

## 4.3 Biological Resources

### 4.3.1 Introduction

This section evaluates the potential for the proposed project, which includes the Housing Element Update (HEU), the Stanford Community Plan (SCP) update, and related rezonings (collectively, the “project”) to result in substantial adverse effects related to Biological Resources. Below, the Environmental Setting portion of this section includes descriptions of existing conditions relevant to Biological Resources. Further below, existing plans and policies relevant to Biological Resources associated with implementation of the project are provided in the Regulatory Setting section. Finally, the impact discussion evaluates potential impacts to Biological Resources that could result from implementation of the project in the context of existing conditions.

### Notice of Preparation Comments

A Notice of Preparation (NOP) for the Draft EIR was circulated on August 8, 2022, and a scoping meeting was held on August 23, 2022. A revised NOP reflecting changes to the HEU’s list of opportunity sites was circulated on March 21, 2023. Both NOPs circulated for a period of 30 days, and the NOPs and the comments received during their respective comment periods can be found in **Appendix A** of this EIR. The California Department of Fish and Wildlife (CDFW) noted potential impacts to riparian habitats including the Llagas Creek drainage channel in Gilroy and alteration of hydrology through diversion of water. With respect to these comments, it should be noted that the second NOP and the revised list of HEU housing opportunity sites do not include any sites in Gilroy or Morgan Hill, so potential impacts specific to those areas will not be discussed further.

### Information Sources

The primary sources of information referenced in this section include those listed below. Please note that a full list of references for this topic can be found at the end of this section.

- Site visit by Environmental Science Associates (ESA) Wildlife Biologist Erika Walther on October 21, 2022, excluding the Pleasant Hills Golf Course, which was added to the HEU after the site visit.
- Historic and current aerial imagery available on Google Earth (2023).
- Subscription-based biological resource databases including the CDFW California Natural Diversity Database (CNDDDB), California Native Plant Society (CNPS) Rare Plant Inventory, and a U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation Official Species List (2022).
- USFWS National Wetlands Inventory (NWI) (2023).
- Santa Clara County General Plan (1994).
- Stanford University Community Plan (2000).
- Santa Clara Valley Habitat Plan (2012).

- County of Santa Clara Guidelines for Tree Preservation and Removal (2010).
- Stanford University 2018 General Use Permit Draft Environmental Impact Report (2018).
- Stanford University Habitat Conservation Plan (2013).

### 4.3.2 Environmental Setting

The project is in the San Francisco Bay Bioregion, which has a mild Mediterranean climate with generally warm, dry summers and cool, wet winters. This region includes marine, freshwater, and terrestrial resources from Point Arena to the Santa Cruz Mountains and extends from the continental shelf to the delta of the Sacramento and San Joaquin Rivers (USGS, 2017). Santa Clara County is in the Santa Clara Valley between the Santa Cruz Mountains to the west and the Diablo Range to the east (Figure 3-1, *Regional Location Map*).

### Land Cover and Associated Wildlife Habitats

The land cover classifications presented below for parcels within San José, which are within the Santa Clara Valley Habitat Plan (Habitat Plan) permit area, are based on land cover types mapped by the Santa Clara Valley Habitat Agency (Habitat Agency). In addition, a potential wetland feature within parcel 649-24-013 (former Pleasant Hills golf course) was mapped by the USFWS NWI but not the Habitat Agency. Land cover classifications for parcels owned by Stanford University, which is outside of the Habitat Plan permit area, are based on the Stanford University General Use Permit Application Final Environmental Impact Report (Stanford, 2018). Land covers in the local vicinity of the HEU and SCP update project area are shown in **Figures 4.3-1a through 4.3-d**.

**Table 4.3-1** provides the locations of the four land cover types present within the HEU and SCP update housing opportunity sites: 1) Urban-Suburban/Developed, 2) Orchard, 3) Golf Courses/Urban Parks, and Pond. Note that some parcels contain more than one land cover type.

**TABLE 4.3-1  
 LAND COVER IN THE HOUSING OPPORTUNITY SITES BY LOCATION AND PARCEL**

Land Cover	Stanford	San José
Urban-Suburban/Developed	142-04-036a, 142-04-036b, 142-04-036c, Potential Future School Location	245-01-004, 282-03-016, 277-06-025, 277-07-027, 277-07-028, 277-07-029, 277-08-029, 277-08-030, 277-08-031, 277-12-029, 277-13-027, 282-02-037, 419-12-044, 599-01-064, 599-39-047, 601-07-066, 612-21-004, 601-25-119
Orchard	N/a	245-01-003
Golf Course	N/a	649-24-013, 649-23-001
Pond	N/a	649-24-013, 649-23-001

The following subsections describe these land cover types, their general locations, and their wildlife associations.

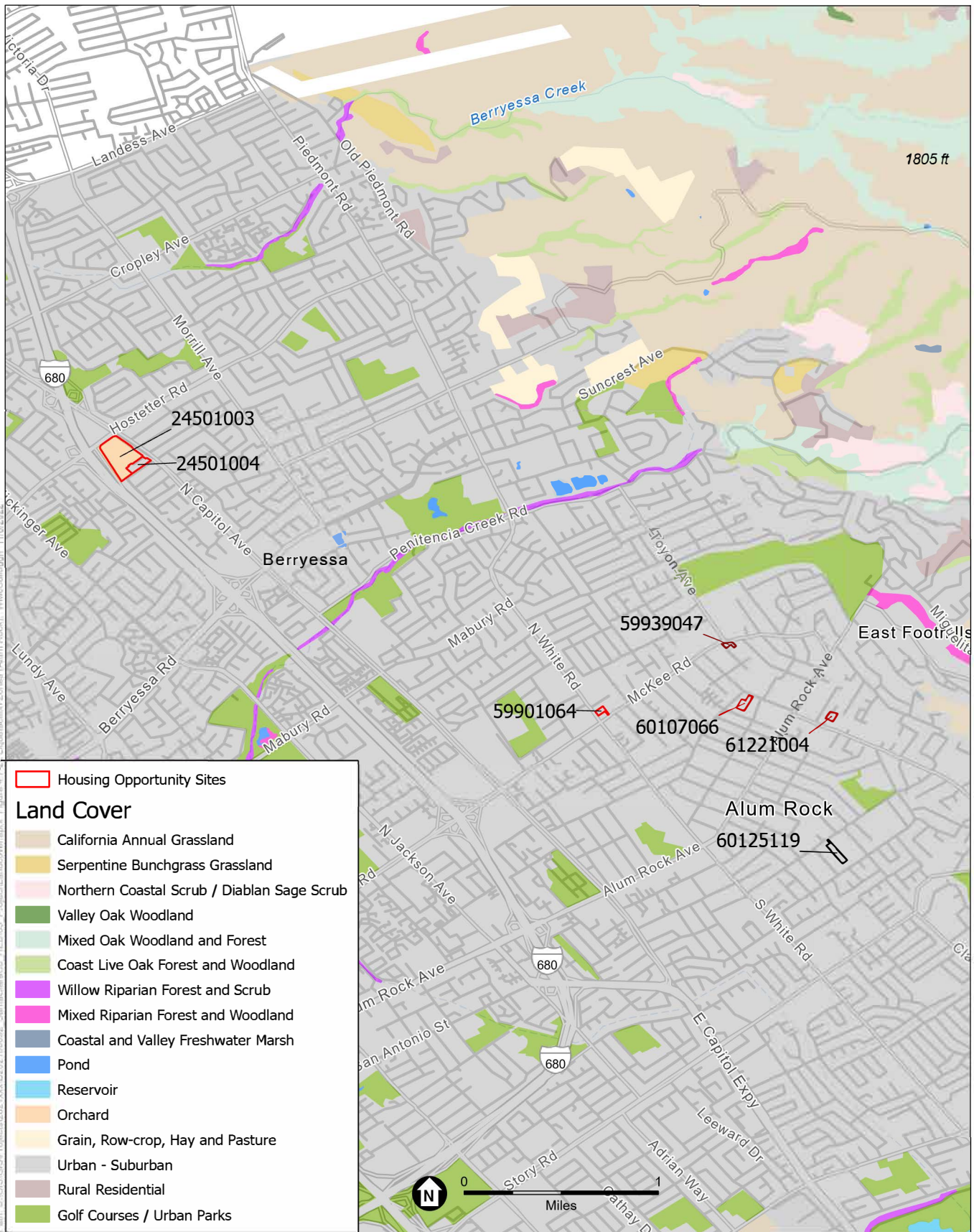


SOURCE: ESA, 2021

Santa Clara County Housing Element and Stanford Community Plan Update

**Figure 4.3-1a**  
Land Cover in Fruitdale Area  
(San Jose)





SOURCE: ESA, 2021

Santa Clara County Housing Element and Stanford Community Plan Update

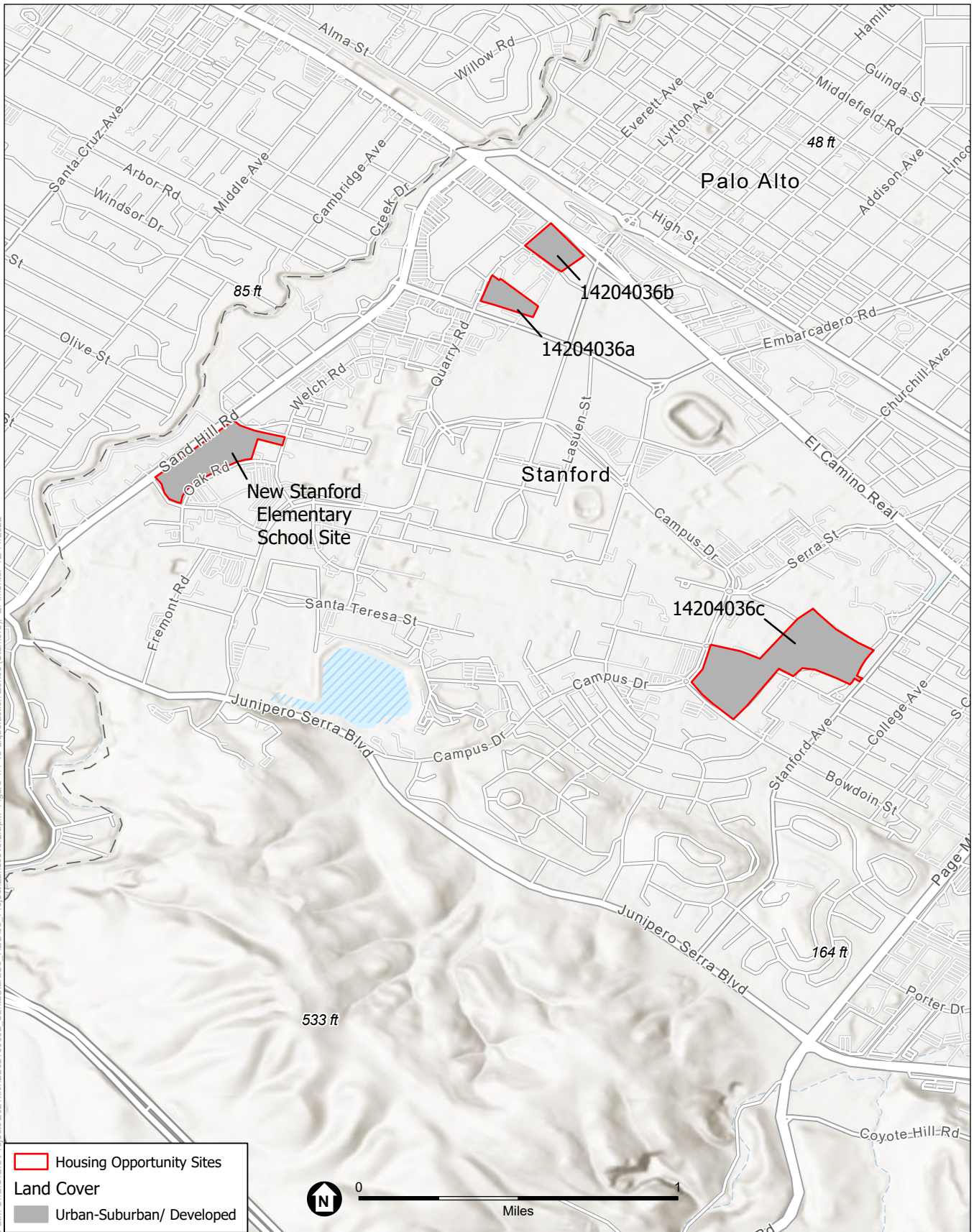
**Figure 4.3-1b**  
**Land Cover in Alum Rock Area**  
**(San Jose)**



