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## 14. BIOLOGICAL RESOURCES

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The following chapter describes existing vegetation and wildlife characteristics in the project area, including possible rare and endangered species, the potential impacts of the proposed project (Downtown Improvement Program Update) on these conditions, and measures warranted to mitigate significant adverse impacts.

The existing setting description in this section has been derived from information included in the City of Sunnyvale General Plan, the City-certified 1999 Olson Cherry Orchard Mixed-Use Project Final EIR, and a record search requested from the California Natural Diversity Data Base (CNDDDB). The record search by the CNDDDB provided information on the known distribution of sensitive natural communities and special-status species for the two U.S. Geologic Survey (USGS) 7.5 minute quadrangles encompassing the project area ("Cupertino" and "Mountain View").

### 14.1 SETTING

#### 14.1.1 Local and Regional Context

The City of Sunnyvale is located between the San Francisco Bay and the eastern slope of the Santa Cruz mountains. Natural habitat in the slopeside portion of Sunnyvale is generally comprised of annual grasslands with scattered riparian trees and scrub within drainages. Recent sources cite up to 838 acres of open space and parkland within the project vicinity.<sup>1</sup>

#### 14.1.2 Project Area Biological Resources

(a) General Characteristics. Most of the project area is urbanized, and existing vegetation reflects the extent of past and ongoing disturbance. Although there is an abundance of parkland and open space in the greater project vicinity, the project area itself is almost completely built out. The only remaining open space within the project area is comprised of Evelyn Plaza in the North of Washington District, and a number of vacant parcels scattered throughout the area.

Existing structures, roadways, and ornamental landscaping occupy most of the project area. Landscaping is composed of a variety of ornamental species, primarily non-native trees,

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<sup>1</sup>City of Sunnyvale, Olson Cherry Orchard Mixed-Use Project Final Environmental Impact Report. Prepared by ESA, May 1999, p. III.9-1.

shrubs, and groundcovers. Ruderal (weedy) grassland species occupy vacant lots and heavily disturbed areas. In general, the project area has low to poor wildlife habitat value due to replacement of natural communities, fragmentation of remaining open space areas, and intensive human disturbance.

Trees and shrubs used for landscaping do provide nest locations and cover for wildlife adapted to developed areas. Typical native bird species include: mourning dove, scrub jay, northern mockingbird, American robin, brown towhee, and house finch. Introduced bird species include: rock dove, European starling, and house sparrow. The urbanized areas also provide habitat for several species of native mammals such as California ground squirrel, raccoon, and striped skunk.

(b) Protected Vegetation and Wildlife Species. The level of urbanization which already occurs in the project area makes the presence of sensitive wildlife species highly unlikely. In addition, pest and weed control activities in urbanized areas such as downtown Sunnyvale limits prey species and seed sources for sensitive birds and small mammals. Because of these urbanized conditions, very few protected vegetation or wildlife species have the potential to occur in the project area. Protected species likely to occur in the project area would be limited primarily to trees protected under the City's tree preservation ordinance (City ordinance 19.94) and nesting birds protected under the federal Migratory Bird Treaty Act.

## **14.2 PERTINENT PLANS AND POLICIES**

### **14.2.1 City of Sunnyvale General Plan**

Given the highly urbanized nature of the City, and the lack of any substantial remaining biological resources, the City of Sunnyvale General Plan includes no policies specifically pertinent to consideration of potential project vegetation and wildlife impacts.

### **14.2.2 Tree Preservation Ordinance**

The City's *Tree Preservation Ordinance* (Sunnyvale Municipal Code, chapter 19.81) provides for protection, installation, removal, and long-term management of significantly sized trees on private property and on City-owned golf courses and parks. The ordinance defines "protected tree" as a tree of "significant size" (i.e., a tree 38 inches or greater in circumference measured four feet above ground). The ordinance sets standards and criteria for issuance of tree removal permits, criteria for replacement trees, and requirements for replanting programs, tree relocation, and tree protection during site development or modification. Requirements for protected trees during site development or modification include applicant preparation of a tree survey; project modification to retain, relocate, or replant protected trees; and preparation of a tree protection plan that demonstrates how trees will be protected during and after construction (section 19.81.120). The only protected trees that have been identified in the project area are trees within the existing Town Center Mall courtyard, which are listed in the City's Cultural

Resources Inventory as the "Sunnyvale Town Center Trees." (See subsection 15.1.3 in the Cultural and Historic Resources chapter of this EIR for additional discussion of these historic trees).

#### **14.2.3 State and Federal Regulatory Framework**

In addition to the environmental protection provided by the California Environmental Quality Act (CEQA), other state and federal regulations have been enacted and agencies authorized to provide for the protection and management of sensitive biological resources. State and federal agencies have a lead role in the protection of biological resources under their permit authority set forth in various state and federal statutes and regulations. At the state level, the California Department of Fish and Game (CDFG) is responsible for administration of the State Endangered Species Act, and for protection of streams, waterbodies, and riparian corridors through the Streambed Alteration Agreement process under §1601-1606 of the California Fish and Game Code. Certification from the California Regional Water Quality Control Board is also required when a proposed activity may result in discharge into navigable waters, pursuant to §401 of the Clean Water Act and EPA 404(b)(1) Guidelines. At the federal level, the U.S. Fish and Wildlife Service (USFWS) is responsible for implementation of the federal Endangered Species Act and the Migratory Bird Treaty Act, while the U.S. Army Corps of Engineers (Corps) has primary responsibility for protecting wetlands under §404 of the Clean Water Act.

