

4.3 BIOLOGICAL RESOURCES

INTRODUCTION

The section of the EIR addresses existing biological resources at the project sites for the Sares Regis and Raintree projects and provides an evaluation of the potentially significant impacts on sensitive resources. Biological resources were identified through the review and compilation of existing information and by conducting a field reconnaissance survey of the project sites. The review provided information on general resources in the area, the extent of sensitive natural communities, jurisdictional wetlands, and the distribution and habitat requirements of special-status species that have been recorded from or are suspected to occur in the Sunnyvale vicinity. Data prepared by the project applicant's consulting arborists on existing trees to be retained and removed was also reviewed. These consisted of a *Tree Survey* (SBCA Tree Consulting, 2013) for the Raintree site and a *Tree Report* (HortScience, 2013) for the Sares Regis site. A field reconnaissance survey was conducted by Environmental Collaborative for this Draft EIR on May 14, 2013 to confirm existing conditions, review the accuracy of tree mapping by the consulting arborists, and verify presence or absence of any nesting birds on the sites.

ENVIRONMENTAL SETTING

The discussion below addresses existing biological resources at the two project sites.

SARES REGIS SITE

The Sares Regis site is now occupied by one vacant, single-story, industrial/commercial/manufacturing building, surrounded by a paved parking area and limited on-site ornamental landscaping. The John W. Christian Greenbelt occurs to the north of the site, currently unimproved and vegetated with a cover of non-native ruderal (weedy) species bordered by ornamental plantings of trees and shrubs. To the east, the East Channel surfaces from a culvert as an open drainage along the right-of-way owned by Santa Clara Valley Water District. Irrigated turf and scattered ornamental tree and shrub plantings occupy the common open space area of Lake Haven Townhome community east of the site.

As summarized in the *Tree Report* by the applicant's arborist, a total of 95 trees occur on the site. These include a mixture of coast redwood (*Sequoia sempervirens*), evergreen ash (*Fraxinus uhdei*), Chinese pistache (*Pistachia chinensis*), sweetgum (*Liquidambar styraciflua*), holly oak (*Quercus ilex*), and casuarina (*Casuarina* sp.). Approximately 91 percent of the trees were rated as having a moderate to excellent condition, with the remaining 9 percent in poor condition. A total of 66 of the 95 trees qualify as a "protected tree" under the City of Sunnyvale Tree Preservation Ordinance (Section 19.94 of the Sunnyvale Municipal Code) based on a trunk circumference of 38 inches or greater. The remaining 29 trees do not qualify as protected trees because they do not meet the minimum size criteria, with trunks as small as 17 inches in circumference.

RAINTREE SITE

The Raintree site is occupied by 15 single-story light manufacturing and office buildings surrounded by parking lots, vehicle access, and ornamental landscaping consisting primarily of irrigated turf and trees. Dense shrubs and English ivy (*Hedera helix*) form a screen along the U.S Highway 101 (Highway 101) frontage of the site and existing residential and institutional development borders the site to the north and west.

The *Tree Survey* by the applicant's arborist identifies a total of 113 trees on the site and adjacent Caltrans right-of-way because of their proximity to the proposed limits of grading. Tree species included coast live oak, ash, holly oak, casuarina, sweetgum, elm (*Ulmus parvifolia*), Monterey pine (*Pinus radiata*), Canary Island pine (*Pinus canariensis*), pepper (*Schinus terebinthifolius*), pittosporum (*Pittosporum tobira*), Japanese Cherry (*Prunus serrulata*), and evergreen pear (*Pyrus kawakamil*). Approximately 73 percent of the trees were rated as having a fair to good rating, with 27 percent considered to be in poor or poor to fair condition. A total of 99 of the 113 trees surveyed qualify as a protected tree under the City's Tree Preservation Ordinance, with the remaining 14 trees having trunk circumferences under 38 inches.

REGULATORY FRAMEWORK

Local, State, and federal regulations have been enacted to provide for the protection and management of sensitive biological and wetland resources. The following section outlines the key local, State, and federal regulations that apply to these resources.

