

4.3 Biological Resources

This section identifies the existing biological resources at the Project Site; identifies the federal, state, and local regulations pertaining to biological resources within the region; evaluates the potential impacts of the Maximum Commercial and Maximum Mixed-Use project scenarios on biological resources; and identifies appropriate mitigation measures, as necessary. Information used in the preparation of this section was obtained from the California Natural Diversity Database (CNDDDB) (California Department of Fish and Game [CDFG], 2011), California Native Plant Society (CNPS) Electronic Inventory (CNPS, 2011), U.S. Fish and Wildlife Service (USFWS, 2011), and standard biological literature.

In order to develop a preliminary characterization of biological resources on the Project Site, previous biological resources studies in the region were reviewed, as well as existing plans such as the Creek Restoration and Trails Master Plan (John Northmore Roberts and Associates, 1993). On September 13, 2011, a reconnaissance-level field survey covering the entire Project Site was conducted to gather first-hand information and verify existing data on vegetative communities, wildlife habitats, and wetlands.

4.3.1 Environmental Setting

Regional Setting

The Project Site is located in the western Contra Costa County city of Walnut Creek, in the San Francisco Bay Area. The Bay Area region supports a Mediterranean climate and a broad range of habitats, including mosaics of oak and mixed evergreen forests, native and non-native grasslands, chaparral, upland scrub, marsh and wetland communities, and riparian scrub and forests. The Project Site is almost entirely developed by commercial buildings and hardscape surfaces within downtown Walnut Creek, and is currently functions as a retail shopping mall; the only semi-natural habitat in the Project Site and surroundings are within the San Ramon Creek riparian corridor.

Project Site Setting

The Project Site includes several parcels of the Broadway Plaza shopping center, which are located between South Broadway and South Main Street in downtown Walnut Creek. The Project Site is depicted in **Figure 4.3-1**. To adequately assess wildlife and habitats potentially present at the Project Site, a larger Study Area consisting of the Walnut Creek and Las Trampas USGS 7.5-minute quadrangles was analyzed and is referred to when a larger regional context is necessary.

Historically, areas in the vicinity of downtown Walnut Creek and the Project Site consisted of a valley where several local creeks drained the surrounding hills of the Diablo Range. The confluence of Las Trampas Creek, San Ramon Creek, and Tice Creek formed Walnut Creek and was located directly north of the Project Site (Oakland Museum of California, 2011). Today, Tice Creek merges



SOURCE: ESRI, 2010

Broadway Plaza Long Range Master Plan EIR . 211723

Figure 4.3-1
Project Site Location and Sensitive Habitats

with Las Trampas Creek outside of the Project Site, just before Las Trampas Creek reaches Main Street. Walnut Creek then flowed north to a large wetland on Suisun Bay, west of the Carquinez Strait, which eventually emptied into San Francisco Bay and the Pacific Ocean.

Historically, the short reaches of San Ramon Creek and Las Trampas Creek within the Project Site supported a dense canopy of riparian woodland.

Rapid urban development in the latter half of the 20th century, which included construction of the Bay Area's extensive freeway network and BART light rail system, resulted in channelization of creeks in the Walnut Creek watershed and large-scale removal of natural habitat. Reaches of San Ramon and Las Trampas Creeks are now contained in culverts and concrete channels for flood control. Despite this, native riparian vegetation still grows above the concrete creek channels along much of both the San Ramon and Las Trampas Creeks south of the Project Site.

On the Project Site, San Ramon Creek and Las Trampas Creek are almost completely covered by the Broadway Plaza shopping center. The exception is a short stretch of San Ramon Creek, north of Newell Avenue, where most of the creekbed is natural, some is channelized, and riparian vegetation grows on creekbanks (see Figure 4.3-1). Adjacent to the Project Site, a section of Las Trampas Creek directly west of Main Street contains habitats with some degree of natural function.

Vegetation Communities and Wildlife Habitats

The majority of the Project Site consists of developed areas with landscape vegetation. These areas, as well as any other habitats within and adjacent to the Project Site that are susceptible to direct or indirect impacts from the Project, are described below.

Developed/Landscaped. Roads, buildings, paved paths, and patches of landscape shrubs, grasses, and trees make up the developed/landscaped habitat within the Project Site. Vegetation present in this habitat type is regularly maintained and often disturbed. Tree species present include non-native southern magnolia (*Magnolia grandifolia*), tulip tree (*Liriodendron tulipifera*), and walnut (*Juglans* sp.), as well as native coast live oak (*Quercus agrifolia*). Redwood (*Sequoia sempervirens*) are also present in the Project Site, which are native to California but not to Walnut Creek.

Developed and landscaped areas provide foraging or nesting habitat for generalist¹, and sometimes non-native, wildlife species that can tolerate human presence and activities. These include birds and small mammals such as western scrub jay (*Aphelocoma californica*), California towhee (*Pipilo crissalis*), house finch (*Carpodacus mexicanus*), raccoon (*Procyon lotor*), and house mouse (*Mus musculus*). Although these areas often do not provide suitable habitat for most native wildlife due to higher human activity levels, they may support native wildlife species under appropriate conditions. Even with high traffic levels on all streets surrounding the Project Site and human activity associated with commercial retail businesses, mature trees may provide nesting habitat for urban passerine species. Nesting raptors are not expected at the Project Site due to the lack of tall trees and constant human presence.

¹ Generalist species can occupy and thrive in a variety of natural or developed areas.

Riparian Vegetation. There is no riparian woodland on the Project Site. There is remnant riparian canopy on a small portion of the Project Site and adjacent to the Project Site.

The remnant riparian canopy is dominated by coast live oak trees present at the top of the creek's bank, above the concrete channel. Other species present include maple (*Acer* sp.), fig (*Ficus* sp.), and willow (*Salix* sp.) trees. While riparian vegetation is not able to grow within the concrete channel, canopy cover from mature trees growing from the top of bank shades the creek bed and provides some riparian habitat function for both creeks.

Riparian areas provide nesting habitat and diverse insects that are attractive to many bird species, and despite being significantly disturbed, riparian areas near the Project Site host a variety of wildlife species. Foliage, bark, and ground substrates provide a variety of foraging areas. Birds that forage for insects in riparian habitats include Bewick's wren (*Thryomanes bewickii*), chestnut-backed chickadee, northern flicker (*Colaptes auratus*), dark-eyed junco (*Junco hyemalis*), and black phoebe (*Sayornis nigricans*). Amphibians and mammals such as western toad (*Bufo boreas*), Sierran tree frog (*Pseudacris sierra*), western harvest mouse (*Reithrodontomys megalotis*), deer mouse (*Peromyscus maniculatus*), and raccoon could also occur in riparian habitats within and adjacent to the Project Site.

