
3.4 - Biological Resources

3.4.1 - Introduction

This section describes the existing biological setting and potential effects from project implementation on the site and its surrounding area. Descriptions and analyses in this section are based on a Biological Resource Assessment conducted by MBA, including a reconnaissance survey. The results of the assessment are presented entirely in this section and the supporting documentation is provided in Appendix D.

3.4.2 - Environmental Setting

Overview

SEQ Area

The SEQ Area is located immediately south of the City of Morgan Hill, along the southeastern city limit boundary. The approximately 1,290-acre SEQ Area is generally bounded by Condit Road and Highway 101 (US 101) to the West, San Pedro Avenue to the north, Carey Avenue to the east, and Maple Avenue to the south. Existing land uses west of the SEQ Area primarily include hotels, recreational vehicle and motorcycle sales, the City of Morgan Hill Outdoor Sports Center, and the Morgan Hill Aquatics Center. Further to the south, properties west of US 101 are unincorporated and contain undeveloped lands, commercial land uses, and rural residential land uses similar to the SEQ Area.

The northern boundary of the SEQ Area is adjacent to the existing Morgan Hill city limits and San Pedro Avenue. Adjacent land uses to the north within the city limits consist of undeveloped land and residential land uses. The City's Outdoor Sports Center is also located to the north. North of San Pedro Avenue, in the unincorporated county, are agricultural uses, a winery, and single-family residences.

Carey Avenue, a rural road, generally forms the eastern boundary of the project site, and is located at the undeveloped foothills of the Mount Hamilton Range. Land uses east of Carey Avenue are primarily open space and rural residential in nature.

Maple Avenue forms the southern boundary of the project area. Primary land uses south of Maple Avenue include agricultural and rural residential uses. The Institute Golf Course also lies south of Maple Avenue.

High School Site

The proposed High School site is bounded on the west by Murphy Avenue. Current land uses to the west include agriculture, orchards, and the Morgan Hill Aquatics Center. Barrett Avenue forms the northern boundary of the site. To the north of Barrett Avenue are several rural residences and agricultural lands. The eastern boundary of the school site is comprised mainly of greenhouses used

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for growing flowers and vegetables, as well as the associated offices and employee residences. The southern boundary of the school site is Tennant Avenue. Several rural residences and agricultural lands occur to the south of Tennant Avenue.

Soils

SEQ Area

The SEQ project area is underlain by 12 soil mapping units, described in Table 3.4-1 and shown in Exhibit 3.2-2. Four of these soils are hydric; however, none are serpentine.

Table 3.4-1: Soils Summary

Soil Mapping Unit	Drainage/Permeability	Hydric
Arbuckle gravelly loam (0–2% slopes)	Well drained/moderately to slow permeability	No
Azule clay loam	Well drained/slow permeability	No
Clear Lake clay	Poorly drained/slow to very slow permeability	Yes
Cortina very gravelly loam	Somewhat excessively drained/rapid permeability	Yes
Cropley clay (0–2% slopes)	Moderately to well drained/sow permeability	Yes
Cropley clay (2–9% slopes)	Moderately to well drained/slow permeability	No
Hillgate silt loam	Moderately to well drained/very slow to slow permeability	No
Pleasanton loam	Well to moderately drained/saturated hydraulic conductivity low	No
Pleasanton gravelly loam	Well to moderately drained/saturated hydraulic conductivity low	No
Rincon clay loam (0–2% slopes)	Well drained/slow permeability	No
Rincon clay loam (2–9% slopes)	Well drained/slow permeability	No
San Ysidro loam (0–2% slopes)	Moderately well drained/very slow permeability	Yes
Source: Natural Resources Conservation Service, 2011.		

The SEQ and its surrounding area are found within a Mediterranean climate with dry hot summers and cool wet winters. Temperatures in the Morgan Hill area range from an average high of 88.1 degrees Fahrenheit (°F) in July to an average low of 37.0°F in December. Rainfall averages 20.96 inches annually, most of which falls between October and March. Nearly all precipitation falls in the form of rain. Stormwater runoff readily infiltrates the soils of the SEQ, and when field capacities are reached, gravitational flows enter Tennant, Foothill, and Maple Creeks.

High School Site

Exhibit 3.2-2 provides the soils mapping for the proposed High School site. As shown in the exhibit, the High School site soils consist primarily of Arbuckle gravelly loam and a small portion of the northwestern corner consists of San Ysidro Loam.

Current Land Uses

SEQ Area

The acreages of the various land uses that currently comprise the SEQ Area can be found in Table 3.4-2.

Table 3.4-2: Land Use Types and Associates Acreages

Land Use Type	Acreage
Agricultural (Row Crops)	976
Grassland	12
Orchard	10
Riparian	18
Vineyard	10
Orchard/Residential	76
Low Density Residential	117
Residential	71
Residential/Commercial	10
Note: Acreages are approximate. Source: Michael Brandman Associates, 2011.	

High School Site

The 38-acre High School site contains agricultural row crops, three rural residences, and ornamental vegetation.

Vegetation and Wildlife

SEQ Area and High School Site

Much of the vegetation throughout the SEQ Area consists of various row crops including but not limited to oats, strawberries, and corn; orchard trees; and landscape trees and shrubs associated with residences. The natural vegetation in the MHPA is comprised mainly of ruderal species such as slender oat (*Avena barbata*), mustard (*Brassica* sp.), ripgut brome (*Bromus diandrus*), Italian thistle (*Carduus pycnocephalus*), pineapple weed (*Chamomilla suaveolens*), field bindweed (*Convolvulus arvensis*), foxtail (*Hordeum murinum*), cheeseweed (*Malva parviflora*), bristly oxtongue (*Picris echioides*), English plantain (*Plantago lanceolata*), and wild radish (*Raphanus sativus*). The landscape is dotted with the occasional coast live oak (*Quercus agrifolia*) and valley oak (*Q. lobata*).

Amphibians and reptiles that could or do occur in the upland areas of the site include Pacific chorus frog (*Hyla regilla*), western fence lizard (*Sceloporus occidentalis*) [observed], gopher snake (*Pituophis catenifer*), and western rattlesnake (*Crotalus viridis*).

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Avian species that do or likely occur in the upland areas of the site include turkey vulture (*Cathartes aura*) [observed], white-tailed kite (*Elanus leucurus*), northern harrier (*Circus cyaneus*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), killdeer (*Charadrius vociferus*) [observed], rock dove (*Columba livia*) [observed], mourning dove (*Zenaidura macroura*) [observed], barn owl (*Tyto alba*), great horned owl (*Bubo virginianus*), Anna's hummingbird (*Calypte anna*), acorn woodpecker (*Melanerpes formicivorus*) [observed], Nuttall's woodpecker (*Picoides nuttallii*), black phoebe (*Sayornis nigricans*), loggerhead shrike (*Lanius ludovicianus*) [observed], scrub jay (*Aphelocoma californica*) [observed], American crow (*Corvus brachyrhynchos*), swallows, American robin (*Turdus migratorius*), northern mockingbird (*Mimus polyglottos*) [observed], European starling (*Sturnus vulgaris*), sparrows, red-winged blackbird (*Agelaius phoeniceus*) [observed], western meadowlark (*Sturnella neglecta*), Brewer's blackbird (*Euphagus cyanocephalus*) [observed], and house finch (*Carpodacus mexicanus*) [observed]. Other avian species are likely to visit the site during annual migration. While the SEQ Area supports suitable habitat for burrowing owls (*Athene cunicularia*), none have been observed anywhere within Morgan Hill in the past several years.

Mammalian species that do or likely occur in the upland areas of the site include the following: opossum (*Didelphis virginiana*), Brazilian free-tailed bat (*Tadarida brasiliensis*), desert cottontail (*Sylvilagus audubonii*), black-tailed jackrabbit (*Lepus californicus*), California ground squirrel (*Spermophilus beecheyi*), Botta's pocket gopher (*Thomomys bottae*), house mouse (*Mus musculus*), California vole (*Microtus californicus*), coyote (*Canis latrans*), raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), and mule deer (*Odocoileus hemionus*).

