Appendix B:

Biological Resources Report

H.T. HARVEY & ASSOCIATES
Ecological Consultants

May 6, 2016

Rebecca Gorton
Lamphier-Gregory
1944 Embarcadero
Oakland, California 94606

Subject: Biological Resources Report for the City of Fremont's Master Plan for the California Nursery Historic Park (HTH # 3602-01)

Dear Ms. Gorton:

Per your request, this biological resources report provides H. T. Harvey & Associates' assessment of existing conditions regarding, and potential impacts on, biological resources resulting from the City of Fremont's proposed Master Plan (Master Plan) for the California Nursery Historical Park in Fremont, California. The purpose of this report is to support California Environmental Quality Act (CEQA) review for the Master Plan. This assessment is based on the Site Plan and Project description provided on 15 September 2014.

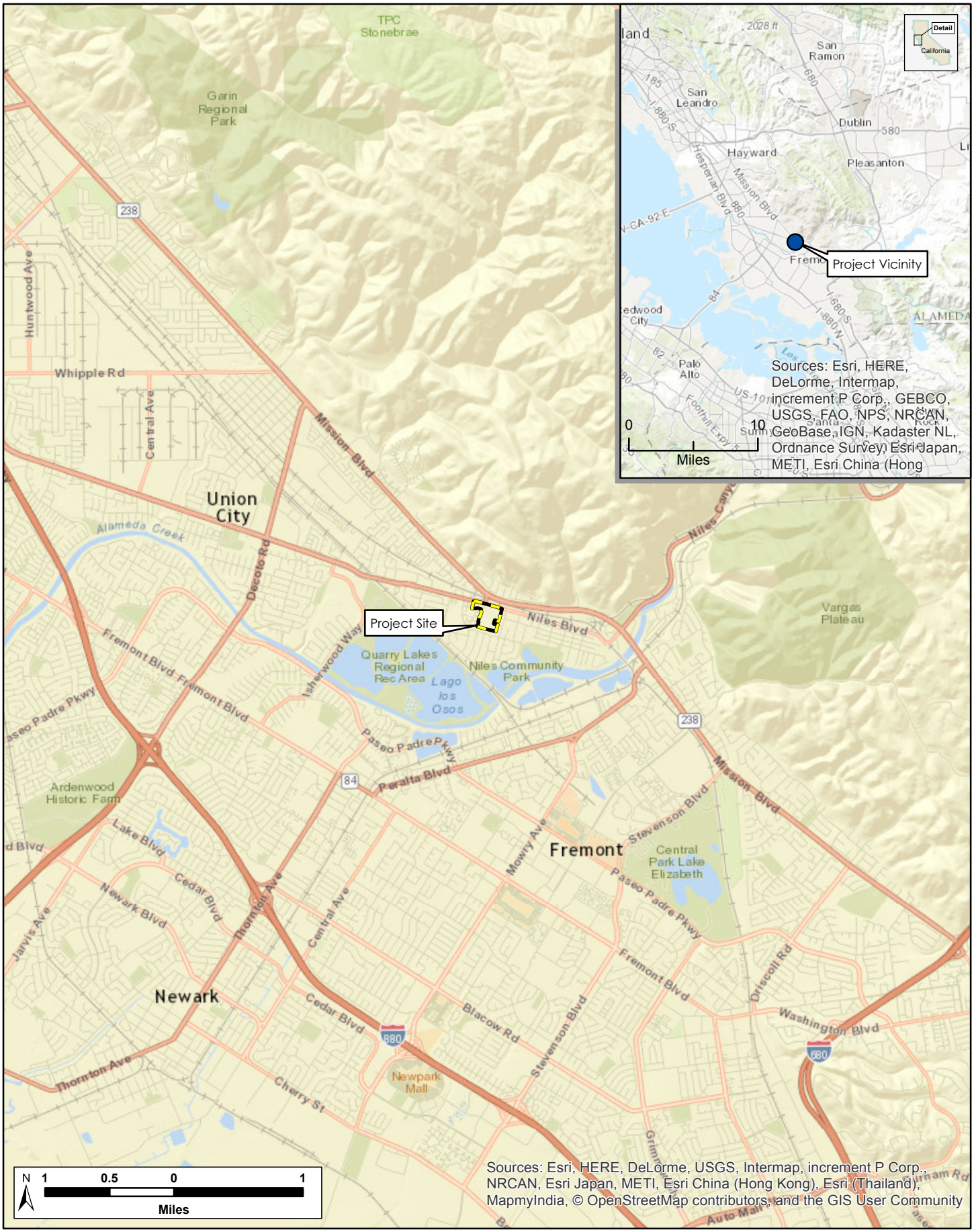
Project Description and Location

The approximately 20.1-acre (ac) proposed Project site is located at 36550 Niles Boulevard in Fremont, California in Alameda County (Figure 1). Residential and commercial development surrounds the site, with Niles Boulevard to the north and residential neighborhoods to the east, west, and south. The Southern Pacific Railroad line lies approximately 200 feet (ft) to the northeast of the site and beyond that, Mission Boulevard (State Route 238) lies approximately 300 ft to the northeast of the site.

The proposed Master Plan will provide a framework for the use, maintenance, improvements, and rehabilitation of the California Nursery Historical Park. The objective of the Master Plan is to provide a comprehensive guide for management of natural, cultural and recreational resources while identifying enhancement opportunities. We understand that the Master Plan is currently in development; however, the Site Plan and Project description made available to us contain sufficient information to allow us to assess potential impacts to biological resources, and the significance of those impacts under CEQA.

Methods

H. T. Harvey & Associates senior wildlife ecologist Steve Rottenborn, Ph.D. characterized the existing biotic conditions on the Project site, including the presence and distribution of biotic habitats, regulated habitats,



N:\Projects3600\3602-01\Reports\Figure 1 Vicinity Map.mxd

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Figure 1: Vicinity Map

