

4.3 Biological Resources

This chapter identifies the existing biological resources within the study area; reviews the federal, state, and local regulations pertaining to biological resources within the region; describes project-related impacts to those biological resources; and outlines mitigation measures to reduce potentially significant impacts to less-than-significant levels. Information used in the preparation of this section was obtained from existing biological reports, the California Department of Fish and Game's California Natural Diversity Database,¹ California Native Plant Society Electronic Inventory,² U.S. Fish and Wildlife Service's *Official List of Federal Endangered and Threatened Species*,³ reconnaissance-level field surveys, and standard biological literature.

A field survey of the Plan area was conducted by an ESA biologist on July 24, 2009 to identify biological resources within the Plan area as well as potential habitat for special-status species.

4.3.1 Environmental Setting

Regional Setting

The Plan area is located in the City of Menlo Park on the east side of the San Francisco Peninsula, approximately two miles west of San Francisco Bay. Much of the natural habitat on the San Francisco Peninsula, including Menlo Park, has been converted or fragmented due to urban development. This is also true for aquatic habitats, which have suffered not only from water quality problems but also from fill for development.

Habitat Types within the Plan Area

The only habitat types found within the Plan area are Urban/Landscaped. San Francisquito Creek and its associated riparian vegetation (Creeks and Riparian habitat) abut the southeastern edge of the project and have been included in this analysis due to potential indirect impacts. Nearby habitats that are not within the Plan area and are therefore not described include Non-native/Ornamental Grasses, Non-native/Ornamental Hardwood/Conifer Mix, and Valley Oak. The Plan area is approximately two miles southwest of Ravenswood Slough and may provide foraging areas for species that inhabit the slough. Habitat classifications are based on the California Wildlife Habitat Relationships System.⁴ Habitat types found in the project vicinity are shown in **Figure 4.3-1**.

¹ California Department of Fish and Game, California Natural Diversity Database (CNDDDB), Data Request for Mountain View, Palo Alto, Woodside, Newark, Redwood Point, Cupertino, Mindego Hill, La Honda, and San Mateo USGS 7.5-Minute Quadrangles, accessed March 2009.

² California Native Plant Society (CNPS), Inventory of Rare and Endangered Plants (online edition, v7-06a), Data Request for Mountain View, Palo Alto, Woodside, Newark, Redwood Point, Cupertino, Mindego Hill, La Honda, and San Mateo USGS 7.5-Minute Quadrangles California Native Plant Society. Sacramento, CA, www.cnps.org/inventory, accessed July 22, 2009.

³ U.S. Fish and Wildlife Service (USFWS), Official List of Federal Endangered and Threatened Species that Occur in or may be Affected by Projects in the Mountain View, Palo Alto, Woodside, Newark, Redwood Point, Cupertino, Mindego Hill, La Honda, and San Mateo USGS 7.5-Minute Quadrangles, accessed July 22, 2009.

⁴ California Department of Fish and Game (CDFG), California Interagency Wildlife Task Group, California Wildlife Habitat Relationships version 8.1 database program. Sacramento, CA, 2005.

Urban/Landscaped

The Plan area is fully developed and occurs in a highly urbanized/landscaped context. Urban, developed areas are dominated by roads, structures, concrete, and asphalt. They provide little wildlife habitat and essentially no habitat for plants other than opportunistic “weedy” species adapted to the built environment or horticultural plants used in landscaping (see discussion below). Wildlife species utilizing urban areas must be able to tolerate disturbances and are typically generalists, capable of utilizing the limited food sources available, such as garbage and horticultural plants and their fruit. Urban wildlife species that may be found in the Menlo Park area include the common crow (*Corvus brachyrhynchos*), northern mockingbird (*Mimus polyglottos*), raccoon (*Procyon lotor*), Norway rat (*Rattus norvegicus*), and Virginia opossum (*Didelphis virginiana*). Exceptions to the generalist rule are red-tailed hawk (*Buteo jamaicensis*), which preys on rodents often found in urban parks, and Cooper’s hawk (*Accipiter cooperi*), which preys on small to medium sized birds such as pigeon (*Columba livia*), European starling (*Sturnus vulgaris*), and Brewer’s blackbird (*Euphagus cyanocephalus*).

Landscaped vegetation includes manicured lawns, planted ornamental shrubs and trees, and gardens. Tree species found in the Plan area include coast redwood (*Sequoia sempervirens*), coast live oak (*Quercus agrifolia*), London plane tree (*Platanus x acerifolia*), ornamental pear (*Pyrus calleryana*), southern magnolia (*Magnolia grandiflora*), palm trees, and a variety of pine species (*Pinus* sp). Landscaped areas and planted trees can typically provide cover, foraging, and nesting habitat for a variety of bird species, especially those that are tolerant of disturbance and human presence. Birds commonly found in such areas include the house finch (*Carpodacus mexicanus*), dark-eyed junco (*Junco hyemalis*), western scrub jay (*Aphelocoma californica*), and Anna’s hummingbird (*Calypte anna*).

Creeks and Riparian

The Plan area is bounded on the northwest by Atherton Channel (also referred to as Atherton Creek) and the southeast by San Francisquito Creek. Both of these creeks run perpendicular to El Camino Real and eventually drain into the southern San Francisco Bay. Atherton Channel begins in Woodside, south of I-280, and exists mostly as engineered channels and storm drains as it passes through Menlo Park. Only small reaches of its headwaters exist as open channels.

San Francisquito Creek is a perennial creek that begins at the outlet of the Searsville Reservoir and is predominantly open and unmodified, except for the lower-most reach. Vegetation found within the San Francisquito Creek riparian zone includes coast live oak, California boxelder (*Acer negundo var. californicum*), cotoneaster (*Cotoneaster pannosus*), elderberry (*Sambucus mexicana*), Fremont cottonwood (*Populus fremontii*), tree of heaven (*Ailanthus altissima*), and black walnut (*Juglans nigra*). San Francisquito Creek has been designated as critical habitat for the Central California Coast steelhead (*Oncorhynchus mykiss irideus*). In addition to functioning as a critical migration corridor for steelhead, it may also function as a movement corridor for other wildlife species, such as western pond turtles, raccoons, and bats.



SOURCE: CDF, 2005; NAIP, 2005; NWI, 2003; NOAA, 2005; Sowers and Thompson, 2005

Menlo Park El Camino Real/Downtown Specific Plan EIR. 208581

Figure 4.3-1
Habitats in Project Vicinity

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Special-Status Species

A number of species with the potential to occur at the Plan area are protected pursuant to federal and/or State endangered species laws. In addition, Section 15380(b) of the California Environmental Quality Act (CEQA) Guidelines provides a definition of rare, endangered or threatened species that are not included in any listing.⁵ Species recognized under these terms are collectively referred to as “special-status species.” For the purposes of this EIR, special-status species include:

- Plant and wildlife species listed as rare, threatened or endangered under the federal or State endangered species acts;
- Species that are candidates for listing under either federal or State law;
- Species formerly designated by U.S. Fish and Wildlife Service as Species of Concern or by California Department of Fish and Game as Species of Special Concern;
- Animals listed as “fully protected” in the Fish and Game Code of California (Sections 3511, 4700, 5050, and 5515);⁶
- Raptors (birds of prey), which are specifically protected by Fish and Game Code Section 3503.5, which prohibits the take, possession, or killing of raptors and owls, their nests, and their eggs;⁷
- Species such as candidate species⁸ that may be considered rare or endangered pursuant to Section 15380(b) of the CEQA Guidelines.

Table 4.3-1 provides a comprehensive list of the special-status species that have been documented within or have the potential to occur in the vicinity of the Plan area. This list was obtained using information from the California Natural Diversity Database, California Native Plant Society Electronic Inventory, and the U.S. Fish and Wildlife Service. **Figure 4.3-2** maps occurrences of special-status species that have been documented in the California Natural Diversity Database within the project vicinity. Based on a review of the biological literature of the region, previous documents, and reconnaissance-level surveys of the Plan area, all of these species except six were eliminated from further evaluation because: (1) the Plan area and/or the vicinity does not provide suitable

⁵ For example, Section 15380(b) includes vascular plants listed by the California Native Plant Society as rare or endangered or as List 1 or 2; List 1A are plants presumed extinct in California, List 1B are plants that are rare, threatened or endangered in California and elsewhere, and List 2 are plants that are rare, threatened or endangered in California but more common elsewhere.

⁶ These sections prohibit the “take or possession” of designated species, except for scientific research (or for livestock protection, in the case of bird relocation). The “fully protected” designation, dating from the 1960s, before enactment of the federal or state endangered species acts, was California’s earliest effort to identify and protect rare animals and those possibly facing extinction. Most “fully protected” species have also subsequently been listed as threatened or endangered species under endangered species laws and regulations. About three dozen species are “fully protected.”

⁷ The inclusion of birds protected by Fish & Game Code Section 3503.5 is in recognition of the fact that these birds are substantially less common in California than most other birds, having lost much of their habitat to development, and the recognition that the populations of these species are therefore substantially more vulnerable to further loss of habitat and to interference with nesting and breeding than are most other birds. It is noted that a number of raptors and owls are already specifically listed as threatened or endangered by state and federal wildlife authorities.

⁸ The term “candidate species” is defined within Section 4.3.2 Regulatory Setting under the California Endangered Species Act section.