In addition to the upland species listed above, wet areas associated with Tennant Creek supported California blackberry (*Rubus ursinus*), elderberry (*Sambucus mexicanus*), willow (*Salix* sp.), tule (*Schoenoplectus acutus* var. *occidentalis*) and milk thistle (*Silybum marianum*). One area (southeast corner of Hill and Barrett) had spearmint (*Mentha spicata*) growing in the drainage, although these plants were recruits from mint growing in greenhouses adjacent to the drainage.

Amphibians and reptiles that do or could potentially occur in wet areas of the site include California tiger salamander (*Ambystoma californiense*), ensatina (*Ensatina eschscholtzii*), western toad (*Bufo boreas*), Pacific chorus frog, California red-legged frog (*Rana draytonii*), Pacific pond turtle (*Actinemys marmorata*), and common garter snake (*Thamnophis sirtalis*). None of these species were observed during the reconnaissance survey conducted for the site.

Vegetation Communities and Wildlife Habitats (SEQ Area and High School Site)

Non-Sensitive Biological Communities

Non-sensitive biological communities in the SEQ Area include non-native annual grassland, which typically occurs in open areas of valley sand foothills throughout California, usually on fine textured clay or loam soils that are somewhat poorly drained. Non-native grassland is typically dominated by non-native annual grasses and forbs along with scattered native wildflowers.

Sensitive Biological Communities

Sensitive biological communities include habitats that fulfill special functions or have special values, such as wetlands, streams, and riparian habitat. These habitats are protected under federal regulations (such as the Clean Water Act), state regulations (such as the Porter-Cologne Act, the California Department of Fish and Wildlife (CDFW) Streambed Alteration Program, and CEQA), or local ordinances or policies (City or County Tree Ordinances, Special Habitat Management Areas, and General Plan Elements).

Watercourses in the SEQ Area

A portion of Tennant Creek runs in a north-south direction beginning near the northeast corner of the site near San Pedro Avenue and Hill Road, and generally follows Hill Road south, leaving the SEQ Area at its southern boundary on Maple Avenue. This feature contains culverts and is channelized in some areas, where it crosses under roads. The most natural features (e.g., riparian vegetation) exist near the intersections of Hill Road and Barrett Avenue, and Tennant and Maple Avenues. Foothill and Maple Creeks also occur within the SEQ Area, and generally run in an east-west direction. All three creeks are shown as blue line features for at least a part of their length within the project boundary. These creeks are tributaries to Coralitos Creek, and their waters eventually drain to the Monterey Bay.

Waters of the United States

The U.S. Army Corps of Engineers (USACE) regulates “Waters of the United States” under Section 404 of the Clean Water Act. Waters of the U.S. are defined broadly as waters susceptible to use in commerce, including interstate waters and wetlands; all other waters (intrastate water bodies, including wetlands); and their tributaries (33 CFR 328.3). Potential wetland areas, according to the three criteria used to delineate wetlands stated in the Corps of Engineers Wetlands Delineation Manual, are identified by the presence of (1) hydrophytic vegetation, (2) hydric soils, and (3) wetland hydrology. Areas that are inundated for sufficient duration and depth to exclude growth of hydrophytic vegetation are subject to Section 404 jurisdiction as “other waters” and are often characterized by an ordinary high water mark. Other waters generally include lakes, rivers, and streams. The placement of fill material into Waters of the U.S. (including wetlands) generally requires an individual or nationwide permit from the USACE under Section 404 of the Clean Water Act.

Waters of the State

The term “Waters of the State” is defined by the Porter-Cologne Act as “any surface water or groundwater, including saline waters, within the boundaries of the state.” The Regional Water Quality Control Board (RWQCB) protects all waters in its regulatory scope, but has special responsibility for wetlands, riparian areas, and headwaters. These water bodies have high resource value, are vulnerable to filling, and are not systematically protected by other programs. RWQCB jurisdiction includes “isolated” wetlands and waters that may not be regulated by the USACE under Section 404. Waters of the State are regulated by the RWQCB under the State Water Quality

Certification Program, which regulates discharges of fill, and dredged material under Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act. Projects that require a USACE permit or that fall under other federal jurisdiction and have the potential to impact waters of the State are required to comply with the terms of the Water Quality Certification determination. If a proposed project does not require a federal permit but does involve dredge or fill activities that may result in a discharge to Waters of the State, the RWQCB has the option to regulate the dredge and fill activities under its state authority in the form of Waste Discharge Requirements.

Streams, Lakes, and Riparian Habitat

Streams and lakes, as habitat for fish and wildlife species, are subject to jurisdiction by CDFW under Sections 1600-1616 of the California Fish and Game Code. Alterations to or work within or adjacent to streambeds or lakes generally require a 1602 Lake and Streambed Alteration Agreement. The term stream, which includes creeks and rivers, is defined in the California Code of Regulations (CCR) as follows: “a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation” (14 CCR 1.72). In addition, the term stream can include ephemeral streams, dry washes, watercourses with subsurface flows, canals, aqueducts, irrigation ditches, and other means of water conveyance if they support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife. Riparian is defined as, “on, or pertaining to, the banks of a stream”; therefore, riparian vegetation is defined as “vegetation which occurs in and/or adjacent to a stream and is dependent on, and occurs because of, the stream itself.” Removal of riparian vegetation also requires a Section 1602 Lake and Streambed Alteration Agreement from CDFW.

Other Sensitive Biological Communities

Other sensitive biological communities not discussed above include habitats that fulfill special functions or that have special values. Natural communities considered sensitive are those identified in local or regional plans, policies, regulations, or by the CDFW. CDFW ranks sensitive communities as “threatened” or “very threatened” and keeps records of their occurrences in its Natural Diversity Database.

Sensitive plant communities are also identified by CDFW and, more recently, the List of Vegetation Alliances. California Natural Diversity Database (CNDDB) vegetation alliances are ranked 1 through 5 based on NatureServe’s (2010) methodology, with those alliances ranked 1 through 3 considered sensitive. Impacts to sensitive natural communities identified in local or regional plans, policies, regulations or by the CDFW or the United States Fish and Wildlife Service (USFWS) must be considered and evaluated under CEQA (California Code of Regulations: Title 14, Div. 6, Chap. 3, Appendix G). Specific habitats may also be identified as sensitive in City or County General Plans or ordinances.

Special-Status Species

Special-status species are those animal and plant species that, in the judgment of the resource agencies, trustee agencies, and certain non-governmental organizations, warrant special consideration in the CEQA process. This includes the following species:

- Officially designated “threatened,” “endangered,” or “candidate” species federally listed by USFWS and protected under the Federal Endangered Species Act.
- Officially designated “rare,” “threatened,” “endangered,” or “candidate” species state listed by CDFW and protected under the California Endangered Species Act. CDFW also maintains a list of “Fully Protected” species as well as “California Special Concern” species that are also generally included as special-status species under CEQA.
- Species considered rare, threatened, or endangered under the conditions of Section 15380 of the CEQA Guidelines, such as plant species identified on lists 1A, 1B, and 2 in the California Native Plant Society (CNPS) Inventory of Rare and Endangered Vascular Plants of California.
- Bat species listed as Medium or High Priority by the Western Bat Working Group.
- Other species considered sensitive, such as nests of birds listed in the Migratory Bird Treaty Act (MBTA), which includes most native birds, and plants included in lists 3 and 4 in the CNPS Inventory.

California Natural Diversity Database

The CNDDDB provides listings of special-status plant and wildlife species for various geographical areas in California. Based upon a review of the resources and databases available for the study area, there are no special status plant or animals recorded by the CNDDDB within the SEQ Area. The reconnaissance survey conducted by MBA in May 2011 did not identify the presence of any of these species, although this does not confirm absence. Accordingly, for several species a probability for occurrence of low or moderate is assumed.

