

4.3 BIOLOGICAL RESOURCES

This chapter describes the existing biological resources in the Specific Plan Area and evaluates the potential biological resource impacts associated with future development that could occur by adopting and implementing the proposed Specific Plan. This chapter provides a summary of the relevant regulatory setting necessary to evaluate potential environmental impacts resulting from the proposed project, describes potential impacts, and discusses existing and proposed goals, policies, and implementation programs and zoning regulations that would avoid or reduce those potential impacts.

4.3.1 ENVIRONMENTAL SETTING

4.3.1.1 REGULATORY FRAMEWORK

This section describes federal, State, regional, and local regulations that provide for the protection and management of sensitive biological resources.

Federal Regulations

Federal Endangered Species Act

The United States Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration, National Marine Fisheries Service are responsible for implementation of the Federal Endangered Species Act (FESA)¹ The FESA protects fish and wildlife species that are listed as threatened or endangered, and protects their habitats. Endangered species, subspecies, or distinct population segments are those that are in danger of extinction through all or a significant portion of their range; threatened species, subspecies, or distinct population segments are likely to become endangered in the near future.

Section 9 of the FESA prohibits the “take” of any fish or wildlife species listed as endangered, including the destruction of habitat that prevents the species’ recovery. Take is defined as an action or attempt to hunt, harm, harass, pursue, shoot, wound, capture, kill, trap, or collect a species. Section 9 prohibitions also apply to threatened species unless a special rule has been defined with regard to take at the time of listing. Under Section 9 of the FESA, the take prohibition applies only to wildlife and fish species. However, Section 9 does prohibit the unlawful removal and reduction to possession, or malicious damage or destruction, of any endangered plant from federal land. Section 9 prohibits acts to remove, cut, dig up, damage, or destroy an endangered plant species in nonfederal areas in knowing violation of any State law or in the course of criminal trespass. Candidate species and species that are proposed, or under petition for listing, receive no protection under FESA Section 9.

Clean Water Act

The federal Clean Water Act (CWA) is administered by the United States Environmental Protection Agency (USEPA) and the US Army Corps of Engineers (USACE). USACE is responsible for regulating the discharge of

¹ United States Code Title 16, Chapter 35, Section 1531.

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fill material into waters of the United States, including lakes, rivers, streams, and their tributaries, as well as wetlands that are navigable or adjacent to a navigable waterway or that have an interstate or foreign commerce connection. In 2008, USACE published the *Wetlands Regulatory Assistance Program: Regional Supplements to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*, which provides detailed information for the Arid West Region, which includes the State of California. Wetlands are defined for regulatory purposes as areas “inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

The discharge of dredged or fill material into waters of the United States is subject to permitting under Section 404, Discharges of Dredge or Fill Material, of the CWA. Section 401, Certification, specifies additional requirements for permit review, particularly at the State level. Project proponents must obtain a permit from USACE for all discharges of dredged or fill material into waters of the United States, including wetlands, before proceeding with a proposed action. USACE permits must be certified by the State Water Resources Control Board in order to be valid. Thus, certification from the State Water Resources Control Board should be requested at the same time an application is filed with USACE. Certification from the local Regional Water Quality Control Board is also required when a proposed activity may result in discharge into navigable waters.²

Migratory Bird Treaty Act

The USFWS is also responsible for implementing the Migratory Bird Treaty Act (MBTA). The MBTA implements a series of treaties between the United States, Mexico, and Canada that provide for the international protection of migratory birds. Wording in the MBTA makes it clear that most actions that result in “taking” or possession (permanent or temporary) of a protected species can be a violation of the Act. The word “take” is defined as “pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.” The provisions of the MBTA are nearly absolute; “except as permitted by regulations” is the only exception. Examples of permitted actions that do not violate the law are the possession of a hunting license to pursue specific game birds, legitimate research activities, display in zoological gardens, bird-banding, and similar activities.

State Regulations

California Endangered Species Act

The California Endangered Species Act (CESA) establishes State policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. CESA mandates that State agencies should not approve projects that jeopardize the continued existence of threatened or endangered species, if reasonable and prudent alternatives are available that would avoid jeopardy. For projects that would affect species that are on the federal and State endangered species lists, compliance with the federal ESA satisfies CESA if the California Department of Fish and Wildlife (CDFW) determines that the federal incidental take authorization is consistent with CESA under California Fish and Game Code Section 2080.1.

² Pursuant to Section 401 of the CWA and EPA 404(b)(1) Guidelines.

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For projects that would result in take of species that are only State-listed, the project proponent must apply for a take permit under Section 2081(b) of the California Fish and Game Code.

California Fish and Game Code

Under the California Fish and Game Code, CDFW provides protection from “take” for a variety of species, including Fully Protected species. “Fully Protected” is a legal protective designation administered by the CDFW, intended to conserve wildlife species that risk extinction within California. Lists have been created for birds, mammals, fish, amphibians, and reptiles. The Fish and Game Code sections dealing with Fully Protected species state that these animals “...may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected” species, although take may be authorized for necessary scientific research. In 2003, the code sections dealing with fully protected species were amended to allow CDFW to authorize take resulting from recovery activities for State-listed species. The CDFW also protects streams, water bodies, and riparian corridors through the streambed alteration agreement process under Section 1601 to 1606 of the California Fish and Game Code. The Fish and Game Code stipulates that it is “unlawful to substantially divert or obstruct the natural flow or substantially change the bed, channel or bank of any river, stream or lake” without notifying CDFW, incorporating necessary mitigation, and obtaining a streambed alteration agreement. Through policy, CDFW asserts jurisdiction to the top of banks of all streams, including intermittent and ephemeral streams, extending laterally to the upland edge of adjacent riparian vegetation.

California Native Plant Protection Act

The California Native Plant Protection Act of 1977 (CNPPA) prohibits importation of rare and endangered plants into California, “take” of rare and endangered plants, and sale of rare and endangered plants. CESA defers to the CNPPA, which ensures that State-listed plant species are protected when State agencies are involved in projects subject to CEQA. In this case, plants listed as rare under the CNPPA are not protected under the CESA; however, impacts to endangered, rare, or threatened species, including plants, are evaluated under CEQA.

