Yellow-rumped Warbler	<i>Setophaga coronata</i>
Brewer's Blackbird	<i>Euphagus cyanocephalus</i>

Table 3

Special-Status Plant Species Known to Occur within 5 Miles of the Redwood Row Project Site

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
Asteraceae					
<i>Blennosperma bakeri</i> Sonoma sunshine	Fed: FE State: CE CNPS: Rank 1B.1	February-April	Valley and foothill grassland (mesic); vernal pools.	Closest record located 2.1 miles northwest of the project site (Occurrence No. 20).	None. No suitable vernal pool habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected. See text.
<i>Centromadia parryi parryi</i> Pappose tarplant	Fed: - State: - CNPS: Rank 1B.2	May-November	Coastal prairie; meadows and seeps; marshes and swamps; vernal wet grassland (sometimes alkaline).	Closest record located 4.6 miles southeast of the project site (Occurrence No. 13).	None. No suitable coastal prairie, marsh, or wet meadow habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected.
<i>Hemizonia congesta congesta</i> Congested-headed hayfield tarplant	Fed: - State: - CNPS: Rank 1B.2	April-November	Valley and foothill grassland. 20 to 560 meters. Clay soils	Closest record located 0.8 miles southeast of the project site (Occurrence No. 12).	None. No suitable clay soils on the project site which was mass graded and filled with imported soils in 2002 and has been disked annually since then. No impacts expected.
<i>Lasthenia burkei</i> Burke's goldfields	Fed: FE State: CE CNPS: Rank 1B.1	April-June	Meadows and seeps (mesic); vernal pools.	Closest record located 2.2 miles northwest of the project site (Occurrence No. 29).	None. No suitable vernal pool habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected. See text.
<i>Microseris paludosa</i> Marsh microseris	Fed: - State: - CNPS: Rank 1B.2	April-July	Closed-cone coniferous forest; cismontane woodland; coastal scrub; valley and foothill grassland. 5-300 m.	Closest record located 1.7 miles south of the project site (Occurrence No. 18).	None. No suitable forest, woodland, or wet meadow habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected.
Campanulaceae					
<i>Downingia pusilla</i> Dwarf downingia	Fed: - State: - CNPS: Rank 2.2	March-May	Valley and foothill grassland (mesic); vernal pools.	Closest record located 4.7 miles northwest of the project site (Occurrence No. 111).	None. No suitable vernal pool habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected.

Table 3

Special-Status Plant Species Known to Occur within 5 Miles of the Redwood Row Project Site

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
Cyperaceae					
<i>Rhynchospora californica</i> California beaked-rush	Fed: - State: - CNPS: Rank 1B.1	May-July	Lower montane conifers forest; meadows (seeps); marshes and swamps (freshwater).	Closest record located 5.0 miles northwest of the project site (Occurrence No. 2).	None. No suitable freshwater marsh or mesic meadow habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected.
Fabaceae					
<i>Trifolium amoenum</i> Showy Indian clover	Fed: FE State: - CNPS: Rank 1B.1	April-June	Valley and foothill grassland (sometimes serpentinite)	Closest record located 1.4 miles south of the project site (Occurrence No. 18).	None. No suitable serpentine grassland habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected.
<i>Trifolium hydrophilum</i> Saline clover	Fed: - State: - CNPS: Rank 1B.2	April-June	Marshes and swamps; valley and foothill grassland (mesic, alkaline); vernal pools. 0-300 m.	Closest record located 4.6 miles southeast of the project site (Occurrence No. 49).	None. No suitable freshwater marsh or alkaline vernal pool habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected.
Liliaceae					
<i>Fritillaria liliacea</i> Fragrant fritillary	Fed: - State: - CNPS: Rank 1B.2	February-April	Coastal prairie; coastal scrub; valley and foothill grassland; [often serpentinite].	Closest record located 4.0 miles north of the project site (Occurrence No. 49).	None. No suitable coastal prairie, scrub, or serpentine scrub habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected.
Limnanthaceae					
<i>Limnanthes vinculans</i> Sebastopol meadowfoam	Fed: FE State: CE CNPS: Rank 1B.1	April-May	Meadows (mesic); vernal pools.	Closest record is in the vicinity of the project site (Occurrence No.35).	None. No suitable vernal pool habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected. See text.

Table 3

Special-Status Plant Species Known to Occur within 5 Miles of the Redwood Row Project Site

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
Poaceae					
<i>Alopecurus aequalis sonomensis</i> Sonoma alopecurus	Fed: FE State: - CNPS: Rank 1B.1	May-July	Marshes & swamps (freshwater); riparian scrub.	Closest record located 3.4 miles northwest of the project site (Occurrence No. 2).	None. No suitable marsh or riparian scrub habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts expected.
Polemoniaceae					
<i>Navarretia leucocephala bakeri</i> Baker's navarretia	Fed: - State: - CNPS: Rank 1B.1	May-July	Cismontane woodland; lower montane coniferous forest; meadows (mesic); valley and foothill grassland; vernal pools.	Closest record located 5.0 miles northwest of the project site (Occurrence No. 2).	None. No suitable forest, woodland, vernal pools, or wet meadow habitat on the project site which was mass graded in 2002 and has been disked annually since then. No impacts
Rosaceae					
<i>Potentilla uliginosa</i> Cunningham Marsh cinquefoil	Fed: State: CNPS: Rank 1A	May-August	Permanent freshwater wetlands (oligotrophic); marshes and swamps.	Closest record located 5.0 miles west of the project site (Occurrence No. 1).	None. Species extirpated in California. No suitable freshwater marsh or wetland habitat on the project site which was mass graded in 2002 and has been disked annually since then. No

Table 3

Special-Status Plant Species Known to Occur within 5 Miles of the Redwood Row Project Site

Family	Taxon	Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
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***Status**

Federal:

- FE - Federal Endangered
- FT - Federal Threatened
- FPE - Federal Proposed Endangered
- FPT - Federal Proposed Threatened
- FC - Federal Candidate

State:

- CE - California Endangered
- CT - California Threatened
- CR - California Rare
- CC - California Candidate
- CSC - California Species of Special Concern

CNPS Continued:

CNPS:

- Rank 1A - Presumed extinct in California
- Rank 1B - Plants rare, threatened, or endangered in California and elsewhere
- Rank 1B.1 - Seriously endangered in California (over 80% occurrences threatened/ high degree and immediacy of threat)
- Rank 1B.2 - Fairly endangered in California (20-80% occurrences threatened)
- Rank 1B.3 - Not very endangered in California (<20% of occurrences threatened or no current threats known)

- Rank 2 - Plants rare, threatened, or endangered in California, but more common elsewhere
- Rank 2A - Extirpated in California, common elsewhere
- Rank 2B.1 - Seriously endangered in California, but more common elsewhere
- Rank 2B.2 - Fairly endangered in California, but more common elsewhere
- Rank 2B.3 - Not very endangered in California, but more common elsewhere
- Rank 3 - Plants about which we need more information (Review List)
- Rank 3.1 - Plants about which we need more information (Review List)
 - Seriously endangered in California
- Rank 3.2 - Plants about which we need more information (Review List)
 - Fairly endangered in California
- Rank 4 - Plants of limited distribution - a watch list
- Rank 4.2 - Plants of limited distribution; fairly threatened in California
- Rank 4.3 - Plants of limited distribution; not very threatened in California

Table 4

Special-Status Wildlife Species Known to Occur Within 5 Miles of the Redwood Row Project Site

Species	*Status	Habitat	Closest Locations	Probability on Project Site
Insects				
Western bumble bee <i>Bombus occidentalis</i>	Fed: FT State: CC Other:	Confined to high elevation sites and north coast. Inhabits grassland with select food plants: Melilotus, Cirsium, Trifolium, Centaurea, Chrysothamnus, and Eriogonum. Typically nests underground in abandoned rodent burrows or other cavities.	The closest record for this species is located approximately 3.1 miles north of the project site (Occurrence No. 167).	None. No suitable habitat due to ongoing disturbance of the project site including annual discing. No impacts expected.
Fish				
Steelhead - Central California Coast DPS <i>Oncorhynchus mykiss irideus</i>	Fed: FT State: - Other:	From Russian River south to Soquel Creek, and to Pajaro River. Also found in San Francisco & San Pablo Bay Basins. Spawn in clear, cool, well oxygenated streams greater than 18 cm deep.	The closest record for this species is located approximately 2.7 miles west of the project site (Occurrence No. 37).	None. No suitable habitat (creeks, streams, rivers) in the project vicinity.
Amphibians				
California tiger salamander (So Co DPS) <i>Ambystoma californiense</i>	Fed: FE State: CT Other:	Found in grassland habitats of the valleys and foothills. Requires burrows for aestivation and standing water until late spring (May) for larvae to metamorphose.	The closest record for this species is located in the vicinity of the project site (Occurrence No. 12).	Very low. This species was known to be present in 2000 but removed from site via salvage. Site was mass graded in 2002. See text for further details.
California red-legged frog <i>Rana draytonii</i>	Fed: FT State: CSC Other:	Occurs in lowlands and foothills in deeper pools and streams, usually with emergent wetland vegetation. Requires 11-20 weeks of permanent water for larvae development.	The closest record for this species is located approximately 1.8 miles southwest of the project site (Occurrence No. 779).	None. No suitable aquatic habitat (ponds, streams, creeks) within the project vicinity. No impacts expected.
Foothill yellow-legged frog ** <i>Rana boylei</i>	Fed: FT State: CT Other:	Found in partially shaded, shallow streams with rocky substrates. Requires perennial pools or flowing water. Needs some cobble-sized rocks as a substrate for egg laying. Requires water for 15 weeks for larval transformation.	The closest record for this species is located approximately 1.8 miles northeast of the project site (Occurrence No. 1549).	None. No suitable habitat (creeks, streams) in the project vicinity.