FEDERAL

The U.S. Fish and Wildlife Service (USFWS) is responsible for protection of terrestrial and freshwater organisms through implementation of the federal Endangered Species Act (ESA) and the Migratory Bird Treaty Act (MBTA). The National Marine Fisheries Service (NOAA Fisheries) is responsible for protection of anadromous fish and marine wildlife. The U.S. Army Corps of Engineers (Corps) has primary responsibility for protecting wetlands under Section 404 of the Clean Water Act (CWA). The Corps also regulates navigable waters under Section 10 (33 U.S.C. 403) of the Rivers and Harbors Act.

STATE

The California Department of Fish and Wildlife (CDFW) is responsible for administration of the California Endangered Species Act (CESA), and for protection of streams and water bodies through the Streambed Alteration Agreement process under Section 1600 of the California Fish and Wildlife Code.

Certification from the California Regional Water Quality Control Board (RWQCB) is also required when a proposed activity may result in discharge into navigable waters, pursuant to Section 401 of the CWA and EPA Section 404(b)(1) Guidelines. The RWQCB also has jurisdiction over waters of the State not regulated by the Corps under the Porter-Cologne Act. The following discusses in more detail how State and federal regulations address special-status species and wetlands.

Special-Status Species

Special-status species are plants and animals that are legally protected under the State and/or federal ESAs, the Migratory Bird Treaty Act, the California Fish and Game Code (Sections 3503, 3503.5, 3511, 3513, 3515, and 4700), or other regulations. In addition, pursuant to CEQA Guidelines Section 15380, special-status species also include 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 federal and State ESAs often represent major constraints to development; particularly when they are wide ranging or highly sensitive to habitat disturbance and where proposed development would result in a take of these species.

Wetlands and Other Waters of the United States

Although definitions vary to some degree, wetlands are generally considered to be areas that are periodically or permanently inundated by surface or ground water, and support vegetation adapted to life in saturated soil. Wetlands are recognized as important features on a regional and national level due to their high inherent value to fish and wildlife, use as storage areas for storm and flood waters, and water recharge, filtration and purification functions. The CDFW, Corps, and RWQCB have jurisdiction over modifications to riverbanks, lakes, stream channels and other wetland features. Technical standards for delineating wetlands have been developed by the Corps and the USFWS, which generally define wetlands through consideration of three criteria: hydrology, soils, and vegetation.

The CWA was enacted to address water pollution, establishing regulations and permit requirements regarding construction activities that affect storm water, dredge, and fill material operations, and water quality standards. The regulatory program requires that discharges to surface waters be controlled under the National Pollutant Discharge Elimination System (NPDES) permit program which applies to sources of water runoff, private developments, and public facilities.

Under Section 404 of the CWA, the Corps is responsible for regulating the discharge of fill material into waters of the United States. The term "waters" includes wetlands and non-wetland bodies of water that meet specific criteria as defined in the Code of Federal Regulations. All three of the identified technical criteria must be met for an area to be identified as a wetland under Corps jurisdiction, unless the area has been modified by human activity. In general, a permit must be obtained before fill can be placed in wetlands or other waters of the United States. The type of permit is determined by the Corps depending on the amount of acreage and the purpose of the proposed fill.

Jurisdictional authority of the CDFW over wetland areas is established under Section 1600 of the Fish and Wildlife Code, which pertains to activities that would disrupt the natural flow or alter the channel, bed, or bank of any lake, river, or stream. The Fish and Wildlife 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 the CDFW, incorporating necessary mitigation, and obtaining a Streambed Alteration Agreement. The Wetlands Resources Policy of the CDFW states that the Fish and Wildlife Commission will strongly discourage development in or conversion

of wetlands, unless, at a minimum, project mitigation assures there will be no net loss of either wetland habitat values or acreage. The CDFW is also responsible for commenting on projects requiring Corps permits under the Fish and Wildlife Coordination Act of 1958.

In addition, the RWQCB is responsible for upholding state water quality standards. Pursuant to Section 401 of the CWA, projects that apply for a Corps permit for discharge of dredge or fill material, and projects that qualify for a Nationwide Permit must obtain water quality certification from the RWQCB. The RWQCB is also responsible for regulating wetlands under the Porter-Cologne Act, which may include hydrologically isolated wetlands no longer regulated by the Corps under Section 404 of the CWA. Recent federal Supreme Court rulings have limited the limits of Corps jurisdiction, but the RWQCB in some cases continues to exercise jurisdiction over these features.