SOURCE: ESA, 2022

Santa Clara County Housing Element and Stanford Community Plan Update

**Figure 4.3-1c**  
Land Cover in Pleasant Hills Area  
(San Jose)



SOURCE: ESA, 2022

Santa Clara County Housing Element and Stanford Community Plan Update

**Figure 4.3-1d**  
Land Cover in Stanford Area

### **Urban-Suburban/ Developed**

The urban-suburban/developed landscape land cover type represents over 99 percent of the housing opportunity sites and the potential future school location on the Stanford University campus. These areas include campus buildings, streets, parking lots, remnant stands of native tree species, such as oaks (*Quercus* spp.), and non-native tree species, such as eucalyptus (*Eucalyptus* spp.), Peruvian pepper (*Schinus molle*), and ornamental landscape plants (Stanford University, 2000; ESA, 2022). The urban-suburban/developed landscape land cover type within Stanford's Academic Growth Boundary, within which Stanford's housing opportunity sites are located, is a highly modified and managed landscape. Urban-suburban/developed is also the predominant land cover within the housing opportunity sites in the HEU opportunity parcels in San José (see Table 4.3-1 for a list of parcels), which include commercial buildings, suburban parcels with residences, parking lots, and ornamental landscape plants.

Urban-suburban/developed land cover provides essentially no habitat opportunity for special-status plant species; however, it can support native and non-native wildlife that are tolerant of human activities, such as house sparrow (*Passer domesticus*), rock pigeon (*Columbia livia*), American robin (*Turdus migratorius*), house finch (*Haemorhous mexicanus*), dark-eyed junco (*Junco hyemalis*), California scrub jay (*Aphelocoma californica*), mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), and Cooper's hawk (*Accipiter cooperii*). Other common wildlife, such as striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), Virginia opossum (*Didelphis virginiana*), house mouse (*Mus musculus*), Norway rat (*Rattus norvegicus*), and black rat (*Rattus rattus*) could use these areas to forage for human food waste, find shelter, or move to and from patches of higher quality habitat. Evidence of wild pigs (*Sus scrofa*) was observed around the bases of trees on parcel 142-04-036b on the Stanford campus.

### **Orchard**

Orchard land cover is present on parcel 245-01-003 in San José. Orchards provide limited habitat opportunity for many native and non-native wildlife species; however, native and non-native birds such as northern mockingbird (*Mimus polyglottos*) and house finch may nest and forage in orchard trees and small mammals like skunk, raccoon, and fox squirrel (*Sciurus niger*) may forage there.

### **Golf Courses / Urban Parks**

Within the housing opportunity sites, golf course/urban parks land cover is present in San José at the Pleasant Hills Golf Course site (parcels 649-24-013 and 649-23-001). The former golf course is primarily comprised of a monoculture of lawn grass with hundreds of trees distributed across the golf course. Recent aerial imagery indicates that the grass has remained short and that numerous stacked piles of woody debris are present throughout the course, which could provide shelter for small mammals, amphibians, and lizards. In addition, several non-residential buildings are present and are assumed to have been vacant since the closure of the golf course in 2004. The golf course is largely surrounded by dense residential development except for Lake Cunningham Regional Park to the west. The golf course lawn and trees provide potential nesting and foraging habitat for urban birds such as Anna's hummingbird, California scrub jay, American robin, downy woodpecker (*Dryobates pubescens*), American crow (*Corvus brachyrhynchos*), and

Cooper's hawk, as well as habitat for tree-roosting bats, such as hoary bat (*Lasiurus cinereus*) and western red bat (*Lasiurus blossevillii*). The buildings provide potential nesting habitat for birds such as black phoebe (*Sayornis nigricans*), house finch, mourning dove, as well as habitat for building-roosting bats, such as Yuma myotis (*Myotis yumanensis*).

In addition, western burrowing owl (*Athene cunicularia* ssp. *hypugaea*), a California species of special concern, has been documented nesting on golf courses at Moffett Field Naval Air Station and Santa Clara Golf and Tennis Club (CNDDDB, 2022), suggesting that this site could potentially provide wintering or nesting habitat to burrowing owls if suitable burrows are present. According to the Habitat Plan, golf courses/urban parks can provide foraging and breeding habitat for western burrowing owl (SCVHP, 2002); however, this site is outside of the Habitat Plan's burrowing owl fee zone and the species is unlikely to be present.

### **Pond**

Within the housing opportunity sites, one pond that straddles parcels 649-24-013 and 649-23-001 at the Pleasant Hills Golf Course is mapped by the Habitat Agency. In addition, the USFWS NWI has mapped a second pond within parcel 649-24-013 (USFWS, 2023). Freshwater ponds could provide habitat to amphibians and reptiles such as the Sierran treefrog (*Pseudacris sierra*). According to the Habitat Plan, golf courses, particularly those with ponds, can provide movement habitat for California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and western pond turtle, and foraging habitat for tricolored blackbird (SCVHP, 2002).

### **Special-Status Species**

The term *special-status species* refers to plant and wildlife species that are considered sufficiently rare that they require special consideration and/or protection and should be, or currently are, listed as rare, threatened, or endangered by the federal and/or state governments. Such species are legally protected under the federal and/or state Endangered Species Acts or other regulations or are species that are considered sufficiently rare by the regulatory and scientific community to qualify for protection. The term *special-status species* includes the following:

- Species listed or proposed for listing as threatened or endangered under the federal Endangered Species Act (FESA) (Code of Federal Regulations Title 50, Section 17.12 [listed plants] and Section 17.11 [listed animals] and various notices in the *Federal Register* [FR] [proposed species]);
- Species that are candidates for possible future listing as threatened or endangered under the FESA (61 FR 40, February 28, 1996);
- Species listed or proposed for listing by the State of California as threatened or endangered under the California Endangered Species Act (CESA) (California Code of Regulations Title 14, Section 670.5);
- Plants listed as rare or endangered under the California Native Plant Protection Act (California Fish and Game Code [CFG] Section 1900 et seq.);



- Species designated by CDFW as California Species of Special Concern (SSC);<sup>1</sup>
- Animals fully protected under the CFGC (Sections 3511 [birds], 4700 [mammals], and 5050 [reptiles and amphibians]);<sup>2</sup>
- Species that meet the definitions of rare and endangered under CEQA. CEQA Section 15380 provides that a plant or animal species may be treated as “rare or endangered” even if not on one of the official lists (CEQA Guidelines Section 15380); and
- Plants considered by CDFW and the CNPS to be “rare, threatened or endangered in California” (California Rare Plant Rank 1A, 1B, and 2).

A list of special-status plant and wildlife species that may occur in the housing opportunity sites within the HEU and SCP update was created by reviewing the resources cited in Section 4.4.1. The CNDDDB (CDFW, 2022) and CNPS (2022) Rare Plant Inventory were queried based on a search of the Palo Alto, Mountain View, Milpitas, Cupertino, San José West, and San José East 7.5-minute U.S. Geological Survey quadrangles. The USFWS *Official List of Federal Endangered and Threatened Species that Occur in or May Be Affected by the Projects* (USFWS, 2022a) was queried based on the project area. The results of these queries, ESA’s field survey (2022), review of aerial imagery and wetland data (USFWS, 2023), and biological resources information in the Stanford University 2018 General Use Permit Final Environmental Impact Report formed the basis for analysis of the potential for special-status species to occur in the housing opportunities sites.

Based on this analysis, it is unlikely that any special-status plant species occur within the project sites on Stanford property (Stanford University, 2018), nor are they expected in the housing opportunity sites in San José, based on the level of development and/or current or historical management of the sites. The potential for special-status wildlife species and otherwise protected species to occur is summarized in **Table 4.3-2**. As indicated in the table, species that have a moderate potential to occur in the HEU opportunity sites and SCP update area include western red bat, hoary bat, and Yuma myotis. Only species with at least a moderate potential to occur are considered subject to potentially significant project-related impacts and those impacts are analyzed under section 4.3.4, *Environmental Impacts and Mitigation Measures*.

---

<sup>1</sup> A California SSC is one that: has been extirpated from the state; meets the state definition of threatened or endangered but has not been formally listed; is undergoing or has experienced serious population declines or range restrictions that put it at risk of becoming threatened or endangered; and/or has naturally small populations susceptible to high risk from any factor that could lead to declines that would qualify it for threatened or endangered status.

<sup>2</sup> The *fully protected* classification was California’s initial effort in the 1960s to identify and provide additional protection to those animals that were rare or faced possible extinction. The designation can be found in the CFGC.

**TABLE 4.3-2  
SPECIES POTENTIAL TO OCCUR IN THE HEU AND SCP UPDATE**

Common Name Scientific Name	Listing Status USFWS/ CDFW/Other	Habitat Description	Potential to Occur in the HEU (San José)	Potential to Occur in the SCP Update (Stanford)
<b>Amphibians</b>				
California tiger salamander <i>Ambystoma californiense</i>	FT/ST,WL/--	Vernal or temporary pools in annual grasslands, or open stages of woodlands. Typically, adults use mammal burrows for aestivation in non-breeding season.	<b>Low.</b> Golf course ponds, such as at Pleasant Hills Golf Course (parcels 649-24-013 and 649-23-001), generally provide marginal habitat. The ponds are not adjacent to upland CTS habitat. The nearest CNDDDB occurrences are within 2 miles of the golf course (#s 326, 441, and 498) and are classified as <i>extirpated</i> .	<b>None.</b> No suitable habitat.
California red-legged frog <i>Rana draytonii</i>	FT/CSC/--	Streams, freshwater pools, and ponds with overhanging vegetation. Also found in woods adjacent to streams. Requires permanent or ephemeral water sources such as reservoirs and slow-moving streams and needs pools of >0.5 m depth for breeding.	<b>Low.</b> Golf course ponds, such as at Pleasant Hills Golf Course (parcels 649-24-013 and 649-23-001), generally provide marginal habitat. The ponds are not hydrologically connected to nor adjacent to known CRLF habitat. Several CNDDDB occurrences (#s 1540, 1542), from the 1970s and 1980s, considered <i>possibly extirpated</i> , are recorded ~3-4 miles from the golf course and are separated from the study area by dense residential development.	<b>None.</b> No suitable habitat.
<b>Reptiles</b>				
Western pond turtle <i>Actinemys marmorata</i>	--/CSC/--	Ponds, marshes, rivers, streams, and irrigation ditches with aquatic vegetation. Requires basking sites and, for breeding, suitable upland habitat for egg-laying. Nest sites most often characterized as having gentle slopes (<15%) with little vegetation or sandy banks.	<b>Low.</b> Freshwater ponds at Pleasant Hills Golf Course (parcels 649-24-013 and 649-23-001) may provide suitable habitat if emergent vegetation and basking opportunities are present. The species occurs (# 176) in the ponds in Overfelt Gardens approximately 3 miles and surrounded by urban development.	<b>None.</b> No suitable habitat.