**TABLE 4.3-1
SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PLAN AREA**

Species name Scientific name	Status Federal/State/ CNPS	Habitat	Potential to occur in Plan area
LISTED SPECIES			
Plants			
San Mateo thorn-mint <i>Acanthomintha duttonii</i>	FE/CE/1B.1	Found in open areas in chaparral, valley and foothill grassland, and coastal scrub. Extant populations only known from uncommon serpentinite vertisol clay soils. 50-200m.	Low. Suitable habitat is not found on site.
Crystal Springs fountain thistle <i>Cirsium fontinale</i> var. <i>fontinale</i>	FE/CE/1B.1	Serpentine seeps in valley and foothill grasslands and chaparral. 90-180m.	Low. Suitable habitat is not found on site.
San Mateo woolly sunflower <i>Eriophyllum latilobum</i>	FE/CE/1B.3	Cismontane woodland, often on roadcuts; found on and off of serpentine. 45-150m.	Low. Suitable habitat is not found on site.
Contra Costa goldfields <i>Lasthenia conjugens</i>	FE/--/1B.1	Valley and foothill grassland, vernal pools, cismontane woodland. Found in pools, swales, and low depressions. 1-445m.	Low. Suitable habitat is not found on site.
White-rayed pentachaeta <i>Pentachaeta bellidiflora</i>	FE/CE/1B.1	Open dry rocky slopes and valley and foothill grasslands. It is often on soils derived from serpentine bedrock. 35-620m.	Low. Suitable habitat is not found on site.
California seablite <i>Suaeda californica</i>	FE/--/1B.1	Marshes and swamps including margins of coastal salt marshes. 0-5m.	Low. Suitable habitat is not found on site.
Invertebrates			
Vernal pool fairy shrimp <i>Brachinecta lynchi</i>	FT/--	Small, clear-water, sandstone-depression pools and grassy swale, earth slump, or basalt-flow depression ponds.	Low. Suitable habitat is not found on site.
San Bruno elfin butterfly <i>Callophrys mossii bayensis</i>	FE/--	Coastal, mountainous areas with grassy cover. Colonies are on steep north-facing slopes in fog belt. Larval host plant is <i>Sedum spathulifolium</i> .	Low. Suitable habitat is not found on site.
Bay checkerspot butterfly <i>Euphydryas editha bayensis</i>	FT/--	Native grasslands on outcrops of serpentine soil. <i>Plantago erecta</i> is the primary host plant; <i>Castilleja densiflorus</i> ssp. <i>densiflora</i> & <i>C. exserta</i> are the secondary host plants.	Low. Suitable habitat is not found on site.
Mission blue butterfly <i>Icaricia icarioides missionensis</i>	FE/--	Grasslands on San Francisco Peninsula. Requires larval host plants: <i>Lupinus albifrons</i> , <i>L. variicolor</i> , <i>L. formosus</i> .	Low. Suitable habitat is not found on site.
Vernal pool tadpole shrimp <i>Lepidurus packardii</i>	FE/--	Vernal pools and swales with grass bottoms.	Low. Suitable habitat is not found on site.
Myrtle's silverspot <i>Speyeria zerene myrtleae</i>	FE/--	Foggy, coastal dunes/hills of the Point Reyes peninsula; extirpated from coastal San Mateo Co. Larval foodplant thought to be <i>Viola adunca</i> .	Low. Suitable habitat is not found on site.
Fish			
Steelhead - central California coast ESU <i>Oncorhynchus mykiss irideus</i>	FT/--	From Russian River, south to Soquel Creek & to, but not including, Pajaro River. Also San Francisco & San Pablo Bay basins.	High. Known to occur in San Francisquito Creek.

TABLE 4.3-1 (Continued)
SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PLAN AREA

Species name Scientific name	Status Federal/State/ CNPS	Habitat	Potential to occur in Plan area
LISTED SPECIES (cont.)			
Amphibians and Reptiles			
California tiger salamander <i>Ambystoma californiense</i>	FT/CSC	Needs underground refuges, especially ground squirrel burrows & vernal pools or other seasonal water sources for breeding.	Moderate. No upland habitat on site, although there is a 2002 CNDDDB record from San Francisquito Creek, immediately south of the Plan area (CDFG, 2009).
California red-legged frog <i>Rana draytonii</i>	FT/CSC	Lowlands & foothills in or near permanent sources of deep water with dense, shrubby or emergent riparian vegetation. Requires 11-20 weeks of permanent water for larval development and must have access to estivation habitat.	Moderate. Lacks upland habitat but may occur in San Francisquito Creek; documented occurrences upstream.
San Francisco garter snake <i>Thamnophis sirtalis tetrataenia</i>	FE/CE,CFP	Upland areas near freshwater marshes, ponds and slow moving streams. Prefers dense cover & water depths of at least one foot.	Low. Suitable habitat is not found on site.
Birds			
Western snowy plover <i>Charadrius alexandrinus nivosus</i>	FT/CSC	Sandy beaches, salt pond levees & shores of large alkali lakes. Needs sandy, gravelly or friable soils for nesting.	Low. Suitable habitat is not found on site.
White-tailed kite <i>Elanus leucurus</i>	--/CFP	Rolling foothills and valley margins with scattered oaks & river bottomlands or marshes next to deciduous woodland. Open grasslands, meadows, or marshes for foraging, close to isolated, dense-topped trees for nesting and perching.	Low. Suitable habitat is not found on site.
American peregrine falcon <i>Falco peregrinus anatum</i>	Delisted/CE, CFP	Found near wetlands, lakes, rivers, on cliffs, banks, dunes, mounds, and human-made structures.	Low. Suitable habitat is not found on site.
California black rail <i>Laterallus jamaicensis coturniculus</i>	--/CT,CFP	Freshwater marshes, wet meadows, and saltwater marshes bordering larger bays. Needs water depths of about 1 inch that does not fluctuate during the year, dense vegetation for nesting habitat.	Low. Suitable habitat is not found on site.
California brown pelican <i>Pelecanus occidentalis californicus</i>	FE/CE	Colonial nester on coastal islands.	Low. Suitable habitat not found on site.
Bank swallow <i>Riparia riparia</i>	--/CT	Colonial nester, primarily in riparian and other lowland habitats near water. Requires vertical banks/cliffs with fine-textured/sandy soils to dig nests.	Low. Suitable habitat is not found on site.
California clapper rail <i>Rallus longirostris obsoletus</i>	FE/CE,CFP	Salt-water & brackish marshes in the vicinity of San Francisco Bay. Associated with pickleweed, but feeds away from cover on invertebrates from mud-bottomed sloughs.	Low. Suitable habitat is not found on site.
California least tern <i>Sternula antillarum browni</i>	FE/CE,CFP	Nests along the coast. Colonial breeder on bare or sparsely vegetated, flat substrates: sand beaches, alkali flats, landfills, or paved areas.	Low. Suitable habitat is not found on site.

TABLE 4.3-1 (Continued)
SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PLAN AREA

Species name Scientific name	Status Federal/State/ CNPS	Habitat	Potential to occur in Plan area
LISTED SPECIES (cont.)			
Mammals			
Salt-marsh harvest mouse <i>Reithrodontomys raviventris</i>	FE/CE,CFP	Saline emergent wetlands with pickleweed. Requires higher areas for flood escape.	Low. Suitable habitat is not found on site.
OTHER SPECIAL-STATUS SPECIES			
Plants			
Franciscan onion <i>Allium peninsulare</i> var. <i>franciscanum</i>	--/--/1B.2	Clay and serpentine soils and dry hillsides in cismontane woodland, valley and foothill grassland. 100-300m.	Low. Suitable habitat is not found on site.
Bent-flowered fiddleneck <i>Amsinckia lunaris</i>	--/--/1B.2	Cismontane woodland, valley and foothill grassland. 50-500m.	Low. Suitable habitat is not found on site.
Anderson's manzanita <i>Arctostaphylos andersonii</i>	--/--/1B.2	Open sites in broadleaved upland forest, chaparral, north coast coniferous forest, redwood forest. 180-800m.	Low. Suitable habitat is not found on site.
Montara manzanita <i>Arctostaphylos montaraensis</i>	--/--/1B.2	Maritime chaparral and coastal scrub. 150-500m	Low. Suitable habitat is not found on site.
Kings Mountain manzanita <i>Arctostaphylos regismontana</i>	--/--/1B.2	Granitic or sandstone outcrops in broadleaved upland forest, chaparral, north coast coniferous forest. 305-730m.	Low. Suitable habitat is not found on site.
Coastal marsh milk-vetch <i>Astragalus pycnostachyus</i> var. <i>pycnostachyus</i>	--/--/1B.2	Mesic sites in coastal dunes, coastal salt marshes. 0-30m.	Low. Suitable habitat is not found on site.
Alkali milk-vetch <i>Astragalus tener</i> var. <i>tener</i>	--/--/1B.2	Alkali playa, valley and foothill grasslands, vernal pools. 1-170m.	Low. Suitable habitat is not found on site.
San Joaquin spearscale <i>Atriplex joaquiniana</i>	--/--/1B.2	Chenopod scrub, alkali meadow, wetlands, and sink scrub, valley and foothill grassland. Found with <i>Distichlis spicata</i> , <i>Frankenia</i> , etc. 1-250m.	Low. Suitable habitat is not found on site.
Round-leaved filaree <i>California macrophylla</i>	--/--/1B.1	Cismontane woodland, valley and foothill grassland on clay soils. 15-1200m.	Low. Suitable habitat is not found on site.
Congdon's tarplant <i>Centromadia parryi</i> ssp. <i>Congdonii</i>	--/--/1B.2	Heavy white clay or alkaline soils in valley and foothill grassland. 1-230m.	Low. Suitable habitat is not found on site.
San Francisco Bay spineflower <i>Chorizanthe cuspidata</i> var. <i>cuspidate</i>	--/--/1B.2	Sandy soil on terraces and slopes in coastal bluff scrub, coastal dunes, coastal prairie, coastal scrub. 5-550m.	Low. Suitable habitat is not found on site.
Lost thistle <i>Cirsium praeteriens</i>	--/--/1A	Collected from the Palo Alto area at the turn of the 20th century. Not seen since 1901. 0-100m.	Low. Suitable habitat is not found on site.
San Francisco collinsia <i>Collinsia multicolor</i>	--/--/1B.2	Decomposed shale (mudstone) mixed with humus in closed-cone coniferous forest, coastal scrub. 30-250m.	Low. Suitable habitat is not found on site.
Point Reyes bird's-beak <i>Cordylanthus maritimus</i> ssp. <i>Palustris</i>	--/--/1B.2	Coastal salt marsh with <i>Salicornia</i> , <i>Distichlis</i> , <i>Jaumea</i> , <i>Spartina</i> . 0-15m.	Low. Suitable habitat is not found on site.