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and special-status species. This assessment involved a review of relevant background information, as described below, combined with a reconnaissance-level survey conducted on 12 September 2014. During the reconnaissance-level survey, Dr. Rottenborn walked the entirety of the Project site searching for potential habitat for special-status species, identifying potential roost sites for bats, identifying potential nesting sites for migratory bird species, and recording observations on common wildlife species present and potential wildlife migration corridors. In addition, Dr. Rottenborn conducted a reconnaissance-level wetlands assessment of the site during the survey.

Based on the results of the reconnaissance-level survey and the presence of potential nesting and roosting habitat for bat species, H. T. Harvey & Associates wildlife biologists Robin Carle, M.S. and Gabriel Reyes, B.S. conducted a focused survey for bat roosts on 23 September 2014.

Information concerning threatened, endangered, or other special-status species that could occur in the Project region was reviewed, including information from the following sources:

- California Natural Diversity Database (CNDDB) and its associated species accounts (CNDDB 2016)
- Species list information for the vicinity from the website of the Sacramento office of the U.S. Fish and Wildlife Service (USFWS) (http://www.fws.gov/sacramento/es/spp_list.htm)
- California Native Plant Society (CNPS) *Inventory of Rare and Endangered Plants of California* (CNPS 2016)
- *Jepson Manual Second Edition* (Baldwin et al. 2012)
- Calflora (2016)
- Consortium of California Herbaria (2016)
- Relevant scientific literature, technical databases, and resource agency reports

The search of CNDDB Rarefind published accounts (CNDDB 2016) was conducted for special-status plant and wildlife species occurring in the *Niles*, *California* U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle within which the site is located, as well as the eight surrounding quadrangles (*Newark*, *Hayward, Dublin, Livermore, La Costa Valley, Calaveras Reservoir, Milpitas, and Mountain View*). In addition, for plants, we reviewed the *Online Inventory of Rare Plants* (CNPS 2016) for information regarding the distribution and habitats of vascular plants designated as California Rare Plant Rank (CRPR) 1A, 1B, 2A, 2B, or 3 that occur in any of the nine USGS quadrangles listed above. We also considered the CNPS plant list for Alameda County, as the CNPS does not maintain quadrangle-level records for CRPR 4 species.