Wetland Communities

Freshwater Emergent Wetland. Small patches of in-stream wetlands are present in San Ramon Creek directly south of where the stream alignment runs underneath the Macy's building, on Parcel 7A. These patches of wetland vegetation occur where enough sediment has accumulated in the concrete channel for vegetation to set roots and establish. A narrow channel of flowing water cuts through this habitat. This section of San Ramon Creek receives more sunlight than adjacent reaches, as the tree canopy extends only from the right bank of the creek. Vegetation present in this habitat includes horsetails (*Equisetum* sp.), cattails (*Typha* sp.), Bermuda grass (*Cynodon dactylon*), curly dock (*Rumex crispus*), water parsley (*Oenanthe sarmentosa*), and floating aquatic vegetation such as pondweed (*Potamogeton* sp.) and duckweed.

Wildlife that depend on open water and visit marshes regularly include coyotes (*Canis latrans*), foxes (red fox [*Vulpes vulpes*] or grey fox [*Urocyon cinereoargenteus*]), raccoons, rodents, most rabbit species (black-tailed jackrabbit (*Lepus californicus*) or desert cottontail (*Sylvilagus audubonii*)), and many species of birds. A number of species require standing or flowing water for breeding, including amphibians such as western toad, Sierran tree frog, western pond turtle (*Actinemys marmorata*), and the federal threatened and California species of special concern, California red-legged frog (*Rana draytonii*), as well as western aquatic garter snake (*Thamnophis couchii*), red-winged blackbird (*Agelaius phoeniceus*), and marsh wren (*Cistothorus palustris*). Freshwater marsh vegetation along streams and lakes can also provide some nesting and seasonal foraging opportunities and cover for waterbird species such as mallards (*Anas platyrhynchos*), green-winged teals (*Anas crecca*), great blue herons (*Ardea herodias*), and great egrets (*Ardea alba*).

Special-Status Species

A number of species known to occur in the vicinity of the Project Site are protected pursuant to federal and/or State of California endangered species laws, or have been designated Species of Special Concern by CDFG. In addition, Section 15380(b) of the CEQA Guidelines provides a definition of rare, endangered, or threatened species that are not included in any listing.² Species recognized under these terms are collectively referred to as “special-status species.” For the purposes of this EIR, special-status species include:

- Plant and wildlife species listed as rare, threatened or endangered under the federal or state endangered species acts;
- Species that are candidates for listing under either federal or state law;
- Species formerly designated by the U.S. Fish and Wildlife Service (USFWS) as Species of Concern or designated by CDFG as Species of Special Concern;
- Species protected by the federal Migratory Bird Treaty Act (16 U.S.C. 703-711); and/or
- Species such as candidate species that may be considered rare or endangered pursuant to Section 15380(b) of the CEQA Guidelines.

Approximately 30 species have been documented from or have potential to occur in suitable habitat within the Study Area. Species information was obtained from the CNDDDB (CDFG, 2011), California Native Plant Society Electronic Inventory (CNPS, 2011), and the U.S. Fish and Wildlife Service (USFWS, 2011). Based on review of the biological literature of the region and a reconnaissance survey at the Project Site, many of these species were eliminated from further evaluation because (1) the Project Site or the immediate area does not provide suitable habitat, or (2) the known range for a particular species is outside of the Project Site and/or the immediate area.

The special-status species list presented in **Table 4.3-1** includes species for which potential habitat (i.e., general habitat types) occurs on or in the vicinity of the Project Site. Species for which generally suitable habitat occurs but that were nonetheless determined to have low potential to occur in the Project Site are also listed in Table 4.3-1. This table also provides the rationale for each potential-to-occur determination. Species observed or with a moderate to high potential to occur at the Project Site are discussed in further detail below.

Species Assessed in Detail

Potential impacts of the Project on special-status species were assessed based on literature review, professional judgment, and the following criteria:

1. A determination of susceptibility. This determination is a three-level process that evaluated, for each species, (a) potential occurrence in the Study Area (generally defined as the terrestrial and aquatic habitats of the Project Site and areas immediately adjacent to the Project Site with the potential to be affected by construction or ongoing operations of the

**TABLE 4.3-1
 SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PROJECT SITE**

Common Name <i>Scientific Name</i>	Listing Status USFWS/ CDFG/CNPS ^a	General Habitat	Potential for Species Occurrence Within Project Site	Period of Identification
SPECIES LISTED OR PROPOSED FOR LISTING				
Animals				
Fish				
Central California coast steelhead <i>Oncorhynchus mykiss</i>	FT/CSC	Spawns and rears in coastal streams between the Russian River and Aptos Creek, as well as drainages tributary to San Francisco Bay, where gravelly substrate and shaded riparian habitat occurs.	Not Present. Channelization and significant creek barriers would prevent steelhead from migrating upstream into the Project Site.	Year-round
Amphibians				
California red-legged frog <i>Rana draytonii</i>	FT/CSC	Breeds in stock ponds, pools, and slow-moving streams; adults move upland into small mammal burrows in annual grasslands or riparian habitats.	Low. Nearest CNDDDB records are approximately 3 miles from the Project Site, and urban development would prevent any upland movement in the vicinity of the Project Site. Records are present in Las Trampas Creek upstream of the Project Site, but fast-moving flows and lack of upland habitat preclude presence of this species.	May–August
OTHER SPECIAL-STATUS SPECIES				
Animals				
Reptiles				
Southern Pacific pond turtle <i>Actinemys marmorata pallida</i>	--/CSC	Freshwater ponds and slow streams edged with sandy soils for laying eggs.	Low. Some concrete structures in reaches of San Ramon and Las Trampas Creeks facilitate ponding water, but reaches within the Project Site do not typically pond and support habitat for this species.	Year-round
Birds				
Cooper's hawk <i>Accipiter cooperi</i>	--/3503.5	Nests in conifers or deciduous stands near riparian areas; also nests in urban areas near riparian corridors.	Low. Constant human disturbance, lack of tall mature trees, and little foraging habitat directly surrounding the Project Site precludes presence of this species.	Year-round

² For example, vascular plants listed as rare or endangered or as List 1 or 2 by the California Native Plant Society (CNPS) are considered subject to Section 15380(b).

