

4.3 BIOLOGICAL RESOURCES

This section identifies existing biological resources on the project site and in the project vicinity, and evaluates potential impacts to these resources. Potential resources include special status species and habitats. The following analysis is based in part on the Natural Environment Study (NES) completed in November 2013 and attached as **Appendix E** (H.T. Harvey & Associates, 2013).

4.3.1 EXISTING CONDITIONS

The 7.26 acre Biological Study Area (BSA) identified for the project encompasses all areas that will be temporarily or permanently affected. This includes areas of potential temporary and permanent project effects, anticipated limits of Fair Oaks Avenue Overhead Bridge (bridge) and roadway work, and potential staging and lay down areas.

The BSA is highly developed, and principally encompasses paved roadways, sidewalks, roadside ditches, ornamental landscaping, streetlights, and signage, as well as portions of adjacent parking lots, businesses and residential properties (See **Figure 4.3-1**). On the southern side of the Caltrain tracks the BSA is bounded by residential apartments to the east and west. North of the Caltrain tracks, the BSA is bounded by the Home Depot parking lot to the east and the Northrop Hendy Site to the west. The majority of the BSA is flat to gently sloping, with the exception of the bridge, which is elevated approximately 20 feet above ground level.

Plant Communities and Wildlife Habitat

Overall wildlife abundance and diversity in the developed and landscaped habitats of the BSA is low. Landscaped areas within the BSA are limited in extent (comprising approximately 10-20% of land cover in the area), and for the most part do not provide habitat for the broader suite of urban-adapted wildlife species that would occur in urban parklands or areas with more extensive landscaping and mature, native trees. In addition, the BSA is surrounded by development and no adjacent or nearby habitats support wildlife species that are typically associated with more natural areas

The paved areas are mostly devoid of vegetation; however, sparse vegetation is present in the form of landscape plantings. These plantings include ornamental trees, shrubs, and flowers. Cherry trees (*Prunus sp.*), sweetgum trees (*Liquidambar styraciflua*), gum trees (*Eucalyptus sp.*), paperbark trees (*Melaleuca sp.*), and pine

trees (*Pinus sp.*) have been planted in the landscaped areas. The trees range from approximately 15 to 50 feet tall and form an open canopy. Some roadside ruderal grassland vegetation is also included in the area, within the landscaped island area near the intersection of Kifer Road and Fair Oaks Avenue. Ruderal grassland habitat characteristically contains non-native, invasive, disturbance-adapted plant species and does not provide suitable habitat for many native plants. Some of the landscaped areas contain invasive species, including English ivy and pampas grass (*Cortaderia sp.*).

The landscaped and developed habitats in the BSA provide habitat for some common, urban-adapted wildlife species, particularly birds. Several species of birds may nest and forage in the landscaped trees, shrubs, and ground cover in the BSA in spring and summer. These include mourning doves (*Zenaida macroura*), Bewick's wrens (*Thryomanes bewickii*), Anna's hummingbirds (*Calypte anna*), American robins (*Turdus migratorius*), and dark-eyed juncos (*Junco hyemalis*). Migrating songbirds such as the yellow-rumped warbler (*Setophaga coronata*), white-crowned sparrow (*Zonotrichia leucophrys*), and golden-crowned sparrow (*Zonotrichia atricapilla*) commonly roost and forage in landscaped vegetation, such as the trees and shrubs in the BSA, during the fall and winter.

Urban adapted mammals such as the raccoon (*Procyon lotor*), Botta's pocket gopher (*Thamnophis bottae*), non-native Norway rat (*Rattus norvegicus*), and striped skunk (*Mephitis mephitis*) are also common foragers in developed and landscaped areas.

Several large trees in the BSA are marginally suitable for nesting by Cooper's hawks (*Accipiter cooperii*), but the small green space located northeast of the intersection of Kifer Road and Fair Oaks Avenue immediately adjacent to the BSA provides the most suitable habitat for nesting by raptors in the immediate Project vicinity. Western fence lizards (*Sceloporus occidentalis*) may occur in the BSA as well, especially where landscaped vegetation, rocks, or other refugia are present. No aquatic, amphibious, or other wetland-specialist wildlife species are expected to occur in the BSA due to the lack of stream and wetland features on the site and in adjacent areas.

