3.2 Biological Resources

This section analyzes potential impacts of the proposed project on biological resources. This section uses the following terms:

- **Project area:** This area is synonymous with the limits of work (e.g., ground disturbance and work in or over potentially jurisdictional wetlands and waters). It defines the area in which direct and indirect impacts on biological resources could occur.
- **Study area:** For purposes of the biological resources analysis, the study area is the project area plus a 250-foot buffer, which encompasses the area within which indirect impacts on biological resources could occur. The project footprint is largely surrounded by urban habitat, with the exception of creeks. The study area includes habitat in the creeks where indirect impacts on biological resources could occur (e.g., disturbance to nesting birds in the riparian corridor).[1]

3.2.1 Environmental Setting

Regional Setting

The proposed project is located in the Central California Coast Bioregion, which has a mild Mediterranean climate with generally warm, dry summers and cool, wet winters. This region includes marine, freshwater, and terrestrial resources from the Santa Cruz Mountains on the north to Point Conception on the south. The edge of the continental shelf forms the western boundary; on the east, the region borders the Central Valley Bioregion. The region is characterized by rugged northwest-to-southeast trending mountain ranges, including the Santa Cruz Mountains, Santa Lucia Ranges, San Rafael Mountains, Diablo Range, Gabilan Range, and Temblor Range. These mountains are separated by a series of valleys: the Santa Clara, Salinas, and Santa Maria River Valleys. Habitats in this diverse bioregion include coastal prairie scrub, chaparral, native and non-native grassland, mixed hardwoods, oak woodlands, redwood forests, and coastal salt marshes.

Local Setting

The city of San José is located in the Santa Clara Valley between the Santa Cruz Mountains to the west and the Diablo Range to the east. The climate in this region is characterized by coastal and bay influences, with a mild climate. The proposed project is located in the Guadalupe River watershed in western San José. The Guadalupe River watershed encompasses approximately 171 square miles, extending from its headwaters in the eastern Santa Cruz Mountains near the summit of Loma Prieta through the Santa Clara Valley to southern San Francisco Bay. Los Gatos Creek, the largest tributary, connects to the Guadalupe River approximately 3.5 miles downstream of the river's headwaters.

Land use in the upper watershed is characterized by heavy forests with pockets of residential parcels. Residential development increases to high density on the valley floor, mixed with

[1] In general, a riparian corridor consists of plant communities that support woody vegetation found along rivers, creeks, and streams. Such habitats can range from dense thickets of shrubs to a closed canopy of large mature trees covered by vines. City of San José Municipal Code Section 20.200.1054 defines *riparian corridor* as "any defined stream channel, including the area up to the bank full-flow line, as well as all characteristic streamside vegetation in contiguous adjacent uplands."

commercial and industrial uses in the city and its surrounding municipalities. With the exception of limited open space and riparian areas, the project area is entirely within the developed urban footprint of the city.

Habitat Types and Associated Wildlife Species

A *vegetation community* is a recognizable collection of plant species that interact with each other and the elements of their environment, and are distinct from adjacent vegetation communities.[2] The terrestrial plant community classification presented in this assessment is based on field observations and the *Preliminary Descriptions of the Terrestrial Natural Communities of California*.[3] Plant communities generally correlate with wildlife habitat types. Wildlife habitats are typically classified and evaluated using *A Guide to Wildlife Habitats of California*.[4] Vegetation communities in the project vicinity (refer to **Figure 3.2-1**) include:

- Developed/landscaped/barren/ruderal;
- Perennial grassland;
- Riverine; and
- Mixed riparian woodland.

The following subsections describe these communities and their locations in the study area.

Developed/Landscaped/Barren/Ruderal

The project area is largely composed of developed urban land that includes existing buildings, paved streets, sidewalks, and parking lots. Such hardscaped areas represent more than 99 percent of the existing land in the project area and provide minimal habitat opportunities for most sensitive plants and wildlife. Developed, barren, and landscaped habitats are not natural vegetation communities per se, as they lack natural vegetation, but the terms are used in this analysis to describe areas that cannot be classified as vegetation communities.

Ruderal[5] habitat is a vegetation community present in only a few limited areas in the study area; these areas are interspersed with developed/barren areas. The total acreage of the ruderal habitat in the project area is less than 0.5 acres. Although larger, contiguous areas of ruderal vegetation can provide habitat for wildlife, the small, discontinuous patches of ruderal vegetation in the study area are not expected to support a different assemblage of wildlife from developed, barren, and landscaped habitats; therefore, "ruderal" is grouped with these other habitats for the purposes of this analysis.

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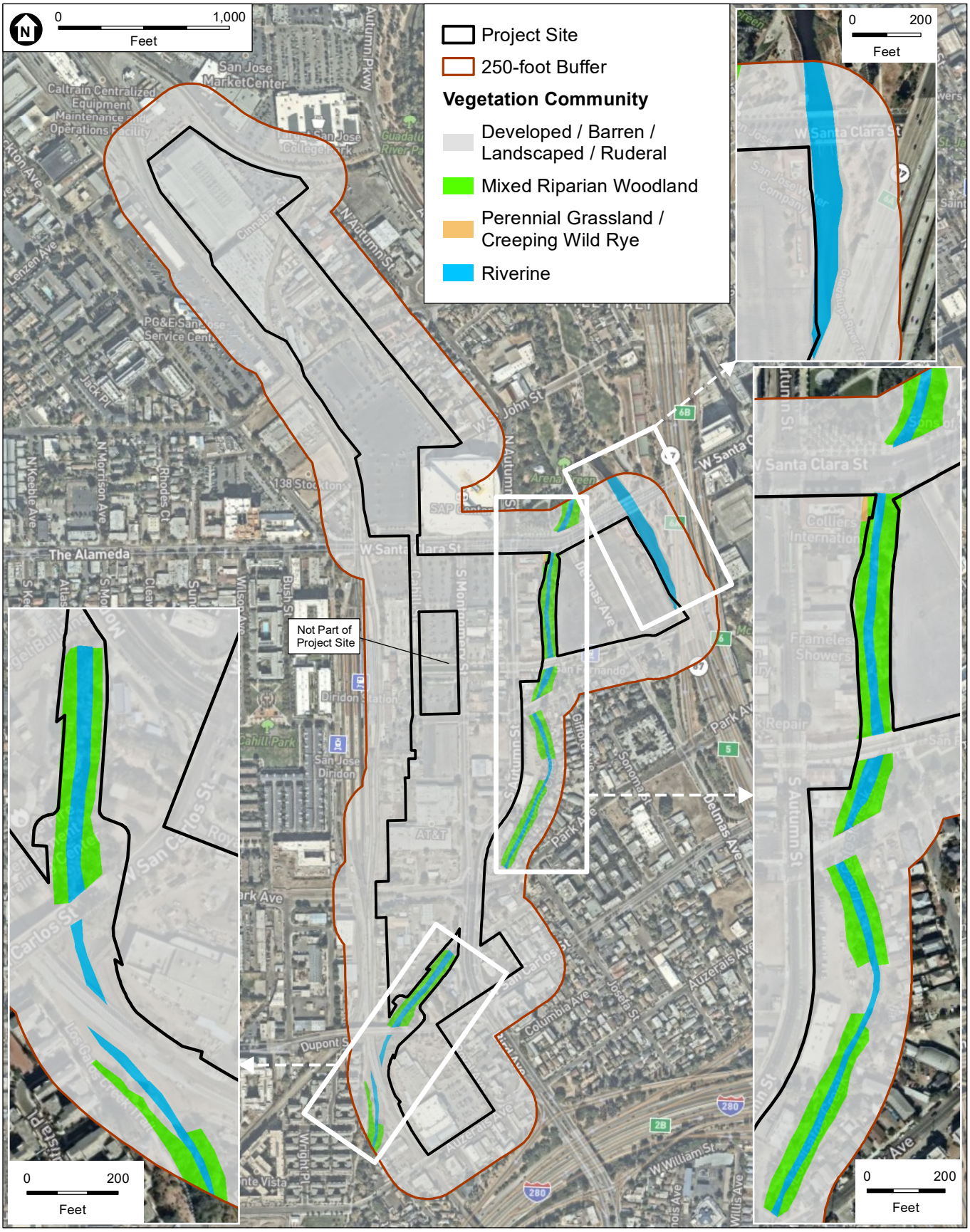
2 Holland, R. F., 1986, *Preliminary Descriptions of the Terrestrial Natural Communities of California*, California Department of Fish and Game.

3 Holland, R. F., 1986, *Preliminary Descriptions of the Terrestrial Natural Communities of California*, California Department of Fish and Game.

4 Mayer, K. R., and W. F. Laudenslayer Jr. (eds.), *A Guide to Wildlife Habitats of California*, 1988.

5 *Ruderal vegetation* is composed of plants that are often the first to colonize a disturbed area, and spontaneously arise and spread widely without human intervention. In California, ruderal vegetation is often composed of non-native grasses and forbs.



SOURCES: Esri, 2019; ESA, 2020

Downtown West Mixed-Use Plan

Figure 3.2-1
Vegetation Communities / Habitats Within the Study Area

Urban settings consist mostly of pavement and buildings, and may be classified as barren if the area has less than 2 percent total vegetation cover by herbaceous or non-wildland species and less than 10 percent cover by shrub or tree species. The vast majority of the study area is within developed or barren habitat, consisting primarily of buildings and parking lots, which provide little habitat for wildlife. Paved roads, parking lots, buildings, and empty lots generally lack habitat for wildlife; however, common wildlife such as striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), and Virginia opossum (*Didelphis virginiana*) could use these areas to forage for human food waste, shelter from predators and weather, or move to and from patches of undeveloped habitat, such as riparian corridors. Abandoned buildings can also support bat species such as Mexican free-tailed bat (*Tadarida brasiliensis*) and pallid bat (*Antrozous pallidus*). Thus, developed areas often have some wildlife species assemblages similar to those of the landscaped and non-native vegetative communities, but with lower rates of occurrence and on a transient basis.

Small areas of landscape vegetation are present in the study area adjacent to buildings, parking lots, and roads. Generally, ornamental landscape trees and shrubs in the study area are relatively small in stature and provide limited food and cover for wildlife. However, landscaped areas in an otherwise urban environment can provide cover, foraging, and nesting habitat for a variety of bird species, as well as reptiles and small mammals, especially those that are tolerant of disturbance and human presence.

Birds commonly found in such areas include non-native species, such as house sparrow (*Passer domesticus*) and European starling (*Sturnus vulgaris*), and birds native to the area, including American robin (*Turdus migratorius*), house finch (*Haemorhous mexicanus*), dark-eyed junco (*Junco hyemalis*), California scrub jay (*Aphelocoma californica*), mourning dove (*Zenaida macroura*), and Anna's hummingbird (*Calypte anna*). Merlins (*Falco columbarius*) can be observed perching in tall urban or neighborhood trees or flying through urban areas in the San Francisco Bay Area in winter. When present, reptiles using this type of habitat often include western fence lizard (*Sceloporus occidentalis*) and northern alligator lizard (*Elgaria multicarinata*), although evidence of these species was not observed in the urbanized study area.

The study area contains limited patches of scattered ruderal habitat adjacent to barren or paved areas and at the top of stream channel banks. Typical vegetation found in ruderal habitat includes wild oat (*Avena* sp.), fennel (*Foeniculum vulgare*), broadleaf filaree (*Erodium botrys*), English plantain (*Plantago lanceolata*), Crane's bill geranium (*Geranium molle*), wild radish (*Raphanus sativus*), and spring vetch (*Vicia sativa*).

Perennial Grassland

An area of perennial grassland, approximately 50 feet long by 10 feet wide and dominated by creeping wild rye (*Elymus triticoides*), is present on the west bank of Los Gatos Creek, southeast of the intersection of West Santa Clara and South Autumn Streets. A review of historic imagery on Google Earth indicates that this grass appears to have been planted for bank stabilization after a bank repair project in late 2017, because it is limited to a very specific area of the streambank.

A vegetation community dominated by creeping wild rye is considered a sensitive natural community by the California Department of Fish and Wildlife (CDFW).[6] Although perennial grassland can provide excellent habitat for a variety of reptiles and birds, this recently planted and limited patch of creeping wild rye is too small to support a grassland wildlife community. Still, it may attract wildlife on a transient basis.

Riverine

Los Gatos Creek and the Guadalupe River are the principal drainages in the study area. Los Gatos Creek is a perennial stream that is buffered by a lush, though narrowly confined, riparian woodland corridor. The section of the Guadalupe River in the study area has a concrete bed and banks; a riparian woodland corridor is absent from this section. *Riverine communities* are defined as intermittent or continually running waters often referred to as rivers, streams, or creeks. These streams originate at some elevated source, with the headwaters of Los Gatos Creek originating several miles to the south, upstream from Lexington Reservoir.

Santa Clara Valley streams are home to approximately 11 native and 19 non-native species of fish.[7,8,9] Over time, the abundance and distribution of native species have been reduced and restricted through human impacts. Most headwater reaches and tributaries remain less disturbed than the lower valley floor streams, which typically abut much of the urban development found in South San Francisco Bay. In contrast to the warmer, impaired valley floor stream habitat, aquatic habitat in the high-elevation forested headwaters provides cool temperatures, high dissolved oxygen levels, and ample riparian cover.[10]

The construction of Vasona, Guadalupe, and Almaden Reservoirs in the 1930s isolated the upper watershed, and while native fish species still persist in stream habitat above the reservoirs, migratory fish can no longer use these tributaries for spawning. All low-elevation, mainstem streams and valley floor tributaries in the study area and vicinity have been substantially altered by human development. These developments include urbanization, water diversions, stream channelization, drop structures, flood-control projects, and riparian vegetation removal, which have increased rates of sedimentation.[11,12] This altered habitat structure often coincides with changes to hydrology and water quality, which typically favors non-native, invasive fish species.[13]

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6 California Department of Fish and Wildlife, Natural Communities–Natural Communities List Arranged Alphabetically by Life Form, November 2019. Available at https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities/List. Accessed in July 2020.

7 Santa Clara Basin Watershed Management Initiative, *Watershed Management Plan, Volume 1–Watershed Characteristics Report*, 2010.

8 Leidy, R. A., *Ecology, Assemblage Structure, Distribution, and Status of Steelhead/Rainbow Trout (*Oncorhynchus mykiss*) in Streams of the San Francisco Estuary, California*. Center for Ecosystem Management and Restoration, Oakland, CA, 2007.

9 Smith, J., *Northern Santa Clara County Fish Resources*, Department of Biological Sciences, San Jose State University, July 25, 2013.

10 Santa Clara Basin Watershed Management Initiative, *Watershed Management Plan, Volume 1–Watershed Characteristics Report*, 2003.

11 Leidy, R. A., *Ecology, Assemblage Structure, Distribution, and Status of Steelhead/Rainbow Trout (*Oncorhynchus mykiss*) in Streams of the San Francisco Estuary, California*. Center for Ecosystem Management and Restoration, Oakland, CA, 2007.

12 Moyle, P. B., *Inland Fishes of California–Revised and Expanded*. University of California Press, 2002.

13 Moyle, P. B., *Inland Fishes of California–Revised and Expanded*. University of California Press, 2002.

However, habitat alteration in the lower reaches of the Guadalupe River watershed, including Los Gatos Creek, has not affected the native fish community such that it substantially differs from its historical composition. Stream sampling conducted by the Santa Clara Valley Water District (Valley Water) consistently records native species in higher abundances than invasive species throughout the Guadalupe River watershed, including Los Gatos Creek.[14] Within Los Gatos Creek, native fish species, including California roach (*Hesperoleucus symmetricus*), prickly sculpin (*Cottus asper*), Sacramento sucker (*Catostomus occidentalis*), and steelhead (*Oncorhynchus mykiss*), are all consistently recorded.[15]

In the sections of Los Gatos Creek in the study area, potential wetlands exist where vegetation is present along the banks in approximately 5 to 8 feet of open water (i.e., the area that appears to be inundated during high water flows). This vegetation includes arroyo willow (*Salix lasiolepis*), Fremont cottonwood (*Populus fremontii*), fennel, California blackberry (*Rubus ursinus*), and smartweed (*Persecaria* sp.).

During a field survey of the project area, as described below under *Special-Status and Protected Species*, a non-native common carp (*Cyprinus carpio*) was observed in the Guadalupe River and a non-native large-mouth bass (*Micropterus salmoides*) was observed in Los Gatos Creek. Other wildlife observed using Los Gatos Creek included mallards (*Anas platyrhynchos*) and Canada geese (*Branta canadensis*).[16] A family of beavers (*Castor canadensis*) has been documented at the confluence of Los Gatos Creek and the Guadalupe River.[17]

Mixed Riparian Woodland

Mixed riparian woodland is present along Los Gatos Creek; however, the extent and quality of the woodland are limited by urban development on either side of the waterway, and by the presence of non-native, invasive plant species. Within the riparian corridor,[18] a mix of native vegetation was observed during the reconnaissance survey of the project area, including Fremont cottonwood, black acacia (*Robinia pseudoacacia*), California walnut (*Juglans hindsii*), arroyo willow, and California blackberry. Non-native vegetation was also observed, including American elm (*Ulmus americana*), Peruvian pepper tree (*Schinus molle*), fennel, cape ivy (*Delairea odorata*), and English ivy (*Hedera helix*). Other vegetation documented in the riparian woodland along Los Gatos Creek includes eucalyptus (*Eucalyptus* sp.), box elder (*Acer negundo*), giant reed (*Arundo donax*), and tree of heaven (*Ailanthus altissima*).[19]

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14 Santa Clara Valley Water District, *Water Year 2018—Juvenile* Oncorhynchus mykiss *Rearing Monitoring in the Guadalupe River Watershed*. Prepared by the Santa Clara Valley Water District Environmental Migration and Monitoring Unit, March 26, 2019.

15 Santa Clara Valley Water District, *Water Year 2018—Juvenile* Oncorhynchus mykiss *Rearing Monitoring in the Guadalupe River Watershed*. Prepared by the Santa Clara Valley Water District Environmental Migration and Monitoring Unit, March 26, 2019.

16 Environmental Science Associates, personal observation during reconnaissance-level field survey, September 27, 2019.

17 Bay Nature, *These Beavers Know the Way to San Jose*, June 3, 2013.

18 *Riparian habitats* are plant communities that support woody vegetation found along rivers, creeks, and streams. Such habitats can range from dense thickets of shrubs to a closed canopy of large mature trees covered by vines.

19 H. T. Harvey and Associates, *Google Downtown San José Los Gatos Creek Enhancement Project Site Assessment Summary Report*, March 5, 2020.

In addition to the presence of non-native plant species, some areas of riparian woodland in the project area lack a vegetative understory but include homeless encampments.[20] The minimal cover coupled with human disturbance limits the potential for the presence of terrestrial wildlife. However, the riparian woodland includes many mature trees with canopy height ranging from 40 to 70 feet, which could support nesting birds and roosting bats. During the reconnaissance survey, a pair of adult red-tailed hawks (*Buteo jamaicensis*) soaring with a juvenile were observed near the riparian canopy, as were dark-eyed juncos, California scrub jays, black phoebes (*Sayornis nigricans*), and Bewick's wrens (*Thryomanes bewickii*).

Mixed riparian woodland often provides habitat for a number of wildlife species because of its extensive cover and the presence of flowing water. Common mammals that could be found in riparian corridors within the study area include raccoon (*Procyon lotor*), Virginia opossum (*Didelphis virginiana*), and skunk (*Mephitis mephitis*). Birds that use moderate- to high-quality riparian habitats for nesting and foraging include northern flicker (*Colaptes auratus*); red-shouldered hawk (*Buteo lineatus*); song sparrow (*Melospiza melodia*); yellow warbler (*Setophaga petechia*), a California species of special concern; and Cooper's hawk (*Accipiter cooperii*), a species on the CDFW Watch List.

Special-Status and Protected Species

The term *special-status species* refers to plant and wildlife species that are considered sufficiently rare that they require special consideration and/or protection and should be, or currently are, listed as rare, threatened, or endangered by the federal and/or state governments. Such species are legally protected under the federal and/or state Endangered Species Acts or other regulations, or are species that are considered sufficiently rare by the regulatory and scientific community to qualify for protection. The term *special-status species* includes the following:

- Species listed or proposed for listing as threatened or endangered under the federal Endangered Species Act (FESA) (Code of Federal Regulations Title 50, Section 17.12 [listed plants] and Section 17.11 [listed animals] and various notices in the *Federal Register* [FR] [proposed species]);
- Species that are candidates for possible future listing as threatened or endangered under the FESA (61 FR 40, February 28, 1996);
- Species listed or proposed for listing by the State of California as threatened or endangered under the California Endangered Species Act (CESA) (California Code of Regulations Title 14, Section 670.5);
- Plants listed as rare or endangered under the California Native Plant Protection Act (California Fish and Game Code [CFGC] Section 1900 et seq.);
- Species formerly designated by the U.S. Fish and Wildlife Service (USFWS) as species of concern or by CDFW as California Species of Special Concern (SSC);[21]

[20] Environmental Science Associates, personal observations during reconnaissance-level field surveys, September 27, 2019, and January 3, 2020.

[21] A California SSC is one that: has been extirpated from the state; meets the state definition of threatened or endangered but has not been formally listed; is undergoing or has experienced serious population declines or range restrictions that put it at risk of becoming threatened or endangered; and/or has naturally small populations susceptible to high risk from any factor that could lead to declines that would qualify it for threatened or endangered status.

- Species designated by the state as "special animals";[22]
- Animals fully protected under the CFGC (Sections 3511 [birds], 4700 [mammals], and 5050 [reptiles and amphibians]);[23]
- Species that meet the definitions of rare and endangered under CEQA. CEQA Section 15380 provides that a plant or animal species may be treated as "rare or endangered" even if not on one of the official lists (CEQA Guidelines Section 15380);
- Raptors (birds of prey), which are specifically protected by CFGC Section 3503.5, thus prohibiting the take, possession, or killing of raptors, including owls, their nests, and their eggs;[24]
- Plants considered by CDFW and the California Native Plant Society (CNPS) to be "rare, threatened or endangered in California" (California Rare Plant Rank 1A, 1B, and 2); and
- Anadromous[25] species managed and regulated under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The potential for the study area to support special-status plant or wildlife species was assessed based on review of the following sources:

- Historic and current aerial imagery available on Google Earth;
- Subscription-based biological resource databases including the CDFW California Natural Diversity Database (CNDDB), CNPS Rare Plant Inventory, and a USFWS Information for Planning and Consultation Official Species List;
- The *Los Gatos Creek Trail—Reach 5 Master Plan*;
- The Diridon Station Area Plan Draft Program Environmental Impact Report (EIR);
- The SJW Land Company Planned Development Rezoning Final Integrated EIR; and
- The City's Downtown Strategy 2040 Integrated Final EIR.

In addition, Environmental Science Associates conducted reconnaissance-level field surveys on September 27, 2019, and January 3, 2020, to document existing biological resources conditions, assess vegetation and wildlife habitats, and identify the potential for special-status species to occur in the study area. No special-status plant or wildlife species were observed during the field surveys.

[22] Species listed on the current CDFW Special Animals List (August 2019). This list includes species that CDFW considers "species at risk."

[23] The *fully protected* classification was California's initial effort in the 1960s to identify and provide additional protection to those animals that were rare or faced possible extinction. The designation can be found in the CFGC.

[24] The inclusion of birds protected by CFGC 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 that the populations of these species are therefore substantially more vulnerable to further loss of habitat and to interference with nesting and breeding than most other birds. It is noted that a number of raptors are already specifically listed by federal and state wildlife authorities as threatened or endangered.

[25] Anadromous fish species are born in freshwater, spend most of their lives in the sea, and return to freshwater to spawn.

The CNDDB[26] and CNPS[27] databases were queried based on a search of the San José West, Mountain View, Milpitas, Calaveras Reservoir, Cupertino, San José East, Castle Rock Ridge, Los Gatos, and Santa Teresa Hills 7.5-minute U.S. Geological Survey quadrangles.[28] The USFWS *Official List of Federal Endangered and Threatened Species that Occur in or May Be Affected by the Projects*[29] was queried based on the project area (refer to Appendix D1, *Plant and Wildlife Species Lists for the Project Area*, for database reports). The results of these queries formed the basis for analysis of special-status species with the potential to occur in the project vicinity, their general habitat requirements, and their potential to occur in the study area (refer to **Table 3.2-1**). Species that are not expected to occur because of the absence of suitable habitat, or because the study area is outside of the species' known range, were excluded from the table.

In addition, CNDDB records of special-status plants and animals were mapped relative to the study area (refer to **Figure 3.2-2**). Note that some species observations shown on Figure 3.2-2, such as California tiger salamander (*Ambystoma californiense*), Northern California legless lizard (*Anniella pulchra*), and yellow rail (*Coturnicops noveboracensis*), were recorded from 70 to more than 120 years ago. These species have not been recorded in the study area for extensive periods of time, during which their habitat has been lost and the area urbanized. These species are not expected to occur in the study area and are not considered further in this analysis.

Special-Status Plants

No special-status plants were determined to have a moderate to high potential to occur in the study area.

Special-Status Wildlife

Several special-status wildlife species have a moderate to high potential to occur in the study area: Central California Coast steelhead distinct population segment (DPS) (*Oncorhynchus mykiss iridius*), western pond turtle (*Emys marmorata*), yellow warbler (*Setophaga petechia*), Cooper's hawk, merlin, western red bat (*Lasiurus blossevillii*), hoary bat (*Lasiurus cinereus*), and Yuma myotis (*Myotis yumanensis*).

As discussed above, no special-status wildlife species were observed during the September 2019 and January 2020 field surveys. These species are described in further detail below.

[26] California Department of Fish and Wildlife, California Natural Diversity Database printout for U.S. Geological Survey 7.5-minute topographic quadrangles: San José, Milpitas, Calaveras Reservoir, Cupertino, San José East, Castle Rock Ridge, Los Gatos, and Santa Teresa Hills, 2019. Accessed September 17, 2019.

[27] California Native Plant Society, Online Inventory of Rare, Threatened, and Endangered Plants of California, 2019. Available at http://www.rareplants.cnps.org/. Accessed in September 2019.

[28] California Department of Fish and Wildlife, California Natural Diversity Database printout for U.S. Geological Survey 7.5-minute topographic quadrangles: San José, Milpitas, Calaveras Reservoir, Cupertino, San José East, Castle Rock Ridge, Los Gatos, and Santa Teresa Hills, 2019. Accessed September 17, 2019.

[29] U.S. Fish and Wildlife Service, ECOS Environmental Conservation Online System Critical Habitat Mapper, 2010. Available at https://ecos.fws.gov/ecp/report/table/critical-habitat.html. Accessed September 23, 2019.

TABLE 3.2-1
SPECIAL-STATUS SPECIES' POTENTIAL TO OCCUR WITHIN THE STUDY AREA

Common Name *Scientific Name*	Status	General Habitat Requirements	Potential for Species Occurrence
SPECIES LISTED OR PROPOSED FOR LISTING			
Invertebrates			
Crotch bumblebee *Bombus crotchii*	—/SC/IUCN: EN	Inhabits open grassland and scrub habitats. Nests are often located underground in abandoned rodent nests, or above ground in tufts of grass, old bird nests, rock piles, or cavities in dead trees. Food plants include the following families of native plants: Asclepias, Chaenactis, Lupinus, Medicago, Phacelia, and Salvia.	**Low.** Undeveloped habitat is limited to riparian corridors, and small, discontinuous sections of landscape plants (primarily hedges and trees) and ruderal habitat. These habitats are unlikely to support food plants for this species. CNDDB record from 1903 from a non-specific San José location.
Western bumblebee *Bombus occidentalis*	—/SC/XSIC: IM	Inhabits open grassy areas, urban parks and gardens, chaparral and shrub areas, and mountain meadows. Generalist forager that visits a wide variety of plants. *B. occidentalis* records are primarily associated with plants in the Leguminosae (=Fabaceae), Compositae (=Asteraceae), Rhamnaceae, and Rosaceae families.	**Low.** Undeveloped habitat is limited to riparian corridors, and small, discontinuous section of landscape plants (primarily hedges and trees) and ruderal habitat. One CNDDB record from 1979 from a non-specific San José location.
Fish			
Steelhead (Central California Coast DPS) *Oncorhynchus mykiss irideus*	FT/—/—	Spawns and rears in coastal streams between the Russian River and Aptos Creek, as well as drainages tributary to San Francisco Bay, where gravelly substrate and shaded riparian habitat occurs.	**Moderate.** Historically present in the Guadalupe River watershed, but urbanization and barriers to passage have likely reduced steelhead runs. Most recently identified in Los Gatos Creek during fish surveys in winter 2014.
Amphibians			
Foothill yellow-legged frog *Rana boylii*	—/SE/—	Partly shaded, usually perennial, shallow streams and riffles with a rocky substrate in a variety of habitats. Needs at least some cobble-sized substrate for egg laying. Needs at least 15 weeks to attain metamorphosis.	**Low.** Marginal stream habitat occurs in Los Gatos Creek and the Guadalupe River, but urban setting includes human disturbance (i.e., homeless encampments) and predators such as feral cats. CNDDB record from 1922 in "Coyote Creek, San Jose"; exact location unknown. CNDDB data indicate "*Rana boylii* essentially disappeared from farmed/urbanized lowland areas of Santa Clara County. Most likely extirpated."
California red-legged frog *Rana draytonii*	FT/SSC/—	Breeds in fresh emergent and seasonal wetlands, and slow-moving streams. Requires 11–20 weeks of permanent water for larval development. Aestivation habitat includes oak woodlands and grasslands. Species will travel more than 1 mile from breeding habitat to access aestivation habitat.	**Low.** Low-quality stream habitat occurs in Los Gatos Creek and the Guadalupe River. Urban setting includes human disturbance (i.e., homeless encampments) and predators such as feral cats. Limited and disturbed aestivation habitat within riparian corridor that transitions to developed urban environment. No CNDDB records within 3 miles of project area.