Table 4

Special-Status Wildlife Species Known to Occur Within 5 Miles of the Redwood Row Project Site

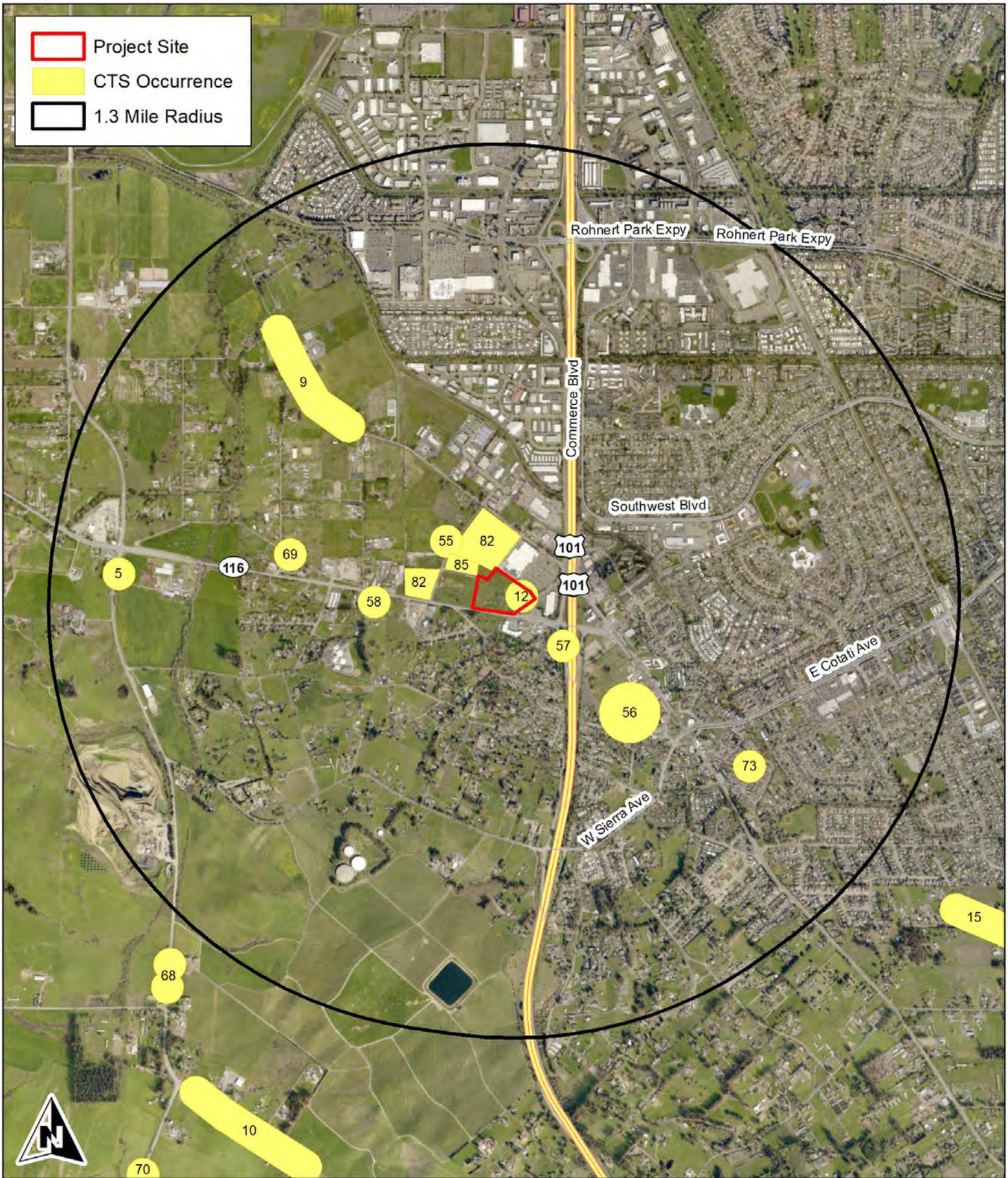
Species	*Status	Habitat	Closest Locations	Probability on Project Site
Reptiles				
Western pond turtle <i>Actinemys marmorata</i>	Fed: FPT State: CSC Other:	Uncommon to common in suitable aquatic habitat throughout CA, west of the Sierra-Cascade crest and absent from desert regions, except the Mojave River. Associated with permanent or nearly permanent water in a wide variety of habitat types.	The closest record for this species is located approximately 1.0 miles west of the project site (Occurrence No. 402).	None. No suitable aquatic within the project vicinity. No impacts expected.
Birds				
Western Yellow-billed Cuckoo <i>Coccyzus americanus occidentalis</i>	Fed: FT State: CE Other:	Riparian forest nester along broad, lower flood-bottoms of larger river systems. Nests in riparian jungles of willow, often mixed with cottonwoods w/ lower story of blackberry, nettles, or wild grape.	The closest record for this species is located approximately 1.8 miles northwest of the project site (Occurrence No. 97).	None. No riparian habitat within the project vicinity. No impacts expected.
Tricolored Blackbird <i>Agelaius tricolor</i>	Fed: - State: CT Other: -	Colonial nester in dense cattails, tules, brambles or other dense vegetation. Requires open water, dense vegetation, and open grassy areas for foraging.	The closest record for this species is located approximately 1.9 miles west of the project site (Occurrence No. 325).	None. No suitable habitat on the project site.
Mammals				
American badger <i>Taxidea taxus</i>	Fed: - State: CSC Other:	Most abundant in drier open stages of most shrub, forest, and herbaceous habitats, with friable soils. Need sufficient food, friable soils & open, uncultivated ground. Prey on burrowing rodents. Dig burrows.	The closest record for this species is located approximately 2.4 miles south of the project site (Occurrence No. 407).	Very low. No evidence of badger diggings ever observed. Extensive development surrounding the project site is sizable deterrent to this species. No impacts expected.

Table 4

Special-Status Wildlife Species Known to Occur Within 5 Miles of the Redwood Row Project Site

Species	*Status	Habitat	Closest Locations	Probability on Project Site
*Status				
Federal:				
FE - Federal Endangered	CE - California Endangered	State:	CSC - California Species of Special Concern	Other:
FT - Federal Threatened	CT - California Threatened	State:	FP - Fully Protected	SA - CDFW Special Animals List
FPE - Federal Proposed Endangered	CR - California Rare	State:	WL - Watch List. Not protected pursuant to CEQA	IUCN V - International Union for Conservation of Nature (IUCN) Vulnerable
FPT - Federal Proposed Threatened	CC - California Candidate			
FC - Federal Candidate				
FPD - Federally Proposed for delisting				

** This frog is listed as "endangered" in the Southern Sierra, central, and southern California coasts and "threatened" in the Northern Sierra and Feather River. This frog is not protected pursuant to CESA on the northern coast of California (all counties north of Marin and Solano Counties north to Oregon boarder).



Monk & Associates
Environmental Consultants
1136 Saranap Avenue, Suite Q
Walnut Creek, California 94595
(925) 947-4867

Exhibit A. California Tiger Salamander Occurrences
in the Vicinity of the
Redwood Row Project Site

Aerial Photograph Source: ESRI
Map Preparation Date: January 10, 2024



GRAVENSTEIN HIGHWAY



NORTH

SITE PLAN

0' 50' 100' 150' 200'



SCALE: 1" = 50'

NOTE:

