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# 4590 Patrick Henry Drive
# Biological Resources Report

**Project #4772-01**

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February 1, 2024

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# Section 1. Introduction

This report describes the potential for sensitive biological resources to occur in the area of the proposed 4590 Patrick Henry Drive redevelopment project in Santa Clara, California; the potential impacts of the proposed project on biological resources; whether those impacts are within the scope of the impacts disclosed in the Patrick Henry Drive Specific Plan Environmental Impact Report (PHD EIR) (MIG 2021) after accounting for PHD EIR policies, guidelines, and mitigation measures; and, if not, any additional, project-specific conceptual mitigation measures necessary to reduce potentially significant impacts to less-than-significant levels under the California Environmental Quality Act (CEQA). This assessment is based on the project plans and description provided to H. T. Harvey & Associates by David J. Powers & Associates through August 2023.

## 1.1 Project Description

The proposed project site is located at 4590 Patrick Henry Drive in Santa Clara, California (Figure 1). The project site is 2.79 acres in size, and is currently occupied by a single-story office building surrounded by surface parking with interspersed landscape plantings. The site is bounded by office buildings to the north and south, Patrick Henry Drive to the east, and Calabazas Creek to the west. The proposed project entails the demolition of existing improvements and construction of an eight-story, 284-unit apartment building on the project site.

The 4590 Patrick Henry Drive property is part of the recently approved Patrick Henry Drive Specific Plan Area which was created to guide the transformation of 73 acres of underutilized industrial land into a new urban area consisting of housing, office and parks, in Northern Santa Clara near transit, freeways, trails and jobs. The site is located along the western edge of the Specific Plan area with residentially zoned land to the North, Patrick Henry Drive to the East, new open space to the South, and the Calabazas Creek corridor to the West and City of Sunnyvale beyond. The property is a single parcel of land totaling 2.79 acres and currently has a vacant, single-story office building, surrounded by an asphalt parking lot. Through the Specific Plan approval in March of 2022, the subject property was zoned for Urban Village, permitting 100 to 149 dwelling units per acre and up to 12 stories. Approximately 0.555 acre of the subject property, along its southern edge, was also identified as a location for a future park.

The 8-story building would consist of 284 residences with a mix of studios, 1-bedroom, and 2-bedroom plans. The building has 5 stories of wood framing over 3 stories of concrete. The vehicular entry to the building is along a 26-foot wide private driveway located along the south edge of the building, adjacent to the new park. The driveway includes sidewalk on one side and a 124-foot diameter turn-around at the westerly property edge, providing resident and visitor access, as well as aerial access for the Fire Department.

The building features a strong tower element at the corner of the entry drive and Patrick Henry Drive. The Patrick Henry public street frontage is activated through the programming of a social lounge at the base of the