**TABLE 4.3-2 (CONTINUED)**  
**SPECIES POTENTIAL TO OCCUR IN THE HEU AND SCP UPDATE**

Common Name Scientific Name	Listing Status USFWS/ CDFW/Other	Habitat Description	Potential to Occur in the HEU (San José)	Potential to Occur in the SCP Update (Stanford)
<b>Birds</b>				
Tricolored blackbird <i>Agelaius tricolor</i>	--/CT,CSC/--	Nests in freshwater marshes with dense stands of cattails or bulrushes, occasionally in willows, thistles, mustard, blackberry brambles, and dense shrubs and grains.	<b>Low.</b> Ponds at Pleasant Hills Golf Course (parcels 649-24-013 and 649-23-001) may provide suitable nesting habitat if emergent vegetation is present; however, adjacent terrestrial habitat appears to be of low quality. CNDDDB occurrence (#845) from 2014 at Lake Cunningham Park.	<b>None.</b> No suitable habitat.
Western burrowing owl <i>Athene cunicularia</i> ssp. <i>hypugaea</i>	--/CSC/--	Nests and forages in low-growing or mowed grasslands that support burrowing mammals such as ground squirrels.	<b>Low.</b> Pleasant Hills Golf Course (parcels 649-24-013 and 649-23-001) may provide suitable nesting or overwintering habitat if burrows or burrow surrogates are present; however, burrowing owls are known from only very few areas of the Valley floor as mapped by the Habitat Plan. Nearby CNDDDB occurrence (#724) from 2008 at Lake Cunningham Park.	<b>None.</b> No Suitable habitat.
<b>Mammals</b>				
Western red bat <i>Lasiurus blossevillii</i>	--/CSC/ WBWG: High	Solitary rooster in tree foliage. May hibernate in leaf litter. Habitats include forests and woodlands from sea level up through mixed conifer forests. Feeds over a wide variety of habitats including grasslands, shrublands, open water, open woodlands and forests, and croplands. Absent from desert areas. Migrants can be found outside.	<b>Moderate.</b> Potentially suitable roosting habitat present in trees at Pleasant Hills Golf Course (parcels 649-24-013 and 649-23-001). Foraging habitat is present in nearby ponds and reservoirs.	<b>Moderate.</b> Potentially suitable roosting and maternity habitat present in all parcels. Foraging habitat is present in nearby open water (creeks and reservoirs). Species has been documented on Stanford campus (Stanford University, 2018). CNDDDB occurrence from 1909.

**TABLE 4.3-2 (CONTINUED)  
SPECIES POTENTIAL TO OCCUR IN THE HEU AND SCP UPDATE**

Common Name Scientific Name	Listing Status USFWS/ CDFW/Other	Habitat Description	Potential to Occur in the HEU (San José)	Potential to Occur in the SCP Update (Stanford)
Hoary bat <i>Lasiurus cinereus</i>	--/--/ WBWG: Medium	Prefers open habitats or habitat mosaics, with access to trees for cover and open areas or habitat edges for foraging. Roosts in dense foliage of medium to large trees. Feeds primarily on moths; requires water.	<b>Moderate.</b> Potentially suitable roosting habitat present in trees at Pleasant Hills Golf Course (parcels 649-24-013 and 649-23-001). Foraging habitat is present in nearby ponds and reservoirs.	<b>Moderate.</b> Potentially suitable roosting and maternity habitat present in all parcels. Foraging habitat is present in nearby open water (creeks and reservoirs). Species has been documented on Stanford campus (Stanford University, 2018). CNDDDB occurrence from 1909.
Yuma myotis <i>Myotis yumanensis</i>	--/--/ WBWG: Low-Medium	Wide variety of habitats below 8,000-foot elevation. Optimal habitats are open forests and woodland with sources of water over which to feed. Adult males typically solitary roosters. roost in buildings, under bridges, and in tree crevices, caves and mines.	<b>Moderate.</b> Potentially suitable roosting habitat present in buildings and trees at Pleasant Hills Golf Course (parcels 649-24-013 and 649-23-001). Foraging habitat is present in nearby ponds and reservoirs.	<b>Moderate</b> Potentially suitable roosting and maternity habitat present in all parcels. Foraging habitat is present in nearby open water (creeks and reservoirs).

NOTES:

<sup>a</sup> Potential to Occur Categories:

Low = The HEU and SCP update and/or immediate vicinity provide limited and/or low-quality habitat. In addition, the species' known range may be outside of the study area.

Moderate = The HEU and SCP update are within the known range of the species and suitable habitat is present within the HEU and SCP update; but there are few or no recent documented occurrences of the species within an appropriate distance of these areas (this will depend on the species' mobility).

High = The HEU and SCP update are within the known range of the species and suitable habitat is present within the HEU and SCP, and there are recent documented occurrences of the species within an appropriate distance of these areas (this will depend on the species' mobility).

STATUS CODES:

FEDERAL:

FT = federal threatened

STATE:

CT = California threatened

CSC = California Species of Special Concern

WL = Watch list

§3503.5 = Protection for nesting species of Falconiformes (hawks) and Strigiformes (owls)

WBWG = Western Bat Working Group:

Low = Stable population

Medium = Need more information about the species, possible threats, and protective actions to implement.

High= Imperiled or at high risk of imperilment.

SOURCE: ESA

## Critical Habitat

USFWS can designate *critical habitat* for species that have been listed as threatened or endangered. Critical habitat is defined in FESA Section 3(5)(A) as those lands (or waters) within a listed species' current range that contain the physical or biological features that are considered essential to its conservation. While there is critical habitat in many parts of Santa Clara County and in the vicinity of Stanford, the areas associated with the proposed project are not within any designated critical habitat (USFWS, 2022b).

### 4.3.3 Regulatory Setting

#### Federal

The FESA, Clean Water Act (CWA) Section 404, and Migratory Bird Treaty Act (MBTA) are the primary federal planning, treatment, and review mechanisms for biological resources in the HEU and SCP update. Each is summarized below.

#### ***Endangered Species Act***

The USFWS and National Marine Fisheries Service (NMFS) are the designated federal agencies responsible for administering the FESA. The FESA defines species as “endangered” and “threatened” and provides regulatory protection for any species thus designated. FESA Section 9 prohibits the “take” of species listed by USFWS as threatened or endangered. As defined in the FESA, *taking* means “... to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in such conduct.” Recognizing that take cannot always be avoided, FESA Section 10(a) includes provisions for takings that are incidental to, but not the purpose of, otherwise lawful activities.

FESA Section 7(a)(2) requires all federal agencies, including USFWS, to evaluate projects authorized, funded, or carried out by federal agencies with respect to any species proposed for listing or already listed as endangered or threatened and the species' critical habitat, if any is proposed or designated. Federal agencies must undertake programs for the conservation of endangered and threatened species and are prohibited from authorizing, funding, or carrying out any action that would jeopardize a listed species or destroy or modify its “critical habitat.”

As defined in the FESA, “individuals, organizations, states, local governments, and other non-federal entities are affected by the designation of critical habitat only if their actions occur on federal lands, require a federal permit, license, or other authorization, or involve federal funding.”

#### ***Clean Water Act Section 404***

CWA Section 404, which is administered by the U.S. Army Corps of Engineers (USACE), regulates the discharge of dredged and fill material into “waters of the United States.” USACE has established a series of nationwide permits that authorize certain activities in waters of the United States, provided that the proposed activity can demonstrate compliance with standard conditions. Projects that result in relatively minor impacts on waters of the United States can

normally be conducted under one of the nationwide permits, if consistent with the standard permit conditions. Use of any nationwide permit is contingent on compliance with FESA Section 7. In the project area, the freshwater ponds that are mapped in the Pleasant Hills Golf Course may qualify as waters of the United States.

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

The MBTA is the domestic law that affirms and implements a commitment by the United States to four international conventions (with Canada, Mexico, Japan, and Russia) for the protection of a shared migratory bird resource. Unless and except as permitted by regulations, the MBTA makes it unlawful at any time, by any means, or in any manner to intentionally pursue, hunt, take, capture, or kill migratory birds anywhere in the United States. The law also applies to the intentional disturbance and removal of nests occupied by migratory birds or their eggs during the breeding season.

### **State**

In addition to CEQA, the primary state planning, treatment, and review mechanisms for biological resources in the HEU and SCP update are the CESA, CWA Section 401, and CFGC Sections 1600–1603, 3503, 3503.5, and 3511. Each is summarized below.

### ***California Endangered Species Act***

The CESA closely parallels the conditions of the FESA; however, it is administered by CDFW. CESA prohibits the take of plant and animal species that the California Fish and Game Commission has designated as either threatened or endangered in California. “Take” in the context of this regulation means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill a listed species (CFGC section 86). The take prohibitions also apply to candidates for listing under CESA. However, section 2081 of the act allows the department to issue permits for the minor and incidental take of species by an individual or permitted activity listed under the act. Unlike FESA, species that are candidates for state listing are granted the same protections as listed species under CESA.

In accordance with the requirements of CESA, an agency reviewing a project within its jurisdiction must determine whether any state-listed endangered or threatened species could be present in the HEU and SCP update. The agency also must determine whether the project could have a potentially significant impact on such species. In addition, the department encourages informal consultation on any project that could affect a candidate species.

### ***Clean Water Act 401: State Regulation of Wetlands and Other Waters***

California’s authority for regulating activities in wetlands and waters in the project area resides primarily with the State Water Resources Control Board (State Water Board). The State Water Board, acting through the San Francisco Bay Regional Water Quality Control Board, must certify that a proposed USACE permit action meets state water quality objectives (CWA Section 401). Any condition of water quality certification is then incorporated into the USACE Section 404 permit authorized for the project.

The State Water Board and the Regional Water Quality Control Boards also have jurisdiction over waters of the state under the Porter-Cologne Water Quality Control Act. The State Water Board and San Francisco Bay Regional Water Quality Control Board evaluate proposed actions for consistency with the Regional Water Quality Control Board's *Water Quality Control Plan for the San Francisco Bay Basin*,<sup>3</sup> and authorize impacts on waters of the state by issuing waste discharge requirements or, in some cases, a waiver of waste discharge requirements.

### **California Fish and Game Code Sections 3503, 3503.5, and 3513**

Under CFGC section 3503, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the code or any regulation made pursuant thereto. CFGC section 3503.5 prohibits take, possession, or destruction of any birds in the orders Falconiformes (hawks) or Strigiformes (owls), or of their nests and eggs. Migratory non-game birds are protected under section 3800, whereas other specified birds are protected under section 3505. CFGC section 3513 adopts the federal definition of migratory bird take, which is defined by the U.S. Department of the Interior under provisions of the MBTA. Section 3513 does not prohibit the incidental take of birds if the underlying purpose of the activity is not to take birds. In addition, CDFW has issued an advisory that affirms that California law prohibits incidental take of migratory birds.<sup>4</sup>

## **Regional**

### **Santa Clara Valley Habitat Plan**

Santa Clara County (County), the Cities of San José, Gilroy, and Morgan Hill, the Santa Clara Valley Transportation Authority (VTA), and Valley Water conducted a collaborative process to prepare and implement the Habitat Plan, administered by the Habitat Agency. These local partners, in association with USFWS, CDFW, stakeholder groups, and the general public, developed the Habitat Plan as a long-range plan to protect and enhance ecological diversity and function in a large section of Santa Clara County, while allowing for currently planned development and growth.

The Habitat Plan is an adopted habitat conservation plan and natural community conservation plan. It provides a regulatory framework for the protection and recovery of natural resources, including nine plant species (Tiburon Indian paintbrush, coyote ceanothus, Mount Hamilton thistle, Santa Clara dudleya, fragrant fritillary, Loma Prieta hoita, smooth Lessingia, Metcalf Canyon jewelflower and most beautiful jewelflower), nine species of terrestrial wildlife (Bay checkerspot butterfly, California tiger salamander, California red-legged frog, foothill yellow-legged frog, northwestern pond turtle, western burrowing owl, least Bell's vireo, tricolored blackbird, and San Joaquin kit fox; fish are not covered), and natural communities such as streams, while streamlining permitting for development, construction of infrastructure, and

<sup>3</sup> San Francisco Bay Regional Water Quality Control Board, *San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan)*, incorporating all amendments approved by the Office of Administrative Law as of May 4, 2017. Available at [https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/planningtmdls/basinplan/web/docs/BP\\_all\\_chapters.pdf](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/BP_all_chapters.pdf).