It is important to remember that the CNDDDB is a volunteer database and it is possible that species recorded nearby could occur within the project boundary. A total of 12 special-status plant species and four special-status wildlife species have been recorded by the CNDDDB within 5 miles of the SEQ Area. These species are summarized in Table 3.4-3 and Table 3.4-4.

Table 3.4-3: Summary of Special-Status Plant Species

Scientific Name Common name	Listing Status USFWS/CDFW/ CNPS	General Habitat Description	Potential for Impacts	Period of Identification
<i>Balsamorhiza macrolepis</i> var. <i>macrolepis</i> big-scale balsamroot	—/—/1B.2	A perennial plant found on chaparral, cismontane woodland, and valley and foothill grassland; sometimes on serpentinite. 90 to 1,555 meters in elevation.	None. The project area has been used for farmland and orchards, and therefore does not support suitable habitat for big-scale balsamroot. There are 14 CDNNB-recorded occurrences of the species within 5 miles of the site, all occurring in natural habitats (or what were natural habitats prior to development) (CNDDDB 2011).	March to June
<i>Castilleja affinis</i> ssp. <i>neglecta</i> Tiburon paintbrush	FE/CT/1B.2	A perennial plant found on valley and foothill grassland (Serpentinite) 60 to 400 meters in elevation.	None. The project area does not contain serpentinite soils, and therefore does not support suitable habitat for Tiburon paintbrush. There is one CNDDDB-recorded occurrence of this species within 5 miles of the site (CNDDDB 2011).	April to June
<i>Ceanothus ferrisiae</i> coyote ceanothus	FE/—/1B.1	A perennial plant found on chaparral, valley and foothill grassland, and coastal scrub (Serpentinite). 120-460 meters in elevation.	None. The project area does not contain serpentinite soils, and therefore does not support suitable habitat for coyote ceanothus. There are three CNDDDB-recorded occurrences of this species within 5 miles of the site (CNDDDB 2011).	January to May
<i>Cirsium fontinale</i> var. <i>campylon</i> Mt. Hamilton fountain thistle	—/—/1B.2	A perennial plant found on serpentinite seeps within cismontane woodland, and valley and foothill grasslands. 100 to 890 meters in elevation.	None. The project area does not contain serpentinite soils, and therefore does not support suitable habitat for Mt. Hamilton fountain thistle. There are five CNDDDB-recorded occurrences of this species within 5 miles of the site (CNDDDB 2011).	February to October

Table 3.4-3 (cont.): Summary of Special-Status Plant Species

Scientific Name Common name	Listing Status USFWS/CDFW/ CNPS	General Habitat Description	Potential for Impacts	Period of Identification
<i>Collinsia multicolor</i> San Francisco collinsia	—/—/1B.2	An annual plant found on closed-cone coniferous forest and costal scrub habitats, sometimes on serpentinite soils. 30 to 250 feet in elevation.	None. The project area has been used for farming and orchards, and as such offers no suitable habitat for San Francisco collinsia. There is 1 CNDDDB-recorded occurrence of the species within 5 miles of the site (CNDDDB 2011).	March to May
<i>Dudleya setchellii</i> Santa Clara Valley dudleya	FE/—/1B.1	A perennial plant found on cismontane woodland, valley and foothill grassland in serpentinite, rocky soils. 60 to 455 meters in elevation.	None. The project area does not contain serpentinite rocky soils, and therefore does not support suitable habitat for Santa Clara Valley dudleya. There are 10 CNDDDB-recorded occurrences of this species within 5 miles of the site (CNDDDB 2011).	April to October
<i>Lessingia micradenia</i> var. <i>glabrata</i> smooth lessingia	—/—/1B.2	An annual plant found on serpentinite soils, often on roadsides, and chaparral and crismontane woodlands. 120-420 meters in elevation	None. The project area does not contain serpentinite soils, and therefore does not support suitable habitat for smooth lessingia. There are seven CNDDDB-recorded occurrences of this species within 5 miles of the site (CNDDDB 2011).	July to November
<i>Malacothamnus arcuatus</i> arcuate bush-mallow	—/—/1B.2	A perennial plant found on chaparral and crismontane woodlands. 15-355 meters in elevation.	None. The project area has been used for farming and orchards, and as such offers no suitable habitat for arcuate bush mallow. There is one CNDDDB-recorded occurrence of the species within 5 miles of the site (CNDDDB 2011).	April to September

Table 3.4-3 (cont.): Summary of Special-Status Plant Species

Scientific Name Common name	Listing Status USFWS/CDFW/ CNPS	General Habitat Description	Potential for Impacts	Period of Identification
<i>Malacothamnus hallii</i> Hall's bush-mallow	—/—/1B.2	A perennial plant found on chaparral and coastal scrub. 10-760 meters in elevation.	None. The project area has been used for farming and orchards, and as such offers no suitable habitat for Hall's bush-mallow. There are three CNDDDB-recorded occurrences of the species within 5 miles of the site (CNDDDB 2011).	May to October
<i>Monolopia gracilens</i> woodland woolythreads	—/—/1B.2	An annual plant found on openings of broad leaved upland forest, chaparral, and north coast coniferous forests; crismontane woodland and valley and foothill grasslands. 100-1200 meters in elevation.	None. The project area has been used for farming and orchards, and as such offers no suitable habitat for woodland woolythreads. There is one CNDDDB-related occurrence of the species within 5 miles of the site (CNDDDB 2011).	February to July
<i>Streptanthus albidus</i> ssp. <i>albidus</i> Metcalf Canyon jewel-flower	FE/—/1B.1	An annual plant restricted to serpentine soils in valley and foothill grassland habitat. 45 to 800 meters in elevation.	None. The project area does not contain serpentinite soils, and therefore does not support suitable habitat for Metcalf Canyon jewel-flower. There is one CNDDDB-recorded occurrence of this species within 5 miles of the site (CNDDDB 2011).	April to July
<i>Streptanthus albidus</i> ssp. <i>peramoenus</i> most beautiful jewel-flower	—/—/1B.2	An annual plan found on Chaparral, cismontane woodland, and valley and foothill grassland with serpentinite soils. 94 to 1,000 meters in elevation.	None. The project area does not contain serpentinite soils, and therefore does not support suitable habitat for most beautiful jewel-flower. There are five CNDDDB-recorded occurrences of this species within 5 miles of the site (CNDDDB 2011).	March to October

Table 3.4-3 (cont.): Summary of Special-Status Plant Species

Scientific Name Common name	Listing Status USFWS/CDFW/ CNPS	General Habitat Description	Potential for Impacts	Period of Identification
Status Codes				
Federal FE = Federally Endangered FT = Federally Threatened FD = Federally Delisted	State CE = State Endangered CT = State Threatened CSC = State Species of Special Concern	CNPS 1A = Presumed extinct in CA 1B.X = Rare, Threatened, or Endangered in CA or elsewhere 2.X = Rare, Threatened, or Endangered in CA but more common elsewhere 3.X = More information is needed Extensions: X.1 = seriously threatened in CA, X.2 = Fairly threatened in CA		

Table 3.4-4: Summary of Special-Status Wildlife Species

Scientific Name Common name	Listing Status USFWS/CDFW/WBVG	General Habitat Description	Potential for Impacts	Period of Identification
Invertebrates				
<i>Euphydryas editha bayensis</i> Bay checkerspot butterfly	FT/—/—	Restricted to native grasslands on outcrops of serpentine soils in the vicinity of San Francisco Bay.	None. None of the soils within the SEQ are serpentine, which is a necessary component of Bay checkerspot butterfly habitat.	February to May
Fishes				
<i>Oncorhynchus mykiss</i> Central California Coastal steelhead	FT/—/—	Central Coast rivers and streams from the Russian River south to Aptos Creek.	None. The relatively small amount of aquatic habitat within the project site does not support suitable habitat for steelhead. Furthermore, there are no CNDDDB-recorded occurrences of this species within 5 miles of the project site (CNDDDB 2011).	To be determined based on consultation with National Marine Fisheries Service