#### **14.2.4 Special-Status Species and Sensitive Natural Communities**

Special-status species<sup>1</sup> are plants and animals that are legally protected under the state and/or federal Endangered Species Acts<sup>2</sup> or other regulations, as well as other species that are considered rare enough by the scientific community and trustee agencies to warrant special consideration, particularly with regard to protection of isolated populations, nesting or denning locations, communal roosts, and other essential habitat. Species with legal protection under the Endangered Species Acts often represent major constraints to development, particularly

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<sup>1</sup>Special-status species include: Officially designated (rare, threatened, or endangered) and candidate species for listing by the CDFG; officially designated (threatened or endangered) and candidate species for listing by the USFWS; species considered to be rare or endangered under the conditions of Section 15380 of the CEQA Guidelines, such as those identified on lists 1A, 1B, and 2 in the *Inventory of Rare and Endangered Vascular Plants of California*; and possibly other species which are considered sensitive or of special concern due to limited distribution or lack of adequate information to permit listing or rejection for state or federal status, such as those included on lists 3 and 4 in the CNPS *Inventory* or identified as animal "Species of Special Concern" by the CDFG. Species of Special Concern have no legal protective status under the state Endangered Species Act but are of concern to the CDFG because of severe decline in breeding populations in California.

<sup>2</sup>The federal Endangered Species Act (FESA) of 1973 declares that all federal departments and agencies shall utilize their authority to conserve endangered and threatened plant and animal taxa. The California Endangered Species Act (CESA) of 1984 parallels the policies of FESA and pertains to native California taxa.

when they are wide ranging or highly sensitive to habitat disturbance and where proposed development would result in a "take"<sup>1</sup> of these species.

The Corps and CDFG both have jurisdiction over modifications to stream channels, river banks, lakes, and other wetland features. Corps jurisdiction is established through the provisions of Section 404 of the Clean Water Act, which prohibits the discharge of dredged or fill material into "waters" of the United States without a permit, including wetlands and unvegetated "other waters."

#### **14.2.5 Migratory Bird Treaty Act**

The Migratory Bird Treaty Act decrees that all migratory birds and their parts (including eggs, nests and feathers) are fully protected. Migratory birds include geese, ducks, shorebirds, raptors, songbirds, wading birds, seabirds, and passerine birds (such as warblers, flycatchers, and swallows). The Migratory Bird Treaty Act (Act) implements various treaties and conventions between the U.S. and Canada, Japan, Mexico and the former Soviet Union for the protection of migratory birds. Under the Act, taking, killing or possessing migratory birds is unlawful.

Unless permitted by regulations, the Act provides that it is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. The Act makes it unlawful to: ship, transport or carry from one state, territory or district to another, or through a foreign country, any bird, part, nest or egg that was captured, killed, taken, shipped, transported or carried contrary to the laws from where it was obtained; import from Canada any bird, part, nest or egg obtained contrary to the laws of the province from which it was obtained.<sup>2</sup>

### **14.3 IMPACTS AND MITIGATION MEASURES**

#### **14.3.1 Significance Criteria**

Based on the CEQA Guidelines,<sup>3</sup> the project and project-facilitated future development activities would be considered to have a significant biological resources impact if they would:

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<sup>1</sup>"Take" as defined by the FESA means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect" a threatened or endangered species. "Harm" is further defined by the USFWS to include actions resulting in significant habitat modification or degradation.

<sup>2</sup>16 U.S.C. 703-711.

<sup>3</sup>CEQA Guidelines, 2002. Appendix G, Item V (a)-(d).

- (a) have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- (b) have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- (c) 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; or
- (d) interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

#### **14.3.2 Impacts and Mitigation Measures**

**General Impacts on Vegetation and Wildlife.** Most of the project area is already developed with residential, commercial, and industrial uses. Any remaining undeveloped land has been disturbed by past agricultural, industrial, and commercial activities, limiting its habitat value. Project-facilitated development would replace some existing vacant lots covered with ruderal vegetation with new structures and landscaping. Such new development and redevelopment would not have a significant impact on the general vegetation and wildlife habitat value of the project area.

Considerably more street trees would be provided as landscaping along street edges, within median strips, and within the margins of private development, would be introduced to improve the aesthetic character of the project area, thereby improving the urban tree canopy habitat available to common wildlife. Use of native trees and shrubs as recommended in the *Downtown Design Plan* would contribute to the habitat value of these landscape plantings.

Due to the low wildlife habitat value and the nonexistence of sensitive natural communities in the project area, the general impact of the project on vegetation and wildlife values would be considered ***less-than-significant***.

**Mitigation.** No significant impact has been identified; no mitigation is required.

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**Impacts on Special-Status Plant or Animal Species.** The project area contains no identified sensitive habitats protected by the Sunnyvale General Plan, 1993 Downtown Specific Plan, or other locally adopted policy documents. No plant or animal species of special concern or associated habitats have been reported or are known to exist within the project area. Suitable

habitat for terrestrial and aquatic animal species of concern is absent from the project area. The potential for nesting special status bird species in the project area is low, and no known observations of special status raptor species activity have been reported. Therefore, no adverse impacts to terrestrial or aquatic animal species are anticipated with implementation of the proposed Downtown Improvement Program Update.

**Mitigation.** No significant impact has been identified; no mitigation is necessary.

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**Tree Removal Impacts.** To the extent that any existing native or non-native trees in the project area that exceed 38 inches in diameter at a point four feet above grade are proposed for removal as part of future project-facilitated development activity, a *tree removal permit* will be required pursuant to the City's *Tree Preservation Ordinance* (Sunnyvale Municipal Code section 19.81). The ordinance sets standards and criteria for issuance of tree removal permits, including tree replacement, replanting, relocation and protection requirements, that would ensure that associated environmental impacts would be ***less-than-significant***.

**Mitigation.** No tree removal impacts have been identified; no mitigation is necessary.