The bridge provides cavities, crevices, and ledges for some wildlife species that are typically associated with cliffs or stream banks in natural areas. Northern rough-winged swallows (*Stelgidopteryx serripennis*) and white-throated swifts (*Aeronautes saxatalis*) often nest in weep holes or soffit vents in bridges similar to those in the bridge.

Individual bats, such as hoary bats (*Lasiurus cinereus*) and western red bats (*Lasiurus blossevillii*), may rarely roost in the foliage of trees in the BSA. No on-site trees have cavities of sufficient size to support maternity colonies of any species of bats.

Further, in all likelihood, no bats roost in on-site trees because of the level of existing disturbance associated with the areas immediately adjacent to the trees and the general lack of cavities in tree trunks in the BSA. The bridge provides potential day and night-roosting habitat for urban adapted species such as Yuma bats (*Myotis yumanensis*) and Mexican free-tailed bats (*Tadarida brasiliensis*). Small numbers of bats (i.e., one or two per roost location) could potentially roost in features such as weepholes. In addition, long horizontal crevices were observed between the deck of the bridge and its support beams, which provide suitable breeding, day-roosting, and night-roosting habitat of non-special-status bats such as the Mexican free-tailed bat and Yuma bat. However, no bats or any sign of bat presence (e.g., guano staining or echolocation calls) were encountered during surveys, and it is unlikely bats are currently using the bridge as roosting habitat. However, because some areas of the bridge were difficult to inspect during surveys (occluded from visual inspection), it is not possible to state conclusively that no bats are currently roosting at the bridge. Many species of bats that roost in the project vicinity may forage aerially over the BSA.

Special-Status Biological Resources

Special-Status Wildlife Species

For purposes of this analysis, *special-status wildlife species* are defined as those that are state or federally listed as Threatened or Endangered, proposed for listing as Threatened or Endangered, designated as state or federal candidates for listing, a federal Bird of Conservation Concern, a state Species of Special Concern, a state Fully Protected Animal, or that may otherwise be considered “rare” under Section 15380 of the California Environmental Quality Act (CEQA) Statutes and Guidelines.

H. T. Harvey & Associates evaluated the list of special-status wildlife species occurring in the region based on the United States Fish and Wildlife Service (USFWS) species list as well as the California Natural Diversity Database (CNDDDB) (2013) records for the site vicinity (**Figure 4.3-2**). The potential for these species to occur within the BSA was evaluated based on the presence of suitable habitat and the range of each species.

Nearly all of the special-status animal species that occur in the project region were rejected for potential occurrence in the BSA because the site lacks suitable habitat and/or is outside of the species’ range. Species associated with aquatic or wetland habitats, such as fish and amphibians, are determined to be absent from the BSA because no habitat for these species is present. Furthermore, most other special-status animals occurring in the region are associated with specific habitats that are

absent from the BSA (e.g., salt marsh habitat or annual grassland habitat with small mammal burrows). No designated critical habitat for federally listed species occur within or adjacent to the BSA.

The biological database search identified two special-status bat species with the potential to exist in the project site - the pallid bat and the western red bat. However, neither are assumed to be present in the project vicinity due to urbanization, the BSA's isolation from riparian habitats, and/or because the species is considered extirpated from the county. Therefore neither species is further discussed in this EIR (see **Appendix E**).

Special-Status Plant Species

For the purposes of this analysis, special status plants include those species that are state or federally listed as Rare, Threatened or Endangered; federal candidates for listing; proposed for state or federal listing; or included on Lists 1, 2, 3, or 4 of the California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants of California.

