

3.14 Biological Resources

This section describes the affected environment and regulatory setting for biological resources in the vicinity of the Commonwealth Corporate Center Project (Project) site. It also describes the impacts on Biological Resources that would result from implementation of the Project, and mitigation measures that would reduce these impacts. This section is based on a biological resources survey conducted on April 19, 2013, and review of lists of special-status plants and wildlife from the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB),¹ the U.S. Fish and Wildlife Service's (USFWS) online species list,² and the California Native Plant Society's (CNPS) Online Inventory of Rare and Endangered Plants.³ The purpose of the biological resources survey was to determine if the Project site contains any wetlands and/or habitat that could support special-status plant or wildlife species known in the Bay region and to document any occurrences of those species, if observed during the field survey.

Additional information on biological resources is provided in Appendix 3.14. Issues identified in response to the Notice of Preparation (NOP) (Appendix 1) were considered in preparing this analysis. Applicable issues that were identified pertain to heritage tree removal, disturbance to nesting migratory birds and roosting bats, impacts of larger buildings on migratory birds, and indirect impacts on wildlife due to the Project's proximity to San Francisco Bay (Bay).

Existing Conditions

Regulatory Setting

Federal

Clean Water Act (Sections 401 and 404). The federal Clean Water Act (CWA) is the primary federal law protecting the quality of the nation's surface waters, including lakes, rivers, and coastal wetlands. CWA empowers the U.S. Environmental Protection Agency (EPA) to set national water quality standards and effluent limitations, and establishes permit review mechanisms to enforce them. Most CWA provisions are at least indirectly relevant to the management and protection of biological resources because of the link between water quality and ecosystem health. The portions that are most directly relevant to biological resources management are contained in Section 404, which regulates the discharge of dredged and fill materials into Waters of the United States (comprising wetlands and other Waters of the United States), which include the following water bodies.:

- All areas within the ordinary high water mark of a stream, including non-perennial streams with a defined bed and bank and any stream channel that conveys natural runoff, even if it has been realigned.
- Seasonal and perennial wetlands, including coastal wetlands.

¹ California Department of Fish and Wildlife. 2013. California Natural Diversity Database. Available: <<http://www.dfg.ca.gov/biogeodata/cnddb/mapsanddata.asp>> Accessed April 16, 2013.

² U.S. Fish and Wildlife Service. 2013. Quad Finder. Available: <http://www.fws.gov/sacramento/es_species/Lists/es_species-lists_quad-finder.htm> Accessed April 16, 2013.

³ California Native Plant Society. 2013. Online Inventory of Rare and Endangered Plants. Available: <<http://www.dfg.ca.gov/biogeodata/cnddb/mapsanddata.asp>> Accessed April 16, 2013.

Section 404 requires project proponents to obtain a permit from the U.S. Army Corps of Engineers (USACE) for all discharges of dredged or fill material into Waters of the United States, including streams, ponds, and wetlands, before proceeding with a proposed activity. CWA Section 401 requires that applicants for a Section 404 permit must first obtain certification from the Regional Water Quality Control Board (Regional Water Board) that the proposed project will comply with state water quality standards.

Endangered Species Act. The federal Endangered Species Act (ESA) was enacted in 1973. Under ESA, the Secretary of the Interior and the Secretary of Commerce jointly have the authority to list a species as threatened or endangered (16 United States Code [USC] 1533[c]). ESA is administered by both the National Marine Fisheries Service (NMFS) and USFWS. NMFS is accountable for animals that spend most of their lives in marine waters, including marine fish, most marine mammals, and anadromous fish, such as Pacific salmon. USFWS is accountable for all other federally-listed plants and animals.

Pursuant to the requirements of ESA, an agency reviewing a proposed project within its jurisdiction must determine whether any federally listed threatened or endangered species may be present in the project site and determine whether the proposed project would have a potentially significant impact on such species. In addition, the agency is required to determine whether the project is likely to jeopardize the continued existence of any species proposed to be listed under ESA or result in the destruction or adverse modification of critical habitat proposed to be designated for such species (16 USC 1536[3], [4]). Therefore, project-related impacts on these species or their habitats would be considered significant and would require mitigation.

CDFW maintains a list of “species of concern” that receive special attention from federal agencies during environmental review, although they are not otherwise protected under FESA. Project-related impacts on such species would also be considered significant under the California Environmental Quality Act (CEQA) Guidelines Section 15380 and would require mitigation.

Projects that would result in “take” (kill, harm, harass, etc.) of any federally-listed threatened or endangered species are required to obtain authorization from NMFS and/or USFWS through either Section 7 (interagency consultation) or Section 10(a) (incidental take permit) of ESA, depending on whether the federal government is involved in permitting or funding the project. The Section 7 authorization process is used to determine if a project with a federal nexus would jeopardize the continued existence of a listed species and what mitigation measures would be required to avoid jeopardizing the species. The Section 10(a) process allows take of endangered species or their habitats in non-federal activities.

Migratory Bird Treaty Act of 1918. The federal Migratory Bird Treaty Act (MBTA) makes it unlawful to “take” any migratory bird listed in 50 CFR 10, including their nests, eggs, or products. Migratory birds include geese, ducks, shorebirds, raptors, songbirds, and many others.

State

California Endangered Species Act. The California Endangered Species Act (CESA) was enacted in 1984. Under CESA, the California Fish and Game Commission (CFGF) has the responsibility for maintaining a list of threatened species and endangered species. CDFW also maintains lists of species of special concern; impacts on these species would be considered significant under CEQA Guidelines Section 15380 and could require mitigation. Pursuant to the requirements of CESA, an agency reviewing a proposed project within its jurisdiction must determine whether any state-listed endangered or threatened species may be present in the project site and determine whether the proposed project

would have a potentially significant impact on such species. In addition, CDFW encourages informal consultation on any project which may affect a candidate species. CESA prohibits the take of California listed animals and plants in most cases, but CDFW may issue incidental take permits under special conditions.

Fish and Wildlife Code Sections 3503, 3503.5, and 3800. These sections of the Fish and Wildlife Code prohibit the “take, possession, or destruction of birds, their nests or eggs.” Disturbance that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a “take.” Removal of vegetation is the most common action that can lead to a violation of these code sections.