<sup>4</sup> CDFW, *CDFW and California Attorney General Xavier Becerra Advisory Affirming California's Protections for Migratory Birds*, November 29, 2018, <https://nrm.dfg.ca.gov/>.

maintenance activities. In general, all private development activities are subject to all applicable Habitat Plan conditions and fees. The Habitat Plan includes Conditions on Covered Activities, including conservation measures to avoid and minimize take of covered species, and avoidance and minimization measures to protect biological resources, such as riparian and aquatic habitat. Like the other local agencies involved in the Habitat Plan, the County is a Permittee under the Habitat Plan. The Habitat Plan includes 20 conditions, to which most development, both private and public, are subject. Several conditions are applicable to specific activities, including urban development, in-stream projects, in-stream operations and maintenance, rural projects, rural operations and maintenance, and implementation of the Plan's Reserve System.<sup>5</sup> Other conditions apply to minimize impacts on natural communities and on specific species.

## Local

### ***Santa Clara County General Plan***

The Santa Clara County General Plan is a comprehensive long-range general plan for the physical development of the County (County of Santa Clara, 1994). The General Plan contains the current County of Santa Clara Housing Element, which was adopted in 2015. The various elements within the General Plan include goals and policies for the physical development of unincorporated Santa Clara County. General Plan strategies and policies related to Biological Resources and relevant to implementation of the HEU are listed below.

### **Habitat and Biodiversity**

**Strategy:** Improve current knowledge and awareness of habitats and natural areas.

***Policy C-RC 4:*** On a countywide basis, the overall strategy for resource management, conservation, and preservation should include the following:

- a. improve and update current knowledge;
- b. emphasize pro-active, preventive measures;
- c. minimize or compensate for adverse human impacts;
- d. restore resources where possible; and
- e. monitor the effectiveness of mitigations.

***Policy C-RC 29:*** Multi-jurisdictional coordination necessary to adequately identify, inventory, and map habitat types should be achieved at the local, regional, state, and federal levels.

***Policy R-RC 5:*** Public and private development projects shall be evaluated and conditioned to assure they are environmentally sound, do not degrade natural resources, and that all reasonable steps are taken to mitigate potentially adverse impacts.

---

<sup>5</sup> The Reserve System is intended to protect nearly 47,000 acres for the benefit of species covered in the Habitat Plan, natural communities, biological diversity, and ecosystem function, through acquisition or other protection.



**Policy C-RC 18:** Water quality countywide should be maintained and improved where necessary to ensure the safety of water supply resources for the population and the preservation of important water environments and habitat areas.

**Policy R-RC 19:** Habitat types and biodiversity within Santa Clara County and the region should be maintained and enhanced for their ecological, functional, aesthetic, educational, medicinal, and recreational importance.

**Policy R-RC 23:** Knowledge and mapping of habitat resources within the rural unincorporated areas should be improved to provide an accurate basis for: a) reviewing proposed projects that require discretionary approvals or permits; b) assessing environmental impacts for projects subject to CEQA; c) identifying critical habitat resources; and d) cooperative conservation planning efforts.

**Policy R-RC 24:** Areas of habitat richest in diversity, of particularly fragile ecological nature, or necessary for preserving threatened or endangered species should receive special consideration for preservation as open space and protection from development impacts. Examples include baylands and riparian areas, serpentine geology, and other critical habitat areas identified by local legislative bodies.

**Strategy:** Protect the biological integrity of critical habitat areas.

**Policies:**

**Policy C-RC 30:** Habitat and other resource areas not suitable or intended for urbanization should be excluded from urbanization, and non-urban development which occurs within resource conservation areas should minimize impacts upon habitat and biodiversity.

**Policy C-RC 31:** Areas of habitat richest in biodiversity and necessary for preserving threatened or endangered species should be formally designated to receive greatest priority for preservation, including baylands and riparian areas, serpentine areas, and other habitat types of major significance.

**Policy C-RC 32:** Land uses permitted in resource conservation areas should not be allowed to degrade the integrity of natural habitat.

**Policy C-RC 33:** Linkages and corridors between habitat areas should be provided to allow for migration and otherwise compensate for the effects of habitat fragmentation.

**Policy R-RC 31:** Natural streams, riparian areas, and freshwater marshes shall be left in their natural state providing for percolation and water quality, fisheries, wildlife habitat, aesthetic relief, and educational or recreational uses that are environmentally compatible. Streams which may still provide spawning areas for anadromous fish species should be protected from pollution and development impacts which would degrade the quality of the stream environment.

**Policy R-RC 32:** Riparian and freshwater habitats shall be protected through the following general means: a) setback of development from the top of the bank; b) regulation of tree and vegetation removal; c) reducing or eliminating use of herbicides, pesticides, and fertilizers by public agencies; d) control and design of grading, road construction, and bridges to minimize environmental impacts and avoid alteration of the

streambed and stream banks (free-span bridges and arch culverts, for example); and e) protection of endemic, native vegetation.

***Policy R-RC 36:*** In cluster residential developments or other projects where open space dedication is required, the stream, riparian areas, and freshwater marshes should be included within the restricted open space area of the project or protected by other enforceable mechanisms, such as deed restrictions or conservation easements.

***Policy R-RC 37:*** Lands near creeks, streams, and freshwater marshes shall be considered to be in a protected buffer area, consisting of the following: 1) 150 feet from the top bank on both sides where the creek or stream is predominantly in its natural state; 2) 100 feet from the top bank on both sides of the waterway where the creek or stream has had major alterations; and 3) In the case that neither (1) nor (2) are applicable, an area sufficient to protect the stream environment from adverse impacts of adjacent development, including impacts upon habitat, from sedimentation, biochemical, thermal and aesthetic impacts.

***Policy R-RC 38:*** Within the aforementioned buffer areas, the following restrictions and requirements shall apply to public projects, residential subdivisions, and other private non-residential development: a) no building, structure or parking lots are allowed, exceptions being those minor structures required as part of flood control projects; b) no despoiling or polluting actions shall be allowed, including grubbing, clearing, unrestricted grazing, tree cutting, grading, or debris or organic waste disposal, except for actions such as those necessary for fire suppression, maintenance of flood control channels, or removal of dead or diseased vegetation, so long as it will not adversely impact habitat value; and c) endangered plant and animal species shall be protected within the area.

***Policy R-RC 39:*** Within areas immediately adjacent to the stream buffer area, new development should minimize environmental impacts on the protected buffer area, and screening of obtrusive or unsightly aspects of a project should be considered as a means of preserving the scenic value of riparian areas.

***Policy R-RC 40:*** Where new roads, clustered residential development, or subdivisions are proposed in proximity of streams and riparian areas, they should be designed so that: a) riparian vegetation is retained; b) creeks and streams remain open and unfenced; and c) there is adequate separation of new roads and building sites from the stream environment.

***Policy R-RC 41:*** Where trails and other recreational uses are proposed by adopted plans to be located in the vicinity of streams and riparian areas or reservoirs, trail alignments and other facilities should be placed on the fringe of the riparian buffer area or at an appropriate distance to avoid disturbance of the stream or vegetation, 1) environmental impacts from development or use of the facility shall be effectively mitigated, and 2) fencing should not restrict access by wildlife to the stream environment.

***Policy R-RC 44:*** Healthy, mature specimen trees should be protected from cutting.

***Policy R-RC 49:*** Retention and planting of native plant species shall be encouraged, especially for landscape uses.

**Strategy:** Evaluate effectiveness of environmental mitigations.

***Policies:***

**Policy C-RC 35:** The status of various threatened and endangered species and the effectiveness of strategies and programs to preserve biodiversity should be monitored and evaluated on an ongoing basis.

**Policy C-RC 36:** Specific project mitigations for the purpose of preserving habitat should be monitored for a period of time to assure the likelihood of their effectiveness.

**Policy R-RC 56:** Specific mitigations required for new development for conserving habitat should be monitored as required by state law to assess their effectiveness and the need for improved mitigations for future projects.

### **Stanford University Community Plan**

The current Stanford University Community Plan was adopted in 2000 (County of Santa Clara, 2000). The primary purpose of the Community Plan is to guide future use and development of Stanford lands in a manner that incorporates key County General Plan principles of compact urban development, open space preservation, and resource conservation. The Community Plan was adopted as an amendment of the General Plan in the manner set forth by California Government Code Section 65350 et seq. Community strategies and policies related to Biological Resources and relevant to implementation of the HEU and Community Plan Update are listed below.

### **Habitat and Biodiversity**

**Strategy #1:** Improve current knowledge and awareness of habitats and natural areas.

**Policy SCP-RC 1:** Maintain and update inventories and maps of important biological resources on Stanford lands, including protected species, species considered at risk of local extinction, and habitat types (biotic communities), for use in conservation efforts, land use decision making, and monitoring of resource status.

**Policy SCP-RC 2:** Allow field research and other academic activities related to improving knowledge and understanding of habitat resources to occur in areas south of Junipero Serra Boulevard.

**Strategy #2:** Protect the biological integrity of habitat areas and adequately mitigate impact.

**Policy SCP-RC 3:** Assure the protection of habitats for special status species in approving the location and design of new development. Avoid habitat areas for these species in the location of development whenever feasible.

**Policy SCP-RC 4:** Protect and maintain habitats, natural areas, and wildlife corridors in development and redevelopment.

**Policy SCP-RC 5:** Protect habitat areas through use of the Open Space and Field Research, Special Conservation, and Campus Open Space land use designations, and through use of the Academic Growth Boundary (AGB). If land use designation changes or AGB relocation is proposed, conduct detailed studies for presence of special status species and their habitat prior to decision making.

**Policy SCP-RC 6:** Require Stanford to mitigate any impacts on special status species or other biological resources that result from land use and development through: a)

mitigation measures that have proven to be effective which shall be implemented prior to commencement of site preparation and construction activities as appropriate, and b) mitigation measures such as provision of new habitat areas which shall be monitored and, if necessary, revised over time to ensure the viability of these measures as mitigation.

**Policy SCP-RC 7:** Maintain and restore riparian buffer zones along creeks as described in Santa Clara County General Plan policy R-RC 37 (see above).

**Policy SCP-RC 8:** Monitor and evaluate the recreational use of sensitive habitat areas and limit if necessary, the recreational use of areas supporting significant, but less sensitive, natural resources.

### **Water Quality and Watershed Management**

**Strategy #5:** Enhance and Restore Wetlands, Riparian Areas, and other Habitats that Improve Watershed Quality.

**Policy SCP-RC 16:** Assist Stanford in identifying and implementing agricultural and other land management practices that promote native species and that contribute to erosion control.

**Policy SCP-RC 17:** Avoid development in riparian areas and wetlands.

### **Santa Clara County Tree Preservation and Removal Ordinance**

Division C16 of the County of Santa Clara Ordinance Code requires a Tree Removal Permit and mitigation measures for removal of any protected tree on any public or private property in designated areas of the County as follows:

- Any tree having a main trunk or stem measuring 37.7 inches or greater in circumference (12 inches or more in diameter) at four and one-half feet above ground level, or in the case of multi-trunk trees, a total of 75.4 inches in circumference (24 inches or more in diameter) of all trunks in the following areas of the County: 1) parcels zoned "Hillsides" of 3 acres or less; 2) parcels within a "-d" (Design Review) combining zoning district; 3) parcels within the Los Gatos Specific Plan area.
- Any tree having a main trunk or stem measuring 18.8" or greater in circumference (6" or more in diameter) at a height of 4.5' above ground level, or in the case of multi-trunk trees, a total of 37.7" in circumference of all trunks (12" or more of the diameter) in the "h<sub>1</sub>" New Almaden Historic Preservation zoning district.
- Any heritage tree, as that term is defined in §C16-2 of the Tree Preservation Ordinance.
- Any tree required to be planted as a replacement for an unlawfully removed tree, pursuant to §C16-17(e) of the Tree Preservation Ordinance.
- Any tree that was required to be planted or retained by the conditions of approval for any use permit, building site approval, grading permit, architectural & site approval (ASA), design review, special permit or subdivision.
- On any property owned or leased by the County of Santa Clara, any tree which measures over 37.7 inches in circumference (12 inches or more in diameter) measured 4.5 feet above the ground, or which exceeds 20 feet in height.

