

4.3 Biological Resources

The following analysis describes the existing biological resources associated with the proposed 123 Independence Drive Residential Project (project; proposed project); identifies the applicable regulatory framework; evaluates potential impacts of the project on biological resources; describes measures to avoid, minimize, and/or mitigate these impacts; and identifies the level of significance after mitigation.

As discussed in Chapter 2, Introduction, and Section 4, Environmental Analysis, two Notices of Preparation (NOPs) were circulated for this environmental impact report (EIR), one in January and February 2021 and one in September and October 2021. Public comments received in response to the NOPs include a letter from the California Department of Fish and Wildlife (CDFW) offering comments and recommendations to assist the City in adequately identifying and/or mitigating the project's significant or potentially significant impacts on biological resources. The letter identified bats and nesting birds as the primary biological resources with potential to occur in or near the project site and recommended mitigation measures to address potential impacts. These recommendations have been fully considered and incorporated into the below mitigation measures, as appropriate. Both NOPs and the comments received in response to them are provided in Appendix A.

4.3.1 Environmental Setting

Methodology

Preliminary Site Evaluation

Special-status plant and wildlife species present or potentially present on the project site were identified through a literature search, conducted in January 2021, using the following sources: the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) (USFWS 2021a), CDFW's California Natural Diversity Database (CNDDDB) (CDFW 2021), and the California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California (CNPS 2021). Searches of the above-referenced databases were completed for the Palo Alto and eight surrounding U.S. Geological Survey 7.5-minute quadrangles: San Mateo, Redwood Point, Newark, Woodside, Mountain View, La Honda, Mindego Hill, and Cupertino. Following a review of these resources, Dudek determined the potential for each species to occur within the site based on a review of vegetation communities and available land cover types, habitat types, soils, and elevation preferences, as well as the known geographic range of each species. Dudek also reviewed current and historical aerial photography to identify any potentially jurisdictional aquatic resources based on aerial and topographic signatures.

For the purposes of this analysis, special-status plant species are those plants listed, proposed for listing, or candidates for listing as threatened or endangered by the USFWS under the Endangered Species Act (ESA) (16 USC 1531 et seq.), those listed or proposed for listing as rare, threatened, or endangered by the CDFW under the California Endangered Species Act (CESA) (California Fish and Game Code, Section 2050 et seq.), and plants that have a California Rare Plant Rank (CRPR) of 1 or 2 in the California Native Plant Society's online Inventory of Rare and Endangered Plants (CNPS 2021). Special-status wildlife species are those that are designated as either rare, threatened, or endangered (or candidates for designation) by CDFW or the USFWS, are protected under either the CESA or the ESA; meet the California Environmental Quality Act (CEQA) definition for endangered, rare, or threatened (14 CCR 15380[b],[d]), are considered fully protected under the California Fish and Game Code, Sections 3511, 4700, 5050, and 5515, or that are on the CDFW Special Animals List (CDFW 2020) and determined by CDFW to be a Species of Special Concern.

Field Reconnaissance

Dudek biologist Emily Scricca performed a reconnaissance-level field survey of the project site on January 11, 2021, from 8:30 a.m. to 10:00 p.m. Weather during the field survey was partly sunny, with an ambient temperature of approximately 45°F–48°F. The field survey included mapping and documenting vegetation communities and land cover types present on the project site, a preliminary evaluation of potentially jurisdictional aquatic resources, and assessing the potential for special-status plant and wildlife species to occur within the project site and adjacent areas.

The survey was conducted on foot to visually cover the entire project site, including a 500-foot buffer of areas adjacent to the site where access allowed. Field notes and an aerial photograph (Google Earth Pro 2021) with an overlay of the project boundary were used to map vegetation communities, potential aquatic resources, and record any special-status species or sensitive biological resources while in the field. Representative project site photographs are provided in Figures 4.1-1a and 4.1-1b.

All plant species encountered during the field survey were identified to the lowest taxonomic group possible to determine rarity, and any wildlife species detected during the field survey by sight, calls, tracks, scat, or other signs were recorded directly into a field notebook. Burrows identified within the project site were investigated for sign of special-status wildlife species use or occupation. Nomenclature for all plant species observed on the project site follow the Jepson Manual, Vascular Plants of California, Second Edition (Jepson Flora Project 2020).

Dudek's field survey did not include a formal wetland delineation or focused surveys for special-status plant or animal species. The field survey was sufficient to generally identify any features of the project site that could be subject to the jurisdiction of CDFW, the U.S. Army Corps of Engineers (USACE), and/or the Regional Water Quality Control Board (RWQCB). However, the site was found not to support any aquatic resources.

Site Description

The project site is located within the Bayfront Area of Menlo Park. As described in the ConnectMenlo General Plan Update (City of Menlo Park 2016a) and the ConnectMenlo General Plan Update EIR (City of Menlo Park 2016b), the Bayfront Area is heavily urbanized with commercial, industrial, and residential development. At the time of the site visit, the project site was entirely developed with five commercial buildings, paved parking lots, driveways, and associated sidewalks. Small slivers of ornamental landscaping bound the northern, eastern, and southern edges of the project site. A review of historical Google Earth imagery shows that the site and immediate surroundings has been developed for at least the past 20 years. The site is immediately surrounded by offices, commercial business parks, hospitality uses, public facilities, and busy roadways.

Topography and Soils

Topography of the project site is relatively flat, with little to no topographic variation. Elevations on the project site range from roughly 0 to 15 feet above mean sea level. San Mateo County experiences a Mediterranean climate with warm, dry summers and cool, wet, winters. The average annual daytime temperature in the general vicinity of the site is 68.7°F, and the average minimum temperature is approximately 48.5°F. Average annual precipitation in the general vicinity of the site is 19 inches, nearly all of which falls from November to April (WRCC 2021).