Local

City of Menlo Park Municipal Code Chapter 13.24. The Project would be subject to the City of Menlo Park Municipal Code (Municipal Code) Chapter 13.24,⁴ which establishes regulations for the preservation of heritage trees. Chapter 13.24 defines heritage trees 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 (*Quercus* sp.) which is native to California and has a trunk with a circumference of 31.4 inches (diameter of ten [10] inches) or more, measured at fifty-four (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 twelve (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 fifteen (15) inches) or more, measured fifty-four (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 twelve (12) feet in height, which will be exempt from this section. (Ord. 928 Section 1 (part), 2004).

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 site prior to initiation of construction activities. Any work performed within an area 10 times the diameter of the tree (i.e., the tree protection zone) shall require submittal of a tree protection plan for review and approval by the Community Development Director or his/her designee prior to issuance of any permit for grading or construction, and shall be prepared by a certified arborist. Removal of heritage trees requires obtaining an appropriate permit from the Director of Public Works and payment of a fee. Applicants are required to submit a site plan with the Heritage Tree Removal Application Permit even if they have submitted a site plan to the City for a planning or building permit. The site plan facilitates the review by the City Arborist. For removals of two or more trees, applicants are required to submit a planting plan indicating the species, size, and location of the proposed replacement trees on a site plan. Heritage Tree Permits related to construction will also be charged for City-retained arborist expenses.

City of Menlo Park General Plan. The following policies from the Open Space Element of the General Plan are relevant to the Project.

Policy OSC1.1: Natural Resources Integration with Other Uses. Protect Menlo Park’s natural environment and integrate reeks, utility corridors, and other significant natural and scenic features into development plans.

⁴ City of Menlo Park. 2010. Menlo Park Municipal Code, Section 16.46.030(7). December 14, 2010

Policy OSC1.3: Sensitive Habitats. Require new development on or near sensitive habitats to provide baseline assessments prepared by qualified biologists, and specify requirements relative to the baseline assessments.

Policy OSC1.4: Habitat Enhancement. Require new development to minimize the disturbance of natural habitats and vegetation, and requires re-vegetation of disturbed natural habitat areas with native or non-invasive naturalized species.

Policy OSC1.15: Heritage Trees. Protect Heritage Trees, including during construction activities through enforcement of the Heritage Tree Ordinance (Chapter 13.24 of the Municipal Code).

Environmental Setting

The Project site, which consists of the Commonwealth Site and the Jefferson Site, is located within the Palo Alto United States Geological Survey (USGS) 7.5-minute quadrangle in San Mateo County. The Project site is relatively flat and occurs between 8 and 11 feet above mean sea level (msl). It is located within an urban setting, surrounded by commercial buildings, US 101, and the Dumbarton Rail Corridor. Historically, the shoreline of the Bay used to be near the Project site, but the existing Bay shoreline is now approximately 1.34 miles north of the Project site. Salt and brackish water marshes that border the southern portion of the Bay occur 0.25 mile north of the Project site. The Natural Resource Conservation Service has mapped soils at the Project site as Urban Land–Orthents, which is generally associated with former tidal flats and salt marshes.

Commonwealth Site

The unoccupied 12.1-acre Commonwealth Site consists of three single-story buildings, a tank farm, a water tank, storage and processing areas, and paved parking and landscaped areas. Office parks to the north and west, the Jefferson Site to the north, and US 101 to the south comprise the surrounding area. Approximately 27 tree species are located at the Commonwealth Site, including redwood (*Sequoia sempervirens*), eucalyptus (*Eucalyptus polyanthemos*), Pineapple guava (*Feijoa sellowiana*), juniper (*Juniperus chinensis*), avocado (*Persea americana*), pittosporum (*Pittosporum tobira*), coast live oak (*Quercus agrifolia*), and incense cedar (*Calocedrus decurrens*). Other vegetation observed at the Project site included one coyote bush (*Baccharis pilularis*), ornamental roses and grass, as well as rabbitfoot grass (*Polypogon monspeliensis*) and common sowthistle (*Sonchus oleracus*) growing in the pavement cracks.⁵

Jefferson Site

The 1.17-acre Jefferson Site consists of one, one-story operational building and associated paved parking and landscaping. Office parks and the Commonwealth Site comprise the surrounding area. Approximately 18 tree species were observed at the Jefferson Site, including Blackwood acacia (*Acacia melanoxylon*), American sweet gum (*Liquidamber styraciflua*), and red ironbark (*Eucalyptus sideroxylon*).

Special-Status Species

A list of special-status plant and wildlife species that have the potential to occur in the vicinity of the Project site was compiled from a 2-mile radius CNDDDB query and from USFWS species list databases for the Palo Alto, Woodside, Mountain View, La Honda, Mindego Hill, Cupertino, Redwood Point, and San Mateo 7.5 minute USGS quadrangle maps, as well as a review of the CNPS Online Inventory of Rare and

⁵ McClenahan Consulting, LLC. 2012. "Tree Survey." 151 Commonwealth and 164 Jefferson. March 27.

Endangered Plants. The results of these queries are presented in Table 3.14-1, along with a description of each species' habitat requirements, protection status, and a brief discussion of its likelihood to occur within the Project site. Figure 3.14-1 depicts the locations of the listed special-status species occurrences from the 2-mile CNDDDB query. For the purposes of this analysis, special-status species include those that fit into any of the following categories.

- Species listed, proposed, or candidate species for listing as Threatened or Endangered by USFWS pursuant to ESA of 1969, as amended.
- Species listed as Rare, Threatened, or Endangered by CDFW pursuant to CESA of 1970, as amended.
- Species designated as Fully Protected under Sections 3511 (birds), 4700 (mammals), and 5050 (reptiles and amphibians) of the California Fish and Wildlife Code.
- Species designated by CDFW as California Species of Concern.
- Species not currently protected by statute or regulation but considered rare, threatened, or endangered under CEQA (Section 15380).