TABLE 3.2-1
SPECIAL-STATUS SPECIES' POTENTIAL TO OCCUR WITHIN THE STUDY AREA

Common Name *Scientific Name*	Status	General Habitat Requirements	Potential for Species Occurrence
NON-LISTED SPECIAL-STATUS SPECIES			
Plants			
Congdon's tarplant *Centromadia parryi* ssp. *congdonii*	—/—/1B.1	Terraces, swales, floodplains, grasslands, and disturbed sites. 0–230 meters. Blooms May–October (November).	**Low.** Suitable habitat present, but nearest recent occurrence (Occurrence #18) is 10 miles away.
Reptiles			
Western pond turtle *Emys marmorata*	—/SSC/—	Ponds, marshes, rivers, streams, and irrigation ditches with aquatic vegetation. Requires basking sites and suitable upland habitat for egg laying. Nest sites most often characterized as having gentle slopes (<15%) with little vegetation or sandy banks. Primarily in foothills and lowlands.	**Moderate.** Marginal stream habitat occurs in Los Gatos Creek and the Guadalupe River within study area, due to urban setting, including human disturbance (i.e., homeless encampments), limited basking sites on banks or in water, and lack of nesting sites. No CNDDB records within 3 miles of study area.
Birds			
Cooper's hawk *Accipiter cooperii*	—/WL/—	Nests in riparian areas and oak woodlands, and hunts songbirds at woodland edges. Increasingly found nesting in neighborhood street trees.	**High.** Suitable habitat in street trees and riparian woodland within study area. CNDDB record from 2006 of nesting Cooper's hawk pair in trees within a commercial/residential neighborhood approximately 2 miles from project area.
Great egret (nesting colony) *Ardea alba*	—/*/—	Colonial nester in tall trees near wetland foraging areas.	**Low.** Potential colonial roosting habitat in riparian woodland within study area. No CNDDB records within 3 miles of project area.
Great blue heron (nesting colony) *Ardea herodias*	—/*/—	Colonial nester in tall trees near wetland foraging areas.	**Low.** Potential colonial roosting habitat in riparian woodland within study area. No CNDDB records within 3 miles of project area.
Burrowing owl *Athene cunicularia*	—/SSC/—	Open grasslands and shrublands where perches and ground squirrel burrows are available. Also found in barren lots, median strips, and undeveloped housing parcels in urban environments where burrows are present.	**Low.** Multiple relatively current (1990s–2009) CNDDB records from vacant lots at Norman Y. Mineta San José International Airport (natural and artificial burrows in use). Most vacant lots appear to have been developed since burrowing owl observations were recorded in the CNDDB. All sites approximately 2.5 miles north of project area. No suitable habitat in study area currently, but suitable habitat could be created following demolition if construction does not start right away and burrows or burrow surrogates are present.
Snowy egret (nesting colony) *Egretta thula*	—/*/—	Colonial nester, with nest sites situated in protected beds of dense tules. Rookery sites situated close to foraging areas: marshes, tidal flats, streams, wet meadows, and borders of lakes.	**Low.** Potential colonial roosting habitat in riparian woodland within study area. No CNDDB records within 3 miles of project area.

TABLE 3.2-1
SPECIAL-STATUS SPECIES' POTENTIAL TO OCCUR WITHIN THE STUDY AREA

Common Name *Scientific Name*	Status	General Habitat Requirements	Potential for Species Occurrence
Merlin *Falco columbarius*	—/WL/—	Occurs in California only in winter, with the majority arriving in October or November. Bay marshes, grassland, agricultural lands, dairies, savannas, and edges of deserts with open habitat and high density of bird prey. Some individuals overwinter in cities.	**Moderate.** Non-breeding individuals may forage on birds in more open areas of Downtown, such as parks.
Peregrine falcon (nesting) *Falco peregrinus*	FDL/SDL;FP/—	Breeds near water at varied nest sites, including natural cliff ledges and potholes, tall metropolitan buildings and bridges, and former nests of common raven and osprey on electric transmission towers and boat navigation channel markers (towers).	**Low.** Nested on top of high-rise office building approximately 2.5 miles from project area from 2006 to 2015. Likely to forage in study area, but few to no suitable nesting sites in study area.
Black-crowned night heron (nesting colony) *Nycticorax nycticorax*	—/*/—	Colonial nester, usually in trees, occasionally in tule patches. Rookery sites located adjacent to foraging areas: lake margins, mud-bordered bays, marshy spots.	**Low.** Potential colonial roosting habitat in riparian woodland within study area. No CNDDB records within 3 miles of project area.
Yellow warbler *Setophaga petechia*	—/SSC/—	Nests in upright forks of bushes, shrubs, or trees, generally along streams and wetlands. Breeds across central and northern North America. Feeds on insects and other arthropods gleaned from foliage or captured on short flights.	**Moderate.** Project area is outside of typical breeding range; however, riparian habitat along Los Gatos Creek provides suitable foraging habitat for migrating individuals.
Mammals			
Pallid bat *Antrozous pallidus*	—/SSC/WBWG: High	A wide variety of habitats is occupied, including grasslands, shrublands, woodlands, and forests from sea level up through mixed conifer forests. The species is most common in open, dry habitats with rocky areas for roosting. Roosts in buildings, caves, tree hollows, crevices, mines, and bridges. Sensitive to human disturbance.	**Unlikely.** Suitable habitat present in riparian woodland and creek overcrossings/bridges within or adjacent to project area (e.g., West San Carlos Street crossing over Los Gatos Creek); however, the species has been extirpated from the valley floor.[30] One CNDDB record from 1943 for non-specific location in the vicinity of San José.
Townsend's big-eared bat *Corynorhinus townsendii*	—/SSC/WBWG: High	Roosts in caves, mines, hollow trees, and tunnels with minimal disturbance, but can also be found in abandoned open buildings or other human-made structures. Found in all habitats except subalpine and alpine habitats, and may be found at any season throughout its range. Very sensitive to human disturbance.	**Unlikely.** Suitable roosting habitat in abandoned building within study area; however, the species has been extirpated from the valley floor.[31] One CNDDB record from 1943 for non-specific location in the vicinity of San José.
Western red bat *Lasiurus blossevillii*	—/SSC/WBWG: High	Solitary rooster in tree foliage. May hibernate in leaf litter. Habitats include forests and woodlands from sea level up through mixed conifer forests. Feeds over a wide variety of habitats including grasslands, shrublands, open water, open woodlands and forests, and croplands. Absent from desert areas. Migrants can be found outside.	**Moderate.** Suitable roosting and foraging habitat in riparian corridors within study area.

[30] Johnston, Dave, Wildlife Ecologist and Bat Biologist, H. T. Harvey & Associates, telephone conversation, March 10, 2020.
[31] Johnston, Dave, Wildlife Ecologist and Bat Biologist, H. T. Harvey & Associates, telephone conversation, March 10, 2020.

TABLE 3.2-1
SPECIAL-STATUS SPECIES' POTENTIAL TO OCCUR WITHIN THE STUDY AREA

Common Name *Scientific Name*	Status	General Habitat Requirements	Potential for Species Occurrence
Hoary bat *Lasiurus cinereus*	—/*/WBWG: Medium	Solitary rooster in tree foliage. Habitats include woodlands, forests, and riparian habitats with dense foliage. Winters along the coast and in Southern California, but is not known to breed on the valley floor. During migration can be found throughout California.	**Moderate.** Suitable winter roosting habitat in riparian woodland within the study area. One CNDDB occurrence from 1990 recorded at the Interstate 280/State Route 87 (Guadalupe Freeway) interchange, and one CNDDB record from 1893 for a non-specific location in Santa Clara.
Yuma myotis *Myotis yumanensis*	—/*/WBWG: Low-Medium	Occupies wide variety of habitats below 8,000-foot elevation. Optimal habitats are open forests and woodlands with sources of water over which to feed. Clusters in groups of up to thousands in maternity colonies; adult males typically solitary; roost in crevices on buildings, under bridges, and trees; also in caves and mines. Common and widespread in California.	**Moderate.** Suitable habitat present in riparian woodland and creek overcrossings/bridges within the study area (e.g., West San Carlos Street crossing over Los Gatos Creek). This species is known to occur in the Los Gatos Creek riparian corridor.[32]
San Francisco dusky-footed woodrat *Neotoma fuscipes annectens*	—/SSC/—	Regional subspecies with range limited to San Francisco Bay Area. Inhabits forests with moderate canopy cover and brushy understory. Evergreen or live oaks and other thick-leaved trees and shrubs are important habitat components for this highly arboreal species.	**Low.** Riparian woodland habitat at some stream crossings; however, the habitat is marginally suitable in areas lacking understory, presence of human encampments, and proximity to roads and residential and commercial development. No CNDDB records within 3 miles of study area.

NOTES:

CNDDB = California Natural Diversity Database; DPS = distinct population segment

[a] The California Department of Fish and Wildlife (CDFW), the agency responsible for determining California Rare Plant Rank (CRPR) plant rankings, does not recognize a ranking status for the northern California black walnut, as the species is not named on CDFW's October 2019 *Special Vascular Plants, Bryophytes, and Lichens List*; however, the California Native Plant Society (CNPS) recognizes this tree as a Rank 1B.1 (rare, threatened, or endangered in California and elsewhere; seriously threatened in California). There is a current widespread distribution in Northern California and southern Oregon of trees that match *J. hindsii* morphologically, previously thought to be hybrids. Recent findings show that most of these occurrences are genetically pure *J. hindsii*.[33] There are only three or four sites (in Contra Costa, Sacramento, and Napa Counties) where the species is known to have occurred before the extensive settlement of California by Europeans in the mid-19th century, which has served as the exclusive justification for CNPS designating a rare plant rank of 1B.1. This now-known widespread distribution of genetically pure *J. hindsii* suggests that the CNPS rare plant rank of 1B.1 is not appropriate.

KEY:

STATUS: Federal/State/Other (CNPS CRPR, Western Bat Working Group, Xerces Society for Invertebrate Conservation)

Federal (U.S. Fish and Wildlife Service)	State (CDFW)	
FDL = delisted	SE = listed as endangered by the State of California	SSC = California Species of Special Concern
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	ST = listed as threatened by the State of California	FP = state fully protected
FC = candidate to become a *proposed* species		SDL = delisted
BGEPA = Bald and Golden Eagle Protection Act	SC = state candidate for listing	SR = state rare (plants)
MMPA = Marine Mammal Protection Act	* = Special Animals List	

[32] Johnston, Dave, Wildlife Ecologist and Bat Biologist, H. T. Harvey & Associates, telephone conversation, March 10, 2020.

[33] Potter, D., H. Bartosh, G. Dangl, J. Yang, R. Bittman, and J. Preece. Clarifying the Conservation Status of Northern California Black Walnut (*Juglans hindsii*) Using Microsatellite Markers. *Madroño* 65(3):131–140.

TABLE 3.2-1
SPECIAL-STATUS SPECIES' POTENTIAL TO OCCUR WITHIN THE STUDY AREA

Common Name *Scientific Name*	**Status**	**General Habitat Requirements**	**Potential for Species Occurrence**

Other

California Native Plant Society (CNPS) California Rare Plant Rank (CRPR)

1A = Presumed extirpated in California; Rare or extinct in other parts of its range.
1B = Rare, threatened, or endangered throughout range; Most species in this rank are endemic to California.
2A = Extirpated in California, but common in other parts of its range.
2B = Rare, threatened, or endangered in California but common in other parts of its range.

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

Western Bat Working Group (WBWG)

Low = Stable population
Medium = Need more information about the species, possible threats, and protective actions to implement
High = Imperiled or at high risk of imperilment

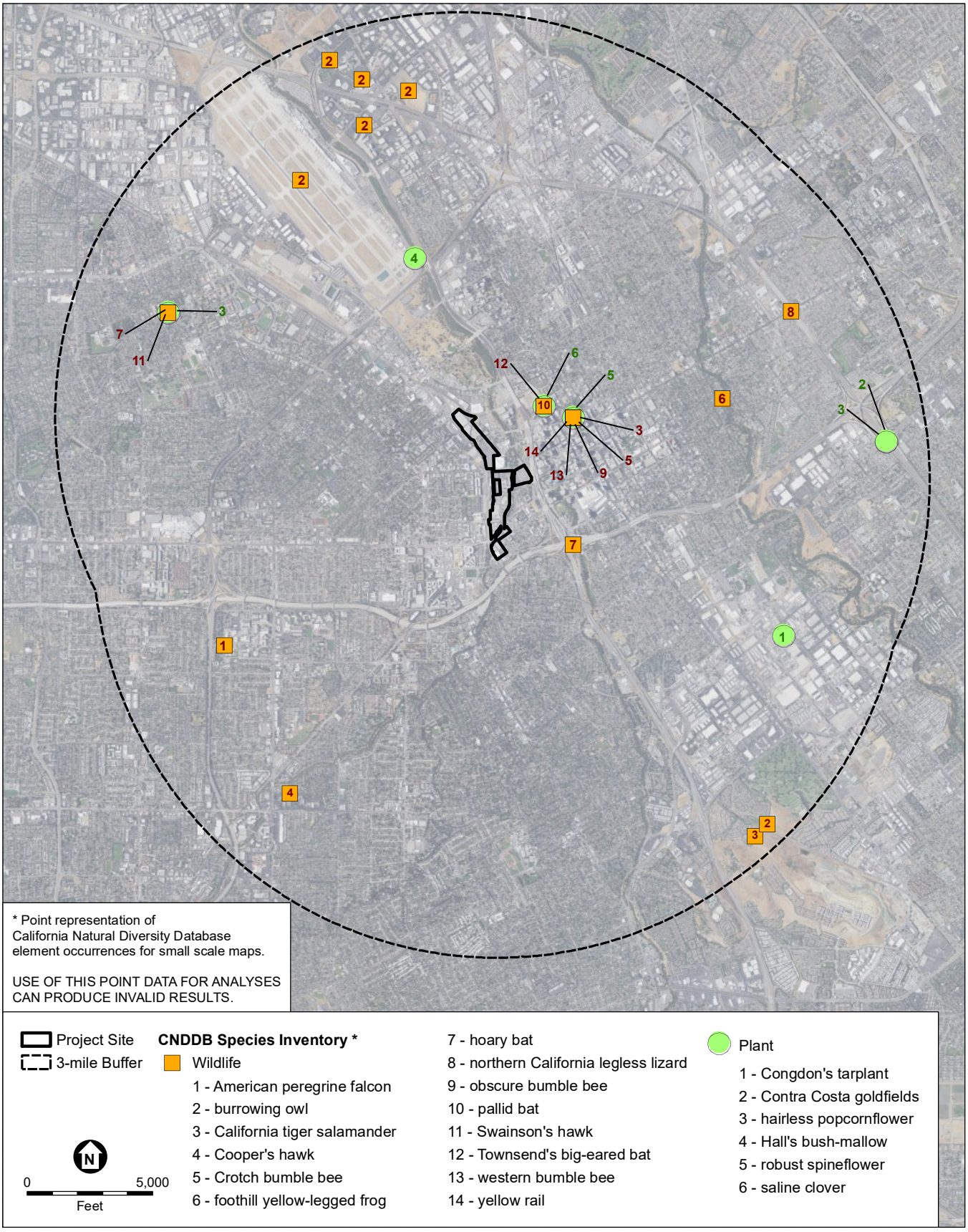
Xerces Society for Invertebrate Conservation (XSIC)

CI = Critically imperiled
IM = Imperiled
VU = Vulnerable
DD = Data Deficit

International Union for Conservation of Nature (IUCN) Red List

LC = Least concern
NT = Near threatened
VU = Vulnerable
EN = Endangered
CR = Critically endangered

SOURCE: Data compiled by Environmental Science Associates in 2019 and 2020



SOURCES: USDA, 2016; Santa Clara County, 2017;
GreenInfo Network, 2019; Google, 2019; CDFW, 2019; ESA, 2020

Downtown West Mixed-Use Plan

Figure 3.2-2
Special-Status Species within
3 Miles of the Study Area

Central California Coast Steelhead Distinct Population Segment

The Central California Coast steelhead DPS is federally listed as threatened. Historically, the Guadalupe River watershed supported a steelhead run, although given the aridity of the system, it was likely smaller than those supported in the larger San Francisco Bay tributaries such as Alameda Creek.[34] The urbanization in the lower reaches of the watershed, along with construction of barriers to upstream passage, has reduced the size of the historic run. Recent surveys during the 2018 water year, conducted by Valley Water, failed to record steelhead at four sampling stations within the lower reaches of Los Gatos Creek, including adjacent to the study area.[35] However, steelhead are known to be present within the system, as sampling conducted by Hobbs et al. during winter 2014 recorded nine individuals at two stations.[36] Steelhead production is likely low in the Los Gatos Creek watershed and the species has struggled to recover from recent drought conditions, as has been observed in the adjacent Guadalupe River watershed. Thus, steelhead have a moderate potential to occur in the study area.

Western Pond Turtle

Western pond turtle is a California SSC that inhabits a variety of water bodies, including ponds, marshes, rivers, streams, and irrigation canals. This species can tolerate full-strength seawater for a short period of time but is normally found in freshwater. Western pond turtle females migrate away from their water bodies into surrounding uplands, where they construct underground nests and lay eggs from April to August.

Suitable habitat for this species is present in the project area in Los Gatos Creek and the Guadalupe River; however, given the urban setting, including human disturbance (i.e., homeless encampments), limited basking sites on banks or in water, and lack of nesting sites, the habitat is of low quality. In particular, the section of the Guadalupe River between West Santa Clara Street and West San Fernando Street lacks a natural riverbank on the southwest side adjacent to the project site; instead there is a vertical concrete floodwall, which would preclude western pond turtles from using this area for anything other than brief passage from one stretch of the river to another.

There are no records of this species within 3 miles of the project area. Western pond turtle has a moderate potential to occur in the study area.

Cooper's Hawk

Cooper's hawk is on the CDFW Watch List. This species nests in riparian areas and oak woodlands, and hunts songbirds at woodland edges. Cooper's hawks are also increasingly found nesting in neighborhood street trees. Suitable nesting habitat is present for this species in street trees and riparian woodland in the study area. Within 3 miles of the project area, one CNDDB

[34] Leidy, R. A., G. S. Becker, and B. N. Harvey, *Historical Distribution and Current Status of Steelhead/Rainbow Trout* (Oncorhynchus mykiss*) in Streams of the San Francisco Estuary, California.* Center for Ecosystem Management and Restoration, Oakland, CA, 2005.

[35] Santa Clara Valley Water District, *Water Year 2018—Juvenile* Oncorhynchus mykiss *Rearing Monitoring in the Guadalupe River Watershed*, prepared by the Santa Clara Valley Water District Environmental Migration and Monitoring Unit, March 26, 2019.

[36] Hobbs, J., J. Cook, and F. La Luz, *Steelhead Smolt Outmigration and Survival Study: Pond A8, A7, & A5 Entrainment and Escapement: Final Report*, Department of Wildlife, Fish and Conservation Biology, University of California, Davis, prepared for National Marine Fisheries Service and the South Bay Salt Pond Recreation Program/Don Edwards San Francisco Bay Wildlife Refuge, 2015.

record for nesting Cooper's hawks exists (from 2006) in trees in a commercial/residential neighborhood approximately 2 miles from the project area. Cooper's hawk has a high potential for nesting in the study area.

Merlin

Merlin is on the CDFW Watch List. This species occurs in California only in winter, with the majority arriving on October and November. Merlins forage in bay marshes, grassland, agricultural lands, dairies, savannas, and edges of deserts with open habitat and high density of bird prey. Some individuals overwinter in cities. Non-breeding individuals may forage on birds in more open areas of Downtown San José, such as parks. Merlin has a moderate potential to occur in the study area (in the winter only).

Yellow Warbler

Yellow warbler is a California SSC that nests in upright forks of bushes, shrubs, or trees, generally along streams and wetlands. This species feeds on insects and other arthropods gleaned from foliage or captured on short flights. Yellow warbler breeds across central and northern North America. The Project is outside of typical breeding range; however, riparian habitat along Los Gatos Creek provides suitable foraging habitat for migrating individuals. Yellow warbler has a moderate potential to occur in the study area during spring and fall migrations.

Western Red Bat

Western red bat is a California SSC and is rated by the Western Bat Working Group (WBWG) as a "high" conservation priority (i.e., species at risk or at high risk of imperilment) for the California region.[37] This species is a solitary rooster in tree foliage and leaf litter, and is found in forests and woodlands from sea level up through mixed conifer forests. This species feeds over a wide variety of habitats, including grasslands, shrublands, open water, open woodlands and forests, and croplands. Western red bat is absent from desert areas.

Suitable roosting and foraging habitat for western red bat is present in riparian corridors within the study area. This species has a moderate potential to occur in the study area.

Hoary Bat

Hoary bat is rated by the WBWG as a "medium" conservation priority (i.e., need more information about the species, possible threats, and protective actions to implement) for the California region. This species is a solitary rooster in tree foliage and is found in woodlands, forests, and riparian habitats with dense foliage. Hoary bats winter along the coast and in Southern California, breeding inland and north of the winter range, but are not known to breed in the Valley floor. During migration, this species can be found throughout California.

Suitable roosting habitat for hoary bat exists in the study area in riparian woodland. There are two CNDDB records for this species within 3 miles of the project area: one occurrence from 1990 was recorded at the intersection of State Route 87 and Interstate 280, and one occurrence from 1893

[37] Western Bat Working Group Western Bat Species Regional Priority Matrix, 2017. Available at http://wbwg.org/matrices/species-matrix/. Accessed March 12, 2020.

from a non-specific location in Santa Clara. Hoary bat has a moderate potential to roost in the study area.

Yuma Myotis

Yuma myotis is rated by the WBWG as a "medium" conservation priority (i.e., need more information about the species, possible threats, and protective actions to implement) for the California region. This species occupies a variety of habitats below the 8,000-foot elevation. Optimal habitats include open forests and woodlands with sources of water over which to feed. Yuma myotis cluster in groups of up to thousands in maternity colonies; adult males are typically solitary and roost in crevices on buildings, under bridges, and trees. They can also be found in caves and mines.

Yuma myotis is common and widespread in California, and is known to occur in the Los Gatos Creek riparian corridor.[38] Suitable roosting habitat for Yuma myotis is present in riparian woodland and creek overcrossings/bridges in the study area (e.g., West San Carlos Street crossing over Los Gatos Creek). No CNDDB records exist of Yuma myotis within 3 miles of the project area. Yuma myotis has a moderate potential to roost in the study area.

Nesting Raptors and Birds

Most bird species that could occur in the project area are protected by the Migratory Bird Treaty Act (MBTA) and by CFGC Sections 3503–3513. These species include locally common species such as Cooper's hawk, red-tailed hawk, cliff swallow (*Petrochelidon pyrrhonota*), bushtit (*Psaltriparus minimus*), dark-eyed junco, house finch, northern mockingbird (*Mimus polyglottos*), and California towhee (*Melozone crissalis*).

Because protected birds could nest in trees, shrubs, ruderal areas and grasses, emergent wetland vegetation, barren ground, and human-made structures, many parts of the project area are considered potential nesting habitat. The MBTA and CFGC are discussed in more detail below.

Sensitive Natural Communities and Critical Habitat

Sensitive natural communities are designated by various resource agencies such as CDFW, or in local policies and regulations; are generally considered to have important functions or values for wildlife and/or are recognized as declining in extent or distribution; and are considered threatened enough to warrant some level of protection. CDFW tracks communities of conservation concern through its *California Sensitive Natural Community List*.[39] Natural communities with ranks of S1 to S3 are considered sensitive natural communities, to be addressed in the environmental review processes of CEQA and its equivalents.[40]

[38] Johnston, Dave, Wildlife Ecologist and Bat Biologist, H. T. Harvey & Associates, telephone conversation, March 10, 2020.

[39] California Department of Fish and Wildlife, Natural Communities–Natural Communities List Arranged Alphabetically by Life Form, November 2019. Available at https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities/List. Accessed in July 2020.

[40] California Department of Fish and Wildlife, Natural Communities–Natural Communities List Arranged Alphabetically by Life Form, November 2019. Available at https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities/List. Accessed in July 2020.

Table 3.2-2 summarizes the one sensitive plant community identified by CDFW on its *California Sensitive Natural Community List* that is present in the study area. No other sensitive natural communities with a rarity ranking of S1 to S3, or communities considered sensitive as marked with a "Y" on the *California Sensitive Natural Community List*, were identified in the study area.

TABLE 3.2-2
SENSITIVE NATURAL COMMUNITIES IN THE PROJECT AREA

Location	Vegetation Types Present	CDFW California Natural Community[a]	Natural Community Alliance(s)[b]	State Rarity Ranking[c]
At top of Los Gatos Creek bank southeast of West Santa Clara Street and South Autumn Street	Dominated by creeping wild rye (*Elymus triticoides* or *Leymus triticoides*)	*Leymus cinereus–Leymus triticoides*	*Leymus triticoides*	S3, and noted as "Y" for Sensitive

SOURCES and NOTES:

CDFW = California Department of Fish and Wildlife

[a] California Department of Fish and Wildlife, Natural Communities—Natural Communities List Arranged Alphabetically by Life Form, September 2010. Available at https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities/List. Accessed in August 2019.

[b] Sawyer, J., T. Keeler-Wolf, and J. M. Evens. *A Manual of California Vegetation*, 2009. Available at http://vegetation.cnps.org/.

[c] State Rarity rankings consist of:
S1 = **Critically imperiled** in the state because of extreme rarity (often five or fewer occurrences) or because of some factor(s) such as very steep declines, making it especially vulnerable to extirpation from the state.
S2 = **Imperiled** in the state because of rarity due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors, making it very vulnerable to extirpation from the nation or state.
S3 = **Vulnerable** in the state due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors, making it vulnerable to extirpation.

As shown in Table 3.2-2, a sensitive natural community of creeping wild rye is present on the west bank of Los Gatos Creek immediately south of West Santa Clara Street. The creeping wild rye extends about 70 feet from West Santa Clara Street to the south along the top of the bank and extends from top of the bank to approximately 10 feet down the bank toward the creek at the north end, gradually increasing to 15 feet at the south end. A review of historic imagery indicates that this grass appears to have been planted for bank stabilization after a bank repair project in late 2017, because it is limited to a very specific area of the streambank.

Critical Habitat Designations

USFWS can designate critical habitat for species that have been listed as threatened or endangered. *Critical habitat* is defined in FESA Section 3(5)(A) as those lands (or waters) within a listed species' current range that contain the physical or biological features that are considered essential to its conservation. The designated habitat should contain elements necessary for the primary biological needs of the species, including breeding, foraging, dispersal, migration, shelter, and growth of juveniles. The critical habitat designation serves to identify specific areas that are considered essential to the conservation of a listed species through special management or protection under FESA Section 7, which requires that federal agencies must not fund, carry out, or authorize projects that would destroy or adversely affect critical habitat.

There is no critical habitat in the study area (Figure 3.2-2). Critical habitat is designated for Central California Coast steelhead in the lower reaches of the Guadalupe River, downstream of the study area.

3.2.2 Regulatory Framework

This subsection briefly describes federal, state, and local regulations, permits, and policies pertaining to biological resources (including wetlands) as they apply to the proposed project.

Federal

The FESA, MBTA, Clean Water Act (CWA) Section 404, and Magnuson-Stevens Act are the primary federal planning, treatment, and review mechanisms for biological resources in the study area. Each is summarized below.

Endangered Species Act

USFWS and the National Marine Fisheries Service (NMFS) are the designated federal agencies responsible for administering the FESA. The FESA defines species as "endangered" and "threatened" and provides regulatory protection for any species thus designated. FESA Section 9 prohibits the "take" of species listed by USFWS as threatened or endangered. As defined in the FESA, *taking* means "… to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in such conduct." Recognizing that take cannot always be avoided, FESA Section 10(a) includes provisions for takings that are incidental to, but not the purpose of, otherwise lawful activities.

FESA Section 7(a)(2) requires all federal agencies, including USFWS, to evaluate projects authorized, funded, or carried out by federal agencies with respect to any species proposed for listing or already listed as endangered or threatened and the species' critical habitat, if any is proposed or designated. Federal agencies must undertake programs for the conservation of endangered and threatened species and are prohibited from authorizing, funding, or carrying out any action that would jeopardize a listed species or destroy or modify its "critical habitat."

As defined in the FESA, "individuals, organizations, states, local governments, and other non-federal entities are affected by the designation of critical habitat only if their actions occur on federal lands, require a federal permit, license, or other authorization, or involve federal funding."

Migratory Bird Treaty Act

The MBTA is the domestic law that affirms and implements a commitment by the United States to four international conventions (with Canada, Mexico, Japan, and Russia) for the protection of a shared migratory bird resource. Unless and except as permitted by regulations, the MBTA makes it unlawful at any time, by any means, or in any manner to intentionally pursue, hunt, take, capture, or kill migratory birds anywhere in the United States. The law also applies to the intentional disturbance and removal of nests occupied by migratory birds or their eggs during the breeding season.

On December 22, 2017, the U.S. Department of the Interior redefined *incidental take* under the MBTA such that "the MBTA's prohibition on pursuing, hunting, taking, capturing, killing, or attempting to do the same applies only to direct and affirmative purposeful actions that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control." Thus, the federal MBTA definition of take does not prohibit or penalize the incidental take of migratory birds that results from actions that are performed without motivation to harm birds. This

interpretation differs from the prior federal interpretation of take, which prohibited all incidental take of migratory birds, whether intentional or incidental. However, California state regulations protect bird nests with eggs or young from incidental take, as discussed below.