Porter-Cologne Water Quality Control Act

The Regional Water Quality Control Boards maintain independent regulatory authority over the placement of waste, including fill, into waters of the State under the Porter-Cologne Water Quality Act of 1969. This Act is similar to and largely based off the federal Clean Water Act and is intended to preserve and enhance all beneficial uses of the waters of the State. The Regional Water Quality Control Board currently employs the USACE procedures and definitions for defining the physical boundaries of wetlands and waters. However, there are differences in the State and federal ability to regulate these features. In order to be subject to federal regulation as waters of the United States, wetlands and waters must demonstrate that water is, or is adjacent to, a navigable waterway or a tributary to a navigable waterway, or have an interstate or foreign commerce connection. Under the Porter-Cologne Act, the State has regulatory authority over what are termed “isolated” waters and wetlands, in addition to waters of the United States.

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Local Regulations

Looking Forward Hayward 2040 General Plan

The City of Hayward 2040 General Plan, adopted in July 2014, includes goals, policies, and programs intended to avoid or reduce impacts on biological resources in the Natural Resources (NR) and Community Health and Quality of Life (HQL) elements of the 2040 General Plan. As described in the General Plan EIR, in most cases, no one goal, policy, or implementation program itself is expected to completely avoid or reduce an identified potential environmental impact.³ However, the collective, cumulative mitigating benefits of the policies listed below are intended to reduce biological resource-related impacts. Specific goals and policies are described in Section 4.3.3, Impact Discussion, to demonstrate how the policy would avoid or reduce the impact.

The following goals and policies are relevant to the analysis of potential biological resource impacts within the Specific Plan Area:

- **Goal NR-1:** Protect, enhance, and restore sensitive biological resources, native habitat, and vegetation communities that support wildlife species so they can be sustained and remain viable.
 - **Policy NR-1.1 Native Wildlife Habitat Protection:** The City shall limit or avoid new development that encroaches into important native wildlife habitats; limits the range of listed or protected species; or creates barriers that cut off access to food, water, or shelter of listed or protected species.
 - **Policy NR-1.2 Sensitive Habitat Protection:** The City shall protect sensitive biological resources, including State and Federally designated sensitive, rare, threatened, and endangered plant, fish, and wildlife species and their habitats from urban development and incompatible land uses.
 - **Policy NR-1.3 Sensitive Species Identification, Mapping, and Avoidance:** The City shall require qualified biologists to identify, map, and make recommendations for avoiding all sensitive biological resources on the project site, including State and Federally sensitive, rare, threatened, and endangered plant, fish, and wildlife species and their habitats using methods and protocols in accordance with the U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and California Native Plant Society for all development applications proposed within sensitive biological resource areas.
 - **Policy NR-1.7 Native Tree Protection:** The City shall encourage protection of mature, native tree species to the maximum extent practicable, to support the local eco-system, provide shade, create windbreaks, and enhance the aesthetics of new and existing development.
 - **Policy NR-1.9 Native Plant Species Protection and Promotion:** The City shall protect and promote native plant species in natural areas as well as in public landscaping.
 - **Policy NR-1.10 Creek Daylighting:** The City shall identify and create opportunities for “daylighting” existing creeks that are currently contained within culverts or hardened channels to reestablish riparian habitat, provide public access and enjoyment, and improve aesthetics.

³ City of Hayward 2040 General Plan certified EIR, State Clearinghouse Number 2013082015.

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- **Policy NR-1.11 Creek and Floodplain Access Easements:** The City shall identify and create opportunities for public access to and maintenance of creek corridors and floodplains through the creation of access easements, where practical.
- **Policy NR-1.12 Riparian Corridor Habitat Protection:** The City shall protect creek riparian corridor habitats by:
 - Requiring sufficient setbacks for new development adjacent to creek slopes,
 - Requiring sensitive flood control designs to minimize habitat disturbance,
 - Maintaining natural and continuous creek corridor vegetation,
 - Protecting/replanting native trees, and
 - Protecting riparian plant communities from adverse effects of increased stormwater runoff, sedimentation, erosion, and pollution that may occur from improper development in adjacent areas.
- **Goal NR-6:** Improve overall water quality by protecting surface and groundwater sources, restoring creeks and rivers to their natural state, and conserving water resources.
 - **Policy NR-6.1:** The City shall coordinate with local and regional partners to improve and restore surface watercourses to their natural condition to the greatest extent possible.
- **Goal HQL-7:** Protect residents from harmful effects of pollution, toxic substances, and environmental contaminants.
 - **Policy HQL-7.1: Support Sustainability Practices.** The City shall support sustainability practices that promote clean water, healthy soils, and healthy ecosystems.
- **Goal HQL-8:** Maintain, enhance, and increase the city’s urban forest as an environmental, economic, and aesthetic resource to improve Hayward residents’ quality of life.
 - **Policy HQL-8.1: Manage and Enhance Urban Forests.** The City shall manage and enhance the urban forest by planting new trees, ensuring that new developments have sufficient right-of-way width for tree planting, managing and caring for all publicly owned trees, and working to retain healthy trees.
 - **Policy HQL-8.2: Urban Forest Management Plan.** The City shall maintain and implement an Urban Forest Management Plan.
 - **Policy HQL-8.3: Trees of Significance.** The City shall require the retention of trees of significance (such as heritage trees) by promoting stewardship and ensuring that project design provides for the retention of these trees wherever possible. Where tree removal cannot be avoided, the City shall require tree replacement or suitable mitigation.

Hayward Municipal Code

The Hayward Municipal Code Chapter 10, Article 15, Tree Preservation,⁴ provides for the protection and preservation of significant trees by designating the species of tree and the types of development or properties that are considered “protected”. “Protected trees” include (1) trees having a minimum trunk

⁴ City of Hayward Municipal Code, Chapter 10, Planning, Zoning, and Subdivisions, Article 15, Tree Preservation.