Western snowy plover (*Charadrius alexandrinus nivosus*). Western snowy plover is federally listed as threatened, and a CDFW Species of Special Concern. This species occurs in coastal beaches, sand spits, dune-backed beaches, sparsely-vegetated dunes, beaches at creek and river mouths, and salt pans at lagoons and estuaries. The CNDDDB contains one record of western snowy plover within 2 miles of the Project site, and this species is known to nest in the salt flats near the Bay.

Alameda song sparrow (*Melospiza melodia pusillula*). Alameda song sparrow is a CDFW Species of Special Concern. This species is found in brackish marshes associated with pickleweed. Alameda song sparrows are only found in marshes along the southern portion of the Bay. In order for nests to stay dry during high tides, the Alameda song sparrow requires upland marsh vegetation for nesting. The Alameda song sparrow breeds from late February to mid-August. The year-round diet of the song sparrow is roughly 79 percent vegetable and 21 percent animal matter. The CNDDDB contains two records of Alameda song sparrow within 2 miles of the Project site.

California clapper rail (*Rallus longirostris obsoletus*). The California clapper rail is both a federally and State endangered bird and it is also CDFW Fully Protected species. This species range is restricted to tidal and brackish marshes in San Francisco, San Pablo, and Suisun Bays, as well as Petaluma and Napa-Sonoma marshes, that are closely associated with pickleweed. Nesting season is from February to August and primarily occurs in the San Francisco estuary. The mated pair builds a cup nest of vegetation in dense cover above or near the water; nests usually include a domed canopy and an entrance ramp. Young leave the nest within hours of hatching. The California clapper rail feeds on aquatic insects, crustaceans, and small fish caught by probing, snatching, or gleaning from the water, ground, or vegetation. The bird may also eat seeds, amphibians, worms, and other small items. The CNDDDB contains one record for California clapper rail within 2 miles of the Project sites.

Table 3.14-1. Special-Status Species Known in within 2 Miles of the Project Site

Scientific Name	Common Name	Fed/State/Other	Habitat	Likelihood of Occurrence at Project Site
Plants				
<i>Cirsium praeteriens</i>	Lost thistle	None/None/ 1A	Perennial herb that is native to California. Habitat ranges from 0 to 328 feet.	None: Presumed extinct.
<i>Stuckenia filiformis</i>	Slender-leaved pondweed	None/None/ S1S2	Assorted shallow freshwater marshes and swamps ranging from 300 – 2150 meters; blooms May – July.	None: No suitable habitat occurs within or adjacent to the Project site.
Amphibians				
<i>Ambystoma californiense</i>	California tiger salamander	FT/ST/ S2S3/CSC	Valley and foothill grasslands and adjacent oak woodlands; shelters in rodent burrows and breeds in seasonal wetlands such as vernal pools.	None: No suitable habitat in or adjacent to the Project site.
Reptiles				
<i>Thamnophis sirtalis tetrataenia</i>	San Francisco garter snake	FE/SE/S2	Utilizes a variety of habitats, preferring grasslands or wetlands near ponds, marshes, and sloughs. May overwinter in upland areas away from water.	Low: No suitable habitat at the Project site.
Birds				
<i>Charadrius alexandrinus nivosus</i>	Western snowy plover	FT/None/ CSC S2	Found in coastal beaches, sand spits, dune-backed beaches, sparsely-vegetated dunes, beaches at creek and river mouths, and salt pans at lagoons and estuaries.	Low: No suitable habitat on the Project site.
<i>Melospiza melodia pusillula</i>	Alameda song sparrow	None/None/ CSC, S2	Found in marshland within the Bay.	Low: No suitable habitat at the Project site.
<i>Rallus longirostris obsoletus</i>	California clapper rail	None/None/ CSC, S2	Salt-water and brackish marshes traversed by tidal sloughs in the vicinity of the Bay. Associated with abundant growths of pickleweed, but feeds away from cover on invertebrates from mud-bottomed sloughs.	Low: No suitable habitat on at the Project site.
<i>Sternula antillarum browni</i>	California least tern	FE/SE/S2S3	Nests are situated on barren to sparsely vegetated places near water, normally on sandy or gravelly substrates. In the Bay region, breeding typically takes place on	Low: No suitable habitat at the Project site.

Table 3.14-1. Special-Status Species Known in within 2 Miles of the Project Site

Scientific Name	Common Name	Fed/State/Other	Habitat	Likelihood of Occurrence at Project Site
			abandoned salt flats.	
Mammals				
<i>Dipodomys venustus venustus</i>	Santa Cruz kangaroo rat	None/None/ S1	Chamise-redshank chaparral, coastal scrub, mixed chaparral.	None: No suitable habitat at the Project site.
<i>Lasiurus cinereus</i>	Hoary bat	None/None/S4	Solitary, foliage roosting species that is infrequently observed. Roosts are typically outside of urban areas. Forages in open areas or along habitat edges.	Low: Trees within the Project site could provide suitable roosting habitat.
<i>Reithrodontomys raviventris</i>	Salt-marsh harvest mouse	FE/SE/CSC, S1S2	Occurs only in the saline emergent wetlands of the Bay and its tributaries. Pickleweed is primary habitat.	Low: No suitable habitat at the Project site.
<i>Taxidea taxus</i>	American badger	None/None/ CSC, S4	Occurs in dry, open grasslands, fields, and pastures. They are found from high alpine meadows to sea level.	None: No suitable habitat at or surrounding the Project site.