- Any tree, regardless of size, within road rights-of-way and easements of the County, whether within or without the unincorporated territory of the County.

Except in the case of heritage trees, no permit shall be required from the Planning Office for the cutting, removal, destruction, or pruning of a tree in the following circumstances:

- The tree is (1) irreversibly diseased, is dead, or is dying; or (2) the tree is substantially damaged from natural causes (a determination by a licensed arborist, tree surgeon, or forester may be required).
- Tree cutting to remove a hazard to life and personal property as determined by the Planning Director, or his or her designee. It shall be the responsibility of the property owner or other person responsible for removing the tree to demonstrate that any tree removed without a permit was irreversibly diseased, substantially damaged, or presented an imminent danger to human life or safety or to property.
- Trees planted, grown and/or held for sale by licensed nurseries and/or tree farms.
- Trees in the active production of agriculture or orchard production, where there is no active plan to convert the property to another use.
- Tree removal necessary to carry out building site approval or other land use application approved by the County. No removal shall be permitted until such grading or building permit has been issued by the County as indicated on approved plans. The number of trees cut may not exceed the minimum number necessary to carry out the permitted action.
- Maintenance work within public utility easements.
- Trees removed or pruned as part of maintenance of County Parks under established policies and procedures of the Parks & Recreation Department.
- Trees removed or pruned as part of maintenance of County right-of-way under established policies and procedures of the Department of Roads & Airports.
- Trees removed on properties with a comprehensive vegetative management program approved by the County.

### ***Stanford University Habitat Conservation Plan***

Stanford University developed a Habitat Conservation Plan (HCP) through a process outlined by FESA Section 10 that involves cooperation between the federal government and a private landowner. Under Section 10, the USFWS can authorize the taking of listed species that is incidental to an otherwise lawful activity, if the landowner first prepares and agrees to implement an acceptable HCP. The purpose of the Stanford HCP is to describe Stanford's activities and identify measures that will minimize and mitigate the effects of these activities on species.

The Stanford HCP provides a regulatory framework for the protection and recovery of natural resources, including three species of terrestrial wildlife – California red-legged frog, California tiger salamander, and San Francisco garter snake. In general, all private development activities are subject to all applicable HCP conditions and fees. The USFWS-approved Stanford HCP creates a comprehensive conservation program that protects, restores, and enhances habitat; monitors and reports on Covered Species; and minimizes impacts on the Covered Species and their

habitats. The Stanford HCP outlines what Stanford will do to minimize or mitigate the impact of its activities on federally protected species. In turn, the USFWS has issued a long-term incidental take permit that authorizes “take” of protected species associated with Stanford’s activities related to academic uses, general campus management and maintenance, redevelopment, future development, and conservation programs.

## 4.3.4 Environmental Impacts and Mitigation Measures

### Significance Thresholds

The thresholds used to determine the significance of impacts related to Biological Resources are based on Appendix G of the *CEQA Guidelines*. Implementation of the proposed project would have a significant impact on the environment if it 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 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 CDFW or USFWS;
- Have a substantial adverse effect on state or federally protected wetlands (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; or
- Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

### Methodology and Assumptions

The impact analysis is based on the resources, references, and data collection methods identified in Section 4.4.1, *Introduction*. The analysis addresses potential direct and indirect impacts from construction or operation of the residential projects that could be constructed if the project is implemented, defined as follows:

- *Direct impacts* are those that could occur at the same time and place as project implementation, such as the removal of habitat as a result of ground disturbance.
- *Indirect impacts* are those that could occur either at a later time or at a distance from the project areas, but that are reasonably foreseeable, such as the loss of an aquatic species as a result of upstream effects on water quality or quantity.

Direct and indirect impacts on biological resources may vary in duration; they may be temporary, short term, or long term.

The analysis considers the potential impacts of the project's implementation and the development of multi-family housing on suitable habitat, special-status species, sensitive natural communities, wetlands, and wildlife corridors, using the significance criteria listed above. Mitigation measures are identified, as necessary, to reduce impacts to less-than-significant levels.

## Impacts and Mitigation Measures

### *Impacts*

**Impact BIO-1: Implementation of the proposed project would not have a substantial adverse effect, either directly, indirectly, or through habitat modifications, on a species identified as a candidate, sensitive, or special-status in local or regional plans, policies, or regulations, or by CDFW or USFWS (nesting birds, special-status roosting bats). (*Less than Significant Impact, with Mitigation*)**

### **Housing Element Update and Stanford Community Plan Update**

The HEU's housing opportunity sites and the SCP area do not include suitable habitat or is outside of the known geographic or elevation range, for many of the terrestrial species documented in the CNDDDB and CNPS searches. However, some project areas contain suitable habitat for the following species and are within the species' known range: nesting birds protected by the MBTA, western red bat, hoary bat, and Yuma myotis. Therefore, the following analysis is limited to potential impacts on these wildlife species. Each has a moderate potential to occur on some of the project sites.

#### Nesting Birds

##### *Construction*

Construction facilitated by the project could result in direct or indirect impacts to nesting birds protected by the MBTA. Direct impacts to nesting birds could result from the removal of trees and vegetation and/or demolition of buildings while an active bird nest is present. In addition, earth moving, operation of heavy equipment, and increased human presence could result in noise, vibration, and visual disturbance. These conditions could indirectly result in nest failure (disturbance, avoidance, or abandonment that leads to unsuccessful reproduction), or could cause flight behavior that would expose an adult or its young to predators. These activities could cause birds that have established a nest before the start of construction to change their behavior or even abandon an active nest, putting their eggs and nestlings at risk for mortality.

Generally, nest failure would be a violation of CFGC sections 3503–3513. Impacts during the non-breeding season generally are not considered significant, primarily because of the birds' mobility and ability to access other comparable foraging habitat in the region. However, impacts during the breeding season would be a **Potentially Significant Impact**; however, implementation of **Mitigation Measure BIO-1a, Avoid and Minimize Impacts on Nesting Birds** would reduce construction-related impacts to less than significant.

### **Mitigation Measure BIO-1a: Avoid and Minimize Impacts on Nesting Birds.**

Adequate measures will be implemented to avoid inadvertent take of raptor nests and other nesting birds protected under the Migratory Bird Treaty Act when in active use. This will be accomplished by taking the following steps prior to demolition, site preparation (including clearing of vegetation), and construction work within the project sites:

- a) If construction is proposed during the nesting season (February 15 to August 31), a pre-construction survey for nesting raptors and other migratory birds will be conducted by a qualified biologist within 7 days prior to the onset of vegetation removal or construction to identify any active nests on the project site and in the vicinity of proposed construction. Surveys will be performed for the project area and vehicle and equipment staging areas, and suitable habitat within 150 feet of these areas, to locate any active passerine (e.g., songbird) nests and within 250 feet to locate any active raptor (bird of prey) nests.
- b) If no active nests are identified during the survey period, or if construction activities are initiated during the non-breeding season (September 1 to February 14), construction may proceed with no restrictions.
- c) If bird nests are found, an adequate no-disturbance buffer will be established around the nest location and construction activities restricted within the buffer until the qualified biologist has confirmed that any young birds have fledged and are able to leave the construction area. Required setback distances for the no-disturbance zone will be established by the qualified biologist and may vary depending on species, line-of-sight between the nest and the construction activity, and the birds' sensitivity to disturbance. As necessary, the no-disturbance zone will be fenced with temporary orange construction fencing if construction is to be initiated on the remainder of the development site.
- d) Any birds that begin nesting within the project area and survey buffers amid construction activities will be assumed to be habituated to construction-related or similar noise and disturbance levels and no-disturbance zones will not be established around active nests in these cases; however, should birds nesting within the project area and survey buffers amid construction activities begin to show disturbance associated with construction activities, no-disturbance buffers will be established as determined by the qualified wildlife biologist.
- e) Any work that must occur within established no-disturbance buffers around active nests will be monitored by a qualified biologist. If adverse effects in response to project work within the buffer are observed and could compromise the nest's success, work within the no-disturbance buffer will halt until the nest occupants have fledged.
- f) A pre-construction survey report of findings will be prepared by the qualified biologist and submitted to the Director of Planning and Development, or the Director's designee for review and approval prior to initiation of construction within the no-disturbance zone during the nesting season. The report will either confirm absence of any active nests or will confirm that any young within a designated no-disturbance zone and construction can proceed.

**Significance After Mitigation:** Implementation of **Mitigation Measure BIO-1a** would reduce construction-related impacts by limiting construction to the non-nesting season when feasible or, if avoiding the nesting season is not feasible, conducting pre-construction surveys for nesting birds and establishing no-disturbance buffers around any



active nests until birds have fledged and are able to leave the construction area; and reporting pre-construction survey findings to the County prior to initiation of construction. Therefore, implementation of this mitigation measure would reduce potential impacts on nesting birds to **Less than Significant Impact, with Mitigation**.

#### *Operations*

Operational activities associated with the project are unlikely to indirectly impact nesting birds due to the baseline level of human disturbance already occurring within and adjacent to the project sites post-construction. Birds nesting in these areas are assumed to be habituated to such disturbance, and therefore, the impacts of human disturbance would be **Less than Significant Impact**.

**Mitigation Measures:** None required.

#### Special-Status Roosting Bats

##### *Construction*

Construction on the HEU opportunity sites and within the SCP area could result in impacts to roosting western red bat, hoary bat, and Yuma myotis, if present. Only western red bat is a CDFW species of special concern. All three species have the potential to roost in trees in all parcels within the SCP area and in trees and/or abandoned buildings in parcels 649-24-013 and 649-23-001 (Pleasant Hills Golf Course) within the HEU opportunity sites, which could result in impacts to bats during daytime construction hours. Construction activities could result in direct impacts to roosting bats if they were disturbed, killed, or injured by removal or trimming of a tree or demolition of a building, in which they were roosting. If roosting bats are present, construction noise could also result in impacts due to disturbance, avoidance, or abandonment of roosts. If tree removal or building demolition were to occur during periods of winter torpor or maternity roosting, any bats present would likely not survive the disturbance (Tuttle, 1991). This would be a **Potentially Significant Impact** but implementation of **Mitigation Measure BIO-1b** would reduce construction-related impacts to less than significant.

**Mitigation Measure BIO-1b: Avoid and Minimize Impacts on Roosting Bats.** A qualified biologist who is experienced with bat surveying techniques (including auditory sampling methods), behavior, roosting habitat, and identification of local bat species will be consulted prior to tree removal or building demolition activities to conduct a pre-construction habitat assessment of the HEU (parcels 649-24-013 and 649-23-001) and SCP update (all parcels) to characterize potential bat habitat and identify potentially active roost sites. No further action is required should the pre-construction habitat assessment not identify potential bat roosting habitat or signs of potentially active bat roosts within the Project area (e.g., guano, urine staining, dead bats, etc.).

The following measures will be implemented should potential bat roosting habitat or potentially active bat roosts be identified during the habitat assessment in buildings to be demolished:

- a) In areas identified as potential roosting habitat during the habitat assessment, initial building demolition will occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15, to the extent feasible. These periods avoid the bat maternity roosting season and period of winter torpor.<sup>6</sup>

---

<sup>6</sup> Torpor refers to a state of decreased physiological activity with reduced body temperature and metabolic rate.