**TABLE 4.3-1
SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PROJECT SITE (CONTINUED)**

Common Name Scientific Name	Listing Status USFWS/ CDFG/CNPS^a	General Habitat	Potential for Species Occurrence Within Project Site	Period of Identification
Birds (cont.)				
Red-shouldered hawk <i>Buteo lineatus</i>	--/3503.5	Usually nests in large trees, often in woodland or riparian deciduous habitats. Forages over open grasslands and woodlands.	Low. Constant human disturbance, lack of tall mature trees, and little foraging habitat directly surrounding the Project Site precludes presence of this species.	Year-round
Red-tailed hawk <i>Buteo jamaicensis</i>	--/3503.5	Usually nests in large trees, often in woodland or riparian deciduous habitats.	Low. Constant human disturbance, lack of tall mature trees, and little foraging habitat directly surrounding the Project Site precludes presence of this species.	Year-round
American kestrel <i>Falco sparverius</i>	--/3503.5	Nests in cavities in large trees near open areas.	Low. While cavities for nesting are present in riparian trees in the vicinity of the Project Site, high disturbance and little foraging habitat likely preclude presence of this species.	Year-round
Mammals				
pallid bat <i>Antrozous pallidus</i>	-- /CSC/WBWG- HP	Occurs in various habitats including rocky arid deserts and canyonlands, shrub-steppe grasslands, and higher-elevation forests. Roosts include rocky outcrops and cliffs, caves, mines, trees and various human structures. Foraging habitat includes of grasslands, oak savannah, orchards, and vineyards.	Low. Potential roosting habitat is available in riparian trees in the vicinity of the Project Site, but no foraging habitat is present.	March– August
hoary bat <i>Lasiurus cinereus</i>	--/--/WBWG- MP	Deserts, grasslands, shrublands, woodlands, and forests. Sensitive to disturbance of roosting sites.	Low. Roosting habitat in riparian trees in the vicinity of the Project Site and surroundings is too highly disturbed to support this species.	March– August

**TABLE 4.3-1
 SPECIAL-STATUS SPECIES CONSIDERED IN EVALUATION OF PROJECT SITE (CONTINUED)**

Common Name <i>Scientific Name</i>	Listing Status USFWS/ CDFG/CNPS ^a	General Habitat	Potential for Species Occurrence Within Project Site	Period of Identification
---------------------------------------	--	-----------------	--	-----------------------------

STATUS CODES

Federal (U.S. Fish and Wildlife Service [USFWS]):

FE = Listed as Endangered (in danger of extinction) by the federal government.
 FT = Listed as Threatened (likely to become Endangered within the foreseeable future) by the federal government.
 FP = Proposed for Listing as Endangered or Threatened.
 FC = Candidate to become a *proposed* species.

State (California Department of Fish and Game [CDFG]):

CE = Listed as Endangered by the State of California.
 CT = Listed as Threatened by the State of California.
 CFP = Listed as Fully Protected by the State of California.
 CR = Listed as Rare by the State of California (plants only).
 CSC = California Species of Special Concern.
 3503.5 = Protection for nesting species of Falconiformes (hawks) and Strigiformes (owls).

* Special animal—listed on CDFG’s Special Animals List.

Audubon Watch List (AWL):

AWLR = Red List; Species that are declining rapidly, have very small populations or limited ranges, and face major conservation threats. These typically are species of global conservation concern.

AWLY = Yellow List; Species that are also declining but at a slower rate than those in the red category. These typically are species of national conservation concern.

Western Bat Working Group (WBWG):

HP = High conservation priority; species are imperiled or at high risk of imperilment.

MP = Medium conservation priority; a lack of information regarding the status of the species constitutes a threat, and conservation actions are warranted.

SOURCE: CNDDDB, 2011; CNPS, 2011; USFWS, 2011.

Project), (b) potential occurrence within the Project footprint (i.e., proposed construction sites); or, (c) absence from either the Study Area or Project footprint. If the species was determined unlikely to be found in the Study Area (for example, if no potential habitat exists for the species in the vicinity), the species was given no further consideration.

2. If a species was determined to have the potential to occur in the Study Area, further analyses were made of life history and habitat requirements, as well as the suitability of habitat for the species found within the Study Area or its immediate vicinity. The results of this determination for each species are provided in the “Potential for Species Occurrence” column of Table 4.3-1.
3. If suitable habitat was determined present within the Study Area and the species has been documented as observed within the Study Area or has at least a moderate potential to occur, additional analysis considered whether the species would be affected by the Project. Both direct effects (e.g., displacement of habitat) and indirect effects (e.g., noise) were considered. In addition, life history and habitat requirements were evaluated to ascertain the likelihood and severity of impact.

No special-status plant species are expected to occur within the Project footprint. Although a number of special-status grassland, scrub, oak woodland plant species have been recorded in the Study Area, there are no intact native communities remaining within the Project footprint. Riparian habitats associated with San Ramon Creek have been heavily disturbed by construction of a concrete creek channel and extensive paving of the surrounding areas, and are not expected to contain special-status plant species. The distribution of many of the plant species occurring in the Study Area is restricted to specific habitat types or soils that are not, or never were, present within the Project Site, such as sandy, clay, or serpentine soils. Some of the plant species are also considered by CNPS (2011) to be extirpated from the Project Site vicinity due to a long-standing history of disturbance.

Of the special-status animals presented in Table 4.3-1, no specific species are expected to occur within the Project Site. Nesting birds, however, could occur at the Project Site.

Nesting Birds. It is not anticipated that raptors will nest in the vicinity of the Project Site due to the highly urban nature of the area, the lack of tall mature trees, and the lack of foraging habitat near the Project Site. However, many other species of birds could potentially nest in landscape or riparian trees within 250 feet of the Project Site. Most native nesting birds are protected by either the Migratory Bird Treaty Act or the California Department of Fish and Game Code, as described in more detail below in 4.3.4 *Regulatory Setting*. Birds accustomed to human presence and urban habitats such as California towhee, common raven (*Corvus corax*), American crow (*Corvus brachyrhynchos*), mourning dove (*Zenadia macroura*), house finch, and white-crowned sparrow (*Zonotrichia leucophrys*) are likely to nest at the Project Site. However, riparian species such as Wilson's warbler (*Wilsonia pusilla*), Bewick's wren, and black phoebe could also nest in the riparian corridors of San Ramon and Las Trampas Creeks adjacent to the Project Site.