LOCAL REGULATIONS

The *City of Sunnyvale General Plan* has no specific goals or policies related to the protection of biological and wetland resources. However, the City of Sunnyvale Municipal Code includes provisions regulating development when it may affect “protected trees” and streams, as summarized below.

The City’s Tree Protection Ordinance (Section 19.94 of the Sunnyvale Municipal Code) serves to regulate the protection, installation, removal, and long-term management of significantly sized trees on private and public property within the City. Protected trees are considered to be trees with a trunk circumference of 38 inches or greater measured 4½ feet above grade for single-trunk trees. For multi-trunk trees, a protected tree is one that has at least one trunk with a circumference of 38 inches or greater or in which the collective measurement of all trunk circumferences is 113 inches or greater. Under Section 19.94.110 of the Ordinance, when site development is occurring, the applicant is required to provide details on existing tree resources, including: a tree survey showing the location, size and species of all trees (protected and unprotected); flexibility in plan modification where considered necessary to retain protected trees; replanting plans to be submitted as part of landscaping plans for the proposed project; a tree protection plan demonstrating how tree protection is to be provided both during and after construction; a tree bond for the value of any tree to be retained during development; and soil mitigation where required to provide suitable conditions for future or existing tree growth.

The City’s Streamside Development Review (Section 19.81 of the Sunnyvale Municipal Code) serves to regulate development in the vicinity of streams. Guidelines used in the Ordinance are based on the Guidelines and Standards for Land Use Near Streams (Santa Clara Valley Water Resources Protection Collaborative, 2005). The guidelines basically state that any parcel within 50 feet of the top of the streambank is subject to the Design Review standards in the Ordinance. The East Channel is the closest stream to either of the project sites, but is located over 150 feet from the Sares Regis site. The Streamside Development Review provisions of the Municipal Code, therefore, do not apply to the proposed development on the two project sites.

ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

SIGNIFICANCE CRITERIA

For the purposes of this Draft EIR, development of the project sites would present a significant impact on biological resources if the projects would:

- 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 CDFW or USFWS.
- 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 CWA (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- 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.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

The Initial Study determined that the second, third, fourth, and sixth criteria above were less than significant or not applicable to the project. Thus, the EIR focuses on the potential for the projects to conflict with regulations pertaining to the protection of active bird nests and applicable local regulations.

Impact BIO-1: Tree removal and building demolition associated with the projects could result in the loss of bird nests in active use, which would be a violation of the federal Migratory Bird Treaty Act (MBTA). (S)

A number of special-status species are known or suspected to occur in the open water and marshlands of San Francisco Bay, riparian corridors along streams and creeks, and undeveloped uplands of the San Mateo Peninsula. However, the potential for occurrence of any special-status species on the two project sites is considered highly unlikely given the extent of past development. Most of the special-status species reported from the Sunnyvale vicinity are associated with the open water and coastal salt marsh habitat of the bay, such as the federally threatened western snowy plover (*Charadrius alexandrinus nivosus*), State-threatened California black rail (*Laterallus jamaicensis coturniculus*), the State and federally endangered California clapper rail (*Rallus longirostris obsoletus*), the State and federally endangered salt-marsh harvest mouse (*Reithrodontomys raviventris*), California least tern (*Sterna antillarum browni*), and California seablite (*Suaeda californica*). Suitable habitat for these species is absent from the two project sites, which does not contain suitable coastal salt marsh habitat or open waters of the bay.

Suitable nesting habitat for State and federally listed bird species is also absent on the two project sites. However, the mature trees and even the exterior of the existing buildings could be used for nesting by more common bird species. These nests would be protected under the MBTA when in active use. The MBTA prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior, including whole birds, parts of birds, and bird nests and eggs. Tree removal, building demolition and other construction activities during the breeding season could result in the incidental loss of fertile eggs or nestlings or nest abandonment.

A standard requirement is to either initiate construction during the non-nesting season, which in Santa Clara County is typically from September 1 to January 31, or to conduct a nesting survey within seven days prior to initial grubbing and construction to determine whether any active nests are present that must be protected until any young have fledged and are no longer dependent on the nest. Protection of the nests, if present, would require that construction setbacks be provided during the nesting and fledging period, with the setback depending on the type of bird species, degree to which the individuals have already acclimated to other on-going disturbance, and other factors.

