



## Memorandum

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July 28, 2025

HTH #4969-01

**To:** Nick Towstopiat, David J. Powers & Associates  
**From:** Ben Pearl and Steve Rottenborn, H. T. Harvey & Associates  
**Subject:** 10887 Linda Vista Drive Biotic Evaluation Peer Review

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H. T. Harvey & Associates has conducted a peer review of the Biotic Evaluation for 10857 Linda Vista Drive prepared by Live Oak Associates, Inc. (LOA) and dated July 15, 2024. The purpose of our peer review was to determine whether LOA's Biotic Evaluation report adequately addressed biological resources existing conditions, impacts, and mitigation measures for use by David J. Powers & Associates in preparing California Environmental Quality Act documentation of the project's impacts. This peer review is based on a brief field inspection of the project site conducted by senior wildlife ecologist Ben Pearl, M.S., on July 2, 2025; our review of LOA's Biotic Evaluation and other relevant background information; and our experience working on projects in the vicinity (e.g., in the Santa Clara Valley near Stevens Creek and the Santa Cruz Mountains). As a result of our review, we offer the following comments, in order of occurrence in the draft report:

### Chapter 2. Existing Conditions

#### Section 2.1 Biotic Habitats

- Page (Pg). 4-6 and Figure 2 - We concur with the report's characterization of the approximately 2.48-acre project site as supporting two land cover types, including developed/landscaped and California annual grassland. The report characterizes California annual grassland as occurring only in the southeastern section of the project site in parcel 356-06-001; however, we found that this land cover type also occurred throughout much of the central and norther portion of the project site in parcels 356-06-001, 356-06-002, 356-06-003, and along a portion of Evulich Ct. We estimate that approximately 1.02 acres of California annual grassland occur on the project site.

#### Movement Corridors

- Pg. 7-8 - We concur with the report that the project site does not provide high-quality habitat for terrestrial wildlife moving along Stevens Creek, which is located approximately 600 feet to the west. Furthermore, a steep embankment west of the project site, as well as fencing separating the project site from the public trail, limit the accessibility of the project site for terrestrial wildlife. The land uses surrounding Stevens Creek, including a golf course and public trail, provide higher-quality habitat that is more accessible for terrestrial wildlife moving along the Stevens Creek corridor.

## Section 2.2 Special Status Plants and Animals

- Pg. 8-9 - We concur with the report's statement regarding 14 species that should be considered absent from the project site due to lack of various suitable habitats in the area that would support these species.
- Pg. 10 - Table 1 indicates that the Crotch's bumble bee (*Bombus crotchii*) is absent from the project site because suitable habitat was not observed during the site survey, and the site supports a limited growth of flowering plants on which this species could forage. We concur that flowering plants on-site are limited, so the site does not provide high-quality foraging habitat. We observed numerous California ground squirrel (*Otospermophilus beecheyi*) individuals and burrows throughout the project site, so potential nesting habitat is present. However, due to the lack of abundant floral resources on the site and in nearby areas, we concur that this species is likely absent from the project site.
- Pg. 11 - Table 1 indicates that the northwestern pond turtle (*Actinemys marmorata*) is considered a candidate for federal listing; it has been formally proposed for listing, so the status of the species should be corrected. Table 1 also indicates that this species is absent from the site due to the lack of observations of this species within 5 km of the project site. It is our opinion that this species could occur along Stevens Creek (i.e., the lack of reports in nearby areas may result from a lack of thorough survey effort), and if it does, it could potentially disperse toward the project site. However, the fencing separating the project site from the public trail would inhibit turtle dispersal onto the site, and the probability of turtle dispersal onto the project site is so low that we concur that this species could be considered likely absent.
- Pg. 13 - Table 2 indicates that the white-tailed kite (*Elanus leucurus*) may possibly nest on-site and in adjacent areas in large trees and identifies that a pair nested and fledged young approximately 1 kilometer from the project site in 2005. We concur with this assessment and note that the project site supports Botta's pocket gopher (*Thomomys bottae*), California ground squirrel, and Norway rat (*Rattus norvegicus*) that may serve as prey for this species (the latter two species only when immature).
- Pg. 13 - Table 2 indicates that the burrowing owl (*Athene cunicularia*) is a California species of special concern. It has been designated a candidate for listing under the California Endangered Species Act, so the status of the species should be corrected, and this species should be moved to Table 1. Table 2 currently indicates that the species is absent from the project site due to the lack of ground squirrel burrows. However, as noted above, ample ground squirrel burrows were observed during the July 2, 2025 site visit. The report also stated that there are no recorded observations of this species within 5 kilometers of the site, however there are two observations of this species in the project vicinity reported on eBird by experienced birders, including 0.5 kilometers to the northwest at McClellan Ranch Preserve and 1.15 kilometers to the southwest at the Stevens Creek County Park Chestnut Parking Lot (Cornell Lab of Ornithology 2025). Given the very limited nature of grassland on the site and proximity of this grassland to high human activity, we concur that the species should be considered absent from the site, but the justification for its absence should be revised.

