

L. Biological Resources

This section describes the biological resources at the proposed project site and evaluates the potential impacts of the proposed project on those resources. The biological resources present, or likely present, on the site were determined through a biological reconnaissance survey¹ and tree assessment conducted by ESA on February 2, 2005 and March 8, 2005; review of a list of special status plant and animal species for the project area provided by the USFWS Endangered Species Office (USFWS, 2006); and review of previous studies of the project area. In addition, ESA conducted searches of the CDFG California Natural Diversity Data Base (CNDDDB) and the California Native Plant Society's (CNPS) Electronic Inventory (CDFG, 2006; CNPS, 2006) for the Oakland East and Oakland West U.S. Geological Survey (USGS) 7.5-minute quadrangles.

Setting

Regional Setting

Oakland is located within the California Floristic Province, Central Western California Region, San Francisco Bay Area subregion (Hickman, 1993).² The climate of this subregion is Mediterranean with warm summers and cool, wet winters. Moderate temperatures result in a long growing season that supports a broad range of habitats including marsh and wetland communities, native and non-native grasslands, riparian scrubs and forests, upland oak and mixed evergreen forests, chaparral and upland scrubs. According to the "bioregional" characterizations developed as part of California's Agreement on Biological Diversity (a multi-agency memorandum signed in 1993), Oakland is located within the Bay/Delta Bioregion. Historically, vegetative cover in the project area would have consisted of a mosaic of coastal terrace prairie and coastal scrub communities traversed by riparian corridors, with extensive brackish and salt marshes found bayward of the site

Project Setting

The proposed project is infill development in an area already subjected to a long history of development. The proposed project site is currently covered by a number of buildings, paved areas, and two vacant lots and is located in between the Union Pacific Railroad tracks and East 12th Street, with elevated BART tracks running down the median of East 12th Street. The site is located approximately one-half mile from the Oakland Estuary, one-quarter mile from an undergrounded reach of Sausal Creek, and one-third mile from the nearest remaining aboveground reach of Sausal Creek. The vast majority of natural vegetation in the project vicinity was converted to either agricultural or urban uses over a century ago. Remaining open space in

¹ The reconnaissance survey was general in nature and was not sufficient to prove absence of rare, threatened and endangered species.

² Geographic subdivisions are used to describe and predict features of the natural landscape. The system of geographic units is four-tiered: provinces, regions, subregions, and districts. The State of California is covered by three floristic provinces: California Floristic Province, Great Basin and Desert. The California Floristic Province is the largest, includes most of the state and small portions of Oregon, Nevada and Baja California, Mexico and is made up of six regions.

the vicinity consists of urban parks, where vegetation is landscaped and dominated by turf grasses and non-native trees. Surrounding land uses are urban-residential and industrial. There are a number of non-native trees along the East 12th Street façade of the site. Other than these trees, vegetation is limited to several landscaped areas and weedy plants growing in the vacant lots and in the cracks of the sidewalks.

Vegetation Communities and Associated Wildlife Habitats

Descriptions of plant communities occurring on and within the immediate vicinity of the proposed project site are based on observed site conditions and generally follow the *List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database* system (CDFG, 2003). This classification system is similar in structure to previous CDFG classification systems (e.g., Holland, 1986), but is based on the Sawyer and Keeler-Wolf (1995) plant classification system. This classification system is a hierarchical treatment of vegetation communities/wildlife habitats that describes natural communities, naturalized communities, invasive plant associations, and human-influenced and urban landscapes. The vegetation communities generally correlate with wildlife habitat types.

The proposed project site occurs in what can be best characterized as an urban developed area and does not currently support natural or native plant communities. Vegetation types occurring onsite are either ruderal in character or consist of urban landscaping. These communities are described below.

Ruderal

Ruderal habitat occurs along the railroad tracks on the southern border of the project site and on the vacant lot included within the site. Herbaceous vegetation within these areas is dominated almost exclusively by non-native species. Species observed in the project area include non-native grasses, such as Kentucky bluegrass (*Poa annua*) and wild oat (*Avena* sp.), as well as herbaceous species such as cheeseweed (*Malva parviflora*), common groundsel (*Senecio vulgaris*), fennel (*Foeniculum vulgare*), and bristly ox-tongue (*Picris echioides*).

In such an urbanized area, ruderal habitat may provide refuge for reptiles such as western fence lizard (*Sceloporus occidentalis*) as well as seed eating birds such as mourning dove (*Zenaidura macroura*) and house finch (*Carpodacus mexicanus*). Vegetated open areas, such as vacant lots may provide foraging habitat for aerial and ground-foraging insect eaters such as *Myotis* bat species. Mammals such as Botta's pocket gopher (*Thomomys bottae*) and western harvest mouse (*Reithrodontomys megalotis*) commonly forage within urban and ruderal areas. These small rodents may attract raptors, including red-tailed hawk (*Buteo jamaicensis*) and red-shouldered hawk (*Buteo lineatus*).

Urban Developed Areas

Much of the project site can be classified as urban developed areas. This community descriptor can be applied to areas occupied by buildings (residential or business), roads, parking lots, and other developed facilities, as well as adjacent landscaped or otherwise heavily disturbed areas. Intact

native plant communities no longer occur in developed areas and these areas provide virtually no habitat for native plants species. Vegetation in developed areas consists primarily of turfgrasses and a wide variety of non-native horticultural species, as well as cultivars of native species such as Monterey pine (*Pinus radiata*), coast redwood (*Sequoia sempervirens*), and coast live oak (*Quercus agrifolia*). Wildlife found in the vicinity of the proposed project site may include the occasional striped skunk (*Mephitis mephitis*), Virginia opossum (*Didelphis virginiana*), raccoon (*Procyon lotor*), as well as more commonly, American goldfinch (*Carduelis tristis*), and house finch. Larger trees in such areas may provide roosting and nesting habitat for raptors and other birds, particularly along open reaches of creeks. However, the project site likely provides habitat for only a few highly adaptable, generally non-native species, such as European starling (*Sturnus vulgaris*), house sparrow (*Passer domesticus*), and Norway rat (*Rattus norvegicus*).

Streams and Wetlands

Wetlands

No wetlands were identified on or in the immediate vicinity of the proposed project site during ESA's site surveys conducted in February and March of 2005. The vacant lots on the proposed project site were thoroughly inspected for evidence of wetlands. The site is fairly level, with well drained soils. No standing water or other evidence of wetland hydrology was observed during the site visits, nor were areas dominated by wetland plants or areas of saturated soils observed. Since there are no wetlands present on the site, the proposed project could have no substantial adverse effect on federally protected wetlands.

Streams

There are no streams or other potentially jurisdictional drainages located on or adjacent to the project site. This heavily urbanized area supports no riparian habitat or other sensitive natural communities. The nearest creek is Sausal Creek (Sowers, 1993), which runs underneath Fruitvale Avenue east of the project site. The lower reaches of Sausal Creek were undergrounded many years ago and there is no longer any riparian habitat present in this area.