Table 3.4-4 (cont.): Summary of Special-Status Wildlife Species

Scientific Name Common name	Listing Status USFWS/CDFW/WBVG	General Habitat Description	Potential for Impacts	Period of Identification
Amphibians				
<i>Ambystoma californiense</i> California tiger salamander	FT/CT/—	Annual grassland habitat and grassy understory of valley-foothill hardwood habitats. Uncommon along stream courses in valley-foothill riparian habitats. Adults spend most of the year in subterranean refugia, especially burrows of California ground squirrels. Migrate to vernal pools and other temporary rainwater ponds to breed and lay eggs.	Low. The project area supports only marginally suitable breeding habitat for the California tiger salamander occurring within pooled areas of the local drainages. Upland estivation habitat is present throughout the SEQ Area. There are 14 CNDDDB-recorded occurrences of CTS within 5 miles of the site, and the closest known occurrences are approximately 1 mile to the southeast and northeast of the SEQ; these animals were observed in 2001 and 2002 (CNDDDB 2011).	March to May (aquatic larval sampling)
<i>Rana boylei</i> Foothill yellow-legged frog	—/CSC	Partly shaded, shallow streams and riffles with a rocky substrate in a variety of habitats.	None. While the project areas offers marginally suitable breeding habitat for the foothill yellow-legged frog, there are no CNDDDB-recorded occurrences of this species within five miles of the project site (CNDDDB 2011). This species is not expected to occur within the project area.	January to February (adult visual survey)
<i>Rana draytonii</i> California red-legged frog	FT/CSC/—	Lowlands and foothills in or near permanent or late-season sources of deep water with dense, shrubby, or emergent vegetation.	Moderate. The project area supports potential breeding habitat for the California red-legged frog within shaded pools along the local drainages. There are eight CNDDDB-recorded occurrences of the species within 5 miles of the site, and the three	January to September (survey time to observe all life stages)

Table 3.4-4 (cont.): Summary of Special-Status Wildlife Species

Scientific Name Common name	Listing Status USFWS/CDFW/WBVG	General Habitat Description	Potential for Impacts	Period of Identification
			closest occurrences were recorded in 2001 within approximately 1 mile of the SEQ, in ponds of the local golf course located adjacent to the southeast corner of the SEQ. According to the CNDDDB, these animals were thought to migrate from an unnamed tributary of Corralitos Creek to the golf course ponds (CNDDDB 2011).	
Reptiles				
<i>Actinemys marmorata</i> Pacific pond turtle	—/CSC/—	Associated with permanent or nearly permanent water in a wide variety of habitats. Requires basking sites. Nests sites may be found up to 0.5 km from water.	Low. The aquatic features within the project area support suitable habitat for the Pacific pond turtle; however, there are only four CNDDDB-related occurrences of the species within 5 miles of the site (CNDDDB 2011). Furthermore, none were observed during the reconnaissance visit to the site.	Year-round (for adults in aquatic environment)
Birds				
<i>Elanus leucurus</i> white-tailed kite	—/CFP/—	Rolling foothills and valley margins with scattered oaks and river bottomlands or marshes next to deciduous woodland. Open grasslands, meadows, or marshes for foraging close to isolated, dense-topped trees for nesting and perching.	Low. While the project area supports suitable foraging habitat for the white-tailed kite and moderate nesting habitat (tall, mature trees), no obvious stick nests were observed during the reconnaissance survey, and the lands surrounding the project area support similar if not more highly suitable habitat for the species. There are no CNDDDB-	Year Round February to August (breeding)

Table 3.4-4 (cont.): Summary of Special-Status Wildlife Species

Scientific Name Common name	Listing Status USFWS/CDFW/WBWG	General Habitat Description	Potential for Impacts	Period of Identification
			related occurrences of the species within 5 miles of the site (CNDDDB 2011).	
<i>Circus cyaneus</i> northern harrier	—/CSC/—	Winter resident throughout most of the state; year-round in the Central Valley and Coast Range. Forages in marshes, grasslands, and ruderal habitats; nests in extensive marshes and wet fields or grasslands.	Low. While the project area supports suitable foraging habitat for the northern harrier it supports only marginal nesting habitat (tall grasses in which to make ground nests). The lands surrounding the project area support similar if not more highly suitable habitat for the species. There are no CNDDDB-related occurrences of the species within 5 miles of the site (CNDDDB 2011).	Year Round February to August (breeding)
<i>Haliaeetus leucocephalus</i> bald eagle	FD/CFP/—	Ocean shore, lake margins, and rivers for both nesting and wintering. Most nests within 1 mi of water. Nests in large, old growth, or dominant live tree w/open branches, especially ponderosa pine. Roosts communally in winter.	None. The project area does not support suitable habitat for bald eagles. Furthermore, there are no CNDDDB-recorded occurrences of this species within five miles of the project site (CNDDDB 2011).	Year Round
<i>Aquila chrysaetos</i> golden eagle	—/CSC,CFP/—	Breeds on cliffs or in large trees or electrical towers, forages in open habitats.	Low. The project area supports marginally suitable foraging and nesting habitat for the golden eagle. However, no obvious stick nests were observed during the reconnaissance survey and there are no CNDDDB-recorded occurrences within 5 miles of the site (CNDDDB 2011).	Year-round

Table 3.4-4 (cont.): Summary of Special-Status Wildlife Species

Scientific Name Common name	Listing Status USFWS/CDFW/WBVG	General Habitat Description	Potential for Impacts	Period of Identification
<i>Falco columbarius</i> Merlin	—/CSC/—	Uncommon winter migrant. Seldom found in heavily wooded areas or open deserts. Frequents open habitats at low elevations near water and tree stands. Favors coastlines, lakeshores, and wetlands. Ranges from annual grasslands to ponderosa pine and montane hardwood-conifer habitats.	Low. The project area is not within the breeding range for merlin. This species may be an occasional visitor to the site during its winter migration. There are no CNDDDB-recorded occurrences of this species within five miles of the project site (CNDDDB 2011).	September to May
<i>Athene cunicularia</i> burrowing owl	—/CSC/—	Open, dry annual or perennial grasslands, deserts and scrublands characterized by low-growing vegetation. Subterranean nester; dependent upon burrowing mammals (e.g., California ground squirrel).	Low. The project area supports suitable nesting and foraging habitat for burrowing owls. And while the species has been known from the region historically (5 CNDDDB-related occurrences within 5 miles of the site), it has been at least 3 years since a burrowing owl has been recorded in Morgan Hill.	February to August (breeding) September to January (wintering)
<i>Agelaius tricolor</i> tricolored blackbird	—/CSC/—	Colonial species, most numerous in central valley and vicinity. Largely endemic to California. Requires open water, protected nesting substrate, and foraging area within 4 miles of nesting area. Breeding territory approximately is 3 square meters per pair; minimum colony size is approximately 50 pairs.	None. The project area does not contain fresh emergent wetland habitat that supports dense stands of tule and other vegetation necessary for tricolored blackbird breeding. Furthermore, there are no CNDDDB-recorded occurrences of the species within 5 miles of the site (CNDDDB 2011).	April to July