According to the U.S. Department of Agriculture Natural Resources Conservation Service (USDA 2021), one soil type occurs within the project site: Urban-land-Orthents, reclaimed complex, 0 to 2 percent slopes. The U.S. Department of Agriculture Natural Resources Conservation Service does not consider Urban-land-Orthents, reclaimed complex,

0 to 2 percent slopes to be hydric (USDA 2021), defined as saturated, flooded, or ponded for long enough periods during the growing season to develop anaerobic conditions such that under sufficiently wet conditions they support hydrophytic (water-long) vegetation. Because the soil type on the project site is a disturbed soil and has been substantially altered through development of the property, the soil does not maintain its native soil characteristics, and would therefore have no particular significance to biological resources of the site. Additionally, Urban-land-Orthents, reclaimed complex, 0 to 2 percent slopes is not known to support edaphic special-status plant species (i.e., the soils of the site are neither serpentine nor alkaline).

Hydrology

The project site is located in the Cordilleras Creek-Frontal San Francisco Bay Estuaries Hydrologic Unit (HUC 180500040902) (USGS 2021). According to the U.S. Geological Survey National Hydrography Dataset (USGS 2021), predefined waters of the United States or state are absent from the project site; however, the project site is located less than 0.25 miles south of the San Francisco Bay, a traditional navigable water of the United States, and existing storm drain systems within and surrounding the project site drain into the San Francisco Bay. The National Wetlands Inventory does not identify any previously mapped wetlands or other waters within the project site (USFWS 2021b), and no features were discovered during the January 2021 site visit.

Vegetation Communities and Land Covers

The entire 8.15-acre site is composed of urban/developed land cover. Urban/developed land cover refers to areas that support residential, commercial, and/or industrial development and that have been physically altered to the point where native vegetation is no longer present. Most of these areas are paved with impermeable surfaces that cannot support vegetation and have limited habitat value for wildlife, although non-native ornamental landscaping that provides habitat for urban-adapted wildlife is often present. The urban/developed land cover type also includes areas that lack vegetation such as paved roads or unimproved areas that still retain a pervious surface.

In its existing condition, the project site consists of five commercial buildings with paved parking lots, driveways, driveways, fencing structures and gates, and associated sidewalks. A small patch of landscaped, planted ornamental vegetation lines the northern, southern, and eastern boundaries of the project site. Plant species observed within these areas include bottlebrush (*Callistemon* spp.), English ivy (*Hedera helix*), Japanese cheesewood (*Pittosporum tobira*), magnolia (*Magnolia* spp.), olive (*Olea europaea*), star jasmine (*Trachelospermum jasminoides*), Indian hawthorn (*Raphiolepis indica*), oleander (*Nerium oleander*), Mexican fan palm (*Washingtonia robusta*), and weeping baeckea (*Baeckea linifolia*).

Jurisdictional Aquatic Resources

No wetlands or waters supporting jurisdictional aquatic resources were observed on the project site during the January 2021 field survey. Aerial imagery further indicates that no aquatic features are present or historically have been present within the project site.

Wildlife Resources

Dudek directly observed 12 bird species on the project site during the January 2021 field survey: rock pigeon (*Columba livia*), Anna's hummingbird (*Calypte anna*), California gull (*Larus californicus*), California scrub-jay (*Aphelocoma californica*), American crow (*Corvus brachyrhynchos*), chestnut-backed chickadee (*Poecile rufescens*), European

starling (*Sturnus vulgaris*), house finch (*Haemorhous mexicanus*), lesser goldfinch (*Spinus psaltria*), dark-eyed junco (*Junco hyemalis*), golden-crowned sparrow (*Zonotrichia atricapilla*), and house sparrow (*Passer domesticus*).

No mammals, amphibians, or reptiles, or signs of their presence, were observed during the survey. No additional wildlife was observed during the survey.

Sensitive Biological Resources

Special-Status Plants

Results of the CNDDDB and California Native Plant Society searches revealed 53 special-status plant species as present or potentially present on the project site or in the vicinity. Of these special-status plants, all 53 species were removed from consideration and are not expected to occur on the site due to the lack of suitable habitat within or immediately adjacent to the project site, the extensively disturbed and developed condition of the site and lack of natural vegetation communities, or due to the site being outside of the species' known elevation range (Appendix D1). No special-status plants were identified during the January 2021 field survey.

Special-Status Wildlife

Results of the CNDDDB and U.S. Fish and Wildlife Service IPaC database queries revealed 42 special-status wildlife species as present or potentially present on the project site or in the vicinity. Of these, 40 species were removed from consideration due to the lack of suitable habitat within or adjacent to the project area, the level of disturbance from frequent human activity within and surrounding the project site, the extensively disturbed and developed condition of the site and lack of natural vegetation communities, or due to the project site being outside of the species' known range (Appendix D2). The remaining two special-status wildlife species, pallid bat (*Antrozous pallidus*) and Townsend's big-eared bat (*Corynorhinus townsendii*), have a low potential to occur on the project site and are discussed in the following subsection. Appendix D2 summarizes the special-status wildlife determined to be unlikely to occur on the project site. No special-status wildlife species, apart from native and migratory birds, were detected during the January 2021 field survey.

Special-Status Bats

Pallid bat is a California Species of Special Concern that inhabits grasslands, shrublands, woodlands, and forests in low elevations in California (Zeiner et al. 1990). This species occurs throughout California in open, dry habitats with rocky areas for roosting. Pallid bat requires protected areas for day roosting, including caves, crevices, and hollow trees, and may roost at night in more open sites, including buildings.