Oakland's Creek Protection Ordinance (Oakland Municipal Code, Title 13, Chapter 13.16.120) requires a Creek Protection Permit for construction that will take place within close proximity to a creek, as defined in the Ordinance. As mentioned above, the nearest extant creek, is located approximately one-fifth of a mile from the project site. Therefore a Creek Protection Permit will not be required for the project.

Wildlife Movement and Overall Biological Value of the Site

The proposed project site lies within a heavily urbanized area of Oakland, adjacent to a major railroad corridor and numerous heavily traveled city streets and within close proximity to I-880. These transportation corridors all provide major impediments to wildlife movement. There are no stream corridors remaining aboveground within the project vicinity to facilitate wildlife movement and there are no natural plant communities remaining in the area. Therefore, the overall biological value of the proposed project site is considered to be quite low.

Special-status Species

A number of species known to occur in the project vicinity are protected pursuant to federal and/or State endangered species laws, or have been designated Species of Special Concern by the CDFG. In addition, CEQA Guidelines Section 15380(b) provides a definition of rare, endangered or threatened species that are not included in any listing.³ Species recognized under these terms are collectively referred to as “special-status species.” For the purposes of this EIR, special-status species include:

- Plant and wildlife species listed as rare, threatened or endangered under the federal or State endangered species acts;
- Species that are candidates for listing under either federal or State law;
- Species formerly designated by the USFWS as Species of Concern or by CDFG as Species of Special Concern;
- Species protected by the federal Migratory Bird Treaty Act (16 U.S.C. 703-711);
- Species such as candidate species that may be considered rare or endangered pursuant to Section 15380(b) of the CEQA Guidelines.

This analysis involved review of a comprehensive list of the special status species that have been documented from, or have potential to occur in suitable habitat within, the general project area. These lists were obtained from the California Natural Diversity Database (CDFG, 2006), California Native Plant Society Electronic Inventory (CNPS, 2006), and the USFWS (USFWS, 2006). Based on ESA’s review of the biological literature of the region, previous EIRs and surveys in the project vicinity, and an evaluation of the habitat conditions of the existing and proposed project sites, many of these species were eliminated from further evaluation because (1) the project site or the immediate area does not provide suitable habitat, or (2) the known range for a particular species is outside of the project site and/or the immediate area. The California Natural Diversity Data Base (CNDDDB) documents occurrences of special status species within the vicinity of the proposed project site. However, these are primarily historical, with many dating from the late 1800s (CDFG, 2006) and most native species have been extirpated from the area since that time. Habitat either no longer exists, or never existed, on-site or nearby for most of the sensitive species listed by the USFWS (2006), CNDDDB (2006), or the California Native Plant Society (CNPS, 2006). Ongoing disturbance and development in the vicinity make it highly unlikely that the proposed project would have direct adverse effects on any special status species. The exception to this is several special status raptors and bat species, presented in **Table IV.L-1**, for which potential habitat (i.e. general habitat types that would support either breeding or foraging) occurs within or in the vicinity of the project site. These species and the potential for their occurrence are also discussed in further detail below.

³ For example, vascular plants listed as rare or endangered or as List 1 or 2 by the CNPS are considered to meet Section 15380(b).

**TABLE IV.L-1
SPECIAL STATUS SPECIES WITH POTENTIAL TO OCCUR AT OR WITHIN THE VICINITY OF THE
PROJECT SITE**

Common Name Scientific Name	Listing Status UFWS/CDFG	Habitat	Potential to Occur	Period of Identification
Birds				
Cooper's hawk <i>Accipiter cooperi</i>	--/CSC	Generally nests in riparian growths of deciduous trees and live oak woodlands. Also known to nest in large trees in urban parks and neighborhoods. Forage in woodlands and urban neighborhoods.	Moderate potential. Unlikely to nest within the immediate vicinity of the project site but may nest in nearby parks and forage throughout the area.	Year-round
Red-tailed hawk <i>Buteo jamaicensis</i>	--/3503.5	Usually nests in large trees, often in woodland or riparian deciduous habitats. Forages over open grasslands and woodlands and urban neighborhoods. Can be seen perching on light standards along freeways in the project area.	Moderate potential. Unlikely to nest within the immediate vicinity of the project site but may nest in nearby parks and forage throughout the area.	Year-round
Red-shouldered hawk <i>Buteo lineatus</i>	--/3503.5	Usually nests in large trees, often in woodland or riparian deciduous habitats. Forages over open grasslands and woodlands and urban neighborhoods. Can be seen perching on light standards along freeways in the project area.	Moderate potential. Unlikely to nest within the immediate vicinity of the project site but may nest in nearby parks and forage throughout the area.	Year-round
Mammals				
Pallid bat <i>Antrozous pallidus</i>	--/CSC	Day roosts are mainly in caves, crevices, and mines; also found in buildings and under bark. Forages in open lowland areas	Moderate potential. Abandoned buildings and trees located on the project site.	March–August
Townsend's western big-eared bat <i>Corynorhinus townsendii</i>	FSC/CSC	Roosts in caves, mines, buildings or other human-made structures for roosting. Forages in open lowland areas	Moderate potential. Abandoned buildings and trees located on the project site.	March-August
Greater western mastiff bat <i>Eumops perotis californicus</i>	FSC/CSC	Needs rock crevices, grassland, coastal scrub; may use urban areas	Moderate potential. Suitable roosting habitat is present within the project vicinity.	March–August
Long-eared myotis <i>Myotis evotis</i>	FSC/--	Inhabits woodlands and forests up to approximately 8,200 feet in elevation; roosts in crevices and snags.	Moderate potential. Suitable roosting habitat is present in the project area.	March–August
Fringed myotis <i>Myotis thysanodes</i>	FSC/--	Inhabits a variety of woodland habitats, roosts in crevices or caves, and forages over water and open habitats.	Moderate potential. Suitable roosting habitat is present within the project vicinity.	March–August

**TABLE IV.L-1 (continued)
 SPECIAL STATUS SPECIES WITH POTENTIAL TO OCCUR AT OR WITHIN THE VICINITY OF THE
 PROJECT SITE**

Common Name Scientific Name	Listing Status UFWS/CDFG	Habitat	Potential to Occur	Period of Identification
Mammals (cont.)				
Long-legged myotis <i>Myotis volans</i>	FSC/--	Roosts in rock crevices, buildings, tree bark, snags, mines, and caves. Trees are perhaps the most important daytime roosts for this species.	Moderate potential. Suitable roosting habitat is present in the project area.	March–August
Yuma myotis <i>Myotis yumanensis</i>	FSC/CSC	Roosts in caves, old buildings, and under bark. Forms maternity colony in the spring.	Moderate potential. Suitable roosting habitat is present in the project area.	March–August

Status Codes:

Federal (USFWS):

- FE = Listed as Endangered (in danger of extinction) by the Federal Government.
- FT = Listed as Threatened (likely to become endangered within the foreseeable future) by the Federal Government.
- FP = Proposed for Listing as Endangered or Threatened.
- FC = Candidate to become a proposed species.
- FSC/FSLC = former Federal Species of Concern/Federal Species of Local Concern. FWS no longer lists species of concern but suggest that they still be considered. These are formerly listed species that may be endangered or threatened, but not enough biological information has been gathered to support listing at this time.
- FD = Delisted by the Federal Government

State (CDFG):

- CE = Listed as Endangered by the State of California
- CT = Listed as Threatened by the State of California
- CSC = California Species of Special Concern
- * = Special Animals

-- No applicable listing

SOURCE: CDFG, 2006; CNPS, 2006; USFWS, 2006.