Clean Water Act Section 404

CWA Section 404, which is administered by the U.S. Army Corps of Engineers (USACE), regulates the discharge of dredged and fill material into "waters of the United States." USACE has established a series of nationwide permits that authorize certain activities in waters of the United States, provided that the proposed activity can demonstrate compliance with standard conditions. Projects that result in relatively minor impacts on waters of the United States can normally be conducted under one of the nationwide permits, if consistent with the standard permit conditions. Use of any nationwide permit is contingent on compliance with FESA Section 7. In the project area, Guadalupe River and Los Gatos Creek may qualify as waters of the United States.

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Act of 1976 (U.S. Code Title 16, Sections 1801−1884 [16 USC 1804–1884]), as amended in 1996 and reauthorized in 2007, is intended to protect fisheries resources and fishing activities within 200 miles of shore. Conservation and management of U.S. fisheries, development of domestic fisheries, and phasing out of foreign fishing activities are the main objectives of the Magnuson-Stevens Act. The Magnuson-Stevens Act provided NMFS with legislative authority to regulate U.S. fisheries in the area between 3 and 200 miles offshore and established eight regional fishery management councils that manage the harvest of the fish and shellfish resources in these waters.

The Magnuson-Stevens Act defines essential fish habitat (EFH) as those waters and substrate that support fish spawning, breeding, feeding, or maturation. The Magnuson-Stevens Act requires that NMFS, the regional fishery management councils, and federal agencies taking an action that may affect managed fish species covered under the Magnuson-Stevens Act identify EFH and protect important marine and anadromous fish habitat.

The regional fishery management councils, with assistance from NMFS, are required to develop and implement Fishery Management Plans. These plans delineate EFH and management goals for all managed fish species, including some fish species that are not protected under the Magnuson-Stevens Act. Federal agency actions that fund, permit, or carry out activities that may adversely affect EFH are required under Magnuson-Stevens Act Section 305(b), in conjunction with required Section 7 consultation under FESA, to consult with NMFS regarding potential adverse effects of their actions on EFH and to respond in writing to NMFS's recommendations.

The portions of the study area in Los Gatos Creek and the Guadalupe River are designated as EFH as covered under the Pacific Coast Salmon Fishery Management Plan,[41] which is designed to protect habitat for commercially important salmonid species. Chinook salmon (*Oncorhynchus*

[41] Pacific Fishery Management Council, *Pacific Coast Salmon Fishery Management Plan: for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California as Revised through Amendment 19*, effective March 2016. Available at https://www.pcouncil.org/documents/2016/03/salmon-fmp-through-amendment-19.pdf/.

tshawytscha) is the only one of these species that may be seasonally present in the study area, although historically Coho salmon (*O. kisutch*) were common in San Francisco Bay.

State

In addition to CEQA, the primary state planning, treatment, and review mechanisms for biological resources in the study area are CWA Section 401; the CESA; CFGC Sections 1600–1603 and 3503, 3503.5, and 3511; and the National Pollutant Discharge Elimination System (NPDES) General Permit. Each is summarized below.

State Regulation of Wetlands and Other Waters

California's authority for regulating activities in wetlands and waters in the project area resides primarily with the State Water Resources Control Board (State Water Board). The State Water Board, acting through the San Francisco Bay Regional Water Quality Control Board, must certify that a proposed USACE permit action meets state water quality objectives (CWA Section 401). Any condition of water quality certification is then incorporated into the USACE Section 404 permit authorized for the project.

The State Water Board and the Regional Water Quality Control Boards also have jurisdiction over waters of the state under the Porter-Cologne Water Quality Control Act. The State Water Board and San Francisco Bay Regional Water Quality Control Board evaluate proposed actions for consistency with the Regional Water Quality Control Board's *Water Quality Control Plan for the San Francisco Bay Basin*,[42] and authorize impacts on waters of the state by issuing waste discharge requirements or, in some cases, a waiver of waste discharge requirements.

California Endangered Species Act

The CESA closely parallels the conditions of the FESA; however, it is administered by CDFW. CESA prohibits the "taking" of listed species except as otherwise provided in state law. Unlike the FESA, CESA applies the take prohibitions to species petitioned for listing (state candidates). State lead agencies are required to consult with CDFW to ensure that any actions are not likely to jeopardize the continued existence of any state-listed species or result in destruction or degradation of required habitat. CDFW is required to coordinate with USFWS for actions that involve both federally listed and state-listed species.

Under CFGC Section 2081, CDFW may authorize individuals or public agencies to import, export, take, or possess any endangered, threatened, or candidate species in the state of California. These acts that are otherwise prohibited may be authorized through permits or memoranda of understanding if:

- The take is incidental to an otherwise lawful activity;
- Impacts of the authorized take are minimized and fully mitigated;

[42] San Francisco Bay Regional Water Quality Control Board, *San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan)*, incorporating all amendments approved by the Office of Administrative Law as of May 4, 2017. Available at https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/BP_all_chapters.pdf.

- The permit is consistent with any regulations adopted pursuant to any recovery plan for the species; and
- The applicant ensures adequate funding to implement the measures required by CDFW.

CDFW makes this determination based on the best scientific and other information that is reasonably available and includes consideration of the species' capability to survive and reproduce.

California Fish and Game Code Sections 1600–1603

All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake in California that supports fish or wildlife resources are subject to the regulatory authority of CDFW under CFGC Sections 1600–1603. Under the CFGC, a *stream* is defined as a body of water that flows at least periodically, or intermittently, through a bed or channel having banks and supporting fish or other aquatic life. Included are watercourses with surface or subsurface flows that support or have supported riparian vegetation. Specifically, CFGC Section 1603 governs private-party individuals, and CFGC Section 1601 governs public projects.

CDFW jurisdiction in altered or artificial waterways is based on the value of those waterways to fish and wildlife. CDFW must be contacted by the public or private party for a streambed alteration agreement for any project that might substantially affect a streambed or wetland. CDFW has maintained a "no net loss" policy regarding potential impacts and has required replacement of lost habitats on at least an acre-for-acre basis.

California Fish and Game Code Sections 3503, 3503.5, and 3513

Under these Fish and Game Code sections, a project operator is not allowed to conduct activities that would result in the taking, possessing, or destroying of any birds of prey; the taking or possessing of any migratory non-game bird; the taking, possessing, or needlessly destroying of the nest or eggs of any raptors or non-game birds; or the taking of any non-game bird under CFGC Section 3800. CFGC Section 3513 adopts the U.S. Department of the Interior's take provisions under the MBTA. As described above, in 2017, the U.S. Department of the Interior redefined incidental take under the MBTA; however, CDFW subsequently issued an advisory that affirms that California law continues to prohibit incidental take of migratory birds.[43]

National Pollutant Discharge Elimination System General Construction Permit for Stormwater Runoff

Construction of the proposed project would disturb more than 1 acre of land surface affecting the quality of stormwater discharges into waters of the United States. The project would thus be subject to the NPDES *General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities* (Order 2009-0009-DWQ, NPDES No. CAS000002, as amended by Orders 2010-0014-DWQ and 2012-006-DWQ). The permit, commonly referred to as the Construction General Permit, regulates stormwater discharges from construction or demolition

[43] California Department of Fish and Wildlife, *CDFW and California Attorney General Xavier Becerra Advisory Affirming California's Protections for Migratory Birds*, November 29, 2018. Available at https://oag.ca.gov/system/files/attachments/press-docs/20181129mbta-advisory3.pdf.

activities, such as clearing and excavation; construction of buildings; and linear underground projects, including installation of water pipelines and other utility lines.

The Construction General Permit regulates pollutants in stormwater (generated by construction activity) to waters of the United States from construction sites that disturb 1 acre or more of land surface, or that are part of a common plan of development or sale that disturbs more than 1 acre of land surface. The permit requires that stormwater discharges and authorized non-stormwater discharges not contain pollutants that cause or contribute to an exceedance of any applicable water quality objective or water quality standards (identified in the water quality control plan, or basin plan).

The Construction General Permit requires that projects develop and implement a storm water pollution prevention plan (SWPPP) that includes specific best management practices (BMPs) designed to prevent sediment and pollutants from contacting stormwater and non-stormwater and from moving off-site into receiving waters. The BMPs fall into several categories: erosion control, sediment control, waste management, and good housekeeping.

Routine inspection of all BMPs is required by the Construction General Permit. In addition, the SWPPP must contain a visual monitoring program, a chemical monitoring program for non-visible pollutants, and a sediment monitoring plan if the site discharges directly to a water body listed on the 303(d) list for sediment.

Regional

Santa Clara Valley Habitat Plan

The Cities of San José, Gilroy, and Morgan Hill; Santa Clara County (County); the Santa Clara Valley Transportation Authority (VTA); and Valley Water conducted a collaborative process to prepare and implement the Santa Clara Valley Habitat Plan (Habitat Plan) for the Santa Clara Valley. These local partners, in association with USFWS, CDFW, stakeholder groups, and the general public, developed the Habitat Plan as a long-range plan to protect and enhance ecological diversity and function in a large section of Santa Clara County, while allowing for currently planned development and growth.

The Habitat Plan is an adopted habitat conservation plan and natural community conservation plan. It provides a regulatory framework for the protection and recovery of natural resources, including nine plant species, nine species of terrestrial wildlife (fish are not covered), and natural communities such as streams, while streamlining permitting for development, construction of infrastructure, and maintenance activities. In general, all private development activities are subject to all applicable Habitat Plan conditions and fees. The Habitat Plan includes Conditions on Covered Activities, including conservation measures to avoid and minimize take of covered species, and avoidance and minimization measures to protect biological resources, such as riparian and aquatic habitat. Like the other local agencies involved in the Habitat Plan, the City of San José is a Permittee under the Habitat Plan. The Habitat Plan includes 20 conditions, to which most development, both private and public, is subject. Several conditions are applicable to specific activities, including urban development, in-stream projects, in-stream operations and maintenance, rural projects, rural operations and maintenance, and implementation of the Plan's

Reserve System.[44] Other conditions apply to minimize impacts on natural communities and on specific species; among the conditions to minimize impacts on natural communities is Condition 11, concerning stream and riparian setbacks from waterways, such as Los Gatos Creek and the Guadalupe River.

Certain conditions, including Condition 11, permit an applicant to request exception(s). In the case of private development, a request for an exception is submitted to the local jurisdiction—in this case, the City of San José. The City must then provide the exception request to the Habitat Agency, CDFW, and USFWS for a 30-day review and comment period, after which the City may consider the exception request, along with any comments received. Compliance with the Habitat Plan does not preclude compliance with all other applicable federal and state laws.

Santa Clara Valley Water District: Guidelines and Standards for Land Use near Streams

In October 2006, Valley Water enacted Ordinance O6-1, the Water Resources Protection Ordinance. This ordinance established the regulations by which, beginning on February 28, 2007, Valley Water would issue permits for modifications, entry, use, or access to Valley Water facilities, where Valley Water has either a fee title or easement property right. This ordinance was developed and enacted to codify the *Guidelines and Standards for Land Use Near Streams* developed by the Santa Clara Valley Water Resources Protection Collaborative. Other agencies do not comply directly with Ordinance O6-1, but instead can adopt the guidelines of Ordinance O6-1 or determine that existing zoning code and/or policies fulfill the guidelines. The City and County approved resolutions that found that their existing codes comply with the guidelines.

An encroachment permit is required for all projects that modify, enter, use, or access Valley Water lands and/or easements. It is through the administration and issuance of the encroachment permit that the guidelines and standards are enforced and tracked. The issuance of the encroachment permit is subject to an environmental assessment and must be found to be in compliance with CEQA.

In addition, findings must be made, such as that the proposed modifications would not impede, restrict, slow down, pollute, or change the direction of water flow, or catch or collect debris carried by the water, and that banks would not be damaged, weakened, eroded, subjected to increased siltation, or reduced in their effectiveness to withhold stormwater and floodwaters.

Local

Envision San José 2040 General Plan

The *Envision San José 2040 General Plan* (General Plan), adopted November 1, 2011, and last amended March 16, 2020, lays out 12 interrelated, mutually supportive major strategies that provide a basis for the City's vision for future development. The strategies relate to developing the economy through job creation; providing more housing so that people who work in the city will also reside there; developing Downtown as a social and cultural center; and building mixed-use developments that create housing centered around transit hubs and full-service

[44] The Reserve System is intended to protect nearly 47,000 acres for the benefit of species covered in the Habitat Plan, natural communities, biological diversity, and ecosystem function, through acquisition or other protection.

neighborhoods. In addition, Major Strategy #10, Life Amidst Abundant Natural Resources, relates directly to biological resources and the proposed project:

- **Major Strategy #10, Life Amidst Abundant Natural Resources**, aims to reinforce the Urban Growth Limit to preserve open space, and promote access to the natural environment by providing, among other things, parks and other recreational amenities to serve residents.

In addition, the General Plan includes goals and policies to protect the city's biological resources, which are summarized in **Table 3.2-3**.

TABLE 3.2-3
ENVISION SAN JOSÉ 2040 GENERAL PLAN POLICIES PERTAINING TO THE PROJECT'S BIOLOGICAL RESOURCES

Environmental Resource Policy	Description
Riparian Corridors[45]	
Policy ER-2.1	Ensure that new public and private developments adjacent to riparian corridors in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP).
Policy ER-2.2	Ensure a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.
Policy ER-2.3	Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise and toxic substances into the riparian zone.
Policy ER-2.4	When disturbances to riparian corridors cannot be avoided, implement appropriate measures to restore, and/or mitigate damage and allow for fish passage during construction.
Policy ER-2.5	Restore riparian habitat through native plant restoration and removal of non-native/invasive plants along riparian corridors and adjacent areas.
Migratory Birds	
Policy ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
Policy ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
Urban Natural Interface	
Policy ER-6.3	Employ low-glare lighting in areas developed adjacent to natural areas, including riparian woodlands. Any high-intensity lighting used near natural areas will be placed as close to the ground as possible and directed downward or away from natural areas.
Policy ER-6.5	Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of proposed development.
Policy ER-6.8	Design and construct development to avoid changes in drainage patterns across adjacent natural areas and for adjacent native trees, such as oaks.
Community Forest	
Policy MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.

[45] The General Plan incorporates by reference the policy recommendations in the *City of San José Riparian Corridor Policy Study* (1999), which are incorporated into the City of San José Riparian Corridor Protection and Bird Safe Design Policy.

TABLE 3.2-3
ENVISION SAN JOSÉ 2040 GENERAL PLAN POLICIES PERTAINING TO THE PROJECT'S BIOLOGICAL RESOURCES

Environmental Resource Policy	Description
Policy MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.
Policy MS-21.7	Manage infrastructure to ensure that the placement and maintenance of street trees, streetlights, signs and other infrastructure assets are integrated. Give priority to tree placement in designing or modifying streets.
Policy MS-21.8	For Capital Improvement Plan or other public development projects, or through the entitlement process for private development projects, require landscaping including the selection and planting of new trees to achieve the following goals: 1) Avoid conflicts with nearby power lines. 2) Avoid potential conflicts between tree roots and developed areas. 3) Avoid use of invasive, non-native trees. 4) Remove existing invasive, non-native trees. 5) Incorporate native trees into urban plantings in order to provide food and cover for native wildlife species. 6) Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species.
Policy MS-21.9	Where urban development occurs adjacent to natural plant communities (e.g., oak woodland, riparian forest), landscape plantings shall incorporate tree species native to the area and propagated from local sources (generally from within 5–10 miles and preferably from within the same watershed).
General Provision of Infrastructure	
Policy IN-1.11	Locate and design utilities to avoid or minimize impacts to environmentally sensitive areas and habitats.
Community Design Policies—Attractive City	
Policy CD-1.24	Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible, include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.
Policy CD-1-25	Apply Riparian Corridor Goals and Policies of this Plan when reviewing development adjacent to creeks. • Development adjacent to creekside areas should incorporate compatible design and landscaping, including appropriate setbacks and plant species that are native to the area or are compatible with native species. • Development should maximize visual and physical access to creeks from the public right-of-way while protecting the natural ecosystem. Consider whether designs could incorporate linear parks along creeks or accommodate them in the future.

City of San José Riparian Corridor Protection and Bird-Safe Design Policy

In 1994, the City commissioned a Riparian Corridor Policy Study to "explore in detail issues related to General Plan policies which promote the preservation of riparian corridors, the areas along natural streams, and how these corridors should be treated for consistency with the General Plan." The City Council approved the Riparian Corridor Policy Study, which was subsequently amended in 1999. The Policy Study defines a *riparian corridor* as any stream channel, including the area up to the bank full-flow line, as well as all riparian (streamside vegetation) in contiguous

adjacent uplands. It also states that riparian setbacks should be measured from the outside edges of riparian habitat or the top of bank, whichever is greater.[46]

The Riparian Corridor Policy Study served as a foundational document for the Riparian Corridor Protection and Bird-Safe Design Policy (Policy 6-34), which the City Council approved on August 23, 2016.[47] The policy provides guidance for how riparian projects[48] should be designed to protect and preserve the city's riparian corridors, and provides bird-safe design guidelines for buildings and structures constructed north of State Route 237. Because the project site is south of State Route 37, the bird-safe design guidelines contained in Part B of Policy 6-34 are not applicable to the project; instead, the project would be subject to the Downtown Design Guidelines with respect to bird-safe design.

The riparian protection policy includes general guidelines for setbacks[49] between various categories of construction projects and riparian corridors, with the following recommended setbacks:

- New residential and commercial/institutional buildings, parking facilities, and roads, and active recreational uses without lighting and mechanical noise sources: 100 feet.
- Multi-use trails (pedestrian/equestrian/bicycle trails) on natural channels: 10 feet.
- Pedestrian-only trails, interpretive nodes/paths/stream crossings, and passive recreational uses: 0 feet.
- Active recreational uses (including lighting and mechanical noise-generating sources): 200 feet.

Reduced setbacks may be considered under limited circumstances, including: developments located within the boundaries of the Downtown area; urban fill locations where most properties are developed and are located on parcels less than or equal to 1 acre; and sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the riparian corridor than the existing use.

The policy also recommends using materials and lighting that are designed to reduce light and glare impacts on riparian corridors, and including restoration and rehabilitation of riparian corridors in project designs, including erosion-control measures to avoid soil erosion and runoff. In addition, the policy provides bird-safe design guidance for buildings and structures.

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46 City of San José, *Riparian Corridor Policy Study.* Approved by City Council May 17, 1994; revised March 1999. Available at https://www.sanjoseca.gov/home/showdocument?id=15579. Accessed August 24, 2020.

47 City of San José, *Riparian Corridor Protection and Bird-Safe Design* (Policy 6-34), approved August 23, 2016. Available at https://www.sanjoseca.gov/home/showdocument?id=12815.

48 *Riparian projects* are defined in the policy as any development project located within 300 feet of a riparian corridor's top of bank or vegetative edge, whichever is greater, and that requires approval of a Development Permit as defined in Chapter 20.200 of Title 20 of the San José Municipal Code (the Zoning Code), except that projects that only required approval of a Single-Family House Permit under the provisions of the Zoning Code are not subject to this policy.

49 Setback is measured from the outside dripline of the riparian corridor vegetation or top of bank, whichever is greater.

These guidelines are consistent with policies of the General Plan, and supplement the regulations in the City Council–adopted Santa Clara Valley Habitat Plan, the Zoning Code, and other existing City policies that may provide for riparian protection and bird-safe design.

City of San José Downtown Design Guidelines and Standards

The City of San José Downtown Design Guidelines and Standards,[50] adopted April 23, 2019, include numerous guidelines and standards related to bird protection, including those presented below (**Table 3.2-4**).

City of San José Tree Removal Permit Requirements and Controls

The City of San José requires a tree removal permit for the removal of the following types of trees:

- A *street tree*, defined as a tree located in the public right-of-way between the curb and the sidewalk. In some locations, the public right-of-way may extend up to 12 feet from the curb.
- A *heritage tree*, defined as one of more than 100 trees on the City's Heritage Tree List with special significance to the community because of their size, history, unusual species, or unique quality. The City also provides a Heritage Tree Map. Under Chapter 13.28 of the San José Municipal Code, it is illegal to prune or remove a heritage tree without first consulting the City Arborist and obtaining a permit.
- An *ordinance-size tree* on private property, defined as either: (1) a single-trunk tree, 38 inches or more in circumference at 4.5 feet above the ground; or (2) a multi-trunk tree, the combined measurements of each trunk circumference, at 4.5 feet above ground, totaling 38 inches or more in circumference. On single-family or duplex lots, a permit is required to remove a living, unhealthy, or dead ordinance-size tree. On multi-family, commercial, or industrial lots, a permit is required to remove a tree of any size.

A permit application to remove an ordinance-size tree will be considered for approval if it can be verified that the tree is a safety hazard; is dead, dying, or diseased; is unsuitable; or restricts economic development and proposed improvement of a parcel. For all of these cases, removal of an ordinance-size tree requires submitting an application for a tree removal permit. For removal of ordinance-sized dead, dying, or diseased trees, the tree removal permit application must be accompanied by a report from a certified arborist. Removal of live ordinance-size trees likely requires fees and may require public notice and a hearing. Tree removal permit applications must include a tree description table and site plan, photograph of each tree, and non-refundable fee, if required.[51]

[50] City of San José, *San José Downtown Design Guidelines and Standards*, adopted April 23, 2019 (amended May 21, 2019). Available at https://www.sanjoseca.gov/home/showdocument?id=38775.

[51] City of San José, Tree Removal Permits webpage. Available at https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/tree-removal-permits. Accessed January 13, 2020.

TABLE 3.2-4
CITY OF SAN JOSÉ DOWNTOWN DESIGN GUIDELINES AND STANDARDS RELATED TO BIRD SAFETY

Chapter	Guidelines	Standards	Definitions
4.4.2.b Bird Safety	a. For projects within 300 feet of a *riparian corridor*, treat all glass that is visible from a riparian corridor with a *bird safety treatment*. b. Do not create areas of glass through which trees, landscape areas, water features or the sky is visible from the exterior unless a *bird safety treatment* is used. c. Reduce or eliminate upward-facing spotlights on buildings. d. For projects within 300 feet of a *riparian corridor*, turn off decorative exterior lighting between 2:00AM and 6:00AM except during June, July, December, and January due to bird migration. e. Do not plant landscaping tree lines that are perpendicular to glass facades.	a. Do not use *mirrored glass*. b. Use a *bird safety treatment* on facades within 300 feet of a *riparian corridor* that have 50% or more glazed surface. c. Use a *bird safety treatment* on the façade of any floor of the building within 15 vertical feet of the level of and visible from a green roof, including a green roof on an adjacent building within 20 horizontal feet, if the facade has 50% or more glazed surface. d. Use a *bird safety treatment* on areas of glass through which sky or foliage is visible on the other side of parallel panes of glass less than 30 feet apart.	Bird Safety Treatment—Treatments may include exterior screens, louvers, grilles, shutters, sunshades, bird-safe patterns, or other methods to reduce the likelihood of bird collisions as suggested by the American Bird Conservancy.
4.4.2.c Balconies (Private Open Space)	N/A	c. Use a bird-safe pattern on glass railings.	Bird-Safe Pattern—A pattern on glass intended to reduce bird collisions. The pattern must have circular or square markers at least 0.25 inch in diameter, spaced at most 4 inches apart horizontally and 2 inches apart vertically.
4.4.8 Pedestrian Bridges	N/A	d. Make the side elevations of a pedestrian bridge at least 50 percent transparent to provide views into and out of the bridge. Ensure bird safety through glass patterning or other techniques (see Section 4.4.2.b, *Bird Safety*).	N/A
4.4.9.a Lighting—Podium Level	N/A	b. Create *skyline level* lighting that is bird safe, including the potential to reduce or shield lighting visible to birds during migration season (February to May and August to November).	N/A

NOTE:
N/A = not applicable

SOURCE: City of San José, *City of San José Downtown Design Guidelines and Standards*, adopted April 23, 2019 (amended May 21, 2019). Available at https://www.sanjoseca.gov/home/showdocument?id=38775.

Chapter 13.32 (Tree Removal Controls) of the City's Code of Ordinances[52] controls the removal of trees in the city. Section 13.32.030 allows the removal of live trees only under the following circumstances:

- Removal of the tree is required pursuant to the provisions of Chapter 13.28: Street Trees, Hedges, and Shrubs[53] (e.g., a tree that may be detrimental to public safety).
- A development permit that allows the removal of the tree has been issued and accepted by the permit applicant pursuant to the provision of Municipal Code Title 20, Zoning.[54]
- An amendment to a development permit that allows the removal of the tree has been issued and accepted pursuant to the provisions of Municipal Code Title 20, Zoning.
- A tree removal permit that allows the removal of that tree has been issued and accepted pursuant to the provision of Chapter 13.32.

Under Section 13.32.040, Removal of Dead Tree, it is unlawful to remove a dead tree unless a report prepared and executed by a certified arborist documents that the tree qualifies as a dead tree pursuant to Section 13.32.020, and either (1) a development permit adjustment that allows the removal of the dead tree has been issued and accepted by the permit applicant pursuant to the provisions of Municipal Code Title 20, or (2) a tree removal permit that allows the removal of the dead tree has been issued and accepted by the permit applicant pursuant to the provisions of Municipal Code Section 13.32.040. Similarly, the removal of an "unsuitable tree"[55] from any private parcel requires a development permit or permit adjustment issued pursuant to Title 20, Zoning, or a tree removal permit, that allows removal of the tree.

City of San José Standard Conditions of Approval

The Standard Conditions of Approval (SCAs) relevant to the proposed project's impacts on biological resources are presented below. If the City approves the proposed project, all applicable SCAs would be adopted as conditions of approval and required, as applicable, to be implemented during project construction and operation to address biological resources impacts. The SCAs are incorporated and required as part of the project, so they are not listed as mitigation measures.

> **SCA BI-1: Santa Clara Valley Habitat Plan.** The proposed project is subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee, for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed online at the following link: https://www.scv-habitatagency.org/.

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52 City of San José, City of San José Municipal Code Chapter 13.32, Tree Removal Controls. Available at https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT13STSIPUPL_CH13.32TRRECO. Accessed January 13, 2020.

53 City of San José, City of San José Municipal Code Chapter 13.28, Street Trees, Hedges and Shrubs. Available at https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT13STSIPUPL_CH13.28STTRHESH. Accessed January 13, 2020.

54 City of San José, *City of San José Municipal Code* Title 20, Zoning. Available at https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO. Accessed January 13, 2020.

55 Refer to San José Municipal Code Section 13.32.020, *Definitions*, for the definition of an "unsuitable tree."

SCA BI-2: Tree Replacement. The removed trees would be replaced according to tree replacement ratios required by the City.

3.2.3 Impacts and Mitigation Measures

Significance Criteria

For the purposes of this EIR, a biological resources impact would be significant if implementing the proposed project would:

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

Approach to Analysis

The impact analysis is based on the resources, references, and data collection methods identified in the *Local Setting* discussion in Section 3.2.1, *Environmental Setting*. The analysis addresses potential direct and indirect impacts from construction or operation of the proposed project, defined as follows:

- *Direct impacts* are those that could occur at the same time and place as project implementation, such as the removal of habitat as a result of ground disturbance.
- *Indirect impacts* are those that could occur either at a later time or at a distance from the project area, but that are reasonably foreseeable, such as the loss of an aquatic species as a result of upstream effects on water quality or quantity.

Direct and indirect impacts on biological resources may vary in duration; they may be temporary, short term, or long term.

The analysis considers the potential impacts of the proposed project on suitable habitat, special-status species, sensitive natural communities, wetlands, and wildlife corridors, using the significance criteria listed above. Mitigation measures are identified, as necessary, to reduce impacts to less-than-significant levels.

Because the vast majority of the potential construction-related biological resources impacts are related to work in or adjacent to Los Gatos Creek and the Guadalupe River, the construction impacts analyzed under Impacts BI-1, BI-2, BI-3, and BI-4 would be expected to occur during Phase 1. Phase 1 would include demolition, construction, and renovation of all buildings along Los Gatos Creek and the Guadalupe River, with the exception of Block H2, which would be constructed in Phase 2, as well as development of open space adjacent to these buildings. Replacement of the San Fernando Street bridge would also be completed during Phase 1. Only redevelopment of Block H2 during Phase 2 would have potential construction-related impacts on biological resources. None of the construction work anticipated to occur under Phase 3 is expected to have potential construction-related impacts on biological resources.

Impact Analysis

Impact BI-1: The proposed project could have a substantial adverse effect, either directly, indirectly, or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS (western pond turtle, central California coast steelhead distinct population segment, nesting birds, special-status bats). *(Less than Significant with Mitigation)*

The study area does not include suitable habitat, or is outside of the known geographic or elevation range, for many of the terrestrial species documented in the CNDDB and CNPS searches. The project area includes suitable habitat for the following species, and is within the species' known range: central California coast steelhead DPS (*Oncorhynchus mykiss iridius*), western pond turtle (*Emys marmorata*), Cooper's hawk (*Accipiter cooperii*), merlin (*Falco columbarius*), western red bat (*Lasiurus blossevillii*), hoary bat (*Lasiurus cinereus*), and Yuma myotis (*Myotis yumanensis*). Therefore, the following analysis is limited to potential impacts on these wildlife species, which have a moderate to high potential to occur in the project area (refer to Appendix D1).

Special-Status Fish

The potential for project construction to impact fish species is limited because most of the project site does not contain fish habitat. However, work in and adjacent to the Los Gatos Creek channel would be required to construct a new footbridge over Los Gatos Creek south of West Santa Clara Street; a pedestrian boardwalk within or adjacent to the creek's riparian corridor and a multi-use trail as close as 10 feet from the riparian corridor; and the West San Fernando Street replacement vehicle bridge over Los Gatos Creek.