Existing Biological Conditions

General Habitat Conditions and Wildlife Use

Vegetation. The Project site is located in a developed suburban setting with many single and multi-family residences situated around the site. The Project site is composed primarily of landscaped park supporting an abundance of cultivated tree species remaining from the historic nursery operation. Vegetative cover within the

site includes coast live oak/mixed woodland, limited patches of ruderal grassland, and a remnant orchard. As a result of historic development and landscaping on the site (e.g., soil disturbance, grading, gravel placement, roads, and buildings), minimal understory vegetation is present. Non-native annual grasses and plants including wild oats (*Avena* sp.), soft chess (*Bromus hordeaceus*), and thistle (*Cirsium* sp.) are the dominant herbaceous species. The site supports a botanical garden-like environment, with many non-native trees remaining from historic nursery operations; exotic species present include Peruvian pepper tree (*Schinus molle*), ginkgo (*Ginkgo biloba*), eucalyptus (*Eucalpytus* sp.), elm (*Ulmus* sp.), olive (*Olea europaea*), English walnut (*Juglans regia*), pines (*Pinus* sp.), fan palms (*Washingtonia filifera*), and a variety of fruit trees. A number of native trees are also present on the site, including valley oak (*Quercus lobata*), Fremont cottonwood (*Populus fremontii*), and coast live oak (*Quercus agrifolia*).

Wildlife. Wildlife use of the ruderal grassland habitat on the Project site is limited by the limited extent of this habitat, high levels of human disturbance that occur in the suburban matrix surrounding and within the site, and its isolation from grasslands and other natural areas in the region. As a result, wildlife species associated with more extensive grassland habitats in the region, such as the grasshopper sparrow (*Ammodramus savannarum*) and western meadowlark (*Sturnella neglecta*), are absent from this landscaped patch of habitat. Common species observed foraging in the Project site include the American crow (*Corvus brachyrhynchos*), American robin (*Turdus migratorius*), Anna's hummingbird (*Calypte anna*), bushtit (*Psaltriparus minimus*), California towhee (*Melozone crissalis*), chestnut-backed chickadee (*Poecile rufescens*), dark-eyed junco (*Junco hyemalis*), house finch (*Haemorhous mexicanus*), oak titmouse (*Baeolophus inornatus*), violet-green swallow (*Tachycineta thalassina*), European starling (*Sturnus vulgaris*), western scrub-jay (*Aphelocoma californica)*, turkey vulture (*Cathartes aura*), Cooper's hawk (*Accipiter cooperii*), and barn owl (*Tyto alba*). A variety of bird species may nest in the many large trees and mixed woodland habitat within the site boundary, such as the Anna's hummingbird, American crow, American robin, western scrub-jay, acorn woodpecker (*Melanerpes formicivorus*), downy woodpecker (*Picoides pubescens*), and many others.

No nests of raptors (e.g., hawks, eagles, falcons, and owls) were observed on the site or in adjacent areas during the focused survey. However, evidence of barn owl presence (i.e., white wash and feathers) was observed beneath a group of large date palms, indicating the potential presence of a barn owl nest and/or roost. Other raptors that nest in natural areas in the region, such as the Alameda foothills to the northeast, may occasionally forage on the Project site.

Common reptiles, such as the western fence lizard (*Sceloporus occidentalis*) and gopher snake (*Pituophis catenifer*), occur on the Project site. Burrows of Botta's pocket gophers (*Thomomys bottae*) and one California ground squirrel (*Spermophilus beecheyi*) were observed on the site during the survey; however, burrows of California ground squirrels were largely absent. Non-native eastern gray squirrel (*Sciurus carolinensis*) and fox squirrel (*Sciurus niger*) were observed foraging at the Project site. Other common mammal species that inhabit the surrounding region and likely forage within the site are the native raccoon (*Procyon lotor*) and striped skunk (*Mephitis mephitis*) and the nonnative Virginia opossum (*Didelphis virginiana*).

Special-status Plant and Animal Species

As described in *Methods* above, information concerning threatened, endangered, or other special-status species that could occur on the Project site was collected from several sources and reviewed by H. T. Harvey & Associates biologists. The specific habitat requirements and the locations of known occurrences of each special-status species were the principal criteria used for inclusion in the list of species potentially occurring on the site. Figure 2 provides a map of the CNDDB's special-status plant and animal species records in the general vicinity of the Project site, defined for the purposes of this report as the area within a 5-mile (mi) radius. These generalized maps are valuable on a historic basis, but do not necessarily represent current conditions. While these records are not definitive, they show areas where special-status species occur or have occurred previously.