Special-status Plant Species

No special status plant species are expected to occur at the project site due, for the most part, to its highly disturbed and developed nature, as described above in the *Project Setting*. There are no natural plant communities remaining at the project site. In addition, a thorough review and analysis of the special status plant species listed by the databases as occurring in the project vicinity, indicates that the potential to occur for most of the species listed is extremely low or non-existent due to one or more of the following reasons:

- Suitable habitat for the species either never existed on the project sites or no longer does due to development or other historical and ongoing disturbance of soils and vegetation;
- The species is not documented within the general vicinity of the project sites;
- Only historical occurrences for the species are documented from the area;
- The species has been extirpated from the quadrangle or county.

Special-status Wildlife Species

The following species are either former federal species of concern, State species of concern, or are protected under the California Fish and Game Code (see *Regulatory Setting* section) and have a moderate potential to occur within the project area.

Cooper's Hawk. The Cooper's hawk, a California species of special concern, ranges over most of North America, and may be seen throughout California. While nesting pairs have generally declined throughout the lower elevation, more populated, parts of the state this species appears to be adapting to urban life. This species feeds primarily on other birds, including pigeons (*Columba livia*) The Cooper's hawk forages in open woodlands and wooded margins and nests in tall trees, often in riparian areas (Ehrlich, et al., 1988) but can also be seen foraging in urban neighborhoods. Although no trees large enough for nesting purposes occur on the project site, there are trees within a 500 foot line of sight that may provide potential nesting habitat and perching habitat for this species and Cooper's hawk may also forage in the area..

Red-tailed Hawk. Red-tailed hawks are commonly found in woodlands and open country with scattered trees as well as in urban areas. These large hawks feed primarily on small mammals, but will also prey on other small vertebrates, such as snakes and lizards, as well as on small birds and invertebrates. Red-tailed hawks nest in a variety of trees in woodland, agricultural, and urban habitats. Although no trees large enough for nesting purposes occur on the project site, there are trees within a 500 foot line of sight that may provide potential nesting habitat for red-tailed hawks parks or neighborhoods near the project area and these hawks may use the vacant lots included within the project site for foraging purposes.

Red-shouldered Hawk. Red-shouldered hawks are relatively common in urban situations and can be found in residential neighborhoods and along riparian corridors or other waterbodies. These hawks hunt primarily for mammals, reptiles, and amphibians (Sibley, 2001). Although no trees large enough for nesting purposes occur on the project site, there are trees within a 500 foot line of sight that may provide potential nesting habitat for this species in the vicinity of the project area and the vacant lots included in the project site may provide foraging habitat.

Pallid Bat. Pallid bats (*Antrozous pallidus*) are California species of special concern and inhabit open, dry grasslands, woodlands, shrublands and forests and lower elevations throughout California. Rocky outcrops, cliffs, hollow trees and crevices are required for roosting. Pallid bats are highly maneuverable and glean insects and arachnids from the ground. These bats may forage over the project site and roost in crevices and in peeling tree bark and snags or in abandoned or under-utilized buildings on or adjacent to the project site.

Townsend's Big-eared Bat. Townsend's big-eared bats (*Corynorhinus townsendii*) are locally common in coastal and lower montane habitats throughout California, although details of its distribution are uncertain. These bats, a former federal Species of Concern and California Species of Special Concern, occur in a variety of habitats from the coastal conifer and broad-leaf forests to semi-arid scrubland and grasslands of the desert and eastern Sierra Nevada foothills. They feed primarily on small moths which they capture in flight or glean from vegetation and other soft-

bodied insects. These species are primarily cave dwellers, and have been found roosting in limestone caves, lava tubes, mine tunnels, buildings and a variety of other man-made structures. The project site and vicinity may provide potential roosting and foraging habitat for this species.

Greater Western Mastiff Bat. Mastiff bats are the largest North American bat. In California, the greater western mastiff bat (*Eumops perotis californicus*), a former federal species of concern and California species of special concern, is distributed in low-elevation habitats from central California southward through the coastal basins of central and southern California and western portions of the deserts, and southeastward into central Mexico. Populations have declined dramatically in the past few decades and many previous localities no longer support this species. Mastiff bats generally occur in low-elevation, rugged, rocky areas where large crevices are available for day roosts. The crevices must open downward to allow individuals to free-fall 6-10 feet prior to taking flight. Exfoliating slabs of granite and sandstone provide excellent roosting habitat. They also roost in buildings and have been known to roost in urban environments (e.g., downtown Los Angeles). These bats regularly forage 100-200 feet above the ground, but may forage as high as 2,000 feet. They typically travel up to 15 miles along riparian corridors while foraging and will forage for up to 6 to 7 hours per night. This species may roost within abandoned or under-utilized buildings in the project vicinity.

Long-eared Myotis. Long-eared myotis, a former federal species of concern, inhabits nearly all brushlands, woodlands, and forests, seeming to prefer coniferous forests and woodlands. Roosts include caves, buildings, snags, and crevices in tree bark. Caves provide night roosts. This species is highly maneuverable in its forays for arthropods over water, open terrain, and in habitat edges. Large trees, as well as abandoned or under-utilized buildings in the project area may provide potential roosting habitat for long-eared myotis.

Fringed Myotis. Fringed myotis, a former federal species of concern, occurs throughout California and is most frequent in coastal and montane forests and near mountain meadows (Jameson and Peeters, 1988). This species uses echolocation to find moths, beetles, and other prey and forms nursery colonies in caves and old buildings (Jameson and Peeters, 1988). Fringed myotis often use separate day and night roosts. Potential roosting habitat in the project area consists of peeling bark in large trees or abandoned or under-utilized buildings.

Long-legged Myotis. A former federal species of concern, this species is widespread throughout the west and most commonly found in woodland and forest habitats above 1200 m (4000 ft). The long-legged myotis feeds primarily on moths and will also eat other flying insects. This species feeds at fairly low heights over water, close to trees and cliffs, and in openings in woodlands and forests. The long-legged myotis roosts in rock crevices, buildings, under tree bark, in snags, mines, and caves. Separate day and night roosts may be used. Trees probably are the most important day roosts. Caves and mines are used only as night roosts. This species forms nursery colonies numbering hundreds of individuals, usually under bark or in hollow trees, but occasionally in crevices or buildings.