Fish species could also be impacted by the proposed enhancements to habitat and flow conveyance in Los Gatos Creek, as described in Chapter 2, Section 2.11, *Flood Control Improvements*, and in the *Google Downtown San José Los Gatos Creek Enhancement Project Site Assessment Summary Report* in Appendix D2. Potential impacts and mitigation measures for these activities are described under *Riparian Habitat* in Impact BI-2. Work is also proposed in the upslope habitat adjacent to the Guadalupe River channel.

Replacing the West San Fernando Street bridge would involve removing bridge supports from Los Gatos Creek before installing a new clear-span bridge. As part of this work, bridge footings that extend from the creek channel to the top of bank would be removed and replaced, which could cause the re-suspension of sediment in the creek channel. To a lesser degree, work adjacent to Los Gatos

Creek and the Guadalupe River channel may indirectly cause sediment levels in the creek channel to increase if work in the riparian corridor and upslope habitats is not contained appropriately.

Re-suspension of sediment in the Los Gatos Creek or Guadalupe River channel could impact the central California coast steelhead DPS by temporarily impairing water quality. Suspended sediment in the water column can lower levels of dissolved oxygen, increase concentrations of suspended solids, and possibly release chemicals present in the sediment into the water column. Turbidity increases would be relatively brief and generally confined to within a few hundred feet of the activity. Turbidity levels would initially be higher than baseline levels, but the sediment would disperse and be re-deposited, and background levels would be expected to be restored within hours of the disturbance.

The project proposes setbacks of 50 feet for new buildings from either the top of bank of Los Gatos Creek or the edge of the creek's existing riparian canopy, whichever is a greater distance outward from the creek. Also, consistent with the previously approved project on the former San Jose Water Company site, the project proposes a 30-foot setback from the top of the channel wall along the Guadalupe River at that location. In addition, non-historic existing buildings along Autumn Street (Blocks D8, D9, D10, D11, D12, and D13), which are currently within 50 feet of the riparian corridor, may be retained and repurposed, or could be rebuilt within existing building footprints if within the riparian setback, pursuant to Sections A.2 and A.3 of City Council Policy 6-34 concerning reduced setbacks and City confirmation that the replacement would be consistent with Policy 6-34.[56]

Construction activities could accidentally introduce contaminants such as fuels, oils, hydraulic fluids, and other chemicals/compounds into both Los Gatos Creek and the Guadalupe River, either directly through spills or incrementally through surface runoff from haul routes and staging areas. If present in sufficient concentrations, contaminants could be toxic to fish and prey organisms occupying adjacent aquatic habitats. Contaminants could also alter oxygen diffusion rates and cause acute and chronic toxicity to aquatic organisms, thereby reducing growth and survival and possibly causing mortality of special-status fish. The project also has the potential to cause increased water temperatures in Los Gatos Creek, which could indirectly impact special-status fish; this potential is described in Impact BI-2.

This impact would be **potentially significant**.

As discussed in Section 3.5, *Geology, Soils, and Paleontological Resources*, and Section 3.8, *Hydrology and Water Quality*, construction contractors would be required to prepare an SWPPP in compliance with the NPDES's General Construction Permit. The SWPPP would list the hazardous materials (including petroleum products) proposed for use during construction. It also would describe spill prevention measures, equipment inspections, and equipment and fuel storage; protocols for responding immediately to spills; and BMPs for controlling site run-on and runoff. This would include preventing site runoff into Los Gatos Creek and the Guadalupe River. The SWPPP would also include BMPs for construction to implement sediment and erosion

[56] City of San José, *Riparian Corridor Protection and Bird-Safe Design* (Policy 6-34), approved August 23, 2016. Available at https://www.sanjoseca.gov/home/showdocument?id=12815.

control measures and BMPs for reducing pollutants in stormwater discharges after completion of each construction phase (i.e., the post-construction best management practices).

In addition to implementing appropriate sediment and erosion control measures and containing potential chemical contaminants, the proposed project would implement the following mitigation measures to reduce this **potentially significant** impact to a less-than-significant level:

- **Mitigation Measure BI-1a, General Avoidance and Protection Measures**
- **Mitigation Measure BI-1b, In-Water Construction Schedule**
- **Mitigation Measure BI-1c, Native Fish Capture and Relocation**

With implementation of Mitigation Measures BI-1a, BI-1b, and BI-1c, potential impacts on special-status fish would be **less than significant with mitigation incorporated**.

Mitigation Measures

Mitigation Measure BI-1a: General Avoidance and Protection Measures

This measure shall be required for demolition, site preparation (including clearing of vegetation), and construction work in the Los Gatos Creek channel and riparian corridor and the 50-foot building construction setback from the riparian corridor. It shall also be required for proposed construction activities within 50 feet of the Guadalupe River (Blocks E1 and E3), and work within 20 feet of the creeping wild rye plant community described under Impact BI-2. Relevant avoidance and protection measures shall be included on demolition, grading, and building permit plans.

- Before the issuance of any demolition, grading, or building permit, a qualified biologist shall prepare a worker environmental awareness training brochure and submit the brochure to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval. The training shall be distributed to the construction contractor for the specific work in question to ensure that a copy is available to all construction workers on-site. The training shall be implemented as described below.
- A California Department of Fish and Wildlife (CDFW)– and National Marine Fisheries Service (NMFS)–approved biologist shall be present to monitor all of the following activities:
  - All construction-related work within the Los Gatos Creek channel or riparian corridor or the 50-foot building construction setback from the riparian corridor;
  - Construction activities within 50 feet of the Guadalupe River (Blocks E1 and E3 and the former San Jose Water Company building); and
  - Work within 20 feet of the creeping wild rye plant community.

  The biologist shall prepare and submit daily reports demonstrating compliance with all general avoidance and protection measures to the Director of Planning, Building and Code Enforcement or the Director's designee.
- A qualified biologist shall provide the worker environmental awareness training to field management and construction personnel. Communication efforts and training shall take place during pre-construction meetings so that construction

personnel are aware of their responsibilities and the importance of compliance. The training shall identify the types of sensitive biological resources in the project area (nesting birds, roosting bats, salmonids, western pond turtle, riparian habitat, and creeping wild rye plant community) and the measures required to avoid impacting these resources. The materials covered in the training program shall include environmental rules and regulations for the specific project and shall require workers to limit activities to the construction work area and avoid demarcated sensitive resource areas.

- If the project adds new construction personnel, the contractor for the work in question shall ensure that the new personnel receive worker environmental awareness training before starting work within the Los Gatos Creek riparian corridor or channel; within the 50-foot building construction setback from the Los Gatos Creek riparian corridor and the Guadalupe River; or within 20 feet of the creeping wild rye plant community. The contractor shall maintain a sign-in sheet identifying the individuals who have received the training. A representative from the contractor company for the work in question shall be appointed during the training to be the contact person for any employee or contractor who might inadvertently kill or injure a listed species, or who finds a dead, injured, or entrapped individual. The representative's name and telephone number shall be provided to NMFS and CDFW before the start of ground disturbance.
- The minimum qualifications for a qualified biologist shall be a four-year college degree in biology or related field and at least two years' demonstrated experience with the species of concern.
- If a listed wildlife species is discovered, construction activities shall not begin in the immediate vicinity of the individual until the CDFW Region 3 office in Fairfield is contacted, and the discovered species has been allowed to leave and is no longer present in the construction area.
- Any special-status species observed by the qualified biologist shall be reported to CDFW by the qualified biologist, or by a biologist designated by the qualified biologist, so that the observations can be added to the California Natural Diversity Database.
- The discharge of water from new construction sites into Los Gatos Creek or the Guadalupe River shall be prohibited if the temperature of the discharged water exceeds 72 degrees Fahrenheit (°F), unless modeling studies and subsequent monitoring demonstrate that the volume of the discharge would not increase maximum daily stream temperatures above 75.2°F. This prohibition shall cover both direct discharges and indirect discharges into local storm drains that discharge to Los Gatos Creek or the Guadalupe River. Construction discharges shall be prohibited until the discharged water cools below the average daily stream temperature at the discharge point or maximum daily stream temperatures drop below 75°F.

Mitigation Measure BI-1b: In-Water Construction Schedule

All in-water construction work in the Los Gatos Creek channel shall occur outside of the normal rainy season, between June 1 and October 15 inclusive (or as otherwise specified by permits from the San Francisco Bay Regional Water Quality Control Board, California Department of Fish and Wildlife, National Marine Fisheries Service, and/or U.S. Army Corps of Engineers), when flows in Los Gatos Creek and the Guadalupe

River are normally at their lowest and special-status anadromous fish species are least likely to occur in the project area.

Mitigation Measure BI-1c: Native Fish Capture and Relocation

The project applicant shall ensure that any contractor for any construction work in the Los Gatos Creek channel prepares and submits a fish relocation plan (consistent with federal and state permit requirements) for in-water work in Los Gatos Creek. Relocation shall be required only for in-water work in the Los Gatos Creek channel. The plan shall be prepared in coordination with the California Department of Fish and Wildlife (CDFW), and a copy of the final plan shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, along with demonstration of coordination with CDFW. Implementation of the fish relocation plan shall be consistent with the following conditions:

- Before rescues of listed species are attempted, any necessary authorization shall be obtained from the resource agencies (CDFW and/or National Marine Fisheries Service [NMFS]).
- Before dewatering may occur, a qualified biologist shall determine whether the extent of dewatering will result in immediate or foreseeable impacts on fish and wildlife. This shall include conducting a reconnaissance survey of the dewatering zone.
- Before dewatering can begin, the following elements of fish relocation shall be determined:
  - *Staging Area:* Staging areas in the dewatering zone shall be identified. Sites should be selected based on their proximity and access to the dewatering zone and ability to support safe operation of the equipment.
  - *Relocation Sites:* Relocation site(s) shall be identified. Priority shall be given to a site's close proximity to the dewatering zone in the same stream. If a qualified on-site biologist determines that no suitable site in the stream is available, then "second choice" locations within the watershed shall be selected. In all cases, the closest site that is likely to result in a successful rescue shall be used.
  - *Transportation Routes:* Transport routes for rescued fish species shall be determined in advance of dewatering.
  - *Disease Consideration:* To guard against disease transmission, fish shall not be moved upstream over substantial barriers or long distances (i.e., greater than 10 miles).
- If salmonids are encountered during relocation, they shall be moved upstream to a location of perennial running water or the best available habitat determined by a qualified biologist. Collection and transport methods shall be determined based on site conditions. Methods shall also be selected to maximize the efficiency of the collection effort while minimizing handling and transport time and stress. Creek water from the site shall be used in all containers. The local transport of fish may be completed using various methods, including:
  - *Net Transfer:* Appropriate for short distances (less than 50 feet) where rapid transfer is possible.

  - *Live Car:* Appropriate for temporary holding in the stream and for short distances where a rapid transfer is required.
  - *Bucket:* Appropriate for temporary holding and transport over short to medium distances. Holding time should be minimized if possible and aeration should be supplied.
  - *Aerated Cooler:* Appropriate for temporary holding and transport for long distances. Temperature shall be maintained to be similar to the temperature of the source creek water, and if necessary, fish shall be sorted by size to reduce risks of predation.

- Species and collection/relocation sites shall be prioritized as follows: (1) Threatened species; and (2) other native fishes.
- A contact person at each of the appropriate resource agencies (CDFW, NMFS, and/or U.S. Fish and Wildlife Service) shall be identified in the relocation plan. At least 24 hours before fish relocation begins, the appropriate resource agencies shall be notified to communicate the details of the fish relocation and to confirm disposition instructions.
- Fish shall be relocated under the following conditions:
  - *Setup:* Upon arrival at the site, a qualified biologist shall review the operational sequence and logistics of the rescue and field assignments shall be designated. The fish relocation team shall review safety and operational methods.
  - *Live Well Operation:*
    - If necessary, live wells shall be set up early in the operation to stabilize tank conditions.
    - Local "native" water shall be used to fill live wells, if available and clean.
    - To lessen stress on fish, the temperature in live wells shall be reduced or managed to be compatible with the water temperatures in which the fish were encountered.
    - To ensure that sufficient oxygen is present during the adjustment period, the aeration system shall be started before fish are placed into the live well. When salmonids are placed in the live well, the live well shall be managed to the extent possible so that the dissolved oxygen concentration is greater than 6 milligrams per liter, but less than saturation.
  - *Electrofishing Operation:*
    - The electrofishing unit settings shall be adjusted to the conductivity and temperature of the water. Settings shall be adjusted for either varying width (wide to narrow) or varying frequency (high to low) to minimize possible fish injury when these settings elicit proper taxis (i.e., response of fish toward or away from stimulus) for fish capture.
    - The settings used and any incidental electrofishing mortalities shall be recorded in the field notebook. If electrofishing mortalities for salmonids and other species listed as threatened or endangered exceed 5 percent of the total capture, or as otherwise specified in any biological resource

permits, a qualified biologist shall re-evaluate and possibly terminate electrofishing activities.

- Fish other than salmonids experiencing mortality from electrofishing activities shall be noted and used as an indicator of the possible injury or mortality rates of salmonids and other fish.

– *General Collection Guidelines:*

- Fish shall be collected in a manner to minimize handling time and stress, yet maintain the safety of personnel.
- Multiple buckets and/or live cars shall be used to reduce crowding during collection and transfer.
- Fish shall be pre-sorted as needed for transport.
- Buckets that hold salmonids shall be equipped with portable aerators until the fish are transferred to a live well.

– *Transport:*

- Fish shall be transported to minimize holding time and alternately sequenced in tandem with ongoing collection activities.
- Normal live well operations shall continue during transport.

– *Records and Data:*

- Fish shall be inventoried and pertinent data shall be recorded, including species, numbers of each species, disposition, and fork length. If conditions preclude a complete inventory, at a minimum, the species present and their disposition shall be documented and their abundance shall be estimated.
- Information on ambient site conditions (available habitat/water quality) shall be recorded as appropriate, including photo documentation at collection and release sites and other information on collection, handling, and transport.
- At completion, a qualified biologist shall conduct an assessment of the fish relocation to identify lessons learned, estimate the number of individual fish and fish species moved, and determine the mortality rate. The assessment report shall be forwarded to the appropriate resource agencies and to the Director of Planning, Building, and Code Enforcement or the Director's designee within a month of the completion of in-water work.

Significance after Mitigation: Less than significant.

Western Pond Turtle

Western pond turtles could be present in the Guadalupe River, but this species' presence near the project site would be transient because no vegetative cover or basking sites are adjacent to the project site. Therefore, project construction adjacent to the river is assumed to have low potential to impact western pond turtles. Construction activities that could directly impact this species would be the use of project-related motorized equipment to construct the footbridge across Los Gatos Creek

and replace the West San Fernando Street vehicle bridge over the creek, which could cause direct mortality of, or injury to, this species.

In addition, grubbing, earth moving, and operation of heavy equipment near the Los Gatos Creek riparian corridor could result in noise, vibration, and increased activity levels, which could indirectly impact western pond turtle by causing individual turtles to avoid areas they normally use. This species could also be impacted by turbidity caused by construction-related erosion or in-water work. Therefore, this construction-related impact would be **potentially significant**. Operational impacts on the western pond turtle are addressed under Impact BI-2 (riparian habitat).

To reduce this potentially significant construction-related impact, the proposed project would implement Mitigation Measure BI-1a (listed under *Special-Status Fish*) and **Mitigation Measure BI-1d, Western Pond Turtle Protection Measures**. These measures would reduce the impact because they require providing environmental training for construction personnel, implementing general protection measures, conducting pre-construction surveys, and monitoring for this species during construction and relocating individuals as authorized. Implementing these mitigation measures would reduce potential impacts on western pond turtle to **less than significant with mitigation incorporated**.

Mitigation Measure

Mitigation Measure BI-1d: Western Pond Turtle Protection Measures

Prior to the start of any construction activities within 50 feet of the Los Gatos Creek riparian corridor (measured from the outer dripline of riparian vegetation or the top of bank, whichever is greater), the project applicant for the specific construction activity to be undertaken shall retain a qualified biologist to conduct pre-construction surveys for western pond turtles in all suitable habitats (i.e., aquatic and upland in the Los Gatos Creek riparian corridor) near the work site. Surveys shall take place no more than 72 hours before the onset of site preparation and construction activities that have the potential to disturb turtles or their habitat and copies shall be provided to the Director of Planning, Building, and Code Enforcement or the Director's designee.

If pre-construction surveys identify active western pond turtle nests on the project site, the biologist shall establish no-disturbance buffer zones around each nest using temporary orange construction fencing. The demarcation shall be permeable to allow young turtles to move away from the nest after hatching. The radius of the buffer zone and the duration of exclusion shall be determined in consultation with the California Department of Fish and Wildlife (CDFW). The buffer zones and fencing shall remain in place until the young have left the nest, as determined by the qualified biologist.

A qualified biologist shall monitor construction activities near suitable habitat within which western pond turtle is found (either during the survey or observed during construction), and shall remove and relocate western pond turtles in proposed construction areas to suitable habitat outside the project limits, consistent with CDFW protocols and handling permits. Relocation sites shall be subject to CDFW approval.

If any turtles are found on the project site, construction activities shall halt within 50 feet of the turtle(s) and the qualified biologist shall be notified. If the biologist determines that the turtle is a western pond turtle, the turtle shall be relocated into nearby suitable habitat

consistent with CDFW protocols and with approval from CDFW. The biologist shall submit a final report to the Director of Planning, Building, and Code Enforcement or the Director's designee following completion of construction and relocation.

Significance after Mitigation: Less than significant.

Nesting Birds

Construction-related direct impacts on nesting birds protected by the Migratory Bird Treaty Act could result from the removal of trees and vegetation and/or demolition of buildings while an active bird nest is present. In addition, earth moving, operation of heavy equipment, and increased human presence could result in noise, vibration, and visual disturbance. These conditions could indirectly result in nest failure (disturbance, avoidance, or abandonment that leads to unsuccessful reproduction), or could cause flight behavior that would expose an adult or its young to predators. These activities could cause birds that have established a nest before the start of construction to change their behavior or even abandon an active nest, putting their eggs and nestlings at risk for mortality.

Because of the potential for nest failure, this impact would be **potentially significant**. Generally, nest failure would be a violation of CFGC Sections 3503–3513. Impacts during the non-breeding season generally are not considered significant, primarily because of the birds' mobility and ability to access other comparable foraging habitat in the region.

Operational/long-term activities that could indirectly impact nesting birds include the removal of street trees, as well as removal of dead and live trees from the riparian corridor; however, the removal of dead and live trees would be mitigated through tree replacement ranging from a ratio of 1:1 to 3:1 (replacement:existing), as described in the analyses of Impact BI-2 (riparian habitat) and Impact BI-5 (street tree removal policy).

Other operational activities that could indirectly impact nesting birds include the use of a new public access trail in the Los Gatos Creek riparian corridor. The resulting increase in human activity could cause nesting birds to flush from their nests or cause young birds to fledge from their nests prematurely, and could result in fewer nesting attempts. However, birds electing to nest in areas where human disturbance is already occurring are habituated to such disturbance, and therefore, human disturbance should not be an issue.

Increased human activity could also attract bird species known to thrive in human-dominated environments, such as American crow (*Corvus brachyrhynchos*). Increases in food-related trash would be a primary attractant to these species. These larger, more aggressive birds can out-compete songbirds and will prey on their eggs and nestlings.

Public access paths would be constructed and located in an already highly urbanized area, and many riparian areas were observed to currently include human encampments.[57] All riparian areas in the study area are within 50 to 100 feet of busy roads, commuter train tracks, or light industrial and commercial businesses. Nesting birds that use these areas are assumed to already be

[57] Environmental Science Associates, personal observations during reconnaissance-level field surveys, September 27, 2019 and January 3, 2020.

accustomed to a moderate to high level of human activity, noise, and vibration. Therefore, the impact on nesting birds from human activity, noise, and vibration during the use and maintenance of public paths would be **less than significant**.

To reduce the potentially significant construction-related impact, the proposed project would implement the following mitigation measures:

- **Mitigation Measure BI-1a, General Avoidance and Protection Measures**
- **Mitigation Measure BI-1e, Avoidance of Impacts on Nesting Birds**

These measures would reduce the impact because they require providing environmental training for construction personnel; implementing general protection measures; limiting construction to the non-nesting season when feasible or, if avoiding the nesting season is not feasible, conducting pre-construction surveys for nesting birds and establishing no-disturbance buffers around any active nests to ensure they are not disturbed by construction; and repeating the pre-construction surveys when work resumes after being suspended for 7 days. Implementing these mitigation measures would reduce potential impacts on nesting birds to **less than significant with mitigation incorporated**.

Mitigation Measures

Mitigation Measure BI-1a: General Avoidance and Protection Measures

Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds

Prior to the issuance of any demolition, grading, or building permits, the project shall implement the following measures to avoid impacts on nesting migratory birds:

- **Avoidance:** The project applicant for the specific construction activity to be undertaken shall schedule demolition and construction activities to avoid commencement during the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay Area, extends from February 1 through August 15 (inclusive), as amended.
- **Nesting Bird Surveys:** If demolition and construction cannot be scheduled to occur between August 16 and January 31 (inclusive), a qualified ornithologist shall complete pre-construction surveys for nesting birds to ensure that no nests are disturbed during project implementation. This survey shall be completed no more than 14 days before the start of construction activities during the early part of the breeding season (February 1 through April 30 inclusive), and no more than 30 days before the start of construction activities during the late part of the breeding season (May 1 through August 15 inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.
- **Buffer Zones:** If an active nest is found within 250 feet of work areas to be disturbed by construction, the ornithologist, in coordination with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet for raptors and 100 feet for songbirds, or an area determined to be adequate by the qualified ornithologist in coordination with CDFW, to ensure that raptor or

migratory bird nests are not be disturbed during project construction. The no-disturbance buffer shall remain in place until the ornithologist determines that the nest is no longer active or the nesting season ends. If construction ceases for 7 days or more, then resumes during the nesting season, an additional survey shall be necessary to avoid impacts on active bird nests that may be present.

- **Reporting:** The project applicant for the specific construction activity to be undertaken shall submit the ornithologist's report indicating the results of the surveys and any designated buffer zones to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of any grading or building permits or tree removal (whichever occurs first).
- The results of the surveys and any identified designated buffer zones shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

Significance after Mitigation: Less than significant.

Special-Status Bats

The proposed project could impact special-status bats if they are present in buildings, or crevices in structures, that would be demolished, or in mature trees that would be removed or pruned to accommodate project construction. Special-status bat species that have the potential to occur in the project area include western red bat, hoary bat, and Yuma myotis. Suitable roosting habitat for these species includes the undersides of road overcrossings, buildings, and mixed riparian woodland in the study area. If tree removal or building and/or bridge demolition were to occur during periods of winter torpor or maternity roosting, any bats present would likely not survive the disturbance.[58] The impact of these disturbances would be **potentially significant**.

To reduce this potentially significant impact, the proposed project would implement **Mitigation Measure BI-1f, Roosting Bat Surveys**. This mitigation measure would reduce impacts because it requires providing worker environmental awareness training and conducting roosting bat surveys, and limiting removal of trees or structures with potential bat roosting habitat to the time of year when bats are active to avoid disturbing bats during the maternity roosting season or months of winter torpor.

Implementing this mitigation measure would reduce potential impacts on roosting bats to **less than significant with mitigation incorporated**.

Mitigation Measure

Mitigation Measure BI-1f: Roosting Bat Surveys

In advance of tree and structure removal or adaptive reuse, a qualified biologist shall conduct a pre-construction survey for special-status bats to characterize potential bat habitat and identify active roost sites within 100 feet of the project site. The results of the surveys and the locations of any designated buffer zones shall be submitted to the

[58] Tuttle, M., How North America Bats Are at Their Most Vulnerable during Hibernation and Migration, *BATS Magazine* 9(3), fall 1991. Available at http://www.batcon.org/resources/media-education/bats-magazine/bat_article/492. Accessed January 5, 2018.

Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of any demolition or building permits. Should potential roosting habitat or active bat roosts be found in trees and/or structures to be removed or renovated under the project or within a 100-foot buffer zone from these areas, the following measures shall be implemented:

- Removal of trees and structures with active roosts shall occur when bats are active, approximately between March 1 and April 15 inclusive and between September 15 and October 15 inclusive. To the extent feasible, removal shall occur outside of bat maternity roosting season (approximately April 15 to August 31 inclusive) and outside of the months of winter torpor (approximately October 16 to February 28 inclusive).
- If removing trees and structures during the periods when bats are active is not feasible and active bat roosts being used for maternity or hibernation purposes are found on or in the immediate vicinity of the project area where tree and structure removal is planned, a 100-foot no-disturbance buffer shall be established around these roost sites until the qualified biologist has determined that they are no longer active.
- The qualified biologist shall be present during removal of trees and structures when active bat roosts not being used for maternity or hibernation purposes are present. Trees and structures with active roosts shall be removed only when no rain is occurring and rain is not forecast to occur for 3 days following removal of the roost, and when daytime temperatures are at least 50 degrees Fahrenheit.
- Removal of trees with active or potentially active roost sites shall follow a two-step removal process:

  (1) On the first day of tree removal and under the supervision of the qualified biologist, branches and limbs that do not contain cavities or fissures in which bats could roost shall be cut only using chainsaws. Removal of the canopy makes the tree unappealing for bats to return that evening to roost.

  (2) On the following day and under the supervision of the qualified biologist, after confirmation that bats have not returned, the remainder of the tree may be removed, using either chain saws or other equipment (e.g., excavator or backhoe).

Structures that contain or are suspected to contain active bat roosts, but that are not being used for maternity or hibernation purposes, shall be dismantled under the supervision of the qualified biologist in the evening, after bats have emerged from the roost to forage. The structures shall be partially dismantled to substantially change roost conditions, causing the bats to abandon and not return to the roost.

Significance after Mitigation: Less than significant.

Impact BI-2: The proposed project could have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, regulations, or by CDFW or USFWS. *(Less than Significant with Mitigation)*

This section addresses impacts on riparian habitat and sensitive natural communities, including EFH and designated critical habitat for project elements in Los Gatos Creek and its associated riparian corridor. As described in Section 3.2.1, *Environmental Setting*, the study area is composed primarily of developed urban land. Although no critical habitat is present, the study area does include EFH, riparian habitat, and a sensitive natural community of creeping wild rye (*Elymus triticoides*).

As described under Impact BI-5, the project would conform to the City's Policy 6-34 (riparian corridor protection) (refer to Section 3.2.2, *Regulatory Framework*). In addition, the *Downtown West Design Standards and Guidelines* (Appendix M) include specific controls for protecting riparian habitat, such as riparian setbacks; additional plantings to extend the riparian corridor in select locations; a footbridge designed for minimal impacts on riparian habitat; replacement of chain-link fencing with wildlife-friendly fences; and control of the lighting adjacent to the riparian corridor.

The following discussions analyze potential impacts on sensitive natural communities.

Essential Fish Habitat

As discussed in Section 3.2.2, *Regulatory Framework*, the reaches of Los Gatos Creek and the Guadalupe River within the study area are designated as EFH. EFH in the study area is covered under the Pacific Coast Salmon Fishery Management Plan and is designed to protect habitat for commercially important salmonid species.[59] Chinook salmon is the only species covered under this plan that may be seasonally present in the study area.

Potential effects of in-water or in-channel construction work on EFH include the temporary impairment of water quality and increased turbidity, coinciding with the disturbance and alteration of stream channel habitat. The project also has the potential to cause increases in water temperatures in Los Gatos Creek associated with the potential loss in riparian cover, which could directly impair EFH in the study area. This potential impact is described in Impact BI-2, in the *Riparian Habitat* discussion. These effects are not specific to EFH; rather, they would be shared by all aquatic life in the study area. Thus, the descriptions of these effects in Impact BI-1, under *Special-Status Fish*, directly apply to EFH-managed fish species.

This impact of project construction to EFH would be **potentially significant**. To reduce this impact, the proposed project would implement an SWPPP in conjunction with the implementation of Mitigation Measures BI-1a, BI-1b, and BI-1c to ensure that any impacts on EFH would be temporary and less than significant. Mitigation Measure BI-1a would ensure that the project would avoid impacts on the riparian community and construction-related discharges

[59] Pacific Fishery Management Council, *Pacific Coast Salmon Fishery Management Plan: for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California as Revised through Amendment 19*, effective March 2016. Available at https://www.pcouncil.org/documents/2016/03/salmon-fmp-through-amendment-19.pdf/.

into the creek to the extent feasible. Mitigation Measure BI-1b would limit in-water or in-channel work in Los Gatos Creek and the Guadalupe River to June 1 to October 15, or as otherwise allowed by regulatory permits, when Chinook salmon are least likely to occur in the study area. If flows and water temperatures during this period remain conducive to supporting over-summering individuals, implementing Mitigation Measure BI-1c would prevent any direct impact on EFH-protected species in the study area.

Because the amount of in-channel work proposed would be limited and the proposed project would implement Mitigation Measures BI-1a, BI-1b, and BI-1c to reduce construction-related impacts on instream habitat, the impact on EFH would be **less than significant with mitigation incorporated**.

Mitigation Measures

Mitigation Measure BI-1a: General Avoidance and Protection Measures (refer to Impact BI-1)

Mitigation Measure BI-1b: In-Water Construction Schedule (refer to Impact BI-1)

Mitigation Measure BI-1c: Native Fish Capture and Relocation (refer to Impact BI-1)

Significance after Mitigation: Less than significant.