Townsend's big-eared bat is a California Species of Special Concern that typically inhabits riparian and mesic habitats that contain coniferous and deciduous forests with caves for roosting in California (Zeiner et al. 1990). This species occurs throughout California and typically prefers caves or lava tubes for roosting; however, Townsend's big-eared bat will roost in human-made structures and tunnels.

Both pallid bat and Townsend's big-eared bat are known to roost in crevices of human-made structures, but are highly sensitive to disturbance. The project site supports marginal roosting habitat for these species, as well as other common bat species, within the existing structures and buildings within the project site. Because the project site is immediately surrounded by urban development and subject to frequent human disturbance, there is a low likelihood that, if either of these species are present, that they would occur in large numbers. Signs of

roosting bat occupancy (i.e., guano or staining) were not observed within the project site during Dudek's January 2021 field survey.

The nearest documented CNDDDB occurrence of pallid bat is from 1951 in which roosting colonies were discovered at Stanford University (Occ. No. 249), approximately 3.7 miles southeast of the project site (CDFW 2021). Townsend's big-eared bat has not been documented within 5 miles of the project site (CDFW 2021).

Nesting and Migratory Birds

In California, all native active bird nests (with eggs or young) are protected by provisions in the federal Migratory Bird Treaty Act of 1918 and Sections 3503 and 3503.5 of the California Fish and Game Code. The existing buildings and structures on site, and ornamental trees and shrubs within and adjacent to the project site, provide suitable nesting habitat for several native local and migratory bird species.

4.3.2 Regulatory Framework

Federal Regulations

Federal Endangered Species Act

The ESA of 1973 (16 USC 1531 et seq.), as amended, is administered by USFWS, National Oceanic and Atmospheric Administration, and National Marine Fisheries Service. This legislation is intended to provide a means to conserve the ecosystems upon which endangered and threatened species depend, and provide programs for the conservation of those species, thus preventing extinction of plants and wildlife. Under provisions of Section 9(a)(1)(B) of the ESA, it is unlawful to "take" any listed species. "Take" is defined in Section 3(19) of the ESA as, harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any such conduct.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act prohibits the intentional take of any migratory bird or any part, nest, or eggs of any such bird. Under the Migratory Bird Treaty Act, "take" is defined as pursuing, hunting, shooting, capturing, collecting, or killing, or attempting to do so (16 USC 703 et seq.). The Migratory Bird Treaty Act prohibits both intentional and unintentional take. Additionally, Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, requires that any project with federal involvement address impacts of federal actions on migratory birds with the purpose of promoting conservation of migratory bird populations (66 FR 3853-3856). Executive Order 13186 requires federal agencies to work with USFWS to develop a memorandum of understanding. USFWS reviews actions that might affect migratory bird species.

State Regulations

California Endangered Species Act

CDFW administers CESA (California Fish and Game Code, Section 2050 et seq.), which prohibits the take of plant and animal species designated by the Fish and Game Commission as endangered, candidate, or threatened in the State of California. Under CESA Section 86, "take" is defined as "hunt, pursue, catch, capture, or kill, or attempt to

hunt, pursue, catch, capture, or kill.” CESA addresses the take of threatened, endangered, or candidate species by stating the following (California Fish and Game Code, Sections 2080–2085):

No person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the Commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided in this chapter, the Native Plant Protection Act (California Fish and Game Code, Sections 1900–1913), or the California Desert Native Plants Act (Food and Agricultural Code, Section 80001).

Sections 2081(b) and (c) of the California Fish and Game Code authorize take of endangered, threatened, or candidate species if take is incidental to otherwise lawful activity and if specific criteria are met. In certain circumstances, Section 2080.1 of CESA allows CDFW to adopt a federal incidental take statement or a 10(a) permit as its own, based on its findings that the federal permit adequately protects the species and is consistent with state law. A Section 2081(b) permit may not authorize the take of “Fully Protected” species, “specially protected mammal” species, and “specified birds” (California Fish and Game Code, Sections 3505, 3511, 4700, 4800, 5050, 5515, and 5517). If a project is planned in an area where a Fully Protected species, specially protected mammal, or a specified bird occurs, an applicant must design the project to avoid take.

California Fish and Game Code

Fully Protected Species and Resident and Migratory Birds

Sections 3511, 4700, 5050, and 5515 of the California Fish and Game Code designate certain birds, mammals, reptiles and amphibians, and fish as Fully Protected species. Fully Protected species may not be taken or possessed without a permit from the Fish and Game Commission. CDFW may not authorize the take of such species except for the following:

- Necessary scientific research
- Protection of livestock
- When the species is a covered species under an approved natural community conservation plan
- When legislatively authorized by the passing of a State Assembly Bill

In addition, the California Fish and Game Code prohibits the needless destruction of nests or eggs of native bird species (California Fish and Game Code, Section 3503), and it states that no birds in the orders of Falconiformes or Strigiformes (birds of prey) can be taken, possessed, or destroyed (California Fish and Game Code, Section 3503.5).

For the purposes of these state regulations, CDFW currently considers an active nest as one that is under construction or in use and includes existing nests that are being modified. For example, if a hawk is adding to or maintaining an existing stick nest in a transmission tower, then it would be considered to be active and covered under these California Fish and Game Code Sections.

Native Plant Protection Act

The Native Plant Protection Act (NPPA) (California Fish and Game Code Section 1900 et seq.) allows the California Fish and Game Commission to designate plants as rare or endangered. Sixty-four species, subspecies, and varieties

of plants are protected as rare under the NPPA. The act prohibits take of endangered or rare native plants but includes exceptions for agricultural and nursery operations; for emergencies; and, after proper notification of CDFW, for vegetation removal from canals, roads, and other building sites, changes in land use, and other situations.