Table 3.4-4 (cont.): Summary of Special-Status Wildlife Species

Scientific Name Common name	Listing Status USFWS/CDFW/WBWG	General Habitat Description	Potential for Impacts	Period of Identification
Mammals				
<i>Antrozous pallidus</i> pallid bat	—/CSC/H	Social bat that often occurs in colonies. Broadly distributed in California from sea level to over 6,000 feet. Roosts in caves, buildings, rock crevices, and tree hollows near water sources. Overwinters in summer habitats at lower elevations.	Low. The project area supports suitable roosting (several abandoned home sites and plentiful trees) and foraging habitat for the pallid bat. However, there are no CNDDDB-related occurrences of the species within 5 miles of the site (CNDDDB 2011).	Year Round (Maternal roosts active between May and August)
<i>Corynorhinus townsendii</i> Townsend’s big-eared bat	—/CSC/H	Roosts in colonies in caves, mines, tunnels, or buildings in mesic habitats. The species forages along habitat edges, gleaning insects from bushes and trees. Habitat must include appropriate roosting or hibernacula sites free from disturbance by humans.	None. The Townsend’s big-eared bat is thought to be absent from the project area due mainly to its sensitivity to human disturbance. Furthermore, there are no CNDDDB-related occurrences of the species within 5 miles of the site (CNDDDB 2011).	To be determined based on coordination with California Department of Fish and Wildlife
<i>Vulpes macrotis mutica</i> San Joaquin kit fox	FE/CT/—	Occur in annual grasslands or grassy open stages of vegetation dominated by scattered brush, shrubs, and scrub with loose-textured, sandy, and loamy soils.	None. While the San Joaquin kit fox was historically known from Santa Clara County, and is included in the proposed countywide HCP, the species has not been recorded near Morgan Hill since 1975, and is not expected to occur within the SEQ. Furthermore, there are no CNDDDB-related occurrences within 5 miles of the site (CNDDDB 2011).	Year-round

Table 3.4-4 (cont.): Summary of Special-Status Wildlife Species

Scientific Name Common name	Listing Status USFWS/CDFW/WBVG	General Habitat Description	Potential for Impacts	Period of Identification
<i>Taxidea taxus</i> American badger	—/CSC/—	Occurs in drier open stages of most scrub, forest, and herbaceous habitats with friable soil.	Low. While the eastern portion of the project area supports suitable habitat for the American badger, no burrows were observed during the reconnaissance survey. Furthermore, there are no CNDDDB-related occurrences of the species within 5 miles of the site (CNDDDB 2011).	Year-round
Status Codes				
Federal FE = Federally Endangered FT = Federally Threatened FD = Federally Delisted	State CE = State Endangered CT = State Threatened CSC = State Species of Special Concern	CNPS 1A = Presumed extinct in CA 1B.X = Rare, Threatened, or Endangered in CA or elsewhere 2.X = Rare, Threatened, or Endangered in CA but more common elsewhere 3.X = More information is needed Extensions: X.1 = seriously threatened in CA, X.2 = Fairly threatened in CA		

3.4.3 - Regulatory Framework

Federal

Federal Clean Water Act: Sections 404 and 401

Natural drainage channels and adjacent wetlands may be considered “Waters of the United States” (hereafter referred to as “jurisdictional waters”) subject to the jurisdiction of the USACE. The extent of jurisdiction is defined in the Code of Federal Regulations but has also been subject to interpretation by the federal courts. Jurisdictional waters generally include:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters including interstate wetlands;
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce;
- All impoundments of waters otherwise defined as waters of the United States under the definition;
- Tributaries of waters identified in paragraphs (a)(1)-(4) (i.e. the bulleted items above).

As determined by the United States Supreme Court in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (the SWANCC decision), channels and wetlands isolated from other jurisdictional waters cannot be considered jurisdictional solely on the basis of their use, hypothetical or observed, by migratory birds. However, the U.S. Supreme Court decisions *Rapanos v. United States* and *Carabell v. U.S. Army Corps of Engineers* (referred to jointly as the Rapanos decision) impose a “significant nexus” test for federal jurisdiction over wetlands. In June 2007, the USACE and Environmental Protection Agency (EPA) established guidelines for applying the significant nexus standard. This standard includes (1) a case-by-case analysis of the flow characteristics and functions of the tributary or wetland to determine if they significantly affect the chemical, physical, and biological integrity of downstream navigable waters and (2) consideration of hydrologic and ecologic factors.

The USACE regulates the filling or grading of such waters under the authority of Section 404 of the Clean Water Act. The extent of jurisdiction within drainage channels is defined by “ordinary high water marks” on opposing channel banks. Wetlands are habitats with soils that are intermittently or permanently saturated, or inundated. The resulting anaerobic conditions are suited for plant species known as hydrophytes that show a high degree of fidelity to such soils. Wetlands are identified by the presence of hydrophytic vegetation, hydric soils (soils saturated intermittently or permanently

saturated by water), and wetland hydrology according to methodologies outlined in the 1987 Corps of Engineers Wetlands Delineation Manual.

All activities that involve the discharge of fill into jurisdictional waters are subject to the permit requirements of the USACE. Such permits are typically issued on the condition that the applicant agrees to provide mitigation that results in no net loss of wetland functions or values. No permit can be issued until the Regional Water Quality Control Board (RWQCB) issues a certification (or waiver of such certification) that the proposed activity will meet state water quality standards. The filling of isolated wetlands, over which the USACE has disclaimed jurisdiction, is regulated by the RWQCB (discussed further below). It is unlawful to fill isolated wetlands without filing a Notice of Intent with the RWQCB. The RWQCB is also responsible for enforcing National Pollution Discharge Elimination System (NPDES) permits, including the General Construction Activity Storm Water Permit. All projects requiring federal money must also comply with Executive Order 11990 (Protection of Wetlands).

Endangered Species Act (ESA)

The USFWS and National Marine Fisheries Service (NMFS) have jurisdiction over species formally listed as threatened or endangered under the federal Endangered Species Act (ESA). The federal ESA is a complex law enacted in 1973 to protect and recover plant and animal species in danger of becoming extinct and to conserve their ecosystems, with an ultimate goal being the recovery of a species to the point where it is no longer in need of protection. An endangered plant or animal species is one that is considered in danger of becoming extinct throughout all or a significant portion of its range. A threatened species is one that is likely to become endangered within the foreseeable future. The USFWS also maintains a list of species proposed for listing as endangered or threatened, and a list of candidate species for which sufficient information is available to support issuance of a proposed listing rule. It is illegal to take any listed species without specific authorization. Any activity that could result in take of a federally listed species requires a Section 10 take permit authorization from the USFWS or NMFS. Should another federal agency be involved with permitting the project, such as the USACE under jurisdiction of the Clean Water Act, Section 7 of the ESA requires the federal lead agency to consult with the USFWS or NMFS before permitting any activity that may result in take of a listed species. Section 9 of the ESA and its applicable regulations restrict certain activities with respect to endangered and threatened plants. However, these restrictions are less stringent than those applicable to fish and wildlife species. The provisions prohibit the removal of, malicious damage to, or destruction of any listed plant species from areas under federal jurisdiction.

Migratory Bird Treaty Act (MBTA)

The Federal Migratory Bird Treaty Act (MBTA) provides for protection of migratory bird species, birds in danger of extinction, and their active nests. It is illegal to possess or take any bird protected under the act without a depredation permit from the USFWS, which includes protection of eggs,

young, and nests in active use. Although the MBTA technically provides for protection of most bird species, it is typically applied as a mechanism to protect active nests of raptors and colonial nesting species through the breeding and nesting season.

The Bald and Golden Eagle Protection Act

The Bald Eagle Protection Act of 1940 (16 U.S.C. 668, enacted by 54 Stat. 250) protects bald and golden eagles by prohibiting the taking, possession, and commerce of such birds and establishes civil penalties for violation of this Act. Take of bald and golden eagles is defined as follows: “disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior” (72 FR 31132; 50 CFR 22.3).

State

California Endangered Species Act (CESA)

Signed into law in 1984, the California Endangered Species Act (CESA) prohibits the “take” of any species that the California Fish and Game Commission determines to be an endangered species or a threatened species. CESA defines a “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” CDFW enforces CESA. The act allows for take incidental to otherwise lawful development projects. CESA emphasizes early consultation to avoid potential impacts to rare, endangered, and threatened species and to develop appropriate mitigation planning to offset project-caused losses of listed species populations and their essential habitats.

Birds of Prey

Birds of prey are protected in California under provisions of the State Fish and Game Code, Section 3503.5, which states that it is “unlawful to take, possess, or destroy any birds in the order *Falconiformes* or *Strigiformes* (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.” Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered “taking” by the CDFW.