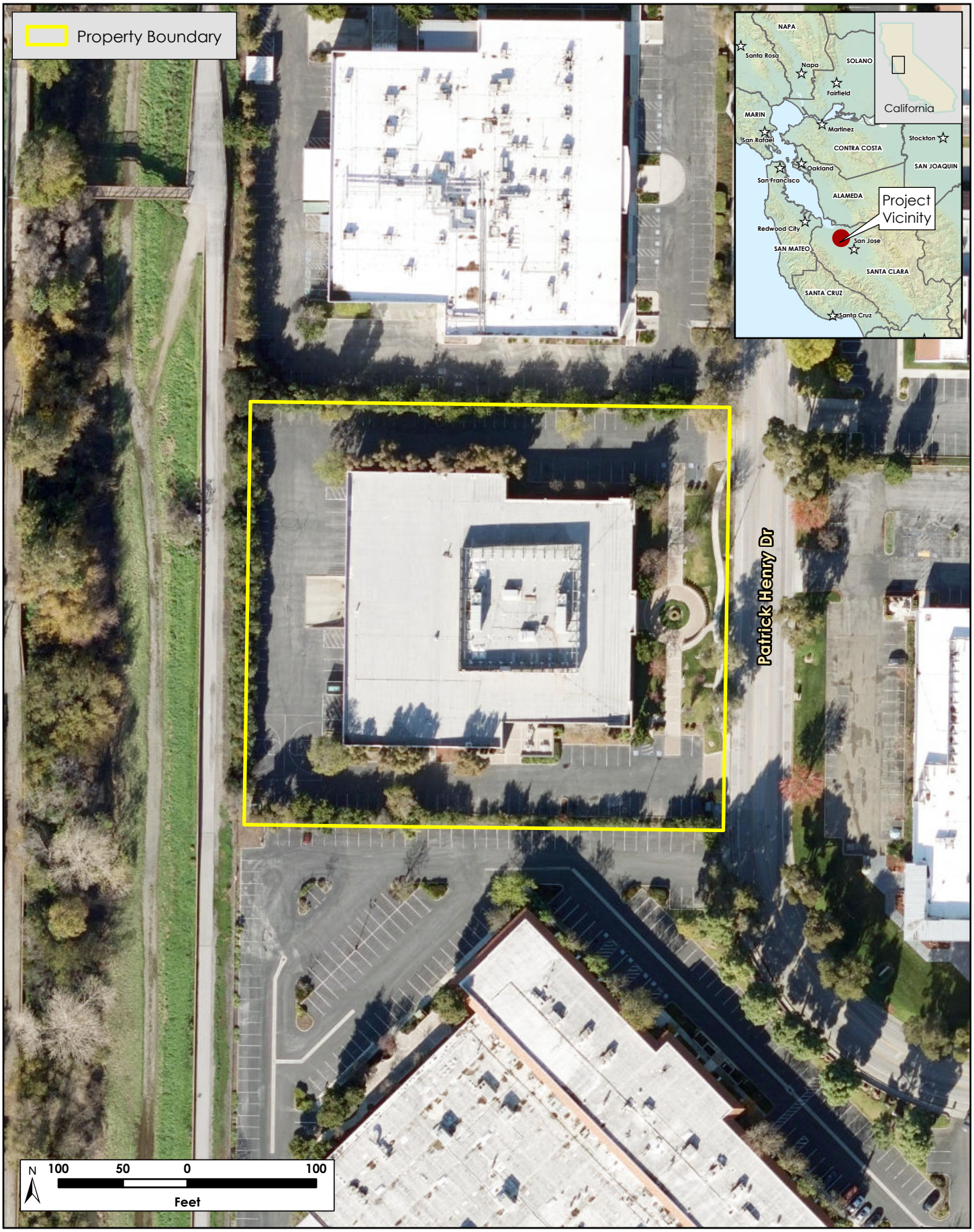


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**Figure 1. Vicinity Map**
4590 Patrick Henry Drive - Biological Resources Report (4772-01)
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corner tower and slightly elevated ground floor residences. The Patrick Henry street frontage has a generous 20-foot wide continuous pedestrian zone, including a 7-foot sidewalk and 6-foot landscape strip.

The building includes the following features and amenities for resident enjoyment:

- Two podium level courtyards:
    - Larger courtyard with a swimming pool, spa, lounge seating, landscaping, and picnic areas with electric barbeques
    - Smaller courtyard with shade trees and landscaping offering quiet seating areas with string lights
- Fitness studio on the ground floor facing the park
- Social lounge on the ground floor, offering games and potential work-from-home options
- Pet grooming room on the ground floor with easy access to the outdoors
- Yoga room on the podium level
- Community room on the podium level with a kitchen and furnished gathering spaces
- Rooftop community room on the 8th floor with furnished gathering spaces
- Rooftop deck on the 8th floor with landscaping, furnishings and a shade structure
- Outdoor balconies (select units)

The project will deliver a total of 42 affordable units (15% of the total), consisting of 14 units each made available to Very Low Income, Low Income, and Moderate Income residents in Santa Clara, furthering the City's housing goals.