Yuma Myotis. The Yuma myotis, while common and widespread in California, is a former federal species of concern and a State species of concern. The species is found in a wide variety

of habitats ranging from sea level to 11,000 feet, but it is uncommon to rare above 2560 m (8000 ft). Optimal habitats are open forests and woodlands with sources of water over which to feed. Yuma myotis feed on a wide variety of small flying insects found by echolocation. This species usually feeds over water sources such as ponds, streams, and stock tanks. The Yuma myotis roosts in buildings, mines, caves, or crevices. The species also has been seen roosting in abandoned swallow nests and under bridges. Separate, often more open, night roosts may be used. Distribution is closely tied to bodies of water, which it uses as foraging sites and sources of drinking water.

Sensitive Communities

The CNDDDB lists three sensitive natural communities as occurring in the Oakland East and Oakland West U.S. Geological Survey quadrangles: northern coastal salt marsh, northern maritime chaparral, and serpentine bunchgrass grassland. However, none of these communities, as described by Holland (1986), occurs on or in the vicinity of the proposed project site.

Critical Habitat

The USFWS has designated Critical Habitat for a number of species in Alameda County, including California red-legged frog (*Rana aurora draytonii*), Alameda whipsnake (*Masticophis lateralis euryxanthus*), and California tiger salamander (*Ambystoma californiense*). However, such designations tend to avoid heavily urbanized areas, focusing instead on habitat that still contains the constituent elements required by these species for survival, and the project site is not included within any of the designated Critical Habitat Units for these species.

Regulatory Setting

Regulation of Special-status Species

Federal Endangered Species Act

Under the Federal Endangered Species Act (FESA), the Secretary of the Interior and the Secretary of Commerce have joint authority to list a species as threatened or endangered (16 United States Code [USC] 1533[c]). Pursuant to the requirements of FESA, a federal agency reviewing a proposed project within its jurisdiction must determine whether any federally listed, threatened, or endangered species, or species proposed for federal listing may be present in the project area and determine whether the proposed project will have a potentially significant impact on such species. In addition, the federal agency is required to determine whether the project is likely to jeopardize the continued existence of any species proposed to be listed under FESA or result in the destruction or adverse modification of critical habitat proposed to be designated for such species (16 USC 1536[3], [4]). Adverse project impacts on these species or their habitats would be considered potentially significant.

Procedures for addressing federal-listed species follow two principal pathways, both of which require consultation with the USFWS, which administers the Act for all terrestrial species, and/or

the NMFS, which has jurisdiction over anadromous salmonids. The first pathway (FESA, Section 10(a) Incidental Take Permit) is set up for situations where a non-federal government entity (or where no federal nexus exists) must resolve potential adverse impacts to species protected under the Act. The second pathway (FESA, Section 7 Consultation) and involves projects with a federal connection or requirement; typically these are projects where a federal lead agency is sponsoring or permitting the proposed project. For example, a permit from the U.S. Army Corp of Engineers (USACE) may be required if a project will result in wetland impacts. In these instances, the federal lead agency (e.g., the USACE) initiates and coordinates the following steps: informal consultation with USFWS and/or NMFS to establish a list of target species; preparation of biological assessment assessing potential for the project to adversely affect listed species; coordination between state and federal biological resource agencies to assess impacts/proposed mitigation; and development of appropriate mitigation for all significant impacts on federally listed species.

The USFWS and/or NMFS ultimately issue a final Biological Opinion on whether the project will affect the federally listed species. A Section 10(a) Endangered Species Incidental Take Permit may be necessary when the “taking” or harming of a species is incidental to the lawful operation of a project.

The USFWS also publishes a list of candidate species. Species on this list receive “special attention” from federal agencies during environmental review, although they are not otherwise protected under FESA. The candidate species are taxa for which the USFWS has sufficient biological information to support a proposal to list as Endangered or Threatened.

California Endangered Species Act

Section 2080 of the California Fish and Game Code prohibits the taking of plants and animals listed under the authority of the California Endangered Species Act of 1984 (CESA). Under the California Endangered Species Act (CESA), CDFG maintains a list of threatened species and endangered species (Cal. Fish and Game Code 2070). The CDFG also maintains a list of candidate species that are species that the CDFG has formally noticed as being under review for addition to either the list of endangered species or the list of threatened species. The CDFG also maintains lists of “species of special concern” which serve as “watch lists.” Pursuant to the requirements of CESA, an agency reviewing a project within its jurisdiction must determine whether any state-listed endangered or threatened species may be present in the project area and determine whether the proposed project will have a potentially significant impact on such species.

Other Statutes, Codes, and Policies Affording Limited Species Protection

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (16 USC, Sec. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. Birds of prey are protected in California under the State Fish and Game Code, Section 3503.5. Section 3503.5 states that it is “unlawful to take, possess, or destroy any birds in

the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.” Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered “taking” by the CDFG. Any loss of fertile eggs, nesting raptors, or any activities resulting in nest abandonment would constitute a significant impact. Project impacts to these species would not be considered significant unless they are known or have a high potential to nest in the project area or to rely on it for primary foraging.

Plants

The legal framework and authority for the state’s program to conserve plants come from various legislative sources, including CESA, the California Native Plant Protection Act (Fish and Game Code Section 1900 – 1913), CEQA Guidelines, and the Natural Communities Conservation Planning Act.

The Native Plant Protection Act of 1977 (Fish and Game Code Section 1900 et seq.) gives the CDFG authority to designate State Endangered, Threatened, and Rare plants and provides specific protection measures for identified populations. Sensitive plant and wildlife species that would qualify for listing but are not currently listed are afforded protection under CEQA. The CEQA Guidelines, Section 15065 (“Mandatory Findings of Significance”) requires that a reduction in numbers of a rare or endangered species be considered a significant effect. CEQA Guidelines Section 15380 (“Rare or endangered species”) provides for assessment of unlisted species as rare or endangered under CEQA if the species can be shown to meet the criteria for listing.

California Native Plant Society (CNPS) maintains a list of special status plant species based on collected scientific information. Designation of these species by CNPS has no legal status or protection under federal or state endangered species legislation. CNPS designations are defined as List 1A (plants presumed extinct); List 1B (plants rare, threatened, or endangered in California and elsewhere); List 2 (plants rare, threatened, or endangered in California, but more numerous elsewhere); List 3 (plants about which more information is needed – a review list); and List 4 (plants of limited distribution - a watch list). In general, plants appearing on CNPS List 1A, 1B or 2 meet the criteria of Section 15380 of the CEQA Guidelines; thus, substantial adverse effects to these species would be considered significant. Additionally, plants constituting CNPS List 1A, 1B or 2 meet the definitions of California Department Fish and Game Code Section 1901 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act).