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

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

In addition, the CNDDB identifies several special-status plant species as occurring within the Project vicinity (Figure 2). According to CNDDB records, these occurrences are either known to be extirpated, are historic records that have not been observed recently, or have habitat requirements that are not present within the Project site. Therefore, these species were determined to be absent from the Project site.

Special-status Animals. Based on our review of current CNDDB (2016) records (Figure 2) and other data sources, several special-status animal species are known to occur in the Project region. However, each of these species was determined to be absent from the Project site due to a lack of suitable habitat or evidence that the species does not occur in the Project vicinity. Species considered for occurrence but rejected, as well as the reasons for their rejection, include the following (among others):

- The California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and Alameda whipsnake (*Masticophis lateralis euryxanthus*) are present in the hills to the north of the Project site. However, suitable habitat is absent from the site and its immediate vicinity, and there is no potential for these species to disperse to the site from occupied habitat because the Project site is separated from the nearest known occurrences of these species by State Route 238, the Southern

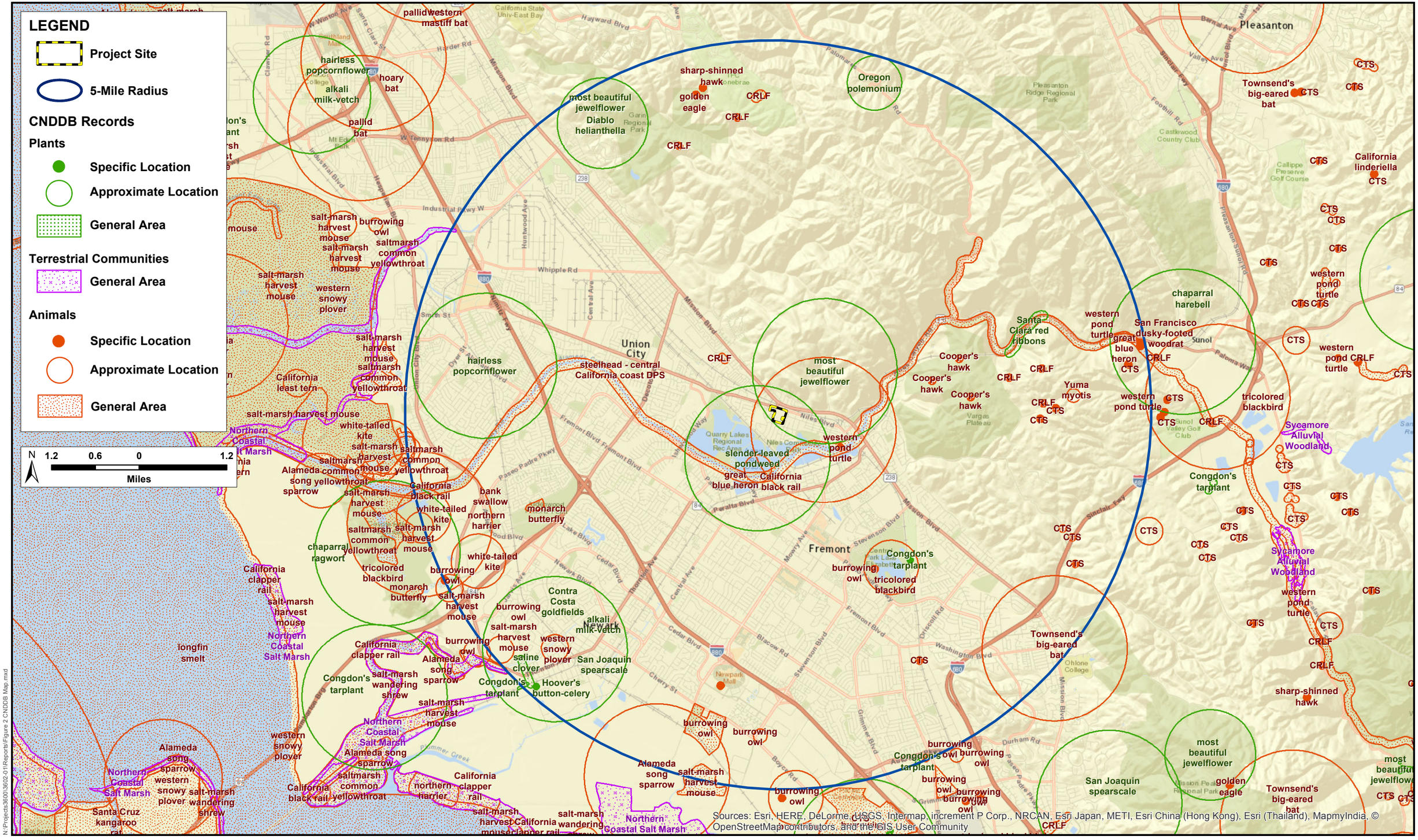

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Figure 2: California Natural Diversity Database Map of Special-status Animals and Plants

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Pacific Railroad, and dense urban development within the City of Fremont. Therefore, these species are not expected to occur on the Project site.

- The Project site lacks suitable wetland or aquatic habitat for the San Francisco common yellowthroat (*Geothlypis trichas sinuosa*), Alameda song sparrow (*Melospiza melodia pusillula*), California black rail (*Laterallus jamaicensis*), California Ridgway's rail (*Rallus obsoletus obsoletus*)[1], California least tern (*Sterna antillarum browni*), western snowy plover (*Charadrius alexandrinus nivosus*), tricolored blackbird (*Agelaius tricolor*), salt marsh wandering shrew (*Sorex vagrans halicoetes*), and salt marsh harvest mouse (*Reithrodontomys raviventris*). Thus, these species are not expected to occur on the Project site.
- The limited extent of grassland habitat on the Project site and its isolation from more extensive grasslands in the region preclude the presence of several sensitive wildlife species that are associated with extensive open habitats, such as the grasshopper sparrow, loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), and northern harrier (*Circus cyaneus*).