TABLE 4.3-1 (Continued)
SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PLAN AREA

Species name Scientific name	Status Federal/State/ CNPS	Habitat	Potential to occur in Plan area
OTHER SPECIAL-STATUS SPECIES (cont.)			
Plants (cont.)			
Ben Lomond buckwheat <i>Eriogonum nudum</i> var. <i>decurrens</i>	--/--/1B.1	Chaparral, cismontane woodland, lower montane coniferous forest. 50-800 m.	Low. Suitable habitat is not found on site.
Hoover's button-celery <i>Eryngium aristulatum</i> var. <i>hooveri</i>	--/--/1B.1	Alkaline depressions, vernal pools, roadside ditches and other wet places near the coast. 5-45m.	Low. Suitable habitat is not found on site.
Hillsborough chocolate lily <i>Fritillaria biflora</i> var. <i>ineziana</i>	--/--/1B.1	Cismontane woodland, valley and foothill grassland, often on serpentine soils. 90-160m.	Low. Suitable habitat is not found on site.
Fragrant fritillary <i>Fritillaria liliacea</i>	--/--/1B.2	Coastal scrub, valley and foothill grassland, coastal prairie. Frequently clay and serpentine soils. 3-410m.	Low. Suitable habitat is not found on site.
Short-leaved evax <i>Hesperivax sparsiflora</i> var. <i>brevifolia</i>	--/--/1B.2	Sandy bluffs and flats in coastal bluff scrub, coastal dunes. 0-200m.	Low. Suitable habitat is not found on site.
Loma Prieta hoita <i>Hoita strobilina</i>	--/--/1B.1	Serpentine, mesic sites in chaparral, cismontane and riparian woodland.	Low. Suitable habitat is not found on site.
Legenere <i>Legenere limosa</i>	--/--/1B.1	Vernal pools. 1-880m.	Low. Suitable habitat is not found on site.
Crystal Springs lessingia <i>Lessingia arachnoidea</i>	--/--/1B.2	Coastal sage scrub, valley and foothill grassland, cismontane woodland. 60-200m.	Low. Suitable habitat is not found on site.
Coast lily <i>Lilium maritimum</i>	--/--/1B.1	Broadleaved upland forest, closed-cone coniferous forest, coastal prairie, coastal scrub, freshwater marshes and swamps, north coast coniferous forest. 5-475m.	Low. Suitable habitat is not found on site.
Arcuate bush-mallow <i>Malacothamnus arcuatus</i>	--/--/1B.2	Gravelly alluvial soils in chaparral. 80-355m.	Low. Suitable habitat is not found on site.
Davidson's bush-mallow <i>Malacothamnus davidsonii</i>	--/--/1B.2	Sandy washes in coastal scrub, riparian woodland, chaparral. 180-855m.	Low. Suitable habitat is not found on site.
Hall's bush-mallow <i>Malacothamnus hallii</i>	--/--/1B.2	Chaparral. Sometimes on serpentine. 10-550m.	Low. Suitable habitat is not found on site.
Pincushion navarretia <i>Navarretia myersii</i> ssp. <i>myersii</i>	--/--/1B.1	Vernal pools, often on acidic soil. 20-330m.	Low. Suitable habitat is not found on site.
Dudley's lousewort <i>Pedicularis dudleyi</i>	--/CR/1B.2	Chaparral, north coast coniferous forest, valley and foothill grasslands. 100-490m.	Low. Suitable habitat is not found on site.
White-flowered rein orchid <i>Piperia candida</i>	--/--/1B.2	North coast coniferous forest, lower montane coniferous forest, broadleaved upland forest. 0-1200m.	Low. Suitable habitat is not found on site.
Choris' popcorn-flower <i>Plagiobothrys chorisianus</i> var. <i>chorisianus</i>	--/--/1B.2	Mesic sites in chaparral, coastal scrub, coastal prairie. 15-100m.	Low. Suitable habitat is not found on site.
Hairless popcorn-flower <i>Plagiobothrys glaber</i>	--/--/1A	Alkaline meadows and seeps, coastal salt marshes and swamps. 5-180m.	Low. Suitable habitat is not found on site.
Oregon polemonium <i>Polemonium carneum</i>	--/--/2.2	Coastal prairie, coastal scrub, lower montane coniferous forest. 0-1830m.	Low. Suitable habitat is not found on site.

TABLE 4.3-1 (Continued)
SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PLAN AREA

Species name Scientific name	Status Federal/State/ CNPS	Habitat	Potential to occur in Plan area
OTHER SPECIAL-STATUS SPECIES (cont.)			
Plants (cont.)			
Slender-leaved pondweed <i>Potamogeton filiformis</i>	--/--/2.2	Marshes and swamps, shallow, clear water of lakes and drainage channels. 15-2310m.	Low. Suitable habitat is not found on site.
Caper-fruited tropidocarpum <i>Tropidocarpum capparideum</i>	--/--/1B.1	Alkaline clay soils in valley and foothill grassland. 0-455m.	Low. Suitable habitat is not found on site.
Robust monardella <i>Monardella villosa</i> ssp. <i>globosa</i>	--/--/1B.2	Openings in broadleaved upland forest, chaparral, cismontane woodland, valley and foothill grassland. 30-300m.	Low. Suitable habitat is not found on site.
San Francisco campion <i>Silene verecunda</i> ssp. <i>Verecunda</i>	--/--/1B.2	Coastal scrub, valley and foothill grassland, coastal bluff scrub, chaparral, coastal prairie. Often on mudstone or shale. 30-645m.	Low. Suitable habitat is not found on site.
Saline clover <i>Trifolium depauperatum</i> var. <i>hydrophilum</i>	--/--/1B.2	Mesic, alkaline sites in marshes and swamps, valley and foothill grassland, vernal pools. 0-300m.	Low. Suitable habitat is not found on site.
San Francisco owl's-clover <i>Triphysaria floribunda</i>	--/--/1B.2	Coastal prairie, valley and foothill grassland. 10-160m.	Low. Suitable habitat is not found on site.
Invertebrates			
Edgewood blind harvestman <i>Calicina minor</i>	--/*	Found on the underside of moist serpentine rocks near permanent springs.	Low. Suitable habitat is not found on site.
Monarch butterfly <i>Danaus plexippus</i>	--/*	Winter roost sites extend along the coast from northern Mendocino to Baja California, Mexico. Roosts located in wind-protected tree groves (eucalyptus, Monterey pine, cypress), with nectar and water sources nearby.	Low. Suitable habitat is not found on site.
Ricksecker's water scavenger beetle <i>Hydrochara rickseckeri</i>	--/*	Aquatic.	Low. Suitable habitat is not found on site.
San Francisco forktail damselfly <i>Ischnura gemina</i>	--/*	Found in small, marshy ponds and ditches with emergent and floating aquatic vegetation.	Low. Suitable habitat is not found on site.
Edgewood Park micro-blind harvestman <i>Microcina edgewoodensis</i>	--/*	Found beneath serpentine rocks in xeric grassland adjacent to scrub oaks.	Low. Suitable habitat is not found on site.
Unsilvered fritillary <i>Speyeria adiastrae adiastrae</i>	--/*	Openings in redwood and coniferous forests, oak woodlands, chaparral.	Low. Suitable habitat is not found on site.
Mimic tryonia (=California brackishwater snail) <i>Tryonia imitator</i>	--/*	Coastal lagoons, estuaries and salt marshes. Found only in permanently submerged areas; able to withstand a wide range of salinities.	Low. Suitable habitat is not found on site.
Amphibians and Reptiles			
Western pond turtle <i>Actinemys marmorata</i>	--/CSC	Aquatic, found in ponds, marshes, rivers, streams, irrigation ditches with aquatic vegetation. Needs basking sites and upland habitat for egg-laying (sandy banks or grassy open fields).	Moderate. May be present in San Francisquito Creek.

TABLE 4.3-1 (Continued)
SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PLAN AREA

Species name Scientific name	Status Federal/State/ CNPS	Habitat	Potential to occur in Plan area
OTHER SPECIAL-STATUS SPECIES (cont.)			
Amphibians and Reptiles (cont.)			
Foothill yellow-legged frog <i>Rana boylei</i>	--/CSC	Partly shaded, shallow streams and riffles with cobble-sized rocky substrate. Needs 15 weeks of submersion for metamorphosis.	Low. No recent records in the Plan area or Vicinity (CDFG, 2009).
Birds			
Cooper's hawk <i>Accipiter cooperii</i>	--/* (nesting)	Open, marginal woodlands. Nests in riparian trees.	Moderate. Known to nest and hunt in urban areas.
Tricolored blackbird <i>Agelaius tricolor</i>	--/CSC	Colonial species, requires open water, protected nesting substrate, insect prey.	Low. Suitable habitat is not found on site.
Great blue heron <i>Ardea herodias</i>	--/* (rookery)	Colonial nester in tall trees, cliff sides, and sequestered spots on marshes. Rookery sites are in close to foraging areas: marshes, lake margins, tide-flats, rivers, streams, wet meadows.	Low. Suitable habitat is not found on site.
Short-eared owl <i>Asio flammeus</i>	--/CSC	Found in swamp lands, both fresh and salt; lowland meadows; irrigated alfalfa fields. Tule patches/tall grass needed for nesting/daytime seclusion. Nests on dry ground in depression concealed in vegetation.	Low. Suitable habitat is not found on site.
Long-eared owl <i>Asio otus</i>	--/CSC	Riparian areas with tall trees near streams. Requires adjacent open areas with rodents and old corvid and raptor nests for breeding	Low. Suitable habitat is not found on site.
Burrowing owl <i>Athene cunicularia</i>	--/CSC	Open, dry annual or perennial grasslands, deserts & scrublands with low-growing vegetation. Subterranean nester, dependent upon burrowing mammals, especially the California ground squirrel.	Low. Suitable habitat is not found on site.
Northern harrier <i>Circus cyaneus</i>	--/CSC	Coastal salt & fresh-water marsh. Nests & forages in grasslands.	Low. Suitable habitat is not found on site.
Snowy egret <i>Egretta thula</i>	--/* (rookery)	Colonial nester in dense tules. Rookery sites situated close to foraging areas: marshes, tidal-flats, streams, wet meadows, and borders of lakes.	Low. Suitable habitat is not found on site.
Saltmarsh common yellowthroat <i>Geothlypis trichas sinuosa</i>	--/CSC	Fresh and salt water marshes. Requires thick, continuous cover down to water surface for foraging; tall grasses, tule patches, willows for nesting.	Low. Suitable habitat is not found on site.
Alameda song sparrow <i>Melospiza melodia pusillula</i>	--/CSC	Salt marshes bordering south arm of San Francisco Bay. Nests in <i>Grindelia</i> and <i>Salicornia</i> bushes that are high enough to escape high tides.	Low. Suitable habitat is not found on site.
Black-crowned night heron <i>Nycticorax nycticorax</i>	--/* (rookery)	Colonial nester, usually in trees, occasionally in tule patches. Rookery sites located close to foraging areas: lake margins, mud-bordered bays, marshy spots.	Low. Suitable habitat is not found on site.
Double-crested cormorant <i>Phalacrocorax auritus</i>	--/* (rookery)	Colonial nester on coastal cliffs, offshore islands, & along lake margins in the interior of the state. Nests on ground with sloping surface, or in tall trees.	Low. Suitable habitat is not found on site.

TABLE 4.3-1 (Continued)
SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PLAN AREA

Species name Scientific name	Status Federal/State/ CNPS	Habitat	Potential to occur in Plan area
OTHER SPECIAL-STATUS SPECIES (cont.)			
Mammals			
Pallid bat <i>Antrozous pallidus</i>	--/CSC	Deserts, grasslands, shrublands, woodlands & forests. Most common in open, dry habitats with rocky areas for roosting. Roosts must protect bats from high temperatures. Very sensitive to disturbance of roosting sites.	Moderate. May roost in structures on site.
San Francisco dusky-footed woodrat <i>Neotoma fuscipes annectens</i>	--/CSC	Forest habitats of moderate canopy & moderate to dense understory. May prefer chaparral & redwood habitats. May be limited by availability of nest-building materials (shredded grass, leaves, twigs).	Low. Suitable habitat is not found on site.
Salt-marsh wandering shrew <i>Sorex vagrans halicoetes</i>	--/CSC	Salt marshes of the south arm of San Francisco Bay. Medium high marsh 6-8 ft above sea level where abundant driftwood is scattered among <i>Salicornia</i> .	Low. Suitable habitat is not found on site.
Santa Cruz kangaroo rat <i>Dipodomys venustus venustus</i>	--/*	Silverleaf manzanita mixed chaparral in the zayante sand hills ecosystem of the santa cruz mountains. Needs soft, well-drained sand.	Low. Suitable habitat is not found on site.
American badger <i>Taxidea taxus</i>	--/CSC	Drier open stages of shrub, forest, and herbaceous habitats. Digs burrows and preys on other burrowing rodents.	Low. Suitable habitat is not found on site.