The building will feature the latest in sustainable design, including photovoltaics, EV-charging stations, and meeting the City's new Reach Codes and CalGreen required measures.

There are a total of 71 trees on the property, none of which qualify as Heritage trees or Protected trees pursuant to City of Santa Clara municipal code (Sect. 12.35). To accommodate the building construction, 51 of these trees are proposed for removal, while 20 trees will be preserved, some along the site perimeters and many within the proposed park.

## Architectural Design

The building design by BAR Architects was driven by specific responses to the surrounding context and synthesized into a cohesive project comprising of building, park, and connecting outdoor spaces-as-one. As the building will be adjacent to a new community park, the overall building massing features a series of large outdoor spaces that pull the park experience into and up through the building, from the arrival/car turnaround along Calabazas Creek, to the south-facing residential pool deck flooded with natural light, to the open-air roof-

deck with panoramic views of the park beyond. As residents and visitors enter by car, bike or by walking between the building and the park, everyone can connect with this open space.

The primary massing moves of the building include 6 vertical "tower" elements that are focused along the public facing Patrick Henry Drive façade and the park to the south. These elements are highlighted by subtly canted walls that create a dynamic movement to the façade and break down the apparent mass of the building. They are executed in tile and stucco with a warm natural tone and color. The rest of the building features a calm and regular fenestration pattern, with variation achieved through balcony placement and application of a light- and dark-color to contrast the natural tan color of the primary volumes.

### Parking and Transit

Vehicular parking is provided in a secure above grade garage on three levels with a total of 324 parking spaces, for an overall parking ratio of 1.14 spaces/unit, including guest parking. The proposal also meets the City's rules for bicycle parking with 19 Class II bicycle racks (1 per every 15 units) throughout the property (along Patrick Henry Drive frontage, along the private entry drive, and near the rear elevator lobby along the western edge of the building). The building also has an access-controlled dedicated bicycle room for that can accommodate the 284 required Class I bicycles.

The Patrick Henry Drive street frontage will be improved with an 8-foot protected bicycle lane, providing easy access to various transit services, including bus and light rail provided by VTA, the ACE commuter rail, as well as easy transit connections to Amtrak and Caltrain. The project proposal also includes a TDM program designed to reduce single-occupant vehicle trips and to relieve traffic congestion, parking demand, greenhouse gas emissions, and air pollution.

### Park Dedication

Pursuant to the Specific Plan, the proposal includes the dedication of a new 0.555 acre park open to the public. This dedication represents slightly less than 1/3 of what will ultimately become a larger park identified in the Specific Plan for sports activities. The preliminary park design consists of table tennis, fitness equipment, picnic tables, shade trees, lawn and trails, though these concepts may be further refined during the public engagement process.

# Section 2. Methods

## 2.1 Background Review

Prior to conducting field work, H. T. Harvey & Associates ecologists reviewed the project's preliminary plans and description provided by David J. Powers & Associates through August 2023; the *Biological Resources* chapter of the PHD EIR (MIG 2021); aerial photos (Google Inc. 2023) and topographic maps; the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDB) (2023); Calflora (2023); the California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants of California (CNPS 2023); bird records from the project vicinity reported to the eBird database (Cornell Lab of Ornithology 2023), which has been established by the Cornell University Laboratory of Ornithology to archive records of birds seen worldwide; and other relevant scientific literature and technical databases in order to assess the current distribution of special-status plants and animals in the site vicinity.

## 2.2 Site Visit

Following our background review, H. T. Harvey & Associates wildlife ecologist Craig Fosdick, M.S., conducted a reconnaissance-level survey of the project site on August 30, 2023. The purpose of this survey was to identify existing biological conditions and the site's potential to support special-status species of plants and animals; other legally protected animals, such as migratory birds; and sensitive/regulated habitats such as jurisdictional wetlands and other waters of the U.S., waters of the state, and riparian habitats. The survey included an assessment of habitats for special-status species and other protected animals both on the site and in adjacent areas (e.g., in developed and landscaped areas on adjacent properties) that could be impacted either directly or indirectly by proposed activities, as well as an assessment of adjacent habitats that could potentially support source populations of sensitive species that could then disperse onto the project site. In addition, C. Fosdick mapped the top of bank along Calabazas Creek adjacent to the site for the purpose of establishing the riparian setback baseline.