* 100 POTENTIAL ADU UNITS



City Ventures

CITY VENTURES

COTATI
CALIFORNIA



CSW|ST2 TARRAR
UTILITY CONSULTANTS



Architecture | Planning | Interiors

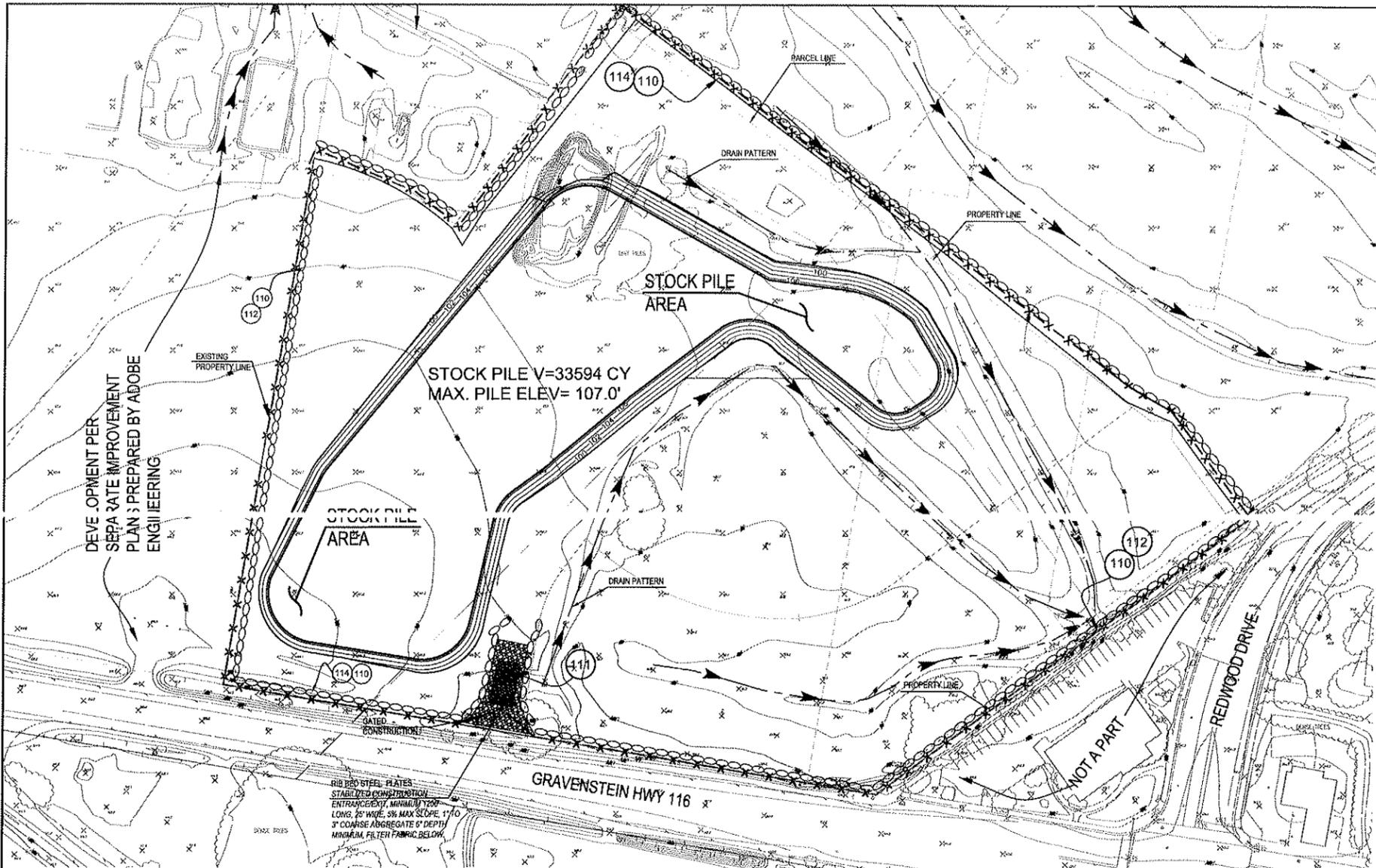
444 Spear Street, Suite 105
San Francisco, CA 94105
www.hunthalejones.com

t. 415-512-1300
f. 415-288-0288

RENDERED SITE PLAN

A0.4.1

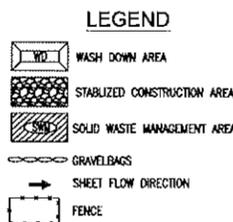
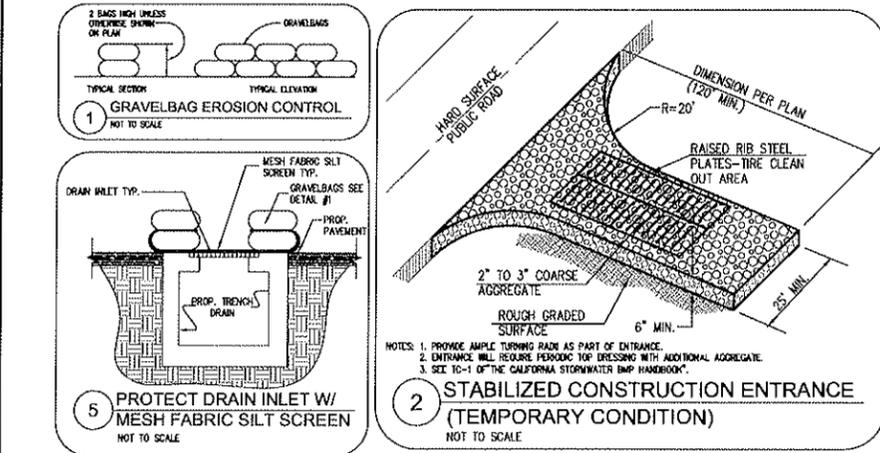
SCALE: 1" = 50' - 0"
DATE: 09.21.2022
PROJECT: 317068.00



EROSION CONTROL PLAN GENERAL NOTES:

- EROSION CONTROL IS REQUIRED FOR GRADING OPERATIONS DURING THE RAINY SEASON FROM OCTOBER 15TH TO APRIL 15TH. APPROVED PLANS ARE REQUIRED FOR ALL ROUGH GRADING.
- IN CASE OF AN EMERGENCY, CALL: BILL NIELSEN AT LOWE'S HW, INC. TELEPHONE NUMBER (760) 804-5300.
- THE DESIGN CIVIL ENGINEER WILL SUPERVISE EROSION CONTROL WORK AND ENSURE THAT WORK IS IN ACCORDANCE WITH THE APPROVED PLANS (IF REQUIRED).
- EQUIPMENT AND WORKERS FOR EMERGENCY WORK SHALL BE MADE AVAILABLE AT ALL TIMES DURING THE RAINY SEASON. NECESSARY MATERIALS SHALL BE AVAILABLE ON SITE AND STOCKPILED AT CONVENIENT LOCATIONS TO FACILITATE RAPID CONSTRUCTION OF TEMPORARY DEVICES WHEN RAIN IS IMMINENT.
- DEVICES SHALL NOT BE MOVED OR MODIFIED WITHOUT THE APPROVAL OF THE CITY ENGINEER.
- ALL REMOVABLE PROTECTIVE DEVICES SHOWN SHALL BE IN PLACE AT THE END OF EACH WORKING DAY WHEN THE 5-DAY RAIN PROBABILITY FORECAST EXCEEDS 40%.
- AFTER A RAINSTORM, ALL SILT AND DEBRIS SHALL BE REMOVED FROM CHECK BERMS, SILT FENCES, AND DESILTING BASINS, ETC.
- THE CONTRACTOR SHALL BE RESPONSIBLE AND SHALL TAKE NECESSARY PRECAUTIONS TO PREVENT PUBLIC TRESPASS ONTO AREAS WHERE IMPOUNDED WATER CREATES A HAZARDOUS CONDITION.
- THE CITY ENGINEER RESERVES THE RIGHT TO MAKE CHANGES OR MODIFICATIONS TO THIS PLAN AS DEEMED NECESSARY.
- INFORMATION ON THIS PLAN IS FOR EROSION CONTROL ONLY. ALL OTHER INFORMATION IS SUBJECT TO CHANGE.
- AREAS SHALL BE MAINTAINED IN SUCH A STATE THAT FIRE ACCESS SHALL BE MAINTAINED AT ALL TIMES (INCLUDING ACCESS TO NEIGHBORING PROPERTIES).
- NO OBSTRUCTION OR DISTURBANCE OF NATURAL DRAINAGE COURSES OR EXISTING STORM DRAIN INLETS SHALL OCCUR DURING THE RAINY SEASON, UNLESS ADEQUATE TEMPORARY/PERMANENT DRAINAGE FACILITIES HAVE BEEN APPROVED AND INSTALLED TO CARRY SURFACE WATER TO THE NEAREST PRACTICAL STORM DRAIN OR NATURAL WATER COURSE.
- THE CONTRACTOR SHALL CONDUCT HIS OPERATIONS IN SUCH A MANNER THAT STORM RUNOFF WILL BE CONTAINED WITHIN THE PROJECT OR CHANNLED INTO THE STORM DRAIN SYSTEM WHICH SERVES THE RUNOFF AREA. STORM RUNOFF FROM ONE AREA SHALL NOT BE ALLOWED TO DIVERT TO ANOTHER RUNOFF AREA.
- CONFORMANCE WITH THE REQUIREMENTS OF THESE PLANS SHALL IN NO WAY RELIEVE THE CONTRACTOR FROM HIS RESPONSIBILITIES TO THIS AND ADJACENT PROPERTIES. TEMPORARY EROSION CONTROL SHALL CONSIST OF, BUT NOT BE LIMITED TO, CONSTRUCTING SUCH FACILITIES AND TAKING SUCH MEASURES AS ARE NECESSARY TO PREVENT, CONTROL AND ABATE WATER, MUD AND EROSION DAMAGE TO PUBLIC AND PRIVATE PROPERTY AS A RESULT OF THE CONSTRUCTION OF THIS PROJECT.
- CLEARING AND GRUBBING SHOULD BE LIMITED TO AREAS THAT WILL RECEIVE IMMEDIATE GRADING. EROSION CONTROL MEASURES WILL BE REQUIRED TO PROTECT AREAS THAT HAVE BEEN CLEARED AND GRUBBED PRIOR TO GRADING OPERATION, AND THAT ARE SUBJECT TO RUNOFF DURING THE PERIOD FROM THE BEGINNING OF THE RAINY SEASON. THESE MEASURES MAY INCLUDE BUT SHALL NOT BE LIMITED TO: GRADED DITCHES, BRUSH BARRIERS AND SILT FENCES. CARE SHALL BE EXERCISED TO PRESERVE VEGETATION BEYOND THE LIMITS OF GRADING.
- CITY APPROVAL OF PLANS DOES NOT RELIEVE THE DEVELOPER FROM RESPONSIBILITY FOR THE CORRECTION OF ERRORS AND OMISSIONS DISCOVERED DURING CONSTRUCTION. UPON REQUEST, THE REQUIRED PLAN REVISIONS SHALL BE PROMPTLY SUBMITTED TO THE CITY ENGINEER FOR APPROVAL.
- THE CONTRACTOR SHALL STRICTLY ADHERE TO THE SWPPP DURING CONSTRUCTION OPERATIONS.
- NO LAND CLEARING OR GRADING SHALL BEGIN UNTIL ALL EROSION CONTROL MEASURES HAVE BEEN INSTALLED.
- ALL EXPOSED AREAS SHALL BE SEEDING AS SPECIFIED WITHIN 30 DAYS OF FINAL GRADING.
- SHOULD CONSTRUCTION STOP FOR LONGER THAN 14 DAYS, THE SITE SHALL BE SEEDING AS SPECIFIED.
- MAINTAIN EROSION CONTROL MEASURES AFTER EACH RAIN AND AT LEAST ONCE A WEEK.
- THIS PLAN SHALL NOT BE CONSIDERED ALL INCLUSIVE AS THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PREVENT SOIL SEDIMENT FROM LEAVING THE SITE.
- GENERAL CONTRACTOR SHALL COMPLY WITH ALL STATE AND LOCAL ORDINANCES THAT APPLY.
- ADDITIONAL EROSION AND SEDIMENT CONTROL MEASURES WILL BE INSTALLED IF DEEMED NECESSARY BY ON SITE INSPECTION.
- IF INSTALLATION OF STORM DRAINAGE SYSTEM SHOULD BE INTERRUPTED BY WEATHER OR NIGHTFALL, THE PIPE ENDS SHALL BE COVERED WITH FILTER FABRIC.
- COMPACT & MAINTAIN 25' WIDE DRIVE FROM ACCESS ROAD TO 30,000 S.F. LAYDOWN AREA AND 25' WIDE DRIVE FROM LAYDOWN AREA TO BUILDING PAD. DRIVE AND LAYDOWN AREA TO BE CONSTRUCTED OF 6" COMPACTED STONE. COORDINATE LOCATION OF LAYDOWN AREA WITH LOWE'S PROJECT MANAGER.
- GENERAL CONTRACTOR SHALL BE RESPONSIBLE TO TAKE WHATEVER MEANS NECESSARY TO ESTABLISH PERMANENT SOIL STABILIZATION.
- SEDIMENT SHALL BE REMOVED FROM THE SEDIMENT BASIN BEFORE IT IS 25% FULL.
- ALL WORK TO BE DONE IN STRICT ACCORDANCE WITH DIVISION 2 OF LOWE'S STANDARD SITE SPECIFICATIONS.