STATUS CODESFederal (U.S. Fish and Wildlife Service [USFWS]):

FE = Listed as Endangered (in danger of extinction) by the federal government.

FT = Listed as Threatened (likely to become Endangered within the foreseeable future) by the federal government.

FP = Proposed for Listing as Endangered or Threatened.

FC = Candidate to become a *proposed species*.

FSC = Former Federal Species of Concern. The USFWS no longer lists Species of Concern but recommends addressing species considered to be at potential risk by a number of organizations and agencies during project environmental review. *NMFS still lists Species of Concern.

State (California Department of Fish and Game [CDFG]):

CE = Listed as Endangered by the State of California.

CT = Listed as Threatened by the State of California.

CR = Listed as Rare by the State of California (plants only).

CSC = California Species of Special Concern.

CFP = Fully Protected

3503.5 = Protection for nesting species of Falconiformes (hawks) and Strigiformes (owls).

*Special animal—listed on CDFG's Special Animals List.

California Native Plant Society (CNPS):

List 1A = Plants presumed extinct in California.

List 1B = Plants rare, Threatened, or Endangered in California and elsewhere.

List 2= Plants rare, Threatened, or Endangered in California but more common elsewhere.

An extension reflecting the level of threat to each species is appended to each rarity category as follows:

.1 – Seriously endangered in California.

.2 – Fairly endangered in California.

.3 – Not very endangered in California.

SOURCES:

California Department of Fish and Game (CDFG), California Interagency Wildlife Task Group, California Wildlife Habitat Relationships version 8.1 database program. Sacramento, CA, 2005.

California Department of Fish and Game, California Natural Diversity Database (CNDDB), Data Request for Mountain View, Palo Alto, Woodside, Newark, Redwood Point, Cupertino, Mindego Hill, La Honda, and San Mateo USGS 7.5-Minute Quadrangles, accessed March 2009.

California Native Plant Society (CNPS), Inventory of Rare and Endangered Plants (online edition, v7-06a), Data Request for Mountain View, Palo Alto, Woodside, Newark, Redwood Point, Cupertino, Mindego Hill, La Honda, and San Mateo USGS 7.5-Minute Quadrangles California Native Plant Society. Sacramento, CA, www.cnps.org/inventory, accessed July 22, 2009.U.S. Environmental Protection Agency, (EPA), Army Corps Issue Joint Guidance to Sustain Wetlands Protection under Supreme Court Decision. Press Release, <http://yosemite.epa.gov/opa/advpress.nsf/e87e8bc7fd0c11f1852572a000650c05/e7240f5d30236d2b852572f1005e1809!OpenDocument>, accessed May 2008, published June 5, 2007.



SOURCE: CDFG, 2009; NAIP, 2005

Menlo Park El Camino Real/Downtown Specific Plan EIR, 208581
Figure 4.3-2
 Records of Special-Status Species in the Project Vicinity

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habitat; or (2) the known range for a particular species is outside of the Planning Area and/or the immediate area. The reasoning behind the determination for each species is presented in Table 4.3-1. Species with a low potential are not expected to occur within the Plan area.

Special-Status Plants

No special-status plant species are expected to occur. Although a number of special-status plant species are identified in Table 4.3-1 as potentially present within the Plan area, there are no intact native plant communities extant; therefore, no suitable habitat for these species is present. In addition, the distribution of a number of these species is restricted to specific habitat types or soils that are not, and/or never were, present within the Plan area, such as vernal pools or serpentine soils.

Special-Status Animals

San Francisquito Creek may provide habitat for the California tiger salamander, California red-legged frog and the western pond turtle, although the tiger salamander was rated “low” in occurrence potential in Table 4.3-1. They are included because of the proximity of the creek to the Project and the tendency of these salamanders to move into adjacent uplands. Cooper’s hawks may nest and forage in the urban setting, and are exposed to impacts. One special-status bat species potentially impacted is identified in Table 4.3-1: the pallid bat. Also, steelhead trout are known to occur in San Francisquito Creek on the south edge of the Plan area.

More detail on these species follows.

California red legged frog (*Rana draytonii*). The California red-legged frog is a federally Threatened species and a California Species of Special Concern. California red-legged frogs typically occur in perennial streams with deep pools and stands of overhanging willows and an intermixed fringe of cattails. However, California red-legged frogs also have been found in ephemeral creeks and drainages and in ponds that may or may not have riparian vegetation. During winter rain events, juvenile and adult California red-legged frogs are known to disperse up to 1 to 2 kilometers (0.6 to 1.2 miles).⁹ There are documented occurrences approximately 3.3 miles upstream of the Plan area along San Francisquito Creek (California Natural Diversity Database, 2003), and approximately 2.3 miles upstream of the Plan area along Atherton Channel (date unknown). Although there is no suitable terrestrial habitat in the Plan area, California red-legged frogs may be found in San Francisquito Creek.

California tiger salamander (*Ambystoma californiense*). The California tiger salamander is listed under the federal Endangered Species Act and is a candidate for listing under the California Endangered Species Act. It is a large terrestrial salamander with a broad, rounded snout. They are

⁹ Rathburn, G.B., M.R. Jennings, et al., Status and Ecology of Sensitive Aquatic Vertebrates in Lower San Simeon and Pico Creeks, San Luis Obispo County, California. Unpublished report, National Ecology Research Center, Piedras Blancas Research Station, San Simeon, California, under Cooperative Agreement (14-16-0009-91-1909), 1993.

around 7-8 inches long with white or pale yellow spots on their black skin. The belly is a white to pale yellow. They are restricted to grasslands and low foothills with aquatic sites for breeding, especially ephemeral pools. Larvae require 3-6 months in a submerged aquatic habitat to develop into adults. They also require burrow refuges in upland habitats, such as California ground squirrel burrows. They are threatened by habitat loss, fragmentation, nonnative predators, diseases, rodent control, hybridization with closely related introduced species, and vehicles.¹⁰ Although the Plan area is not considered high quality habitat for the tiger salamander, the California Natural Diversity Database reports a sighting in San Francisquito Creek in 2002, which may have occurred at the edge of the Plan area.¹¹

Central California Coast steelhead trout (*Onchorynchus mykiss*). Steelhead from the Central California Coast Distinct Population Segment is listed as Threatened under federal Endangered Species Act. Steelhead requires cold-water streams with adequate dissolved oxygen as well as gravelly substrates for spawning. Steelhead possesses the ability to spawn repeatedly, returning to the Pacific Ocean after spawning in freshwater. Juvenile steelhead may spend up to four years residing in freshwater prior to migrating to the ocean as smelts. Adults migrate upstream between December and March and the juveniles migrate downstream in late winter and spring. They are threatened by habitat loss, water impoundments, diversions, and water pollution.

Cooper's hawk (*Accipiter cooperii*). Cooper's hawk is a California Watch List species, protected under section 3503.5 of California Department of Fish and Game code (nesting Falconiformes). Cooper's hawks range over most of North America and may be seen throughout California, most commonly as a winter migrant. Nesting pairs have declined throughout the lower-elevation, more populated parts of the state. Cooper's hawk forages in open woodlands and wooded margins, nesting in tall trees, often in riparian areas. This species is known to nest and hunt in urban areas, and may use the landscaped trees in the proposed Plan area.¹²

Pallid bat (*Antrozous pallidus*). The pallid bat is a California Species of Special Concern and identified by the Western Bat Working Group as High Priority. Pallid bats range throughout western North America, from British Columbia to Mexico and east to Texas. This species is most abundant in arid lands, including deserts and canyon lands, shrub-steppe grasslands, and higher elevation coniferous forests and is therefore only likely to occur within the Plan area on a transient basis during spring and summer seasonal movements. Pallid bats may roost alone or in groups in trees in cavities or under bark and structures such as bridges and buildings. Pallid bats forage over

¹⁰ U.S. Fish and Wildlife Service, Official List of Federal Endangered and Threatened Species that Occur in or may be Affected by Projects in the Mountain View, Palo Alto, Woodside, Newark, Redwood Point, Cupertino, Mindego Hill, La Honda, and San Mateo USGS 7.5-Minute Quadrangles, accessed July 22, 2009.

¹¹ California Department of Fish and Game, California Natural Diversity Database, Data Request for Mountain View, Palo Alto, Woodside, Newark, Redwood Point, Cupertino, Mindego Hill, La Honda, and San Mateo USGS 7.5-Minute Quadrangles, accessed March 2009.

¹² California Department of Fish and Game (CDFG), California Interagency Wildlife Task Group, California Wildlife Habitat Relationships version 8.1 database program. Sacramento, CA, 2005.

open areas and are opportunistic feeders on a wide variety of insects, foraging both on surfaces and in the air. Prey includes beetles, centipedes, crickets, moths, and rarely, lizards, and small rodents.¹³

Western pond turtle (*Actinemys marmorata*). This California Species of Special Concern is found in a wide variety of permanent and nearly permanent aquatic habitats throughout California west of the Sierra Cascades. They require basking sites such as partially submerged logs, rocks, floating vegetation, or mud banks. They feed on both aquatic plant material and a variety of aquatic invertebrates, fish, frogs, and carrion. Western pond turtles are consumed by fish, bullfrogs, garter snakes, wading birds, and some mammals. They are brown to blackish with cream to yellow coloring on legs and head. Threats to the western pond turtle include habitat loss and fragmentation due to conversion to farmland, water diversion, and urbanization. They are also subject to overharvesting for food and pets, predation from introduced species (such as the bullfrog), and motor vehicle collisions.¹⁴

In addition to these species, migratory birds, raptors, and other bat species are considered in the impact analysis due to their unique habitat characteristics and general protections provided by state and federal regulations.

4.3.2 Regulatory Setting

This section briefly describes federal, state, and local regulations, permits, and policies pertaining to biological resources and wetlands as they apply to the Specific Plan.