Porter-Cologne Water Quality Control Act

The intent of the Porter-Cologne Water Quality Control Act is to protect water quality and the beneficial uses of water, and it applies to both surface water and groundwater. Under this law, the State Water Resources Control Board develops statewide water quality plans, and the RWQCBs develop basin plans that identify beneficial uses, water quality objectives, and implementation plans. The RWQCBs have the primary responsibility to implement the provisions of both statewide and basin plans. All waters of the state are regulated under the Porter-Cologne Water Quality Control Act, including isolated waters that are no longer regulated by USACE. Recent changes in state procedures require increased analysis and mitigation. Developments with impact to jurisdictional waters of the state must demonstrate compliance with the goals of the act by developing stormwater pollution prevention plans, standard urban stormwater mitigation plans, and other measures to obtain a Clean Water Act, Section 401 certification and/or Waste Discharge Requirement.

California Environmental Quality Act

CEQA requires identification of a project's potentially significant impacts on biological resources and feasible mitigation measures and alternatives that could avoid or reduce significant impacts. The CEQA Guidelines Section 15380(b)(1) defines endangered animals or plants as species or subspecies whose "survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors" (14 CCR 15000 et seq.). A rare animal or plant is defined in Section 15380(b)(2) as a species that, although not presently threatened with extinction, exists "in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or ... [t]he species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered 'threatened' as that term is used in the federal Endangered Species Act." Additionally, an animal or plant may be presumed to be endangered, rare, or threatened if it meets the criteria for listing, as defined further in the CEQA Guidelines Section 15380(c). CEQA also requires identification of a project's potentially significant impacts on riparian habitats (e.g., wetlands, bays, estuaries, and marshes) and other sensitive natural communities, including habitats occupied by endangered, rare, and threatened species.

Regional and Local Regulations

City of Menlo Park General Plan

The City's General Plan (specifically the Land Use Element, Open Space/Conservation Element, Noise Element, and Safety Element) contains general goals, policies, and programs that would require local planning and development decisions to consider impacts on biological resources. The following General Plan goals, policies, and programs would serve to minimize potential adverse impacts on biological resources:

Goal LU-6: Preserve open-space lands for recreation; protect natural resources and air and water quality; and protect and enhance scenic qualities.

Policy LU-6.2: Open Space in New Development. Require new nonresidential, mixed use, and multiple dwelling development of a certain minimum scale to provide ample open space in the form of plazas, greens, community gardens, and parks whose frequent use is encouraged through thoughtful placement and design.

Policy LU-6.8: Landscaping in Development. Encourage extensive and appropriate landscaping in public and private development to maintain the City's tree canopy and to promote sustainability and healthy living, particularly through increased trees and water-efficient landscaping in large parking areas and in the public right-of-way.

Policy LU-6.11: Baylands Preservation. Allow development near the Bay only in already developed areas.

Program LU-6.D: Design for Birds. Require new buildings to employ façade, window, and lighting design features that make them visible to birds as physical barriers and eliminate conditions that create confusing reflections to birds.

Goal OSC-1: Maintain, Protect and Enhance Open Space and Natural Resources. Protect, conserve and enhance valuable natural resources, open areas and designated open space lands rich in scenic value, wildlife or of a fragile ecological nature through conservation and restoration efforts.

Policy OSC-1.1: Natural Resources Integration with Other Uses. Protect Menlo Park's natural environment and integrate creeks, utility corridors, and other significant natural and scenic features into development plans.

Policy OSC-1.3: Sensitive Habitats. Require new development on or near sensitive habitats to provide baseline assessments prepared by qualified biologists, and specify requirements relative to the baseline assessments.

Policy OSC-1.4: Habitat Enhancement. Require new development to minimize the disturbance of natural habitats and vegetation, and requires revegetation of disturbed natural habitat areas with native or non-invasive naturalized species.

Policy OSC-1.5: Invasive, Non-Native Plant Species. Avoid the use of invasive, non-native species, as identified on the lists of invasive plants maintained at the California Invasive Plant Inventory and United States Department of Agriculture invasive and noxious weeds database, or other authoritative sources, in landscaping on public property.

Policy OSC-1.11: Sustainable Landscape Practices. Encourage the enhancement of boulevards, plazas and other urban open spaces in high-density and mixed-use residential developments, commercial and industrial areas with landscaping practices that minimize water usage.

Policy OSC-1.12: Landscaping and Plazas. Include landscaping and plazas on public and private lands, and well-designed pedestrian and bicycle facilities in areas of intensive non-vehicular activity. Require landscaping for shade, surface runoff, or to obscure parked cars in extensive parking areas.

Policy OSC-1.13: Yard and Open Space Requirements in New Development. Ensure that required yard and open spaces are provided for as part of new multi-family residential, mixed-use, commercial and industrial development.

Policy OSC-1.15: Heritage Trees. Protect Heritage Trees, including during construction activities through enforcement of the Heritage Tree Ordinance (Chapter 13.24 of the Municipal Code).