4.3.2 Regulatory Setting

This subsection briefly describes federal, state, and local regulations, permits, and policies pertaining to biological resources and wetlands as they apply to the Project.

Special-Status Species

Federal Endangered Species Act

The USFWS (with jurisdiction over plants, wildlife, and most freshwater fish) and the National Marine Fisheries Service (NMFS) (with jurisdiction over anadromous fish, marine fish, and mammals) oversee implementation of the Federal Endangered Species Act (FESA). Section 7 of the FESA mandates that all federal agencies consult with the USFWS and NMFS to ensure that federal agency actions do not jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat for listed species. A federal agency is required to consult with USFWS and NMFS if it determines a "may affect" situation will occur in association with the Project. The FESA prohibits the "take"³ of any fish or wildlife species listed as threatened or endangered, including the destruction of habitat that could hinder species recovery.

Under Section 9 of the FESA, the take prohibition applies only to wildlife and fish species. However, Section 9 does prohibit the removal, possession, damage, or destruction of any endangered plant from federal land. Section 9 also prohibits acts to remove, cut, dig up, damage, or destroy an endangered plant species in non-federal areas in knowing violation of any state law

³ "Take," as defined in Section 9 of the FESA, is broadly defined to include intentional or accidental "harassment" or "harm" to wildlife. "Harass" is further defined by the U.S. Fish and Wildlife Service as an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns that include, but are not limited to, breeding, feeding, and sheltering. "Harm" is defined as an act that actually kills or injures wildlife. This may include significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

or in the course of criminal trespass. Candidate species and species that are proposed or under petition for listing receive no protection under Section 9 of the FESA.

Section 10 of the FESA requires the issuance of an “incidental take” permit before any public or private action may be taken that would potentially harm, harass, injure, kill, capture, collect, or otherwise hurt (i.e., take) any individual of an endangered or threatened species. To offset the take of individuals that may occur incidental to implementation of the project, the permit requires preparation and implementation of a habitat conservation plan that provides for the overall preservation of the affected species through specific mitigation measures.

Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (16 USC, Section 703, Supplement I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

California Endangered Species Act

Under the California Endangered Species Act (CESA), CDFG has the responsibility for maintaining a list of threatened and endangered species (California Fish and Game Code Section 2070). CDFG also maintains a list of “candidate species,” which are species formally noticed as being under review for addition to either the list of endangered species or the list of threatened species. In addition, CDFG maintains lists of “species of special concern,” which serve as “watch lists.” Pursuant to the requirements of the CESA, an agency reviewing a Project within its jurisdiction must determine whether any state-listed endangered or threatened species could be present on the Project Site and determine whether the Project could have a potentially significant impact on such species. In addition, CDFG encourages informal consultation on any Project that may affect a candidate species.

California Environmental Quality Act

The intent of CEQA is to maintain “high-quality ecological systems and the general welfare of the people of the state.” It is the policy of the state to “prevent the elimination of fish or wildlife species due to man’s activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.” CEQA forbids agencies from approving projects with significant adverse impacts when feasible alternatives or feasible mitigation measures can substantially reduce such impacts.⁴

CEQA requires consultation with CDFG on any project an agency initiates that is not statutorily or categorically exempt from CEQA. The CEQA Guidelines (Section 15065a) indicate that impacts on state- and federal-listed rare, threatened, or endangered plants or animals are significant.

⁴ CEQA also provides that a project might be approved in spite of residual, unmitigated significant impacts, by adoption of a statement of overriding social and economic considerations in situations where mitigations or alternatives are deemed infeasible.

Although rare, threatened, and endangered species are protected by specific federal and state statutes, CEQA Guidelines Section 15380(b) provides that a species not listed on federal or state protected species lists may be considered rare, threatened, or endangered if the species can be shown to meet certain criteria (e.g., it can be shown that the species' survival in the wild is in jeopardy or the species is at risk of becoming endangered in the near future). These criteria have been modeled after the definition in the FESA and the section of the California Fish and Game Code dealing with rare or endangered plants or animals. This section was included in the CEQA Guidelines primarily to deal with situations in which a public agency is reviewing a project that may have a significant effect on, for example, a "species of concern" that has not yet been listed by either the USFWS or CDFG. Thus, CEQA provides an agency with the ability to protect a species from a project's potential impacts until the respective government agencies have an opportunity to designate the species as protected, if warranted. Under CEQA Guidelines Section 15380, impacts on species that meet the specified criteria but are not officially listed may also be considered significant by the lead agency (for an EIR), depending on the applicability of other laws (e.g., Migratory Bird Treaty Act) and the discretion of the agency. For example, CDFG interprets Lists 1A, 1B, and 2 of the California Native Plant Society's *Inventory of Rare and Endangered Vascular Plants of California* to consist of plants that, in a majority of cases, would qualify for listing as rare, threatened, or endangered. However, the determination of whether an impact is significant is a function of the lead agency, absent the protection of other laws. Projects subject to CEQA review must specifically address potential impacts on listed species and provide mitigation measures if the impact is significant.

California Native Plant Protection Act

State listing of plant species began in 1977 with the passage of the California Native Plant Protection Act (NPPA), which directed CDFG to carry out the legislature's intent to "preserve, protect, and enhance endangered plants in this state." The NPPA gave the California Fish and Game Commission the power to designate native plants as endangered or rare and to require permits for collecting, transporting, or selling such plants. The California Endangered Species Act expanded upon the original NPPA and enhanced legal protection for plants. The CESA established threatened and endangered species categories, and grandfathered all rare animals—but not rare plants—into the act as threatened species. There are three listing categories for plants in California: rare, threatened, and endangered.

California Fish and Game Code

Under Section 3503 of the California Fish and Game Code, 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. Section 3503.3 of the California Fish and Game Code prohibits take, possession, or destruction of any birds in the orders Falconiformes (hawks) or Strigiformes (owls), or of their nests and eggs.

Fish and Game Code (Sections 3511-birds, 4700-mammals, 5050-reptiles and amphibians, and 5515-fish) allows the designation of a species as Fully Protected. This is a greater level of

protection than is afforded by the California Endangered Species Act, since such a designation means the listed species cannot be taken at any time.