Special-Status Species

Federal Endangered Species Act

The U.S Fish and Wildlife Service, which has jurisdiction over plants, wildlife, and most freshwater fish, and the National Marine Fisheries Service, which has jurisdiction over anadromous¹⁵ fish, marine fish, and mammals, oversee implementation of the federal Endangered Species Act. Section 7 of the federal Endangered Species Act mandates that all federal agencies consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to ensure that federal agencies actions do not jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat for listed species. A federal agency is required to consult with U.S. Fish and Wildlife Service and National Marine Fisheries Service if it determines a “may affect” situation will occur in association with the project.¹⁶ The federal

¹³ Western Bat Working Group (WBWG), Species Accounts: *Antrozous pallidus*, Pallid bat. http://www.wbwg.org/speciesinfo/species_accounts/vesperilionidae/anpa.pdf accessed March 2, 2009, published in 1998 and updated in 2005 (2005b).

¹⁴ Ashton, D.T., A.J. Lind, et al., Western pond turtle (*Clemmys marmorata*). Natural History. USDA Forest Service, Pacific Southwest Research Station, available online: http://www.krisweb.com/biblio/gen_usfs_ashtonetal_1997_turtle.pdf, 1997.

¹⁵ Anadromous fish are those that spend all or part of their adult life in salt water and return to freshwater streams and rivers to spawn.

¹⁶ A determination of “may affect,” which equates to any effect, positive, negative, or neutral can be qualified with a determination of ‘likely to adversely affect’ or ‘not likely to adversely affect.’ A “may affect and is likely to adversely affect” determination triggers formal consultation with the Fish and Wildlife Service. A determination of “may affect and not likely to adversely affect” can be addressed with informal consultation with the Fish and Wildlife Service.

Endangered Species Act prohibits the “take”¹⁷ of any fish or wildlife species listed as threatened or endangered, including the destruction of habitat that could hinder species recovery.

Under Section 9 of the federal Endangered Species Act, the take prohibition applies only to wildlife and fish species. However, Section 9 does prohibit the removal, possession, damage or destruction of any endangered plant from federal land. Section 9 also prohibits acts to remove, cut, dig up, damage, or destroy an endangered plant species in nonfederal areas in knowing violation of any state law or in the course of criminal trespass. Candidate species, and species that are proposed or under petition for listing, receive no protection under Section 9 of the federal Endangered Species Act.

Section 10 of the federal Endangered Species Act requires the issuance of an “incidental take” permit before any public or private action may be taken that would potentially harm, harass, injure, kill, capture, collect, or otherwise hurt (i.e., take) any individual of an Endangered or Threatened species. The permit requires preparation and implementation of a habitat conservation plan that would offset the take of individuals that may occur, incidental to implementation of the project by providing for the overall preservation of the affected species through specific mitigation measures.

California Endangered Species Act

Under the California Endangered Species Act, California Department of Fish and Game has the responsibility for maintaining a list of threatened and endangered species (California Fish and Game Code Section 2070). California Department of Fish and Game also maintains a list of “candidate species,” which are species formally noticed as being under review for addition to either the list of endangered species or the list of threatened species. In addition, California Department of Fish and Game maintains lists of “species of special concern,” which serve as “watch lists.” Pursuant to the requirements of California Endangered Species Act, an agency reviewing a proposed project within its jurisdiction must determine whether any state-listed endangered or threatened species could be present in the Plan area and determine whether the proposed project could have a potentially significant impact on such species. In addition, California Department of Fish and Game encourages informal consultation on any proposed project that may impact a candidate species.

California Native Plant Protection Act

State listing of plant species began in 1977 with the passage of the California Native Plant Protection Act, which directed the California Department of Fish and Game to carry out the legislature’s intent to “preserve, protect, and enhance endangered plants in this state.” The

¹⁷ “Take,” as defined in Section 9 of the federal Endangered Species Act, is broadly defined to include intentional or accidental “harassment” or “harm” to wildlife. “Harass” is further defined by the U.S. Fish and Wildlife Service as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, and sheltering. “Harm” is defined as an act which actually kills or injures wildlife. This 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.

California Native Plant Protection Act gave the California Fish and Game Commission the power to designate native plants as endangered or rare and to require permits for collecting, transporting, or selling such plants. The California Endangered Species Act expanded upon the original California Native Plant Protection Act and enhanced legal protection for plants. The California Endangered Species Act established threatened and endangered species categories, and grandfathered all rare animals—but not rare plants—into the act as threatened species. Thus, there are three listing categories for plants in California: rare, threatened, and endangered.

Other Regulations Concerning Animal Species

Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (16 U.S.C., Section 703, Supplement I, 1989) states that without a permit issued by the U.S. Department of the Interior, it is unlawful to pursue, hunt, take, capture, or kill any migratory bird. This act encompasses birds as well as bird nests and eggs.

California Fish and Game Code

Under Section 3503 of the California Fish and Game Code, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto. Section 3503.5 of the California Fish and Game Code prohibits take, possession, or destruction of any birds in the orders *Falconiformes* (hawks) or *Strigiformes* (owls), or of their nests and eggs.

Fish and Game Code Sections 3511, birds; 4700, mammals; 5050, reptiles and amphibians; and 5515, fish) allows the designation of a species as Fully Protected. This is a greater level of protection than is afforded by the California Endangered Species Act, since such a designation means the listed species cannot be taken at any time.

Bats and other non-game mammals are protected in California. Section 4150 of the Fish and Game Code states that all non-game mammals or parts thereof may not be taken or possessed except as otherwise provided in the code or in accordance with regulations adopted by the commission. Thus, destruction of an occupied, non-breeding, bat roost, resulting in the death of bats, or disturbance that causes the loss of a maternity colony of bats (resulting in the death of young), is prohibited.

Jurisdictional Waters Including Wetlands

Waters of the United States

The term “waters of the United States.” as defined in the Code of Federal Regulations (CFR) (33 CFR Section 328.3[a]; 40 CFR Section 230.3[s]), refers to:

1. All waters which are currently used, 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;

2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:
 - which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - which are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as waters of the U.S. as defined in the Code of Federal Regulations (CFR) (33 CFR Section 328.3[a]; 40 CFR Section 230.3[s]);
5. Tributaries of waters identified in 1. through 4., above;
6. Territorial seas;
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6., above; and
8. Waters of the U.S. do not include 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 EPA (33 CFR 328.3[a][8]).

Wetlands are ecologically productive habitats that support a rich variety of both plant and animal life. The importance of wetlands has increased due to their value as recharge areas and filters for water supplies and to their widespread filling and destruction to enable urban and agricultural development. In a jurisdictional sense, there are two commonly used definitions of a wetland, one definition adopted by the U.S. Army Corps of Engineers and a separate definition, originally developed by U.S. Fish and Wildlife Service, which has been adopted by the agencies in the State of California that have regulatory authority over wetlands. Both definitions are presented below.

Federal Wetland Definition

Wetlands are a subset of “waters of the U.S.” and receive protection under the Clean Water Act. Wetlands are defined as 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. Wetland determination under the federal wetland definition adopted by the U.S. Army Corps of Engineers requires the presence of three factors: (1) wetland hydrology, as defined above under point 2; (2) plants adapted to wet conditions; and (3) soils that are routinely wet or flooded [33 CFR Section 328.3(b)]. The Supreme Court of the U.S. ruled in 2001 (January 8, 2001: *Solid Waste Agency of Northwestern Cook County v. United States Army Corps of Engineers et al.*) that

certain isolated wetlands do not fall under the jurisdiction of the Clean Water Act. This decision was further clarified in the 2006 Supreme Court case, *Rapanos v. United States*, 547 U.S. 715.

California Wetland Definition

California Department of Fish and Game has adopted the Cowardin *et al.*¹⁸ definition of wetlands. The federal definition of wetlands requires three wetland identification parameters to be met, whereas the Cowardin definition can be satisfied under some circumstances with the presence of only one parameter. Thus, identification of wetlands by California Department of Fish and Game consists of the union of all areas that are periodically inundated or saturated, or in which at least seasonal dominance by hydrophytes may be documented, or in which hydric soils are present. The California Department of Fish and Game does not normally assert jurisdiction over wetlands unless they are subject to Streambed Alteration Agreements¹⁹ (California Fish and Game Code Sections 1600–1616) or they support state-listed endangered species.

U.S. Army Corps of Engineers and U.S. Environmental Protection Agency (EPA)

The U.S. Army Corps of Engineers and EPA regulate the discharge of dredged or fill material into waters of the U.S. including wetlands, under Sections 404 and 401 of the Clean Water Act. Projects that would result in the placement of dredged or fill material into waters of the U.S. require a Section 404 permit from the U.S. Army Corps of Engineers. Based on the 2001 Supreme Court ruling concerning the Clean Water Act jurisdiction over isolated waters, non-navigable, isolated, intrastate waters based solely on the use of such waters by migratory birds are no longer defined as waters of the U.S. Jurisdiction of non-navigable, isolated, intrastate waters may be possible if their use, degradation, or destruction could affect other waters of the U.S., or interstate or foreign commerce. Jurisdictions of non-navigable, isolated, intrastate waters are analyzed on a case-by-case basis. Impoundments of waters, tributaries of waters, and wetlands adjacent to waters should be analyzed on a case-by-case basis. A more recent Supreme Court case, *Rapanos v. United States* (2006), also questioned the definition of “waters of the U.S.” and the scope of federal regulatory jurisdiction over such waters, but left open the question as to whether the Clean Water Act extends to those waters and wetlands that have a ‘significant nexus’ to navigable waters of the U.S., or whether it is limited to waters with a continuous connection. According to the recent joint guidelines issued by the EPA and U.S Army Corps of Engineers, the Clean Water Act will:

- 1) Continue to regulate “traditionally navigable waters,” including all rivers and other waters that are large enough to be used by boats that transport commerce and any wetlands adjacent to such waters;
- 2) Continue to regulate “non-navigable tributaries that are relatively permanent and wetlands that are physically connected to these tributaries”; and
- 3) Continue to regulate other

¹⁸ Cowardin L.M., V. Carter, F.C., Golet, and E.T. LaRoe. 1979. Classification of wetlands and deepwater habitats of the United States. FWS/OBS-79/31. U.S. Fish and Wildlife Service, Office of Biological Services, Washington, D.C.

¹⁹ A Streambed Alteration Agreement is a permit for activities that would result in the modification of the bed, bank, or channel of a stream, river, or lake, including water diversion and damming and removal of vegetation from the floodplain to the landward extent of the riparian zone. This permit governs both activities that modify the physical characteristics of the stream and activities that may affect fish and wildlife resource that use the stream and surrounding habitat.

tributaries and adjacent wetlands based on case-by-case determinations of whether or not a significant nexus with a traditionally navigable water exists.²⁰

State Policies and Regulations

State regulation of activities in waters and wetlands resides primarily with the California Department of Fish and Game and the State Water Resources Control Board. In addition, the California Coastal Commission has review authority for wetland permits within its planning jurisdiction. California Department of Fish and Game provides comment on U.S Army Corps of Engineers permit actions under the Fish and Wildlife Coordination Act. California Department of Fish and Game is also authorized under the California Fish and Game Code, Sections 1600–1616, to enter into a Streambed Alteration Agreement with applicants and develop mitigation measures when a proposed project would obstruct the flow or alter the bed, channel, or bank of a river or stream in which there is a fish or wildlife resource, including intermittent and ephemeral streams. The State Water Resources Control Board, acting through the nine Regional Water Quality Control Boards, must certify that a U.S. Army Corps of Engineers permit action meets state water quality objectives (Clean Water Act, Section 401).