City of Menlo Park Municipal Code

The project is subject to the City's Heritage Tree Ordinance, codified in Chapter 13.24 of the Municipal Code. The project is proposed under Senate Bill (SB) 330, the Housing Crisis Act of 2019. The Preliminary Application, as defined in the Housing Crisis Act of 2019, was submitted on February 26, 2020. Thus, under the provisions of the Housing Crisis Act of 2019, the project is subject to the Heritage Tree Ordinance as it existed on February 26, 2020. The text of the Heritage Tree Ordinance as of February 26, 2020 is provided in Appendix D3. The ordinance requires that tree surveys be conducted by an International Society of Arboriculture-certified arborist, and a tree report and map be prepared to show the locations of all pertinent trees prior to initiation of construction activities. Any work performed within an area 10 times the diameter of the tree (i.e., the tree protection zone) requires submittal of a tree protection plan prepared by a certified arborist for review and approval by the Community Development Director or his/her designee prior to issuance of any permit for grading or construction. Removal of heritage trees requires an appropriate permit from the Director of Public Works or his/her designee and replacement of each Heritage Tree at a 1:1 ratio. A tree report for the project site was prepared by FMA Landscape Services, Inc. in June 2020 and updated in January 2022. The Arborist Report is provided in Appendix D4.

The project is also subject to Chapter 16.44.130(6) of the Municipal Code concerning bird-friendly designs for buildings. No revisions to Chapter 16.44.130(6) of the Municipal Code have been made since February 26, 2020. As required by the ordinance, all new construction, regardless of size, must implement the following bird-friendly design features:

- A. No more than ten percent (10%) of facade surface area shall have non-bird-friendly glazing.
- B. Bird-friendly glazing includes, but is not limited to, opaque glass, covering the outside surface of clear glass with patterns, paned glass with fenestration, frit or etching patterns, and external screens over nonreflective glass. Highly reflective glass is not permitted.
- C. Occupancy sensors or other switch control devices shall be installed on nonemergency lights and shall be programmed to shut off during nonwork hours and between ten (10) p.m. and sunrise.
- D. Placement of buildings shall avoid the potential funneling of flight paths towards a building facade.
- E. Glass skyways or walkways, freestanding (see-through) glass walls and handrails, and transparent building corners shall not be allowed.
- F. Transparent glass shall not be allowed at the rooflines of buildings, including in conjunction with green roofs.
- G. Use of rodenticides shall not be allowed.
- H. A project may receive a waiver from one (1) or more of the items listed in subsections (6)(A) to (F) of [the ordinance], subject to the submittal of a site-specific evaluation from a qualified biologist and review and approval by the planning commission. (Ord. 1025 Section 3 (part), 2016)

4.3.3 Thresholds of Significance

The significance criteria used to evaluate the project impacts to biological resources are based on Appendix G of the CEQA Guidelines. Potential project-related impacts analyzed in this section account for biological resources that

occur or have the potential to occur on the project site. According to Appendix G of the CEQA Guidelines, a significant impact related to biological resources would occur if the project would:

- A. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.
- B. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.
- C. 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.
- D. 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.
- E. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- F. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.
- G. Make a cumulatively considerable contribution to a significant cumulative impact related to biological resources.

4.3.4 Impacts and Mitigation Measures

Methodology

Direct impacts are caused by a project and occur at the same time and place. Direct impacts may be permanent or temporary. **Direct permanent impacts** typically refer to the permanent physical loss of a biological resource due to ground disturbance activities associated with implementation of a proposed project. Direct permanent impacts can include the following (1) permanent loss of vegetation communities and land covers that can serve as habitat for special-status plant and wildlife species; (2) injury or mortality to individuals of special-status plant and wildlife species; (3) permanent loss of sensitive habitat; and (4) permanent loss of areas that facilitate wildlife movement and habitat connectivity. **Direct temporary impacts** typically consist of ground disturbance associated with construction activities that would not result in a permanent structure and that would be restored to substantially similar conditions after construction is complete. Temporary impacts may result from equipment staging, equipment turnaround areas, and construction access. Additionally, temporary direct impacts can occur from removal or trampling of vegetation outside designated work zones in the absence of avoidance and minimization measures.

Indirect impacts are reasonably foreseeable effects on biological resources caused by the project but that occur at a different time and place (e.g., resources adjacent to but outside of the site during construction, remaining resources either during construction or operation). Indirect impacts may be short-term construction-related impacts, such as those due to noise and dust, or long-term impacts, such as degradation of habitat or impacts from activities during operations and maintenance.

Cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or several separate projects. The cumulative impact from several projects is the change in the environment that results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over time.

Project Impacts

The significance of impacts to biological resources are typically assessed by comparing the potential changes resulting from a proposed project to the significance thresholds defined above. However, Section 15064(b) of the CEQA Guidelines states that an ironclad definition of “significant” effect is not possible because the significance of an activity may vary with the setting. As such, an evaluation of whether or not an effect on biological resources would be “substantial,” and therefore a potentially significant impact with respect to the significance thresholds identified above, generally considers the following:

- amount and/or extent of the resource (numbers, acres, etc.) to be affected;
- the relative biological value (rarity, functions and values) and/or sensitivity status of the resource and its relevance within a specified geographical area;
- the type and severity of impact, (i.e., would the project adversely affect wildlife through mortality, injury, displacement, or habitat loss or adversely impact vegetation through destruction of a sensitive plant population?);
- timing of the impact, (i.e., would the impact occur at a critical time in the life cycle of a special-status plant or animal, such as breeding, nesting, or flowering periods?);
- duration of the impact, (i.e., whether the impact is temporary or permanent); and
- project design attributes included as part of the overall proposed project that would avoid or minimize potential impacts on biological resources.

Direct impacts from the proposed project would generally be associated with the construction of structures such as townhomes, rental apartments, and associated parking and landscaping as shown in Figure 3-5, Proposed Site Plan. No direct temporary impacts would occur because the entire site is developed and does not have any natural vegetation communities or land cover types that would need to be restored to pre-project conditions. Therefore, this analysis focuses on direct permanent impacts.