Sares Regis Applicant Proposed Scenario. Development of the site under this scenario would involve tree removal and building demolition, and could result in the loss of bird nests in active use, as discussed above.

Sares Regis Full Buildout Scenario. Development under the Full Buildout Scenario would be similar to the Applicant Proposed Scenario, requiring demolition of the existing building and tree removal. Potential impacts on possible nesting birds would be similar to the Applicant Proposed Scenario.

Raintree Applicant Proposed Scenario. Development of the site under this scenario would involve tree removal and building demolition, and could result in the loss of bird nests in active use, as discussed above.

Raintree Full Buildout Scenario. Development under the Full Buildout Scenario would be similar to the Applicant Proposed Scenario, requiring demolition of the existing buildings and tree removal. Potential impacts on possible nesting birds would be similar to the Applicant Proposed Scenario.

Mitigation Measure BIO-1: *Tree removal and building demolition shall be performed in compliance with the Migratory Bird Treaty Act and relevant sections of the California Fish and Wildlife Code. This shall be accomplished by preferably scheduling tree removal and building demolition outside of the bird nesting season (which occurs from February 1 to August 31) to avoid possible impacts to nesting birds if new nests are established in the future. Alternatively, if tree removal and building demolition cannot be scheduled during the non-nesting season (September 1 to January 31), then a preconstruction nesting survey shall be conducted. The preconstruction nesting survey shall include the following:*

- *A qualified biologist (Biologist) shall conduct a pre-construction nesting bird (both passerine and raptor) survey within seven days prior to tree removal and/or building demolition.*

- *If no nesting birds are observed, no further action is required and tree removal and construction activities shall occur within seven days of the survey to prevent take of individual birds that could begin nesting after the survey.*
- *Another nest survey shall be conducted if more than seven days elapse between the initial nest search and the beginning of tree removal and construction activities.*
- *If any active nests are encountered, the Biologist shall determine an appropriate disturbance-free buffer zone to be established around the nest location(s) until the young have fledged. Buffer zones vary depending on the species (i.e., typically 75 to 100 feet for passerines and 300 feet for raptors) and other factors such as on-going disturbance in the vicinity of the nest location. If necessary, the dimensions of the buffer zone shall be determined in consultation with the California Department of Fish and Wildlife (CDFW).*
- *Orange construction fencing, flagging, or other marking system shall be installed to delineate the buffer zone around the nest location(s) within which no construction-related equipment or operations shall be permitted. Continued use of existing facilities such as surface parking and site maintenance may continue within this buffer zone.*
- *No restrictions on grading or construction activities outside the prescribed buffer zone are required once the zone has been identified and delineated in the field and workers have been properly trained to avoid the buffer zone area.*
- *Construction activities shall be restricted from the buffer zone until the Biologist has determined that young birds have fledged and the buffer zone is no longer needed.*
- *A survey report of findings verifying that any young have fledged shall be submitted by the Biologist for review and approval by the City of Sunnyvale Planning Division prior to initiation of any tree removal or other construction activities within the buffer zone. Following approval by the City, tree removal and construction within the nest-buffer zone may proceed. (LTS)*
- Applies to Sares Regis Applicant Proposed Scenario:
- Applies to Sares Regis Full Buildout Scenario:
- Applies to Raintree Applicant Proposed Scenario:
- Applies to Raintree Full Buildout Scenario:

Impact BIO-2: Proposed development would require removal of protected trees and could conflict with the City's Tree Preservation Ordinance. (PS)

Proposed development would require the removal of a large number of the existing trees on the two sites, many of which meet the definition of "protected tree" under the City's Tree Preservation Ordinance. Compliance with the City's Tree Preservation Ordinance requires that project applicants provide details on existing tree resources, including: a tree survey showing the location, size and species of all trees; replanting plans; and a tree protection plan demonstrating how tree protection is to be provided both during and after construction. The following provides a summary of the status of required documentation for the two project sites and the degree to which tree resources would be affected by proposed development.