Wetlands

U.S. Army Corps of Engineers

Wetlands and other waters, e.g., rivers, streams and natural ponds, are a subset of “waters of the U.S.” and receive protection under Section 404 of the CWA. The regulations and policies of various federal agencies (e.g., USACE, U.S.D.A, and Natural Resource Conservation Service [NRCS], USEPA) mandate that the filling of wetlands be avoided to the extent possible. The

USACE has primary federal responsibility for administering regulations that concern waters of the U.S. In this regard, the USACE acts under two statutory authorities, the Rivers and Harbors Act (Sections 9 and 10), which governs specified activities in “navigable waters,” and the CWA (Section 404), which governs specified activities in “waters of the United States,” including wetlands. Navigable waters of the United States are defined as those waters that are a subject to the ebb and flow of the tide or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. USEPA has the ultimate authority for designating dredge and fill material disposal sites and can veto the Corp’s issuance of a permit to fill jurisdictional waters of the U.S.

The term “waters of the U.S. “ as defined in Code of Federal Regulations (33 CFR 328.3[a]; 40 CFR 230.3[s]) includes: (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (2) All interstate waters including interstate wetlands; (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters which are or could be used by interstate or foreign travelers for recreational or other purposes; or from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or which are used or could be used for industrial purposes by industries in interstate commerce; (4) All impoundments of waters otherwise defined as waters of the United States under the definition; (5) Tributaries of waters identified in paragraphs (1) through (4); (6) Territorial seas; and (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6). The USACE requires obtaining a permit if a project proposes placing structures within navigable waters and/or alteration of waters of the United States.⁴

Regional Water Quality Control Board

The Regional Water Quality Control Board (RWQCB) regulates waters of the state under the Porter-Cologne Act. Under Section 401 of the CWA, the RWQCB has review authority of Section 404 permits. The RWQCB has a policy of no-net-loss of wetlands in effect and typically requires mitigation for all impacts to wetlands before it will issue a water quality certification.

⁴ Based on the Supreme Court ruling (SWANCC) concerning the Clean Water Act jurisdiction over isolated waters (January 9, 2001), non-navigable, isolated, intrastate waters based solely on the use of such waters by migratory birds are no longer defined as waters of the United States. Jurisdiction of non-navigable, isolated, intrastate waters may be possible if their use, degradation, or destruction could affect other waters of the United States, or interstate or foreign commerce. Jurisdiction over such other waters are analyzed on a case-by-case basis. Impoundments of waters, tributaries of waters, and wetlands adjacent to waters should be analyzed on a case-by-case basis. A more recent Supreme Court case, *Rapanos v. United States* (2006), also questioned the definition of “waters of the United States” and the scope of federal regulatory jurisdiction over such waters, but left open the question as to whether the CWA extends to those waters and wetlands that have a ‘significant nexus’ to navigable waters of the United States, or whether it is limited to waters with a continuous connection. The implications of this ruling are still being tested in the courts. For example, the California Ninth Circuit Court of Appeals decision, in *Northern California River Watch v. City of Healdsburg* (August 10, 2006), relied on the “significant nexus” definition, an interpretation that suggests little change in the scope of the CWA. To date, neither the USEPA nor the USACE have issued guidelines as to how to implement the CWA in light of these latest rulings. In practice, USACE jurisdictional authority remains as it was prior to *Rapanos*, although the potential exists for changes in the future based on Court decisions and pending regulatory guidance.

Dredging, filling, or excavation of isolated waters constitutes a discharge of waste to waters of the State, and prospective dischargers are required to submit a report of waste discharge to the RWQCB and comply with other requirements of Porter-Cologne.

California Department of Fish and Game

The CDFG has jurisdiction over certain aquatic resources and associated riparian habitats under California Fish and Game Code Sections 1600-1616 for Lake and Streambed Alteration Agreements. Fish and Game Code Section 1602 requires any person, state or local governmental agency, or public utility to notify the CDFG before beginning any activity that will do one or more of the following: 1) substantially obstruct or divert the natural flow of a river, stream, or lake; 2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake; or 3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake. Fish and Game Code Section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state.

City of Oakland Regulations

Tree Preservation and Removal Ordinance

This City ordinance (Oakland Municipal Code Chapter 12.36) requires a permit for removal of protected trees. A permit is also required if work might damage or destroy a protected tree. A “protected tree” is a coast live oak four inches or larger in diameter measured four-and-a-half feet above the ground (diameter at breast height), or any other species nine inches in diameter or larger at breast height, except eucalyptus and Monterey pine trees. Tree permits are reviewed and approved by the Public Works Agency. Tree planting plans are approved by the Tree Services Department of the Office of Parks and Recreation.

Creek Protection, Stormwater Management and Discharge Control Ordinance

Oakland updated its stormwater ordinance in 1997 to provide new and stronger provisions to safeguard and manage creeks. The ordinance is now called the Creek Protection, Stormwater Management and Discharge Control Ordinance and includes permitting guidelines for development and construction projects taking place on a creekside property.

Habitat Conservation Plans

No Habitat Conservation Plans, Natural Community Conservation Plans, or other local, regional, or state habitat conservation plans that apply to this part of Oakland. Therefore no further discussion on this topic is provided.

Impacts and Mitigation Measures

Significance Criteria

A biological resources impact is considered to be significant if it would meet any of the following criteria:

1. 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 CDFG or USFWS;
2. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the CDFG or USFWS;
3. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
4. 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;
5. Fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan;
6. Fundamentally conflict with the City of Oakland Tree Preservation and Removal Ordinance (Oakland Municipal Code [OMC] Chapter 12.36) due to removal of protected trees under certain circumstances. Factors to be considered in determining significance include the number, type, size, location, and condition of (a) the protected trees to be removed and/or affected by construction, and (b) the protected trees to remain, with special consideration given to native trees.⁵

Protected trees include the following:

Quercus agrifolia (California or coast live oak) measuring four inches diameter at breast height (dbh) or larger, and any other tree measuring nine inches dbh or larger except eucalyptus and *Pinus radiata* (Monterey pine); provided, however, that Monterey pine trees on City property and in development-related situations where more than five Monterey pine trees per acre are proposed to be removed are considered to be protected trees.

7. Fundamentally conflict with the City of Oakland Creek Protection Ordinance (OMC Chapter 13.16) intended to protect biological resources. Although there are no specific, numeric/quantitative criteria to assess impacts, factors to be considered in determining significance include whether there is substantial degradation of riparian and aquatic habitat through (a) discharging a substantial amount of pollutants into a creek, (b) significantly modifying the natural flow of water, (c) depositing substantial amounts of new material into a creek or causing substantial bank erosion or instability, or (d)

⁵ Oakland Planning Code Section 17.158.280E2 states that “Development related” tree removal permits are exempt from CEQA if no single tree to be removed has a dbh of 36 inches or greater **and** the cumulative trunk area of all trees to be removed does not exceed 0.1 percent of the total lot area.

adversely affecting the riparian corridor by significantly altering vegetation or wildlife habitat.