Local Plans and Policies

Menlo Park General Plan

San Francisquito Creek is considered “open space” according to the Open Space and Conservation Element of the Menlo Park General Plan (City of Menlo Park, 1973).

Open Space and Conservation Goals and Policies applicable to the development of the Planning area are:

- To preserve the wildlife habitat value and natural character of San Francisquito Creek;
- To protect and conserve open space areas rich in wildlife or of a fragile ecological nature;
- Preserve and protect water, water-related areas, wildlife and plant habitat areas to maintain and enhance their open space and conservation purposes;
- Review all plans for future industrial expansion to maintain and enhance air and water resources in accordance with regional standards; and
- Utilize natural riparian lands along San Francisquito Creek wherever possible for paths and trails, and as linear park links in the City-Wide and subregional open space systems.

²⁰ U.S. Environmental Protection Agency, (EPA), Army Corps Issue Joint Guidance to Sustain Wetlands Protection under Supreme Court Decision. Press Release, <http://yosemite.epa.gov/opa/admpress.nsf/e87e8bc7fd0c11f1852572a000650c05/e7240f5d30236d2b852572f1005e1809!OpenDocument>, accessed May 2008, published June 5, 2007.

Menlo Park Heritage Tree Ordinance

Menlo Park Municipal Code Chapter 13.24 establishes regulations for the preservation of heritage trees. Heritage trees are defined as:

- A tree or group of trees of historical significance, special character or community benefit, specifically designated by resolution of the city council;
- An oak tree which is native to California and has a trunk with a circumference of 31.4 inches (diameter of 10 inches) or more, measured at 54 inches above natural grade. Trees with more than one trunk shall be measured at the point where the trunks divide, with the exception of trees that are under 12 feet in height, which will be exempt from this section; and
- All trees other than oaks which have a trunk with a circumference of 47.1 inches (diameter of 15 inches) or more, measured 54 inches above natural grade. Trees with more than one trunk shall be measured at the point where the trunks divide, with the exception of trees that are less than 12 feet in height, which will be exempt from this section.

Any construction activity such as grading, excavation, demolition, or construction, may not threaten the health or viability of any heritage tree. As required by the City's Municipal Code, a tree survey shall be conducted by a certified arborist, and a tree report and map shall be prepared showing the locations of all pertinent trees within a project envelope prior to the initiation of construction activities. Any work performed within an area ten times the diameter of the tree (i.e., the tree protection zone) shall require submittal of a tree protection plan for review and approval of the Community Development Director or his/her designee prior to the issuance of any permit for grading or construction, and shall be prepared by a certified arborist. Removal of heritage trees or pruning more than 25 percent of the roots or branches requires obtaining an appropriate permit from the Director of Public Works.

4.3.3 Impacts and Mitigation Measures

Significance Criteria

Implementation of the Plan would be considered to have significant impacts on biological resources if it would:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as threatened, endangered, candidate, sensitive, or special-status species in local or regional plans, policies, regulations or by lists of species of concern from the California Department of Fish and Game, the U.S. Fish and Wildlife Service, or as defined by CEQA Guidelines Section 15380;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community (e.g., serpentine grassland) identified in local or regional plans, policies, regulations, or lists compiled by California Department of Fish and Game or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect to federally or State protected wetlands (including but not limited to marshes and riparian areas) as defined by Section 404 of the Clean Water Act, or

riparian and marsh areas under the jurisdiction of California Department of Fish and Game as defined by California Fish and Game Code 1600–1616;

- Interfere substantially with the movement of any native resident or migratory fish or wildlife species, with established migration or dispersal corridors, or with the use of native wildlife nursery sites;
- Conflict with any local plans or ordinances designed to protect biological resources; or
- Conflict with any applicable habitat conservation plan or natural community plan.

Based on existing site conditions and the established significance criteria, the Specific Plan has the potential to adversely impact special-status birds, special-status bat species, steelhead, as well as conflict with the local tree ordinance by removing heritage trees. The Plan area does not lie within the planning area for any adopted or proposed habitat conservation or natural community plans; therefore, the last criterion, above, is not applicable.

Specific Plan Guidelines D.2.01, D.2.32, D.2.44, D.3.19, and D.5.20 would lessen biological resources impacts by protecting existing trees in the Plan area.

Impacts

Special Status Bird Species

Impact BIO-1: The Specific Plan could result in the take of special-status birds or their nests. (Potentially Significant)

The loss of active nests, eggs, or young of any special status species, such as those identified above in Table 4.3-1, would be considered a significant impact. Although this is a highly urbanized, developed area, there is the possibility that Cooper’s hawk (*Accipiter cooperi*) may occur in the Plan area, as noted in Table 4.3-1. If active nest sites occur in or adjacent to the Plan area, noise and visual disturbance associated with construction activities occurring during the nesting season may lead to nest abandonment and/or nest failure. The removal of large trees has potential to destroy active nest sites. Destruction of Cooper’s hawk nests, or nest of any other raptor or other special-status bird species, would be considered a significant impact under the criteria set forth earlier in this EIR.

In addition to CEQA impacts, any removal or destruction of active nests and any killing of migratory birds would violate the federal Migratory Bird Treaty Act and/or the California Fish and Game Code, Sections 3500-3516. Common bird species may use vegetation in the Plan area for nesting. With the exception of English sparrow (*Passer domesticus*), European starling (*Sturnus vulgaris*), and rock dove (pigeon, *Columba livia*), the nests, eggs, and nestlings of all birds are protected under the California Fish and Game Code. (As noted, raptors protected by Fish and Game Code Section 3503.5 are considered special-status species for the purposes of this EIR, and are therefore listed in Table 4.3-1.)

The following mitigation measures would reduce impacts on special-status birds to less-than-significant level:

Mitigation Measure BIO-1a: Pre-Construction Special-Status Avian Surveys. No more than two weeks in advance of any tree or shrub pruning, removal, or ground-disturbing activity that will commence during the breeding season (February 1 through August 31), a qualified wildlife biologist will conduct pre-construction surveys of all potential special-status bird nesting habitat in the vicinity of the planned activity. Pre-construction surveys are not required for construction activities scheduled to occur during the non-breeding season (August 31 through January 31). Construction activities commencing during the non-breeding season and continuing into the breeding season do not require surveys (as it is assumed that any breeding birds taking up nests would be acclimated to project-related activities already under way). Nests initiated during construction activities would be presumed to be unaffected by the activity, and a buffer zone around such nests would not be necessary. However, a nest initiated during construction cannot be moved or altered.

If pre-construction surveys indicate that no nests of special-status birds are present or that nests are inactive or potential habitat is unoccupied: no further mitigation is required.

If active nests of special-status birds are found during the surveys: implement Mitigation Measure BIO-1b.

Mitigation Measure BIO-1b: Avoidance of active nests. If active nests of special-status birds or other birds are found during surveys, the results of the surveys would be discussed with the California Department of Fish and Game and avoidance procedures will be adopted, if necessary, on a case-by-case basis. In the event that a special-status bird or protected nest is found, construction would be stopped until either the bird leaves the area or avoidance measures are adopted. Avoidance measures can include construction buffer areas (up to several hundred feet in the case of raptors), relocation of birds, or seasonal avoidance. If buffers are created, a no disturbance zone will be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted will take into account factors such as the following:

1. Noise and human disturbance levels at the Plan area and the nesting site at the time of the survey and the noise and disturbance expected during the construction activity;
2. Distance and amount of vegetation or other screening between the Plan area and the nest; and
3. Sensitivity of individual nesting species and behaviors of the nesting birds.

Significance after Mitigation: Less than Significant.

Implementation of the above mitigation measures would reduce impacts to special-status bird species to a less-than-significant level. (Implementation of Mitigation Measure BIO-1b would likewise ensure compliance with the federal Migratory Bird Treaty Act and with California Fish and Game Code, Sections 3500–3516.)

Impact BIO-2: Project construction and operations, as well as the final building structures, have the potential to affect migratory and breeding special-status birds through building collisions. (Less than Significant)

It is estimated that, in North America alone, millions of songbirds are killed due to collisions with buildings and other structures each year; collisions are currently recognized as one of the leading causes of bird population declines worldwide.²¹ Daytime collisions occur most often when birds fail to recognize window glass as a barrier. Many collisions are induced by artificial night lighting, particularly from large buildings, which can be especially problematic for migrating songbirds since many species are nocturnal migrants.²²

A lack of local data does not make it possible to determine the precise significance of this potential impact in relation to the Specific Plan. However, a growing recognition of the severity of this worldwide impact on birds suggests that, whenever feasible, measures to reduce the risk of avian collisions should be incorporated in building design.

Individual development projects in the Plan area may result in impacts to common birds through increased building collisions both at night and during the day. However, because Cooper's hawk is the only special-status bird species identified as having a moderate potential to be present in the Plan area, and because hawks are known to forage in relatively open areas, the potential for a Cooper's hawk to strike a building is deemed low. Therefore, this impact is less than significant.

Nevertheless, bird-safe design of subsequent development projects could minimize bird mortality. The following measures are based on the Bird-Safe Building Guidelines developed by the New York Audubon Society and the Bird Friendly Building Program developed by the Fatal Light Awareness Program (www.flap.org), and could be considered and incorporated, to the extent feasible, during building design and operations of subsequent development projects. These measures would help to minimize the potential impacts identified above to migrating birds in the study area.

Bird-safe Building Guidelines

- a. Minimize the use of reflective glass at lower building levels, especially where vegetation or water features may be reflected;
- b. Minimize bird habitat near ground stories, place new landscaping far enough away from glass building facades such that no vegetation reflection occurs, or situate trees and shrubs immediately adjacent to glass walls at a distance of less than three feet from the glass;
- c. Minimize the reflection of rooftop landscaping in adjacent building features and design with adequate space for birds to fly safely into and out of any rooftop gardens;

²¹ Brown, H., Caputo, S., McAdams, E.J., Fowle, M., Phillips, G., Dewitt, C., Gelb, Y., *Bird-safe Building Guidelines*, New York Audubon, available online: <http://www.nycaudubon.org/home/BSBGuidelines.shtml>, accessed February 16, 2010.

²² Ogdan, L.E., 1996. *Collision Course: The Hazards of Lighted Structures and Windows to Migrating Birds*, Special Report for the World Wildlife Fund and the Fatal Light Awareness Program. Website: <http://www.flap.org/new/ccourse.pdf>. Date Accessed: July 17, 2008. Published September 1996.