- The Project site lacks aquatic habitat for the Central California Coast steelhead (*Oncorhynchus mykiss*), Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*), and western pond turtle (*Actinemys marmorata*). Thus, these species are determined to be absent.
- The Project site supports suitable structures and large trees with crevices and cavities that could provide roosting habitat for bats. However, during focused surveys for bat roosts, biologists observed only a few foraging bats flying around the site and found no evidence of bat roosts in any of the structures on the site. Thus, roosting bats, including the pallid bat (*Antrozous pallidus*) and Townsend's big-eared bat (*Corynorhinus townsendii*), are determined to be absent from the site, and there is no evidence that large roosts of these or any bat species are present.

Sensitive and Regulated Habitats

The CDFW ranks certain rare or threatened plant communities, such as wetlands, meadows, and riparian forest and scrub, as 'threatened' or 'very threatened'. These communities are tracked in the CNDDB. Impacts on CDFW sensitive plant communities, or any such community identified in local or regional plans, policies, and regulations, must be considered and evaluated under the California Environmental Quality Act (CEQA) (California Code of Regulations: Title 14, Div. 6, Chap. 3, Appendix G). Furthermore, aquatic, wetland and riparian habitats are also afforded protection under applicable federal, state, or local regulations, and are generally subject to regulation, protection, or consideration by the U.S. Army Corps of Engineers, Regional Water Quality Control Board, CDFW, and/or the USFWS.

CDFW Sensitive Habitats. Based on a query of Rarefind (CNDDB 2016) for sensitive habitats in the *Niles, California* 7.5-minute USGS quadrangle, no sensitive habitats were identified on or near the Project site. Further, no sensitive habitats were found to be present during the reconnaissance-level survey.

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

Waters of the U.S./State. No habitat observed on the Project site possesses the field characteristics used by the federal and state resource/regulatory agencies in defining their jurisdiction (i.e., waters of the U.S., under the Clean Water Act, or waters of the State, under the Porter-Cologne Water Quality Control Act). No areas showing evidence of supporting standing or flowing water, and no hydrophytic (i.e., wetland-associated) vegetation, was observed during the site visits. Therefore, no jurisdictional or regulated waters or aquatic habitats were found to occur on the Project site.