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diameter of eight inches measured 54 inches above the ground (multi-trunk trees are measured by the diameters of the largest three trunks added together); (2) street trees or other trees required as a condition of approval, Use Permit, or other zoning requirement, regardless of size (street trees are protected under the Street Tree Ordinance); (3) all memorial trees dedicated by an entity recognized by the City, and all specimen trees that define a neighborhood or community; (4) a tree or trees of any size planted as a replacement for a Protected Tree; and (5) trees of the following species that have reached a minimum of four inches diameter trunk size:

- Big Leaf Maple (*Acer macrophyllum*)
- California Buckeye (*Aesculus californica*)
- Madrone (*Arbutus menziesii*)
- Western Dogwood (*Cornus nuttallii*)
- California Sycamore (*Platanus racemosa*)
- Coast Live Oak (*Quercus agrifolia*)
- Canyon Live Oak (*Quercus chrysolepis*)
- Blue Oak (*Quercus douglassii*)
- Oregon White Oak (*Quercus garryana*)
- California Black Oak (*Quercus kelloggi*)
- Valley Oak (*Quercus lobata*)
- Interior Live Oak (*Quercus wislizenii*)
- California Bay (*Umbellularia californica*)

All Protected Trees require a permit for removal, relocation, cutting or reshaping. Where Protected Tree removal, relocation, or encroachment into the Protected Zone of a tree is requested as part of the development of a lot or parcel, the application must be processed prior to the issuance of any grading, trenching, encroachment, demolition, or building permit for development. On receipt of a completed application, the City Landscape Architect or his or her designated representative shall inspect the premises and determine which Protected Trees may be removed or what reshaping or cutting may occur.

4.3.1.2 EXISTING CONDITIONS

This section describes the existing conditions of the plant and wildlife resources in the Specific Plan Area. The following information is taken in part from the *Existing Conditions and Opportunities Analysis* prepared for the Specific Plan Area. This report is included as Appendix B of this Draft EIR.

Vegetation and Wildlife Habitat

The majority of the Specific Plan Area has been urbanized and now supports roadways, structures, other impervious surfaces, areas of turf, and ornamental landscaping. As such, only portions of the city, mostly near the bay front in the western portion of the city and the hillsides in the eastern portion of the city, support wildlife habitats.

Specific Plan Area Vegetation and Wildlife

The Specific Plan Area is highly developed and primarily occupied by structures, roadways, and other impervious surfaces. See Figure 3-3 in Chapter 3, Project Description for an aerial photograph of the project site. Only a few parcels remain without structures or pavement, mainly the Hayward Japanese Gardens, and Carlos Bee Park, as well as select small parcels interspersed throughout the Specific Plan Area. Concentrations of mature trees exist within areas surrounding the Hayward Public Library and along the San Lorenzo Creek riparian corridor. Street trees have been planted along the frontages of many roadways within the Specific Plan Area, and varying amounts of landscaping are present on individual sites ranging from scattered trees and shrub planting to limited areas of groundcover plantings.

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The San Lorenzo Creek and Coyote Creek flow through the northern portion of the Specific Plan Area. The San Lorenzo Creek flows east to west through the Hayward Japanese Gardens towards the San Francisco Bay. Coyote Creek runs north to south through Carlos Bee Park adjacent to the Specific Plan Area, and connects with the San Lorenzo Creek near the Hayward Japanese Gardens. The creeks are surrounded by narrow riparian corridors abutted by urban development.⁵ Oak woodlands exist adjacent to the intact portions of the riparian corridors.

As shown on Figure 4.3-1, the majority of the Specific Plan Area is identified as “urban” and there are numerous areas dispersed throughout the Specific Plan Area identified as “ruderal” (i.e., disturbed or non-native grasslands). These habitat types do not contain sensitive natural communities. Urbanized or barren areas tend to have low to poor wildlife habitat value due to replacement of natural communities, fragmentation of open space areas, and intensive human disturbance. The diversity of urban wildlife depends on the extent and type of landscaping and remaining open space, as well as the proximity to natural habitat. Trees and shrubs used for landscaping provide nest sites and cover for wildlife adapted to developed areas. Typical native bird species include Cooper’s hawk (*Accipiter cooperi*), Loggerhead shrike (*Lanius ludovicianus*), Long-eared owl (*Asio otus*), Sharp shinned hawk (*Accipiter striatus*), White tailed kite (*Elanus leucurus*), and Yellow warbler (*Dendroica petechial brewsteri*).⁶ Urban areas can also provide habitat for several species of native mammals such as the California ground squirrel and striped skunk, as well as the introduced eastern fox squirrel and eastern red fox. Introduced pest species such as the Norway rat, house mouse, and opossum are also abundant in developed areas. Ruderal communities include areas that have been partially developed, recently disturbed, or have been used in the past for agriculture. In the Specific Plan Area the disturbed/ruderal communities consist primarily of vacant parcels. Some examples of wildlife species commonly associated with this community include the Rock Dove (*Columba livia*), Brewer’s Blackbird (*Euphagus cyanocephalus*), gophers (*Thomomys bottae*), and voles (*Microtus sp.*)⁷

In the northern portion of the Specific Plan Area, there are limited areas identified as Central and Southern California mixed evergreen woodlands, California Montane Riparian Systems, and Oak woodland savanna. These habitat types offer potential habitat for special-status species and are described below.