ATTACHMENT "B" NOTES:



EROSION CONTROL CONSTRUCTION NOTES:

- 110 INSTALL GRAVELBAGS PER DETAIL 1 HEREON.
- 111 STABILIZED CONSTRUCTION ENTRANCE PER DETAIL 2 HEREON.
- 112 INSTALL SILT FENCE AROUND THE CONSTRUCTION SITE PER SE-1 SILT FENCE IN SWPPP.
- 114 INSTALL 6" CHAIN LINK FENCE WITH SILT FENCE FABRIC.

GENERAL NOTES

CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT INCLUDING SAFETY OF ALL PERSONS AND PROPERTY THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS AND THAT THE CONTRACTOR SHALL OBTAIN NECESSARY PERMITS AND APPROVALS FROM AGSD. ALL GRADING OPERATIONS SHALL BE SUSPENDED DURING SECOND OR WOODS' STAGE WIND ALERTS BY AGSD.

THE CONTRACTOR IS RESPONSIBLE FOR DUST CONTROL MEASURES AND COMPLIANCE WITH ALL SOUTH COAST AIR QUALITY RULES AND REGULATIONS. PERMITTEE IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM AGSD. ALL GRADING OPERATIONS SHALL BE SUSPENDED DURING SECOND OR WOODS' STAGE WIND ALERTS BY AGSD.

WATER SHALL BE APPLIED TO THE SITE TWICE DAILY DURING GRADING OPERATIONS OR AS OTHERWISE DIRECTED BY THE CITY INSPECTOR IN COMPLIANCE WITH SOUTH COAST AIR QUALITY RULE 403 (DUST CONTROL MEASURES). PERMITTEE SHALL PERIODICALLY OPERATE STREET SWEEPERS ON PAVED AREAS ADJACENT TO THE SITE.

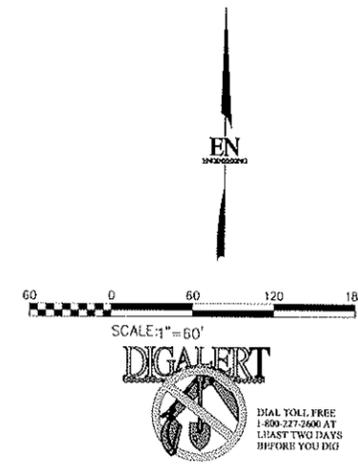
WATER SHALL BE APPLIED TO THE SITE TWICE DAILY DURING GRADING OPERATIONS OR AS OTHERWISE DIRECTED.

NOISE MITIGATION MEASURES

- CONSTRUCTION WILL BE ALLOWED ONLY BETWEEN THE HOURS OF 7 AM AND 5 PM MONDAY THROUGH SATURDAY.
- A CHAIN LINK FENCE WITH TARP SCREENING SHALL BE INSTALLED ALONG GRAVENSTEIN HWY WHILE CONSTRUCTION IS OCCURRING.
- STORAGE OF MATERIALS AND EQUIPMENT (IE GENERATORS) SHALL BE LIMITED TO THE EASTERN PORTION OF THE SITE.

NOTE:
STOCKPILE OF MATERIAL SHALL NOT EXCEED 8' IN HEIGHT AND SHALL BE COVERED AT ALL TIMES.

NOTE TO CONTRACTOR:
STOCKPILE SOILS AND ASPHALT REMOVALS FOR FILLS AND BASE MATERIAL. SOIL ENGINEER TO DETERMINE IF MATERIAL IS USABLE.



REVISION NUMBER	REVISION DESCRIPTION	DATE	APPROVED BY

EN ENGINEERING

Engineers / Planners / Surveyors

1920 MAIN STREET, SUITE 850, IRVINE, CA 92614
 TEL (949) 486-0777 FAX (949) 486-0779

245 E. WARM SPRINGS ROAD, SUITE 100, LAS VEGAS, NV 89119
 TEL (702) 866-6604 FAX (702) 866-6605

IRVING, IRVINGOPOLIS, R.C.E. 65859

PREPARED FOR:

LOWE'S

6000 Parkway Avenue Suite 100 Oakland, CA 94620

PREPARED FOR:

NEWMAN DEVELOPMENT GROUP OF COTATI, LCC

LOWE'S MARKETPLACE AT COTATI COMMONS
PA 21/03

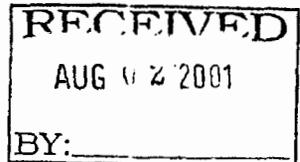
STOCK PILE PLAN

NORTHWEST CORNER OF REDWOOD DRIVE AND GRAVENSTEIN HIGHWAY
COTATI, CALIFORNIA

JOB NO: 03-067

SHEET C01 OF 68 SHEETS

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MITIGATION AGREEMENT

between

SOUTH SONOMA CAPITAL PARTNERS, LLC

and the

CALIFORNIA DEPARTMENT OF FISH AND GAME

Tracking Number 1802-2001-017-03

This Mitigation Agreement ("Agreement") is made and entered into by and between **South Sonoma Capital Partners, LLC** ("South Sonoma Capital Partners") and the California Department of Fish and Game (the "Department"), a Department of the State of California, collectively "the Parties."

The purpose of this Agreement is to set forth legally enforceable measures to mitigate potentially significant environmental impacts to the California tiger salamander (*Ambystoma californiense*) caused by construction of the South Sonoma Business Park in Cotati, Sonoma County, California. The California tiger salamander is a state-designated Species of Special Concern, a candidate for listing under the federal Endangered Species Act, and the subject of a petition pending before the California Fish and Game Commission for emergency listing as an endangered species under the California Endangered Species Act ("CESA", Fish and Game Code §§2050 et seq.).

RECITALS

- A. WHEREAS, South Sonoma Capital Partners proposes development of the South Sonoma Business Park on 34.13 net usable acres in Cotati, California, including measures to mitigate for potential impacts to California tiger salamander; and
- B. WHEREAS, the City of Cotati, as lead agency under the California Environmental Quality Act ("CEQA", Public Resources Code §§21000 et seq.), has certified an Environmental Impact Report (EIR) for the proposed project that identifies potentially significant environmental impacts to habitat for the California tiger salamander and describe mitigation measures to offset those impacts; and
- C. WHEREAS, the Department desires, consistent with the policies of California Fish and Game Code Section 1802 and its role as trustee of California's fish, wildlife and native plants, to ensure permanent protection for California tiger salamanders and their habitat to promote the conservation, restoration, and long-term survival of this species; and
- D. WHEREAS, South Sonoma Capital Partners, after consulting with the Department and obtaining the Department's concurrence, in May 2001 collected California tiger salamander larvae from waters on the site that were drying up and moved the larvae to another location; and
- E. WHEREAS, South Sonoma Capital Partners and the Department have reached agreement on a method for mitigating the potentially significant environmental impacts to California tiger salamander habitat and voluntarily seek to formalize their understanding in this Agreement; and
- F. WHEREAS, South Sonoma Capital Partners will mitigate for the loss of California tiger salamander habitat at ratio of 1:1 (that is, for every acre of California tiger salamander habitat impacted, one acre will be preserved and enhanced); and

G. WHEREAS, California tiger salamanders and/or their habitat occur on the proposed South Sonoma Business Park project site, and construction of the project will result in permanent loss of California tiger salamander habitat; and

H. WHEREAS, South Sonoma Capital Partners agrees to undertake the mitigation measures set forth in this Agreement to offset the potentially adverse impacts to California tiger salamanders caused by development of the South Sonoma Business Park project site ("The Project").