Riparian Habitat

In general, City Policy 6-34 requires that new buildings be set back at least 100 feet and that multi-use trails on natural channels be set back at least 10 feet; however, lesser setbacks may be permitted Downtown—including the project site. Pedestrian-only paths (e.g., the boardwalks proposed as part of the project) may be allowed up to the edge of and, where necessary for continuity, within the riparian corridor. The project proposes setbacks of 50 feet from Los Gatos Creek for new buildings and, consistent with the previously approved project on the former San Jose Water Company site, a 30-foot setback from the top of the channel wall along the Guadalupe River at the San Jose Water Company site. Portions of six existing structures, on Blocks D8, D9, D10, D11, D12, and D13 at Creekside Walk at South Autumn Street, currently encroach into the Los Gatos Creek 50-foot riparian setback. Outside of the riparian setback, vertical and horizontal additional would be permitted to the existing structures. The cumulative area of vertical and horizontal additions to these existing structures would not exceed 17,500 square feet (sf) beyond the total built area of existing structures. It is also possible that future structural assessments would indicate that one or more of these existing structures cannot reasonably be retained. In that event, replacement structures would be permitted within the existing building footprints, pursuant to Sections A.2 and A.3 of City Council Policy 6-34 concerning reduced setbacks from the riparian corridor and City confirmation that the replacement would be consistent with Policy 6-34.

Active programs would be kept outside the 50-foot riparian setback, with the exception of programming within the existing buildings on Blocks D8, D9, D10, D11, D12, and D13 and the existing former San Jose Water Company building at 374 West Santa Clara Street. Where possible, a 50- to 100-foot ecological enhancement zone would be included in the project in open spaces such as Los Gatos Creek Park, Creekside Walk at South Autumn Street, and Los Gatos Creek East. This enhancement zone would include riparian plantings composed primarily of native species. These riparian plantings would expand the riparian canopy, replace existing

hardscape,[60] and potentially reduce the water temperature of urban stormwater runoff by reducing the impervious area that can be heated by sunlight over which stormwater would flow, which would benefit Los Gatos Creek and provide wildlife habitat for birds and pollinators (Appendix M).

Several elements of the proposed project have the potential to result in permanent and/or temporary impacts on riparian habitat:

- Construction of a new footbridge over Los Gatos Creek south of West Santa Clara Street (between Blocks D and E; refer to Figure 2-7, *Open Space Plan*)
- Construction of a new multi-use trail at least 10 feet away from the riparian corridor (but generally closer to 50 feet from the riparian corridor)
- Construction, between West Santa Clara and West San Fernando Streets, of pedestrian-only boardwalks,[61] that may be located up to the edge of the riparian corridor, and may extend into the riparian corridor in limited circumstances. These circumstances include where these features replace existing impervious, hardscape, and/or disturbed landscape surfaces and where existing buildings extend within the minimum width of a boardwalk, such that an encroachment into the riparian corridor is necessary to ensure continuity of the feature.
- Placement of creek overlooks/viewing platforms within the riparian setback or riparian corridor. If placed within the riparian corridor, development of the platforms would avoid removal of native trees, avoid placement of footings within the top of bank, and be located no less than 250 linear feet apart, with up to 4-foot protrusion into the riparian corridor for a maximum of 25 feet in length along the riparian corridor.
- Removal of existing fencing between the creek and the project site and possible replacement with wildlife-friendly fencing
- Replacement of the West San Fernando Street vehicle bridge over Los Gatos Creek (refer to Figure 2-3, *Land Use Plan*)
- Construction of a new utility corridor ("utilidor") via jack-and-bore crossing underneath Los Gatos Creek in two locations: (1) on the north side of West San Carlos Street between Block H and Block G1, and (2) between Block D at South Autumn Street and Block E. Jacking and receiving pits on either side of the creek would be placed outside of the riparian corridor. In addition, the utilidor would cross Los Gatos Creek in at least one of the following two locations (refer to Figure 2-10, *Preliminary Utilidor Alignment Options*):
  - On the replacement West San Fernando Street vehicle bridge, and/or
  - On the proposed footbridge between Block D and Block E.

[60] Overall, the project would reduce impervious surfaces by more than 50 percent within the Los Gatos Creek riparian setback of 50 feet.

[61] Pedestrian boardwalks would be narrower than a multi-use trail and intended for less-intensive use. To minimize the disruption of vegetation, the boardwalks would be permeable and would be constructed no more than 4 feet off the ground. Boardwalk materials and lighting would be limited by the Downtown West Design Standards and Guidelines and by City lighting policies. Pedestrian boardwalks would encourage the flow of people, rather than creating places to gather and create noise, to protect the existing and extended habitat from noise and light.

- Reconstruction of an existing storm drain outfall to Los Gatos Creek, under the West Santa Clara Street overcrossing, which would be relocated into creeping wild rye habitat. The new outfall would require a flap gate to prevent backwater flows.
- Demolition, construction, and renovation of office, residential, and retail/cultural buildings; as well as buildings for recreational/educational activities outside of the proposed 30- or 50-foot riparian setback (as described at the beginning of this section)
- Implementation of flow conveyance and creek habitat enhancements (removal of debris, live and dead trees, and logjams) and placement of five engineered fish habitat enhancement log structures or other bioengineered features in Los Gatos Creek

Potential permanent impacts on riparian habitat, including operational impacts, would include: construction-related removal of riparian vegetation for the new footbridge over Los Gatos Creek and for elevated pedestrian boardwalks and viewing platforms where they would extend into the riparian corridor; loss of creeping wild rye/riparian habitat due to outfall construction; increased night lighting, noise, trash or debris, and shading caused by the construction and operation of new buildings, the multi-use trail, pedestrian boardwalks, viewing platforms, and bridges near (or, in limited circumstances, in) the riparian corridor; removal of trees for flow conveyance and creek habitat enhancements; and placement of fish habitat structures in Los Gatos Creek.

Potential temporary impacts on riparian habitat include: clearing and grubbing of adjacent work areas in or near the riparian corridor during construction of the footbridge and of pedestrian boardwalks and/or viewing platforms where they would extend into (and possibly where they would be adjacent to) the riparian corridor; crushing of vegetation during worker access and materials staging; incidental entry of soils or harmful materials into Los Gatos Creek; and construction-related increases in artificial night lighting and noise.

The following discussion analyzes the potential permanent and temporary construction and operational impacts on riparian habitat of each of the project elements listed above.

Impacts of the Footbridge

Construction Impacts

The new footbridge over Los Gatos Creek is anticipated to be a clear-span bridge supported by abutments on either end. The footbridge is expected to be 12 feet wide and approximately 85 feet long, with approximately 65 feet of the bridge located in or over riparian habitat and 20 feet extending over open water. The footings/abutments would be constructed outside the top of bank to the extent feasible, but they may need to be constructed within the riparian corridor (Appendix M). The footings/abutments are assumed to be 16 feet wide and 8 feet long.

Potential permanent impacts on riparian habitat would occur where the clear-span footbridge would bisect the riparian corridor on either side of the creek, including the abutments that could extend beyond the bridge. Potential impacts could also result from the shading of open water. Based on the extent of riparian and open water habitat and the bridge's estimated dimensions, the new footbridge would result in the permanent loss of an estimated 0.02 acres (812 sf) of riparian habitat and 0.006 acres (240 sf) of shading of open water. In addition, an excavator is anticipated to work in the stream channel during construction, and removal of riparian vegetation may be required for access and construction in an estimated 25-foot-wide area extending 30 feet down the

creek bank on all sides of the bridge placement. This work would result in a total temporary impact area of 0.07 acres (3,000 sf).

The proposed project would be expected to require replacement of or compensation for replacement of permanently impacted riparian habitat at a 1:1 ratio based on acreage, or as otherwise specified by the permitting resource agencies. Shading impacts would likely require creek enhancement at a minimum 1:1 ratio based on acreage, or as otherwise specified by the permitting agencies. Potential temporary impacts include construction-related disturbance of riparian vegetation by workers and equipment required to install the footbridge, and the potential for erosion or the entry of harmful materials into Los Gatos Creek. Therefore, permanent and temporary impacts on riparian habitat would be **potentially significant**.

Lighting and Noise. Riparian corridors, even those in an urban setting, offer natural cover, food, water, and nest sites for a variety of birds and mammals, and riparian vegetation maintains temperatures for terrestrial and aquatic habitats.[62] Although wildlife in riparian corridors adjacent to Downtown San José is habituated to a certain level of light and noise, construction-related increases in artificial night lighting and noise or a change in adjacent uses could impact wildlife in the riparian corridor by disrupting their circadian rhythms,[63] increasing stress, or masking natural sounds. These changes to baseline conditions could cause animals to avoid lighted or noisy areas that previously provided suitable resting, dispersal, or feeding habitat, or could cause them to miss auditory cues about predators and/or prey.

Construction of the footbridge would occur during the daylight hours (7 a.m. to 7 p.m.). Therefore, the project would have a **less-than-significant** impact on riparian wildlife from nighttime lighting associated with construction of the footbridge, and no mitigation is required. Noise during construction of the footbridge would likely be generated by earth-moving equipment, truck trips, concrete pours or placement of pre-cast bridge abutments, and the use of a crane to place the clear-span bridge across Los Gatos Creek. Construction of the footbridge would last an estimated 6 months or less and would occur in a very limited area of the riparian corridor. Wildlife would have access to the majority of the riparian corridor and would likely avoid the construction area temporarily during construction. Construction equipment would use noise suppression devices as described in General Plan Policy EC-1.7[64] and SCA NO-1, Construction-Related Noise (refer to Section 3.10, *Noise and Vibration*). Therefore, noise impacts on wildlife during construction of the footbridge would be **less than significant**, and no mitigation is required.

Operational Impacts

Potential operational impacts of the proposed footbridge on riparian habitats could result from increased human use by pedestrians (e.g., increased noise, light, and refuse), which could impact wildlife that uses the corridor. The *Downtown West Design Standards and Guidelines* include a standard to minimize lighting on the footbridge by targeting lighting levels to those required for

62 City of San José, *Downtown Strategy 2040 Integrated Final EIR*, December 2018.

63 A *circadian rhythm* is a natural, internal process that regulates the sleep-wake cycle in animals over an approximately 24-hour period. These rhythms can become altered by external cues such as light.

64 City of San José, *Envision San José 2040 General Plan*, adopted November 1, 2011 (amended March 16, 2020). Available at https://www.sanjoseca.gov/home/showdocument?id=22359. Accessed January 16, 2020.

pedestrian safety and prohibiting light trespass into the riparian corridor. The *Downtown West Design Standards and Guidelines* also require wildlife-proof waste receptacles. The area is currently developed and open to ongoing human activity on three sides: light industrial and commercial businesses to the west, the VTA San Fernando light rail station to the south, and West San Fernando Street to the north. In addition, homeless encampments are present[65] at the southwest and southeast corners of this stream reach, north of the San Fernando light rail station.

Overall, the level of existing disturbance within and adjacent to the riparian corridor makes the riparian habitat in this area conducive only to wildlife species that are tolerant of human activity.

Considering implementation of the *Downtown West Design Standards and Guidelines*, combined with the existing baseline disturbance, operational impacts of the proposed footbridge would be **less than significant**, and no mitigation is required.

Mitigation Measures

For the footbridge, no mitigation is required for construction-related nighttime lighting or noise impacts on wildlife, or for operational impacts.

However, the proposed project would implement the following mitigation measures to reduce potentially significant construction-related permanent and temporary impacts on riparian habitat from the footbridge to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require providing environmental training to construction crews, delineating the limits of construction around riparian habitat to exclude work within those limits, returning any temporarily impacted areas to pre-project conditions through re-vegetation and monitoring, compensating for permanently impacted riparian habitat, and preparing and implementing a fish relocation plan for in-water work in Los Gatos Creek.

> **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1b: In-Water Construction Schedule** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1c: Native Fish Capture and Relocation** (refer to Impact BI-1)
>
> **Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**
>
> The project applicant for the specific construction activity to be undertaken and its contractors shall implement the following measures.
>
> For portions of the project site located within 50 feet of the riparian corridor—such as the new footbridge; multi-use trail and associated infrastructure; pedestrian boardwalks, viewing platforms, and signage; removal and replacement of fencing; replacement of the West San Fernando Street vehicle bridge; reconstruction of the existing storm drain; and building demolition, construction, and renovation—a qualified biologist shall clearly delineate the construction footprint in or within 50 feet of the riparian area with flagging

[65] Environmental Science Associates, personal observation during reconnaissance-level field survey, September 27, 2019.

before the start of construction to avoid the accidental removal or trampling of vegetation outside of the project limits.

The limits of construction within 50 feet of the riparian corridor shall be confined to the smallest possible area to complete the required work. The edge of construction in and near riparian areas shall be separated and protected from the work area through silt fencing, amphibian-friendly fiber rolls (i.e., no microfilament), or other appropriate erosion control material. Staging of materials and all other project-related activity shall be located at least 25 feet upslope from riparian areas.

Where disturbance to riparian habitat cannot be avoided, any temporarily affected riparian habitat shall be restored to pre-construction conditions or better at the end of construction, in accordance with the requirements of USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW permits. Compensation for permanent impacts on riparian habitat shall be provided at a 1:1 or greater ratio, or as specified by USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW. Compensation for loss of riparian habitat may be in the form of permanent on-site or off-site creation, restoration, enhancement, or preservation of habitat. At a minimum, the restoration or compensation sites shall meet the following performance standards by the fifth year after restoration or as otherwise required by resource agency permits:

(1) Temporarily affected areas are returned to pre-project conditions or better.

(2) Native vegetation cover shall be at least 70 percent of the baseline native vegetation cover in the impact area.

(3) No more cover by invasive species shall be present than in the baseline/impact area.

Restoration or compensation shall be detailed in a Riparian Habitat Mitigation and Monitoring Plan, which shall be developed before the start of construction and in coordination with permit applications and/or conditions from applicable regulatory agencies. At a minimum, the plan shall include:

(1) Name and contact information for the property owner of the land on which the mitigation will take place;

(2) Identification of the water source for supplemental irrigation, if needed;

(3) Identification of depth to groundwater;

(4) Topsoil salvage and storage methods for areas that support special-status plants;

(5) Site preparation guidelines to prepare for planting, including coarse and fine grading;

(6) Plant material procurement, including assessment of the risk of introduction of plant pathogens through the use of nursery-grown container stock vs. collection and propagation of site-specific plant materials, or use of seeds;

(7) A planting plan outlining species selection, planting locations, and spacing for each vegetation type to be restored;

(8) Planting methods, including containers, hydroseed or hydromulch, weed barriers, and cages, as needed;

(9) Soil amendment recommendations, if needed;

(10) An irrigation plan, with proposed rates (in gallons per minute), schedule (i.e., recurrence interval), and seasonal guidelines for watering;

(11) A site protection plan to prevent unauthorized access, accidental damage, and vandalism;

(12) Weeding and other vegetation maintenance tasks and schedule, with specific thresholds for acceptance of invasive species;

(13) Performance standards, as referenced above, by which successful completion of mitigation can be assessed relative to a relevant baseline or reference site, and by which remedial actions will be triggered;

(14) Success criteria that shall include the minimum performance standards described in Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat, and Mitigation Measure BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat;

(15) Monitoring methods and schedule;

(16) Reporting requirements and schedule;

(17) Adaptive management and corrective actions to achieve the established success criteria; and

(18) An educational outreach program to inform operations and maintenance departments of local land management and utility agencies of the mitigation purpose of restored areas to prevent accidental damages.

The Riparian Habitat Mitigation and Monitoring Plan shall be developed before the start of construction and in coordination with permit applications and/or conditions from applicable regulatory oversight agencies. The plan shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, prior to the issuance of any demolition, grading, or building permit that would include construction activities that would have direct impacts on riparian habitat.

Significance after Mitigation: With implementation of Mitigation Measures BI-1a, BI-1b, BI-1c, and BI-2a, potential impacts on riparian habitat from the footbridge would be **less than significant with mitigation incorporated**.

Impacts of the Multi-Use Trail, Pedestrian Boardwalks, Viewing Platforms, Interpretive Signage, and Removal and Replacement of Fencing

Construction Impacts

The proposed project would include a new Class I (e.g., dirt) multi-use trail, pedestrian boardwalks, viewing platforms, and interpretive signage. The multi-use trail would have a minimum 10-foot setback from the riparian corridor, but the pedestrian boardwalks, viewing platforms, and signage could be adjacent to or, in limited circumstances, within the riparian corridor. Plans for Reaches 5C and 5E as described in the City of San José's Los Gatos Creek Trail–Reach 5 Master Plan[66] include a trail that appears to be in approximately the same location as the project's proposed multi-use trail, with minor modification as directed by the City. According to the master plan, the Reach 5C trail alignment, adjacent to the riparian corridor between the Southern Pacific Railroad undercrossing and Park Avenue, would be constructed on the top of bank; and Reach 5E, adjacent

[66] City of San José, *Los Gatos Creek Trail—Reach 5 Master Plan,* June 20, 2008.

to the riparian corridor between West San Fernando and West Santa Clara Streets, would be constructed on the top of bank before routing pedestrians and bicyclists onto existing sidewalks. In addition, the project would encourage removal of existing fences outside of the riparian corridor between Los Gatos Creek and Downtown West and replacement with wildlife-friendly fences that do not impede movement of, or create a hazard to, wildlife. The project would also remove existing impervious, hardscape, and/or disturbed landscape surfaces (such as areas of disturbed habitat and non-native vegetation as well as areas of compacted bare soil, gravel, or mulch that are not part of habitat restoration) within the riparian setback and corridor, and replace these surfaces with vegetation and/or permeable surfaces.

Because the multi-use trail would be outside of riparian habitat, no permanent impacts associated with its construction are anticipated, and no mitigation is required. Removal of chain-link fencing and replacement with post-and-rail wildlife friendly fencing is expected to be negligible in terms of permanent impacts because both types of fencing are assumed to include similarly-sized and similarly-spaced support posts. However, placement of pedestrian boardwalks, viewing platforms, and interpretive signage outside of the existing building footprints and within the riparian corridor may require permanent removal of riparian vegetation. The pedestrian boardwalks and viewing platforms would be elevated, rather than constructed directly on grade, thereby minimizing the area to be disturbed for supporting foundations. Nevertheless, permanent impacts on riparian habitat would be **potentially significant**.

Construction of the multi-use trail, pedestrian boardwalks, viewing platforms, and interpretive signage and replacement of fencing adjacent to riparian habitat could result in temporary impacts on riparian habitat during clearing and grubbing of adjacent work areas; crushing of vegetation during worker access and materials staging; and the potential for erosion or the entry of harmful materials into Los Gatos Creek. The pedestrian boardwalks and viewing platforms would be elevated, rather than constructed directly on grade, thereby minimizing the area to be disturbed for supporting foundations. Nevertheless, temporary impacts on riparian habitat would be **potentially significant**.

Lighting and Noise. As described earlier in this impact discussion under *Impacts of the Footbridge*, construction-related increases in artificial night lighting and noise could impact wildlife in the riparian corridor. Construction of the multi-use trail, pedestrian boardwalks, viewing platforms, and interpretive signage and replacement of fencing would occur during the daylight hours (7 a.m. to 7 p.m.). Therefore, the project would have a **less-than-significant** impact on wildlife from nighttime lighting associated with construction of the multi-use trail, and no mitigation is required. Noise during construction of the multi-use trail, pedestrian boardwalks, viewing platforms, and interpretive signage could be generated by clearing and grubbing equipment; small earth-moving equipment such as a skid steer, if used; and truck trips for materials and/or spoils. Construction equipment would be minimal and small in scale. The equipment would use noise suppression devices as described in General Plan Policy EC-1.7 and SCA NO-1, Construction-Related Noise (refer to Section 3.10, *Noise and Vibration*). Therefore, the project would have a **less-than-significant** impact on riparian wildlife from noise during construction of the multi-use trail, pedestrian boardwalks, viewing platforms, and interpretive signage and replacement of fencing is anticipated, and no mitigation is required.

Operational Impacts

The multi-use trail, pedestrian boardwalks, viewing platforms, and interpretive signage would result in an increase in human activity, and thus would have the potential to increase noise, lighting, and refuse adjacent to the Los Gatos Creek riparian corridor. This could potentially impact wildlife that uses the riparian corridor, as discussed earlier in this impact discussion under *Impacts of the Footbridge*. The multi-use trail would be a minimum 10-foot riparian setback, which would provide a sufficient buffer between transient human activity associated with the multi-use trail and wildlife using the riparian corridor. The pedestrian boardwalks, viewing platforms, and signage could be adjacent to or, in limited circumstances, within the riparian corridor, as permitted by Council Policy 6-34. However, these are considered passive uses and human activity thereon would not be anticipated to adversely affect, to a substantial degree, wildlife using the riparian corridor. In addition, human homeless encampments were observed during the field survey[67] along Los Gatos Creek, which makes the riparian habitat in this area conducive only to wildlife species that are tolerant of human activity.

The *Downtown West Design Standards and Guidelines* include a number of guidelines and standards related to trails, the pedestrian boardwalks, and viewing platforms to protect the Los Gatos Creek riparian corridor. These include limiting active programming to outside of the riparian setback except where necessary to ensure continuity of the pedestrian boardwalks (i.e., where existing building edges are closer to the riparian corridor than the width required for a pedestrian boardwalks), and where the new features would replace an existing impervious, hardscape, and/or impervious surface with a permeable surface; restricting lighting within the riparian corridor and setbacks; and installing wildlife-proof waste receptacles. Therefore, with the implementation of the *Downtown West Design Standards and Guidelines*, the project would have a **less-than-significant impact** on riparian wildlife from operation of the multi-use trail, pedestrian boardwalks, viewing platforms, interpretive signage, and fence replacement, and no mitigation is required.

Mitigation Measures

For the multi-use trail, pedestrian boardwalks, viewing platforms, interpretive signage, and removal and replacement of fencing, no mitigation is required for permanent construction-related impacts on riparian habitat, for construction-related nighttime lighting or noise impacts on wildlife, or for operational impacts.

However, the proposed project would implement the following mitigation measures to reduce potentially significant temporary construction-related impacts on riparian habitat from construction of the multi-use trail, pedestrian boardwalks, viewing platforms, and interpretive signage to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require providing environmental training to construction crews, delineating the limits of construction around riparian habitat to exclude work within those limits,

[67] Environmental Science Associates, personal observation during reconnaissance-level field survey, September 27, 2019.

and returning any temporarily impacted areas to pre-project conditions through re-vegetation and monitoring.

> **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)
>
> **Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**
>
> **Significance after Mitigation:** With implementation of Mitigation Measures BI-1a and BI-2a, potential impacts on riparian habitat from the multi-use trail, pedestrian boardwalks, viewing platforms, interpretive signage, and removal and replacement of fencing would be **less than significant with mitigation incorporated**.

Impacts of the West San Fernando Street Vehicle Bridge Replacement

Construction Impacts

Replacement of the West San Fernando Street vehicle bridge would involve removing the existing bridge above Los Gatos Creek and the support columns in the creek channel, and replacing them with a clear-span bridge. The replacement bridge would be the same size as the existing bridge, and the new bridge abutments would be of comparable size and in the same location as the existing abutments (top of creek bank). Therefore, replacing the West San Fernando Street vehicle bridge is not expected to result in a permanent loss of riparian habitat or to increase shading in the riparian corridor, and no mitigation is required.

Temporary impacts associated with removal of the existing bridge supports would include re-suspension of sediment, as described under Impact BI-1, *Special-Status Fish*. Additional potential temporary impacts would include construction-related disturbance to riparian vegetation by the workers and heavy equipment in the riparian corridor and creek channel, and the potential for entry of deleterious materials (e.g., hazardous materials, site runoff, sediment) into Los Gatos Creek. Excavators are anticipated to work within the creek channel and riparian corridor during demolition of the existing bridge, and within the riparian corridor during construction of the new bridge. Removal of riparian vegetation in an estimated 25-foot-wide area extending 30 feet down the creek bank on all sides of the bridge placement, for a total temporary impact area of approximately 0.07 acres (3,050 sf), may be required for excavator and crew access during construction. These impacts on riparian habitat would be **potentially significant**.

Lighting and Noise. As described earlier in this impact discussion under *Impacts of the Footbridge*, construction-related increases in artificial night lighting and noise could impact wildlife in the riparian corridor. Construction would occur during the daylight hours (7 a.m. to 7 p.m.). Therefore, impacts on riparian wildlife from construction-related lighting used during replacement of the West San Fernando Street bridge are expected to be **less than significant**, and no mitigation is required.

Noise during construction of the West San Fernando Street bridge could be generated by clearing and grubbing equipment, heavy equipment for demolition and earth-moving, truck trips for materials and spoils, concrete pours or placement of pre-cast bridge abutments, and use of a crane to place the bridge section across Los Gatos Creek. There are several existing disturbances near the stream reach where the West San Fernando Street replacement bridge is planned to be

constructed. For example, the bridge would be replaced at the site of an existing roadway, and homeless encampments are present[68] below the bridge.

Overall, the level of existing disturbance within and adjacent to the riparian corridor makes the riparian habitat in this area conducive only to wildlife species that are tolerant of human activity. These species would likely avoid the area temporarily during construction by moving to other sections of the riparian corridor upstream and downstream of the construction site. In addition, construction would occur during the daylight hours, and equipment would use noise suppression devices as described in General Plan Policy EC-1.7 and SCA NO-1, Construction-Related Noise (refer to Section 3.10, *Noise and Vibration*). Therefore, noise impacts on wildlife from replacement of the West San Fernando Street bridge would be **less than significant**, and no mitigation is required.

Operational Impacts

No new noise or light, or change in use, would be associated with the replacement of the West San Fernando Street vehicle bridge. Therefore, impacts on riparian wildlife from operation of this bridge would be **less than significant**, and no mitigation is required.

Mitigation Measures

For replacement of the West San Fernando Street vehicle bridge, no mitigation is required for permanent construction-related impacts on riparian habitat; construction-related lighting or noise impacts on wildlife; or operational impacts.

However, the proposed project would implement mitigation measures to reduce the potentially significant temporary impacts of replacing the West San Fernando Street vehicle bridge to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require providing environmental training to construction crews; delineating the limits of construction around riparian habitat to exclude work within those limits; returning any temporarily impacted areas to pre-project conditions through re-vegetation and monitoring; and preparing and implementing a fish relocation plan for in-water work in Los Gatos Creek.

> **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1b: In-Water Construction Schedule** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1c: Native Fish Capture and Relocation** (refer to Impact BI-1)
>
> **Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**
>
> **Significance after Mitigation:** With implementation of Mitigation Measures BI-1a, BI-1b, BI-1c, and BI-2a, potential impacts on riparian habitat from construction of the West San Fernando Street vehicle bridge replacement would be **less than significant with mitigation incorporated**.

[68] Environmental Science Associates, personal observation during reconnaissance-level field survey, January 3, 2020.

Impacts of the Utilidor

Construction Impacts

Installation of the utilidor inside the box girder of the new West San Fernando Street bridge would be accomplished off-site and would not require work in or above the channel, or in the riparian corridor; therefore, no impacts on the Los Gatos Creek riparian corridor are anticipated. The utilidor may be installed on the new footbridge either before or after installation of this bridge. Under either scenario, potential temporary impacts would be similar to those of the bridge construction described earlier in this impact discussion under *Impacts of the West San Fernando Street Vehicle Bridge Replacement*: impacts on riparian habitat from heavy equipment in the construction area, and impacts on Los Gatos Creek from construction materials or deleterious (e.g., hazardous materials, site runoff, sediment) materials that could inadvertently enter Los Gatos Creek. These temporary impacts on riparian habitat would be **potentially significant**.

As described in Chapter 2, *Project Description*, and as shown on Figure 2-10, *Preliminary Utilidor Alignment Options*, jack-and-bore construction would be used to construct the utilidor underneath Los Gatos Creek to link Block H with the rest of the site, crossing Los Gatos Creek north of West San Carlos Street. In addition, jack-and-bore construction may be used to construct the utilidor underneath Los Gatos Creek to link Block E with the rest of the site between West Santa Clara Street and the VTA tracks. Jacking and receiving pits, as well as staging areas for jack-and-bore operations, would be located outside of the 50-foot riparian corridor. During jack-and-bore construction, the potential would exist for frac-outs[69] to occur. If a frac-out were to occur, bentonite slurry could be released into Los Gatos Creek, which could degrade water quality, adversely impacting riparian habitat and/or individual steelhead or other aquatic species by increasing suspended sediments. These temporary impacts would be **potentially significant**.

Lighting and Noise. As described earlier in this impact discussion under *Impacts of the Footbridge*, construction-related increases in artificial night lighting and noise could impact wildlife in the riparian corridor. Jack-and-bore construction would occur during the daylight hours (7 a.m. to 7 p.m.). Therefore, nighttime lighting impacts on riparian wildlife associated with installation of the utilidor would be **less than significant**, and no mitigation is required.

Installation of the utilidor within the box girder of the replacement West San Fernando Street vehicle bridge would not occur in or over Los Gatos Creek, and is not expected to have any noise impacts above and beyond installation of the replacement bridge. However, installation of the utilidor under Los Gatos Creek using jack-and-bore methods would require the use of excavators to dig (and fill) jacking and receiving pits and the use of a horizontal auger in upland areas outside of the riparian corridor. These jack-and-bore construction sites include existing disturbances to riparian wildlife typical of urban streams (e.g., homeless encampments within the riparian corridor), and roadways, public transit, businesses, and parking lots adjacent to the riparian corridor.

Overall, the level of existing disturbance within and adjacent to the riparian corridor makes the riparian habitat in this area conducive only to wildlife species that are tolerant of human activity.

[69] A *frac-out* is the condition in which drilling mud is released through fractured bedrock into the surrounding rock and sand and travels toward the surface during directional bore operations such as horizontal directional drilling.

These species would likely avoid the area temporarily during construction by moving to other sections of the riparian corridor upstream and downstream of the construction site. In addition, construction equipment would use noise suppression devices as described in General Plan Policy EC-1.7 and SCA NO-1, Construction-Related Noise (refer to Section 3.10, *Noise and Vibration*). Therefore, noise impacts on riparian wildlife associated with utilidor construction would be **less than significant**, and no mitigation is required.