Potential indirect impacts resulting from the proposed project include:

- **Noise.** Construction-related and operational noise can result in altered foraging and nesting behavior of birds, displacement of animals from shelter, damaged hearing from extremely loud noises, and increased vulnerability to predators (Lovich and Ennen 2011).
- **Chemical pollutants.** Accidental spills of hazardous chemicals could contaminate surface and sub-surface waters, and impact wildlife species through direct or secondary poisoning.

Indirect impacts are expected to be minimal to non-existent. The project site is in a heavily urbanized area and habitat for special-status wildlife on and adjacent to the site is very limited. Any species using nearby buildings or trees would have adapted to existing urban noise levels from traffic, nearby construction, and humans. These species may temporarily alter normal foraging and movement behaviors during construction (e.g., birds reacting to

loud demolition noises by flushing from trees) but are highly unlikely to permanently abandon the area, and their populations would not be reduced below self-sustaining levels.

Impact 4.3-1 Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

Special-Status Plants

As previously described, no special-status plant species are known to occur or have potential to occur on the project site or within the immediate vicinity as the site lacks suitable habitat, is extensively disturbed and developed lacking natural vegetation communities, and due to the site being outside of several species' known elevation ranges. Therefore, there is no potential for direct or indirect impacts to special-status plant species within the project site. As such, special-status plant species are not discussed any further in this section.

Special-Status Wildlife

The proposed project is not expected to have a substantial adverse effect on most special-status wildlife species known to occur in the region because it would redevelop existing hardscape that provides little to no habitat for wildlife species. Adjacent lands are also developed and heavily urbanized and therefore unlikely to support special-status wildlife species that could be indirectly affected by the proposed project.

The project site has a low potential to support roosting bats, including pallid bat and Townsend's big-eared bat, both of which are California Species of Special Concern. If present, potential direct impacts to these species from the project include direct mortality or injury of roosting individuals and the loss of roosting habitat. Such impacts would be significant because they would they have a substantial adverse effect, through loss of roosts, on these special-status species. The loss of roosting habitat is considered one of the primary conservation issues facing bat populations, with loss of maternity roosts considered especially significant (Johnston et al. 2019).

Mitigation Measures

Implementation of MM 4.3a, which requires a pre-construction survey for and avoidance of bat roosts, would reduce the impact to a **less-than-significant** level.

MM 4.3a **Pre-construction Surveys for Bat Roosts.** To the extent practicable, demolition of existing structures should occur outside the bat maternity season when dependent young would be present, which generally occurs from April to September in California. Prior to the removal of trees or the demolition of buildings, a bat survey shall be performed by a qualified bat biologist no more than 3 days prior to the start of construction activities. A qualified bat biologist shall have at least 2 years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat and Townsend's big-eared bat, with verified project names, dates, and references, and experience with relevant equipment used to conduct bat surveys. The survey should include a determination on whether active bat roosts are present on or within 50 feet of the project site. The survey shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark, suitable canopy for foliage roosting species, attics, eaves).

If no evidence of bat roosting is found, the project sponsor shall complete the following:

- Submit a memorandum prepared by the biologist who completed the survey describing survey methods, conditions, and results of the survey.
- No further action is required if the trees and buildings are removed prior to the next breeding season (the following April).
- If demolition is not completed by the following April, a new bat survey shall be completed by a qualified biologist no more than three days prior to any further demolition or tree removal.

If the survey identifies active bat roosts, or buildings scheduled for demolition, or trees scheduled for removal as potential bat habitat, demolition and tree removal may not begin, or resume, and the project sponsor shall complete the following:

- Retain a qualified biologist to conduct an evening visual emergence survey of the source building(s) from 0.5 hours before to 1 or 2 hours after sunset for a minimum of 2 nights, using night-vision goggles and/or passive acoustic detectors/monitoring equipment to assist in species identification.
- If roosting is found to occur on site, the project sponsor and qualified biologist must prepare an appropriate bat eviction and exclusion plan which will recognize maternity and winter roosting seasons as vulnerable seasons for bats, and require exclusion outside of these times, for example, dates generally between March 1 and April 15 or September 1 and October 15 are suitable times for exclusion; identify suitable areas for excluded bats to disperse or require installation of appropriate dispersal habitat, such as artificial bat houses, prior to project activities, and include an associated management and monitoring plan with implementation and funding; and include a requirement that exclusion materials shall be re-evaluated for effectiveness by the qualified biologist up to 2 weeks prior to building demolition. Locations and procedures for the implementation of bat boxes shall be determined by a qualified biologist and consultation with the California Department of Fish and Wildlife to reduce the likelihood of mortality of the evicted bats.
- If maternity roosts are identified during the maternity roosting season (between the months of April and September), avoid all disturbance to such roosts until a qualified biologist has determined the young bats are no longer roosting.
- If a female or maternity colony of bats is found on the project site, construction activities shall be conducted outside of the maternity roost season (after September 1 and before April 15), if feasible.
- If an active maternity roost is documented on-site and the project cannot be conducted outside of the maternity roosting season, a qualified biologist shall implement a construction-free buffer zone around the active roost to ensure the continued success of the colony. Such buffer zones may include a construction-free barrier of 200 feet from the roost. If implementing a construction-free buffer during the maternity roosting season is not feasible for the project, then bats shall be excluded from the site after September 1 and before October 15, and/or after March 1 and before April 15, to prevent the formation of maternity colonies. Non-breeding bats shall be safely evicted under the direction of a qualified biologist.
- If the qualified biologist identifies potential bat habitat trees, then tree trimming and tree removal shall not proceed unless the following occurs: (1) a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establishes absence of roosting bats or (2) tree trimming and tree removal occurs only during seasonal periods of

non-breeding bat activity, from approximately March 1 through April 15 and September 1 through October 15, and tree removal occurs using the two-step removal process. Two-step tree removal shall be conducted over two consecutive days. The first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided. The second day the entire tree shall be removed.