NOW THEREFORE, the Parties agree as follows:

1. NOTIFICATION.

South Sonoma Capital Partners intends to pursue development opportunities for the South Sonoma Business Park project site upon execution of this Agreement and all necessary approvals from the City of Cotati and other regulatory agencies. This Agreement serves as notification to the Department that South Sonoma Capital Partners intends to commence ground-disturbing activities on some or all of the 34.13 acres of the project site.

2. RESPONSIBLE PARTY.

By execution of this Agreement, South Sonoma Capital Partners is notifying the Department that Mr. Tom Monahan (President and Managing Member), or his/her legal designee, is responsible for compliance with this Agreement.

3. ACQUISITION OF HABITAT MITIGATION LANDS.

- A. South Sonoma Capital Partners agrees to preserve 34.13 acres of extant California tiger salamander habitat within the known range of this species in Sonoma County, California. Habitat Mitigation Lands ("HM lands") acquired by South Sonoma Capital Partners shall be transferred to the Department in fee simple title or preserved through a permanent conservation easement in favor of the Department and approved by the Department. In lieu of transfer to the Department, fee simple title to the HM lands may be transferred to a non-profit corporation or public entity approved by the Department under terms approved by the Department. South Sonoma Capital Partners agrees to obtain the Department's approval of the biological suitability of any proposed HM lands prior to acquisition and transfer of such lands.
- B. South Sonoma Capital Partners shall prepare and implement a Management and Monitoring Plan ("MMP"), approved by the Department, for the HM lands. Monitoring will continue for a minimum of five years from the time the HM lands are transferred and enhancement measures specified in the MMP are implemented. Monitoring and reporting shall be performed by qualified personnel approved by the Department. A Final Report, which shall include objectives, methods, results, data analysis, and management recommendations (including a long-term management plan for the mitigation site in a format acceptable to the Department) shall be provided for Department review at least 120 days prior to any termination or expiration of this Agreement ~~(WHEN WILL AGREEMENT EXPIRE?)~~ *2/21* 109
- C. South Sonoma Capital Partners designates Geoff Monk as the principal biologist responsible for implementation of the Agreement (hereinafter the "Principal Biologist"). Appointment of a new Principal Biologist shall be mutually agreed upon by South Sonoma Capital Partners and the Department.
- D. South Sonoma Capital Partners agrees to maintain the HM lands consistent with the MMP for the benefit of the California tiger salamander and shall not permit uses incompatible with the purpose of the HM lands. South Sonoma Capital Partners shall maintain the mitigation site in good

ecological condition for the entire monitoring period. If the HM lands are protected through a conservation easement rather than a transfer of fee simple title to the Department, South Sonoma Capital Partners must also obtain from the landowner the right to enter the property for purposes of undertaking enhancement and management activities identified in the MMP to benefit California tiger salamander.

4. LAND RATIO REQUIREMENT.

The required HM lands acreage is based upon the agreement between South Sonoma Capital Partners and the Department that the 34.13 acre South Sonoma Business Park site may provide California tiger salamander habitat, and that one acceptable method of mitigating potential impacts to California tiger salamanders and their habitat is to preserve 34.13 acres of existing California tiger salamander breeding and estivation habitat at an offsite location. This is a 1:1 impact-to-replacement ratio.

5. CONDITIONS OF HABITAT ENHANCEMENT.

- A. South Sonoma Capital Partners agrees to demonstrate to the Department's satisfaction that the HM lands are suitable for California tiger salamander mitigation by providing information that shows California tiger salamander distribution on the proposed HM lands or distribution in close proximity to the HM lands, as determined by the Department. If California tiger salamanders are not distributed on the HM lands, the HM lands must consist of grassland or oak-studded grassland located in close proximity to known California tiger salamander breeding habitat.
- B. More than 34.14 acres shall be protected if some of the HM lands acreage protected through this Agreement is not suitable California tiger salamander habitat; areas within the HM lands that are not suitable for California tiger salamanders will not be applied to the total mitigation requirement. Any suitable California tiger salamander habitat in excess of the 34.13 acres that is protected by South Sonoma Capital Partners pursuant to this Agreement will be considered as a "credit" that can be used toward mitigation of South Sonoma Capital Partners' future impacts if any, to California tiger salamander habitat. The excess acreage may also be sold to other interested parties that need to protect habitat to mitigate impacts to California tiger salamander habitat provided South Sonoma Capital Partners first obtains Department approval to operate a conservation bank or mitigation bank.
- C. Any HM lands protected for the purposes of this Agreement must include areas on-site where California tiger salamanders can breed successfully. South Sonoma Capital Partners will be responsible for creating breeding habitat on the HM lands if the Department determines it necessary to produce on-site breeding habitat. South Sonoma Capital Partners agrees to provide the Department a recent preliminary title report and Level I environmental report for the HM lands. All documents conveying HM lands and all conditions of title are subject to the approval of the Department, the Department of General Services and, if applicable, the Fish and Game Commission.
- D. Sonoma Capital Partners agrees to preserve a total of 34.13 acres of HM lands within 18 months of the execution of this Agreement. These acres shall be acquired within the range of the California tiger salamander in Sonoma County to meet the overall acreage requirement of 34.13 acres.
- E. If South Sonoma Capital Partners fails to complete the acquisition of 34.13 acres of HM lands within 18 months, or fails to perform other duties identified in this Agreement within the time periods specified, the Department, at its option, may demand that South Sonoma Capital Partners cure its breach forthwith and draw upon the Security required below in Section 6 of this Agreement to itself acquire HM lands or perform other duties that are past due.

6. FUNDING REQUIREMENTS FOR HABITAT MITIGATION LANDS.

- A. South Sonoma Capital Partners shall be responsible for initial protection and enhancement measures on the HM lands; these measures may include but are not limited to fencing, trash clean-up, grazing or mowing, and any habitat restoration deemed necessary by the Department. These measures will be described in the MMP. South Sonoma Capital Partners will secure the performance of these initial protection and enhancement activities on the HM lands by providing the Department cash or a cash equivalent in a form acceptable to the Department, in the amount of \$100,000 drawn from a banking institution located within California. In the event that South Sonoma Capital Partners fails to perform the initial protection and enhancement measures, the Department may draw upon those funds to implement those measures. Any unobligated funds for initial protection and enhancement of the HM lands shall be returned to South Sonoma Capital Partners upon completion of all such activities.
- B. South Sonoma Capital Partners agrees to provide the Department with cash in the amount of \$98,000 to establish an endowment for the long-term management of the HM lands. South Sonoma Capital Partners shall transfer these funds to the Department upon transfer of the HM lands to the Department or its designee, but in no event later than 18 months after execution of this Agreement. The funds shall be cash drawn from a banking institution located within California. Such funding shall be used as principal for a permanent capital endowment. Interest from this amount shall be available for operations, management and protection of the HM lands acquired pursuant to this Agreement. Operation, management and protection activities may include reasonable administrative overhead, biological monitoring, improvements to biological carrying capacity, law enforcement measures, and any other actions designed to protect or improve the habitat values of the HM lands. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the Department to ensure the continued viability of the species on the HM lands. Money received by the Department pursuant to this provision shall be deposited in a special account established pursuant to Government Code Section 16370. The Department may pool the endowment with other endowments for the operation, management and protection of HM lands for local populations of the California tiger salamander.
- C. South Sonoma Capital Partners agrees to reimburse the Department for reasonable expenses incurred as a result of the approval and implementation of this Agreement, including costs of title and documentation review, expenses incurred from other state agency reviews and reasonable overhead directly related to this agreement. The Parties estimate that this Agreement will create an additional cost to the Department of up to \$3,000.
- D. South Sonoma Capital Partners plans to proceed with the Project prior to fully performing the mitigation described in this Agreement. South Sonoma Capital Partners therefore agrees to secure the performance of its mitigation duties by providing the Department with cash, an irrevocable letter of credit, a trust bank account, or other form of security approved by the Department in an amount of \$883,600 ("Security"). South Sonoma Capital Partners must obtain the Department's approval of the form and content of the Security, and must provide the Security to the Department no later than 90 days after the date this Agreement is signed. South Sonoma Capital Partners agrees to provide the Security in the amount of (1) \$682,600 (34.13 acres at an estimated \$20,000 an acre = \$682,600) for the acquisition and/or preservation of the HM lands, (2) \$100,000 for initial protection and enhancement of the HM lands, (3) \$3,000 for Department processing fees, and (4) \$98,000 for an endowment for the long-term management of the HM lands.
- E. South Sonoma Capital Partners must acquire, protect and transfer the HM lands and fully perform and fund all other requirements of this Agreement (excluding required monitoring and reporting) within 18 months of the execution of this Agreement. If South Sonoma Capital Partners fails to meet its satisfy these requirements within this period, the Department may provide South Sonoma Capital Partners with a written notice demanding that South Sonoma Capital Partners immediately perform all of South Sonoma Capital Partners' overdue obligations under this Agreement or fund

the Department's performance of those obligations. If South Sonoma Capital Partners fails to perform those obligation or fund the Department's performance of those obligations within 10 days after receiving written notice from the Department, the Department may draw upon the Security provided pursuant to this Agreement and use such funds to acquire, protect, enhance and manage the HM lands.