Sensitive Natural Communities

Special-status natural communities are identified as such by CDFG's Natural Heritage Division and include those that are naturally rare and those whose extent has been greatly diminished through changes in land use. The CNDDDB tracks 135 such natural communities in the same way that it tracks occurrences of special-status species: information is maintained on each site's location, extent, habitat quality, level of disturbance, and current protection measures. CDFG is mandated to seek the long-term perpetuation of the areas in which these communities occur. While there is no statewide law that requires protection of all special-status natural communities, CEQA requires consideration of a project's potential impacts on biological resources of statewide or regional significance.

Jurisdictional Waters (Including Wetlands)

Definitions

Waters of the United States

The term "waters of the United States," as defined in the Code of Federal Regulations (33 C.F.R. § 328.3[a]; 40 C.F.R. § 230.3[s]), refers to:

1. All waters which are currently used, 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;
2. All interstate waters including interstate wetlands;
3. 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 including any such waters:
 - which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - which are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as waters of the United States under the definition;
5. Tributaries of waters identified in paragraphs (1) through (4);
6. Territorial seas; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6).
8. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act (CWA), the final authority regarding Clean Water Act jurisdiction remains with the U.S. Environmental Protection Agency (EPA) (33 CFR 328.3[a][8]).

Wetlands are ecologically productive habitats that support a rich variety of both plant and animal life. The importance of wetlands has increased due to their value as recharge areas and filters for water supplies and to their widespread filling and destruction to enable urban and agricultural development. Examples of wetlands may include freshwater marsh, seasonal wetlands, and vernal pool complexes that are adjacent to waters of the U.S. In a jurisdictional sense, there are two commonly used wetland definitions, one adopted by the EPA and Corps and a separate definition, originally developed by USFWS, which has been adopted by agencies in the State of California that have regulatory authority over wetlands. Both definitions are presented below.

Federal Wetland Definition

Under federal law, wetlands are a subset of “waters of the United States” and receive protection under Section 404 of the CWA. Wetlands are defined as those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland determination under the federal wetland definition adopted by the Corps requires the presence of three factors: (1) wetland hydrology; (2) plants adapted to wet conditions; and (3) soils that are routinely wet or flooded [33 C.F.R. § 328.3(b)]. In January 2001, the Supreme Court of the United States ruled that certain isolated wetlands do not fall under the jurisdiction of the CWA (*Solid Waste Agency of Northwestern Cook County v. United States Army Corps of Engineers et al.*).

California Wetland Definition

The CDFG and the California Coastal Commission (CCC) have adopted the USFWS Cowardin (1979) definition of wetlands. While the federal definition of wetlands requires three wetland identification parameters to be met, the Cowardin definition can be satisfied under some circumstances with the presence of only one parameter. Thus, identification of wetlands by State agencies may include areas that are permanently or periodically inundated or saturated and without wetland vegetation or soils, such as rocky shores, or areas that presume wetland hydrology based on the presence of at least one of the following: a) a seasonal or perennial dominance by hydrophytes⁵ or b) the presence of hydric⁶ soils. CDFG does not normally assert jurisdiction over wetlands unless they are subject to Streambed Alteration Agreements (CDFG Code Sections 1600–1616) or they support state-listed endangered species.

⁵ A *hydrophyte* is, literally, a water loving plant, i.e., one that is adapted to growing in conditions where the soil lacks oxygen, at least periodically during the year, due to saturation with water.

⁶ A *hydric* soil is one that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.

Other Waters of the U.S

“Other waters of the U.S.” refers to additional features that are regulated by the CWA but are not wetlands (33 CFR 328.4). To be considered jurisdictional, these features must exhibit a defined bed and bank and an ordinary high water mark. The term ordinary high water mark refers to a line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other means appropriate to the characteristics of the surrounding areas. Examples of other waters of the U.S. include rivers, creeks, ponds, and lakes.

U.S. Army Corps of Engineers and U.S. Environmental Protection Agency Regulations

The U.S. Army Corps of Engineers (Corps) and the U.S. EPA regulate the discharge of dredged or fill material into waters of the U.S., including wetlands, under Sections 404 and 401 of the CWA. Projects that would result in the placement of dredged or fill material into waters of the U.S. require a Section 404 permit from the Corps. Some classes of fill activities may be authorized under General or Nationwide permits if specific conditions are met. Nationwide permits do not authorize activities that are likely to jeopardize the existence of a threatened or endangered species (listed or proposed for listing under the FESA). In addition to conditions outlined under each Nationwide Permit, project-specific conditions may be required by the Corps as part of the Section 404 permitting process. When a project’s activities do not meet the conditions for a Nationwide Permit, an Individual Permit may be issued.

Section 401 of the CWA requires an applicant for a Corps permit to obtain state certification that the activity associated with the permit will comply with applicable state effluent limitations and water quality standards. In California, water quality certification, or a waiver, must be obtained from the Regional Water Quality Control Board (RWQCB) for both Individual and Nationwide Permits.

The Corps also regulates activities in navigable waters under Section 10 of the Rivers and Harbors Act. The construction of structures, such as tidegates, bridges, or piers, or work that could interfere with navigation, including dredging or stream channelization, may require a Section 10 permit, in addition to a Section 404 permit if the activity involves the discharge of fill.

Finally, the federal government also supports a policy of minimizing “the destruction, loss, or degradation of wetlands.” Executive Order 11990 (May 24, 1977) requires that each federal agency take action to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands.

In recent years, several Supreme Court cases have challenged the scope and extent of the Corps’ jurisdiction over waters of the United States and have led to several reinterpretations of that authority. The most recent of these decisions include the case of *Solid Waste Agency of Northern Cook County (SWANCC) v. the Army Corps of Engineers* (January 9, 2001) and *Rapanos v. United States* (June, 2006). The SWANCC decision found that jurisdiction over non-navigable,

isolated, intrastate waters could not be based solely on the use of such waters by migratory birds. The reasoning behind the SWANCC decision could be extended to suggest that waters need a demonstrable connection with a 'navigable water' to be protected under the CWA. The introduction of the term isolated has led to the consideration of the relative connectivity between waters and wetlands as a jurisdictionally relevant factor. The more recent Rapanos case further questioned the definition of "waters of the United States" and the scope of federal regulatory jurisdiction over such waters. The case resulted in a split decision which did not provide definitive answers but expanded on the concept that a 'significant nexus' with traditional navigable waters was needed for certain waters to be considered jurisdictional.