Habitat Connectivity

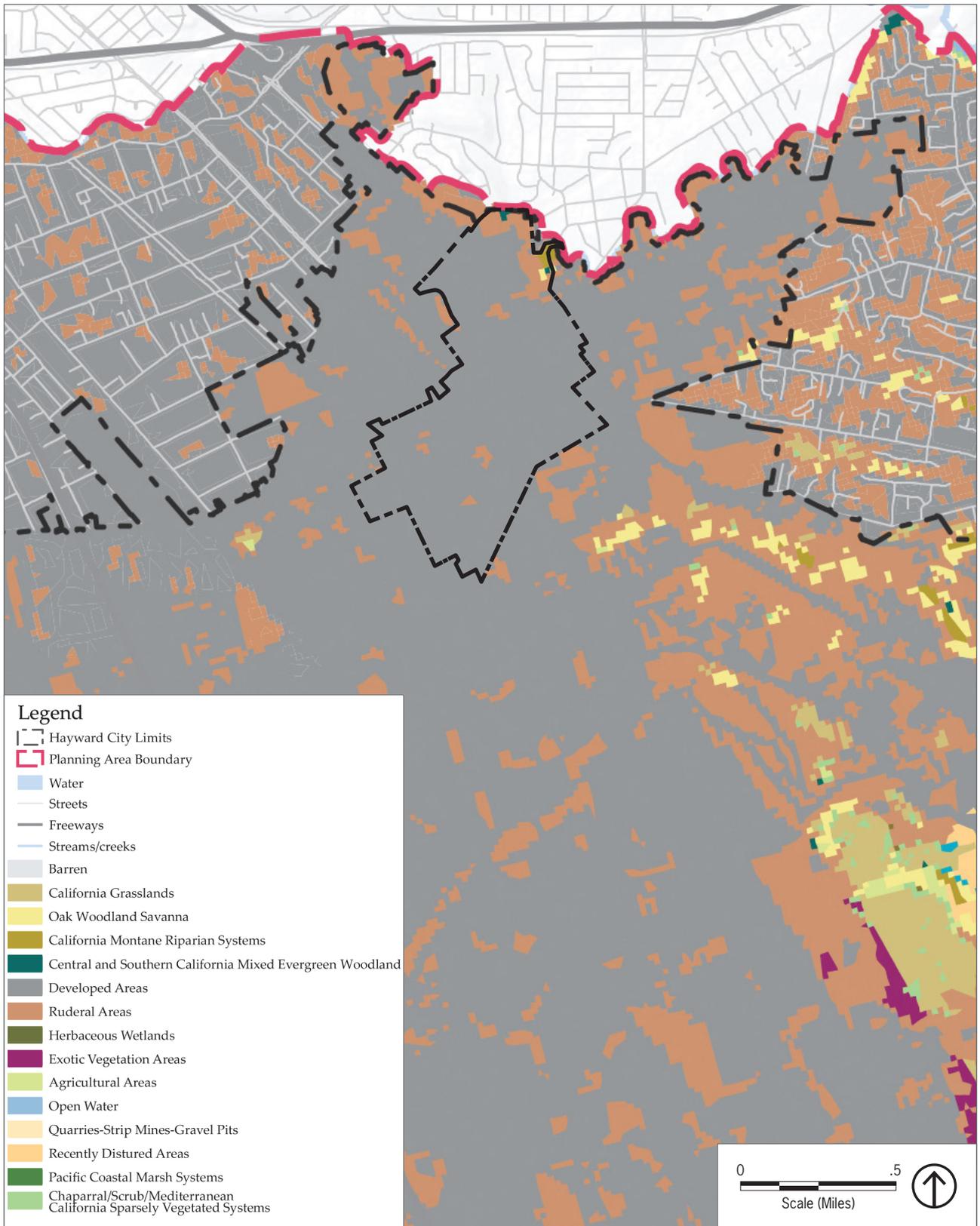
The spatial arrangement of habitats and barriers affects the location, movement patterns, foraging dynamics, and persistence of plant and animal species. The extent of urbanization limits opportunities for movement and dispersal of native wildlife and plant species through the Specific Plan Area. Common urban features such as paved roads, retaining walls, rail lines, fencing, buildings, and hardscape represent barriers to wildlife movement and dispersal. In general, riparian corridors typically provide the best opportunity for plant and animal movement through urbanized areas. A riparian corridor associated with the San Lorenzo Creek and Coyote Creek runs through the northern portion of the Specific Plan Area.

⁵ City of Hayward, 2014, Hayward 2040 General Plan Background Report, pages 7-5 to 7-6.

⁶ City of Hayward, 2014, Hayward 2040 General Plan Background Report, Table 7-2.

⁷ City of Hayward, 2014, Hayward 2040 General Plan Background Report, page 7-11.

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Source: 2040 Hayward General Plan, July 2014.

Specific Plan Boundary Hayward City Limit

Figure 4.3-1
Vegetation Habitat Types

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Special-Status Species

Special-status plants include those listed as “Endangered,” “Threatened,” or “Candidate for Listing” by the CDFW or USFWS; those included on Lists 1 and 2 of the California Native Plant Society Inventory; or those considered special-status in local or regional plans, policies, or regulations. Special-status animals include those listed as “Endangered,” “Threatened,” or “Candidate for Listing” by the CDFW or USFWS; those designated as “Watch List,” “Species of Special Concern,” or “Fully Protected” by the CDFW; or those considered “Birds of Conservation Concern” by the USFWS.

The California Natural Diversity Database (CNDDDB) compiles inventories of known occurrences of rare plants and animals for a variety of purposes, including to provide data to government agencies and to assist in environmental review, such as that required by CEQA. Many non-listed special-status species are not monitored by the CNDDDB and occurrence data is therefore not available. In general, the highly urbanized character of the Specific Plan Area, coupled with the predominance of hardscape surfaces and ornamental plantings, offers limited potential for habitat that supports special-status species. However, a search of the CNDDDB, together with other relevant information, indicates that some occurrences of plant and animal species with special-status have been recorded or are suspected to occur in and around the city of Hayward. Figure 4.3-2 shows the CNDDDB records surrounding the Specific Plan Area for special-status plant and wildlife species.

Special-Status Plant Species

As shown on Figure 4.3-2, special-status plant species have one known occurrence in the vicinity of the Specific Plan Area. The Santa Cruz tarplant (*Holocarpha macradenia*), which is designated as a threatened species, is located on the western edge of the Specific Plan Area. This plant species inhabits clay or sandy soils in coastal prairie, coastal scrub, and valley and foothill grasslands. Habitat conditions are considered suitable within agricultural or ruderal grasslands and exotic woodland areas within Hayward.⁸ The urbanized nature of the land uses in the Specific Plan Area precludes the likelihood of occurrence of this plant species.