- b) Buildings with potential bat roosting habitat or active (outside of maternity and winter torpor seasons) roosts will be disturbed only under clear weather conditions when precipitation is not forecast for three days and when daytime temperatures are at least 50 degrees Fahrenheit.
- c) The demolition or relocation of buildings containing or suspected of containing potential bat roosting habitat or active bat roosts will be done under the supervision of a qualified biologist. When appropriate, buildings will be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost, likely in the evening and after bats have emerged from the roost to forage. Under no circumstances will active maternity roosts be disturbed until the roost disbands at the completion of the maternity roosting season or otherwise becomes inactive, as determined by the qualified biologist.
- d) If avoidance of the bat maternity roosting season and period of winter torpor, defined under a), above, is infeasible, the qualified biologist will conduct pre-construction surveys of potential bat roost sites identified during the initial habitat assessment no more than 14 days prior to building demolition.
- e) If active bat roosts or evidence of roosting is identified during pre-construction surveys for building demolition, the qualified biologist will determine, if possible, the type of roost and species. A no-disturbance buffer will be established around roost sites until the start of the seasonal windows identified above, or until the qualified biologist determines roost sites are no longer active. The size of the no-disturbance buffer would be determined by the qualified biologist and would depend on the species present, roost type, existing screening around the roost site (such as dense vegetation or a building), as well as the type of construction activity that would occur around the roost site.

**Significance After Mitigation:** Implementation of **Mitigation Measure BIO-1b** would reduce construction-related impacts by requiring pre-construction surveys to identify active bat roosts; establishment of protective buffers until roosts are no longer in use; and, limiting the removal of trees or structures with potential bat roosting habitat to the time of year when bats are active to avoid disturbing bats during the maternity roosting season or months of winter torpor. Therefore, implementation of this mitigation measure would reduce potential impacts on roosting bats to **Less than Significant Impact, with Mitigation**.

#### *Operations*

Operational activities associated with the proposed project are unlikely to indirectly impact roosting bats due to the baseline level of human disturbance already occurring within and adjacent to the project sites post-construction. Bats roosting in these areas are assumed to be habituated to such disturbance, and therefore, the impacts of human disturbance would be **Less than Significant Impact**.

**Mitigation Measures:** None required.

---

**Impact BIO-2: Implementation of the proposed project would not have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, regulations, or by CDFW or USFWS. (*Less than Significant Impact*)**

#### **Housing Element Update and Stanford Community Plan Update**

No riparian habitat or other sensitive natural community is present in the locations associated with the HEU and SCP; therefore, the construction and operations related to the project would have **No Impact** on these biological resources.

**Mitigation Measures:** None required.

---

**Impact BIO-3: Implementation of the proposed project would not have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. (*Less than Significant Impact, with Mitigation*)**

Under CWA Section 404, the U.S. Army Corps of Engineers (USACE) regulates activities that result in the discharge of dredged or fill material into waters of the United States. Waters of the United States include wetlands as well as streams, rivers, lakes, reservoirs, ponds, bays, and oceans (33 CFR 328.3[e]). Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (33 CFR 328.3[b]). Wetlands, streams, reservoirs, sloughs, and ponds are typically under federal jurisdiction under Section 404 of the CWA and state jurisdiction under the Porter-Cologne Water Quality Control Act. Streams and ponds typically fall under state jurisdiction under Section 1602 of the California Fish and Game Code.

#### **Housing Element Update and Stanford Community Plan Update**

No jurisdictional waters are present on the affected SCP update area; therefore, the construction and operations related to the SCP update would have **No Impact** on these biological resources, and the discussion below relates only to two specific HEU housing opportunity sites in San José where jurisdictional waters are potentially present.

##### *Construction*

Two aquatic features characterized as excavated freshwater ponds by the USFWS NWI are present within the Pleasant Hills Golf Course. One pond is mapped as being 0.47 acres and located on parcels 649-24-013 and 649-23-001 (USFWS, 2023). This pond is also mapped by the Habitat Agency. A second pond, which is 0.26 acres and located on parcel 649-24-013, is mapped by NWI but not mapped by the Habitat Agency (Figure 4.3-1c). These features are potentially jurisdictional waters. Construction that would result in direct fill of jurisdictional waters, or that could cause indirect impacts to jurisdictional waters due to uncontrolled runoff of sediment, spoils piles, or deleterious materials into waters, would be a **Potentially Significant Impact**. To

reduce this potentially significant impact, the proposed project would implement **Mitigation Measure BIO-3a, Aquatic Resources Delineation** and **BIO-3b, Implement Condition 12 of the Santa Clara Valley Habitat Plan.**

#### **Mitigation Measure BIO-3a: Aquatic Resources Delineation**

The project applicant for the specific construction activity to be undertaken and its contractors will minimize impacts on waters of the United States and waters of the state, including wetlands, by implementing the following measures:

- A preliminary jurisdictional delineation of wetlands for the two aquatic features within parcels 649-24-013 and 649-23-001 and mapped by the U.S. Fish and Wildlife Service National Wetlands Inventory (USFWS NWI) will be prepared to confirm the presence and determine the extent of waters of the United States and/or waters of the state within that area. Per Section 6.8.4, Item 4, Map of Wetlands, Ponds, Streams, and Riparian Woodlands, of the Santa Clara Valley Habitat Plan, the preliminary jurisdictional delineation must map any waters of the state that are not also Waters of the United States. The results will be summarized in a wetland delineation report to be submitted to the Director of Planning and Development, or the Director's designee, for review and approval before the issuance of any demolition, grading, or building permit for construction activity, within 150 feet of the footprint of the two aquatic features within parcels 649-24-013 and 649-23-001 as mapped by the USFWS NWI.
- Impacts to wetlands identified in the preliminary jurisdictional delineation report will be avoided and minimized by implementing Mitigation Measure BIO-3b.

#### **Mitigation Measure BIO-3b: Implement *Condition 12, Wetland and Pond Avoidance and Minimization*, of the Santa Clara Valley Habitat Plan.**

The purpose of this condition is to minimize direct and indirect impacts to wetlands and ponds and in some cases, avoid direct and indirect impacts to high quality wetlands and ponds. Direct impacts are those that directly affect a wetland or a pond within its mapped boundary (see Section 6.8.4 Item 4: Map of Wetlands and Waters for a description of mapping direct impacts to wetlands in the Santa Clara Valley Habitat Plan). Project proponents are required to pay a wetland fee for impacts to wetlands and ponds to cover the cost of restoration or creation of aquatic land cover types required by this Plan (see Chapter 9 of the Santa Clara Valley Habitat Plan for details on this wetland fee). Covered activities can avoid paying the wetland fee if they avoid impacts to the wetland. All project proponents will implement the following actions to avoid and minimize impacts of covered activities on wetlands and ponds.

#### Planning Actions

- Projects must be designed to avoid and minimize impacts to wetlands to the maximum extent practicable.
- Applicants with streams on site must follow the stream setback requirements in Condition 11.
- Applicants for coverage under the Plan must follow the requirements and guidelines in Condition 3 to minimize the effects of development on downstream hydrology, streams, and wetlands.

### Design

- Locate septic facilities, if used, at least 100 feet from the edge of a wetland or pond if space allows.
- If the runoff from the development will flow within 100 feet of a wetland or pond, install vegetated stormwater filtration features, such as rain gardens, grass swales, tree box filters, or infiltration basins, to capture and treat flows.
- Plant native vegetation (shrubs and small trees) between the wetland or pond and the development such that the line of sight between the wetland or pond and the development is shielded.
- If during the environmental review process, it is shown that a project has adverse indirect impacts to the wetland's function (change in hydrological functions, etc.), the project will be required to avoid these indirect effects, as determined on a case-by-case approach by the local jurisdiction, in consultation with the project proponent. Santa Clara County will coordinate avoidance measures with the project proponent. Wetlands that are not completely avoided, including indirect effects, will be considered permanently impacted and will count towards the impact caps described in Table 4-2 of the Santa Clara Valley Habitat Plan and will be assessed fees as described in Chapter 9 of the Santa Clara Valley Habitat Plan. If, however, the local jurisdiction demonstrates to the Wildlife Agencies that the wetlands to be indirectly affected are highly degraded prior to project impacts, and the Wildlife Agencies agree, impacts will not be counted toward the impact caps described in Table 4-2 of the Santa Clara Valley Habitat Plan and fees will not be assessed. "Highly degraded" wetlands could include, but are not limited to, those that are indirectly affected by surrounding development or agriculture to the extent that hydrology, water quality, or habitat for covered species is adversely affected.

### Construction Actions

- Personnel conducting ground-disturbing activities in or adjacent to wetlands and ponds will be trained by a qualified biologist in these avoidance and minimization measures and the permit obligations of project proponents working under this Plan.
- All wetlands and ponds to be avoided by covered activities will be temporarily staked in the field by a qualified biologist to ensure that construction equipment and personnel avoid these features.
- Fencing will be erected along the outer edge of the project area, between the project area and a wetland or pond. The type of fencing will match the activity and impact types. For example, projects that have the potential to cause erosion will require erosion control barriers (see below), and projects that may bring more household pets to a site will be fenced to exclude pets. The temporal requirements for fencing also depend on the activity and impact type. For example, fencing for permanent impacts will be permanent, and fencing for short-term impacts will be removed after the activity is completed.
- Appropriate erosion control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff of contaminants into wetlands, ponds, streams, or riparian woodland/scrub. Filter fences and mesh will be of material that will not entrap reptiles and amphibians. Erosion control blankets will

be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians.

- Erosion-control measures will be placed between the wetland or pond and the outer edge of the project site.
- Fiber rolls used for erosion control will be certified as free of noxious weed seed.
- Seed mixtures applied for erosion control will not contain invasive nonnative species but will rather be composed of native species appropriate for the site or sterile nonnative species. If sterile nonnative species are used for temporary erosion control, native seed mixtures must be used in subsequent treatments to provide long-term erosion control and slow colonization by invasive nonnatives.
- Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.
- Trash generated by covered activities will be promptly and properly removed from the site.
- No construction or maintenance vehicles will be refueled within 200 feet of avoided wetlands and ponds unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
- All management of pest species will be conducted in compliance with the County integrated pest management (IPM) ordinance. In addition, other requirements identified in this chapter that exceed the requirements of the IPM ordinance will be implemented.
- Where appropriate to control serious invasive plants, herbicides that have been approved by EPA for use in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. In wetland environments, appropriate herbicides may be applied during the dry season to control nonnative invasive species (e.g., yellow star-thistle). Herbicide drift will be minimized by applying the herbicide as close to the target area as possible. Herbicides will only be applied by certified personnel in accordance with label instructions.
- All organic matter should be removed from nets, traps, boots, vehicle tires and all other surfaces that have come into contact with ponds, wetlands, or potentially contaminated sediments. Items should be rinsed with clean water before leaving each study site.
- Implement measures to minimize the spread of disease and non-native species based on current Wildlife Agency protocols (e.g., USFWS Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog: Appendix B, Recommended Equipment Decontamination Procedures and other best available science.
- Used cleaning materials (liquids, etc.) should be disposed of safely, and if necessary, taken off site for proper disposal. Used disposable gloves should be retained for safe disposal in sealed bags (U.S. Fish and Wildlife Service 2005).

**Significance After Mitigation:** Implementation of **Mitigation Measure BIO-3a** and **Mitigation Measure BIO-3b** would reduce construction-related impacts by requiring a

preliminary wetland delineation and, if jurisdictional wetlands and waters are identified, avoidance of such features to the extent practical and implementation of protective measures during construction. If jurisdictional wetlands and waters cannot be avoided, permanent impacts to high quality wetlands would be compensated for according to the Habitat Plan. Therefore, implementation of this mitigation measure would reduce potential impacts on jurisdictional wetlands and waters to **Less than Significant Impact, with Mitigation**.

#### *Operations*

No operational impacts to jurisdictional wetlands and waters associated with the development sites associated with the project are anticipated since ponds will either be permanently filled or will be preserved and integrated into project design and maintained as permanent landscape; therefore, there would be **No Impact** from operational activities.