Source: California Department of Fish and Wildlife, Natural Diversity Database, Biogeographic Data Branch, “CNDDDB Query for the Palo Alto, Woodside, Mountain View, La Honda, Mindego Hill, Cupertino, Redwood Point, and San Mateo 7.5 minute USGS quadrangle maps,” April 16, 2013. (Appendix 3.14 of this Draft EIR)

Notes:

Federal

- FE Federally listed as Endangered
- FT Federally listed as Threatened

State

- SE State listed as Endangered
- ST State listed as Threatened
- CSC California Department of Fish and Wildlife designated “Species of Special Concern”

- | | |
|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| S1 - Less than 6 Element Occurrences (EOs) OR less than 1,000 individuals OR less than 2,000 acres | S3 - 21-100 EOs or 3,000-10,000 individuals OR 10,000-50,000 acres |
| S1.1 - very threatened | S3.1 - very threatened |
| S2 - 6-20 EOs OR 1,000-3,000 individuals OR 2,000-10,000 acres | S4 - Apparently secure within California; this rank is clearly low |

Table 3.14-1. Special-Status Species Known in within 2 Miles of the Project Site

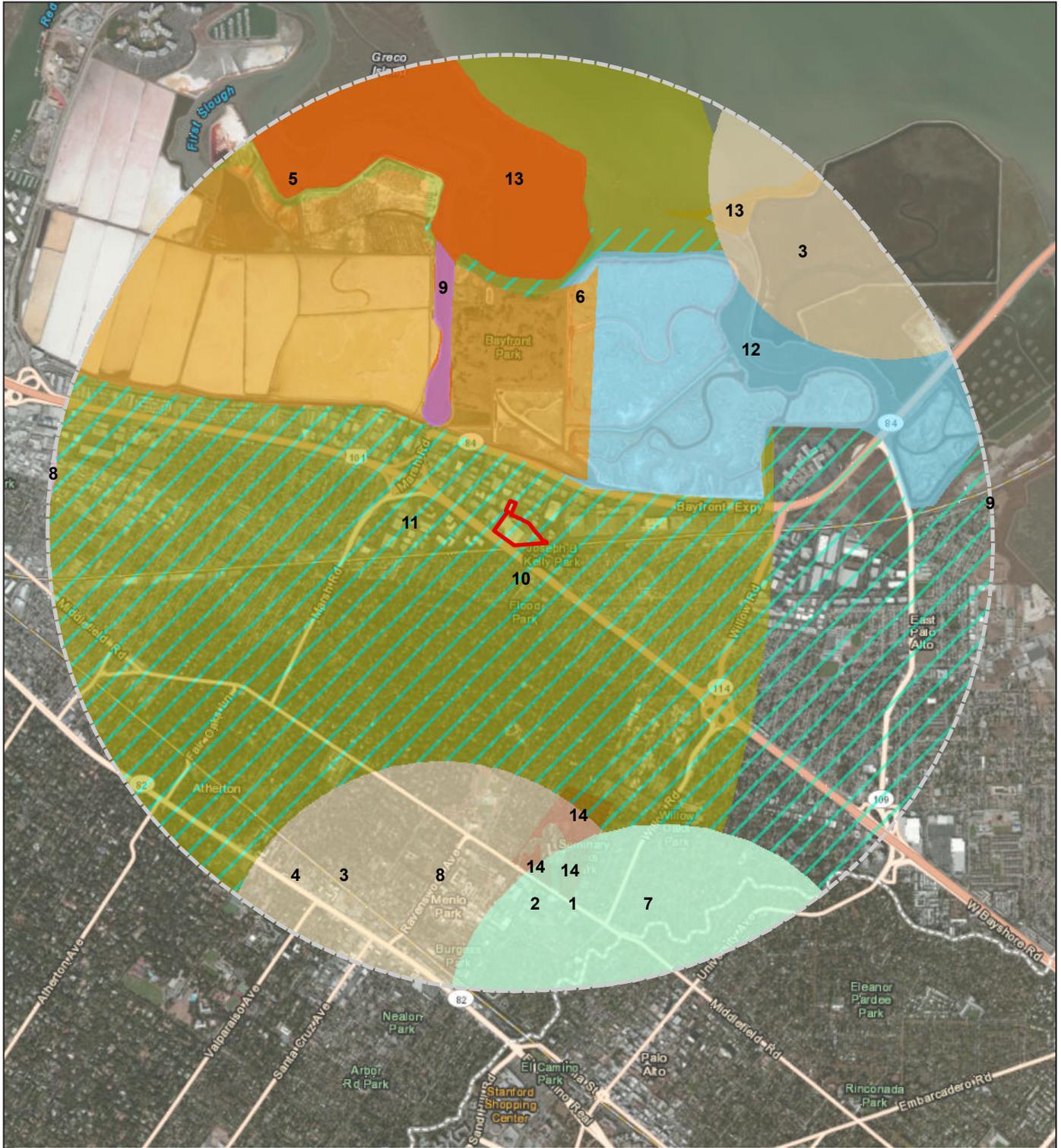
Scientific Name	Common Name	Fed/State/Other	Habitat	Likelihood of Occurrence at Project Site
S2.1 -	very threatened			than S3 but factors exist to cause some concern; i.e. there is some threat, or somewhat narrow habitat.

CNPS

- 1A Presumed extinct
- 1B California Native Plant Society (CNPS) Ranking. Defined as plants that are rare, threatened, or endangered in California and elsewhere.
- 2 California Native Plant Society (CNPS) Ranking. Defined as plants that are rare, threatened, or endangered in California, but more common elsewhere.
- 3 Plants about which more information is needed
- 4 Plants of limited distribution - a watch list
- CNPS Threat Code Extension
 - .1 - Species seriously endangered in California
 - .2 - Species fairly endangered in California
 - .3 - Species not very endangered in California

Likelihood of occurrence evaluations:

A rating of “Moderate” indicates that it is not known if the species is present, but suitable habitat exists on-site.
 A rating of “Low” indicates that species was not found during biological surveys conducted to date on the site and may not be expected given the species’ known regional distribution or the quality of habitats located on the site.
 A rating of “None” indicates that the taxa would not be expected to occur on the Project site because the site does not include the known range or does not support suitable habitat.