Porter-Cologne Act

The Porter-Cologne Act established the California State Water Quality Resources Control Board and the Nine Regional Water Quality Control Boards (RWQCBs) in their current form. The RWQCBs regulate all activities, including dredging, filling, or discharge of materials into Waters of the State that are not regulated by the USACE, due to a lack of connectivity with a navigable water body and/or lack of an ordinary high water mark.

CDFW Section 1600 Regulations

The Fish and Game Code of California mandates that “it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds, without first notifying the department of such activity.” CDFW’s jurisdiction includes ephemeral, intermittent, and perennial watercourses (including dry washes) characterized by (1) the presence of hydrophytic vegetation; (2) the location of definable bed and banks; and (3) the presence of existing fish or wildlife resources.

Furthermore, CDFW jurisdiction is often extended to habitats adjacent to watercourses, such as oak woodlands in canyon bottoms or willow woodlands that function as part of the riparian system. Historic court cases have further extended CDFW jurisdiction to include watercourses that seemingly disappear, but re-emerge elsewhere. Under the CDFW definition, a watercourse need not exhibit evidence of an OHWM to be claimed as jurisdiction. However, CDFW does not regulate isolated wetlands, that is, those that are not associated with a river, stream, or lake.

Sections 2080 and 2081 of the State Fish and Game Code

Section 2080 of the State Fish and Game Code states that no person shall import into this state (California), export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission [State Fish and Game Commission] determines to be an endangered species or threatened species, or attempt any of those acts, except as otherwise provided in this chapter, the Native Plant Protection Act, or the California Desert Native Plants Act. Under Section 2081 of the Code, the CDFW may authorize individuals or public agencies to import, export, take, or possess, any state-listed endangered, threatened, or candidate species. These otherwise prohibited acts may be authorized through permits or Memoranda of Understanding if (1) the take is incidental to an otherwise lawful activity, (2) impacts of the authorized take are minimized and fully mitigated, (3) the permit is consistent with any regulations adopted pursuant to any recovery plan for the species, and (4) the applicant ensures adequate funding to implement the measures required by CDFW. CDFW shall make this determination based on the best scientific and other information that is reasonably available and shall include consideration of the species’ capability to survive and reproduce.

Section 3503 of the State Fish and Game Code

Section 3503 of the State Fish and Game Code states, “It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.”

Natural Community Conservation Planning Program

The Natural Community Conservation Planning Program, managed by CDFW, is designed to conserve multiple species and their habitats, while also providing for the compatible use of private

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land. Through local planning, the Natural Community Conservation Planning Program process protects wildlife and habitat before the landscape becomes so fragmented or degraded by development that listings are required under the FESA. Instead of saving small, disconnected units of habitat for just one species at a time, agencies, local jurisdictions, and other interested parties have an opportunity, through the Natural Community Conservation Planning Program, to work cooperatively to develop plans that consider broad landscapes, or ecosystems, and the needs of many species. Partners enroll in the programs and, by mutual consent, habitat areas with high conservation values are set aside and may not be developed. Partners also agree to study, monitor, and develop management plans for these reserve areas. The program provides a process for fostering economic growth by allowing approved development in enrolled areas with lower conservation values.

Native Plant Protection Act

The Native Plant Protection Act includes measures to preserve, protect, and enhance rare and endangered native plants. The definition of rare and endangered differs from those contained in CESA. However, the list of native plants afforded protection pursuant to this act includes those listed as rare and endangered under the CESA. The Native Plant Protection Act provides limitations on take as follows: “No person shall import into this state, or take, possess, or sell within this state” any rare or endangered native plant, except in compliance with provisions of the act. Individual landowners are required to notify the CDFW at least 10 days in advance of changing land uses to allow the CDFW to salvage any rare or endangered native plant material.

California Native Plant Society

The CNPS is a statewide resource conservation organization that has developed an inventory of California’s special-status plant species. This inventory is a summary of information on the distribution, rarity, and endangerment of California’s vascular plants. This rare plant inventory consists of four lists. CNPS presumes that List 1A plant species are extinct in California because they have not been seen in the wild for many years. CNPS considers List 1B plants as rare, threatened, or endangered throughout their range. List 2 plant species are considered rare, threatened, or endangered in California, but more common in other states. Plant species on lists 1A, 1B, and 2 meet CDFW criteria for endangered, threatened, or rare listing. Plant species for which CNPS requires additional information in order to properly evaluate their status are included on List 3. List 4 plant species are those of limited distribution in California whose susceptibility to threat is considered low at the current time.

Local

City of Morgan Hill

General Plan

The City of Morgan Hill General Plan establishes the following goals and policies related to biological resources that are applicable to the proposed project:

Circulation

- **C Policy 3P:** Continue to implement the program for planting street trees and landscaping arterial streets and major intersections.
- **C Policy 3.11:** Landscape and include street trees in the public right-of-way (exclusive of paved roads) and medians.

Open Space and Conservation

- **OSC Goal 6:** Protection of native plants and animals
- **OSC Policy 6c:** Preserve outstanding natural features, such as the skyline of a prominent hill, rock outcroppings, and native and/or historically significant trees.
- **OSC Policy 6e:** Identify and protect wildlife, rare and endangered plants and animals and heritage resources from loss and destruction.
- **OSC Policy 6g:** Encourage use of native plants, especially drought-resistant species, in landscaping to the extent possible.
- **OSC Action 6.1:** Develop Design Guidelines provisions requiring construction activities to avoid disturbance to natural features to the extent feasible.

Public Health and Safety

- **PHS Policy 6.g:** Encourage the protection, restoration, and enhancement of remaining native grasslands, oak woodlands, marshlands and riparian habitat.
- **PHS Policy 6.h:** Preserve and protect mature, healthy trees whenever feasible, particularly native trees and other trees which are of significant size or of significant aesthetic value to immediate vicinity or to the community as a whole.

Tree Ordinance

Morgan Hill Municipal Code Chapter 12.32 sets forth restrictions on tree removal activities. “Indigenous tree” species (Oak, California Bay, Madrone, Sycamore, and Alder) with a trunk circumference of 18 inches or more, or non-indigenous tree species with a trunk circumference of 40 inches or more are subject to the provisions of Chapter 12.32. The permit requirement outlined in the ordinance does not apply to developments that have been reviewed and approved by the Planning Commission or Community Development Director provided that tree removal conforms to the landscape plans of those developments. The ordinance also does not apply to non-indigenous trees in residential zones.

Sensitive Sites

Under provision 18.74.060 – Sensitive Sites, as pertains to riparian corridors and waterways, a site is considered sensitive when it:

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1. Involves a notable feature such as a hillside, ridgeline, watercourse, major drainage way or floodplain.
2. Contains or is immediately adjacent to a mapped riparian habitat area or a mapped critical habitat for federally listed endangered species.
3. Is within two hundred feet of a lake or shore.
4. Is within fifty feet of a stream or watercourse.

Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

The Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) was adopted in late 2012. The partners of this HCP/NCCP are the County of Santa Clara; the Santa Clara Valley Transportation Authority; the Santa Clara Valley Water District; the cities of San Jose, Gilroy, and Morgan Hill; the California Department of Fish and Wildlife; and the U.S. Fish and Wildlife Service. The HCP/NCCP gives the City long-term endangered species permits/authorized take coverage from the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife for the its own activities within the City.. The HCP/NCCP outlines goals and policies for preservation of biological resources within the plan boundaries.

3.4.4 - Methodology

MBA evaluated potential impacts on biological resources through review of the existing General Plan, federal and state lists of special-status species, aerial photographs, and visual reconnaissance. A senior biologist from MBA conducted site reconnaissance on May 5, 2011. (Note that reconnaissance-level surveys may occur any time of the year).

3.4.5 - Thresholds of Significance

According to Appendix G, Environmental Checklist, of the CEQA Guidelines, biological resources impacts resulting from the implementation of the proposed project would be considered significant if the project would:

- a.) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?
- b.) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?
- c.) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

- d.) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of wildlife nursery sites?
- e.) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
- f.) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

3.4.6 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the development of the project and provides mitigation measures where appropriate.