The CNPS (2013) identifies 95 special-status plant species as potentially occurring in the *Mountain View or Cupertino, California* 7.5-minute quadrangle or at least one of the surrounding ten quadrangles, or for CNPS List 4 species for which quadrangle-level data is not available, in Santa Clara County. The CNDDDB (2013) documents nine of these special-status plants as occurring within a 5-mile vicinity of the BSA (**Figure 4.3-2**).

The potential of the BSA to support any of the special-status plants identified in the database review was assessed through consideration of a variety of factors including the species' preferred habitat characteristics, proximity to existing populations, and ecological condition of the habitats within the BSA, among other factors. After considering these factors for each of the species, it was determined that the project site does not represent potential habitat for any of the 95 special-status plant species that occur in the project vicinity for the following reasons: the lack of adequate habitat in the BSA, the 95 special-status species are associated with soil types that are not present (e.g., strongly alkaline soils or serpentine soils), the BSA is outside the species elevation range, and/or because the species is considered extirpated from the county.

Sensitive Habitats

Habitats would be considered to be sensitive if they are limited in distribution, are regulated (e.g., by the Clean Water Act), or if they provide habitat for a sensitive species in the region. The BSA is surrounded by development and has been heavily affected by disturbance related to road traffic, maintenance, pollution, and invasive

plant species, limiting the distribution and quality of sensitive habitats in and near the project site. The BSA does not support any sensitive habitat types tracked by the CNDDDB that are known to occur in the general vicinity, such as Northern Coastal Salt Marsh.

Jurisdictional Wetlands and Waters

Wetlands, creeks, streams, and permanent and intermittent drainages are subject to the jurisdiction of the US Army Corps of Engineers (ACOE) under Section 404 of the Clean Water Act. The California Department of Fish and Wildlife (CDFW) also generally has jurisdiction over these resources, together with other aquatic features that provide an existing fish and wildlife resource pursuant to Sections 1602-1603 of the California Fish and Game Code.

No features that would be considered waters of the U.S. regulated under Section 404 of the Clean Water Act occur in the BSA. Moreover, no evidence of wetlands likely to be regulated by the Clean Water Act and/or claimed as waters of the State by the Regional Water Quality Control Board (RWQCB) was found within the BSA. The features on-site consist solely of small areas of puddled water supplied by leaking pipes. Such areas are typically not considered jurisdictional waters because they occur in uplands and are supported by artificial hydrology. The project site is in a developed condition and does not contain any jurisdictional wetlands or waters.

Wildlife Movement Corridors

Wildlife corridors are described as pathways or habitat linkages that connect discrete areas of natural open space otherwise separated or fragmented by topography, changes in vegetation, and other natural or manmade obstacles such as urbanization. Fragmentation of habitats can hinder regional wildlife movements.

The project site is immediately bordered by residential development and roadways. The project site itself is developed and highly disturbed. These characteristics provide limited habitat to nesting and foraging bird species. As urban development borders the project site on all sides, the project site does not provide habitat connectivity between open space areas and is not considered to be part of an established wildlife movement corridor.

Protected Trees

The City of Sunnyvale defines a “Protected Tree” by the following criteria:

- Any single trunk tree 38 inches or greater in circumference;
- Any multi-trunk tree which has at least one trunk 38 inches or greater in circumference or where the measurements of the multi-trunks added together equal at least 113 inches.

The only potential ‘Protected Trees’ in the BSA are the eucalyptus trees toward the south end of the bridge, west of Fair Oaks Avenue, and the redwood trees at the north end of the bridge near Kifer Road.

4.3.2 REGULATORY SETTING

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service (USFWS) has jurisdiction over federally listed Threatened and Endangered species under the federal Endangered Species Act (ESA). Section 9 of the ESA protects listed species from harm or “take,” which is broadly defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”¹ An activity can be defined as a “take” even if it is accidental or unintentional.

An Endangered species is one which is considered in danger of becoming extinct throughout all or significant portions of its range. A Threatened species is one that is likely to become Endangered within the foreseeable future. In addition to Endangered and Threatened species, the USFWS maintains lists of candidate species and Birds of Conservation Concern. Species on these lists are not afforded the legal protection of the federal ESA but are considered to be of special-status under CEQA.