Operational Impacts

No new noise or light, or change in use, would be associated with the operation of the utilidor where it crosses Los Gatos Creek. Therefore, impacts on riparian wildlife from operation of the utilidor would be **less than significant**, and no mitigation is required.

Mitigation Measures

For the utilidor construction, no mitigation is required for permanent construction-related impacts on riparian habitat, for construction-related nighttime lighting or noise impacts on wildlife, or for operational impacts.

However, the proposed project would implement the following mitigation measures to reduce potentially significant temporary impacts of installing the utilidor to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require providing environmental training to construction crews, delineating the limits of construction around riparian habitat to exclude work within those limits, returning any temporarily impacted areas to pre-project conditions through re-vegetation and monitoring, and developing and implementing a frac-out contingency plan.

> **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)
>
> **Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**
>
> **Mitigation Measure BI-2b: Frac-Out Contingency Plan**
>
> If jack-and-bore construction is implemented, the project applicant shall require the contractor to retain a licensed geotechnical engineer to develop a Frac-out Contingency Plan. The project applicant shall submit the contingency plan to the appropriate resource agencies (e.g., the California Department of Fish and Wildlife [CDFW], Regional Water Quality Control Board, U.S. Army Corps of Engineers [USACE], U.S. Fish and Wildlife Service [USFWS], and National Marine Fisheries Service [NMFS]) for review and approval prior to the start of construction of any pipeline that requires jack-and-bore construction to avoid surface waters. The regulatory agency–approved Frac-Out Contingency Plan shall also be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee. The Frac-out Contingency Plan shall be implemented where jack-and-bore construction under a waterway will occur to avoid, minimize, or mitigate potential project impacts during jack-and-bore construction, as specified in the contingency plan. The Frac-out Contingency Plan shall include, at a minimum:
>
> (1) Measures describing training of construction personnel about monitoring procedures, equipment, materials, and procedures in place for the prevention, containment, cleanup (creating a containment area and using a pump, using a

vacuum truck, etc.), and disposal of released bentonite slurry, and agency notification protocols;

(2) Methods for preventing frac-out, including maintaining pressure in the borehole to avoid exceeding the strength of the overlying soil;

(3) Methods for detecting an accidental release of bentonite slurry that include:

(a) Monitoring by a minimum of one qualified biological monitor throughout drilling operations to ensure swift response if a frac-out occurs;

(b) Continuous monitoring of drilling pressures to ensure they do not exceed those needed to penetrate the formation;

(c) Continuous monitoring of slurry returns at the exit and entry pits to determine if slurry circulation has been lost; and

(d) Continuous monitoring by spotters to follow the progress of the drill bit during the pilot hole operation, and reaming and pull back operations;

(4) Protocols that the contractor would follow if there is a loss of circulation or other indicator of a release of slurry; and

(5) Cleanup and disposal procedures and equipment the contractor would use if a frac-out occurs.

If a frac-out occurs, the contractor shall immediately halt work and implement the measures outlined in the Frac-out Contingency Plan to contain, clean up, and dispose of the bentonite slurry. The project applicant and/or contractor shall also notify and coordinate with appropriate regulatory agencies, as required by the Frac-Out Contingency Plan (e.g., CDFW, the Regional Water Quality Control Board, USACE, USFWS, and NMFS) before jack-and-bore activities can begin again.

Significance after Mitigation: With implementation of Mitigation Measures BI-1a, BI-2a, and BI-2b, potential impacts on riparian habitat from the utilidor construction would be **less than significant with mitigation incorporated**.

Impacts of Replacement of the Storm Drain Outfall

Construction Impacts

An existing 18-inch-diameter storm drain outfall into Los Gatos Creek, currently located under the West Santa Clara Street overcrossing, would be replaced with a 33-inch-diameter pipe, headwall and apron, or riprap, on the west bank of Los Gatos Creek south of the Santa Clara Street overcrossing. The new outfall would include a larger flap gate. From the top of bank to approximately 12 feet below the top of bank, this area is vegetated with creeping wild rye, a sensitive natural community. Impacts on creeping wild rye are analyzed in detail later in this impact discussion under *Creeping Wild Rye Sensitive Natural Community*. An additional 20 to 25 feet of riparian vegetation extends from the lower edge of the creeping wild rye down the bank to the channel. CDFW determines the limits of riparian vegetation on a case-by-case basis, but generally defines it as the entire area between the two top-of-bank areas; therefore, for this analysis, the area of the top of bank down to the channel in the immediate area of creeping wild rye is considered riparian habitat.

In the absence of construction drawings, the dimensions of the headwall and apron/riprap have been estimated to calculate permanent impacts on riparian habitat. Assuming a 33-inch-diameter outfall pipe; an 8-foot-long, 26-inch-deep footprint for the headwall; and an 8-foot-wide, 15-foot-long apron/area of riprap, the permanent impact on riparian habitat would total approximately 0.008 acres (341 sf). In addition, temporary impacts on riparian habitat could include disturbance caused by workers accessing the site, by clearing and grubbing in preparation for construction, or by the use of construction equipment on the channel banks or in the channel during installation of the storm drain outfall, headwall, and apron/riprap. These impacts would be **potentially significant**.

The project also proposes to construct a new, larger storm drainage pipe in Cinnabar Street in the northern portion of the site, to connect with a new storm drain installed in North Autumn Street. These new storm drainage pipes would connect to an existing outfall east of the former Howard Street—to be increased in size by the City as part of its ongoing Capital Improvement Program—that drains into the Guadalupe River. Project-related construction of larger storm drainage pipes and a new storm drain would occur outside of the riparian corridor and would therefore have no impact on riparian habitat. Potential project-related impacts related to the increased capacity of the storm drain outfall are discussed later in this impact discussion under *Operational Impacts*. Construction to increase the size of the existing storm drain outfall east of the former Howard Street under the City's Capital Improvement Program is addressed under *Cumulative Impacts*.

Lighting and Noise. As described earlier in this impact discussion under *Impacts of the Footbridge*, increases in artificial night lighting and noise during construction could impact wildlife in the riparian corridor. Construction of the storm drain outfall would occur during the daylight hours (7 a.m. to 7 p.m.). Therefore, impacts on riparian wildlife from nighttime lighting used during replacement of the storm drain outfall would be **less than significant**, and no mitigation is required.

During replacement of the storm drain outfall, noise could be generated by clearing and grubbing equipment, earth-moving equipment, truck trips for materials and spoils, and concrete pours. This work would occur adjacent to West Santa Clara Street and would be of limited duration. Overall, the level of existing disturbance within and adjacent to the riparian corridor limits its utility as habitat to wildlife species that are very tolerant of human presence. These species would likely avoid the area temporarily during construction by moving to other sections of the riparian corridor upstream and downstream of the construction site. In addition, construction equipment would use noise suppression devices as described in General Plan Policy EC-1.7 and SCA NO-1, Construction-Related Noise (refer to Section 3.10, *Noise and Vibration*). Therefore, noise impacts on wildlife from replacement of the storm drain outfall would be **less than significant**, and no mitigation is required.

Operational Impacts

No new noise or light would be associated with the operation of the replacement storm drain outfall south of the Santa Clara Street overcrossing. The outfall would discharge stormwater into Los Gatos Creek approximately 50 feet upstream from its current discharge location. Because Los Gatos Creek is a major perennial stream and the proposed new discharge location is so close to the current discharge location, no changes to stream hydrology or riparian vegetation are

anticipated. A concrete apron or riprap would be installed and would protect against erosion. Similarly, the increased capacity of storm drainage pipes in Cinnabar Street in the northern portion of the project site, which would connect to the existing outfall east of the former Howard Street, would result in increased stormwater being discharged into Guadalupe Creek. Because the Guadalupe River is a major perennial stream and the proposed new discharge location is the same as the current location, no changes to stream hydrology or riparian vegetation are anticipated. Therefore, a **less-than-significant** impact on riparian habitat would result from outfall operations, and no mitigation is required.

Mitigation Measures

For the replacement of the storm drain outfall, no mitigation is required for construction-related nighttime lighting or noise impacts on wildlife, or for operational impacts.

However, the proposed project would implement the following mitigation measures to reduce potentially significant construction-related impacts of replacing the storm drain outfall to a level of **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require providing environmental training to construction crews, delineating the limits of construction around riparian habitat to exclude work within those limits, returning any temporarily impacted areas to pre-project conditions through re-vegetation and monitoring, compensating for permanently impacted riparian habitat, and preparing and implementing a fish relocation plan for in-water work in Los Gatos Creek.

> **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1b: In-Water Construction Schedule** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1c: Native Fish Capture and Relocation** (refer to Impact BI-1)
>
> **Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**
>
> **Significance after Mitigation:** With implementation of Mitigation Measures BI-1a, BI-1b, BI-1c, and BI-2a, potential impacts on riparian habitat from replacement of the storm drain outfall would be **less than significant with mitigation incorporated**.

Impacts of Demolition, Construction, and Renovation of Buildings and Construction of Buildings for Recreational/Educational Activities

Construction Impacts

The proposed project would include demolition, construction, and renovation (hereafter referred to as "construction") of buildings and construction of various permanent structures for recreational/educational activities—such as program decks, serviced and un-serviced pavilions, and kiosks (refer to Chapter 2, *Project Description*, for description of these elements). These buildings would provide space for uses such as informal gatherings, extension of retail, social seating, commercial concessions, recreational rentals, and educational/learning/exhibit space. Program decks and kiosks would not include amplified music. Pavilions would host live music events but would be entirely enclosed. The project would also include an outdoor performance space in the St. John Triangle open space.

The project proposes 50-foot setbacks from Los Gatos Creek for new building construction and, consistent with the previously approved project on the former San Jose Water Company site, a 30-foot setback from the top of the channel wall along the Guadalupe River at the San Jose Water Company site. In addition, non-historic existing buildings along South Autumn Street (Blocks D8, D9, D10, D11, D12, and D13) that are currently within 50 feet of the riparian corridor may be retained and repurposed, or could be rebuilt within existing building footprints if within the riparian setback.[70] City Policy 6-34 allows consideration of a reduced riparian setback under certain circumstances (see Sections A.2 and A.3 of the policy). Because new structures, including pavilions and kiosks, program decks, and the outdoor performance space, would be constructed a minimum of 50 feet outside of the riparian corridor or within the footprint of existing buildings or previously approved setbacks, permanent impacts on riparian habitat from building construction would be **less than significant**, and no mitigation is required.

However, project construction could temporarily damage riparian vegetation if heavy equipment or workers were to enter the riparian corridor or stage materials there. In addition, equipment leaks, refueling, or improper storage or containment could cause harmful material (e.g., concrete truck washout, sediment) to enter Los Gatos Creek or the Guadalupe River, especially during the rainy season. This impact would be **potentially significant**.

Lighting and Noise. As described earlier in this impact discussion under *Impacts of the Footbridge*, increases in artificial night lighting during construction could impact wildlife in the riparian corridor. Construction would generally occur during the daylight hours (7 a.m. to 7 p.m.), except during 24-hour continuous concrete pours for major building foundations, which could be required for residential/commercial buildings. Construction-related night lighting is only expected to potentially impact wildlife when used for building construction adjacent to the Los Gatos Creek or Guadalupe River riparian corridors. Six blocks in the vicinity of the riparian corridor are planned for new construction: Blocks E1, E2, and E3 (collectively referred to as Block E), and Blocks G1, H2, and H3. This impact would be **potentially significant**.

During building construction, noise would be generated by construction crews, haul trucks, and heavy equipment accessing the construction site via existing primary roadways in Downtown San José, and by the operation of construction equipment such as pile drivers, compactors, excavators, concrete trucks, and other heavy equipment. Construction-related noise from pile driving and heavy equipment could indirectly impact active bird nests in riparian areas during the bird nesting season (February 1 through August 15 [inclusive]) or roosting bats, as described in the discussions under Impact BI-1, under *Nesting Birds* and *Special-Status Bats*. To reduce potentially significant construction-related impacts, the proposed project would implement Mitigation Measure BI-1e, Avoidance of Impacts on Nesting Birds and Mitigation Measure BI-1f, Roosting Bat Surveys. Most building construction activities would occur 50 feet or more from the riparian corridor, in accordance with City Policy 6-34, except in a few locations: where roadways used as haul routes cross Los Gatos Creek, where the former San Jose Water Company building and transformer house on Block E may be rehabilitated within 30 feet of the Guadalupe River, and where existing non-historical buildings within the riparian corridor of the Creekside

[70] City of San José, *Riparian Corridor Protection and Bird-Safe Design* (Policy 6-34), approved August 23, 2016. Available at https://www.sanjoseca.gov/home/showdocument?id=12815.

Walk at South Autumn Street open space may be rehabilitated or redeveloped (as described earlier in this impact discussion). The level of existing disturbance within and adjacent to the riparian corridor makes the riparian habitat in this area conducive only to wildlife species that are tolerant of human activity. These species may avoid the area temporarily during construction by moving to other sections of the riparian corridor upstream and downstream of the construction site. Construction equipment would use noise suppression devices as described in General Plan Policy EC-1.7 and SCA NO-1, Construction-Related Noise (refer to Section 3.10, *Noise and Vibration*). Therefore, noise impacts on wildlife from building demolition, construction, and renovation would be **less than significant with mitigation**.

Operational Impacts

Both the Diridon Station Area Plan EIR[71] and the Downtown Strategy 2040 EIR[72] included a mitigation measure requiring future development within 100 feet of the riparian corridors to analyze the impacts of new shading and thermal radiation from proposed structures on riparian vegetation and creek temperatures to assess potential impacts on fish in the Guadalupe River and Los Gatos Creek. The measure indicated that projects resulting in "a 20 percent or more increase in shade or any increase in average daily temperatures within the river corridor" would be required to alter their design to reduce shading or implement other measures to reduce instream water temperatures, such as increasing setbacks or planting additional shaded riverine aquatic habitat.

No analysis justifying the 20 percent threshold was presented in either of the above-referenced EIRs, or in the prior EIR for the Downtown Strategy 2000,[73] where the 20 percent figure first appeared; in each instance, the 20 percent threshold first appears in a mitigation measure without explanation or analysis. Moreover, none of the three prior EIRs discuss whether the 20 percent threshold is based on an annual total amount of sunlight, one or more individual days, or a calculation at a single worst-case moment in time. Finally, the prior EIRs do not explain the geographic area that is to be considered in the analysis of shading on riparian vegetation. Because shadow cast on riparian vegetation could have more complex effects than can be described with a simple quantitative threshold, this EIR presents a reasoned, qualitative analysis of potential effects.

The following analysis is based on a shadow study prepared by Integral Group, which is included as Appendix L to this Draft EIR. As described in *Approach to Analysis* in Section 3.9, *Land Use*, the shadow analysis assumes that all project buildings would reach the maximum allowable height (180–290 feet) shown in Chapter 2, *Project Description*, Figure 2-5, *Existing and Proposed Zoning Districts*, and would cover the entire footprint of each block on the project site, as shown in Chapter 2, Figure 2-6, *Existing Height Limits and Proposed Height Limits*. The shadow model does not include building setbacks at upper stories, and therefore, is a worst-case

[71] City of San José, *Diridon Station Area Plan EIR.* Final EIR certified June 17, 2014. Available at: https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/completed-eirs/diridon-station-area-plan. Accessed August 24, 2020.

[72] City of San José, *Downtown Strategy 2040 EIR.* Final EIR certified December 18, 2018. Available at: https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/downtown-strategy-2040. Accessed August 24, 2020.

[73] City of San José, *Downtown Strategy 2000 Plan EIR*, adopted in June 2005. Available at https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/completed-eirs/downtown-strategy-2000.

scenario. The analysis evaluates project-generated shadows on the winter solstice (on or around December 21), which is the shortest day of the year when the sun is lowest in the sky and shadows are the longest at any given time of day. To bracket the range of impacts, the analysis also considers the summer solstice (on or around June 21) and the spring/fall equinoxes (on or around March 21 and September 21), during the hours of 10 a.m., 12 noon, and 3 p.m.

Limited new shadow would be cast by the project on the Guadalupe River, and the portion of this reach that is most affected—adjacent to the project's Block E—has no riparian vegetation. Accordingly, shadow effects on the Guadalupe River would be less than significant and are not discussed further.

Under existing conditions, the Los Gatos Creek riparian corridor adjacent to the project site receives minimal shade from buildings. Relatively few existing buildings are adjacent to (or within 100 feet of) the creek, and those that do exist are generally no more than two stories in height. Many existing structures near Los Gatos Creek are single-story buildings. However, as shown in the analysis in Appendix L, development of the proposed project would substantially increase building shadow on the riparian corridor of Los Gatos Creek, particularly during the six months between the fall equinox and the spring equinox. It is important to note that, within the project area, the Los Gatos Creek riparian corridor is composed of a fairly dense riparian canopy of mature trees, which shades the creek; however, the seasonal extent has not been quantified.

Increased water temperatures may result from a reduction in riparian cover due to the substantial increase in shading described above, which may increase the exposure of instream habitat to direct sunlight. In addition, increased water temperatures may result from heat radiation from the newly constructed buildings and hardscape environments. This increased exposure to direct sunlight and/or heat radiation from buildings, and the resulting potential increases in water temperature, could impair the riparian environment. Increased water temperatures may result in the exclusion of fish from this portion of Los Gatos Creek and may prevent steelhead from migrating upstream or dispersing throughout the Los Gatos Creek–Guadalupe River system. Additional impacts on instream habitat may result from a loss of riparian cover, such as decreased prey availability for fish and a lack of cover for holding fish.[74] Some aquatic insects, the primary source of freshwater prey for steelhead, feed on leaves and woody material that fall in the water; terrestrial insects utilizing riparian vegetation occasionally fall into the waterway as well, providing another source of food for fish.

For these reasons, the impact on riparian habitat from shading by adjacent buildings and from changes in water temperature caused by losses in riparian cover or heat island effects would be **potentially significant**.[75]

[74] During downstream migration, most juvenile steelhead move rapidly from their natal reaches to San Francisco Bay. However, a small portion of the juvenile population may hold for up to several months within instream habitat that provides suitable cover, water temperature, and prey.

[75] The *heat island effect* refers to the tendency for built areas to retain solar radiation and heat generated by building heating systems and other human activity and discharge that heat during the cooler evening hours, thereby increasing the ambient temperature in the surrounding area, compared to conditions in a less developed environment.

Noise and Lighting. Operational noise from building equipment, such as heating, ventilation, and air conditioning (HVAC), is expected to be negligible. Pavilions may include commercial concessions, event support space, public restrooms, shared community meeting space, food and beverage service in connection with events, and educational/learning/exhibit space. Some pavilions could be used for live entertainment venues; however, pavilions would be enclosed structures and would not be expected to generate much, if any, outdoor noise. Kiosks may include commercial concessions, newsstands, food and beverage (pre-made), and recreational rentals. Current noise levels adjacent to the riparian corridor in downtown include vehicular and train traffic, commercial and light industrial building operations, and human activity, including homeless encampments. The noise levels associated with concessions, exhibit space and rentals in the vicinity of the riparian corridor are not expected to generate noise levels that are substantially different from noise levels that currently exist. With respect to the outdoor performance space, the noise analysis in Section 3.10, *Noise and Vibration*, explains: "Operators of events at the outdoor performance space would be required to obtain a special event permit from the City to operate any loudspeaker or sound amplifier. Such a permit may establish additional operational conditions such as hours of operation, direction of speakers, or sound level restrictions. Such events would not be regular occurrences, would be restricted by permit conditions to certain hours, and would occur in an area where rail noise occurs multiple times an hour during daytime periods and approximately once an hour into the late evening." The outdoor performance space would be located at least 650 feet from the Guadalupe River riparian corridor and farther than that from the Los Gatos Creek riparian corridor, and would be largely shielded from both waterways by existing buildings. It would also be about half that distance from the Caltrain tracks, which, as noted, are an existing noise source. Therefore, the outdoor performance space would be unlikely to result in any substantial noise impacts on species using riparian habitat along either waterway.

In addition, the proposed project would conform to Sections 20.20.300, 20.30.700, 20.40,600, and 20.50.300 of the City of San José Municipal Code,[76] and would implement **Mitigation Measure NO-1a, Operational Noise Performance Standard** (refer to Section 3.10, *Noise and Vibration*), to limit noise levels through the use of low-noise-emitting HVAC or other strategies.

Traffic noise is expected to increase as development of the proposed project progresses; however, the Los Gatos Creek riparian corridor would be largely buffered from long-term traffic noise because of the open space and buildings between the primary roadways and the riparian corridor. As stated in Section 3.10, *Noise and Vibration* (Table 3.10-10, *Traffic Noise Increases along Roads in the Project Vicinity*), traffic noise would increase substantially (+8.3 A-weighted decibels [dBA]) in only one area where wildlife in the riparian corridor could potentially be impacted: the West San Fernando Street bridge crossing over Los Gatos Creek. Human encampments are present in what is a narrow riparian corridor along this reach.[77]

Overall, the level of existing disturbance within and adjacent to the riparian corridor makes the riparian habitat in this area conducive only to wildlife species that are tolerant of human activity.

[76] These sections of the City's Municipal Code establish performance standards for noise exposure associated with stationary/non-transportation sources at the property line of noise-sensitive uses. Specifically, noise exposure is limited to 55 dBA, 60 dBA, and 70 dBA at the property line of residential, commercial, and industrial receivers.

[77] Environmental Science Associates, personal observation during reconnaissance-level field survey, January 3, 2020.

Therefore, noise impacts from building equipment and traffic would be **less than significant**, and no mitigation is required.

Once constructed, buildings and public gathering areas such as program decks, pavilions, and kiosks in the vicinity of the Los Gatos Creek riparian corridor could increase ambient nighttime light levels if they are operating after dark. Increased ambient nighttime light levels could impact roosting bats and nesting birds in the riparian corridor.[78]

In accordance with the General Plan,[79] the Riparian Corridor Policy Study, [80] the City's Downtown Design Guidelines, and City Policy 6-34, [81] the following guidelines would reduce the potential for new light sources from all types of buildings to negatively impact wildlife in the riparian corridor:

- Design new development to protect adjacent riparian corridors from encroachment of lighting into the riparian zone.
- Design new development to use materials and lighting that reduce light and glare impacts into the riparian corridor.
- Orient exterior lighting fixtures downward.
- Place high-intensity lighting near riparian corridors as close to the ground as possible (e.g., bollard lighting).
- Direct light downward with light sources not visible from riparian area.

In addition, the *Downtown West Design Standards and Guidelines* include standards to avoid light trespass by interior and exterior lighting into the riparian corridor; require fully shielded down-lighting for outdoor building spaces such as paths and decks; require lighting on building façades to use wildlife-friendly lighting within the green-to-yellow light spectrum; and prohibit lights that blink or flash repeatedly (Appendix M). With implementation of these standards and guidelines, impacts on riparian corridors from exterior and interior building lighting would be **less than significant**, and no mitigation is required.

Potential impacts of increased ambient nighttime lighting on birds migrating at night, including in or near riparian corridors, are analyzed under Impact BI-4 and would be **less than significant with mitigation incorporated**.

Mitigation Measures

For the building demolition, construction, and renovation, and construction of program decks, pavilions, and kiosks, no mitigation is required for construction-related noise impacts on wildlife.

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78 The Diridon Station Area Plan EIR identified a significant unavoidable impact on riparian corridor wildlife, largely because of the inclusion of a ballpark and associated lighting that was planned for the area between Diridon Station and Los Gatos Creek. Because no ballpark was built and a ballpark is not currently proposed, that impact is not relevant to the current project.

79 City of San José, *Envision San José 2040 General Plan*, adopted November 1, 2011 (amended March 16, 2020). Available at https://www.sanjoseca.gov/home/showdocument?id=22359. Accessed August 22, 2020.

80 City of San José Riparian Corridor Policy Study. Approved by City Council May 17, 1994. Revised in March 1999. Available at https://www.sanjoseca.gov/home/showdocument?id=15579. Accessed August 22, 2020.

81 City of San José, *Riparian Corridor Protection and Bird-Safe Design* (Policy 6-34). Approved by City Council August 23, 2016. Available at https://www.sanjoseca.gov/home/showdocument?id=12815. Accessed August 22, 2020.

However, the proposed project would implement the following mitigation measures to reduce potentially significant construction-related permanent impacts on riparian habitat from the construction and operation of program decks, pavilions, and kiosks adjacent to the riparian setback, construction-related temporary impacts on riparian habitat, and construction-related noise and night lighting impacts on riparian wildlife to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require providing environmental training to construction crews; limiting construction to the non-nesting season for birds when feasible or, if avoiding the nesting season is not feasible, conducting pre-construction surveys for nesting birds and establishing no-disturbance buffers around any active nests to ensure they are not disturbed by construction, and repeating the pre-construction surveys when work resumes after being suspended for 7 days; delineating the limits of construction around riparian habitat to exclude work within those limits; returning any temporarily impacted areas to pre-project conditions through re-vegetation and monitoring; compensating for permanently impacted riparian habitat; and requiring contractors to direct night lighting away from the riparian corridor.

Mitigation Measure BI-1a: General Avoidance and Protection Measures (refer to Impact BI-1)

Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds (refer to Impact BI-1)

Mitigation Measure BI-1f: Roosting Bat Surveys (refer to Impact BI-1)

Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat

In addition, the proposed project would implement the following mitigation measures to reduce potentially significant operational impacts on riparian habitat to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require monitoring water temperatures within Los Gatos Creek to ensure that steelhead are not exposed to harmful conditions (the threshold of concern is 71.6˚F); monitoring riparian vegetation before and after building construction adjacent to the riparian corridor; establishing performance criteria for existing riparian vegetation; and, if performance criteria are not met, implementing habitat enhancement.

Mitigation Measure BI-2c: Monitor Effects of Shading and Heat Island on Riparian Vegetation and Stream Temperature

To evaluate the effects of building shading on riparian vegetation and water temperature in Los Gatos Creek, the project applicant shall implement an annual monitoring program that includes a baseline assessment and continues annually for 15 years following construction. Two or more unshaded reference sites shall be included for comparison to shaded areas to account for vegetation effects that are unrelated to the project, such as from drought. The following performance standards shall be used to evaluate vegetation and water temperature changes over time, and determine whether project-related shading is negatively affecting the riparian corridor, or whether the increased urban footprint is negatively affecting water temperatures in Los Gatos Creek.

Aquatic monitoring. The project applicant shall use the following methodology to study water temperature in Los Gatos Creek during the 15-year monitoring period. Prior to project construction, water and ambient air temperature loggers shall be installed at three locations within and adjacent to the project site. One logger shall be installed in upstream

Los Gatos Creek, one within the affected reach adjacent to building construction, and one downstream of the project site. Care shall be taken to ensure that each of these temperature loggers is installed in similar habitat types (e.g., pool, riffle, run) within similar habitat conditions (e.g., amount of cover, depth, flow rate). Loggers at these three locations shall record hourly water temperature values before, during, and after project construction. If the difference in water temperature between the upstream and downstream monitoring locations increases substantially over time, particularly above the threshold of concern (71.6 degrees Fahrenheit), then additional adaptive actions shall be implemented (e.g., riparian planting, increase in urban tree canopy, treatment of runoff) to compensate for any increase in stream temperature. All actions shall be consistent with the approved Habitat Enhancement Plan, described below.

Riparian monitoring. At a minimum, riparian vegetation shaded by project buildings shall meet the following performance standards by the 15th year of post-project monitoring:

(1) The loss of absolute cover of riparian canopy and understory cover relative to baseline conditions is less than or equal to 15 percent. (If the loss of cover exceeds this criterion, then the change shall be compared with changes measured in the reference site[s] to determine whether on-site shading is the causal factor as opposed to other external regional factors such as climate change, drought, and alterations to reservoir releases.)

(2) There is no more than a 5 percent reduction in native species relative to non-native species for tree and woody shrub species, measured both as species richness and relative cover.

The following approach shall be used to monitor vegetation conditions during the 15-year period:

(1) Prior to the start of building construction within 100 feet of the riparian corridor, the project applicant shall prepare a 15-Year Riparian Vegetation Monitoring Plan to assess the change in riparian vegetation canopy and understory cover in the Los Gatos Creek riparian corridor within 100 feet of the project. The Riparian Vegetation Monitoring Plan shall describe quantitative methods for measuring the canopy and understory vegetation cover of baseline on-site and reference site riparian habitat and changes in the extent and species composition of riparian vegetation canopy following the completion of building construction within 100 feet of the riparian corridor. This plan shall assess the impacts of shading by project buildings on the riparian vegetation. Reference sites shall be chosen that have comparable canopy coverage, species composition, hydrology, topography, and scale from locations on Los Gatos Creek or the Guadalupe River as close to the project site as possible. The Riparian Vegetation Monitoring Plan shall be submitted to the appropriate regulatory agencies (e.g., the California Department of Fish and Wildlife [CDFW]) for review and subsequently to the Director of Planning, Building and Code Enforcement or the Director's designee. The Riparian Vegetation Monitoring Plan shall include, at a minimum, the following elements:

   (a) Methods for monitoring and measuring composition (i.e., species), cover, and extent of existing riparian vegetation, which may include:

      (1) Tree canopy and wood understory cover plots or transects; and

      (2) Percent cover of non-native invasive species.

In addition, monitoring shall include qualitative indicators of riparian vegetation health such as photomonitoring and signs of early decline (e.g., yellowing of leaves, small leaves, poor growth) to allow for early indications that riparian canopy cover and understory vegetation is in decline. Monitoring will also include natural recruitment/succession of native riparian vegetation, by recording observations of seedling and sapling tree species, and tracking their persistence and growth each year.

(b) Pre-project conditions shall be assessed during the late summer before the start of each construction phase that includes construction within 100 feet of the riparian corridor. Post-project monitoring shall be conducted in years 1–15 following the conclusion of each construction phase that includes construction within 100 feet of the riparian corridor. Surveys shall be conducted during the late summer to capture riparian species during their maximum growth.