Special-Status Animal Species

According to the CNDDDB records, there are three known special-status animal species occurrences within the Specific Plan Area. Figure 4.3-2 shows that the Pallid bat, Western bumble bee, and Western mastiff bat have historical occurrences within and surrounding the Specific Plan Area.

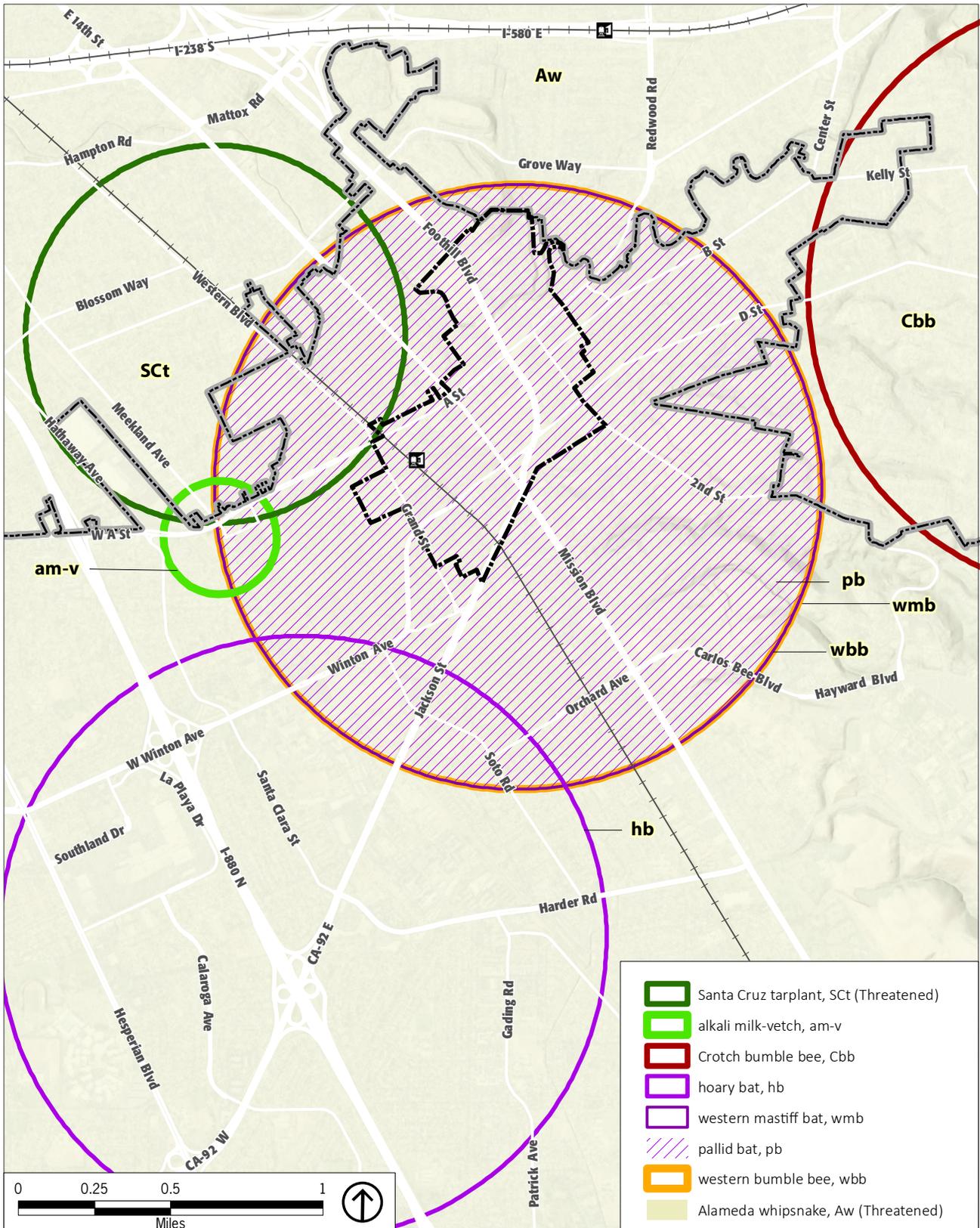
Pallid Bat

The pallid bat (*Antrozous pallidus*) is designated as a Species of Special Concern by the CDFW. This species typically forages over many habitats and roosts in caves, rock outcrops, buildings, and hollow trees.⁹ Large trees with cavities and old buildings may provide suitable habitat in the Specific Plan Area.

⁸ City of Hayward, 2014, Hayward 2040 General Plan Background Report, Table 7-2.

⁹ City of Hayward, 2014, Hayward 2040 General Plan Background Report, Table 7-2.

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Source: CNDDDB, 2017; ESRI, 2018; City of Hayward, 2018; PlaceWorks, 2018.

Specific Plan Boundary Hayward City Limit

Figure 4.3-2

Occurrences of Special-Status and Threatened Species

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Western Bumble Bee

The western bumble bee (*Bombus occidentalis*) does not have existing legal protection under the FESA or CESA, but records on their distribution in the western United States are now being more closely monitored by the CNDDDB and other data bases due to a dramatic decline in numbers and distribution over the past two decades.

Western Mastiff Bat

The western mastiff (*Eumops perotis californicus*) bat is designated as Species of Special Concern by the CDFW. This species is found in a variety of open, arid and semi-arid habitats, and presence seems associated with large rock structures for roosting, including cliff crevices and cracks in boulders. Historical records of the Western mastiff bat exist within Hayward, but suitable habitat consists of open areas and a quarry site within the city.¹⁰ The Specific Plan Area is largely urban and built up, providing little habitat for this species.

Alameda Whipsnake

The range of the federally and State-threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) is restricted to the inner Coast Range in western and central Contra Costa and Alameda Counties. Typical habitat characteristics for Alameda whipsnake consists of stands of chaparral and scrub habitat that contain abundant prey species such as western fence lizard, with abundant areas for sunning and other behaviors. This subspecies is known to utilize adjacent areas of grassland, woodland and riparian habitats, but chaparral and scrub habitats are essential for occupation in an area. The Specific Plan Area is largely urban and built up, providing little habitat for this species.