**Mitigation Measures:** None required.

---

**Impact BIO-4: Implementation of the proposed project would not interfere substantially with the movement of a 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. (*Less than Significant Impact*)**

#### **Housing Element Update**

##### *Construction*

**Native Wildlife Nursery Sites.** Native wildlife nursery sites in the study area would primarily include sites that house individual nesting birds and roosting bats or communally roosting birds and bats. Potential construction- and operations-related impacts and mitigation measures on individual nesting birds and bats and communally roosting bats are discussed above under Impact BIO--1. Birds such as herons and egrets that nest in groups, and whose communal nesting sites are referred to as rookeries, are not documented to nest in the study area (CDFW, 2022a) and are not expected. Therefore, project impacts on native wildlife nursery sites within the project's development areas would be **Less than Significant, with Mitigation**.

**Native Wildlife Movement Corridors.** The vast majority of the project project's development locations are parcels that are currently developed, occupied by residents and domestic animals, and are surrounded by urban-suburban development. Although wildlife species that tolerate, or even prefer, living amongst humans, such as raccoon, striped skunk, and opossum, move through these areas regularly, such movement would not constitute use of a wildlife movement corridor since the project sites do not link habitat patches, nor do they provide particularly valuable or unique dispersal habitat in the context of their locations. Therefore, the project development sites do not provide any native wildlife movement corridors and there would be **No Impact** to wildlife movement corridors resulting from construction related to the project.

**Mitigation Measures:** None required.

### *Operations*

As described above under *Construction*, there are no wildlife movement corridors within the project's development sites; therefore, there would be **No Impact** to wildlife movement corridors resulting from operations related to the project.

**Mitigation Measure:** None required.

## **Stanford Community Plan**

### *Construction*

**Native Wildlife Nursery Sites.** Native wildlife nursery sites in the study area would primarily include sites that house individual nesting birds and roosting bats or communally roosting birds and bats. Potential construction- and operations-related impacts and mitigation measures on individual nesting birds and bats and communally roosting bats are discussed above under Impact BIO-1. Birds such as herons and egrets that nest in groups, and whose communal nesting sites are referred to as rookeries, are not documented to nest in the study area (CDFW, 2022a) and are not expected. Project impacts on native wildlife nursery sites within the SCP update would be **Less than Significant, with Mitigation**.

**Native Wildlife Movement Corridors.** The SCP update primarily includes parcels that are currently developed. Parcel 142-04-036b is not developed; however, it is part of a larger undeveloped area that is surrounded by the Stanford campus and Stanford Shopping Center and would be used only by wildlife species that tolerate human habitation. However, regular movements through these areas would not constitute use of a wildlife movement corridor since the SCP update sites do not link habitat patches, nor do they provide particularly valuable or unique dispersal habitat in the context of their locations. Therefore, the SCP update sites do not provide any native wildlife movement corridors and there would be **No Impact** to wildlife movement corridors resulting from construction related to the SCP update.

**Mitigation Measure:** None required.

### *Operations*

As described above under *Construction*, there are no wildlife movement corridors within the SCP update sites; therefore, there would be **No Impact** to wildlife movement corridors resulting from operations related to the SCP update.

**Mitigation Measure:** None required.

---

## **Impact 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. (No Impact)**

The local policies relevant to the biological resources present, or with potential to occur, in the HEU or SCP update housing opportunity sites include the Santa Clara County General Plan, Stanford Community Plan, and Santa Clara County Tree Preservation and Removal Ordinance.



These policies, summarized in detail in Section 4.4.3, *Regulatory Setting*, are analyzed for project consistency below.

### **Housing Element Update**

#### **Santa Clara County General Plan**

The proposed project is consistent with the goals and policies of the Santa Clara County General Plan goal for Habitat and Biodiversity Conservation, which includes strategies to improve knowledge and awareness of habitats and natural areas, protect the biological integrity of critical habitat areas, and evaluate effectiveness of environmental mitigations. The project's development sites are currently developed parcels or are surrounded by existing urban development, thereby limiting potential impacts on biodiversity and areas of special ecological significance, such as baylands, freshwater marshes, riparian areas, serpentine geology, wildlife corridors, and endemic, native vegetation. Marginal habitat values are present on the Pleasant Hills sites, and impacts can be mitigated effectively, as discussed under Impact BIO-3. Generally, none of these habitats are present on the project's development sites; therefore, the project would not conflict with local policies or ordinances and **No Impact** would occur.

#### **Santa Clara County Tree Preservation and Removal Ordinance**

Where applicable, with the County's approval of a Tree Removal Permit and compliance with the protected tree replacement requirements outlined in Division C16 of the County of Santa Clara Ordinance Code, the project would not conflict with the Santa Clara County Tree Preservation and Removal Ordinance, and **No Impact** would occur.

**Mitigation Measures:** None required.

### **Stanford Community Plan**

#### **Stanford University Community Plan and Santa Clara County General Plan**

The SCP update is consistent with the goals and policies of the Stanford Community Plan goal for Habitat and Biodiversity Conservation, which includes strategies to improve knowledge and awareness of habitats and natural areas, protect the biological integrity of critical habitat areas, and evaluate effectiveness of environmental mitigations. The SCP housing development sites and potential future school location are currently developed parcels, thereby limiting potential impacts on biodiversity and areas of special ecological significance, such as baylands, freshwater marshes, riparian areas, serpentine geology, wildlife corridors, and endemic, native vegetation. None of these habitats is present in the SCP update study area; therefore, the SCP update would not conflict with local policies or ordinances and **No Impact** would occur.

**Mitigation Measures:** None required.

**Impact BIO-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. (*Less than Significant Impact, With Mitigation*)**

The adopted habitat conservation plans relevant to the HEU or SCP update housing opportunity sites include the Santa Clara Valley Habitat Plan (Habitat Plan) and Stanford University Habitat Conservation Plan (Stanford HCP). These plans, summarized in detail in Section 4.4.3, *Regulatory Setting*, are analyzed for project consistency below.

**Housing Element Update**

As set forth in the discussion in Section 4.3.3, *Regulatory Framework*, the City of San José and Santa Clara County are Permittees of the Habitat Plan, and the proposed project is within the Habitat Plan Permit Area. Portions of the project area are located within fee zones and are subject to conditions identified in Chapter 6 of the Habitat Plan. The project area is outside of the covered species and serpentine fee zones but may be subject to land cover fees for Zone B (Agricultural and Valley Floor Land) and wetland fees (Pond)<sup>7</sup> for any work within or adjacent to the ponds at the Pleasant Hills Golf Course. The project would also be subject to nitrogen deposition fees for any increases in vehicle trips.<sup>8</sup> Applicable fees and conditions would be determined during the entitlement or permitting phase for the proposed project.

The project would also comply with Condition 1, *Avoid Direct Impacts on Legally Protected Plant and Wildlife Species*, Condition 3, *Maintain Hydrologic Conditions and Protect Water Quality*, Condition 12, *Wetland and Pond Avoidance and Minimization, of the Habitat Plan*, and additional mitigation measures as described under the impact discussions, above. With compliance with Habitat Plan fees and conditions, and mitigation measures described in this chapter, the proposed project would not conflict with the Habitat Plan.

**Mitigation Measures:** Implement Mitigation Measures BI-1a, BI-3a, and BI-3b.

**Significance after Mitigation:** Less than significant.

**Stanford Community Plan**

The Stanford HCP covers three listed species: California red-legged frog, California tiger salamander, and San Francisco garter snake. Each of these species is highly unlikely to occur in the SCP housing opportunity sites or the potential future school location due to a lack of suitable habitat, isolation from any suitable habitat, and a lack of recorded observations. Furthermore, the SCP housing opportunity sites and potential future school location are within Stanford HCP Zone 4, which is comprised of developed lands that are surrounded by urban development and/or roads or are otherwise isolated from areas that support the covered species, and that do not support or cannot sustain the covered species. Furthermore, there are no Stanford HCP-related maximum

---

<sup>7</sup> Santa Clara Valley Habitat Agency Geobrowser. Available at <http://www.hcpmaps.com/habitat/>. Accessed January 13, 2020.

<sup>8</sup> Willdan Financial Services with Urban Economics, *Santa Clara Valley Habitat Plan Development Fee Nexus Study*, June 30, 2012.

limits of development in areas designated as Zone 4 (Stanford, 2018). Therefore, implementation of the SCP update would not conflict with the Stanford HCP and **No Impact** would occur.

---

### ***Cumulative Impacts***

This section presents an analysis of the cumulative effects of the proposed project in combination with other past, present, and reasonably foreseeable future projects that could cause cumulatively considerable impacts. Significant cumulative impacts related to Biological Resources could occur if the incremental impacts of the project combined with the incremental impacts of one or more of the cumulative projects or cumulative development projections included in the project description and described in Section 4.0.3, *Cumulative Impacts*.

#### **Impact BIO-7: Implementation of the proposed project, when combined with other past, present, or reasonably foreseeable projects, would not result in a substantial adverse effect related to biological resources. (*Level than Significant Impact, with Mitigation*)**

Significant cumulative impacts related to biological resources could occur if the incremental impacts of the project combined with the incremental impacts of one or more of the cumulative projects would cause the project to have a cumulatively considerable impact on special-status species, riparian habitat, wetlands, or other waters of the United States, or on other biological resources protected by federal, state, or local regulations or policies (based on the significance criteria and thresholds presented earlier). This analysis then considers whether the incremental contribution of the project's implementation to this cumulative impact would be considerable. Both conditions must apply for a project's cumulative effects to be significant.

The geographic scope of potential cumulative impacts on biological resources encompasses the project's development sites and biologically linked areas that share the San Francisquito Creek watershed and greater San Francisco Bay. Widespread historic development in the region has already caused substantial adverse cumulative changes to biological resources in the study area.

### **Housing Element Update**

#### **Special-status Plant Species and Sensitive Natural Communities**

The HEU's housing opportunity sites do not include habitat that would support special-status plant species or sensitive natural communities and implementation of the HEU would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would be **Less than Significant**.

#### **Nesting Birds and Special-status Roosting Bats**

Construction associated with the HEU's implementation could result in direct impacts on nesting birds and special-status roosting bats due to tree removal or trimming, or demolition of structures that could support nesting birds or roosting bats. Indirect construction-related impacts on nesting birds and roosting bats could include construction noise, vibration, and human activity near active bird nests and bat roosts during construction.

The cumulative projects identified in Section 4.0 of this EIR include 13 residential projects of 20 or more units within a one-mile radius of HEU housing sites located within the City of San José and the Stanford University campus. The four cumulative projects within one mile of the HEU opportunity sites are all located in the City of San José and are under construction or approved. These cumulative projects would have been required to comply with applicable regulatory requirements protecting biological resources, the relevant municipalities' local policies and ordinances, and project-specific mitigation measures (where applicable) like those of the HEU. In addition, cumulative projects in the City of San José would have been required to comply with the conditions and fees in the Habitat Plan. The six projects that are pending approval are planned to be constructed in already developed areas in the cities of Menlo Park and Palo Alto. These projects could potentially directly or indirectly impact nesting birds utilizing street trees and ornamental landscaping due to tree removal, clearing and grubbing, and increased noise, vibration and/or visual disturbance during construction, which could cause nest failure or abandonment.

The HEU, in combination with cumulative projects, could result in a significant cumulative impact on nesting birds during construction. However, with implementation of **Mitigation Measure BIO-1a, Avoid and Minimize Impacts on Nesting Birds** and **Mitigation Measure BIO-1b, Avoid and Minimize Impacts on Roosting Bats**, implementation of the HEU would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would be less than significant.

#### Riparian Habitat and Jurisdictional Wetlands or Waters

Construction within the HEU could result in direct impacts on potentially jurisdictional waters (i.e., ponds in parcels 649-24-013 and 649-23-001) due to fill associated with housing construction. Indirect construction-related impacts on jurisdictional waters could include equipment leaks, refueling, or improper storage or containment caused harmful material (e.g., concrete truck washout, sediment) to enter the ponds, especially during the rainy season.