Ordinance and Landmark Trees. The City of Fremont Tree-Removal Controls (Fremont Municipal Code, Sec. 4-5101) serve to protect all trees having a trunk diameter of 6 inches or greater at a height measured 4 ½ feet above the natural grade of slope, growing within the city limits. The ordinance protects all trees other than commercial nut and fruit-bearing trees, except black walnut and olive trees, or any tree located on a lot or parcel of land which is less than ten thousand square feet in area. A tree-removal permit is required from the City of Fremont city manager for the removal of ordinance-sized trees. The City of Fremont also maintains a list of Landmark Trees (Fremont Municipal Code, Sec. 4-5109) which serves to protect trees having significant girth, height, spread, or is of some unique quality or species. There are 14 species of landmark trees designated within the Project site. It is unlawful to vandalize, mutilate, remove, or destroy landmark and ordinance trees without a permit from the City. In addition, the City of Fremont requires, prior to the issuance of any approval or permit for construction of any improvement of the project site, that all trees on a project site be inventoried and categorized in a Tree Location Plan according to size, species, and spot elevation at the base of each tree (Fremont Municipal Code, Sec. 4-5107).

Biotic Impacts and Mitigation

Overview

The CEQA and the State CEQA Guidelines provide guidance in evaluating impacts of projects on biological resources and determining which impacts will be significant. The Act defines "significant effect on the environment" as "a substantial adverse change in the physical conditions which exist in the area affected by the proposed project." Under State CEQA Guidelines section 15065, a project's effects on biotic resources are deemed significant where the project would:

A. "substantially reduce the habitat of a fish or wildlife species"
B. "cause a fish or wildlife population to drop below self-sustaining levels"
C. "threaten to eliminate a plant or animal community"
D. "reduce the number or restrict the range of a rare or endangered plant or animal"

In addition to the section 15065 criteria that trigger mandatory findings of significance, Appendix G of State CEQA Guidelines provides a checklist of other potential impacts to consider when analyzing the significance of project effects. The impacts listed in Appendix G may or may not be significant, depending on the level of the impact. For biological resources, these impacts include whether the project would**:**

E. "have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service"
F. "have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service"
G. "have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act"
H. "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites"
I. "conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance"
J. "conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan"

We analyzed potential impacts to biological resources on the site based on the CEQA guidelines, the resources known or expected to occur on the site, and the conceptual site plans provided to us by Lamphier-Gregory.

No Impact

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

Impacts on Special-status Animals. As described above, suitable habitat is not present on the Project site for any special-status animal species, and the site is functionally isolated from occupied habitat for special-status species in the surrounding region. Therefore, there would be no impact on special-status animals due to this Project.

Less-than-significant Impacts

Impacts on Common Upland Habitats (Ruderal Grassland/Mixed Woodland) and Associated Common Wildlife Species. Construction activities related to the proposed Project may result in the alteration of up to 20 ac of ruderal grassland, mixed woodland, and developed/landscaped areas. Increased human activity associated with the Project would also result in increased disturbance of common wildlife species on the site. Impacts on these common habitats and associated wildlife communities during construction and operation could reduce or alter their extent on the Project site, resulting in a reduction in abundance of some of the common plant and wildlife species that use the site. However, these habitats are relatively abundant and widespread regionally, and are not particularly sensitive, valuable (from the perspective of providing important plant or wildlife habitat), or exemplary occurrences of these habitat types. In addition, many of the wildlife species currently using the site are already adapted to some human activity given the existing use of the site as

a park and the surrounding suburban land uses (which will reduce the extent to which wildlife populations decline with increased human activity).

To some extent, nighttime human use of the site, as well as night lighting, will increase impacts to the common, widespread animals that currently use the site. These impacts may occur by disturbing animals that are sleeping, discouraging nocturnal animals from being active on or near the site, making animals more visible to nocturnal predators, or otherwise disrupting the normal "schedule" of animals' activities. However, because no special-status animals are expected to be present on the site, the species that would be affected are all regionally common, widespread species; any adverse effects on these common species would have no measurable impact on their regional populations. Also, the species using the site have to be habituated to some extent to night lighting and nighttime activities in surrounding urban areas, which reduces the magnitude of any impacts on these species that nighttime use/lighting will cause.

The site supports only a very small proportion of the regional availability of common habitats and populations of common wildlife species, and thus any impact on these resources would not reach the threshold of a *substantial* adverse effect. Therefore, impacts to common habitats and wildlife species are less than significant (though see below for impacts to nesting birds).