Because the site is completely developed, no suitable habitat for special-status plants is present. Although special-status plants are not expected to occur on the site, per Mitigation Measure 6.3 of the PHD EIR, H. T. Harvey & Associates senior ecologist Steve Rottenborn, Ph.D., conducted a focused survey for arcuate bush-mallow (*Malacothamnus arcuatus*) and Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*) on the project site on September 24, 2023, as specified in Mitigation Measure 6.3.

# Section 3. Regulatory Setting

No sensitive or regulated habitats, such as wetlands, streams, or riparian habitats, are present on the project site or will be directly impacted by the project. Therefore, regulations pertaining to such habitats are not discussed below.

## 3.1 Federal Regulations

### 3.1.1 Federal Endangered Species Act

The Federal Endangered Species Act (FESA) protects federally listed wildlife species from harm or *take*, which is broadly defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct." *Take* can also include habitat modification or degradation that directly results in death or injury of a listed wildlife species. An activity can be defined as *take* even if it is unintentional or accidental. Listed plant species are provided less protection than listed wildlife species. Listed plant species are legally protected from take under FESA only if they occur on federal lands.

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service have jurisdiction over federally listed, threatened, and endangered species under FESA. The USFWS also maintains lists of proposed and candidate species. Species on these lists are not legally protected under FESA, but may become listed in the near future and are often included in their review of a project.

Project Applicability: No federally listed or proposed plant or animal species occur on the project site due to the absence of suitable habitat on and adjacent to the site and the intensively urbanized surroundings, which preclude dispersal of such species onto the site. The only candidate for federal listing that may occur on the project site is the monarch butterfly (*Danaus plexippus*). Suitable larval hostplants (milkweeds [*Asclepias* spp.]) for the monarch do not occur on the project site, and the species therefore does not breed there. However, monarchs are expected to fly through the site as occasional migrants, and they may nectar on flowers on or adjacent to the project site in small numbers.

### 3.1.2 Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA), 16 U.S.C. Section703, prohibits killing, possessing, or trading of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. The MBTA protects whole birds, parts of birds, and bird eggs and nests; and prohibits the possession of all nests of protected bird species whether they are active or inactive. An active nest is defined as having eggs or young, as described by the Department of the Interior in its April 16, 2003 Migratory Bird Permit Memorandum. Nest starts (nests that are under construction and do not yet contain eggs) are not protected from destruction.

Project Applicability: All native bird species that occur on the project site are protected under the MBTA. The PHD EIR requires compliance with all applicable federal laws and regulations, including the MBTA.

## 3.2 State Regulations

### 3.2.1 California Endangered Species Act

The California Endangered Species Act (CESA; California Fish and Game Code, Chapter 1.5, Sections 2050-2116) prohibits the take of any plant or animal listed or proposed for listing as rare (plants only), threatened, or endangered. In accordance with CESA, the CDFW has jurisdiction over state-listed species (Fish and Game Code 2070). The CDFW regulates activities that may result in take of individuals (i.e., "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill"). Habitat degradation or modification is not expressly included in the definition of take under the California Fish and Game Code. The CDFW, however, has interpreted take to include the "killing of a member of a species which is the proximate result of habitat modification."

Project Applicability: No state listed, proposed, or candidate plant or animal species occur on the project site due to the absence of suitable habitat on and adjacent to the site and the intensively urbanized surroundings, which preclude dispersal of such species onto the site.