Project Consistency

No federally listed wildlife species are expected to occur on the project site. However, if federally listed wildlife species were encountered during construction, the project would be required to comply with USFWS regulations.

¹ 16 USC, Section 1532(19).

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act² (MBTA) prohibits killing, possessing, or trading of migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. The Act encompasses whole birds, parts of birds, and bird nests and eggs.

Project Consistency

Construction activities during the avian breeding season could result in the incidental loss of eggs or nestlings. **Mitigation Measures BIO-2e and BIO-2f** include measures to address construction timing and vegetation removal in terms of compliance with the MBTA.

California Department of Fish and Wildlife

The CDFW has jurisdiction over state-listed Threatened and Endangered species under the California Endangered Species Act. The state also maintains a list of wildlife identified as Species of Special Concern and Fully Protected. Species on this list are not afforded the legal protection of the state ESA but are considered to be of special-status under CEQA.

The CDFW also exerts jurisdiction over the beds and banks of watercourses.³ The CDFW typically requires a Streambed Alteration Agreement for the fill or removal of any material from any natural drainage. The jurisdiction of the CDFW extends to the top of bank and includes the outer edge of riparian canopy cover.

Section 3503 of the California Fish and Game Code protects all breeding native bird species in California by prohibiting the take, possession, or needless destruction of nests and eggs of any bird, with the exception of non-native English sparrows, European starlings, and rock doves (pigeons) (Section 3801).

Project Consistency

The project involves construction to the existing bridge which could potentially provide nesting habitat to special-status bats. **Mitigation Measures BIO-2a- BIO-2d** includes measures to address construction activities disturbing potential roosting bats in terms of compliance with the CDFW and Section 3503 of the California Fish and Game Code.

² 16 USC, Section 703, Supplement I, 1989.

³ Section 1601- 1603 of the Fish and Game Code

California Native Plant Society

The CNPS has developed and maintains lists of plant species that it considers to be rare, threatened or endangered in California. Although the CNPS is a private conservation group, the species on its List 1B (plant species considered endangered in California and elsewhere) and List 2 (plant species considered rare, threatened or endangered in California, but common elsewhere) warrant analysis in CEQA documents as they meet the definition of threatened or endangered under the California Native Plant Protection Act (NPPA) and Sections 2062 and 2067 of the California Fish and Game Code. List 1A plants are considered extinct by the CNPS because they have not been observed despite focused searches. The CDFW does not consider the CNPS List 3 and List 4 plant species as requiring CEQA analysis, although the CNPS does recommended that these species be considered in CEQA documents. List 3 plants are those about which more information is needed (a review list), and List 4 Plants are those plants with limited distribution (a watch list).

Project Consistency

The project site does not contain any plant species that CNPS considers to be rare, threatened, or endangered in California.

Sunnyvale General Plan

Given the highly urbanized nature of Sunnyvale, and the lack of any substantial biological resources, the City of Sunnyvale General Plan contains no policies specifically pertaining to potential project-related vegetation and wildlife impacts.

Sunnyvale Municipal Code

Title 13, Chapter 13.16 City Trees

The intent of this chapter is to ensure the preservation of the city's urban forest, encourage the protection of trees for aesthetic and biological reasons, and to regulate the maintenance, removal, and planting of trees, shrubbery, and plantings within the public rights-of-way. "City tree" refers to any woody plant which is growing within the public right-of-way along a city street and has a trunk four inches or more in diameter at four and one-half feet above normal ground level. Specific regulations associated with tree disturbance and removals are summarized below.

Permits Required (13.16.060)

- **Maintenance and Removal:** It is unlawful for any person to trim, prune, spray, fertilize, remove, cut above ground, or otherwise disturb any city tree without first procuring a permit from the superintendent. The permit shall be issued when the superintendent determines that the required work is necessary and that the proposed method is in accordance with generally accepted arboricultural specifications and standards of practice.
- **Construction:** It is unlawful for any person to make any excavation, place any fill, compact the soil, or construct any structure, walkway, driveway, pavement or public utility within fifteen feet of any city tree without first obtaining a permit for such work from the superintendent and conducting such work in accordance with such permit. As a condition of issuing such permit, the superintendent shall require that the work be done in accordance with such generally accepted arboricultural specifications and standards of practice necessary to protect the vitality of the tree.