- F. The parties estimate that South Sonoma Capital Partners' costs for the acquisition and transfer of suitable HM lands totaling 34.13 acres of California tiger salamander habitat will be \$682,600 at an estimated cost of \$20,000 an acre. Notwithstanding the above estimate, in the event that acquisition costs exceed the projected amount, South Sonoma Capital Partners shall not be released from performance of the requirements unless the Department and South Sonoma Capital Partners agree to modify this Agreement to provide for alternate effective California tiger salamander mitigation measures acceptable to the Department. In the event that acquisition costs are less than estimated, South Sonoma Capital Partner's obligation shall be the actual acquisition cost and associated expenses described in the Agreement.
- G. The Department will authorize the release or return of Security to South Sonoma Capital Partners as mitigation duties are completed by South Sonoma Capital Partners. Upon timely request and upon presentation of documentary evidence of full compliance with the terms and conditions of this Agreement, the Department shall release or request the release of the remaining Security.

7. OTHER PROVISIONS

- A. To reduce salamander mortality and to otherwise salvage California tiger salamanders that may be on the South Sonoma Business Park site, South Sonoma Capital Partners, with the approval of the Department, will collect and transport California tiger salamanders to a preserve site approved by the Department. A qualified biologist will search potential California tiger salamander estivation habitat before grading begins and salvage any animals found. During initial grading, the biologist will be present to monitor the site for California tiger salamanders and salvage any encountered as part of the grading activities.
- B. The Department, its designee or successor shall hold title to and protect all HM lands conveyed in fee title under this Agreement solely for the purposes of conservation, protection, restoration, and enhancement of the California tiger salamander and/or its habitats. This covenant shall remain in effect and run with the land, and no use of such land shall be permitted by the Department or any subsequent title holder or assignee which is in conflict with the stated conservation purposes of this Agreement. The Department, its designee or successor may allow some limited grazing on the HM lands if said uses or the management of said uses do not conflict in any way with the MMP or the Department's conservation goals for California tiger salamanders.
- C. The Department, its designee or successor shall record on each deed a statement in the form of Exhibit A that the HM lands described in the deed of record have been conveyed to the Department, its designee or successor for purposes of conservation, protection, restoration and enhancement of the California tiger salamander and its habitat.
- D. In the event South Sonoma Capital Partners defaults on any of its material obligations under this Agreement, the Department shall have all rights with respect to any cash Security and all remedies available at law or in equity, including specific performance injunction, and without limitation all rights of a secured party pursuant to the California Uniform Commercial Code.

8. NOTICES AND COMMUNICATIONS

All notices and other communications required or permitted under this Agreement shall be in writing and addressed to the parties at the following addresses, or at substitute addresses subsequently provided to any of the parties:

South Sonoma Capital Partners:

South Sonoma Capital Partners, LLC
1101 Fifth Avenue, Suite 150
Rafael, California 94901
Phone: (415) 456-0600
Fax: (415) 456-2414

Department:

Regional Manager
Central Coast Region
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599
Phone: (707) 944-5525
Fax: (707) 944-5563

AND

General Counsel
Department of Fish and Game
1416 Ninth Street, Twelfth Floor
Sacramento, CA 95814

9. Any assignment of this Agreement or any of the rights or obligations is void absent the written consent of the Parties; provided, however, that written notice but no written consent shall be required for assignment or pledge made by South Sonoma Capital Partners (a) to any company that shall succeed by purchase, merger or consolidation to the properties of South Sonoma Capital Partners; or (b) as Security for a debt under the provision of any mortgage, deed of trust, indenture, bank credit agreement, or similar instrument.

10. This Agreement comprises the entire agreement and understanding between the Parties concerning mitigation of potentially significant environmental impacts to California tiger salamanders and their habitat from construction of the proposed South Sonoma Business Park. This Agreement supersedes all prior and contemporaneous agreements, representations or understandings, whether oral or written, between the Parties with respect to Project impacts on the California tiger salamander. It does not, however, supersede or otherwise affect the Section 2081 Management Authorization and Memorandum Of Understanding signed by 101 Sonoma Associates and the Department to address impacts to State-listed plants on a portion of the South Sonoma Business Park project site. The MOU was signed by the Department on October 23, 1997 (Tracking No. 2081-1995-077-3).

11. This Agreement shall be governed by the laws of the State of California. Actual or threatened breach of this Agreement may be prohibited or restrained by a court of competent jurisdiction.

12. This Agreement is solely for the benefit of the People of the State of California, both and through the Department, and South Sonoma Capital Partners.

13. From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this Agreement. This Agreement cannot be amended or modified in any way except by a written instrument duly executed by the Parties. In any action requiring the agreement or approval of either of the Parties, such agreement or approval shall not be unreasonably denied or withheld, so long as it does not substantially alter the Agreement, duties and remedies of the Parties.

14. It is acknowledged that the purpose of this Agreement is to set forth the obligations and rights of the Parties with respect to the South Sonoma Business Park and the mitigation of potentially significant environmental impacts on the California tiger salamander and its habitat. **The Department will not seek further mitigation or compensation for the California tiger salamander or its habitat from South Sonoma Capital Partners for potential impacts within the South Sonoma Business Park area.**

15. This Agreement shall be immediately effective upon execution by the Parties.

16. This Agreement includes and incorporates the following:

EXHIBIT A - Certificate of Public Purpose

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the last date written below.

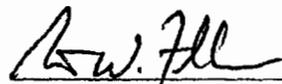
South Sonoma Capital Partners, LLC



THOMAS M. MONAHAN
Title: President and Managing Member

Date: 7/25/01

California Department of Fish and Game



ROBERT W. FLOERKE
Regional Manager, Central Coast Region

Date: 7/31/01

EXHIBIT A

CERTIFICATE OF PUBLIC PURPOSE

This is to certify that the interest in real property conveyed by the deed or grant of the following property

_____, dated _____, from _____, to the California Department of Fish and Game (the "Department"), grantee, a governmental agency (under section 27281 of the Government Code), is hereby accepted by the undersigned officer on behalf of the Department, pursuant to authority conferred upon him by resolution of the _____ on _____.

The public purpose of this real property conveyance and the recordation hereof is being accomplished pursuant to the terms and conditions of the Mitigation Agreement (the "Agreement") entered into on _____, by and between Sonoma South Capital Partners and the Department.

The Agreement, among other terms and conditions not relevant here, provides at section 7.B.:

"The Department, its designee or successor shall hold title to and protect all HM lands conveyed in fee title under this Agreement solely for the purposes of conservation, protection, restoration, and enhancement of the California tiger salamander and/or its habitats. This covenant shall remain in effect and run with the land, and no use of such land shall be permitted by the Department or any subsequent title holder or assignee which is in conflict with the stated conservation purposes of this Agreement ..."

A copy of this Mitigation Agreement in its entirety may be obtained by interested parties by sending a request to the Director of the Department at the address below.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA
1416 Ninth Street
Sacramento, California 95814

By: _____
Title: _____
Authorized Representative
Date: _____

APPENDIX A

SOUTH SONOMA BUSINESS PARK REGULATORY HISTORY

South Sonoma Capital Partners LLC (Managing General Partner was Monahan Pacific) purchased the Sonoma Business Park project site from 101 Sonoma Associates in 1999. On November 5, 1998, 101 Sonoma Associates had obtained a permit from the U.S. Army Corps of Engineers (Corps) (Permit No. 23540N) that allowed all waters of the U.S. on the Project site to be graded and filled. Similarly, the California Regional Water Quality Control Board had issued a “waiver” of water quality that allowed 101 Sonoma Associates to fill 2.5 acres of wetlands (all wetlands) on the Project site (RWQCB Resolution No. 87-113). The Corps permit and the RWQCB’s waiver of water quality, and the City of Cotati’s Conditions of Project Approval were transferred to South Sonoma Capital Partners LLC on March 17, 2000.

As required to meet regulatory agency permitting requirements as further detailed below, while working for 101 Sonoma Associates, M&A’s principal biologist Mr. Geoff Monk identified mitigation parcels that totaled 13.4 acres that were subsequently incorporated into the Corps’ permit conditions. Accordingly, the Corps’ permit required that the permittee, as transferred to South Sonoma Capital Partners LLC (hereinafter “Capital Partners”), purchase the Walker Avenue Conservation Site (Assessor Parcel Numbers 134-202-26, 134-202-27, 134-202-22, 134-202-23, 134-202-24) (these parcels were then in the ownership of Alvin Tesconi).

As additional mitigation for impacts to 2.5 acres of wetlands on the Project Site, the Corps’ permit required that 2.74 acres of new wetlands be created on the Walker Avenue Conservation Site. This condition was subsequently met by Capital Partners when on behalf of Capital Partners, in 2003/2004, Golden Bear BioStudies graded mitigation wetlands on the Walker Avenue Mitigation Site. On May 10, 2016, M&A’s principal Biologist Mr. Geoff Monk confirmed that in fact over 3.5 acres of functioning wetlands were graded into the 13.4 acre Walker Avenue mitigation site. M&A has not checked this site in recent years as this property is owned by CDFW and they are responsible for maintaining it (S. Lynch of M&A pers. comm. with T. Monahan, October 3, 2023).

Incorporated into the Corps’ November 5, 1998 Individual permit was a U.S. Fish and Wildlife Service (USFWS) Biological Opinion (January 25, 1993 - Reference No. 1-1-92-F-75) that provided “incidental take authority” for impacts that would occur from the mass grading of the Project Site to 0.12-acre of Sebastopol meadowfoam (*Limnanthes vinculans*) habitat, a state and federally listed plant species protected pursuant to the California and Federal Endangered Species Acts (respectively). The conditions of the Biological Opinion required that a 3.0 acre portion of the approximately 20 acre Totin/Haller/Boswick parcel (a 3.0 acre portion of APN 134-232- 13) located immediately to the south of the Alvin Tesconi parcels be preserved via the recordation of a Conservation Easement. In 1998-2000, Mr. Monk had confirmed that 5,000 to 20,000 Sebastopol meadowfoam plants occurred on the 3.0 acre portion of the Totin/Haller/Boswick parcel, which met the 101 Sonoma Associates Corps, USFWS and California Department of Fish and Game (CDFG) (now known as California Department of Fish and Wildlife (CDFW) requirements for preservation of Sebastopol meadowfoam habitat.