Impact 4.3-2 Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

As previously described, the project site contains only one non-natural land cover type (urban/developed) and does not support riparian habitat or other sensitive natural communities. Therefore, there would be **no impact** on any riparian habitat or sensitive natural community.

Mitigation Measures

No mitigation measures are required.

Impact 4.3-3 Would the project 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?

As previously described, no wetlands, waters, or riparian habitats under the jurisdiction of the USACE, RWQCB, or CDFW were identified on the project site during the January 2021 field survey or from desktop assessments, database searches, or aerial imagery review. Therefore, there would be **no impact** on state or federally protected wetlands.

Mitigation Measures

No mitigation measures are required.

Impact 4.3-4 Would the project 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?

Project construction associated with the proposed project could result in impacts to nesting birds, including the loss of nests, eggs, and fledglings if work activities occur during the nesting season (generally February 1 through August 31). All native migratory bird species are protected by the federal Migratory Bird Treaty Act, California Fish and Game Code section 3503.5 (which also specifically protects raptors). As discussed in Impact 4.3-1, the project site could also support bat roosts.

As discussed in Section 4.3.1, the project site is highly developed and does not contain habitat for other native resident or migratory wildlife species.

Given the potential for nesting birds and bat roosts to occur on the project site that could be destroyed or disturbed during project construction, the project would have a **potentially significant** impact related to impeding the use of wildlife nursery sites. Thus, mitigation is required.

Mitigation Measures

Implementation of Mitigation Measure 4.3a as identified in Impact 4.3-1 would ensure that impacts to bat roosts are avoided and/or reduced to a **less-than-significant** level. Additionally, implementation of Mitigation Measure 4.3b would ensure that impacts to nesting birds are avoided and/or reduced to a **less-than-significant** level.

MM 4.3b **Pre-construction Survey for Nesting Birds.** If project construction activities are scheduled to occur during the nesting season (February 1 to August 31), a pre-construction nesting bird survey should be conducted by a qualified biologist within 7 days prior to construction activities to determine if any native birds are nesting on or near the project site (including a 250-foot buffer for raptors). If any active nests are observed during surveys, a suitable avoidance buffer will be determined by the qualified biologist based on species, location, and planned construction activity. These nests would be avoided until the chicks have fledged and the nests are no longer active as determined by the qualified biologist.

Impact 4.3-5 Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Heritage Trees

Twenty-nine of the 85 trees on the site meet the City's definition of a heritage tree; all of these are proposed for removal (Appendix D1). As stated in Chapter 2, Project Description, the project site is approximately 7 to 9 feet above mean sea level and is within the Federal Emergency Management Agency (FEMA) Zone AE (FEMA 2019), indicating it is likely to be subject to inundation during a 100-year flood. Further, the site is in an area that would be subject to sea-level rise. Menlo Park Municipal Code Section 16.45.130(4) requires that all ground-level residential units in the Residential Mixed-Use zone district be raised 2 feet above the 5-foot FEMA floodplain to avoid potential hazards associated with sea-level rise. Because the project proposes to construct residential units throughout the site, complying with the elevation requirement necessitates that the entire site be graded and covered with fill material to achieve the required elevation above the floodplain. As a result, it would not be feasible to retain existing trees within the site. The Heritage Tree Ordinance as it existed as of February 26, 2020, when the Preliminary Application for the project was submitted, required that when heritage trees are removed to accommodate a development project, the project developer must provide for replacement of those trees at a 1:1 ratio or pay a heritage tree in-lieu fee if replacement onsite is not feasible.

Applications for tree removal permits were submitted to the City in June 2020 and permits would be issued prior to construction. The project proposes to plant 353 new trees with a minimum 15-gallon container size throughout the project site, as shown in Figure 3-9, Tree Planting Plan. The project would therefore comply with the City's Heritage Tree Ordinance as it existed at the time that the Preliminary Application for the project was submitted, in accordance with the Housing Crisis Act of 2019.

Bird-Safe Building Design

Glass windows and building façades can result in bird injury or mortality because birds do not perceive glass as an obstruction (City of San Francisco 2011, Loss et al. 2014). They may collide with glass that reflects the sky or vegetation or glass that is transparent, which allows birds to perceive an unobstructed flight route to vegetation inside the building. Most bird-window collisions occur within the first 60 feet of the ground, where birds spend most of their time foraging, nesting, and roosting, and where vegetation is most likely to be reflected in glazed surfaces (City of San Francisco 2011).

By necessity, the buildings constructed as part of the proposed project would be within the primary “bird collision zone” (i.e., within 0 to 60 feet of the ground) and the project is therefore subject to bird-safe building design requirements under Chapter 16.44.130(6) of the Municipal Code, with which the project would comply.

The project would construct 116 three-story townhomes and a five-story apartment building. Roof heights for the townhouse buildings would generally be between 40 and 43 feet but in some places would reach as much as approximately 50 feet, while the apartment building roof would be 68 feet at the top of the ridge and approximately 67 feet around the perimeter, with rooftop elevator overruns reaching 73 feet and penthouse stairways reaching 75 feet. Terrace and podium guardrails on all buildings will either be open metal railings or fitted with fritted clear-glazed glass. This is considered a bird-friendly glazing, as required by the Municipal Code, because it creates “visual noise barriers” that help avoid bird-window collisions. In addition, the buildings would not include any transparent glass at the rooflines or building corners.