Sensitive Natural Communities

Oak Woodland Savanna

Oak woodland savanna is present in a disturbed, remnant patch adjacent to a riparian forested corridor of the Specific Plan Area. This community is typically dominated by coast live oak with an understory of non-native annual grasses and both native and non-native shrubs. The oak woodland savanna community in the Specific Plan Area is surrounded by disturbed soils and ruderal vegetation. This natural community provides valuable habitat because they enhance wildlife corridors and transitional habitat between forests and grassland areas. Wildlife species that may use these areas include Northern Flicker (*Colaptes auratus*), Western Scrub-Jay (*Aphelocoma californica*), fox squirrel (*Sciurus niger*), and raccoon (*Procyon lotor*).¹¹

Central and Southern California Mixed Evergreen Woodland

Central and southern California mixed evergreen woodland is present in the undeveloped portions of the Specific Plan Area. This community is dominated by broad-leaved trees ranging from 10 to 30 meters in

¹⁰ City of Hayward, 2014, Hayward 2040 General Plan Background Report, Table 7-2.

¹¹ City of Hayward, 2014, Hayward 2040 General Plan Background Report, Page 7-5.

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height, interspersed with taller coniferous species, and is interspersed with grassland areas. These communities support oaks (*Quercus chrysolepis*, *Quercus kelloggii*), big-leaf maple (*Acer macrophyllum*), Pacific manzanita (*Arbutus menziesii*) and Coulter's pine (*Pinus coulteri*). Wildlife species that may be found with this community include Steller's jay (*Cyanocitta stelleri*), Raccoon (*Procyon lotor*), and Gray squirrel (*Sciurus carolinensis*).¹²

California Montane Riparian Systems

California montane riparian systems are located along the San Lorenzo Creek that is in the Specific Plan Area. The San Lorenzo Creek has a narrow riparian corridor due to the surrounding urban development. This community consists of oak/bay forest dominated by coast live oak (*Quercus agrifolia*) and California bay (*Umbellularia californica*), with scattered California buckeye (*Aesculus californica*) and big leaf maple (*Acer macrophyllum*) with a dense tree canopy with minimal understory vegetation, including scattered toyon, snowberry (*Symphoricarpos albus*), poison oak (*Toxicodendron diversilobum*), California blackberry (*Rubus ursinus*), and blue elderberry (*Sambucus mexicana*). Some examples of wildlife species commonly associated with riparian forest include black-tail deer (*Odocoileus hemionus*), raccoon (*Procyon lotor*), dusky-footed woodrat (*Neotoma fuscipes*), Lesser Goldfinch (*Carduelis psaltria*), Spotted Towhee (*Pipilo maculatus*), and chorus frog (*Pseudacris regilla*).¹³

Wetlands

According to the National Wetlands Inventory, the Specific Plan Area contains freshwater Forested/shrub wetland along the San Lorenzo Creek and Coyote Creek.¹⁴ However, this area is would not be subject to new development under the proposed Specific Plan. Due to the urbanized nature of the Specific Plan Area, seasonal wetlands are absent in the areas where there is potential for development. Indirect impacts to wetlands such as water quality impacts from erosion are discussed in Chapter 4.8, Hydrology and Water Quality, of this Draft EIR.

Habitat Conservation Plans

There is no adopted habitat conservation plan or natural community conservation plan covering the Specific Plan Area.

4.3.2 STANDARDS OF SIGNIFICANCE

Implementation of the proposed project would result in a significant impact to biological resources if it would:

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

¹² City of Hayward, 2014, Hayward 2040 General Plan Background Report, Pages 7-6.

¹³ City of Hayward, 2014, Hayward 2040 General Plan Background Report, Page 7-5 to 7-6.

¹⁴ United States Fish & Wildlife Service, National Wetlands Mapper, <https://www.fws.gov/wetlands/data/mapper.html>.

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regulations by the California Department of Fish and Wildlife, or United States Fish and Wildlife Service.

2. 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 Wildlife, or United States Fish and Wildlife Service.
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. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance
6. Implementation of the proposed project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or State habitat conservation plan.

4.3.2.3 STANDARDS NOT DISCUSSED FURTHER

With regards to Standard 6 above, as described in Section 4.3.1.2, Existing Conditions, no adopted Habitat Conservation Plan or Natural Community Conservation Plans encompass the Specific Plan Area. The proposed Specific Plan would not conflict with any adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved conservation plan, and no impact would occur. Furthermore, the General Plan contains Implementation Program NR-1, Habitat Conservation Plan, which requires the City to coordinate with Alameda County, the cities of Fremont and Union City, the Hayward Area Recreation and Parks District, and the East Bay Regional Park District to develop and adopt a comprehensive Habitat Conservation Plan for areas within and surrounding Hayward. Currently, the City has not adopted a Habitat Conservation Plan. However, if a Habitat Conservation Plan were to be approved, future development within the Specific Plan Area would be required to comply with the Habitat Conservation Plan through the development permitting process.

4.3.3 IMPACT DISCUSSION

BIO-1	Implementation of the proposed project would not 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 by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.
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Future development under the proposed project would have the potential to affect species identified as candidate, sensitive, or special-status species if the development resulted in the “take” of a species.

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Potential effects could include direct or through habitat modification, actions or attempts to hunt, harm, harass, pursue, shoot, wound, capture, kill, trap, or collect a species. Due to the extent of past development and absence of suitable habitat, special-status species are generally not believed to occur in the Specific Plan Area, and no adverse impacts are anticipated. This includes suitable habitat for the Santa Cruz tarplant, pallid bat, western bumble bee, and western mastiff bat.

There is a remote possibility that one or more species of special-status bats, including the pallid bat and western mastiff bat, could occur in existing unused attic spaces, tree cavities, and other locations in the Specific Plan Area. If present, building demolition or tree removal could result in the loss of individual bats or entire colonies, which would be a significant impact. Appropriate timing of building demolition and tree removal, preparation of preconstruction surveys to confirm absence, and appropriate restrictions if any active roosts are encountered would serve to avoid inadvertent loss of roosting bats, if any are present in the Specific Plan Area.