- Pg. 14 - Table 1 indicates that the grasshopper sparrow (*Ammodramus savannarum*) is unlikely to occur in the study area due to lack of breeding habitat and marginally suitable foraging habitat. The report further states that the species has not been observed within 5 kilometers of the project, however there is a recent record of two grasshopper sparrows at Linda Vista Park, approximately 0.5 kilometers to the south (Cornell Lab of Ornithology 2025). Nevertheless, we concur that this species is unlikely to occur in the study area for the reasons mentioned above.
- Pg. 14 - Table 1 indicates that the loggerhead shrike (*Lanius ludovicianus*) is unlikely to occur on the project site due to a lack of dense bushes to support nesting and small area of suitable foraging habitat. The report further states that there are no observations of this species within 5 kilometers of the project site, however there are three nearby documented observations of this species, including 0.6 kilometers to the north along the Stevens Creek trail and two observations at Rancho San Antonio County Park and Open Space Preserve, approximately 3.6 kilometers to the northwest (Cornell Lab of Ornithology 2025). Given the very limited nature of grassland on the site and proximity of this grassland to high human activity, we concur that the species should be considered absent from the site, but the justification for its absence should be revised.
- Pg. 14 - Table 1 indicates that the Townsend's big-eared bat (*Corynorhinus townsendii*) could possibly occur on the project site as a forager, and detached structures support marginal potential roosting habitat. We concur with this assessment and note that one of the detached structures, an old horse stable, is boarded up and locked to prevent entry by tenants, but there is a large gap between the walls and roof that would allow bats to enter the structure. During the July 2 site visit, the door of one of the stables was opened by the owner of the parcel; no signs of bat roosting such as urine staining or bat droppings were observed.
- Pg. 14 - Table 1 indicates that the pallid bat (*Antrozous pallidus*) could possibly occur on the project site as a forager, and detached structures support marginal potential roosting habitat. We concur with this assessment and note that in addition to the stable noted above, two of the houses on the project site contain vent holes and/or cracks, and a utility pole with a large woodpecker hole present on the edge of the project site provide suitable roosting habitat for this species.
- Pg. 15 - Table 1 indicates that the San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) is absent, as the site did not support woodrat nests at the time of the June 2024 site visit. We looked for and did not observe woodrat nests during the July 2, 2025 site visit, so we concur that this species is likely absent.

### Section 2.3 Jurisdictional Waters

- Pg. 15 - We concur with the reports assessment that the site does not support jurisdictional waters.

## Chapter 3. Impacts and Mitigation

### Section 3.1 Significance Criteria

No comment.

### Section 3.2 Relevant Goals, Policies, and Laws

No comment.

### Section 3.3 Impacts Specific To The Project

- Pg. 25, Impact Statement 3.3.1, Potential Project Impacts to Special-Status Plants – No comment.
- Pg. 26, Impact Statement 3.3.2, Loss of Habitat for Special-Status Animals - No comment.
- Pg. 27 Impact Statement 3.3.3., Loss of Habitat for Native Wildlife - No comment.
- Pg. 27 Impact Statement 3.3.4, Interference with the Movement of Native Wildlife - No comment.
- Pg. 27 Impact Statement 3.3.5, Impacts to Nesting Migratory Birds Including White-tailed Kite and other Nesting Raptors and Protected Birds - No comment.
- P. 28 Mitigation Measure 3.3.5a. This measure requires that a preconstruction survey of the project site and surrounding lands within 250 feet be conducted within 7 days prior to the onset of ground disturbance if construction activities occur during the breeding season (February 1 to August 31). If an active nest is found, an appropriate construction free-buffer would be established and periodically monitored by a qualified biologist. Once the nest is no longer active, the buffer would be removed. We concur with this approach, but note that Cupertino Municipal Code 17.040.050 Section (D)1.d. states that construction free-buffers must be at least 300 feet for raptors and 75 feet for passerines and other birds, and may only be reduced by the qualified biologist in consultation with California Department of Fish and Wildlife. This code also requires that the active nest be monitored on a weekly basis. Section (D)1.e. requires that a final report that includes the survey methodology, survey date(s), map of identified active nest(s), and protection measures (if required) be prepared by the qualified biologist and submitted to and approved by the Director of Community prior to the start of ground disturbance.
- Pg. 28 Impact Statement 3.3.6, Roosting Bats - The report states that the detached structures onsite could provide marginal roosting habitat and a number of bat species could forage on the site year round, while the residences onsite do not support suitable bat roosting habitat. We concur that the detached structures could provide roosting bat habitat and the site may support foraging bats throughout the year, but note that two of the residences also contain vent holes that may provide access to suitable roosting bat habitat. The assessment of impacts to bats, and associated mitigation measures, should consider those residences as well.

- Pg. 28 Mitigation Measure 3.3.6a - This measure requires that a daytime bat assessment/survey be conducted prior to demolition of the buildings and structures onsite. If a non-breeding bat colony is found, then they would be evicted via two-step removal under the guidance of a qualified biologist to ensure no take would occur. We concur with this approach, but note that due to the height of some of the vent holes in the residences, a dusk emergence survey may be required to confirm the presence/absence of a non-breeding bat colony if the biologist is not able to physically access the interior areas where bats could roost. In addition, Cupertino Municipal Code 17.040.050 Section (D)2.b. states that the bat assessment/survey shall occur within 14 days prior to the start of tree removal or demolition.
- Pg. 28 Mitigation Measure 3.3.6b - No comment.
- Pg. 29 Impact Statement 3.3.7, Potential Impacts to Riparian Habitat and Other Sensitive Natural Communities, Including Federally and State Protected Wetlands - No comment.
- Pg. 29 Impact Statement 3.3.8, Degradation of Water Quality in Seasonal Drainages, Stock Ponds, and Downstream Waters - No comment.
- Pg. 29 Impact Statement 3.3.9, Conflict with Local Policies and Ordinance: City of Cupertino's Tree Ordinance - No comment.
- Pg. 30 Impact Statement 3.3.10, Conflict with Local Policies and Ordinances: City of Cupertino's General Plan: Community Vision 2015-2040 - No comment.

## References

Cornell Lab of Ornithology 2025. eBird: An online database of bird distribution and abundance [web application]. eBird, Cornell Lab of Ornithology, Ithaca, New York. Available: <http://www.ebird.org>. (Accessed July 2025).

iNaturalist. 2025. Available from <https://www.inaturalist.org>. Accessed July 2025.