Cumulative projects within one mile of the HEU that have been built, or are proposed to be built, are on parcels that are already developed and are not within or adjacent to riparian habitat nor jurisdictional wetlands or waters. Therefore, the HEU, in combination with cumulative projects, would not result in a considerable contribution to cumulative impacts to jurisdictional wetland and water, and the cumulative impact would be **Less than Significant**.

#### Wildlife Corridors and Nursery Sites

The vast majority of HEU opportunity sites are parcels that are currently developed, occupied by residents and domestic animals, and are surrounded by urban-suburban development. Animal movement in these parcels would not constitute a wildlife movement corridor and construction of the HEU opportunity sites would have no impact on wildlife movement corridors. Potential construction-related impacts on nesting birds and maternity roosting bats, inclusive of colonial roosters, could occur and addressed under *Nesting Birds and Roosting Bats*.

The cumulative projects identified in Section 4.0.3 of this EIR include 13 residential projects that have been built, or are proposed to be built, on parcels that are already developed. None of the cumulative projects, whether under construction, approved, or pending approval, is in a wildlife

corridor and, therefore, would have no potential impacts on wildlife corridors. However, potential construction-related impacts on nesting birds, inclusive of colonial roosters, could occur and addressed under *Nesting Birds and Roosting Bats*.

The HEU, in combination with cumulative projects, could result in a significant cumulative impact on nesting birds during construction. However, with implementation of **Mitigation Measure BIO-1a, Avoid and Minimize Impacts on Nesting Birds** and **BIO-1b, Avoid and Minimize Impacts on Roosting Bats** implementation of the HEU would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would **Less than Significant, with Mitigation**.

#### Policies and Ordinances

The HEU is primarily composed of currently developed planning areas, thereby limiting potential impacts on areas of special ecological significance identified in the Santa Clara County General Plan, such as baylands, freshwater marshes, riparian areas, serpentine geology, wildlife corridors, and endemic, native vegetation. Two ponds, which are potentially jurisdictional wetlands or waters are present in the HEU (parcel 649-24-013 and 649-23-001). Implementation of **BIO-3a, Aquatic Resources Delineation**, and **BIO-3b, Implement Condition 12 of the Santa Clara Valley Habitat Plan** avoids and minimizes impacts to wetlands and waters. Trees protected by the Santa Clara County Tree Preservation and Removal Ordinance could be removed or trimmed as part of project implementation and, if so, would comply with the Ordinance by only removing protected trees authorized by an approved County tree removal permit and by complying with the County's tree replacement requirements. Therefore, the HEU is consistent with the goals and policies under the Santa Clara County General Plan and Santa Clara County Tree Preservation and Removal Ordinance.

None of the cumulative projects, whether under construction, approved, or pending approval, have the potential to impact special-status plant or wildlife species, riparian habitat, sensitive natural communities, or wildlife corridors. However, the cumulative projects could potentially directly or indirectly impact nesting birds protected by the MBTA due to clearing and grubbing, tree trimming or removal, or increased noise, vibration and/or visual disturbance during construction, which could cause nest/roost failure or abandonment. These cumulative projects would be required to comply with applicable regulatory requirements protecting biological resources, Santa Clara County General Plan and Santa Clara County Tree Preservation and Removal Ordinance, and project-specific mitigation measures (where applicable) like those of the HEU; therefore, implementation of the HEU would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would be **Less than Significant**.

#### Adopted Habitat Conservation Plan

None of the Habitat Plan covered species or natural communities are expected to occur in the HEU housing opportunity sites. However, portions of the project area are located within fee zones and are subject to conditions identified in Chapter 6 of the Habitat Plan. Applicable fees and conditions would be determined during the entitlement or permitting phase for the proposed project and the project would be required to comply with such fees and conditions, as well as additional mitigation measures as described under the impact discussions, above.

Because the City of San José is a permittee under the Habitat Plan, cumulative projects within the City of San José would be subject Habitat Plan fees and conditions, as well as project-specific mitigation measures (where applicable) like those of the HEU.

The HEU, in combination with cumulative projects, could result in a significant cumulative impact on biological resources covered under the Habitat Plan. However, with compliance with application Habitat conditions and fees, and project-specific mitigation measures (as applicable), implementation of the HEU would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would be less than significant.

### **Stanford Community Plan**

#### **Special-status Plant Species and Sensitive Natural Communities**

Development areas associated with the SCP update do not include habitat that would support special-status plant species or sensitive natural communities and implementation of the SCP update would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would be **Less than Significant**.

#### **Special-status Wildlife**

Similar to the HEU, construction within the SCP update area could result in direct impacts on nesting birds and special-status roosting bats due to trimming or removal of trees that could support nesting birds or roosting bats. Indirect construction-related impacts on nesting birds and roosting bats could include construction noise, vibration, and human activity near active bird nests and bat roosts during construction.

Cumulative projects within one mile of the SCP update housing opportunity sites are in the Cities of Menlo Park and Palo Alto. Three of the cumulative projects are under construction or approved and would have been required to comply with applicable regulatory requirements protecting biological resources, the relevant municipalities' local policies and ordinances, and project-specific mitigation measures (where applicable) like those of the SCP update. In addition, cumulative projects in these cities would have been required to comply with the conditions and fees in the Stanford Conservation Plan. The six projects that are pending approval would be constructed in already developed areas in the cities of Menlo Park and Palo Alto. These projects could potentially directly or indirectly impact nesting birds utilizing street trees and ornamental landscaping due to tree removal, clearing and grubbing, and increased noise, vibration and/or visual disturbance during construction, which could cause nest failure or abandonment.

The SCP update, in combination with cumulative projects, could result in a significant cumulative impact on nesting birds during construction. However, with implementation of **Mitigation Measure BIO-1a, Avoid and Minimize Impacts on Nesting Birds**, implementation of the SCP update would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would be less than significant.

### Riparian Habitat and Jurisdictional Wetlands or Waters

Construction associated with the SCP update has no potential to directly impact riparian habitat nor jurisdictional wetland or waters. All the cumulative projects within one mile of the affected areas of the SCP update area have been built, or are proposed to be built, on parcels that are already developed. None of the cumulative projects, whether under construction, approved, or pending approval, are within or adjacent to riparian habitat or jurisdictional wetlands or waters. Therefore, the SCP update, in combination with cumulative projects, would not result in a considerable contribution to cumulative impacts to jurisdictional wetlands or waters, and the cumulative impact would be **Less than Significant**.

### Wildlife Corridors and Nursery Sites

The SCP update primarily includes parcels that are currently developed. Parcel 142-04-036b is not developed; however, it is part of a larger undeveloped area that is surrounded by the Stanford campus and Stanford Shopping Center and would be used only by wildlife species that tolerate human habitation. Animal movement in these parcels would not constitute a wildlife movement corridor and construction of the SCP update opportunity sites would have no impact on wildlife movement corridors. Potential construction-related impacts on nesting birds and maternity roosting bats, inclusive of colonial roosters, could occur and addressed under *Nesting Birds and Roosting Bats*.

The cumulative projects identified in Section 4.0.3 of this EIR include 13 residential projects that have been built, or are proposed to be built, on parcels that are already developed. None of the cumulative projects, whether under construction, approved, or pending approval, is in a wildlife corridor and, therefore, would have no potential impacts on wildlife corridors. However, potential construction-related impacts on nesting birds, inclusive of colonial roosters, could occur and addressed under *Nesting Birds and Roosting Bats*.

The SCP update, in combination with cumulative projects, could result in a significant cumulative impact on nesting birds and roosting bats during construction. However, with implementation of **Mitigation Measure BIO-1a, Avoid and Minimize Impacts on Nesting Birds** and **BIO-1b, Avoid and Minimize Impacts on Roosting Bats**, implementation of the SCP update would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would be **Less than Significant, with Mitigation**.

### Policies and Ordinances

The SCP update opportunity sites are currently developed parcels, thereby limiting potential impacts on biodiversity and areas of special ecological significance, such as baylands, freshwater marshes, riparian areas, serpentine geology, wildlife corridors, and endemic, native vegetation. None of these habitats is present in the SCP update study area. The cumulative projects are also planned for currently developed, highly urbanized parcels that lack sensitive biological resources. Therefore, the SCP update, in combination with cumulative projects, would not result in a considerable contribution to cumulative impacts to consistency with local policies and ordinances, and the cumulative impact would be **Less than Significant**.

### Adopted Habitat Conservation Plan

The Stanford HCP covers three listed species: California red-legged frog, California tiger salamander, and San Francisco garter snake, none of which are expected in the SCP update housing opportunity sites. In addition, the SCP housing opportunity sites are within Stanford HCP Zone 4, which does not support and cannot sustain the covered species (Stanford, 2018). Cumulative projects are planned for currently developed, highly urbanized parcels that lack suitable habitat for any special-status species. Therefore, the SCP update, in combination with cumulative projects, would not result in a considerable contribution to cumulative impacts to an adopted habitat conservation plan, and the cumulative impact would be **Less than Significant**.

---

### 4.3.5 References

- California Department of Fish and Wildlife (CDFW), 2022. California Natural Diversity Database printout for U.S. Geological Survey 7.5-minute topographic quadrangles: Benicia, Walnut Creek, Vine Hill, Honker Bay, Briones Valley, Clayton, Oakland East, Las Trampas Ridge, and Diablo, 2021. Accessed October 20, 2022.
- California Native Plant Society (CNPS), 2022. CNPS Rare Plant Program, Online Inventory of Rare and Endangered Plants of California (online editions, v9-01 1.0). Available online: <https://www.rareplants.cnps.org/>. Accessed October 20, 2022.
- California Natural Diversity Database (CNDDDB), 2022. Special Animals List. California Department of Fish and Wildlife. Sacramento, CA. Published October 2022.
- County of Santa Clara, 1994. *County of Santa Clara General Plan*. Available online: <https://plandev.sccgov.org/ordinances-codes/general-plan>. Accessed August 15, 2022.
- County of Santa Clara, 2000. *Stanford University Community Plan*. Available online: [https://stgenpln.blob.core.windows.net/document/SU\\_CP.pdf](https://stgenpln.blob.core.windows.net/document/SU_CP.pdf). Accessed August 15, 2022.
- Environmental Science Associates (ESA), 2022. Personal observations during field survey. October 21, 2022.
- Santa Clara Valley Habitat Plan (SCVHP), 2012. Prepared by ICF International. August 2012.
- Stanford University, 2013. *Stanford University Habitat Conservation Plan*. March 2013.
- Stanford University, 2018. *Stanford University 2018 General Use Permit Final Environmental Impact Report, Volume I*. December 2018.
- Tuttle, M., 1991. How North America Bats Are at Their Most Vulnerable during Hibernation and Migration, *BATS Magazine* 9(3), fall 1991, [https://sj-admin.s3-us-west-2.amazonaws.com/1991\\_0000\\_Tuttle\\_HowNorthAmericanBats.pdf](https://sj-admin.s3-us-west-2.amazonaws.com/1991_0000_Tuttle_HowNorthAmericanBats.pdf), accessed April 28, 2021.
- U.S. Fish and Wildlife Service (USFWS), 2022a. *Official List of Federal Endangered and Threatened Species that Occur in or May Be Affected by the Project*. Accessed October 20, 2022.



U.S. Fish and Wildlife Service (USFWS), 2022b. ECOS Environmental Conservation Online System Critical Habitat Mapper, 2010. Available at <https://ecos.fws.gov/ecp/report/table/critical-habitat.html>. Accessed October 20, 2022.

U.S. Fish and Wildlife Service (USFWS), 2023. National Wetlands Inventory Wetlands Mapper. Available at <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>. Accessed April 14, 2023.

U.S. Geological Survey (USGS), 2017. Western Ecological Research Center (WERC). Bioregions of the Pacific U.S. Available at <https://www.usgs.gov/centers/werc/science/bioregions-pacific-us>. Accessed October 20, 2022.

This page intentionally left blank