- d. Avoid placing water features in close proximity to glazed facades, or place soil berms, furniture, landscaping, or architectural features to prevent reflection of water in glass;
- e. Design to avoid monolithic, undistinguishable expanses of glazing by maximizing “visual noise” both on the building scale and individual glass units;
- f. Utilize glass that has been treated to reduce reflectivity, such as low-e patterning²³, etching, or low reflectivity glazing;
- g. Where appropriate use plastic or metal screens over windows, especially on the ground levels, incorporate louvers, awnings, sunshades or other exterior shading/shielding devices to reduce reflection and give birds an indication of a visual barrier;
- h. Angle glass to reflect the ground instead of nearby habitat and sky;
- i. Minimize the number of, and co-locate, rooftop antennas and other structures;
- j. Utilize self-supporting lattice or monopole structures that do not require guy wires.

Mitigation: None required.

Impact BIO-3: Impacts to migratory or breeding special-status birds and other special-status species due to lighting conditions. (Potentially Significant)

The tendency of birds to move towards lights at night when migrating, and their reluctance to leave the sphere of light influence for hours or days once encountered, has been well documented. It has been suggested that structures located at key points along migratory routes may present a greater hazard than those at other locations.²⁴ Direct effects include death or injury as the birds collide with lighted structures and other birds that are attracted to the light. Indirect effects include delayed arrival at breeding or wintering grounds, and reduced energy stores necessary for migration, winter survival, or subsequent reproduction.²⁵ The type of light used may affect its influence on the birds, for example, studies have indicated that blinking lights or strobe lights affect birds significantly less than non-blinking lights.²⁶

The Plan area currently contains street and building lights and is located in an urban setting, surrounded by other light sources. Existing lighting sources already provide a significant source of illumination that affects nearby natural areas to some extent. However, the Plan area is in the vicinity of San Francisco Bay, a migratory bird stopover that is attractive to both waterfowl and songbirds. The Specific Plan may result in the construction of buildings that could be taller than most of the existing or other proposed buildings in the vicinity. While specific avian flight routes

²³ Low emissivity (e) glass controls heat radiation and also distorts reflections, which prevents birds from flying into glass windows.

²⁴ Ogden, 1996.

²⁵ Gauthreaux, S.A., Belser, C.G., “Effects of Artificial Night Lighting on Migrating Birds,” In: Rich, C. and Longcore, T., *Ecological Consequences of Night Lighting*, Island Press, Covelo, CA, pp. 67-93, 2006.

²⁶ Gauthreaux and Belser, 2006.

are not known and there is no local data on bird kills due to building collisions, the Project has the potential to result in new sources of lighting, which may act as an attractant for birds, resulting in collisions and avian mortality, particularly in areas prone to fog, areas proximate to migratory stopover points, and for buildings with large expanses of reflective or transparent glass.²⁷

The following mitigation measures would reduce lighting-related impacts on migratory or breeding special-status birds and other special-status species to a less-than-significant level:

Mitigation Measure BIO-3a: Reduce building lighting from exterior sources.

- a. Minimize amount and visual impact of perimeter lighting and façade up-lighting and avoid up-lighting of rooftop antennae and other tall equipment, as well as of any decorative features;
- b. Install motion-sensor lighting;
- c. Utilize minimum wattage fixtures to achieve required lighting levels;
- d. Comply with federal aviation safety regulations for large buildings by installing minimum intensity white strobe lighting with a three-second flash interval instead of continuous flood lighting, rotating lights, or red lighting;
- e. Use cutoff shields on streetlight and external lights to prevent upwards lighting.

Mitigation Measure BIO-3b: Reduce building lighting from interior sources.

- a. Dim lights in lobbies, perimeter circulation areas, and atria;
- b. Turn off all unnecessary lighting by 11pm thorough sunrise, especially during peak migration periods (mid-March to early June and late August through late October);
- c. Use gradual or staggered switching to progressively turn on building lights at sunrise.
- d. Utilize automatic controls (motion sensors, photo-sensors, etc.) to shut off lights in the evening when no one is present;
- e. Encourage the use of localized task lighting to reduce the need for more extensive overhead lighting;
- f. Schedule nightly maintenance to conclude by 11 p.m.;
- g. Educate building users about the dangers of night lighting to birds.

Significance after Mitigation: Less than Significant.

²⁷ Brown et al., 2007.

Impact BIO-4: Noise from project construction and operational activities could affect migrating and breeding special-status birds, and other special-status species, but not to a degree that would be considered substantial or adverse. (Less than Significant)

Noise pollution can have detrimental impacts on wildlife, and bird populations are particularly susceptible because they rely on acoustic signals for mating, predator evasion, and communication between adults and offspring, among other behaviors. Ellis, for example, describes studies that show “noticeably alarmed” responses in raptors to sounds within the 82 to 114 dBA range.²⁸ Wildlife perception of noise appears to be generally more sensitive than that of humans

As discussed in more detail in Section 4.5, *Noise*, development of new land uses proposed in the Specific Plan could expose nearby residences to construction noise levels as high as 89 dBA at 50 feet using typical construction methods. However, Mitigation Measures NOI-1a and NOI-1b are identified to ensure that potential impacts to sensitive receptors within and adjacent to the Specific Plan area would be reduced to less-than-significant levels by requiring implementation of best management practices to reduce noise levels associated with construction equipment. In addition, Mitigation Measure BIO-1b would require avoidance measures for special-status birds and their nests during construction activities, which can include buffer areas that allow noise to dissipate with distance, resulting in less-than-significant impacts from construction.

Since the Plan area is already developed, ambient noise levels are already fairly high, in particular from roadways and the Caltrain commuter rail line. As discussed in Section 4.5, *Noise*, the project, upon build-out, even with other cumulative development, no noise levels would approach the 82 dBA level found to cause alarm in raptors. Therefore, the impacts of noise on migrating and breeding special-status birds and other special-status species would be less than significant. For a discussion of the current and projected noise resulting from the Specific Plan, please see Section 4.5, *Noise*.

Mitigation: None required.

Special Status Bat Species

Impact BIO-5: The Specific Plan could result in the take of special-status bat species. (Potentially Significant)

The pallid bat is the only special-status bat species that has the potential to occur in the Plan area. Bats have the potential to occur in man-made structures and trees, using them for roosting, breeding, or hibernating. In addition to protections afforded special-status bat species by the federal and California Endangered Species Act, other bats and non-game mammals are protected in California.

²⁸ Ellis, D.H., C.H. Ellis, and D.P. Mindell, *Raptor Responses to Low-Level Jet Aircraft and Sonic Booms*, Environmental Pollution 74:53-83, 1981.

Maternity roosts are those that are occupied by pregnant females or females with non-flying young. Non-breeding roosts are day roosts without pregnant females or non-flying young. Destruction of an occupied, non-breeding, special-status bat roost, resulting in the death of bats; disturbance that causes the loss of a maternity colony of special-status bats (resulting in the death of young); or destruction of hibernacula (winter hibernation sites) would be considered a significant impact. This may occur due to direct or indirect disturbances. Direct disturbance includes tree removal, building removal, or nest destruction by any other means. Indirect disturbances include noise or increased human activity in the area. Hibernacula are generally not formed by bat species in the Bay area due to sufficiently high temperatures year round.

In addition to CEQA impacts, the California Fish and Game Code Section 4150 states that all non-game mammals or parts thereof, may not be taken or possessed except as otherwise provided in the code or in accordance with regulations adopted by the Commission.

The following mitigation measures would reduce impacts on special-status bat species to a less-than-significant level:

Mitigation Measure BIO-5a: Preconstruction surveys. Potential direct and indirect disturbances to special-status bats will be identified by locating colonies and instituting protective measures prior to construction of any subsequent development project. No more than two weeks in advance of tree removal or structural alterations to buildings with closed areas such as attics, a qualified bat biologist (e.g., a biologist holding a California Department of Fish and Game collection permit and a Memorandum of Understanding with the California Department of Fish and Game allowing the biologist to handle and collect bats) shall conduct pre-construction surveys for potential bats in the vicinity of the planned activity. A qualified biologist will survey buildings and trees (over 12 inches in diameter at 4.5-foot height) scheduled for demolition to assess whether these structures are occupied by bats. No activities that would result in disturbance to active roosts will proceed prior to the completed surveys. If bats are discovered during construction, any and all construction activities that threaten individuals, roosts, or hibernacula will be stopped until surveys can be completed by a qualified bat biologist and proper mitigation measures implemented.

If no active roosts present: no further action is warranted.

If roosts or hibernacula are present: implement Mitigation Measures BIO-2b through 2e.

Mitigation Measure BIO-5b: Avoidance. If any active nursery or maternity roosts or hibernacula of special-status bats are located, the subsequent development project may be redesigned to avoid impacts. Demolition of that tree or structure will commence after young are flying (i.e., after July 31, confirmed by a qualified bat biologist) or before maternity colonies forms the following year (i.e., prior to March 1). For hibernacula, any subsequent development project shall only commence after bats have left the hibernacula. No-disturbance buffer zones acceptable to the California Department of Fish and Game will be observed during the maternity roost season (March 1 through July 31) and during the winter for hibernacula (October 15 through February 15).

Also, a no-disturbance buffer acceptable in size to the California Department of Fish and Game will be created around any roosts in the Project vicinity (roosts that will not be

destroyed by the Project but are within the Plan area) during the breeding season (April 15 through August 15), and around hibernacula during winter (October 15 through February 15). Bat roosts initiated during construction are presumed to be unaffected, and no buffer is necessary. However, the “take” of individuals is prohibited.

Mitigation Measure BIO-5c: Safely evict non-breeding roosts. Non-breeding roosts of special-status bats shall be evicted under the direction of a qualified bat biologist. This will be done by opening the roosting area to allow airflow through the cavity. Demolition will then follow no sooner or later than the following day. There should not be less than one night between initial disturbance with airflow and demolition. This action should allow bats to leave during dark hours, thus increasing their chance of finding new roosts with a minimum of potential predation during daylight. Trees with roosts that need to be removed should first be disturbed at dusk, just prior to removal that same evening, to allow bats to escape during the darker hours. However, the “take” of individuals is prohibited.

Significance after Mitigation: Less than Significant.

Special Status Amphibians and Reptiles

Impact BIO-6: The Specific Plan could result in the take of special-status amphibians and reptiles; California red-legged frog, California tiger salamander, and western pond turtle. (Potentially Significant)

Construction activities would take place in the vicinity of San Francisquito Creek and stormdrains that discharge to both San Francisquito Creek and Atherton Channel. Construction activities could directly adversely affect California red-legged frogs, California tiger salamanders, and/or western pond turtles, which would result in potentially significant impacts. Indirect impacts could occur through the loss of habitat or the introduction of non-native species.