Project Area
 2 mile Buffer

CNDDB Occurrence

Plants

- 1. lost thistle
- 2. slender-leaved pondweed

Wildlife

- 3. Alameda song sparrow
- 4. American badger
- 5. California clapper rail
- 6. California least tern
- 7. California tiger salamander

Terrestrial Community

- 8. hoary bat
- 9. salt-marsh harvest mouse
- 10. San Francisco garter snake
- 11. Santa Cruz kangaroo rat
- 12. western snowy plover
- 13. Northern Coastal Salt Marsh
- 14. Valley Oak Woodland



Graphics: 00078.13 (10-30-13) GIS



**Figure 3.14-1
Special-Status Species**

California least tern (*Sternula antillarum browni*). California least tern is a federal and state Endangered and a CDFW Fully Protected species. As its name implies, the least tern is the smallest of North American terns. It is approximately 8.25 to 9 inches long, and its wingspan is approximately 19 to 21 inches. The breeding season begins in May. They are single brooded but replace lost clutches. They nest in colonies on relatively open beaches kept free of vegetation by natural scouring from tidal action. Nests are situated on barren to sparsely vegetated places near water, normally on sandy or gravelly substrates. In the Bay region, breeding typically takes place on abandoned salt flats. The nest is a shallow, hollow, usually unlined, or sparingly lined with nearby plant material or small pebbles or shell fragments. The birds mainly eat small fishes but also eat shrimp and sometimes other invertebrates. The CNDDDB contains one record for California least tern within 2 miles of the Project site.

Pallid bat (*Antrozous pallidus*). Pallid bat is a CDFW Species Of Special Concern but has no federal status. This species uses hollow trees, caves, and rock crevices for roosting but also uses human-made structures, such as mines, old buildings, and bridges, if suitable structure and seclusion are available. Threats include loss of roosting habitat, loss of maternity roosts, and illegal extermination during pest control. The CNDDDB contains no records for pallid bat within 2 miles of the Project site.

Hoary bat (*Lasiurus cinereus*). Hoary bat has no state or federal status; however maternal roosting sites are protected during the breeding season. This species is solitary, typically roosting in foliage of riparian trees such as cottonwoods and sycamores, though eucalyptus are also known to be used as well. Roosting trees can occur at the edge of clearings, heavy forests, open wooded glades, and shade trees along urban streets and in city parks. Threats include loss of roosting habitat, loss of maternity roosts, and illegal extermination during pest control. The CNDDDB contains two records for hoary bat within 2 miles of the Project site.

Salt marsh harvest mouse (*Reithrodontomys raviventris*). Salt marsh harvest mouse is both a federal Endangered Species and a California Endangered Species. This species is typically found in and adjacent to emergent salt marsh habitats dominated by dense growths of pickleweed. Salt marsh harvest mouse requires adjacent, upland areas for escape during high tides. Threats include loss of habitat due to conversion to urban development. The CNDDDB contains two records for salt marsh harvest mouse within 2 miles of the Project site.

Environmental Impacts

This section describes the impact analysis related to effects from the Project on biological resources. It describes the methods used to determine the impacts of the Project and lists the thresholds used to measure whether an impact would be significant. Measures to mitigate (i.e., avoid, minimize, rectify, reduce, eliminate, or compensate for) significant impacts accompany each impact discussion.

Thresholds of Significance

In accordance with Appendix G of the State CEQA Guidelines, the Project would be considered to have a significant effect if it would result in any of the conditions listed below.

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS.
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by CDFW or USFWS.

- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marshes, vernal pools, coastal wetlands, etc.) through direct removal, filling, hydrological interruption, or other means.
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

Methods for Analysis

The environmental setting of the Project was established by reviewing available information on special-status species known to occur in the Project vicinity. The information review included:

- A query of the CNDDDB and USFWS species list databases for the Palo Alto, Woodside, Mountain View, La Honda, Mindego Hill, Cupertino, Redwood Point, and San Mateo 7.5 minute USGS quadrangle maps.
- A review of the CNPS Online Inventory of Rare and Endangered Plants.
- A review of the habitat requirements of the special-status species determined to have potential to occur in the Project site through the above queries.

This review was supplemented with a field survey on April 19, 2013 to determine which of these species actually occurs or whether potential habitat for these species is present on the Project site. Information from the sources noted above and the subsequent field review are presented in Table 3.14-1, along with a description of each species' habitat requirements, protection status, and a brief discussion of its likelihood to occur within the Project site. Figure 3.14-1 depicts the locations of the listed special-status species occurrences from the 2-mile CNDDDB query.

Impacts Not Evaluated in Detail

Conflicts with Adopted Habitat Conservation Plans. The entire Project site is developed, with approximately half occupied by buildings and the remainder covered with scattered ornamental landscaping or concrete pavement. The entire site is zoned M-2, designated General Industrial, and is not a part of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. Therefore, there would be **no impact** from implementation of the Project on an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plans; therefore, this impact is not discussed further.

Impacts and Mitigation Measures

Impact BIO-1: Impacts on Special-Status Species. The Project could have an impact on species identified as candidate, sensitive, or special-status in local or regional plans, policies, or regulations. (PS)

Pallid bats, hoary bats, and other potential crevice-roosting bat species are the only mammal species that could occur in the vicinity of the Project site. Pallid bats are listed as California species of special concern and hoary bats are not listed, but maternal breeding colonies are protected. Pallid bats, which have a moderate likelihood of occurrence, could roost in crevices on the exterior of the unoccupied existing buildings on the Commonwealth Site and in hollow trees. Hoary bats, which have a low likelihood of occurrence, could roost in the foliage of trees at the Commonwealth Site and Jefferson Site. With implementation of the Project, the existing buildings on the Commonwealth Site would be demolished and replaced with two four-story buildings. Several existing shrubs and approximately 44 of 45 trees (23 of which are heritage trees⁶) would be removed prior to redevelopment. However, approximately 474 trees would be planted to offset the heritage tree removal. This would result in an overall net gain in roosting habitat for potential bat species.

Removal of trees and removal of or modification to buildings containing active bat roosts, particularly during the nesting season (typically April through August), could result in the loss of individual bats, bat colonies, or their habitat. While adult hoary and pallid bats may be able to escape during tree removal, if tree and shrub removal is to occur during the maternity season (May 1st through October 1st), young bats that cannot yet fly are likely to be killed or injured during vegetation removal. This would result in take of these species. Loss of individual bats and disruption of maternity roosting bats resulting in the abandonment of young or the loss of young through vegetation removal would be a ***potentially significant*** impact.

MITIGATION MEASURE. Implementation of Mitigation Measure BIO-1.1 would reduce potential roosting and breeding bat impacts from the Project to a *less-than-significant level*.