Determining Significance

In addition to the significance criteria listed above, the following approaches to, and definitions of, significance of impacts to biological resources, drawn from several sections of the CEQA Guidelines, were considered in the impacts analysis for this EIR.

- CEQA (Section 15065) directs lead agencies to find that a project may have a significant effect on the environment if it has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish and wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.
- CEQA (Section 15206) further specifies that a project shall be deemed to be of statewide, regional, or area-wide significance if it would substantially affect sensitive wildlife habitats including, but not limited to, riparian lands, wetlands, bays, estuaries, marshes, and habitats for rare and endangered species.
- CEQA (Section 15380) further provides that a plant or animal species, even if not on an official list, may be treated as “rare or endangered” if, for example, it is likely to become endangered in the foreseeable future.
- Additional criteria to assess significant impacts to biological resources due to the proposed project are specified in the CEQA Guidelines Section 15382 (Significant Effect on the Environment) “...a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.”

Impact Discussion

The proposed project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the CDFG or USFWS; have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means; fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan; and will not fundamentally conflict with the City of Oakland Creek Protection Ordinance through (a) discharging a substantial amount of pollutants into a creek, (b) significantly modifying the natural flow of water, (c) depositing substantial amounts of new material into a creek or causing substantial bank erosion or instability, or (d) adversely affecting the riparian corridor by significantly altering vegetation or wildlife habitat.

Project implementation does, however, have the potential to result in the following impacts to protected trees and special-status birds and bays as discussed below. Potential impacts will be

reduced to less than significant levels through implementation of the City of Oakland's standard conditions of approval and the mitigation measures proposed in this EIR.

Protected Trees

Impact BIO-1: Implementation of the proposed project could result in the removal and pruning of, and potential damage to protected trees. (Potentially Significant)

Oakland's Tree Protection Ordinance (Oakland Municipal Code, Title 12, Chapter 12.36) requires a permit for removal of any protected tree (12.36.040). The project would likely result in the removal of up to 73 existing trees that are located on or adjacent to the project site (see **Figure IV.L-1**). Of the total, 41 trees are located west of 29th Avenue and 32 trees are located along or east of 29th Avenue.

Forty-seven (47) of the 73 potentially affected trees have a "diameter at breast height" (dbh)⁶ greater than 9 inches. A total of 46 are "protected trees" (except eucalyptus) subject to the Oakland's Tree Protection Ordinance, and therefore a Tree Removal Permit will be required.

None of the potentially affected trees are native to the area. A Tree Permit application is not required to mitigate (i.e., replace) for the removal of nonnative trees (Oakland Municipal Code Section 12.36.060). Project landscaping would include a varied landscape palette, including trees. Oakland's Street Tree Plan provides guidelines and recommendations for street tree planting throughout the city, and City approval is required prior to any street tree planting.

Since none of the potentially affected trees are native to the area, it is not anticipated that replacement would be required (Oakland Municipal Code Section 12.36.060). Therefore, the project would not fundamentally conflict with the City of Oakland Tree Preservation and Removal Ordinance. The project would remove 73 trees total (46 of which are "protected trees"), and no existing trees would remain or potentially be affected or damaged by construction activity. The project applicant must secure a tree removal permit and abide by the conditions of that permit.

Standard Condition BIO-1a: Prior to removal of any protected trees, per the Protected Tree Ordinance, located on the project site or in the public right-of-way adjacent to the project, the project applicant must secure a tree removal permit, and abide by the conditions of that permit.

⁶ The Oakland Tree Protection Ordinance (12.36.020) defines diameter at breast height (dbh) as "... tree trunk diameter measured at four and one-half feet above the ground."

**TABLE IV.L-2
KEY TO EXISTING TREES NEAR OR ON THE PROJECT SITE MAP (FIGURE IV.L-1)**

Map No.	Potentially Subject to Tree Ordinance ^a	Common Name	Species	Stem DBH ^b (estimated inches)	Notes
West of 29 th Avenue					
1	X	Ash	<i>Fraxinus sp.</i>	10"	
2	X	Ash	<i>Fraxinus sp.</i>	12"	3 stems
3	X	Ash	<i>Fraxinus sp.</i>	11"	3 stems
4		Ash	<i>Fraxinus sp.</i>	Dead	Dead
5		Ash	<i>Fraxinus sp.</i>	8.5"	3 stems
6	X	Privet	<i>Ligustrum lucidum</i>	16"	
7	X	Privet	<i>Ligustrum lucidum</i>	16"	
8	X	Privet	<i>Ligustrum lucidum</i>	18"	Round-headed canopy
9	X	Privet	<i>Ligustrum lucidum</i>	20"	Not healthy, multi-trunked
10	X	Privet	<i>Ligustrum lucidum</i>	20"	Multi-branched
11	X	Pear	<i>Pyrus communis</i>	8"	Fruiting, healthy
12	X	Privet	<i>Ligustrum lucidum</i>	12"	Pruned heavily at base; not a valuable tree
13	X	Privet	<i>Ligustrum lucidum</i>	20"	
14		Ash (Dead)	<i>Fraxinus sp.</i>	6"	Dead
15	X	Privet	<i>Ligustrum lucidum</i>	15"	Three branches start at 5', tall, healthy
16	X	Privet	<i>Ligustrum lucidum</i>	19"	Two stems
17	X	Privet	<i>Ligustrum lucidum</i>	16"	
18	X	Privet	<i>Ligustrum lucidum</i>	12"	Three stems (above dbh)
19	X	Privet	<i>Ligustrum lucidum</i>	12"	
20	X	Privet	<i>Ligustrum lucidum</i>	20"	Two stems- both 10"; large root has raised sidewalk
21	X	Peach	<i>Prunus persica</i>	6"	Not a valuable tree
22	X	Privet	<i>Ligustrum lucidum</i>	17"	Three stems at 5', healthy
23	X	Privet	<i>Ligustrum lucidum</i>	12.5"	Wide and healthy
24	X	Privet	<i>Ligustrum lucidum</i>	14"	Healthy
25	X	Privet	<i>Ligustrum lucidum</i>	16"	
26	X	Privet	<i>Ligustrum lucidum</i>	16"	
27	X	Privet	<i>Ligustrum lucidum</i>	10"	
28	X	Privet	<i>Ligustrum lucidum</i>	16"	
29	X	Privet	<i>Ligustrum lucidum</i>	13"	
30	X	Privet	<i>Ligustrum lucidum</i>	14"	
31		Eucalyptus	<i>Eucalyptus sp.</i>	11"	
32		Eucalyptus	<i>Eucalyptus sp.</i>	9"	
33		Eucalyptus	<i>Eucalyptus sp.</i>	10"	
34		Crape Myrtle	<i>Lagerstroemia indica</i>	2-3"	
35		Crape Myrtle	<i>Lagerstroemia indica</i>	2-3"	
36		Crape Myrtle	<i>Lagerstroemia indica</i>	2-3"	
37		Crape Myrtle	<i>Lagerstroemia indica</i>	2-3"	
38		Crape Myrtle	<i>Lagerstroemia indica</i>	2-3"	
39		Crape Myrtle	<i>Lagerstroemia indica</i>	2-3"	
40		Crape Myrtle	<i>Lagerstroemia indica</i>	2-3"	
41		Crape Myrtle	<i>Lagerstroemia indica</i>	2-3"	

^a Meets definition of protected tree (Oakland Tree Ordinance 12.36.020) "*Quercus agrifolia* measuring four inches dbh or larger, and any other tree measuring nine inches dbh or larger except *Eucalyptus* and *Pinus radiata*."