Special-Status Species

Impact BIO-1: Development and land use activities contemplated by the SEQ may adversely affect special-status species protected by state and federal law.

Impact Analysis

Special-status plant and wildlife species typically occur in undeveloped areas, although it is possible for them to occur within developed areas as well. According to the CNDDDB, no special-status plant or wildlife species are recorded within the boundaries of the SEQ Area. However, as noted above, a number of special-status species are known to occur within 5 miles of the site. Because of the history of agricultural practices within the SEQ Area, the presence of special-status plant species is highly unlikely—none were observed during a reconnaissance survey, and no mitigation is expected for impacts to special-status plants either in the greater SEQ Area or within the proposed High School area.

Areas within the SEQ do support suitable habitat for several special-status animal species, including California tiger salamander, California red-legged frog, Pacific pond turtle, white-tailed kite, burrowing owl, and various bat species.

SEQ Area (Program Level)

The General Plan Amendments associated with the Sports-Recreation-Leisure and Open Space designations have the potential to facilitate new development and land use activities that could potentially impact special-status plant and wildlife species. The General Plan Amendments associated with the Rural County and Residential Estate land use designations have limited potential to impact special-status plant and wildlife species because existing land use activities within these areas are expected to experience little to no change. The Residential Estate designation is proposed only to recognize existing residential subdivisions approved by the County. Regardless, in the absence of specific details of individual project applications, it would be speculative to attempt to predict such impacts at a programmatic level. Future development activities that occur within the

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SEQ Area pursuant to the boundary adjustments and land use designations changes would be subject to project-level environmental review, as well as applicable federal, state, and local requirements concerning special status species. Impacts would be less than significant.

High School Site (Project Level)

The area identified for the future High School—bound by Murphy Avenue to the west, Barrett Avenue to the north and Tennant Avenue to the south—currently supports three residences with associated trees and a small orchard. The lands between the homesteads are used for row crops.

A small out building sits on the northeast corner of Murphy Avenue/Tennant Avenue that supports a roost (likely nesting roost) for an owl. Although there was no direct observation of the individual owl(s), many pellets and white wash were noted. The mature trees and orchard trees of the subject site likely provide nesting habitat for a number of migratory bird species, other owls and potentially for bat species.

The SEQ Area does not support any special-status plant species; therefore, there would be no significant impacts to plant species as a result of constructing the High School. The known roosting site (and likely nesting site) of an owl species poses a potentially significant impact to a bird of prey from the removal of the structure that occurs on the corner of Murphy Avenue/Tennant Avenue. Potential impacts to migratory birds, other birds of prey, and various bat species are also possible, should any of these species occur in the trees or are found inhabiting other structures associated with the High School site. Implementation of Mitigation Measures BIO-1a and BIO-1b would reduce any impacts to sensitive species to a level that is less than significant.

Level of Significance Before Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Potentially significant impact.

Mitigation Measures

MM BIO-1a High School. A qualified biologist shall conduct a pre-construction survey for nesting migratory birds and tree-nesting raptors in all trees occurring within 250-feet of construction areas. Pre-disturbance surveys shall also be conducted prior to tree or ground trimming or tree removal. These surveys shall be conducted within 30 days of first tree or ground disturbance in the area, if such disturbance occurs during the breeding season (February 1 to August 31). If protected birds (including raptors) are detected, a construction-free buffer (appropriately sized based on species) shall be established around each active nest and monitored by a qualified biologist for the duration of the breeding season or until it is determined the young are independent.

Pre-construction avian surveys are not required during the non-breeding season, as birds are expected to abandon their roosts if disturbed by construction, tree trimming or tree removal. This mitigation measure shall not apply to tree trimming or tree removal activities that occur during the non-breeding season (September 1 to January 31).

MM BIO-1b High School. Prior to tree removal activities or building demolition, a qualified bat biologist (i.e., one who possess a Scientific Collection Permit and Memorandum of Understanding for bats with the CDFW) shall conduct the following surveys:

- No less than 180 prior to the anticipated date of tree removal or building demolition, day time surveys shall be conducted for all trees or buildings. The purpose of these surveys is to determine if bats are present. These studies shall be performed between either March 1 and April 15 or between August 1 and October 15.
- No less than 30 days prior to the anticipated date of tree removal or building demolition, nighttime emergence surveys for roosting bats shall be performed.

If bats are present in structures, the following procedures shall be implemented:

- Removal of night roosts shall occur only during daylight hours. Building demolition shall occur between June and mid-late October. If building demolition is scheduled to occur between October 15 and May 31, 4-foot by 8-foot sections (number of sections to be determined at time of surveys) of the roof must be removed by mid-October (prior to start of hibernacula use).
- Removal of maternity roosts shall only occur after young are volant (i.e., able to fly, typically August 15) and before start of hibernacula use (October 15). Removal of known maternity roost habitat would be conducted as follows: passive eviction of bats by a qualified biologist if possible, and if not possible, removal of windows and doors or other appropriate portions of the structure, as determined by a qualified biologist, 7 to 10 days prior to building demolition. Demolition must occur during daylight hours.
- Snags or live trees shall only be removed during seasons when bats are active and young are volant (March 1 to April 15 and August 1 to October 15).

Level of Significance After Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Less than significant impact.

Sensitive Natural Communities

Impact BIO-2: Development and land use activities contemplated within the SEQ would not adversely impact sensitive natural communities or riparian habitat.

Impact Analysis

Within the SEQ Area, the only sensitive natural community is riparian habitat. Under Morgan Hill Municipal Code Section 18.74.060, one criterion for a site to be considered sensitive is when it occurs within 50 feet of a riparian area. (Note that the Santa Clara Valley HCP/NCCP also has standards for riparian setbacks, but this impact analysis uses the City's 50-foot standard as the basis for assessing impacts). Riparian habitats are found along creek corridors and drainages, and support vegetation that can draw water from beneath the water table. Riparian habitats generally occur along the banks and adjacent to banks of naturally occurring rivers, streams and drainages.

Three creeks—Tennant, Foothill, and Maple—flow within the SEQ Area and all are all tributaries to Coralitos Creek, which drains to the Monterey Bay. Tennant Creek runs in a generally north-south direction mainly along Hill Road. The majority of the creek within the SEQ Area runs in engineered channels, though there are several reaches that are daylighted and support some riparian habitat. Foothill Creek runs in a generally east-west direction and is in its natural condition (offering the densest riparian habitat within the SEQ Area) until its waters are rerouted through an engineered channel at approximately Tennant and Foothill Avenues. Maple Creek occurs in its natural state for a relatively short distance onsite before its flows are rerouted through an engineered channel. The riparian vegetation that occurs along these creeks within the SEQ is relatively narrow, consisting of only 1 to 2 tree widths, made up of a mix of valley oak, elderberry, and willow. These areas generally lack the structural diversity found in robust riparian habitats.

While riparian systems are known to serve as dispersal corridors and islands of habitat for an estimated 83 percent of amphibians and 40 percent of reptiles in California, the sparse reaches of riparian habitat within the SEQ Area offer only small islands of habitat in a sea of agricultural/low-density residential development. As such, these riparian areas support only low to moderate biotic value. Nonetheless, they offer potential breeding habitat for California tiger salamander and California red-legged frog along with movement corridor habitat for these species; support habitat for resident and migratory bird species; and offer potential roosting habitat for several bat species.

Should future development require crossing these features, adding culverts, removing woody vegetation, etc., permits could be required from the USFWS, CDFW or RWQCB. To preserve sensitive riparian habitats and maintain watershed health (including water and habitat quality), the County of Santa Clara would require compliance with the Santa Clara Valley Water Resources Protection Collaborative.

The riparian areas adjacent to sections of Tennant, Foothill, and Maple Creeks have a potential to be negatively impacted by buildout of the SEQ. Based on the relatively low habitat value ascribed to

these existing riparian resources, and the stringent requirements already in place in the Santa Clara Valley Water Resources Protection Collaborative, any negative impact could be mitigated to a less than significant level at the time project-level environmental review is completed.