BIO-1.1: Identify and protect roosting and breeding bats on the Project site and provide alternative roosting habitat. The Sobrato Organization (Project Sponsor) shall implement the following measures to protect roosting and breeding bats found in a tree or structure to be removed with the implementation of the Project.

Prior to tree removal or demolition activities, the Project Sponsor shall retain a qualified biologist to conduct a focused survey for bats and potential roosting sites within buildings to be demolished or trees to be removed. The surveys can be conducted by visual identification and can assume presence of hoary and/or pallid bats or the bats can be identified to a species-level with the use of a bat echolocation detector such as an “Anabat” unit. If no roosting sites or bats are found, a letter report confirming absence shall be sent to the California Department of Fish and Wildlife (CDFW) and no further mitigation is required. If roosting sites or hoary bats are found, then the following monitoring and exclusion, and habitat replacement measures shall be implemented. The letter or surveys and supplemental documents shall be provided to the City of Menlo Park (City) prior to demolition permit issuance.

- a. If bats are found roosting outside of nursery season (May 1st through October 1st), then they shall be evicted as described under (b) below. If bats are found roosting

⁶ McClenahan Consulting, LLC. 2012. “Arborist Survey.” 151 Commonwealth and 164 Jefferson. March 27, 2012.

during the nursery season, then they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or monitoring the roost after the adults leave for the night to listen for bat pups. If the roost is determined to not be a maternal roost, then the bats shall be evicted as described under (b). Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. A 250-foot (or as determined in consultation with CDFW) buffer zone shall be established around the roosting site within which no construction or tree removal shall occur.

- b. Eviction of bats shall be conducted using bat exclusion techniques, developed by Bat Conservation International (BCI) and in consultation with CDFW that allow the bats to exit the roosting site but prevent re-entry to the site. This would include, but not be limited to, the installation of one-way exclusion devices. The devices shall remain in place for seven days and then the exclusion points and any other potential entrances shall be sealed. This work shall be completed by a BCI-recommended exclusion professional. The exclusion of bats shall be timed and carried concurrently with any scheduled bird exclusion activities.
- c. Each roost lost (if any) will be replaced in consultation with the Department of Fish and Game and may include construction and installation of BCI-approved bat boxes suitable to the bat species and colony size excluded from the original roosting site. Roost replacement will be implemented before bats are excluded from the original roost sites. Once the replacement roosts are constructed and it is confirmed that bats are not present in the original roost site, the structures may be removed or sealed.

Impact BIO-2: Impacts on Wildlife Corridors or Nursery Sites. The removal of trees, shrubs, or woody vegetation during Project construction could have an impact on the movement of native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. In addition, the proposed buildings and lighting would have the potential to injure or cause death to birds from collision and other factors. (PS)

Existing shrubs and trees on the Project site could provide nesting habitat for a variety of native migratory birds. The existing buildings at the Project site would be demolished, existing landscaping removed, and the site would be developed with new buildings and landscaping. Therefore, most or all of the existing shrubs along the perimeter of the property, along with those associated with the landscaping around the existing buildings on the Project site, would be removed. As discussed in BIO-1, 474 trees would be planted, resulting in an overall net gain in migratory bird nesting habitat at the Project site.

If during the nesting period (February 15 to August 31), nesting migratory birds are present (i.e., nests containing eggs or young), tree and shrub removal associated with the redevelopment of the Project site could result in the loss of those birds caused by the direct mortality of adult or young birds, nest destruction, or disturbance of nesting native migratory bird species resulting in nest abandonment and/or the loss of reproductive effort. Native migratory bird species are protected by both state (CDFW Code Sections 3503 and 3513) and federal (MBTA of 1918) laws. Disruption of nesting birds, resulting in the abandonment of active nests, or the loss of active nests through structure removal would be a ***potentially significant*** impact.

Further, injury or death to birds could result from collisions with buildings and from improper lighting at the Project site that could misdirect or confuse birds. The potential for these types of impacts could be heightened due to the Project being located near areas where birds are present. Impacts on birds from Project buildings and improper lighting would be a ***potentially significant*** impact.

MITIGATION MEASURE. Implementation of Mitigation Measures BIO-2.1 and BIO-2.2 would reduce potential nesting migratory bird impacts from the Project to a *less-than-significant level*.

BIO-2.1: Conduct pre-construction surveys for nesting migratory birds. The Sobrato Organization (Project Sponsor) shall implement the following measures to reduce impacts to nesting migratory birds.

- a. To facilitate compliance with state and federal law (CDFW Code and the MBTA) and prevent impacts on nesting birds, the Project Sponsor shall avoid the removal of trees, shrubs, or weedy vegetation February 15 through August 31 during the bird nesting period. If no vegetation or tree removal is proposed during the nesting period, no surveys are required. If it is not feasible to avoid the nesting period, a survey for nesting birds shall be conducted by a qualified wildlife biologist no earlier than seven days prior to the removal of trees, shrubs, weedy vegetation, buildings, or other construction activity.
- b. Survey results shall be valid for the tree removals for 21 days following the survey. If the trees are not removed within the 21-day period, then a new survey shall be conducted. The area surveyed shall include all construction areas as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist.

In the event that an active nest for a protected species of bird is discovered in the areas to be cleared or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least 2 weeks or until the biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts.

BIO-2.2: Implement Bird-Safe Design Standards into Project Buildings and Lighting Design. All new buildings and lighting features constructed or installed at the Project site shall be implemented to at least a level of "Select Bird-Safe Building" standards as defined in the City of San Francisco Planning Department's "Standards for Bird-Safe Buildings," adopted July 14, 2011. These design features shall include minimization of bird hazards as defined in the standards. With respect to lighting, the Project site shall adhere to the following standards.

- Be designed to minimize light pollution, including light trespass, over-illumination, glare, light clutter, and skyglow, while using bird-friendly lighting colors when possible.
- Avoid uplighting, light spillage, event search lights, and use green and blue lights when possible.
- Turn off unneeded interior and exterior lighting from dusk to dawn during migrations: February 15 through May 31 and August 15 through November 30.
- Include window coverings on rooms where interior lighting is used at night that adequately block light transmission and motion sensors or controls to extinguish lights in unoccupied spaces.