Title 19, Chapter 19.94 Tree Preservation

The purpose of this chapter is to regulate the protection, installation, removal, and long-term management of significantly sized trees on private property within the city, as well as to establish review, permit procedures, and penalties to assure the correct planting, maintenance, protection, and removal of significant trees. For the purpose of this chapter, a “protected tree” is a tree of significant size. “Significant size” means a tree thirty-eight inches or greater in circumference measured four and one-half feet above ground for single-trunk trees. For multi-trunk trees “significant size” means a tree which has at least one trunk with a circumference thirty-eight inches or greater measured four and one-half feet above ground level, or in which the measurements of the circumferences of each of the multi-trunks, when measured four and one-half feet above the ground level, added together equal an overall circumference one hundred thirteen inches or greater.

In order to remove any protected tree from private property, or from any city owned golf course or park, it is necessary to obtain a protected tree removal permit from the Department of Community Development. Any tree that has been designated as a heritage landmark, pursuant to the provisions of Chapter 19.96 (Heritage Preservation), shall not be removed without obtaining a tree removal permit in addition to a landmark alteration permit.

Policy Consistency

As set forth below in **Mitigation Measure BIO-1**, prior to any construction activities or tree removal on-site, a qualified arborist will conduct a survey to evaluate the trees subject to removal to the requirements of the City of Sunnyvale's tree permit conditions.

4.3.3 IMPACTS AND MITIGATION MEASURES

Significance Criteria

Appendix G of the CEQA Guidelines identifies environmental issues to be considered when determining whether a project could have significant effects on the environment. A project would have a significant biological resources impact if it would:

- 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 CDFW or USFWS;
- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to: marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, Regional, or state Habitat Conservation Plan;
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance;
- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as candidate, sensitive, or special status species in local or regional plans, policies, regulations, or by the CDFW or USFWS; or
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with an established resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

Discussion of No Impacts

Analysis of the site characteristics in the context of the six significance criteria stated above shows that no impacts would result for four of the criteria.

Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS?

The project site and surrounding area are highly developed and do not contain any riparian areas or other sensitive natural communities. Therefore, the project would not result in impacts to such resources.

Would the project 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 mean?

According to the National Wetland Inventory Map (NWI 1976), no hydrologic features occur within or adjacent to the project site. No features that would be considered waters or wetlands of the U.S. regulated under Section 404 of the Clean Water Act occur in the vicinity of the project site. Refer to **Subsection 7.1.2, Hydrology and Water Quality**, for a discussion of water quality, groundwater resources, and floodplains.

Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, Regional, or state habitat Conservation plan?

The closest Habitat Conservation Plan is the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), which has been adopted by Gilroy, Morgan Hill, San Jose, the County of Santa Clara, Santa Clara Valley Transportation Authority, and Santa Clara Valley Water District. The northwestern boundary of the HCP/NCCP lies over 2.5 miles southeast of the project site. Owing to this distance and intervening urban development, the project would not impact or conflict with any HCP/NCCP.

Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with an established resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

The project site is not part of a regional wildlife movement corridor. Urban development borders the project site on all sides and the project site does not provide habitat connectivity between open space areas and is not considered to be part of an established wildlife movement corridor. The project is expected to have no long-term effects on wildlife movement. Hence, development of the proposed project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established corridors. Finally, the project site does not constitute a native wildlife nursery site. Therefore, no impact would occur.