On June 5, 2007, the EPA and the Corps released guidance on CWA jurisdiction in response to the Rapanos Supreme Court decision, which can be used to support a finding of CWA coverage for a particular water body when either a) there is a significant nexus between the stream or wetland in question and navigable waters in the traditional sense; or b) a relatively permanent water body is hydrologically connected to traditional navigable waters and/or a wetland has a surface connection with that water. According to this guidance, the Corps and the EPA will take jurisdiction over the following waters:

1. Traditional navigable waters, which are defined as 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;
2. Wetlands adjacent to traditional navigable waters; including adjacent wetlands that do not have a continuous surface connection to traditional navigable waters;
3. Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months);
4. Wetlands adjacent to non-navigable tributaries as defined above; that have a continuous surface connection to such tributaries (e.g., they are not separated by uplands, a berm, dike, or similar feature).

The EPA and the Corps decide jurisdiction over the following waters, based on a fact-specific analysis to determine if there is a significant nexus, as defined below, to a traditional navigable water:

1. Non-navigable tributaries that are not relatively permanent;
2. Wetlands adjacent to non-navigable tributaries that are not relatively permanent;
3. Wetlands adjacent to, but that do not directly abut a relatively permanent non-navigable tributary.

The EPA and the Corps *generally* do not assert jurisdiction over the following features:

1. Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent or short duration flow);

2. Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water.

The EPA and the Corps have defined the significant nexus standard as follows:

1. A significant nexus analysis assesses the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters;
2. Significant nexus analysis includes consideration of hydrologic and ecologic factors including:
 - a. volume, duration, and frequency of flow, including consideration of certain physical characteristics of the tributary,
 - b. proximity to a traditional navigable water,
 - c. size of the watershed,
 - d. average annual rainfall,
 - e. average annual winter snow pack,
 - f. potential of tributaries to carry pollutants and flood waters to traditional navigable waters,
 - g. provision of aquatic habitat that supports a traditional navigable water,
 - h. potential of wetlands to trap and filter pollutants or store flood waters, and
 - i. maintenance of water quality in traditional navigable waters.

State Policies and Regulations for Waters and Wetlands

State regulation of activities in waters and wetlands resides primarily with CDFG and the State Water Resources Control Board (SWRCB). In addition, the CCC has review authority for wetland permits within its planning jurisdiction.

CDFG provides comment on Corps permit actions under the Fish and Wildlife Coordination Act. CDFG is also authorized under the California Fish and Game Code, Sections 1600–1616, to enter into a Streambed Alteration Agreement with applicants and to develop mitigation measures when a Project would obstruct the flow or alter the bed, channel, or bank of a river or stream in which there is a fish or wildlife resource, including intermittent and ephemeral streams. The SWRCB, acting through the nine RWQCBs, must certify that a Corps permit action meets state water quality objectives (Section 401, CWA).

Local Regulations

City of Walnut Creek General Plan 2025

Walnut Creek's General Plan was finalized in 2006, with the goal of creating a comprehensive and long-term strategy for development of Walnut Creek while preserving open space and the natural character of the city. Walnut Creek has more than 2,700 acres of open space within the

city limits, some of which occurs as parks and plazas integrated into urban areas. The City also contains a vast network of sub-watersheds in the hills surrounding downtown Walnut Creek, which drain into creeks that flow through developed and natural areas of Walnut Creek. Goals and policies outlined in Chapter 3, Natural Environment and Public Spaces of the General Plan that are relevant to the Project are summarized below.

- **Goal 3:** Maintain and enhance the area's creek systems, their riparian environments, and their recreational amenities.

- *Policy 3.1:* Restore riparian corridors and waterways throughout the city.
- *Policy 3.2:* Make downtown creeks a central feature in new development.

Action 3.2.1: Implement the 1993 Creeks Restoration and Trails Master Plan.

Action 3.2.2: Incorporate the downtown creeks in project designs for new development and redevelopment in the Core Area.

Action 3.2.3: Expose covered creeks and incorporate open creeks in new development and redevelopment wherever possible.

Action 3.2.4: Encourage the use of volunteers to implement the 1993 Creeks Restoration and Trails Master Plan.

Creek Restoration and Trails Master Plan

The Creek Restoration and Trails Master Plan for the City of Walnut Creek was published in 1993 with the goal of retrofitting the built environment to integrate nature in a positive and mutually-supportive way, while enabling people to experience the creekside greenway. One of the foremost goals of the Master Plan is to create continuous and accessible creekside trails that enable safe transportation through a natural setting within Walnut Creek. *Action 3.2.1* in the Walnut Creek General Plan specifically requires implementation of the Creek Restoration and Trails Master Plan. Major Guidelines of the Master Plan are summarized below.

1. Create a linear park and greenbelt along three creek corridors, Las Trampas, San Ramon, and Walnut Creek in the downtown which balances human access with the protection, enhancement, and restoration of natural systems.
2. Create a continuous bicycle and hiking trail system along the creek corridors, and connect the trails through the commercial and civic downtown area where the creeks have been undergrounded.
3. Create passive recreational areas related to the creeks and trails within the downtown.
4. Enhance the downtown setting by encouraging the orientation of commercial enterprises towards the creeks.
5. Improve the existing riparian habitat, upland wildlife habitat, fisheries and fish passage throughout the creek corridors and restore the degraded natural habitats to the greatest extent feasible.
6. Preserve (or improve, if feasible) the existing flood capacity of the creek channels while providing for improved riparian habitat and trails.

7. Link the restored riparian and fisheries habitat within the natural channels to restoration treatments within the concrete channelized portions of the creek.
8. Reach voluntary agreements with property owners on right-of-way acquisition wherever possible.
9. Increase public awareness of the creeks, the creek ecology, the effects of human activities on the creeks, and the creek-related heritage of the City through education, interpretive programs, public events, and support facilities along the creek trails.

The Master Plan also contains a conceptual design for a recreation path along San Ramon Creek, which if implemented, would cause potentially significant impacts to riparian resources, and alterations of natural flows. These activities would not be permitted or would be discouraged by resource agencies. The design is only conceptual and intended to be illustrative of how the goals might be implemented.

Accordingly, the Creek Restoration and Trails Master Plan is interpreted and applied by the City to encourage achievement of its goals without requiring development of aspects of the conceptual plan that would harm riparian resources. The Project proposes a recreational path along the east side of San Ramon Creek on the top of bank, outside of the creek channel.