Accordingly, in 2001 Capital Partners purchased the right to record the conservation easement from Totin/Haller/Boswick.

While the USFWS' Biological Opinion (BO) was prepared for the Project on January 25, 1993, as further documented in a letter prepared on March 13, 2001 by Mr. Monk for Mr. Don Hankins of the USFWS (letter copied to Mr. Pete Straub of the Corps and Mr. Carl Wilcox of the California Department of Fish and Game), prior to the time the Corps issued its Individual Permit for the Project on November 5, 1998, the Project mitigation plan and USFWS' 1993 Biological Opinion were once again fully reviewed by Ms. Jan Knight of the USFWS. On January 21, 1998, Ms. Knight stated in a telephone call with Mr. Monk that "After she reviewed the proposed project and learned that a three-acre Sebastopol meadowfoam preserve site had been acquired by the applicant to compensate in part for impacts to a 0.12-acre Sebastopol meadowfoam pool, that she sees "no fundamental changes to issues or requirements." Ms. Knight further stated that she thought that the mitigation plan, which was developed under the strict scrutiny of Dr. Peter Baye (formerly with the Corps and then the USFWS), was a good mitigation plan. This conversation was originally documented in the Corps' November 5, 1998 Individual Permit.

On October 23, 1997, 101 Sonoma Associates entered into a California Endangered Species Act (CESA) Memorandum of Understanding and Management Authorization (MOA) (Tracking No. 2081-1995-077-3, attached) with the CDFG that provided 101 Sonoma Associates with "incidental take authority" pursuant to CESA Section 2081 for impacts that would occur to 0.12-acre of Sebastopol Meadowfoam habitat from the then proposed development of the Project Site. This MOA was transferred to Capital Partners and required that it purchase and transfer fee title of the 13.4-acre Alvin Tesconi parcels to the CDFG. The Alvin Tesconi parcels were transferred in fee title from Capital Partners to the CDFG in May 2004 (this is the Walker Avenue Conservation Site).

The 3.0-acre Totin/Haller/Boswick conservation easement was recorded by Capital Partners on January 29, 2003 completing the MOA mitigation requirement and also meeting the conditions set forth for land preservation in the Corps' 1998 Individual Permit that incorporated the conditions of the USFWS' 1993 Biological Opinion. The Grantee of the Conservation Easement was the CDFG. ***The California Department of Fish and Wildlife (CDFW), the successor agency of CDFG, currently owns and manages the Walker Avenue Conservation Site, which includes the original 13.4-acre Alvin Tesconi parcels and the 3.0-acre Totin/Haller/Boswick Conservation Easement.***

Circa 1995, the Project Site was also determined to support breeding California tiger salamanders (*Ambystoma californiense*), at the time a CDFG designated "species of special concern." [This salamander was not federally listed until July 22, 2002 and it was not State listed until August 19, 2010]. "Species of special concern" are afforded protections pursuant to the California Environmental Quality Act (CEQA). As a CEQA Trustee Agency CDFG (now CDFW) can comment on review documents prepared pursuant to the CEQA by lead agencies such as the City of Cotati. Accordingly, in 2001 CDFG requested that Capital Partners compensate for project impacts to the California tiger salamander. In August 2001, Capital Partners entered into a Mitigation Agreement (MA) with CDFG for project impacts to the

California tiger salamander. To meet CDFG imposed California tiger salamander mitigation requirements Capital Partners was required to implement certain mitigation measures that included the purchase of the 8.8-acre Arshi property and the transfer in fee title of this property to the CDFG. Capital Partners transferred the Arshi property via fee title to CDFG on January 29, 2003 (see Attachment). In addition, CDFG required the purchase of an additional 25.30 acres of Conservation credits from the Wright Preservation Bank and the Southwest Santa Rosa Preservation Bank. On July 17, 2002, the CDFG confirmed that Capital Partners had met its California tiger Salamander mitigation requirements in a letter prepared for Capital Partners on July 17, 2002 [See attachments. Note that the copy of the letter is not on letterhead it was acquired by M&A via a Public Records Act Request in 2015 (Public Records Act Request No. 15-09-349). Note that the copy of this letter does have key initials from the Region 2 Office of the CDFW, and it has the CDFG stamp in the signature block)].

In consideration of the MA by and between Capital Partners and the CDFG, and California tiger salamander mitigation that had been implemented by Capital Partners, and as mass grading was imminent on the 34-acre project site, on March 26, 2002 Mr. Carl Wilcox, Environmental Services Supervisor of Region 3 CDFG provided permission for Monk & Associates to salvage and transport captured California tiger salamander larvae from the Project Site to the Courtside Village mitigation site on Todd Road. This mitigation site is known today as the Gobbi mitigation property. On March 28, 2002 two CTS larvae salvaged from project site were immediately transported to the Gobbi wetlands mitigation property on Todd Road. On April 5, 2002, 13 CTS larvae were salvaged and transported to the Gobbi wetlands mitigation property. Similarly, on April 15, 2002, three CTS larvae were captured and transported to the Gobbi mitigation property.

In compliance with the Corps' Individual Permit which incorporated the USFWS' BO, the waiver of water quality from the RWQCB, the MOA with CDFG, the MA with CDFG, and with a grading permit issued by the City of Cotati, in June of 2002 Capital Partners graded 100 percent of the 34-acre Project Site (which includes the Redwood Row Project Site) removing all Corps' jurisdictional features, 0.12 acre of Sebastopol meadowfoam habitat, and all California tiger salamander habitat. The date of mass grading occurred prior to the USFWS' emergency listing of the California tiger salamander on July 22, 2002, and thus there were no federal requirements for the Project for the California tiger salamander. Regardless, on October 7, 2002, the USFWS prepared an after-the-fact Biological Opinion (File No. 1-1-03-F-0002) that provided Incidental Take authority for the California tiger salamander for the South Sonoma Business Park. USFWS concluded that with mitigation purchases and salvage from the project site that it was the *Service's Biological Opinion that the SSBP [South Sonoma Business Park] Project is not likely to jeopardize the continued existence of the (California tiger) salamander in Sonoma County.*

In 2003/04, M&A conducted a California tiger salamander salvage project on two adjacent parcels north and west of the Project Site. This salvage was conducted under the assumption that all adult California tiger salamanders and their breeding habitat had been removed from the Project Site when it was mass graded in June 2002. The recovery/salvage project was implemented under expectation that the balance of the Project Site and the parcel to the north and west of this project site would be developed under a master development project. Mr. Jim

Browning of the USFWS reviewed and approved the salvage plan. On November 5, 2003, Mr. Dan Buford of the USFWS provided an email approval for M&A to construct and operate the California tiger salamander drift fence/pitfall trapping arrays. USFWS approved the translocation project under the condition that it would be completed under the direct supervision of Mr. Liam Davis and Mr. Bill Cox of the CDFG.

In the 2003/2004 trapping season, M&A installed drift fence/trapping arrays prior to the onset of heavy seasonal rains. Approximately 4,220 linear feet of drift fences were constructed immediately to the west and the north of the Project Site boundaries. These arrays were expected to catch California tiger salamander that could still be migrating onto the project site in search of breeding pools that had removed in June 2002. A total of 141 pitfall traps were installed in the drift fence arrays. A total of 82 adult California tiger salamanders were captured and about one third were translocated under the supervision and direction of Mr. Bill Cox of the CDFG to the Gobbi Bank site. The rest of the California tiger salamanders were likely located to the Alton Lane Conservation Preserve per information in an email of December 9, 2003 from Mr. Jim Browning to Wayne White, Cay Goude and Dan Buford at USFWS. In this email, Mr. Browning stated that he had just talked to Mr. Carl Wilcox (CDFG) and told him that USFWS was OK with CDFG's proposal to relocate the captured CTS to the Alton Lane Preserve.

 South Sonoma Business Park



0 50 100 200 300 400 500 Feet

Monk & Associates
Environmental Consultants
1136 Saranap Avenue, Suite Q
Walnut Creek, California 94595
(925) 947-4867

Figure 1. Aerial Photograph of the
South Sonoma Business Park Project
Cotati, California

Map Preparation Date: September 7, 2007
Aerial Photograph Source: Sonoma County (~2002)

Appendix B. SSBP Bond Payments.