(c) The project applicant shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, an annual report documenting the monitoring of riparian habitat and any associated habitat enhancement activities. The first-year report shall consist of baseline on-site and reference site monitoring and a plan for habitat enhancement. Reports shall be submitted by December 30 of each monitoring year.

(2) A failure to meet the performance standards defined above in year 5, 10, or 15 shall trigger implementation of the following habitat enhancement measures as mitigation for loss of existing riparian habitat:

(a) Repeat the monitoring the following year (e.g., if performance criteria are not met in year 5, repeat monitoring in year 6). If in the following year (e.g., year 6), performance criteria are not met (i.e., for 2 years in a row), implement step (b), below.

(b) The project applicant shall develop a Habitat Enhancement Plan to be reviewed and approved by appropriate regulatory agencies (e.g., National Marine Fisheries Service), and submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee. The plan shall consist of a planting palette composed primarily of shade-tolerant riparian vegetation such as white alder (*Alnus rhombifolia*), bigleaf maple (*Acer macrophyllum*), box elder (*Acer negundo*), Oregon ash (*Fraxinus latifolia*), California buckeye (*Aesculus californica*), and other locally appropriate native species, as well as an invasive vegetation control plan (if appropriate based on monitoring findings).

(c) The area of plantings needed to offset losses of existing riparian vegetation shall be defined in the Habitat Enhancement Plan based on the documented difference in percent absolute cover of riparian vegetation between the baseline conditions and the percent absolute cover averaged over each year of annual monitoring to date.

(d) Mitigation gains in woody riparian vegetation shall be deemed successful when there is an 80 percent survival rate of plantings after 5 years of additional monitoring, and no increase in percent cover of invasive plant species in restored areas.

(e) If these criteria are not met, adaptive management and corrective actions shall be implemented to achieve the established success criteria, in coordination with the applicable regulatory agencies. These may include additional plantings, weeding, or provision of supplemental water. Monitoring within the corrective action area shall continue for up to 10 additional years, until the criteria are met, or as otherwise required by the applicable regulatory agencies.

(f) The project applicant shall prepare and submit an annual report to the Director of Planning, Building and Code Enforcement, or the Director's designee, documenting the annual monitoring of habitat enhancement activities to document that this performance standard has been satisfied.

Significance after Mitigation: With implementation of Mitigation Measures BI-1a, BI-1e, BI-1f, BI-2a, and BI-2c, potential impacts on riparian habitat from building demolition, construction, and renovation; construction and operation of program decks, pavilions, and kiosks; and shading caused by new buildings would be **less than significant with mitigation incorporated**.

Impacts of Creek Habitat/Flow Conveyance Enhancements

Construction Impacts

To facilitate water conveyance, decrease flooding, and enhance habitat, the project would remove an estimated 4 dead trees and 7 live trees (non-native and native) from the riparian corridor, as well as 13 individual in-channel logs, 3 logjams, 2 logs lodged on the creek bank, and 13 aerial logs within a highly constrained stream reach from West Santa Clara Street to San Carlos Street.

Live trees larger than 6 inches diameter at breast height (dbh) removed by the project would be replaced at a minimum ratio of 3:1 (trees replaced: trees removed) for native species and 2:1 for non-native species. Removal of live trees with a dbh of 2 to 6 inches would be mitigated at a minimum of 1:1 for native trees, and no mitigation for non-native trees. No mitigation is proposed for the removal of invasive tree species regardless of dbh. Removal of dead trees would be mitigated at a ratio of 1:1 (refer to Appendix D2, the *Google Downtown San José Los Gatos Creek Enhancement Project Site Assessment Summary Report*). Replacement trees would consist of a combination of plantings of shade-tolerant riparian vegetation such as Oregon ash (*Fraxinus latifolia*), California buckeye (*Aesculus californica*), and other locally appropriate native species. With implementation of tree replacement at the ratios above, permanent impacts associated with tree removal would be less than significant.

Because some of the logjams and single logs to be removed from the channel provide velocity refugia for steelhead moving through this reach during high flows, approximately five engineered fish habitat enhancement log structures (EFHELS) would be installed in the Los Gatos Creek channel to mitigate the removal of three logjams and several additional logs currently present in the channel, by creating habitat and high velocity refuge for steelhead. In addition, placing these structures would help to slow streamflow velocity and retain coarse sediment within the reach. All proposed work would need to be developed based on further field studies, design work,

collaboration and approval with the site owner (Valley Water), and review and permitting by relevant regulatory agencies, especially NMFS and CDFW.[82]

The placement of EFHELS, while beneficial to steelhead, would be a permanent impact of fill in potentially jurisdictional waters. Drawings representing the footprint of these structures are not available, so their size has been estimated by assuming that each EFHEL would be a log structure with root ball that would be anchored in the creek bank. Assuming that each log would be 18 feet long with a 2-foot-diameter trunk and a 6-foot-diameter root ball, and assuming that 12 feet of the trunk would be anchored in the creek bank and covered with rock, permanent impacts on riparian habitat would be 24 sf per EFHELS, or 120 sf for all five structures. Because a portion of the EFHELS would be placed in the creek, which would be a permanent impact on potentially jurisdictional waters, that impact is presented under Impact BI-3.

Removing trees and logjams from the instream channel and banks would result in a temporary loss of steelhead habitat until EFHELS are placed in the creek. Both of these activities would occur in-channel, and therefore, would occur outside of the normal rainy season, as described in Mitigation Measure BI-1b, In-Water Construction Schedule. The removal of logjams and logs and installation of EFHELS is assumed to occur during the same dry season, and therefore, would not impact steelhead moving through the reach during high flows.

In addition, removing trees and logjams from the in-stream channel and banks may cause sediment re-suspension and impacts on water quality similar to those described under Impact BI-1. However, in-channel work would be conducted during the summer months when streamflow is at its lowest and steelhead are least likely to be present. Should in-water work be required during the removal or placement of log structures, a fish rescue and relocation would be implemented to prevent any impact of construction on steelhead as described in Mitigation Measure BI-1c, Native Fish Capture and Relocation.

Mitigation Measures

In addition to implementing appropriate sediment and erosion control measures and containing potential chemical contaminants, the proposed project would implement the following mitigation measures to reduce potentially significant impacts to **less than significant with mitigation**. These measures would reduce the impacts because they require providing environmental training to construction crews; delineating the limits of construction around riparian habitat to exclude work within those limits; conducting in-water work outside of the rainy season; dewatering,

[82] H. T. Harvey and Associates, *Google Downtown San José Los Gatos Creek Enhancement Project Site Assessment Summary Report*, March 5, 2020.

capturing, and relocating fish out of the construction area if water is present in Los Gatos Creek; and returning any temporarily impacted areas to pre-project conditions.

> **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1b: In-Water Construction Schedule** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1c: Native Fish Capture and Relocation** (refer to Impact BI-1)
>
> **Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**
>
> **Significance after Mitigation:** With implementation of Mitigation Measures BI-1a, BI-1b, BI-1c, and BI-2a, potential impacts on special-status fish and habitat from instream enhancement activities would be **less than significant with mitigation incorporated**.

Conclusion Regarding Impact BI-2

In summary, if any project components analyzed above could permanently or temporarily impact riparian habitat, the proposed project would require permit authorization from some or all of the following agencies:

- CDFW (a Streambed Alteration Agreement [CFGC Section 1600 et seq.])
- NMFS (informal or formal consultation under FESA Section 7(c) [16 USC 1536(c) and Code of Federal Regulations Title 50, Section 402.12])
- San Francisco Bay Regional Water Quality Control Board (CWA Section 401 certification)
- USACE (CWA Section 404 permit)
- Valley Water (project review and approval; encroachment permit)
- Santa Clara Valley Habitat Agency (review for consistency with the Santa Clara Valley Habitat Plan [Habitat Plan])

(Refer to Section 3.2.2, *Regulatory Framework*, and Chapter 2, Section 2.15.2, *Other State, Regional, and Local Entities*.)

In addition to the SWPPP that would be required under the NPDES General Construction Permit, as described under the *Special-Status Fish* analysis in Impact BI-1, the proposed project would implement the following mitigation measures to reduce significant impacts on riparian habitat:

> **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1b: In-Water Construction Schedule** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1c: Native Fish Capture and Relocation** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds** (refer to Impact BI-1)
>
> **Mitigation Measure BI-1f: Roosting Bat Surveys** (refer to Impact BI-1)
>
> **Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**

Mitigation Measure BI-2b: Frac-Out Contingency Plan

Mitigation Measure BI-2c: Monitoring of Effects of Shading and Urban Heat Retention on Riparian Vegetation and Stream Temperature

Mitigation Measure HY-3b: Plan for Ongoing Creek Maintenance (refer to Section 3.8, *Hydrology and Water Quality*)

Mitigation Measure NO-1a: Operational Noise Performance Standard (refer to Section 3.10, *Noise and Vibration*)

Significance after Mitigation: Less than significant.

The project would also follow the guidelines in City Policy 6-34 (riparian corridor protection) and Environmental Resource Policy ER-6.3 in the General Plan. These policies are summarized in Section 3.2.2, *Regulatory Framework*, and analyzed for project consistency under Impact BI-5, below.

Creeping Wild Rye Sensitive Natural Community

As described in Section 3.2.1, *Environmental Setting*, the majority of the project site is disturbed urban land, but a sensitive natural community dominated by creeping wild rye is present in the riparian corridor of Los Gatos Creek directly south of West Santa Clara Street (refer to Figure 3.2-1).

As part of the proposed project, a new footbridge is planned to span Los Gatos Creek between West Santa Clara Street and the railroad tracks north of West San Fernando Street. The footbridge is expected to be placed approximately midway between West Santa Clara Street and the railroad tracks (refer to Figure 2-7, *Open Space Plan*).

As described earlier in this impact discussion, re-construction of the storm drain outfall south of the West Santa Clara Street overcrossing could temporarily and permanently impact creeping wild rye habitat, which would be a **potentially significant** impact. Additionally, construction of the pedestrian boardwalk adjacent to the existing building on Block D8 (450 West Santa Clara Street), south of West Santa Clara Street and along the edge of the riparian corridor, could temporarily affect creeping wild rye habitat through ground disturbance; this impact is not anticipated to be permanent because the elevated and permeable design of the boardwalk would allow regrowth of creeping wild rye. Because the creeping wild rye is within the riparian corridor, the temporary and permanent impacts are quantified under the *Riparian Habitat* section, above.

To reduce the potentially significant impact on creeping wild rye habitat, the proposed project would implement the following mitigation measures:

- Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat
- Mitigation Measure BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat

Implementing these mitigation measures would reduce impacts to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require conducting worker environmental awareness training for construction personnel regarding

protection of creeping wild rye habitat; installing fencing to delineate any creeping wild rye habitat; and returning any temporarily impacted areas to pre-project conditions through re-vegetation and monitoring.

Mitigation Measures for Impacts on Creeping Wild Rye Sensitive Natural Community

Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat (refer to Impact BI-1)

Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat

Prior to the start of construction within 20 feet of retained areas of creeping wild rye, the project applicant shall ensure that all areas that contain or potentially contain creeping wild rye are clearly delineated, separated, and protected from the work area by environmentally sensitive area fencing, which shall be maintained throughout the construction period. A qualified biologist shall oversee the delineation and installation of fencing. Excavation, vehicular traffic, staging of materials, and all other project-related activity shall be located outside of the environmentally sensitive area.

If creeping wild rye cannot be avoided, any temporarily affected areas shall be restored to pre-construction conditions or better at the end of construction that occurs within 20 feet of the retained area of creeping wild rye. At a minimum, the restoration sites shall meet the following performance standards by the fifth year after restoration:

(1) Temporarily affected areas shall be returned to pre-project conditions or better.

(2) Native vegetation cover shall be at least 70 percent of the baseline native vegetation cover in the impact area.

(3) No more cover by invasive species shall be present than in the baseline/impact area.

Restoration shall be detailed in a habitat mitigation and monitoring plan, which shall be developed before the start of construction and in coordination with permit applications and/or conditions. At a minimum, the plan shall include:

(1) Name and contact information for the property owner of the land on which the mitigation will take place;

(2) Identification of the water source for supplemental irrigation, if needed;

(3) Identification of depth to groundwater;

(4) Topsoil salvage and storage methods for areas that support special-status plants;

(5) Site preparation guidelines to prepare for planting, including coarse and fine grading;

(6) Plant material procurement, including assessment of the risk of introduction of plant pathogens through the use of nursery-grown container stock vs. collection and propagation of site-specific plant materials, or use of seeds;

(7) A planting plan outlining species selection, planting locations, and spacing for each vegetation type to be restored;

(8) Planting methods, including containers, hydroseed or hydromulch, weed barriers, and cages, as needed;

(9) Soil amendment recommendations, if needed;

(10) An irrigation plan, with proposed rates (in gallons per minute), schedule (i.e., recurrence interval), and seasonal guidelines for watering;

(11) A site protection plan to prevent unauthorized access, accidental damage, and vandalism;

(12) Weeding and other vegetation maintenance tasks and schedule, with specific thresholds for acceptance of invasive species;

(13) Performance standards by which successful completion of mitigation can be assessed relative to a relevant baseline or reference site, and by which remedial actions will be triggered;

(14) Success criteria that shall include the minimum performance standards described in Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat, and Mitigation Measure BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat;

(15) Monitoring methods and schedule;

(16) Reporting requirements and schedule;

(17) Adaptive management and corrective actions to achieve the established success criteria; and

(18) An educational outreach program to inform operations and maintenance departments of local land management and utility agencies of the mitigation purpose of restored areas to prevent accidental damages.

The Habitat Mitigation and Monitoring Plan and all field documentation, prepared in coordination with the appropriate regulatory agencies, shall be submitted to the Director of the City of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permit for construction that would occur within 20 feet of creeping wild rye habitat.

Significance after Mitigation: Less than significant.

Impact BI-3: The proposed project could have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. ***(Less than Significant with Mitigation)***

During reconnaissance surveys conducted on September 27, 2019, and January 3, 2020, Environmental Science Associates biologists estimated the areas of potentially jurisdictional wetlands and waters of the United States and the state that could be impacted by the proposed project. As shown in **Table 3.2-5**, several features in the study area have riverine habitat and potential instream wetlands. These features are considered navigable waters of the United States; therefore, they are "jurisdictional" waters regulated by USACE under Section 10 of the Rivers and Harbors Act and CWA Section 404. These waters are also regulated by the San Francisco Bay Regional Water Quality Control Board and CDFW as waters of the state and streams.

TABLE 3.2-5
POTENTIALLY JURISDICTIONAL WETLANDS AND WATERS OF THE UNITED STATES AND THE STATE IN THE PROJECT AREA

Location	Riverine (i.e., channel width)	Potential Instream Wetlands
Guadalupe River north and south of West Santa Clara Street, north of State Route 87 (adjacent to the project area)	60–80 feet	None observed
Los Gatos Creek, south of West Santa Clara Street, north of West San Fernando Street	20 feet	5–8 feet of bank on either side of channel
Los Gatos Creek, north of West Santa Clara Street to the 250-foot project buffer	20 feet	5–8 feet of bank on either side of channel
Los Gatos Creek east of South Autumn Street, between West San Fernando Street and Park Avenue	20 feet	5–8 feet of bank on either side of channel
Los Gatos Creek, northeast of West San Carlos Street, southwest of South Montgomery Street	20 feet	5 feet of bank on either side of channel
Los Gatos Creek west of the railroad tracks, between West San Carlos Street and Auzerais Avenue	20 feet	5 feet of bank on either side of channel
Los Gatos Creek under West San Fernando Street (bridge replacement site)	35–50 feet	None observed

SOURCE: Data compiled by Environmental Science Associates in 2019.

The proposed project would construct a new footbridge over Los Gatos Creek south of West Santa Clara Street and replace a vehicle bridge where West San Fernando Street crosses over the creek. No in-water work is anticipated for construction of the new footbridge; the footbridge would be a clear-span bridge with footings placed outside of the channel, away from jurisdictional wetlands and waters. Direct impacts of the new footbridge on jurisdictional waters would be limited to shading, and ecological effects on the surrounding riparian area or creek would be negligible. Shading impacts are expected to be less than significant, given the assumed modest size of the footbridge relative to the extensive shading of Los Gatos Creek along this reach by a broad canopy of mature trees in the riparian corridor.

Replacing the West San Fernando Street bridge would involve removing bridge supports from Los Gatos Creek before installing a new clear-span bridge. Direct disturbance of the stream bottom for removal of the bridge footings could impact jurisdictional waters of the United States and state. The existing abutments are located on the banks of Los Gatos Creek and extend from the channel to the top of bank. The abutments for the replacement bridge would be supported on piles that are expected to occupy the same or smaller footprint as the existing abutments; therefore, the new abutments are not expected to impact jurisdictional waters. In addition, because the replacement bridge is expected to be the same width as the existing bridge, no shading impacts are anticipated. Installing the utilidor in the new West San Fernando Street bridge would not require work in or above the channel, or in the riparian corridor. Thus, **less-than-significant impacts** on jurisdictional waters are anticipated in association with the utilidor crossing.

As described under Impact BI-2, above, approximately five engineered fish habitat enhancement log structures would be installed in the Los Gatos Creek channel to mitigate the removal of three logjams and several additional logs currently present in the channel. The placement of these

EFHELS, while beneficial to steelhead, would be a permanent impact of fill in potentially jurisdictional waters. Drawings representing the footprint of these structures are not available, so the size has been estimated assuming that each EFHEL would be a log structure with root ball that would be anchored in the creek bank. In addition, a 6-foot portion of each 2-foot-diameter EFHELS, as well as their 6-foot-diameter root balls, would be placed in the creek. The permanent impact for would be 125 sf for each EFHELS, or a total of 625 sf, for all five structures.

The resource agencies consider placement of structures within, as well as over, jurisdictional features to be a potentially significant impact. Construction drawings are not yet available, nor has a wetland delineation been completed; therefore, the potential for portions of the proposed outfall, headwall, and apron, described in detail under Impact BI-2, to result in a permanent impact on wetlands cannot be dismissed. Project construction–related activities such as access, equipment staging, or placement of EFHELS or temporary structures in the channel or instream wetlands could temporarily impact federal and/or state jurisdictional waters by causing sediment suspension and, potentially, minor amounts of erosion from the work or access occurring on the creek bank. This impact would be **potentially significant**.

To reduce this potentially significant impact, the proposed project would implement the following mitigation measures:

- Mitigation Measure BI-1a, General Avoidance and Protection Measures
- Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat
- Mitigation Measure BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat
- **Mitigation Measure BI-3, Avoidance of Impacts on Wetlands and Waters**

Implementing these mitigation measures would reduce impacts on wetlands and other jurisdictional waters to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require providing worker environmental awareness program training to construction personnel regarding protection of jurisdictional waters; delineating the limits of the riparian corridor to exclude work within those limits and returning any temporarily impacted riparian habitat areas to pre-project conditions through re-vegetation and monitoring; conducting a wetland delineation and preparing a wetland delineation report; and minimizing disturbance to wetlands by keeping construction activity at least 50 feet away, and restoring the bed and bank of streams to pre-construction conditions.

In addition, for work in and over the creek channel, CDFW, the San Francisco Bay Regional Water Quality Control Board, and USACE would require specific permits, including a CFGC Section 1602 permit (also known as a Streambed Alteration Agreement), CWA Section 401 certification, and CWA Section 404 permit, respectively. In addition, Valley Water may require project review and approval and an encroachment permit. (Refer to Section 3.2.2, *Regulatory Framework*, and Chapter 2, Section 2.15.2, *Other State, Regional, and Local Entities*, for more details.)

Mitigation Measures

Mitigation Measure BI-1a: General Avoidance and Protection Measures (refer to Impact BI-1)

Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat (refer to Impact BI-2)

Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat (refer to Impact BI-2)

Mitigation Measure BI-3: Avoidance of Impacts on Wetlands and Waters

The project applicant for the specific construction activity to be undertaken and its contractors shall minimize impacts on waters of the United States and waters of the state, including wetlands, by implementing the following measures:

- A preliminary jurisdictional delineation of wetlands shall be prepared to determine the extent of waters of the United States and/or waters of the state within the project component footprints and anticipated construction disturbance areas. The results shall be summarized in a wetland delineation report to be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval before the issuance of any demolition, grading, or building permit for construction activity within the riparian corridor. Wetlands identified in the report shall be avoided through project design, if feasible. All identified avoidance and protection measures shall be included on the plans for proposed demolition, grading, and/or building permits for construction activities within the riparian corridor.
- The proposed project shall be designed to avoid, to the extent practical, work within wetlands and/or waters under the jurisdiction of U.S. Army Corps of Engineers (USACE), the San Francisco Bay Regional Water Quality Control Board, and/or the California Department of Fish and Wildlife (CDFW). If applicable, permits or approvals shall be sought from the above agencies, as required. Where wetlands or other water features must be disturbed, the minimum area of disturbance necessary for construction shall be identified and the area outside avoided.
- Before the start of construction within 50 feet of any wetlands and drainages, appropriate measures shall be taken to ensure protection of the wetland from construction runoff or direct impact from equipment or materials, such as the installation of a silt fence, and signs indicating the required avoidance shall be installed. No equipment mobilization, grading, clearing, or storage of equipment or machinery, or similar activity, shall occur until a qualified biologist has inspected and approved the fencing installed around these features. The construction contractor for the specific construction activity to be undertaken shall ensure that the temporary fencing is maintained until construction activities are complete. No construction activities, including equipment movement, storage of materials, or temporary spoils stockpiling, shall be allowed within the fenced areas protecting wetlands.
- Where disturbance to jurisdictional wetlands or waters cannot be avoided, any temporarily affected jurisdictional wetlands or waters shall be restored to pre-construction conditions or better at the end of construction, in accordance with the requirements of USACE, San Francisco Bay Regional Water Quality Control Board, and/or CDFW permits. Compensation for permanent impacts on wetlands or waters shall be provided at a 1:1 ratio, or as agreed upon by CDFW, USACE, and the San Francisco Bay Regional Water Quality Control Board, as applicable. Compensation for loss of wetlands may be in the form of permanent on-site or off-

site creation, restoration, enhancement, or preservation of habitat. At a minimum, the restoration or compensation sites shall meet the following performance standards by the fifth year after restoration:

(1) Temporarily affected areas shall be returned to pre-project conditions or better.

(2) Wetlands restored or constructed as federal wetlands meet the applicable federal criteria for jurisdictional wetlands, and wetlands restored or constructed as state wetlands meet the state criteria for jurisdictional wetlands.

(3) No more cover by invasive species shall be present than in the baseline/impact area pre-project.

Restoration and compensatory mitigation activities shall be described in the habitat mitigation and monitoring plan prescribed by Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat.

Significance after Mitigation: Less than significant.

Impact BI-4: The proposed project could interfere substantially with the movement of a 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. *(Less than Significant with Mitigation)*

Native Wildlife Movements

The study area encompasses several reaches of Los Gatos Creek with riparian habitat that could provide movement corridors for native wildlife species. Riparian habitat provides movement corridors for native mammals such as Columbian black-tailed deer (*Odocoileus hemionus columbianus*), raccoon, and western gray squirrel (*Sciurus grisius*). Riparian habitat also provides corridors for bird dispersal, as well as breeding grounds and overwintering and migration stopover sites.[83] The proposed project would include construction and ongoing use of a public access trail that would be either within or adjacent to the riparian corridor along a 600-foot section of Los Gatos Creek east of Autumn Street (refer to Figure 2-7, *Open Space Plan*).

The project area is located within the Pacific Flyway along the southern shoreline of San Francisco Bay. Although specific migratory corridors near the project area are unknown, it can be assumed that numerous birds pass overhead or in the project vicinity during their spring and fall migrations. Existing buildings in the project area are one and two stories tall (10 to 20 feet high), whereas the heights of the project's buildings are expected to range between approximately 25 and 290 feet, or 2 to 20 stories high (excluding mechanical structures mounted on roofs). The portion of buildings most likely to sustain bird strikes extends from ground level to 60 feet above the ground surface.[84]

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[83] Riparian Habitat Joint Venture, *The Riparian Bird Conservation Plan: A Strategy for Reversing the Decline of Riparian Associated Birds in California*, Version 2.0, California Partners in Flight, 2004. Available at http://www.rhjv.org/.

[84] San Francisco Planning Department, *Standards for Bird-Safe Buildings*, adopted July 14, 2011.

The proposed project is likely to increase the amount of glass in the built environment, given the increased height and surface area of the newly constructed buildings. Typically, as building size increases, so does the amount of glass, making larger buildings more of a collision threat to birds.[85] Daytime collisions with glass occur most often when birds fail to recognize window glass because it reflects the sky, clouds, and vegetation in the absence of protective window treatments (e.g., frit) or because the glass is transparent (e.g., in the case of skywalks, or glass corners in buildings). Birds may also move through the urban environment while moving from one riparian habitat to another.

Many bird collisions are also induced by artificial night lighting, particularly from large buildings, which can be especially problematic for migrating songbirds because many are nocturnal migrants.[86] Research suggests that fatal bird collisions increase as light emissions increase.[87] The project area is located in a generally urban industrial setting and surrounded by other light sources that contribute to ambient light levels at night; however, the proposed project would increase the amount of nighttime lighting and glare in the built environment because of the infill of vacant parcels and increased height and surface area of newly constructed buildings, which would include interior and exterior illumination. Artificial night lighting from nearby buildings could also impact wildlife in the riparian corridor by causing wildlife to avoid lighted areas, which may expose them to predation, as discussed in Impact BI-2 (riparian habitat).

Direct effects on migratory and resident birds moving through an area could include death or injury if birds collide with lighted structures or with glass during the daytime or nighttime. Indirect effects on migratory birds could include delayed arrival at breeding or wintering grounds, and reduced energy stores necessary for migration, winter survival, or subsequent reproduction.[88] Because of the scale of the proposed project and its proximity to riparian corridors, the impact of the proposed project on movement corridors for native wildlife would be **potentially significant**.

As summarized in Section 3.3.2, *Regulatory Framework*, the City's *San José Downtown Design Guidelines* include guidelines and standards for minimizing bird collisions with the built environment, including the following requirements that the project must meet:

- Avoid the use of mirrors, large areas of reflective glass, and areas of glass through which natural features are visible.
- Use bird safety treatments on certain applications of glass or façades (e.g., in the vicinity of riparian corridors).
- Strategically place landscaping to reduce reflection and views of foliage inside or through glass.
- Avoid or minimize up-lighting and spotlights on buildings.

85 San Francisco Planning Department, *Standards for Bird-Safe Buildings*, adopted July 14, 2011.
86 Ogden, L. E., *Collision Course: The Hazards of Lighted Structures and Windows to Migrating Birds, Special Report for the World Wildlife Fund Canada and the Fatal Light Awareness Program*, September 1996. Available at https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1002&context=flap.
87 Verheijen, F. J., Bird Kills at Lighted Man-Made Structures: Not on Nights Close to a Full Moon, *American Birds* 35(3):251–254, 1981.
88 Gauthreaux, S. A., and C. G. Belser, Effects of Artificial Night Lighting on Migrating Birds, in *Ecological Consequences of Night Lighting*, eds. C. Rich and T. Longcore, Covelo, CA: Island Press, 2006.

- Turn off decorative exterior lighting between 2 a.m. and 6 a.m. except during June, July, December, and January due to bird migration.

Refer to Section 3.2.2, *Regulatory Framework*, for more details.

In addition to the City's guidelines and standards, the proposed project would implement **Mitigation Measure BI-4, Avian Collision Avoidance Measures**, to reduce this potential adverse impact on bird movement corridors. This measure would reduce the impact to **less than significant with mitigation incorporated** because it requires educating building occupants to reduce night lighting impacts on birds, and minimizing the impacts of antennas, monopole structures, and rooftop elements that could pose bird collision hazards. In addition, the General Plan includes Environmental Resource Policy ER-6.3, summarized in Section 3.3.2, *Regulatory Framework*, which recommends practices for limiting nighttime light pollution near natural areas, including riparian habitat.

Native Wildlife Nursery Sites

Native wildlife nursery sites in the study area would primarily include communally roosting birds and bats, or individual nesting birds and roosting bats. Potential impacts and mitigation measures on individual nesting birds and bats and communally roosting bats are discussed under Impact BI-1. Birds such as herons and egrets that nest in groups, and whose communal nesting sites are referred to as rookeries, are not documented to nest in the Los Gatos Creek riparian corridor;[89] therefore, project impacts would be **less than significant** on native wildlife nursery sites.

Mitigation Measures

Mitigation Measure BI-4: Avian Collision Avoidance Measures

In addition to conforming to the bird safety standards and guidelines in the City's Downtown Design Guidelines, and the General Plan, the following mitigation measures shall be implemented:

Educating Residents and Occupants. Prior to issuance of any building permits, the project applicant shall develop educational materials for building tenants, occupants, and residents, encouraging them to minimize light transmission from windows, especially during peak spring and fall migratory periods, by turning off unnecessary lights and/or closing window coverings at night. The Director of Planning, Building and Code Enforcement or the Director's designee shall review and approve the educational materials before buildings are occupied. The project applicant shall also supply documentation (e.g., written statement) describing when and how the materials will be distributed (e.g., poster in building lobby, attachment to lease, new-tenant welcome packet). Documentation shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

Antennae, Monopole Structures, and Rooftop Elements. Prior to issuance of any building permits, the project applicant shall provide documentation (e.g., construction drawings) that buildings minimize the number of and co-locate rooftop antennas and other rooftop

[89] California Department of Fish and Wildlife, California Natural Diversity Database special-status species locations in GIS file format, version: September 4, 2019. Available at https://www.wildlife.ca.gov/Data/CNDDB/Data-Updates.

equipment, and that monopole structures or antennas on buildings do not include guy wires. The documentation shall be reviewed and approved by a wildlife biologist before issuance of the site development permit for the project component (e.g., building) that poses a collision risk for birds. Documentation shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

Significance after Mitigation: Less than significant.