City of Walnut Creek Municipal Code

Preservation of Trees on Private Property

Chapter 8 of Title 3 of the Walnut Creek Municipal Code requires a tree removal permit for removal of trees. “Trees” under this ordinance are defined in section 3-8.02(j), as the following:

- Any live woody plant having a single perennial stem of 28 inches or more in circumference measured 4.5 feet above the natural grade;
- Any multi-stemmed perennial plant having an aggregate circumference of 40 inches or more measured 4.5 feet above the natural grade;
- Any multi-stemmed plant having one stem of 28 inches or more in circumference;
- A tree of any size which is part of a grove.

The ordinance also defines “highly protected trees,” which are subject to heightened standards of approval. Highly protected trees include the following native tree species that meet the size criteria set forth above: valley oak (*Quercus lobata*), blue oak (*Q. douglasii*), coast live oak (*Q. agrifolia*), California black oak (*Q. kelloggii*), canyon live oak (*Q. chrysolepis*), interior live oak (*Q. wislizenii* var. *wislizenii*), madrone (*Arbutus menziesii*), California buckeye (*Aesculus californica*), California black walnut (*Juglans hindsii*), and grey pine (*Pinus sabiniana*). Walnut Creek Municipal Code section 3-8.02(h).

Street Trees

Removal and planting of street trees is regulated by Article 4 of Chapter 1 of Title 7 of the Walnut Creek Municipal Code. A street tree is defined in section 7-1.403 as any tree located within six feet from the back edge of the sidewalk, or if there is no sidewalk, within 11 feet from the curb line. The Code requires a permit for planting any street tree, and allows removal of street trees provided 1:1 replacement is provided. In addition, for projects requiring Design Review, section 7-1.405 provides “The Design Review Commission shall review the type, size and location of street trees for new development as a part of the design review plan proposed for the project. Design Review Commission approval shall constitute the planting permit required under Section 7-1.404. Planting or re-planting of street trees must adhere to planting standards in the City’s Master Street Tree Planting Plan.”

4.3.3 Impacts and Mitigation Measures

Significance Criteria

The Project would have a significant effect on the environment if it were to:

1. 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 CDFG or USFWS;
2. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFG or USFWS;
3. 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;
4. 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;
5. Fundamentally conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
6. Fundamentally conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

The following sections of the CEQA Guidelines, which expand and define some of the terms used in the criteria presented above, were also considered when using the criteria to determine impact significance.

1. CEQA Guidelines Section 15065 directs lead agencies to find that a project may have a significant effect on the environment if it has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish and wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to

eliminate a plant or wildlife community, substantially reduce the number or restrict the range of an endangered, rare, or threatened species, or eliminate important examples of the major periods of California history or prehistory.

2. CEQA Guidelines Section 15380 further provides that a plant or wildlife species, even if not on one of the official lists, may be treated as “rare or endangered” if, for example, it is likely to become endangered in the foreseeable future.
3. CEQA Guidelines Section 15382 identifies a significant effect on the environment as a “...substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.”

Approach to Analysis

- Potential impacts resulting from implementation of the Project elements were evaluated based on field reconnaissance surveys performed by a qualified ESA biologist and a review of the following sources: Existing resource maps and aerial photographs of the Project Site;
- Data presented in the CNDDDB, the CNPS *Electronic Inventory of Rare and Endangered Vascular Plants of California*, and an official species list for the Walnut Creek and Las Trampas Ridge USGS 7.5 minute topographic quadrangles, which includes the Project Site and surrounding areas, from the USFWS (2011);
- Standard biological references (e.g., Hickman, 1993; Mayer and Laudenslayer, 1988; Sibley, 2001);
- Other available literature regarding the natural resources of the area.

Once site surveys were completed and all sources reviewed, a list was prepared of special-status species that were observed or had the potential to occur due to the presence of the basic habitat types that they inhabit within the Project Site. Species were then further evaluated to determine their actual potential to occur, given conditions within the Project Site. Species with a low potential to occur are species whose known current distribution or range does not include the Project Site, are those for whom only limited or marginally suitable habitat is present within the Project Site, species whose specific habitat requirements (e.g., serpentine grasslands, as opposed to grasslands occurring on other soils) are not present, or species that are presumed, based on the best scientific information available, to have been extirpated from the Project Site or region. Species with a moderate potential to occur are those for whom low to moderate quality suitable habitat is present within the Project Site or immediately adjacent areas, even though the species have not necessarily been observed during general biological surveys conducted in the Project Site. A species was determined to have high potential for occurrence if moderate to high quality habitat is present within the Project Site in addition to the site being included in the documented range of the species.

For the analysis presented below, impacts resulting from implementation of the Project were considered to be significant if they had the potential to:

- Have a substantial adverse effect on special-status species that were found to have moderate or high potential to occur;
- Result in the fill of or otherwise cause degradation of potentially jurisdictional waters;
- Have a substantial adverse effect on areas designated as sensitive habitat in this EIR;
- Otherwise exceed the significance criteria outlined above.

Topics Briefly Addressed

As discussed in Section 4.9, *Land Use and Planning*, regarding Criterion 3 for that topic, the Project Site is not located within a habitat or natural community conservation plan area. Therefore, the Project would have no impact to such plans since none exist in the Project Site. This topic, Significance Criterion 6, is considered No Impact and is not discussed further in this EIR.

Impacts by Project Scenario

For all significance criteria relating to biological resources, the impacts are the same for the Maximum Commercial Scenario and the Maximum Mixed Use Scenario. Therefore, both scenarios are discussed under a single Impact Statement for each criterion.

Impacts

Special-Status Species

Impact BIO-1: The Project could negatively impact special-status wildlife species (Criterion 1). (Potentially Significant)

The Project Site and much of the Study Area are highly urbanized, no special status wildlife species were detected during the Project Site surveys, and most special-status species in the region could not occur at the Project Site. No special-status plant species were detected, and no habitat for special-status plant species exists. However, there is a moderate potential for nesting birds to be present in the Project Site.

Native birds could nest in trees or shrubs present in all portions of the Project Site, and could be negatively impacted by project construction. Existing levels of disturbance at the Broadway Plaza shopping center are extremely high, with constant vehicle traffic, human presence, and pet presence for the entirety of the day and much of the night. Despite this, some disturbance-tolerant species and habituated individuals are capable of nesting in trees, shrubs, and buildings in or within 250 feet of the Project Site. Direct impacts on nesting birds could occur as a result of tree removal and building demolition. Constant or impulse construction noise produced by the Project would be louder than current conditions, and could indirectly impact nesting birds by altering behavior, making eggs or nestlings more vulnerable to predators, or causing nest abandonment.