### 3.2.2 California Environmental Quality Act

CEQA is a state law that requires state and local agencies to document and consider the environmental implications of their actions and to refrain from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. CEQA requires the full disclosure of the environmental effects of agency actions, such as approval of a general plan update or the projects covered by that plan, on resources such as air quality, water quality, cultural resources, and biological resources. The State Resources Agency promulgated guidelines for implementing CEQA are known as the State CEQA Guidelines.

Section 15380(b) of the State CEQA Guidelines provides that a species not listed on the federal or state lists of protected species may be considered rare if the species can be shown to meet certain specified criteria. These criteria have been modeled after the definitions in FESA and CESA and the section of the California Fish and Game Code dealing with rare or endangered plants and animals. This section was included in the guidelines primarily to deal with situations in which a public agency is reviewing a project that may have a significant effect on a species that has not yet been listed by either the USFWS or CDFW or species that are locally or regionally rare.

The CDFW has produced three lists (amphibians and reptiles, birds, and mammals) of "species of special concern" that serve as "watch lists". Species on these lists are of limited distribution or the extent of their habitats has been reduced substantially, such that threat to their populations may be imminent. Thus, their populations should be monitored. They may receive special attention during environmental review as potential rare species, but do not have specific statutory protection. All potentially rare or sensitive species, or habitats capable of supporting rare species, are considered for environmental review per the CEQA Section 15380(b).

The CNPS, a non-governmental conservation organization, has developed CRPRs for plant species of concern in California in the Inventory of Rare and Endangered Plants (CNPS 2023). The CRPRs include lichens, vascular, and non-vascular plants, and are defined as follows:

- CRPR 1A Plants considered extinct.
- CRPR 1B Plants rare, threatened, or endangered in California and elsewhere.
- CRPR 2A Plants considered extinct in California but more common elsewhere.
- CRPR 2B Plants rare, threatened, or endangered in California but more common elsewhere.
- CRPR 3 Plants about which more information is needed - review list.
- CRPR 4 Plants of limited distribution-watch list.

The CRPRs are further described by the following threat code extensions:

- .1—seriously endangered in California;
- .2—fairly endangered in California;
- .3—not very endangered in California.

Although the CNPS is not a regulatory agency and plants on these lists have no formal regulatory protection, plants appearing as CRPR 1B or 2 are, in general, considered to meet CEQA's Section 15380 criteria, and adverse effects on these species may be considered significant. Impacts on plants that are listed by the CNPS as CRPR 3 or 4 are also considered during CEQA review, although because these species are typically not as rare as those of CRPR 1B or 2, impacts on them are less frequently considered significant.

Compliance with CEQA Guidelines Section 15065(a) requires consideration of natural communities of special concern, in addition to plant and wildlife species. Vegetation types of "special concern" are tracked in Rarefind (CNDDB 2021). Further, the CDFW ranks sensitive vegetation alliances based on their global (G) and state (S) rankings analogous to those provided in the CNDDB. Global rankings (G1–G5) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas S rankings reflect the condition of a habitat within California. If an alliance is marked as a G1–G3, all the associations within it would also be of high priority. The CDFW provides the Vegetation Classification and Mapping Program's currently accepted list of vegetation alliances and associations (CDFW 2023).

Project Applicability: All potential impacts on biological resources will be considered during CEQA review of the project in the context of this Biological Resources Report. Project impacts are discussed in Section 6 below.

### 3.2.3 California Fish and Game Code

Ephemeral and intermittent streams, rivers, creeks, dry washes, sloughs, blue line streams on U.S. Geological Survey maps, and watercourses with subsurface flows fall under CDFW jurisdiction. Canals, aqueducts, irrigation ditches, and other means of water conveyance may also be considered streams if they support aquatic