In addition, vegetation in the vicinity of the project site is limited to non-native ornamental trees and shrubs. It lacks the structural diversity that typically attracts large numbers of native birds. The number of birds that would be exposed to increased risk of window collisions is therefore expected to be relatively low. Species with the greatest potential to collide with new buildings are primarily the common, urban-adapted passerines that currently use the site.

In summary, the proposed project is subject to bird-safe building design requirements under the City’s Municipal Code and has incorporated these requirements into the design of the buildings’ windows and facades. Combined with the low number of birds expected to be exposed to increased risk of collisions and the fact that most birds would be urban generalists that already occur in the area, compliance with the City’s bird-safe design requirements would reduce the number of bird collisions at the new buildings to a less-than-significant level.

Conclusion

The proposed project is subject to City ordinances concerning heritage tree removal and bird-safe building design. Compliance with these ordinances is mandatory. Although the proposed project would remove heritage trees and may not be able to completely remove the risk of bird-window collisions, compliance with City requirements regarding heritage tree removal and bird-safe building design would reduce potential impacts to a **less than significant** level.

Mitigation Measures

No mitigation measures are required.

Impact 4.3-6 Would the Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

To date, there are no adopted Habitat Conservation Plans, Natural Community Conservation Plans, or other approved habitat conservation plans that cover the project site. Therefore, the project would not conflict with an adopted habitat conservation plan and there would be **no impact**.

Mitigation Measures

No mitigation measures are required.

Cumulative Impacts

This analysis of potential cumulative impacts to biological resources considers the effects of buildout under the City's General Plan. This includes ongoing development throughout the City of Menlo Park, particularly within the Bayfront Area, as described in Section 4.0 Environmental Analysis. This geographic area is appropriate for consideration of cumulative impacts to biological resources because, as stated in the ConnectMenlo EIR, "potential impacts of proposed development on biological resources tend to be site-specific" and dependent upon the resources present within a given project site. However, it is also important to recognize that biological resources in a given region or area comprise a network of vegetation communities and hydrologic features that support a diversity of plant and wildlife species that are not limited to individual properties or project sites. These resources can be adversely affected by the incremental loss of such resources on individual sites.

Impact 4.3-7 Would the Project make a cumulatively considerable contribution to a significant cumulative impact related to biological resources?

The ConnectMenlo EIR contained a discussion of cumulative impacts to biological resources under Impact BIO-7. This analysis found that when individual projects comply with the goals, policies and programs in the General Plan Land Use, Open Space/Conservation, and Noise and Safety elements, comply with the bird-safe design measures in the Municipal Code, and provide project-specific baseline biological resources assessment as required under ConnectMenlo EIR Mitigation Measure BIO-1, buildout of the City's General Plan within the Bayfront Area would result in a less-than-significant cumulative impact to biological resources.

The ConnectMenlo EIR analysis also concluded that the future development anticipated under the General Plan has the potential to cumulatively impact biological resources but that such impacts would be reduced to less-than-significant levels with implementation of mitigation measures and compliance with applicable federal, state, and local regulations. The ConnectMenlo EIR contains the conclusion that ongoing development within the City would not create or contribute to a cumulative impact on biological resources (City of Menlo Park 2016b). While the proposed project would increase the total development density and intensity compared to the amount of development evaluated in the ConnectMenlo EIR, the project would not expand the footprint of development relative to the City's General Plan. Thus, the analysis and conclusions of the ConnectMenlo EIR regarding cumulative impacts to biological resources remain applicable to the proposed project.

As stated in Section 4.3.1, a Dudek biologist conducted a site-specific survey and assessment of the potential for the project site and adjacent areas to support significant biological resources, consistent with the City's requirements under General Plan Policy OSC-1.3, Sensitive Habitats, and Mitigation Measure BIO-1 from the ConnectMenlo EIR. As discussed in Section 4.3.1 and under Impact 4.3-1, the project site supports urban development. There is no native vegetation or populations of special-status plant species, no aquatic or hydrologic resources, and no wildlife movement corridors within or adjacent to the site. Thus, the proposed project would not result in any incremental loss of such resources within the project region.

Section 4.3.1 and Impact 4.3-1 identify that the site has a low potential to support pallid bat and Townsend's big-eared bat, which are special-status wildlife species. Pallid bat and Townsend's big-eared bat are known to roost in crevices of human-made structures but are highly sensitive to disturbance. The extent of urban development and activity within and immediately surrounding the project site reduces the potential for these species to be present at all, and greatly reduces the likelihood for large numbers of either species to be present. In addition, Impact 4.3-4 identifies that the project site could support nesting birds and construction activities

could result in impacts to nesting birds, including the loss of nests, eggs, and fledglings if work activities occur during the nesting season, as well as that the project site could support bat roosts.

Mitigation Measures 4.3a and 4.3b require that pre-construction surveys for roosting bats and nesting birds be completed prior to commencement of construction activities and identify additional requirements to avoid adverse effects to such species if they are present. With implementation of these measures, the proposed project would not result in any significant incremental effects to these species.

Impact 4.3-5 identifies that the project would result in the removal of 29 heritage trees from the project site, but in compliance with the City's Heritage Tree Ordinance as it existed as of February 26, 2020, the project would replace these trees at a 1:1 ratio and would plant additional trees throughout the site, as shown in Figure 3-9. Impact 4.3-5 also identifies that the project is subject to and complies with the City's Bird Safe Design requirements. Thus, the project would not result in any significant incremental effects to these biological resources.

In conclusion, the project would be consistent with the findings of the ConnectMenlo EIR that there would not be a significant cumulative impact to biological resources to which the project could contribute. Thus, the project would have **no impact** associated with cumulative losses of biological resources.

Mitigation Measures

No mitigation measures are required.

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