Similarly, there is remote potential that one or more species of bird protected under the Migratory Bird Treaty Act and State Fish and Wildlife Code could nest in the Specific Plan Area or establish new nests in the future before vegetation removal and building demolition occurs. If active nests are present, vegetation removal and construction-related disturbance during breeding and rearing season could inadvertently result in the destruction or abandonment of a nest in active use, which would be a violation of the Migratory Bird Treaty Act and California Fish and Game Code. Appropriate timing of vegetation removal or preparation of a preconstruction survey to confirm absence, with appropriate restrictions if any active nests are encountered, would serve to avoid an inadvertent loss of nesting birds, if any are present in the Specific Plan Area.

Additionally, future development in the Specific Plan Area would be required to comply with existing General Plan policies listed above in Section 4.3.1.1, Regulatory Framework, as applicable, that require local planning and development decisions to consider impacts to biological resources, including sensitive or special-status species.

Specific policies that protect sensitive or special-status species include the following: Policy NR-1.1 requires the City limit to avoid new development that encroaches into important native wildlife habitats, limits the range, or creates barriers that cut off access to food, water or shelter of listed or protected species; Policy NR-1.2 states that the City shall protect sensitive biological resources, including State and Federally designated sensitive, rare, threatened, and endangered plant, fish, and wildlife species and their habitats from urban development and incompatible uses; Policy NR-1.3 requires a qualified biologist to identify, map, and make recommendations for avoiding all sensitive biological resources on the project site for all development applications proposed within sensitive biological resource areas; and Policy NR-1.9 states that the City shall protect and promote native plant species in natural areas as well as in public landscaping.

Furthermore, the proposed Specific Plan includes goals, policies, and programs that steer site design of potential future development that may impact water quality in the Specific Plan Area, having an adverse effect on sensitive or special-status species. Goal 7, Infrastructure and Public Facilities (IPF), addresses infrastructure and site design tactics that help provide water quality treatment for stormwater runoff. Programs included in the proposed Specific Plan addressing stormwater runoff are listed below.

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Implementation of these policies will reduce pollution of water habitats for sensitive and special-status species by partially treating water onsite.

- **Program IPF 1:** Require new projects to provide water quality treatment for stormwater runoff by incorporating site design measures, source control measures, and low impact development (LID) measures that are hydraulically sized as specified in the C.3 Technical Guidance Manual from the Alameda County Clean Water Program.
- **Program IPF 3:** Develop an in-lieu or incentive-based program to encourage developers to treat stormwater from the public right-of-way on site.

The proposed Mixed-Use Gateway placetype includes the areas designated with sensitive natural communities, including the oak woodland savanna, Central and southern California mixed evergreen woodland, and California montane riparian systems located along the San Lorenzo Creek. The creek is surrounded by narrow riparian corridors due to surrounding urban development. The proposed Specific Plan would transform this placetype area into a mixed-use, residential, and commercial block-form. The proposed form and intensity improvements include the redevelopment sites along San Lorenzo Creek to have two ‘fronts’ to orient development towards the creek and the street, with active frontages along both to provide greater access to this unique civic amenity, and provide “eyes on the creek” to improve safety.

The proposed Specific Plan does not include goals or policies relating to the protection of candidate, sensitive or special-status species or sensitive habitats that could support such species. However, future development potential in the Specific Plan Area where potential development is expected to occur would be concentrated on sites either already developed and/or underutilized, and/or in close proximity to existing development, where future development would have a lesser impact on sensitive habitat that could support special-status species. Accordingly, due to the existing conditions and with the ongoing implementation of the existing General Plan and Zoning Code regulations, direct and indirect impacts to candidate, sensitive, or special-status species would be *less than significant*.

Significance without Mitigation: Less than significant.

BIO-2 Implementation of 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, regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

The Specific Plan would have a significant impact if development or infrastructure projects allowed by the proposed Specific Plan would result in direct or indirect impacts to riparian resources or a sensitive natural community. As described in Section 4.3.1.2, Existing Conditions, there is a riparian corridor along the San Lorenzo Creek with surrounding sensitive natural communities within the Mixed-Use Gateway placetype of the proposed Specific Plan. The riparian corridor is surrounded by oak woodland savanna,

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central and southern California mixed evergreen woodland, and California montane riparian systems.¹⁵ This area is currently developed with Carlos Bee Park, the Hayward Japanese Gardens, the Douglass Morrisson Theatre, Hayward Area Senior Center and De Anza Park. The parks are surrounded by commercial and residential uses. The Specific Plan does not propose new development to this area that would have a substantial adverse effect on the riparian corridor and surrounding sensitive communities.

As described in impact discussion BIO-1 above, future development potential in the Specific Plan Area where new potential development is expected to occur would be concentrated on sites either already developed and/or underutilized, and/or in close proximity to existing development, where future development would have a lesser impact on sensitive habitat. Future development in the Specific Plan Area would be required to comply with existing General Plan policies listed above in Section 4.3.1.1, Regulatory Framework, as applicable, that require local planning and development decisions to consider impacts to biological resources, including sensitive habitat. Specific policies that protect riparian corridors and sensitive natural communities include the following: Policy NR-1.1 requires the City limit or avoid new development that encroaches into important native wildlife habitats, limits the range, or creates barriers that cuts off access to food, water or shelter of listed or protected species; Policy NR-1.3 requires a qualified biologist to identify, map, and make recommendations for avoiding all sensitive biological resources on the project site for all development applications proposed within sensitive biological resource areas; Policy NR-1.10 states that the City shall identify and create opportunities for “daylighting” existing creeks that are currently contained within culverts or hardened channels to reestablish riparian habitat, provide public access and enjoyment, and improve aesthetics; and Policy NR-1.12 requires the protection of creek riparian corridor habitats by requiring sufficient setbacks for new development adjacent to creek slopes, requiring sensitive flood control designs to minimize habitat disturbance, maintaining natural and continuous creek corridor vegetation, protecting native trees, and protecting riparian plant communities from the adverse effects of increased stormwater runoff, sedimentation, erosion, and pollution that may occur in improper development in adjacent areas.