Impact BIO-3: Indirect Impacts on Special-Status Species Inhabiting the Nearby Salt Marshes. The Project would not impact the special-status bird and mammal species inhabiting the nearby salt and brackish water marshes. (LTS)

As discussed above in Impact BIO-1, the existing facilities and majority of the vegetation at the Project site would be removed and redeveloped. As part of the Project, two new buildings would be constructed and 474 trees would be planted. The number of trees at the Project site would increase from 45 to approximately 474 upon Project implementation. The new buildings and additional trees could serve as perching or nesting opportunities for raptors and other predatory birds and increase predation on special-status species in the nearby salt marshes, such as western snowy plover, California clapper rail, and salt marsh harvest mouse. Raptors perch in trees and hunt by watching movement on the ground. However, raptors and other predatory birds would have no direct line of sight from which to prey on special-status species in the nearby salt marshes. The salt marshes are 0.25 miles east of the Project site and numerous buildings and SR 84 block them from direct view. As hunting perches, these trees would have no impact on special-status species in the salt marshes. In addition, existing conditions of the Project site and surrounding area already provide numerous trees and buildings that can be used as nesting sites for raptors and other predatory birds. Additional nesting sites in an urban landscape with existing trees and in a project site that is developed and previously contained these habitat constituents is not an impact. Therefore, Project implementation is not expected to contribute to increased predation of the species occupying salt marsh habitat. Indirect impacts as a result of increased predation by raptors or other predatory birds would be a *less-than-significant* impact.

Impact BIO-4: Loss of Riparian, Wetlands, and Other Habitats. The Project would not affect any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife, US. Fish and Wildlife Service, or as defined by Section 404 of the Clean Water Act. (LTS)

Based upon the April 19, 2013 field survey, no riparian habitat or natural plant communities are present within the boundaries of the Project site. Salt marshes, which are a category of federally protected wetland, occur 0.25 mile to the north of the Project along the edge of the Bay; however, the Project is separated from the marshes by a network of streets and buildings. Project activities at the Project site occur within the boundaries of an existing developed area. All of the existing buildings would be demolished, existing pavement and landscaping would be removed, new buildings and parking lots would be constructed, and trees would be planted. Based on the field survey, no wetlands or other Waters of the United States are present on or adjacent to the site. Since there are no riparian habitats, salt marsh habitats, state or federally protected wetlands, or other Waters of the United States in any portion of the Project site, impacts on federally protected wetland as defined by Section 404 of the Clean Water Act are considered **less than significant**.

Impact BIO-5: Conflicts with any Local Policies or Ordinances Protecting Biological Resources. The Project would not result in conflicts with Chapter 13.24 of the Municipal Code (Heritage Tree Ordinance). (LTS)

There are currently 24 trees at the Project site that qualify as heritage trees⁷ under the City's Heritage Tree Ordinance.⁸ These trees consist of both native and nonnative ornamental species such as coast live oak, redwood, incense cedar, pittosporum, pineapple guava, eucalyptus, juniper, avocado, and

⁷ McClenahan Consulting, LLC. 2012. "Arborist Survey." 151 Commonwealth and 164 Jefferson. March 27, 2012.

⁸ City of Menlo Park. 2010. Menlo Park Municipal Code, Section 16.46.030(7). December 14, 2010

blackwood acacia. Project designs indicate that all but one of these trees (23 trees) would be removed during clearing of the Project site for redevelopment. Removal of heritage trees without first obtaining an appropriate permit from the Director of Public Works and payment of a fee is prohibited. As a part of obtaining a tree removal permit, the Project Sponsor must be in compliance with the Heritage Tree Ordinance,⁹ as described in more detail below. Since compliance with the tree ordinance is mandatory, this impact would be considered *less than significant*.

The Project would be required to adhere to Chapter 13.24 of the City's Municipal Code, as follows.

- For trees to be retained near construction activities, concurrent with each demolition permit submittal, the Project Sponsor shall submit a heritage tree preservation plan for any trees to be retained, detailing the location of and methods for all tree protection measures, as described in the arborist report (Appendix 3.2). The Project arborist shall submit a letter confirming adequate installation of the tree protection measures. The Project Sponsor shall retain an arborist throughout the term of the Project (demolition through approval of final building permit inspection for the building shells), and the Project arborist shall submit periodic inspection reports to the Building Division. The heritage tree preservation plan shall be subject to review and approval by the Planning Division prior to demolition permit issuance.
- For those heritage trees to be removed, the Project Sponsor shall submit a site plan with the Heritage Tree Removal Application Permit even if they have submitted a site plan to the City for a planning or building permit. The site plan facilitates the review by the City Arborist. For removals of two or more trees, the Project Sponsor shall be required to submit a planting plan indicating the species, size, and location of the proposed replacement trees on a site plan. Heritage Tree Permits related to construction shall also be charged for City-retained arborist expenses.
- The heritage tree replacement ratio in the City is determined by the Community Development Director. In general, all commercial applicants who are granted approval to remove a heritage tree are required to replace the lost trees at a ratio of 2 to 1. However, City staff may exercise discretion on the size and number of trees an applicant may be required to install. Consequently, 23 heritage trees would be removed from the Project site and replaced with approximately 474 trees of various species, which is a replacement ratio of approximately 7:1. Replacement trees must be installed within 30 days after the heritage tree is removed, must be planted at least 10 feet away from any structures, must not be planted under overhead utility wires, and must not be planted over underground utilities.¹⁰

Cumulative Impacts

Unless otherwise identified below, the geographic context for the analysis of cumulative biological impacts includes the Bay Area. The analysis accounts for all anticipated cumulative growth within this geographic area as represented by full implementation of the San Mateo County and City General Plans, including the Tier 1 and Tier 2 projects identified in Section 3.0, *Environmental Impact Analysis*.

⁹ City of Menlo Park. 2010. Menlo Park Municipal Code, Section 16.46.030(7). December 14, 2010

¹⁰ City of Menlo Park, Community Development. "Heritage Tree Replacement Procedures." Available: <www.menlopark.org/departments/pln/htree/Htree_Replacement_Pro.pdf> Accessed September 9, 2013.