SEQ Area (Program Level)

The SEQ Area contains various waterways, including Tennant Creek and its tributaries that may contain riparian habitat. There are no other sensitive natural communities within the SEQ Area.

The General Plan Amendments associated with the Sports-Recreation-Leisure and Open Space designations have the potential to facilitate new development and land use activities that could potentially impact riparian habitat. The General Plan Amendments associated with the Rural County and Residential Estate land use designations have limited potential to impact riparian habitat because existing land use activities within these areas are expected to experience little to no change. The Residential Estate designation is proposed only to recognize existing residential subdivisions approved by the County. Regardless, in the absence of specific details of individual project applications, it would be speculative to attempt to predict such impacts at a programmatic level. Future development activities that occur within the SEQ Area pursuant to the boundary adjustments and land use designations changes would be subject to project-level environmental review, as well as applicable federal, state, and local requirements concerning riparian habitat. Impacts would be less than significant.

High School Site (Project Level)

The High School site does not support any sensitive natural communities or riparian habitats. Therefore, there will be no adverse impacts related to this category from buildout of the High School. Impacts would be less than significant.

Level of Significance Before Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Less than significant impact.

Mitigation Measures

No mitigation is necessary.

Level of Significance After Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Less than significant impact.

Wetlands

Impact BIO-3: Development and land use activities contemplated by the SEQ would not have a substantial adverse effect on federally protected wetlands.

Impact Analysis

SEQ Area (Program Level)

The SEQ Area contains various waterways, including Tennant Creek and its tributaries that may contain federally protected wetlands.

The General Plan Amendments associated with the Sports-Recreation-Leisure and Open Space designations have the potential to facilitate new development and land use activities that could potentially impact wetlands. The General Plan Amendments associated with the Rural County and Residential Estate land use designations have limited potential to impact wetlands because existing land use activities within these areas are expected to experience little to no change. The Residential Estate designation is proposed only to recognize existing residential subdivisions approved by the County. Regardless, in the absence of specific details of individual project applications, it would be speculative to attempt to predict such impacts at a programmatic level. Future development activities that occur within the SEQ Area pursuant to the boundary adjustments and land use designations changes would be subject to project-level environmental review, as well as applicable federal, state, and local requirements concerning wetlands. Impacts would be less than significant.

High School Site (Project Level)

The High School site does not support any wetland features; therefore, project buildout would have no adverse effects on protected wetlands. No mitigation is required. Impacts are less than significant impact

Level of Significance Before Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Less than significant impact.

Mitigation Measures

No mitigation is necessary.

Level of Significance After Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Less than significant impact.

Wildlife Movement

Impact BIO-4: Development of the proposed project would not substantially interfere with wildlife movement but may impede the use of a wildlife nursery site.

Impact Analysis

SEQ Area (Program Level)

As described previously, the riparian vegetation that occurs along the creeks within the SEQ Area is relatively narrow, consisting of only 1 to 2 tree widths, made up of a mix of valley oak, elderberry and willow. As such, the riparian corridors are not considered high value for wildlife movement or use as a wildlife nursery. Therefore, the proposed boundary adjustments and land use designations changes contemplated within the SEQ Area would not have the potential to adversely affect wildlife movement. Future development activities that occur within the SEQ Area pursuant to the boundary adjustments and land use designations changes would be subject to project-level environmental review, as well as applicable federal, state, and local requirements concerning wildlife movement. Any change to the current habitat value would be evaluated at the time of project-level review. Impacts to wildlife movement would be less than significant.

High School Site (Project Level)

Wildlife nursery sites likely to occur within the High School site include outbuildings with a roosting owl, attics, barns, and/or mature trees. The loss of maternal nesting/roosting sites would be considered significant under CEQA. Implementation of Mitigation Measure BIO-1b would render any impacts to wildlife nursery sites to a level that is less than significant.

Level of Significance Before Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Potentially significant impact.

Mitigation Measures

SEQ Area (Program Level)

No mitigation is necessary.

High School Site (Project Level)

Implement Mitigation Measure BIO-1b.

Level of Significance After Mitigation

SEQ Area (Program Level)

Less than significant impact.

Biological Resources

High School Site (Project Level)

Less than significant impact.

Local Biological Policies and Ordinances

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

Impact Analysis

SEQ Area (Program Level)

The SEQ Area contains trees that may be subject to the City of Morgan Hill's Tree Ordinance (Municipal Code Chapter 12.32).

Future development and land use activities that occur within the SEQ Area would require discretionary review by the City of Morgan Hill. Municipal Code Chapter 12.32 exempts developments that have been reviewed and approved by the Planning Commission or Community Development Director from the provisions of the chapter provided that tree removal conforms to the landscape plans of those developments. Therefore, no conflicts would occur with the tree ordinance. Impacts would be less than significant.

High School Site (Project Level)

The High School site contains a number of mature trees, including species that may be subject to Municipal Code Chapter 12.32. Future development activities associated with the High School would require discretionary review by the City of Morgan Hill. Municipal Code Chapter 12.32 exempts developments that have been reviewed and approved by the Planning Commission or Community Development Director from the provisions of the chapter, provided that tree removal conforms to the landscape plans of those developments. Therefore, no conflicts would occur with the tree ordinance. Impacts would be less than significant.

Level of Significance Before Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Less than significant impact.

Mitigation Measures

No mitigation is necessary.

Level of Significance After Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Less than significant impact.

Conservation Plan

Impact BIO-6: Development of the proposed project may conflict with an adopted habitat conservation plan or natural community conservation plan.

Impact Analysis

SEQ Area (Program Level)

The project site falls within the boundaries of the Santa Clara Valley HCP/NCCP. The HCP/NCCP was adopted in 2012, and outlines procedures to minimize take of covered species and undesirable land use changes that have the potential to impact habitat. According to HCP/NCCP Figure 2-2, the plan classifies the SEQ Area as “Agriculture.” Figure 2-3 indicates a small portion of the area is suitable as Type 3 open space, which overlaps with the Agriculture Priority Area shown in Exhibit 2-9. The Type 3 Open Space designation is compatible with the uses contemplated within the proposed Agriculture Priority Area.

Future development and land use activities that occur within the SEQ Area would be subject to the provisions of HCP/NCCP Chapter 2.3.7 Rural Development and Chapter 9.4.1, which establishes fee obligations. As such, Mitigation Measure BIO-6a requires future development and land use activities that occur within the SEQ Area to comply with the applicable provisions of the HCP/NCCP. With the implementation of mitigation, impacts would be less than significant.

High School Site (Project Level)

The High School site is also within the boundaries of the HCP/NCCP. HCP/NCCP Figure 2-2 classifies the High School site as Agriculture. Development of the High School would be subject to the provisions of HCP/NCCP Chapter 2.3.7 Rural Development and Chapter 9.4.1, which establishes fee obligations. As such, Mitigation Measure BIO-6b requires the High School to comply with the applicable provisions of the HCP/NCCP. With the implementation of mitigation, impacts would be less than significant.

Level of Significance Before Mitigation

SEQ Area (Program Level)

Potentially significant impact.

High School Site (Project Level)

Potentially significant impact.

Mitigation Measures

MM BIO-6a SEQ Area. Prior to issuance of a grading permit, applicants for future development and land use activities that occur within the SEQ Area shall submit an application to the City of Morgan Hill for coverage under the Santa Clara Valley HCP/NCCP. As

Biological Resources

part of the application process, the applicant shall provide all applicable HCP/NCCP fees. The terms and conditions of the approved application shall apply to each individual project.

MM BIO-6b High School Site. Prior to issuance of a grading permit, the High School applicant shall submit an application to the City of Morgan Hill for coverage under the Santa Clara Valley HCP/NCCP. As part of the application process, the applicant shall provide all applicable HCP/NCCP fees. The terms and conditions of the approved application shall apply to the High School project.

Level of Significance After Mitigation

SEQ Area (Program Level)

Less than significant impact.

High School Site (Project Level)

Less than significant impact.