Furthermore, as listed in impact discussion BIO-1 the proposed Specific Plan includes goals, policies, and programs that steer site design of potential future development that may impact water quality in the Specific Plan Area, having an adverse effect on riparian habitats or other sensitive natural communities.

Accordingly, due to the existing conditions and with the ongoing implementation of the existing General Plan and Zoning Code regulations and implementation of the proposed Specific Plan policies, direct and indirect impacts to riparian corridor and surrounding sensitive communities would be *less than significant*.

Significance without Mitigation: Less than significant.

¹⁵ City of Hayward, 2014, Hayward 2040 General Plan Background Report, Figure 7-1.

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BIO-3 Implementation of the proposed project would not 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.

As described in Section 4.3.1.2 above, wetlands exist in the Mixed-Use Gateway placetype within the Specific Plan Area. However, the proposed Specific Plan would not create new development within the areas with potential wetlands; development under the proposed Specific Plan would only occur in areas where potential wetlands are absent. Therefore, no direct impact to wetlands would occur.

Indirect impacts to wetlands and jurisdictional other waters include: 1) an increase in the potential for sedimentation due to construction grading and ground disturbance, 2) an increase in the potential for erosion due to increased runoff volumes generated by impervious surfaces, and 3) an increase in the potential for water quality degradation due to increased levels in non-point pollutants. However, indirect impacts could be largely avoided through effective implementation of Best Management Practices during construction and compliance with water quality controls. The indirect water quality-related issues are discussed further in Chapter 4.8, Hydrology and Water Quality, of this Draft EIR. As discussed in impact discussion HYDRO-1, water quality impacts would be less than significant.

Future development in the Specific Plan Area would be required to comply with existing General Plan policies listed above in Section 4.3.1.1, Regulatory Framework, as applicable, that require local planning and development decisions to consider impacts to biological resources, including wetlands as defined by Section 404 of the federal Clean Water Act. Specific policies that protect wetlands include the following: Policy NR-1.2 states that the City shall protect sensitive biological resources, including State and Federally designated sensitive, rare, threatened, and endangered plant, fish, and wildlife species and their habitats from urban development and incompatible uses; and Policy NR-1.3 requires a qualified biologist to identify, map, and make recommendations for avoiding all sensitive biological resources on the project site for all development applications proposed within sensitive biological resource areas.

Furthermore, as listed in impact discussion BIO-1 the proposed Specific Plan includes goals, policies, and programs that steer site design of potential future development that may impact water quality in the Specific Plan Area, having an adverse effect on wetlands.

Because no development would occur in areas where wetlands are present, direct impacts to wetlands would be less than significant. Future development would be required to comply with existing General Plan policies and proposed Specific Plan policies, and because direct impacts would be less than significant, potential indirect impacts on wetlands would also be considered *less than significant*.

Significance without Mitigation: Less than significant.

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BIO-4 Implementation of the proposed project would not substantially interfere 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.

Future development potential in the Specific Plan Area would occur in urbanized areas where sensitive wildlife resources and important wildlife movement corridors are no longer present because of existing development. Wildlife species common to urban and suburban habitat could be displaced where existing structures are demolished and landscaping is removed as part of future development, but these species are relatively abundant, and adapted to human disturbance. Future development in the Specific Plan Area would be required to comply with existing General Plan policies listed above in Section 4.3.1.1, Regulatory Framework, as applicable, that require local planning and development decisions to consider impacts to biological resources, including wildlife corridors. Specific policies include the following: Policy NR-1.1 requires the City to limit or avoid new development that encroaches into important native wildlife habitats; limits the range of listed or protected species; or creates barriers that cut off access to food, water, or shelter of listed or protected species; Policy NR-1.2 requires the City to protect sensitive biological resources, including State and Federally designated sensitive, rare, threatened, and endangered plant, fish, and wildlife species and their habitats from urban development and incompatible land uses; and Policies NR-1.7 and NR-1.9, require the City to encourage protection of mature, native tree species to the maximum extent practicable, to support the local eco-system, and protect and promote native plant species in natural areas as well as in public landscaping, respectively. Policies NR-1.7 and NR-1.9 would specifically serve to improve urban habitat linkages for migration of native and special-status species. Compliance with the General Plan policies would ensure that new structures and landscaping installed as part of future development would provide replacement habitat for wildlife species adapted to urban areas. Potential impacts on the movement of fish and wildlife, wildlife corridors, or wildlife nursery sites would be considered *less than significant*.

Significance without Mitigation: Less than significant.

BIO-5 Implementation of the proposed project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

Development and land use activities consistent with the Specific Plan Area would occur in urbanized areas where sensitive biological resources are generally considered to be absent. No major conflicts with the relevant policies or ordinances in the General Plan or Municipal Code are anticipated.

Future development in the Specific Plan Area would be required to comply with existing General Plan policies listed above in Section 4.3.1.1, Regulatory Framework, as applicable, that require local planning and development decisions to consider impacts to biological resources, including tree preservation policies. Specific policies include Policy NR-1.7, which requires the City to encourage protection of mature, native tree species to the maximum extent practicable, to support the local eco-system, provide shade, create windbreaks, and enhance the aesthetics of new and existing development.

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Additionally, Hayward Municipal Code Chapter 10, Article 15, Tree Preservation has additional requirements that provide for the protection and preservation of significant trees by designating the species of tree and the types of development or properties that are considered “protected.” All development that proposes removal of protected trees requires a permit for removal, relocation, cutting or reshaping. Where Protected Tree removal, relocation, or encroachment into the Protected Zone of a tree is requested as part of the development of a lot or parcel, the application must be processed prior to the issuance of any grading, trenching, encroachment, demolition, or building permit for development. The City also has a Tree Preservation Fee that is part of the development fees that must be paid prior to building permit issuance. New development within the Specific Plan Area will be required to comply with this existing Municipal Code policy. The proposed project does not include policies relating to the biological resources. With adherence to the General Plan policies, the Tree Preservation requirements, and development impact fees, no conflicts with local plans and policies are anticipated, and impacts would be considered *less than significant*.

Significance without Mitigation: Less than significant.

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