Discussion of Significant Impacts

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

Impact BIO-1: Project implementation would result in the removal, trimming, and possible damage to several existing trees within the vicinity of the project. (LESS THAN SIGNIFICANT WITH MITIGATION)

The City of Sunnyvale's Municipal Code contains policies related to tree protection and preservation, as well as permit requirements for construction activities and tree removal (refer to **Subsection 4.3.2, Regulatory Setting**). The project may remove, prune, or conduct construction activities near a small number of trees along the roadways that are subject to Title 13 of the City of Sunnyvale's Municipal Code. Approximately 15-18 landscape trees may be removed during project implementation. All of the trees to be removed occur in the developed/landscaped habitat and are non-native, ornamental species, including seven sweetgums, seven gums, one Washington fan palm (*Washingtonia robusta*), one ornamental fruit tree (*Prunus sp.*), and two non-native trees. Additional trees will be trimmed during project implementation, and construction-related activities are likely to occur near other trees within the vicinity of the project.

Tree removal and pruning will not cause substantial biological effects on the city's urban forest or on populations of the animal species that use these trees due to the limited nature of tree removal and the abundance of similar habitat in the vicinity of the project site.

Mitigation Measure BIO-1: Prior to tree removal and construction activities, an International Society of Arboriculture (ISA) Certified Arborist will conduct a survey to evaluate the trees subject to removal. Trees to remain will be clearly identified as such on project plans. Such trees will be protected by erecting a fence around the trees, as specified by an arborist. This protective fencing will prevent the parking of vehicles and/or storage of equipment/materials within the dripline of the tree and must conform to the requirements of the City of Sunnyvale's city tree permit conditions. Any city tree that is to be removed or trimmed will require a permit per the requirements of Title 13 in the City of Sunnyvale's Municipal Code.

Significance after Mitigation: Less than significant. Implementation of **Mitigation Measure BIO-1** would ensure that a permit would be obtained prior to any tree disturbing and/or removal activities and would serve to protect trees in the area not identified for removal, thereby reducing impacts to a less-than-significant level. Moreover, the City has committed to replacing any trees removed by construction on a one-to-one basis.

Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as candidate, sensitive, or special status species in local or regional plans, policies, regulations, or by the CDFW or USFWS?

Impact BIO-2: Construction activities, demolition, and tree removal could have an adverse effect on special-status species including roosting bats that are potentially occupying the bridge, as well as to nesting birds through the incidental loss of eggs or nestlings (LESS THAN SIGNIFICANT WITH MITIGATION)

The loss of a small portion of non-breeding habitat for special-status bats or the loss of a small number of non-special status bats would not result in a substantial effect on regional populations of these species. However, the following measures will be implemented to ensure that individual bats are not impacted, in the event that bats occupy the bridge in greater numbers than were detected during biological surveys prior to the initiation of construction (since suitable roosting habitat is present).

Mitigation Measure BIO-2a: In order to facilitate the implementation of measures to avoid impacts on roosting bats without constraining project work windows (i.e., to allow for the eviction of bats during the non-breeding season), a survey for roosting bats will be conducted by a qualified bat biologist prior to the breeding season (April 1st) in the year in which project disturbance is scheduled to occur. If a visual survey is not adequate to determine presence or absence of bats (i.e., in tree cavities), acoustic equipment will be used to determine occupancy.

If no bats are found roosting, bat exclusion devices will be installed to prevent bats from taking up occupancy of the structure prior to the onset of the proposed activity

Mitigation Measure BIO-2b: If a day roost of bats is found in the bridge, the bats will be safely evicted under the direction of a qualified bat biologist. Eviction of bats will occur at night to decrease the likelihood of predation (compared to eviction during the day). Eviction will occur between 1 September and 31 March, outside the maternity season, but will not occur during long periods of inclement or cold weather (as determined by the bat biologist) when prey are not available or bats are in torpor. Eviction activities will be performed under the supervision of a qualified bat biologist.

Following eviction, bat exclusion devices will be installed to prevent bats from taking up occupancy of the structure prior to the onset of the proposed activity.