^b DBH = (Oakland Tree Ordinance 12.36.020) "dbh (diameter at breast height) means trunk diameter measured at four and one-half feet above ground. For multistemmed trees, a permit is required if the diameter of all individual trunks, when added together, equals or exceeds the minimum size stipulated for the species."

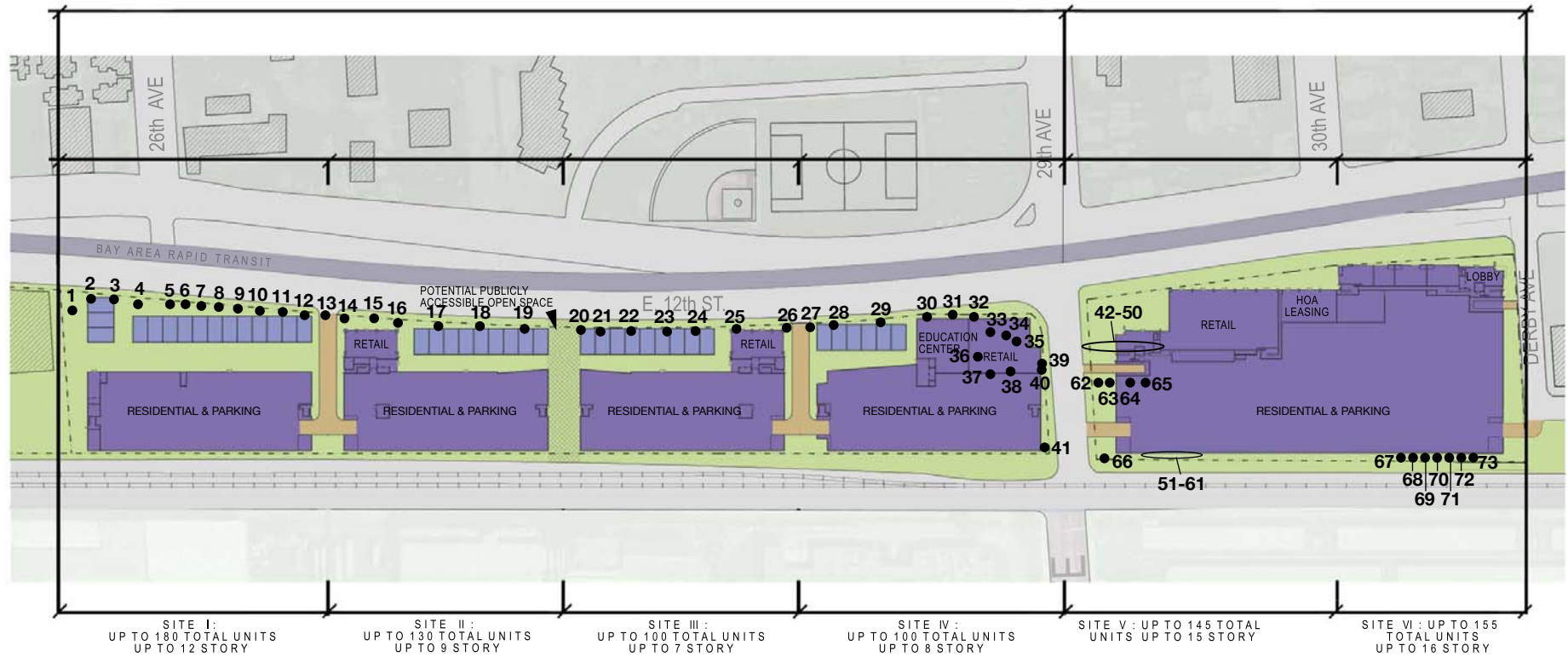
TABLE IV.L-2 (continued)
KEY TO EXISTING TREES NEAR OR ON THE PROJECT SITE MAP (FIGURE IV.L-1)

Map No.	Potentially Subject to Tree Ordinance ^a	Common Name	Species	Stem DBH ^b (inches)	Notes
East of 29 th Avenue ^c					
42		Dead tree			Covered with ivy; recommend removal
43	X	Privet	<i>Ligustrum lucidum</i>	14"	Ivy on trunk
44	X	Privet	<i>Ligustrum lucidum</i>	10"	Ivy on trunk
45		Pittosporum	<i>Pittosporum</i> sp.	8"	Ivy on trunk
46	X	Privet	<i>Ligustrum lucidum</i>	12"	Multi-stemmed
47		Pittosporum	<i>Pittosporum</i> sp.	6"	Ivy on trunk
48	X	Privet	<i>Ligustrum lucidum</i>	11"	Ivy on trunk
49	X	Privet	<i>Ligustrum lucidum</i>	12"	Ivy on trunk
50		Pittosporum	<i>Pittosporum</i> sp.	4"	Ivy on trunk
51	X	Privet	<i>Ligustrum lucidum</i>	10"	Small, unhealthy
52		Privet	<i>Ligustrum lucidum</i>	6"	Small, unhealthy
53		Privet	<i>Ligustrum lucidum</i>	6"	Small, unhealthy
54		Privet	<i>Ligustrum lucidum</i>	5"	Small, unhealthy
55		Privet	<i>Ligustrum lucidum</i>	4"	Small, unhealthy
56		Privet	<i>Ligustrum lucidum</i>	5"	Small, unhealthy
57		Privet	<i>Ligustrum lucidum</i>	5"	Small, unhealthy
58		Privet	<i>Ligustrum lucidum</i>	5"	Small, unhealthy
59		Privet	<i>Ligustrum lucidum</i>	4"	
60	X	Privet	<i>Ligustrum lucidum</i>	16"	
61		Privet	<i>Ligustrum lucidum</i>	8"	
62	X	Liquidambar	<i>Liquidambar styraciflua</i>	12"	
63	X	Liquidambar	<i>Liquidambar styraciflua</i>	10"	
64	X	Liquidambar	<i>Liquidambar styraciflua</i>	12"	
65	X	Liquidambar	<i>Liquidambar styraciflua</i>	16"	
66	X	Plum	<i>Prunus</i> sp.	20"	
67	X	Camphor	<i>Cinnamomum camphora</i>	24"	Two stems
68	X	Camphor	<i>Cinnamomum camphora</i>	28"	Three stems
69	X	Camphor	<i>Cinnamomum camphora</i>	20"	Two stems
70	X	Camphor	<i>Cinnamomum camphora</i>	13"	
71	X	Camphor	<i>Cinnamomum camphora</i>	14"	Two stems
72	X	Camphor	<i>Cinnamomum camphora</i>	12"	
73	X	Black Acacia	<i>Acacia melanoxylon</i>	36-40"	

SOURCE: Christopher Bowen, Arborist, 2006 (west of 29th Avenue); ESA, 2007 (east of 29th Avenue).