Impacts Found to Be Less than Significant with Mitigation

Impacts on Ordinance and Landmark Trees. The Project may result in the removal or trimming of trees during implementation of park development, maintenance, or operation. Although the Master Plan has been developed to avoid impacts to ordinance and landmark trees wherever possible, some removal of these trees may be necessary. Under the City of Fremont Tree Removal Controls, it is unlawful to remove or destroy landmark trees without prior consent from the City. Therefore, removal of ordinance-sized and/or landmark trees may result in a significant impact due to conflict with the City's ordinance. Implementation of the following mitigation measure will reduce this impact to a less-than-significant level.

Mitigation Measure 1. The Project proponent will seek authorization and/or necessary permits from the City regarding potential modifications to ordinance-sized or landmark trees prior to any modifications of these trees. The Project proponent will mitigate removal of any ordinance-sized or landmark trees by replacing each tree removed in accordance with the City's ordinance. At a minimum, each ordinance-sized or landmark tree that is removed will be replaced by one or more trees so that the total (i.e., cumulative) diameter at breast height (dbh) of the replacement tree(s) is at least equal to the dbh of the tree(s) to be removed. The replacement tree(s) will be monitored for a period of at least 5 years to ensure that, at the end of 5 years after planting, the cumulative dbh of all surviving replacement trees still equal or exceed the dbh of the tree(s) that were removed.

Impacts on Nesting Birds. As described under "Less-than-significant Impacts" above, the Project will result in the loss of habitat for, and the disturbance of, a number of relatively common wildlife species associated with the types of habitats found in suburban Fremont. While impacts to the populations of any one species will not be substantial, impacts to nesting birds using the existing park may be greater when viewed at the

community scale. The tall trees and diversity of plant species on the site combine to support large numbers of nesting birds, and a high diversity of nesting birds. As a result, construction activities during the avian nesting season could potentially result in disturbance of large numbers of active nests of a number of species. Construction disturbance during the nesting season (1 February through 31 August, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests, or indirectly by causing the abandonment of nests.

Although the site supports only a small proportion of the regional populations of common wildlife species, the abundance of trees and mixed woodland habitat on the Project site relatively high compared to the surrounding vicinity and a significant reduction could have a measurable effect on regional nesting bird populations. This impact is potentially significant under CEQA for bird species that nest on the Project site due to the high abundance of nesting habitat and the potentially high magnitude of the Project impacts on these species. In order to reduce this potential impact to a less-than-significant level, the following measures will be implemented. In addition, these measures will ensure that Project activities comply with the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code.

Mitigation Measure 2a. To the extent feasible, vegetation disturbance and other construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season (i.e., if they occur during the period 1 September through 31 January), impacts to nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in Alameda County extends from 1 February through 31 August.

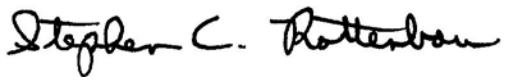
Mitigation Measure 2b. If it is not possible to schedule construction activities between 1 September and 31 January, then pre-construction surveys for nesting birds will be conducted by a qualified ornithologist to ensure that no nests will be disturbed during Project implementation. These surveys will be conducted no more than seven days prior to the initiation of vegetation disturbance or other construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., shrubs, ruderal grasslands, and buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 ft for raptors and 100 ft for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during Project implementation. The nest buffers will be determined by the ornithologist based on the circumstances of each individual nest, such as its height above the ground, the level of existing disturbance in the vicinity of the nest (to which the nesting birds are already habituated), the nature of the construction-related activity proposed near the nest (e.g., its duration, and the magnitude of expected disturbance), and factors such as the presence of vegetation that may screen the birds' view of construction activities.

Mitigation Measure 2c. If construction activities will not be initiated until after the start of the nesting season, potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the Project may be removed prior to the start of the nesting season (e.g., prior to 1 February). This will

preclude the initiation of nests in this vegetation, avoidance disturbance to nesting migratory birds, and prevent the potential delay of the Project due to the presence of active nests in these substrates.

Please contact me by email at srottenborn@harveyecology.com or by phone at (408) 458-3205 if you have any questions regarding this report. Thank you very much for contacting H. T. Harvey & Associates regarding this Project.

Sincerely,



Stephen C. Rottenborn, Ph.D.
Principal –Wildlife Ecologist

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