In some circumstances, it could be beneficial to allow roosting bats to continue using a roost while construction is occurring on or near the roost site. For example, if a roost is found in a portion of the bridge that will not be heavily disturbed during construction, a qualified bat biologist (in consultation with the CDFW) will determine whether the bats will be evicted or whether they will remain in-place. If it is determined that the risks to bats from eviction (e.g., increased predation or exposure, or competition for roost sites) are greater than the risk of colony abandonment, then the bats will not be evicted.

Mitigation Measure BIO-2c: Because the survey described in **Mitigation Measure BIO-2a** will be conducted prior to the breeding season, several months could pass between the initial survey and the initiation of tree removal and project activities that could potentially result in disturbance of roosting bats. Therefore, a preconstruction survey for roosting bats, following the methods described above, will be conducted within the 15 days prior to the commencement of project activities in a given area to determine whether bats have occupied a roost in or near the project's work areas. If no active roosts are found, then no further action is warranted. In the event that a new roost (i.e., a roost that was not detected during the survey conducted under **Mitigation Measure BIO-2a**) is detected, **Mitigation Measures BIO-2b** and **BIO-2d** will be implemented.

Mitigation Measure BIO-2d: If a maternity roost is detected during the preconstruction survey, and bats cannot be evicted prior to the onset of project activities, the bat biologist will determine the extent of a construction-free buffer around the active roost that will be maintained. This buffer will be maintained from 1 April until the young are flying, typically after 31 August.

Impacts to nesting birds would not be considered a substantial effect for the species that could potentially nest in the project site due to the local and regional abundances of these species and/or the low magnitude of the potential impact of the project to these species (i.e., the project may impact one or two individual pairs of these species, which is not significant to their regional populations). However, the following measures will be implemented to ensure that the project activities comply with the MBTA and California Fish and Game Code.

Mitigation Measure BIO-2e: A pre-construction survey for nesting birds will be conducted by a qualified ornithologist, to ensure that no active nests will be disturbed during project implementation. The survey will be conducted no more than seven days prior to the initiation of construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings, and the bridge) in and immediately adjacent to the impact areas for nests. These survey areas should include the project footprint and areas within 300 feet (for raptors) and 100 feet (for non-raptors) of project activity areas, as access permits. If an active nest is found within these survey areas, buffers of 300 feet for raptors and 100 feet for non-raptors will be established around the nests. No new activities (i.e., activities that were not already ongoing when the nest was established) are permitted within the buffer for as long as the nest is in active use. If, in the opinion of a qualified ornithologist, a reduced buffer can be established without risking nest abandonment or reduced reproductive success (e.g., due to the level of existing noise and other disturbance, screening structures or vegetation between the nest and project activities, or other reasons), the ornithologist will determine an appropriate buffer in consultation with the CDFW.

Mitigation Measure BIO-2f: To avoid potential impacts to nests during project implementation, potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the project would be removed prior to the start of the nesting season (e.g., prior to 1 February). This will preclude the initiation of nests in this vegetation, and prevent the potential delay of the project due to the presence of active nests in these substrates. Nest deterrence may also be implemented to prevent birds from nesting on the bridge or in other areas where nests may be disturbed by, or which may constrain, project activities. Nest deterrence may include removal of nest starts (incomplete nests that do not yet contain eggs or young) at frequent intervals and/or the installation of measures such as netting or material to plug weep holes that will prevent birds from accessing nest sites. If any such materials are installed, they must be installed very carefully to ensure that birds are not trapped within such materials (e.g., birds can become trapped behind

improperly installed netting), and they must be monitored frequently to ensure that they are functioning properly.

Significance after Mitigation: Less than significant. Implementation of the above mitigation measures would ensure that there are no active nests in existing trees or structures on the project site prior to ground disturbing activities. If active bat roosts or bird nesting is discovered, this measure would ensure the affected bats and birds are properly removed prior to removal of the occupied tree or demolition of structures, thereby reducing the impact to a less-than-significant level.

4.3.4 REFERENCES

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Figure 4.3-1 Bioloal Study Area

Figure 4.3-2 California Natural Diversity Database Records

Figure 4.3-2 (back of page)