PRELIMINARY DEVELOPMENT PLAN
UP TO 510 TOTAL UNITS

PRELIMINARY PLAN FOR
FUTURE DEVELOPMENT
UP TO 300 TOTAL UNITS



NOTE: ALL EXISTING TREES ARE LOCATED
WITHIN THE PROJECT SITE



Figure IV.L-1
Existing Trees on or Near the Project Site

Standard Condition BIO-1b: Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:

- a) **Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.**
- b) **Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.**
- c) **No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.**
- d) **Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.**
- e) **If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.**
- f) **All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation,**

and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.

Significance after Implementation of Standard Conditions: Less than Significant

Special-status Bird Species

Impact BIO-2: Activities associated with the construction of the proposed project could result in adverse impacts on special-status bird species. (Potentially significant)

Large trees, such as oaks, redwoods, and eucalyptus, in the vicinity of the proposed project site may support nesting special-status raptors such as Cooper's hawk, red-tailed hawk, and red-shouldered hawk, particularly when these trees are associated with riparian corridors. However, there are no trees capable of supporting nesting raptors on or within the immediate vicinity of the project site. A wide variety of trees, shrubs, and even buildings may provide nesting habitat for passerine species commonly found in relatively urban areas. Several species of birds were observed in the site vicinity during site visits, including black phoebe (*Sayornis nigricans*), Anna's hummingbird (*Calypte anna*), house finch, and common raven (*Corvus brachyrhynchos*). Although these are all resident species common in urban areas, their nesting activity is protected under California Fish and Game Code Section 3503. In addition Section 3513 of the Code and the Federal Migratory Bird Treaty Act (16 USC, Sec. 703, Supp. I, 1989) prohibit the killing, possession, or trading of migratory birds. Finally, Section 3800 of the Code prohibits the taking of non-game birds, which are defined as birds occurring naturally in California that are not game birds or fully protected species.

The potential for birds to nest onsite or in the immediate vicinity is relatively low due to the high ambient noise levels from trains and traffic. No nesting activity was observed during site visits and no nests from previous years were observed in trees onsite or nearby. However, the possibility for nesting activity to occur within the project area cannot be completely ruled out.

Construction activities associated with the proposed project that are implemented during the breeding season, including removal of trees and other nesting habitat, have the potential to result in direct mortality of special-status birds. In addition, human disturbance and construction noise have the potential to cause nest abandonment and death of young or loss of reproductive potential at active nests located near project activities. Therefore, even if there is relatively low potential for nesting birds at the proposed project site, if project construction were conducted during the bird breeding season and were to produce average noise levels higher than the average ambient noise level and/or if project activities included any tree pruning or removal then construction activities could result in destruction or abandonment of bird nests, eggs, or fledglings.

The proposed project would be subject to the following standard conditions of approval. Implementation of the standard condition would reduce potential impacts to breeding birds to a less than significant level.

Standard Condition BIO-2: To the extent feasible, removal of the large trees and other vegetation suitable for nesting shall not occur during the breeding season of March 15 and August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting birds or raptors. If the survey indicates that potential presences of nesting birds or raptors, the results would be coordinated with CDFG and suitable avoidance measures would be developed and implemented. Construction shall observe the CDFG avoidance guidelines which are a minimum 500-foot buffer zone surrounding active raptor nests and a 250-foot buffer zone surrounding nests of other birds. Buffer zones shall remain until young have fledged.

Significance after Implementation of Standard Condition: Less than Significant.

Special-status Bat Species

Impact BIO-3: Tree removal, building demolition, pile driving, and other proposed construction activities during the breeding season could result in impacts to special-status bat species. (Less than Significant)

A number of bat species are considered species of concern due to nationwide declines in their populations. Special-status bats that may occur in the project area include long-legged myotis, fringed myotis, long-eared myotis, yuma myotis, Townsend's big-eared bat, greater western mastiff bat, and pallid bat. Special-status bats may use crevices in buildings or exfoliating tree bark and/or hollow cavities in trees located at the project site, as well as abandoned or little used buildings on or in the immediate vicinity of the project site. In urban areas bats are most likely to be found in proximity to water bodies or open spaces, as well as in the cavity of large trees and abandoned or underutilized buildings. As none of these conditions exist on the project site, the project is determined to have a less-than-significant impact on roosting or breeding special status bats.

Mitigation: None Required.

Cumulative Impacts

Cumulative Context

The geographic context used for the assessment of cumulative biological resources impacts consists of the urban areas of Oakland generally bounded by the Oakland Estuary and Highway 880, MacArthur Boulevard, Hegenberger Road, and 14th Avenue.

Cumulative Impacts on Biological Resources

This analysis evaluates whether the impacts of the proposed project, together with the impacts of cumulative development, would result in a significant impact and, if so, whether the contribution of the proposed project to this impact would be considerable. Both conditions must apply in order for the project's cumulative impacts to rise to the level of significance.

Impact BIO-4: Construction activity resulting from the project, in conjunction with other foreseeable infill development in already heavily urbanized portions of the city, could result in impacts on special-status birds and bats. (Less than Significant)

The project vicinity is already heavily urbanized and habitat values have been reduced over time through a variety of historical and current land uses. However, the area still provides reproductive and foraging habitat for special-status birds and bats protected under a variety of legislations. Assuming concurrent implementation of the project with other reasonably foreseeable future infill projects in the vicinity, adverse cumulative effects on biological resources could include construction impacts on special-status birds and bats. However, the proposed project and other future projects in the area would be required to comply with local, state, and federal laws and policies and all applicable permitting requirements of the regulatory and oversight agencies intended to address potential impacts on biological resources. Additionally, new projects would be required to demonstrate that they would not have significant effects on these biological resources, although it is possible that some projects may be approved even though they would have significant, unavoidable impacts on biological resources. Impacts resulting from the proposed project are considered less than significant. Therefore, given the heavily urbanized context, the effect of the project on biological resources, in combination with other foreseeable similar projects, would likely be less than significant. Given the number of similar development projects currently in progress as well as those proposed at this time within the geographic context of this analysis, the incremental contribution of the proposed project towards cumulative impacts is not considerable and is considered to be less than significant.

Mitigation: None Required.

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