life, riparian vegetation, or stream-dependent terrestrial wildlife. A *stream* is defined in Title 14, California Code of Regulations Section 1.72, as "a body of water that follows at least periodically or intermittently through a bed or channel having banks and that supports fish and other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." Using this definition, CDFW extends its jurisdiction to encompass riparian habitats that function as a part of a watercourse. California Fish and Game Code Section 2786 defines *riparian habitat* as "lands which contain habitat which grows close to and which depends upon soil moisture from a nearby freshwater source." The lateral extent of a stream and associated riparian habitat that would fall under the jurisdiction of CDFW can be measured in several ways, depending on the particular situation and the type of fish or wildlife at risk. At minimum, CDFW would claim jurisdiction over a stream's bed and bank. Where riparian habitat is present, the outer edge of riparian vegetation is generally used as the line of demarcation between riparian and upland habitats.

Pursuant to California Fish and Game Code Section 1603, CDFW regulates any project proposed by any person that will "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." California Fish and Game Code Section 1602 requires an entity to notify CDFW of any proposed activity that may modify a river, stream, or lake. If CDFW determines that proposed activities may substantially adversely affect fish and wildlife resources, a Lake and Streambed Alteration Agreement (LSAA) must be prepared. The LSAA sets reasonable conditions necessary to protect fish and wildlife, and must comply with CEQA. The applicant may then proceed with the activity in accordance with the final LSAA.

Certain sections of the California Fish and Game Code describe regulations pertaining to protection of certain wildlife species. For example, Code Section 2000 prohibits take of any bird, mammal, fish, reptile, or amphibian except as provided by other sections of the code.

The California Fish and Game Code Sections 3503, 3513, and 3800 (and other sections and subsections) protect native birds, including their nests and eggs, from all forms of take. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered take by the CDFW. Raptors (e.g., eagles, hawks, and owls) and their nests are specifically protected in California under Code Section 3503.5. Section 3503.5 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."

Bats and other non-game mammals are protected by California Fish and Game Code Section 4150, which states that all non-game mammals or parts thereof may not be taken or possessed except as provided otherwise in the code or in accordance with regulations adopted by the commission. Activities resulting in mortality of non-game mammals (e.g., destruction of an occupied bat roost, resulting in the death of bats), or disturbance that causes the loss of a maternity colony of bats (resulting in the death of young), may be considered take by the CDFW.

Project Applicability: No streams or riparian habitat occurs on or adjacent to the project site. Therefore, a CDFW LSAA would not be required for the project. Calabazas Creek occurs near, but outside of the project site boundary, and no work will occur adjacent to, or below, the defined top of bank for the creek corridor.

Most native bird, mammal, and other wildlife species that occur on the project site and in the immediate vicinity are protected by the California Fish and Game Code. The PHD EIR requires compliance with all applicable state laws and regulations, including the California Fish and Game Code.

## 3.3 Local Regulations

### 3.3.1 City of Santa Clara 2010–2035 General Plan

Chapter 5 of the City of Santa Clara's 2010–2035 General Plan (General Plan) (City of Santa Clara 2010) includes the following goals and policies related to the conservation of biological resources:

- *5.10.1-G1*: The protection of fish, wildlife, and their habitats, including rare and endangered species.
- *5.10.1-G2:* Conservation and restoration of riparian vegetation and habitat.
- *5.10.1-P1*: Require environmental review prior to approval of any development with the potential to degrade the habitat of any threatened or endangered species.
- *5.10.1-P2:* Work with the Santa Clara Valley Water District and require that new development follow the "Guidelines and Standards for Land Use Near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resource in Santa Clara County".
- *5.10.1-P3:* Require preservation of all City-designated heritage trees listed in the Heritage Tree Appendix 8.10 of the General Plan.
- *5.10.1-P4:* Protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way.
- *5.10.1-P5:* Encourage enhancement of land adjacent to creeks in order to foster reinstatement of natural riparian corridors where possible.
- *5.3.1-P10:* Provide opportunities for increased landscaping and trees in the community, including requirements for new development to provide street trees and a minimum 2:1 on- or off-site replacement for trees removed as part of the proposal to help increase the urban forest and minimize the heat island effect.
- *5.10.1-P11:* Require use of native plants and wildlife-compatible nonnative plants, when feasible, for landscaping on City property.
- *5.10.1-P12:* Encourage property owners and landscapers to use native plants and wildlife-compatible nonnative plants, when feasible.