Sares Regis Applicant Proposed Scenario. The *Tree Report* by the applicant's consulting arborist provides a mapping, inventory, and valuation of all protected trees on the site, together with draft Tree Preservation Guidelines consistent with the City's Tree Preservation Ordinance. According to the *Tree Report*, an estimated 42 of the 95 trees are recommended for preservation and 53 are recommended for removal. The appraised value of the 42 trees proposed for preservation is \$112,800 and for the 53 trees proposed for removal is \$128,150. Additional review is necessary to ensure compliance with the City's Tree Preservation Ordinance in demonstrating adequate replacement plantings, determine an appropriate bond value for trees to be protected and determine whether soil mitigation and other requirements are necessary.

Sares Regis Full Buildout Scenario. Development under the Full Buildout Scenario would be similar to the Applicant Proposed Scenario, requiring demolition of the existing building and tree removal. The proposed footprint of development would be similar under both scenarios, and anticipated tree preservation and removal would presumably be similar. As with the Applicant Proposed Scenario, additional review is necessary to ensure compliance with the City's Tree Preservation Ordinance in demonstrating adequate replacement plantings, determine an appropriate bond value for trees to be protected and determine whether soil mitigation and other requirements are necessary.

Raintree Applicant Proposed Scenario. The *Tree Survey* by the applicant's consulting arborist provides a mapping and inventory of all protected trees on the site, but does not provide a valuation of trees to be preserved or tree preservation guidelines called for in the City's Tree Preservation Ordinance. According to the *Tree Survey*, of the 113 trees inventoried, an estimated 33 protected trees would be retained, 44 would be removed, and 21 protected trees may or may not be removed. Additional review is necessary to ensure compliance with the City's Tree Preservation Ordinance in demonstrating adequate replacement plantings, determine an appropriate bond value for trees to be protected and determine whether soil mitigation and other requirements are necessary.

Raintree Full Buildout Scenario. Development under the Full Buildout Scenario would be similar to the Applicant Proposed Scenario, requiring demolition of the existing building and tree removal. The proposed footprint of development would be similar under both scenarios, and anticipated tree preservation and removal would presumably be similar. As with the Applicant Proposed Scenario, additional review is necessary to ensure compliance with the City's Tree Preservation Ordinance in demonstrating adequate replacement plantings, determine an appropriate bond value for trees to be protected and determine whether soil mitigation and other requirements are necessary.

Mitigation Measure BIO-2: *The proposed projects shall comply with the City's Tree Preservation Ordinance. As necessary, additional information shall be provided by the applicants regarding valuation of trees to be preserved and tree preservation guidelines during and after construction. Further review shall be provided to demonstrate adequate replacement plantings, establish an appropriate bond value for trees to be protected, and determine whether soil mitigation and other requirements are necessary. (LTS)*

- Applies to Sares Regis Applicant Proposed Scenario:
- Applies to Sares Regis Full Buildout Scenario:
- Applies to Raintree Applicant Proposed Scenario:
- Applies to Raintree Full Buildout Scenario:

CUMULATIVE IMPACTS

The cumulative analysis for potential impacts on biological resources considered anticipated development in the surrounding area, including the pending or approved developments shown in Table 6-1 in Chapter 6. No substantial impacts on biological resources are anticipated that would be cumulatively considerably as a result of anticipated development. Compliance with the City's Tree Preservation Ordinance would ensure that tree resources are adequately protected and/or replaced as part of future development, as required under Mitigation Measure BIO-2 and compliance with any mitigation recommended as part of environmental review of specific development applications, such as avoidance of nesting birds required under Mitigation Measure BIO-1, would serve to address potential impacts in locations where future development may affect sensitive biological resources. Thus, the projects would not contribute to significant cumulative impacts on biological resources and no mitigation measures would be necessary.

REFERENCES

- HortScience, 2013. *Tree Report, 630 E. Weddell Drive Sunnyvale CA*. Prepared for Regis Homes of N. California, March.
- Santa Clara Valley Water Resources Protection Collaborative, 2005, *Guidelines & Standards for Land Use Near Streams, A Manual of Tools, Standards and Procedures to Protect Streams and Streamside Resources in Santa Clara County*, August. Revised July 2006.
- SBCA Tree Consulting, 2013, *Tree Survey, Fair Oaks Residential Development, Sunnyvale*, March.