California red-legged frogs, California tiger salamanders, and/or western pond turtles or their habitat are present in San Francisquito Creek near the Plan area; it is unlikely that habitat for these species is present within Atherton Channel since it is mostly channelized and underground. While San Francisquito Creek is surrounded by urban development, relatively undisturbed upstream habitats could contain breeding populations of California red-legged frogs, California tiger salamanders, and/or western pond turtles. Additionally, individuals from upstream populations could move downstream San Francisquito Creek and into the Plan area. Upland habitat for these species is extremely limited in the vicinity of the Plan area and individuals of these species present in the creek are unlikely to move out of the riparian corridor. Project activities will not likely impact California red-legged frogs, California tiger salamanders, or western pond turtles, but discharge of hazardous materials into San Francisquito Creek could significantly impact habitat quality for these species.

The following mitigation measure would reduce impacts on California red-legged frog, California tiger salamander, and western pond turtle to less-than-significant levels:

Mitigation Measure BIO 6a: The following measures shall be implemented to mitigate the effects of the project on special-status amphibians and reptiles:

- The project sponsor shall install exclusionary fencing, such as silt fences, along San Francisquito Creek and around all construction areas that are within 100 feet of or adjacent to potential California red-legged frog, California tiger salamander, or western pond turtle habitat. Once fencing is in place, it shall be maintained by the project sponsor until completion of construction within or adjacent to the enclosure.
- Prior to commencement of any earthmoving activities, the project sponsor shall retain a qualified monitoring biologist to train all construction personnel and work crews on the sensitivity and identification of the California red-legged frog, California tiger salamander, and western pond turtle and the penalties for the “take” of these species. In addition, species identification cards shall be provided to all construction personnel. Training sessions shall be conducted for all new employees before they access the Plan area and periodically throughout project construction.
- During project construction the qualified monitoring biologist who is familiar with the identification and life history of California red-legged frog, California tiger salamander, and western pond turtle, and with the appropriate agency authorization, shall be designated to periodically inspect onsite compliance with all mitigation measures, consistent with the training sessions.
- The qualified monitoring biologist shall perform a daily survey of the San Francisquito Creek within 100 feet of the Plan area during initial ground-breaking activities and during the rainy season. During these surveys, the qualified monitoring biologist shall inspect the exclusion fencing for individuals trapped within the fence and determine the need for fence repair. After ground-breaking activities and during the non-rainy season, the qualified monitoring biologist shall continue to perform daily fence surveys and compliance reviews at the Plan area.
- All stormwater runoff from the Plan area shall be monitored and follow best management practices, stormwater pollution prevention plan protocols, and National Pollutant Discharge and Elimination System permit provisions.
- Staging areas, and all fueling and maintenance of vehicles and other equipment and staging areas shall be at least 100 feet from any riparian habitat.
- If a California red-legged frog or California tiger salamander is identified in the project work area, all work in the immediate area shall cease and the U.S. Fish and Wildlife Service shall be contacted. Work shall not begin again until so authorized by the U.S. Fish and Wildlife Service.

Significance after Mitigation: Less than Significant.

Protected Trees

Impact BIO-7: The Specific Plan may result in damage to, or removal of, protected trees that are within or adjacent to the Plan area. (Less than Significant)

Certain trees are protected by Menlo Park Municipal Code Chapter 13.24 Heritage Trees. Protected or heritage trees that occur within or immediately adjacent to the footprint of subsequent individual development projects could be damaged by construction activities such as excavating, grading and soil compaction. Extensive damage to branches, trunks, or roots increases vulnerability and may lead to tree mortality. The loss of a heritage tree without prior approval by the City would be a violation that can be remedied by fine, stop-work order, and development moratorium. City code requires submittal of a removal permit, subject to the approval of the Director of Public Works. Approvals/denials can be appealed to the Environmental Quality Commission and again to the City Council. Associated guidelines require the planting of replacement trees at a 1:1 basis for residential projects and 2:1 for commercial projects.

Additionally, the City of Menlo Park's Building Division provides "Tree Protection Specification"²⁹ measures to further ensure the protection of heritage trees during construction activities. These measures include but are not limited to fencing protected trees and providing a "tree protection zone" during building/development, or using a tree wrap where appropriate and prohibiting spillage of materials below the tree canopy, damaging trunks, roots, or branches of trees without prior authorization.

The Plan area is urban and almost completely developed. As a result, mature trees are primarily located within the public right-of-ways, including streets, sidewalks and other public areas, and along the perimeter or private properties. The Specific Plan includes guidelines for the retention of existing mature trees to the extent possible (Design Guidelines D.2.01, D.2.32, D.2.44, D.3.19, D.5.20, and E.3.6.05) and the addition of trees and landscaping along sidewalks, in plazas and other public spaces (Design Guidelines D.2.03, D.2.20, D.2.25, D.2.39, D.2.53, D.3.04, D.3.07, D.3.13, D.3.22, D.4.05, D.5.03, D.5.04, and D.5.20). With the combination of the design guidelines' emphasis on retention and enhancement of trees in the Specific Plan area and the location of many existing trees within public areas and on the perimeter of properties, it is not expected that implementation of the Specific Plan would result in extensive tree removal. Although permits may be requested for the removal or substantial pruning of a heritage tree, approval is a discretionary action subject to appeal rights as noted above. In addition, removals are subject to replacement planting requirements.

The City's procedures and the Specific Plan guidelines would ensure the protection of heritage trees and would limit impacts to a less-than-significant level.

Mitigation: None required.

²⁹ City of Menlo Park. Tree Protection Specifications. Community Development Building Division. http://www.menlopark.org/departments/bld/tree_Specifications09.pdf

Creeks and Riparian Areas

Impact BIO-8: Construction activities could impact creeks and riparian areas, but impacts would be limited by existing statutes and permitting requirements, as well as distance from the creek to likely development sites. (Less than Significant)

San Francisquito Creek and its associated riparian zone are located at the far southeastern edge of the study area. Due to its proximity, the creek may be subject to project related development impacts. Any subsequent development project resulting in temporary or permanent impacts to jurisdictional waters is subject to provisions outlined in the Clean Water Act and California Fish and Game Code. Section 404 of the CWA is under authority of the U.S. Army Corps of Engineers, Section 401 of the Clean Water Act is under authority of the Regional Water Quality Control Board, and Sections 1600 through 1616 (Streambed Alteration Agreement) are under authority of the California Department of Fish and Game.

The potential impact of non-proximate construction on the creek is discussed in more detail in Section 4.8, *Hydrology and Water Quality*, but key elements are summarized here with regard to the National Pollutant Discharge Elimination System (NPDES) waste discharge regulations. Stormwater in San Mateo County is managed in accordance with a municipal stormwater NPDES permit from the San Francisco Bay Regional Water Quality Control Board (permit no. R2-2009-0074). This permit contains a comprehensive plan to reduce the discharge of pollutants to the “maximum extent practicable” and mandates that participating municipalities implement an approved stormwater management plan. New development and redevelopment projects are required to incorporate treatment measures and other appropriate source control and site design features to reduce the pollutant load in stormwater discharges and manage runoff flows. Projects that involve the creation or replacement of 10,000 square feet or more of impervious surfaces must comply with the C.3 requirements. Associated requirements mandate the development and implementation of a storm water pollution prevention plan (SWPPP).

In addition, the City of Menlo Park Public Works Department has requirements for development or redevelopment projects that replace or introduce more than 10,000 square feet of impervious surfaces as well as simplified requirements for smaller projects. These requirements include preparation of a Hydrology Report containing minimum design criteria. Incorporation of these requirements or equivalent practices would be expected to reduce this potentially significant impact on water resources to a less-than-significant level if incorporated.

The potential for direct development impacts to San Francisquito Creek is limited by the fact that only one privately-owned parcel, 100 El Camino Real, extends into the creekbed itself. This particular site is occupied by a hotel that appears to be an income-generating property in good condition and as such currently represents an unlikely redevelopment location. The parcels on the opposite side of El Camino Real (addressed 15 through 99 El Camino Real) are separated from the creek by a public street (Creek Drive) and are likewise occupied by buildings that do not appear to be immediate development sites.

As a result, existing statutes and permitting requirements for non-proximate construction and the absence of likely redevelopment sites directly affecting the bed of San Francisquito Creek itself would reduce potential impacts on jurisdictional waters to less-than-significant levels.

Mitigation: None required.

Cumulative Impacts

This analysis evaluates whether the impacts of the Specific Plan, together with the impacts of cumulative development, would result in a cumulatively significant impact on special-status species, wetlands and other waters of the U.S., or other biological resources protected by federal, state, or local regulations or policies (based on the significance criteria and thresholds presented earlier). This analysis then considers whether the incremental contribution of the Specific Plan to this cumulative impact would be considerable. Both conditions must apply in order for the project's cumulative effects to rise to the level of significance.

The geographic context for analysis of cumulative impacts to biological resources in this Draft EIR encompasses similar urbanized areas in eastern San Mateo County.

Impact BIO-9: Project construction activity and operations, in conjunction with other past, current, or foreseeable development in similar urbanized areas in eastern San Mateo County, could result in impacts on special-status species, habitats, wetlands, and other waters of the U.S. (Less than Significant)

Relative to existing conditions, which is the baseline for CEQA analysis, the impacts of the Specific Plan would not aggregate with other impacts to breach the CEQA significance thresholds described elsewhere in the Draft EIR. The Specific Plan could result in the displacement of a few scattered pockets of wildlife (e.g., bats in abandoned buildings; birds nesting in street trees), which generally represents a less-than-significant relocation of disturbance-tolerant plants and animals. Like other urbanized areas in this part of the Bay Area, the Specific Plan does not provide important plant and wildlife habitat.

Environmentally protective laws and regulations have been applied with increasing rigor since the early 1970s and include the California Endangered Species Act, Federal Endangered Species Act, and the Clean Water Act, as described in the Regulatory Setting for this section. The Specific Plan and other similar future infill projects within the other urbanized areas in the vicinity are and would be required to comply with local, state, and federal laws and policies and all applicable permitting requirements of the regulatory and oversight agencies intended to address potential impacts on biological resources, including wetlands, other waters of the U.S., and special-status species. Additionally, new projects would be required to demonstrate that they would not have significant effects on these biological resources, although it is possible that some projects may be approved even though they would have significant, unavoidable impacts on biological resources.

The current impact analysis has shown that the El Camino Real/Downtown Specific Plan has the potential for relatively minor impacts on biological resources and that these impacts can be minimized to less-than-significant levels through the application of the identified mitigation measures. When considered relative to all past, present, and reasonably foreseeable similar projects within the geographic context for this analysis, the minor incremental contribution of the Specific Plan to an already existing cumulative impact is not considerable. Therefore, the cumulative effect of the Specific Plan on biological resources would be less than significant.

Mitigation: None required.