Impact C-BIO-1: Cumulative Impacts on Roosting Bats. Removal of buildings, trees, shrubs, or other woody vegetation associated with construction of the Project and other cumulative development would result in impacts to roosting bats. (LTS)

Tier 1 and Tier 2

As described above under Impact BIO-1, activities that result in the removal of existing buildings, trees, shrubs, or other woody vegetation could adversely affect roosting bats, either by causing the loss of bats or the abandonment of an active roosting area. With future development in the Bay Area, it is reasonable to expect that there would be a loss of buildings, trees, and other woody vegetation that provide nesting and roosting habitat. Disturbance to these habitats, in combination with the potential loss of similar habitat in the Bay Area, would result in a potentially significant cumulative impact. Pallid bats and other crevice-roosting bat species, if present in the vicinity of the Project, could roost in crevices on the exterior of the existing buildings. Hoary bats roost in the foliage of trees, usually away from urban areas and along woodland edges and riparian corridors.

The Project would result in the removal of approximately 44 trees out of a total of 45 trees. Removal of trees and removal of or modification to buildings containing active bat roosts, particularly during the nesting season (typically April through August), could result in the loss of individual bats, bat colonies, or their habitat. Mitigation Measure BIO-1.1 would reduce the Project's contribution to this potentially significant cumulative impact to less than cumulatively considerable because they would identify and protect breeding roosting bats on the Project site. In addition, the Project would plant 474 trees at the Project site, resulting in a net gain in potential roosts and offsetting the impacts of potential tree removal in surrounding areas over time. The Project's cumulative impact would be *less than significant*.

Impact C-BIO-2: Cumulative Impact on Wildlife Corridors or Native Migratory Nesting Birds. Removal of buildings, trees, shrubs, or other woody vegetation associated with the construction of the Project and other cumulative development could result in impacts to movement of native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or nesting birds. In addition, the proposed buildings and lighting would have the potential to injure or cause death to birds from collision and other factors. (LTS)

Tier 1 and Tier 2

As described above under Impact BIO-2, activities that result in the removal of existing buildings, trees, shrubs, or other woody vegetation could adversely affect nesting birds, either by causing the loss of young birds or the abandonment of an active nest. With future cumulative development in the Bay Area, it is reasonable to expect there would be a loss of buildings, trees, and other woody vegetation that provide nesting habitat. Disturbance to these habitats, in combination with the potential loss of similar habitat in the Project site, would result in a potentially significant cumulative impact. Native migratory bird species are protected by both state (CDFW Code Sections 3503 and 3513) and federal (MBTA of 1918) laws, and it is assumed that all cumulative development would comply with these regulations, reducing the cumulative impact to less than significant. Approximately 44 trees would be removed by the Project and replaced with approximately 474 trees, resulting in net gain in potential nesting habitat and reducing cumulative impacts associated with habitat loss in the surrounding area. In addition, Mitigation Measure BIO-2.1 requires identification and protection of nesting migratory birds, reducing the potential impact to less than significant. Mitigation Measure BIO-2.2 requires implementation of bird-safe design standards in Project buildings and lighting design. Therefore, the cumulative impact is *less than significant*.

Impact C-BIO-3: Cumulative Indirect Impact on Special-Status Species Inhabiting Nearby Salt Marsh. Construction of new multi-story buildings associated with the Project and other cumulative development would result in indirect effects on special-status bird and mammal species inhabiting the adjacent salt and brackish water marshes due to increased raptor predation. (LTS)

Tier 1 and Tier 2

As described under Impact BIO-3, development activities that result in taller buildings and a net increase in trees could serve as new or additional perching or nesting opportunities for birds of prey. However there is no direct line of sight from the Project to the salt marsh habitat, so it is unlikely these features would provide raptors or other predatory birds a vantage point from which to prey on special-status species in the adjacent salt marshes. In addition, the Project is located in an urban setting with numerous existing building and trees that already provide potential habitat for birds of prey. Cumulative development near salt marsh in the Bay could result in significant impacts on individual western snowy plover, salt marsh harvest mouse, or other special-status bird or mammal species as a result of increased predation by raptors or other predatory birds. However, development of the Project site is not expected to result in increased injury or mortality of these species; therefore, the project's contribution to any indirect cumulative impact would be considered *less than significant*.

Impact C-BIO-4: Cumulative Loss of Riparian Habitat and Other Sensitive Natural Communities. The Project, in combination with other cumulative development, would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local, regional, State, or federal plans or policies. (LTS)

Tier 1 and Tier 2

As described above under Impact BIO-4, riparian habitat and other natural communities are not present on the Project site. While salt marshes, which are considered a sensitive habitat, occur 0.25 mile to the north, the Project is separated from the marshes by urban development. With future cumulative development in the Bay Area, it is reasonable to expect that there could be impacts on riparian habitats and wetlands. Cumulative impacts could be significant. However, since there are no riparian habitats, wetlands, or other sensitive natural community identified in any portion of the Project site, the Project's contribution to any cumulative impact would be considered *less than significant*.

Impact C-BIO-5: Cumulative Conflicts with any Local Policies or Ordinances Protecting Biological Resources. The Project, in combination with other reasonably foreseeable projects, would not conflict with local policies or ordinances protecting biological resources. (LTS)

Tier 1 and Tier 2

The cumulative context for an analysis of cumulative impacts regarding conflicts with local policies or ordinances protecting biological resources is the City, as individual jurisdictions have differing criteria to evaluate loss of protected resources. As described above under Impact BIO-5, activities that result in the removal of heritage trees could result in conflicts with the City's Heritage Tree Ordinance.¹¹ With future development in the City, it is reasonable to expect there would be an additional loss of heritage trees. However, compliance with the measures in Chapter 13.24 of the City's Municipal Code would be required by all future development in the City. On the Project site, compliance with Chapter 13.24 would

¹¹ City of Menlo Park. 2010. Menlo Park Municipal Code, Section 16.46.030(7). December 14, 2010

minimize the loss of heritage trees by requiring a certain replacement ratio and requiring tree species best suited to survive and thrive. Therefore, in combination with other potential projects, the cumulative impact would be ***less than significant***.