		046-286-017	046-286-018	046-286-019	046-286-020		
2004	2005 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	9,900.00	27,750.00	90,500.00	18,600.00	2004/2005 Amounts to be confirmed	
2005	2006 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	9,908.12	27,996.60	90,599.66	18,669.74		
2006	2007 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	9,911.98	28,007.52	90,635.04	18,677.02		
2007	2008 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	9,907.58	27,995.04	90,594.62	18,668.70		
2008	2009 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,006.34	28,274.44	91,499.14	18,854.96		
2009	2010 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,073.78	28,465.18	92,116.64	18,982.12		
2010	2011 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,040.66	28,371.52	91,813.44	18,919.68		
2011	2012 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,110.76	28,569.76	92,455.20	19,051.84		
2012	2013 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,023.46	28,322.84	91,655.78	18,887.20		
2013	2014 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,072.02	28,460.18	92,100.46	18,978.78		
2014	2015 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,106.24	28,556.96	92,413.76	19,043.30		
2015	2016 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,171.08	28,740.42	93,007.72	19,165.60		
2016	2017 NEWMAN DEVELOPMENT GROUP OF COTATI, LLC	10,194.84	28,807.80	93,225.18	19,210.40		
2017	2018 COTATI COMMONS MARKETPLACE, LLC	10,171.12	28,740.50	93,007.92	19,165.66		
2018	2019 COTATI COMMONS MARKETPLACE, LLC	10,157.40	28,701.66	92,882.26	19,138.78		
2019	2020 COTATI COMMONS MARKETPLACE, LLC	8,174.52	23,092.96	74,724.76	15,400.64		
2020	2021 COTATI COMMONS MARKETPLACE, LLC	8,119.76	22,938.08	74,223.34	15,297.38		
2021	2022 COTATI COMMONS MARKETPLACE, LLC	8,120.70	22,940.76	74,232.06	15,299.16		
2022	2023 COTATI COMMONS MARKETPLACE, LLC	8,121.72	22,943.60	74,241.24	15,301.06		
		<u>183,292.08</u>	<u>517,675.82</u>	<u>1,675,928.22</u>	<u>345,312.02</u>		

Sub-Total of Payments Made 2,722,208.14

NDG/Cotati Commons Marketplace Land	10.63	acres	31.15%	2,722,208.14
Other Assessment Parcels (Lowes, SSCP, SFR Homes)	23.50	acres	68.85%	6,018,051.86
Total Acreage	34.13	acres	100.00%	8,740,260.00

Est. Total of all Payments Made (including others) 8,740,260.00

This notice was posted on JAN 16 2008
and will remain posted for a period of thirty days
until Feb 17, 2008

JANICE ATKINSON, Co. Clerk
BY: Janice Atkinson
DEPUTY CLERK

08-018-1

OK

NOTICE OF DETERMINATION

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: City of Cotati
Planning Department
201 West Sierra Avenue
Cotati, CA 94931

✓ County Clerk
County of Sonoma
2300 County Center Dr., Suite B-177
Santa Rosa, CA 95403

Applicant: Newman Dev't Group LLC
PO Box 678
Vestal, NY 13851

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Project Title: Marketplace at Cotati Commons
Pads A, B & C

State Clearinghouse Number: 200052045 (South Sonoma Business Park EIR)

Contact Person: David Woltering, Director of Planning
(707) 665-3638



Project Location: Northwest intersection of Gravenstein Highway and Redwood Drive
(APNs: 046-286-017 and 046-286-018)

Project Description: Construction of three individual commercial buildings, each measuring approximately 5,700 square feet, on Pads A, B, and C at the Marketplace at Cotati Commons development, previously known and approved as the South Sonoma Business Park project.

This is to advise that the City of Cotati has approved the above described project on December 3, 2007, and has made the following determinations regarding the above described project:

1. The project will have a significant effect on the environment.
The project ✓ will not have a significant effect on the environment.
2. ✓ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures ✓ were, were not, made a condition of the approval of the project.
4. A Statement of Overriding Considerations ✓ was, was not, adopted for this project.

\$50 530803
\$0 530805

324441

Notice of Determination
City of Cotati
Marketplace at Cotati Commons, Pads A, B & C

This is to certify that the Final EIR and Addendum with comments and responses and record of project approval is available to the General Public at the City of Cotati Planning Department, 201 West Sierra Avenue, Cotati, CA 94931.

Date(s) received for filing and posting at OPR: January 2001 (EIR); and,
November 27, 2006 (NOD - Addendum)



Signature (Public Agency)
City of Cotati
David Woltering

Title: Director of Planning



STATE OF CALIFORNIA - THE RESOURCES AGENCY
DEPARTMENT OF FISH AND GAME
ENVIRONMENTAL FILING FEE CASH RECEIPT

324441

Lead Agency: City of Cotati Date: 1/18/08
 County/State Agency of Filing: Sonoma County Document No.: 05/118-1
 Project Title: Market place at Cotati Commons
 Project Applicant Name: Newman Dev't Group LLC
 Project Applicant Address: PO BOX 6078
 City: Vestal State: NY Zip Code: 13851 Phone Number: (707) 665-3638

Project Applicant (check appropriate box):

- Local Public Agency School District Other Special District State Agency Private Entity

Check Applicable Fees:

- | | | |
|---|--------------------------------------|----------------------------------|
| <input checked="" type="checkbox"/> Environmental Impact Report | (pd 5/18/08 Fy (G)*102697) \$2500.00 | \$ <u>See attached prev. pd.</u> |
| <input type="checkbox"/> Negative Declaration | \$1800.00 | \$ _____ |
| <input type="checkbox"/> Application Fee Water Diversion (State Water Resources Control Board Only) | \$850.00 | \$ _____ |
| <input type="checkbox"/> Projects Subject to Certified Regulatory Programs | \$850.00 | \$ _____ |
| <input checked="" type="checkbox"/> County Administrative Fee | \$50.00 | \$ <u>50.00</u> |
| <input type="checkbox"/> Project that is exempt from fees | | |
| <input type="checkbox"/> Notice of Exemption | | |
| <input type="checkbox"/> DFG No Effect Determination (Form Attached) | | |

TOTAL RECEIVED \$ 50.00

Signature and title of person receiving payment: _____

[Handwritten Signature]

WHITE-PROJECT APPLICANT

YELLOW-DFG/ASB

PINK-LEAD AGENCY

GOLDENROD-COUNTY CLERK

This notice was posted on DEC 23 2003
and will remain posted for a period of thirty days
until 1/22/04

EVEE T. LEWIS, Co. Clerk

BY Sandy Middleton
DEPUTY CLERK

03-1223-1

NOTICE OF DETERMINATION

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: City of Cotati
Planning Department
201 West Sierra Avenue
Cotati, CA 94931

X County Clerk
County of Sonoma
2300 County Center Dr., Suite B-177
Santa Rosa, CA 95403

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of
the Public Resources Code.

Project Title: South Sonoma Business Park Revision (Cotati Commons)

State Clearinghouse Number: N/A

Contact Person: David Woltering, Planning Director
(707) 665-3638

Project Location: The subject property is located at the northwestern intersection of
Highway 116 (Gravenstein Highway) and Redwood Drive within the
City of Cotati; APN 046-286-011, 046-286-012, 046-286-013, 046-286-
014, 046-286-015, 144-050-006, and 144-050-007.

Project Description: Request for approval of an Addendum to a previously certified
Environmental Impact Report (EIR) for the South Sonoma Business
park, which previously included 582,900 sq. ft. of office and retail
space and 50 residential housing units. The current proposal,
referred to as Cotati Commons, includes approximately 258,982 sq.
ft. of retail space anchored by Lowe's (approximately 165,382 sq. ft.)
and associated smaller retail buildings; 39,750 sq. ft. of small office
space and 39 (modified from an earlier request of 42 units) housing
units. Specific entitlements include: Adoption of an Ordinance
Rezoning 31 acres from Commercial (C-1) and Highway Commercial
(CH) to CH:PUD (Highway Commercial: Planned Unit Development)
as to a portion thereof on C-1:PUD (Commercial Planned Unit
Development) for the remainder of the subject property; Lot Line
Adjustment reconfiguring four parcels into four new parcels with
different property lines for the South Sonoma Business Park
Revision; Release/Extinguishment of existing easements on the
subject property (Cotati Commons); Preliminary Design Review for
the construction of a 165,382 sq. ft. Lowe's Home Improvement
Center building, 75,100 sq. ft. of retail space consisting of four (4)
Retail Commercial buildings located on a 23 acre site (The

\$35
261113

232933

Marketplace at Cotati Commons); and Conditional Use Permit to allow buildings within the marketplace at Cotati Commons project to exceed the 35-foot maximum height limit within a C-1 (Commercial) and CH (Highway Commercial) Zoning District.

This is to advise that the City of Cotati has approved the above described project on December 22, 2003, and has made the following determinations regarding the above described project:

1. The project will have a significant effect on the environment.

The project will not have a significant effect on the environment.

2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.

A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

3. Mitigation measures were, were not, made a condition of the approval of the project.

4. A Statement of Overriding Considerations was, was not, adopted for this project.

This is to certify that the Addendum to the Final EIR and Final EIR with comments and responses and record of project approval is available to the General Public at the City of Cotati Planning Department, 201 West Sierra Avenue, Cotati, CA 94931.

Date received for filing and posting at the County of Sonoma: DEC 23 2003

Jared Wolter Planning Director
Signature (Public Agency) Title



STATE OF CALIFORNIA - THE RESOURCES AGENCY
DEPARTMENT OF FISH AND GAME

ENVIRONMENTAL FILING FEE SH RECEIPT

DFG 753.5a (6-81)

102697

Lead Agency: City of Colton Date: 05/18/01

County/State Agency of Filing: Adams County Document No.: 01-0518-1

Project Title: Shuttle Adams Business Park

Project Applicant Name: City of Colton Planning Dept. Phone Number: 792-4600

Project Applicant Address: 2201 West Avenue Blvd. Colton CA 94731

Project Applicant (check appropriate box): Local Public Agency School District Other Special District

State Agency Private Entity

CHECK APPLICABLE FEES:

- Environmental Impact Report \$ 850.00
- Negative Declaration \$
- Application Fee Water Diversion (State Water Resources Control Board Only) \$
- Projects Subject to Certified Regulatory Programs \$ 35.00
- County Administrative Fee \$ 85.00
- Project that is exempt from fees

TOTAL RECEIVED \$ 885.00

Signature and title of person receiving payment: Charles