Impact BI-5: The proposed project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. *(Less than Significant*)

The local policies relevant to the biological resources present, or with potential to occur, in the study area include the General Plan, City Policy 6-34 (riparian corridor protection), the City of San José Tree Removal Permit Requirements and Controls, and City of San José SCA BI-2, Tree Replacement. These policies, summarized in detail in Section 3.2.2, *Regulatory Framework*, are analyzed for project consistency below.

Envision San José 2040 General Plan

The proposed project is consistent with Major Strategy #10, *Life Amidst Abundant Natural Resources*, because the project incorporates access to open space, including parks and the Los Gatos Creek riparian corridor (refer to Figure 2-7, *Open Space Plan*). In addition, the proposed project would implement the following General Plan policies:

- **Riparian Corridors Policies ER-2.1 through ER-2.5**, which include: consistency with City's Riparian Corridor Policy Study (refer to Section 3.2.2, *Regulatory Framework*); the inclusion of appropriate setbacks near riparian corridors; design of new development to protect riparian habitat from encroachment of lighting, glare, and noise; implementation of mitigation measures to restore riparian habitat following temporary and permanent impacts, including for fish passage during construction; and restoration of riparian habitat through native plant restoration along riparian corridors. (Also refer to Mitigation Measures BI-2a and BI-3, and discussion of Policy 6-34 under Impact BI-4.)
- **Migratory Birds Policies ER-5.1 and ER-5.2**, which include avoidance and protection of active bird nests during the nesting season. (Also refer to Mitigation Measures BI-1a and BI-1e.)
- **Urban Natural Interface Policies ER-6.3, ER-6.5, and ER-6.8**, which include: employing low-glare lighting in areas developed adjacent to natural areas, including riparian woodlands, and placing high-intensity lighting in these areas as close to the ground as possible and directed downward; prohibiting the use of invasive species in landscaping; and designing and constructing development to avoid changes in drainage patterns across natural areas. (Also refer to the discussion of Policy 6-34 under Impact BI-2, and Mitigation Measure BI-4.)
- **Community Forest Policies MS-21.5, MS-21.6, MS-21.8, and MS-21.9**, which include: preserving protected trees, and when preserving protected trees is not feasible, replacing trees; requiring planting of street trees as a condition of new development; requiring replacement of street trees removed for the project; requiring landscaping to avoid the use of invasive, non-native species; removing existing invasive, non-native trees; and

incorporating locally native tree species propagated from local sources (preferably the same watershed) into landscape planting adjacent to natural plant communities, such as riparian forest.

- **General Provision of Infrastructure Policy IN-1.11**, which includes locating and designing utilities to avoid or minimize impacts on environmentally sensitive areas and habitats. For example, where the utilidor for the proposed project would cross Los Gatos Creek, it would be placed inside the box girder structure of the replacement vehicle bridge at West San Fernando Street, avoiding impacts on the creek.
- **Community Design Policies—Attractive City Policy CD-1.24**, which includes preservation of ordinance-sized and other significant trees, particularly native species, and when preservation is not feasible, including replacements or alternative mitigation measures in the project to maintain and enhance the City's community forest. (Also refer to the City of San José Tree Removal Permit Requirements and Controls, and the City's SCA BI-2, Tree Replacement, below.)

City of San José Riparian Corridor Protection and Bird-Safe Design (Policy 6-34)

Riparian projects in San José are subject to design guidelines, including a riparian setback in certain areas, as defined by the City's Policy 6-34. Generally, this policy prescribes a standard 100-foot setback requirement for new buildings, roads, and active recreational uses in the vicinity of riparian corridors; however, a reduced setback may be considered under limited circumstances, including when the development is located within the boundaries of the Downtown area, as defined in the General Plan (additional detail is provided in Section 3.2.2, *Regulatory Framework*). The project site is located in the designated Downtown area, as identified in the General Plan, making the project eligible for a reduced setback of 50 feet from the Los Gatos Creek riparian corridor. Consistent with the previously approved project on the former San Jose Water Company site (Building 374 on Figure 2-3, *Land Use Plan*), the project proposes a 30-foot setback from the top of the channel wall along the Guadalupe River at that location. In addition, non-historic existing buildings along Autumn Street (Blocks D8, D9, D10, D11, D12, and D13), which are currently within 50 feet of the riparian corridor, may be retained and repurposed, or could be rebuilt within existing building footprints if within the riparian setback, subject to City conformation of consistency with Policy 6-34.[90]

Policy 6-34 further prescribes a standard 10-foot setback for multi-use trails on natural channels and a 0-foot setback for pedestrian-only trails and passive recreational uses; pedestrian-only trails may enter the riparian corridor where necessary for continuity of the trail, and interpretive nodes and paths may penetrate riparian areas at intervals not to exceed an average of one every 500 feet of riparian corridor. The proposed project's multi-use trails would be located outside the 10-foot setback. The pedestrian boardwalks between West Santa Clara and West San Fernando Streets would be located along the edge of the riparian corridor, except both where it is necessary for continuity to enter the riparian corridor around existing buildings that are located closer than the width of a boardwalk, and where a pedestrian boardwalk would replace existing hardscape, impervious, and/or disturbed landscape surface with permeable material.

[90] City of San José, *Riparian Corridor Protection and Bird-Safe Design* (Policy 6-34), approved August 23, 2016. Available at https://www.sanjoseca.gov/home/showdocument?id=12815.

City of San José Tree Removal Permit Requirements and Controls

The City of San José Tree Removal Permit Requirements and Controls would apply to all trees in the project area, except within the riparian corridor, including but not limited to street trees and park landscaping. The proposed project would be required to comply with this policy (described in detail in Section 3.2.1, *Environmental Setting*). A tree removal permit is not applicable to this project because tree removal would be granted through the issuance of the planned development permit, pursuant to City of San José Municipal Code Section 13.32.080.[91]

City of San José Standard Condition of Approval BI-2: Tree Replacement

Tree replacement ratios are provided in SCA BI-2, *Tree Replacement* (refer to Section 3.2.2, *Regulatory Framework*). Compliance with the tree replacement ratios in SCA BI-2 applies only to trees outside of the riparian corridor. All 537 urban street or landscape trees on-site would be removed, of which 8 are native and 529 are non-native (none are orchard trees). Of the 537 trees inventoried, 254 of the trees are classified as Ordinance Trees under the City of San José regulations. According to the tree replacement ratios defined in SCA BI-2 (shown in **Table 3.2-6**), 6 trees would be replaced at a 5:1 ratio, 249 trees at a 4:1 ratio, 2 trees at a 3:1 ratio, 195 trees at a 2:1 ratio, and the remaining 85 trees would be replaced at a 1:1 ratio. Therefore, the total number of replacement trees required to be planted would be 1,507 (refer to Appendix D3, the arborist report). The species of trees to be planted would be determined in consultation with the City Arborist and staff from the City Department of Planning, Building and Code Enforcement.

TABLE 3.2-6
TREE REPLACEMENT RATIOS AND REQUIRED REPLACEMENT SIZE

Circumference of Tree to be Removed	Replacement Ratio for Native Trees	Replacement Ratio for Non-native Trees	Replacement Ratio for Orchard Trees	Minimum Size of Each Replacement Tree
≥ 38 inches	5:1	4:1	3:1	15 gallons
19 up to 38 inches	3:1	2:1	none	15 gallons
< 19 inches	1:1	1:1	none	15 gallons

NOTES:

x:x = Tree replacement to tree loss ratio.

On single-family or duplex properties, trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family Residential, Commercial, and Industrial properties, a permit is required for the removal of trees of any size, unless a development permit that allows the removal of the tree has been issued and accepted by the permit applicant.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box tree equals two 15-gallon trees.

Single-family and two-dwelling properties may be mitigated at a 1:1 ratio.

SOURCE: City of San José Standard Condition of Approval BI-2

[91] City of San José Municipal Code Section 13.32.080—Development Permit Combined. Available at https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT13STSIPUPL_CH13.32TRRECO_13.32.080DEPECO. Accessed May 11, 2020.

If the project site does not have sufficient area to accommodate the required tree mitigation, one or both of the following measures would be implemented to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director's designee at the development permit stage:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- Off-site tree replacement fee(s) will be paid to the City, before the issuance of grading permit(s), in accordance with the City Council–approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

As indicated in Chapter 2, *Project Description*, the project has committed to planting 2,280 trees, which exceeds the number required with implementation of SCA BI-2. Therefore, impacts of tree removal would be **less than significant**.

In addition, according to the City's Heritage Tree Map showing the location of each tree on the Heritage Tree List, the project area does not contain any heritage trees;[92] however, the City's Tree Removal Policy requires tree removal permits for trees other than heritage trees, as described in Section 3.3.2, *Regulatory Framework*. Compliance with the Tree Removal Policy would further reduce potential impacts and avoid conflicts with the City's tree ordinance.

Assuming project approval, the project would undergo a conformance review process to ensure that subsequent development within the project site substantially conforms with the requirements of the General Development Plan, the Design Standards and Guidelines, applicable provisions of the Municipal Code, and the other applicable standards and guidelines. In conclusion, there would be no conflict between the proposed project and the policies described above that protect biological resources.

Mitigation: None required.

Impact BI-6: The proposed project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. *(Less than Significant with Mitigation)*

As set forth in the discussion in Section 3.2.2, *Regulatory Framework*, the City is a Permittee of the *Santa Clara Valley Habitat Plan* (Habitat Plan), and the proposed project is within the Habitat Plan Permit Area. Portions of the project area are located within fee zones and are subject to conditions identified in Chapter 6 of the Habitat Plan. The project area is outside of the burrowing owl and serpentine fee zones, but the proposed project may be subject to land cover fees for Zone B (Agricultural and Valley Floor Land) and wetland fees (Willow Riparian Forest and

[92] City of San José, Heritage Tree Map. Available at https://www.sanjoseca.gov/your-government/departments/transportation/roads/landscaping/trees/heritage-trees. Accessed January 16, 2020.

Scrub)[93] for any work within and adjacent to the riparian corridor. The project would also be subject to nitrogen deposition fees for any increases in vehicle trips.[94]

Any project requesting a riparian setback reduction from City Policy 6-34 and the Habitat Plan's Condition 11 must be reviewed and approved by the City. For exceptions to the Habitat Plan's Condition 11, the stream and riparian setback requirement, an exception request is submitted to the City. The City could work with the project applicant to make any adjustments, and the City would then provide the exception request to the Habitat Agency, CDFW, and USFWS for a 30-day period for review and comment. At the conclusion of the 30-day review period, the City would consider any comments received from these agencies and may then consider the stream and riparian setback exception request for approval.

The Habitat Plan defines the standard setback for Los Gatos Creek, a Category 1 stream inside the existing urban service area, and with a slope class of 0–30 percent, as 100 feet. As described under Impact BI-2, the project proposes 50-foot building setbacks from Los Gatos Creek, consistent with a setback reduction that may be permitted under Policy 6-34.[95] The project would also retain certain existing buildings along South Autumn Street (Blocks D8, D9, D10, D11, D12, and D13) that are currently within 50 feet of the riparian corridor. One or more of these buildings could also be replaced within existing building footprints if retention is determined not reasonably feasible, subject to City confirmation of consistency with Policy 6-34; such replacement would be required under the Downtown West Design Standards and Guidelines to maintain or reduce the existing building footprint within the City-mandated minimum 50-foot riparian setback. The project would remove certain hardscape areas and areas of disturbed landscape behind (on the Los Gatos Creek side of) at least two of these buildings on Block D that are adjacent to the top of the stream bank, would revegetate the formerly hardscape/disturbed areas with riparian plant species, and would then install sections of a raised pedestrian boardwalk along the edge of, and in some cases within, the riparian corridor. This boardwalk would provide continuous pedestrian access along Los Gatos Creek from the VTA rail tracks north to West Santa Clara Street. Where it would be along the edge of, or intrude into, the riparian corridor, the pedestrian boardwalk would travel exclusively above the formerly paved or disturbed areas to be revegetated. Similarly, the project would develop a pedestrian boardwalk on the east side of Los Gatos Creek between the VTA tracks and West Santa Clara Street, on Block E. This boardwalk would remain outside the riparian corridor.

Open spaces would be developed adjacent to the riparian corridor, but commercial/residential mixed-use buildings, active facilities (e.g., pavilions, kiosks, and program decks), along with maintenance facilities, would be set back 50 feet or more from the riparian corridor. However, such facilities may be located within the 100-foot setback permitted by the Habitat Plan's Condition 11. The exact dimensions and locations of program decks, pavilions, kiosks, and

93 Santa Clara Valley Habitat Agency Geobrowser. Available at http://www.hcpmaps.com/habitat/. Accessed January 13, 2020.

94 Willdan Financial Services with Urban Economics, *Santa Clara Valley Habitat Plan Development Fee Nexus Study*, June 30, 2012.

95 On Block E, the former San Jose Water Company site, the project would provide a 30-foot setback from the top of the channel wall along the Guadalupe River, consistent with a project previously approved there (File Nos. PDC15-051, PD15-061, and PT16-012). This portion of the Guadalupe River is an engineered flood channel that the City, in consultation with the Santa Clara Valley Habitat Agency, previously determined was not subject to Habitat Plan policies.

maintenance facilities are not yet known; therefore, the total area of encroachment has not been calculated. The project applicant would request that the City grant exceptions to the standard 100-foot Habitat Plan setback for such uses; the minimum setback allowed under the Habitat Plan for new development is 35 feet.[96] As explained in Impact BI-2, Mitigation Measure BI-2a would include a number of features and requirements to avoid adverse effects on the riparian corridor and riparian habitat. The Block D pedestrian boardwalk described above would enhance the riparian corridor by removing previously paved surfaces and revegetating them with riparian plant species.

With implementation of Mitigation Measure BI-2a, along with Mitigation Measures BI-1a, BI-1b, and BI-1c, the proposed project would have a less-than-significant impact on the riparian corridor and the riparian habitat that it provides. Because the identification of a significant impact under CEQA depends on the finding that a project would result in a physical change in the environment (CEQA Guidelines Section 15358(b), the fact that the project would provide less than the Habitat Plan's standard 100-foot riparian setback would not rise to the level of a significant unavoidable impact, given that mitigation for any adverse physical effects is feasible through implementation of Mitigation Measures BI-1a, BI-1b, BI-1c, and BI-2a and given that a reduced setback for any proposed construction would require approval by the City during Conformance Review to ensure conformance to the Habitat Plan's reduced setback provisions.

Applicable fees and conditions would be determined during the entitlement phase for the proposed project.

Mitigation Measures

Mitigation Measures BI-1a, BI-1b, BI-1c, and BI-2a

Significance after Mitigation: Less than significant.

Cumulative Impacts

Impact C-BI-1: The proposed project, in conjunction with other past, current, or foreseeable development in the project vicinity, could result in cumulative impacts on biological resources. *(Less than Significant with Mitigation)*

This analysis evaluates whether the impacts of the proposed project (including development it would facilitate), together with the impacts of cumulative development, would cause the project to have a cumulatively considerable impact on special-status species, wetlands, or other waters of the United States, or on 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 proposed project to this cumulative impact would be considerable. Both conditions must apply for a project's cumulative effects to be significant.

[96] Santa Clara Valley Habitat Agency. Santa Clara Valley Habitat Plan. Accessed August 19, 2020. https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan

The geographic scope of potential cumulative impacts on biological resources encompasses the project area and biologically linked areas that share the Guadalupe River watershed and greater San Francisco Bay. Past projects in this context—including the development of civic facilities, residences, commercial and industrial areas, and infrastructure—have already caused substantial adverse cumulative changes to biological resources in the study area. This includes the engineering of the Guadalupe River and Los Gatos Creek to allow urban development over and around these waterways, and the loss of the riparian corridors and floodplains to urban encroachment.

Current and future development projects, similar to those in the project area shown in Appendix B and summarized on Figure 3-1, *Cumulative Projects in the Project Vicinity*, could similarly impact biological resources if appropriate actions are not taken to avoid or mitigate the loss of habitat or other direct or indirect impacts.

Of the projects identified, only two are located along the Los Gatos Creek or Guadalupe River riparian corridor: Montgomery 7, located at 565 Lorraine Avenue (PDC15-038, PD15-042), and River Corporate Center, located at 353 West Julian Street (H16-013, HA16-013-01). Montgomery 7 is in the planning stage and proposes 54 dwelling units and 1,856 sf of retail space. River Corporate Center is under construction and includes 194,178 sf of office space. In addition, in connection with the Diridon Station Area Plan, the City of San José plans to upsize three stormwater outfalls as part of its ongoing Capital Improvement Program.

These projects would have potential impacts on sensitive biological resources similar to those of the proposed project because of the concentration of biological resources in riparian corridors in Downtown San José and the similarity of some project components (i.e., construction of residential, retail, and office space). As discussed under *Impact Analysis*, construction of the proposed project would have the potential to impact special-status fish, western pond turtle, nesting and protected birds, special-status bats, riparian habitat, EFH, sensitive natural communities, wetlands, and native wildlife corridors. The following sections summarize cumulative impacts on each of these biological resources.

Special-Status Fish and Western Pond Turtle

Potential impacts of the proposed project on special-status fish (i.e., steelhead) and western pond turtle are limited to impacts from construction activity in or adjacent to Los Gatos Creek and the Guadalupe River. Such construction work would include demolishing and constructing buildings adjacent to these waterways, constructing the footbridge across Los Gatos Creek, replacing the West San Fernando Street vehicle bridge over Los Gatos Creek, and implementing flow conveyance and creek habitat enhancements. Impacts could include construction-related mortality or injury to western pond turtle on the banks of the riparian corridor, and increased turbidity caused by in-water work or fouling of waterways by spills or uncontained harmful materials at the construction site. Both of these scenarios would negatively impact fish and western pond turtle. Western pond turtle could also be indirectly and temporarily impacted by construction noise, vibrations, and human activity near the turtles.

Impacts on special-status fish and western pond turtle would be reduced to less than significant by implementing Mitigation Measures BI-1a through BI-1d, which require conducting worker

environmental awareness training; limiting all in-water work to the specified in-water work window during the dry season; implementing a fish relocation plan; conducting pre-construction surveys for western pond turtle; and monitoring for this species during construction and relocating individuals as authorized.

With these mitigation measures, potential impacts on steelhead and pond turtles would be minor and short-term. Other projects in the region that occur within potential steelhead and pond turtle habitat, potentially including flood control or riverine/riparian enhancement projects, would be required to implement similar measures to protect steelhead and western pond turtles. In conjunction with the proposed project, the cumulative impact of such projects on steelhead and western pond turtles, or their populations, would be **less than significant with mitigation incorporated**.

Nesting Birds and Special-Status Bats

Potential direct impacts of the proposed project on nesting birds and special-status roosting bats include the effects of removing vegetation and demolishing buildings during construction. Indirect construction-related impacts could include construction noise, vibration, and human activity near active bird nests and bat roosts. Operational indirect impacts could result from the use of the new multi-use trail, pedestrian boardwalks, viewing platforms, program decks, and interpretive signage); however, the trail and program decks would be outside of the riparian corridor where the most bird nesting and bat roosting activity would be expected, and substantial baseline human activity already occurs within and adjacent to the trail alignment.

These impacts would be reduced to less than significant by implementing Mitigation Measure BI-1e. This measure would reduce impacts on nesting birds because it requires limiting construction to the non-nesting season when feasible to avoid impacts on active nests. If avoiding the nesting season is not feasible, this measure calls for conducting pre-construction surveys for nesting birds and establishing no-disturbance buffers around any active nests to ensure that they are not disturbed by construction. The project would also implement other mitigation measures to reduce the impact, including requiring worker environmental awareness training.

Other cumulative projects in the region would also be required to implement the City's SCAs for protection of nesting birds, which would reduce potential cumulative impacts on nesting birds to **less than significant**. The proposed project would also implement Mitigation Measure BI-1a to educate construction personnel on the identification of birds, and additionally avoid impacts.

Cumulative projects that may occur in the region, such as flood control or riverine/riparian enhancement projects, would be required to implement measures for protecting roosting bats similar to those identified in Mitigation Measure BI-1f. These measures include conducting roosting bat surveys, and limiting the removal of trees or structures with potential bat roosting habitat to the time of year when bats are active to avoid disturbing bats during the maternity roosting season or months of winter torpor. With the implementation of such measures for projects that provide bat roosting habitat, cumulative impacts on this species group would be **less than significant with mitigation incorporated**.

Sensitive Natural Communities and State- or Federally Protected Wetlands

Three sensitive natural communities—riparian habitat, creeping wild rye vegetation community, and EFH—and potentially jurisdictional wetlands and waters are present in the project area. Potential permanent impacts on the creeping wild rye vegetation community could result from construction of the storm drain outfall and temporary impacts could also result from construction of the boardwalk adjacent to Block D8 within creeping wild rye habitat, which is also within riparian habitat. Potential direct impacts on riparian habitat, EFH, and instream wetlands could also result from permanent removal of riparian habitat for the new footbridge over Los Gatos Creek, increased shading of the Los Gatos Creek riparian corridor from construction of the footbridge and new buildings, and implementation of flow conveyance and creek habitat enhancements.

In addition, as described in more detail under Impact BI-2, temporary impacts on riparian habitat and/or jurisdictional waters would result from construction of the new footbridge; construction of a multi-use trail, pedestrian boardwalks, viewing platforms, and interpretive signage; removal and replacement of fencing; replacement of the West San Fernando Street vehicle bridge over Los Gatos Creek; installation of the utilidor; reconstruction of an existing storm drain outfall to Los Gatos Creek; demolition, construction, and renovation of office, residential, and retail/cultural buildings; construction of recreational/educational facilities such as program decks, pavilions, and kiosks; and implementation of flow conveyance and creek habitat enhancements. Temporary construction-related impacts on riparian vegetation and jurisdictional waters could include clearing and grubbing of adjacent work areas, crushing of vegetation during worker access and materials staging, the incidental entry of soils or harmful materials into Los Gatos Creek, and increases in artificial night lighting and noise, which would impact wildlife using those corridors.

As described under the *Special-Status Fish* analysis in Impact BI-1, an SWPPP would be required under the NPDES General Construction Permit to prevent soils and hazardous materials from entering jurisdictional waters. In addition, the City's Policy 6-34, the General Plan, and the Building and Design Standards include standards and guidelines to reduce the potential for new light sources to impact wildlife in the riparian corridor, and the project's *Downtown West Design Standards and Guidelines* include several guidelines to protect the riparian corridor from noise and lighting impacts. These impacts would be further reduced to less than significant by implementing Mitigation Measures BI-1a, BI-e, BI-1f, BI-2a, BI-2b, BI-2c, BI-2d, and BI-3, which require the project to:

- Provide worker environmental awareness training;
- Prepare and implement a fish relocation plan for in-water work in Los Gatos Creek;
- Conduct pre-construction nesting bird surveys and create no-construction buffers around active bird nests;
- Conducting pre-construction roosting bat surveys;
- Delineate the limits of riparian and creeping wild rye areas to exclude work within those limits;
- Return any temporarily impacted riparian or creeping wild rye habitat to pre-project conditions through re-vegetation and monitoring;

- Provide compensatory mitigation for permanent impacts on riparian or creeping wild rye habitat, and wetlands and waters;
- Develop and implement a frac-out contingency plan;
- Conduct a wetland delineation and prepare a wetland delineation report;
- Minimize disturbance to wetlands and waters by keeping construction activity at least 50 feet away where possible; and
- Monitor the effects of shading and heat island on riparian vegetation and stream temperature.

With implementation of these mitigation measures, potential impacts on sensitive natural communities and state or federally protected wetlands would be less than significant. In addition, CDFW, the San Francisco Bay Regional Water Quality Control Board, and USACE would require specific permits to facilitate work in and over the creek channel. Other projects in the region that occur within or adjacent to the riparian corridor, potentially including flood control or riverine/riparian enhancement projects, would be required to implement similar measures to protect sensitive natural communities and state or federally protected wetlands, and would be subject to the same permit requirements. In conjunction with the proposed project, cumulative impacts on sensitive natural communities and federally protected wetlands would be **less than significant with mitigation incorporated**.

Wildlife Corridors

The proposed project could impact resident and migrating birds; the resulting infill would increase levels of lighting and areas of glazing, and the project would construct new buildings that would be taller than existing buildings in the project area. The City requires projects to implement the City's Downtown Design Guidelines. The Downtown Design Guidelines provide standards and guidelines for bird-safe design, including but not limited to avoiding mirrored glass; using bird safety treatment on certain building façades within 300 feet of a riparian corridor; not creating areas of glass through which trees, landscape areas, water features, or the sky would be visible from the exterior unless a bird safety treatment is used; and turning off decorative exterior lighting between 2 a.m. and 6 a.m., except during June, July, December, and January, due to bird migration. Impacts on birds using the riparian corridors would be further reduced to less than significant by implementing Mitigation Measure BI-4, which requires:

- Educating building occupants to reduce night lighting impacts on birds; and
- Minimizing the impacts of antennas, monopole structures, and rooftop elements that pose bird collision hazards.

With implementation of the mitigation measures and compliance with the City's Downtown Design Guidelines, potential impacts on wildlife corridors would be less than significant. Other projects in the region that could increase nighttime lighting levels and areas of glazing, potentially including multi-story mixed-use projects, would be required to implement similar measures to protect birds using the riparian corridor and other areas of the city. In conjunction with the proposed project, cumulative impacts on wildlife corridors would be **less than significant with mitigation incorporated**.

Local Ordinances

The proposed project would require removal of trees and vegetation adjacent to or within the riparian corridor; however, the project would comply with the City's SCA BI-2, Tree Replacement (refer to Section 3.3.2, *Regulatory Framework*), which prescribes replacement ratios for tree removal, and with the City's Tree Removal Policy, and Council Policy 6-34, which provides protection for riparian corridors. The proposed project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance, and no impact would occur. Other projects in the region with the potential to conflict with local policies or ordinances protecting biological resources, including multi-story mixed-use projects, would be required to comply with the City's SCA BI-2 and Tree Removal Policy. In conjunction with the proposed project, additional projects would have a **less-than-significant cumulative** impact on these resources.

Santa Clara Valley Habitat Plan

The City participates in the Santa Clara Valley Habitat Plan, and the project is a covered activity that is within the permit area for the Habitat Plan. The proposed project would implement SCA BI-1, Santa Clara Valley Habitat Plan (refer to Section 3.3.2, *Regulatory Framework*). Although an encroachment into riparian setback defined by Condition 11 of the Habitat Plan would be requested (as described in Impact BI-6), Mitigation Measures BI-1a, BI-1b, BI-1c, and BI-2a would avoid impacts to riparian habitat. Therefore, impacts would be less than significant with mitigation incorporated with respect to compliance with the Habitat Plan. Other projects in the region with the potential to conflict with the Habitat Plan, including covered activities within the Habitat Plan permit area, would be required to comply with SCA BI-1. In conjunction with the proposed project, additional projects would have a less-than-significant impact related to a potential conflict with the Habitat Plan.

In conclusion, with implementation of the City's SCAs, design standards and guidelines, and policies and ordinances, and the mitigation measures described in this section, the proposed project would result in less-than-significant impacts on biological resources in the study area.

The cumulative projects under planning review, approved, or under construction near the project area are shown on Figure 3-1, *Cumulative Projects in the Project Vicinity*, and listed in Appendix B. These projects include primarily mixed-use residential/office/retail development, as well as a few hotels, located in the highly urbanized Downtown area. These projects are not expected to have impacts on special-status species, riparian habitat, EFH, sensitive natural communities, or jurisdictional wetland and waters; however, they could potentially impact wildlife corridors in a manner similar to those of the proposed project. Therefore, current and future development projects would be expected to implement similar protection measures as indicated under Impact BI-4, as required by the City.

When considered within the existing condition of biological resources in the project area and the greater Bay Area in the context of past, present, and reasonably foreseeable similar projects, the proposed project would add only a very minor, incremental contribution to impacts on riparian habitat or wetlands, and special-status wildlife species. The proposed project's contribution would not be cumulatively considerable. Therefore, in combination with past, present, and

reasonably foreseeable future projects, the proposed project's cumulative effects on biological resources would be **less than significant with mitigation incorporated**.

Mitigation Measures

Mitigation Measure BI-1a: General Avoidance and Protection Measures (refer to Impact BI-1)

Mitigation Measure BI-1b: In-Water Construction Schedule (refer to Impact BI-1)

Mitigation Measure BI-1c: Native Fish Capture and Relocation (refer to Impact BI-1)

Mitigation Measure BI-1d: Western Pond Turtle Protection Measures (refer to Impact BI-1)

Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds (refer to Impact BI-1)

Mitigation Measure BI-1f: Roosting Bat Surveys (refer to Impact BI-1)

Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat (refer to Impact BI-2)

Mitigation Measure BI-2b: Frac-Out Contingency Plan (refer to Impact BI-2)

Mitigation Measure BI-2c: Monitor Effects of Shading and Heat Island Effect on Riparian Vegetation and Stream Temperature (refer to Impact BI-2)

Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat (refer to Impact BI-2)

Mitigation Measure BI-3: Avoidance of Impacts on Wetlands and Waters (refer to Impact BI-3)

Mitigation Measure BI-4: Avian Collision Avoidance Measures (refer to Impact BI-4)

Mitigation Measure HY-3b: Plan for Ongoing Creek Maintenance (refer to Section 3.8, *Hydrology and Water Quality*)

Mitigation Measure NO-1a: Operational Noise Performance Standard (refer to Section 3.10, *Noise and Vibration*)

Significance after Mitigation: Less than significant.

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