Any disturbance of nesting birds or destruction of nests would be considered a significant impact. The following mitigation measure will reduce this impact to less-than-significant levels.

Mitigation Measure BIO-1: The Project Applicants shall take the following steps to avoid direct losses of nests, eggs, and nestlings and indirect impacts to avian breeding success:

- If construction activities for the Project occur only during the non-breeding season, between August 31 and February 1, no surveys shall be required.
- During the breeding bird season (February 1 through August 31) a qualified biologist shall survey the Project Site for nesting passerine birds not more than 14 days prior to any tree removal, grading, excavation or project construction. Surveys shall include all line-of-sight trees and all vegetation within 250 feet of construction activities. If nesting passerine birds are found, the qualified biologist shall recommend measures necessary to avoid direct losses of nests, eggs, and nestlings and indirect impacts to avian breeding success, which may include construction buffer areas or seasonal avoidance.
- Based on the results of the surveys, avoidance procedures shall be adopted, as recommended by the qualified biologist.

Significance after Mitigation: Less than Significant.

Sensitive Natural Communities

Impact BIO-2: The Project would not impact sensitive natural communities recognized by CDFG, such as riparian woodland or freshwater wetland (Criterion 2). (Less than Significant)

Implementation of the Project would have no impact on sensitive natural communities recognized by CDFG. The Project includes construction of a recreational trail along the West side of Capwell Street, directly east of riparian vegetation within San Ramon Creek. If any trimming or removal of any riparian trees is proposed, the Project Applicant would be required to notify CDFG and comply with applicable codes and regulations administered by CDFG.

Wetlands and Waters of the U.S.

Impact BIO-3: The Project would not impact jurisdictional waters, including wetlands and other waters of the U.S. within San Ramon Creek (Criterion 3). (Less than Significant)

Project activities will not directly impact any jurisdictional waters or wetlands, as no Project elements are proposed within San Ramon or Las Trampas Creeks, and no other wetlands occur within the Project Site. While the Project could indirectly impact jurisdictional waters and wetlands associated with either creek through stormwater runoff containing sediment or

hazardous materials, the regulatory requirements discussed in Chapter 4.8 *Hydrology and Water Quality* will ensure that these impacts are less-than-significant.

Wildlife Movement, Corridors, and Nursery Sites

Impact BIO-4: The Project would not impact movement of wildlife species, active wildlife corridors, or wildlife nursery sites (Criterion 4). (Less than Significant)

The Project Site is almost completely developed, and no identified wildlife corridors will be affected by Project construction. Potential impacts to nesting birds, including those that nest in the riparian vegetation, will be mitigated to less-than-significant levels through Mitigation Measure BIO-1.

Additionally, lighting and ongoing noise at the Project Site will not increase in amounts significant enough to impact migratory birds flying over the area; downtown Walnut Creek is already heavily urbanized, and implementation of the Project will not illuminate the Broadway Plaza shopping center more than surrounding buildings, parking lots, and residential streets.

Local Policies and Ordinances

The Project would not conflict with the City of Walnut Creek's Tree Ordinance (Criterion 5). (Less than Significant)

The Project will be required to comply with all City of Walnut Creek Municipal Code ordinances governing the treatment of trees within the city. As previously mentioned, the City may attach reasonable conditions to ensure compliance with the intent and purpose of these ordinances, including the protection of any trees that are to remain on the Project Site. Conditions may require replacement plantings or monetary equivalent. As the Project will not conflict with the relevant Walnut Creek tree ordinances, the impact is less than significant.

Cumulative Impacts

The Project, combined with cumulative development, including past, present, and reasonably foreseeable future development, would not result in significant cumulative impacts on biological resources. (Less than Significant)

The geographic context for analysis of cumulative impacts to biological resources generally includes the area surrounding the Project Site, including projects located close to San Ramon Creek. The range of projects considered included those listed in Appendix B. The majority of these projects are in previously developed or disturbed areas.

Impacts on biological resources associated with the Project include the potential disturbance of nesting birds during construction activities and removal and potential trimming of trees within the Project Site. However, these impacts would be confined to the Project Site and would be less than significant with Mitigation Measure BIO-1 and compliance with regulatory requirements.

Past projects, including the development of civic facilities, residences, commercial and industrial areas, and infrastructure, have already caused substantial adverse changes to biological resources in the Walnut Creek area. For example, construction of commercial retail and residential areas in downtown Walnut Creek have removed almost all natural habitat from properties on all sides of the Project Site. These urban areas provide habitat for some wildlife species that are accustomed to, or can benefit from, human presence. Overall, this is true of many areas throughout the region.

The minor biological impacts of the Project are confined to the Project Site and do not combine with potential impacts to biological resources on other sites. In any event, the cumulative contribution of any impacts resulting from the Project, as mitigated, are not cumulatively considerable.

Mitigation: None required.

4.3.4 References

- California Department of Fish and Game (CDFG), California Natural Diversity Database (CNDDDB) version 3.1.0, data request for the Walnut Creek and Las Trampas Ridge U.S. Geological Survey 7.5-minute topographic quadrangles, commercial version 10/1/2011, expires 4/01/2012, retrieved 11/3/2011.
- California Native Plant Society (CNPS), CNPS Electronic Inventory, version 7-11 (5/5/11), data request for San Francisco South U.S. Geological Survey 7.5-minute topographic quadrangles, online application, cnps.web.aplus.net/cgi-bin/inv/inventory.cgi, information retrieved 11/3/2011.
- John Northmore Roberts and Associates, *Creek Restoration and Trails Master Plan; Volume 1: Summary Master Plan*, prepared for the City of Walnut Creek, 1993.
- Oakland Museum of California, *Guide to San Francisco Bay Area Creeks; Creeks of the East Bay, East Contra Costa Historical Creek Map*, <http://museumca.org/creeks/AA-OBEastCoCo.html>, retrieved 11/3/2011.
- U.S. Army Corps of Engineers, *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*, 2008.
- U.S. Army Corps of Engineers, *Corps of Engineers Wetlands Delineation Manual*, Wetlands Research Program Technical Report Y-87-1, 1987.
- U.S. Fish and Wildlife Service (USFWS), Official List of Federal Endangered and Threatened Species that Occur in or may be Affected by Projects in the Walnut Creek and Las Trampas Ridge USGS 7.5 Minute Quadrangles, database retrieved 11/4/2011.