Project Applicability: The General Plan is currently in effect in Santa Clara, and includes all portions of the project site. Therefore, the project will remain consistent with the General Plan's goals and policies. The Environmental Impact Report for the General Plan (City of Santa Clara 2011) evaluated the impacts of the General Plan on biological resources, including potential adverse effects of development but also taking into consideration the aforementioned goals and policies of the General Plan related to the protection and enhancement of biological resources.

### 3.3.2 City of Santa Clara Patrick Henry Drive Specific Plan

The City of Santa Clara adopted the Patrick Henry Drive Specific Plan (PHD Specific Plan) on March 22, 2022. The PHD Specific Plan provides detailed guidance to implement the General Plan's goals and policies within the Plan area, which includes the project site, including the following policies and guidelines related to the conservation of biological resources:

- *4.3.1 Land Use Policies* – Create a connected system of diverse parks and open spaces to provide outdoor recreation options for residential areas, facilitate pedestrian mobility, and enable habitat preservation and restoration.
- *4.5.1 Parks, Recreation, and Open Space Policies* – Require at least 22% of total residential developable land to be allocated for public parks or publicly accessible open spaces, including not less than 11% of land dedicated to the City in fee title as public parkland.
- *5.4.1.7 Landscaping* – Use climate-appropriate and native tree and plant species for landscaped areas to minimize maintenance and water requirements.
- *7.1.3 Project Planning Review and Approval* – Individual projects must provide a bird-safe evaluation as part of the development review process.

Project Applicability: The PHD Specific Plan is currently in effect, and includes all portions of the project site. Therefore, the project will comply with the PHD Specific Plan's policies and guidelines. The PHD EIR (MIG 2021) evaluated the impacts of the PHD Specific Plan on biological resources, including potential adverse effects of development but also taking into consideration the aforementioned policies and guidelines of the PHD Specific Plan related to the protection and enhancement of biological resources.

### 3.3.3 City of Santa Clara Tree Protection Policies

The City of Santa Clara claims jurisdiction over all trees growing along public streets and in public places (City of Santa Clara Municipal Code, Chapter 12.35). These "protected" trees may not be removed or topped unless a written permit from the superintendent of streets has been obtained. Earthwork (e.g., grading and trenching) in the vicinity of the root zones of protected trees also requires authorization. Projects proposing impacts to protected trees may be required to implement precautionary measures during site construction to limit adverse environmental effects, such as erosion control and water retention. At a minimum, protection requires installation of an open material (e.g., chain link) fence 6 feet in height around the drip line and maintenance of the existing grade level around a tree and out to its drip line.

The General Plan also affords protection to City-designated heritage trees listed in Appendix 8.10 of the General Plan (see Conservation Policy 5.10.1-P3 in Chapter 5). Under the General Plan, "all healthy cedars, redwoods, oaks, olives, bay laurels, and pepper trees of any size, as well as all other trees over 36 inches in circumference measured from 48 inches above-grade, located on both private and public property as well as in the public right-of-way", are designated as heritage trees (see Conservation Policy 5.10.1-P4 in Chapter 5). Furthermore, the General Plan includes a policy for providing opportunities to increase the number of trees in the community through requirements for new development to provide street trees and a minimum 2:1 on- or off-site replacement for trees removed (see General Land Use Policy 5.3.1-P10 in Chapter 5).

Project Applicability: The project will remove 51 of the 71 existing protected trees on the site; however none of these 51 trees qualify as heritage trees. Authorization from the City for tree removal, topping, or earthwork in the vicinity of the root zones of protected and heritage trees is required prior to construction activities, and mitigation for removing protected trees may be required by the City.

# Section 4. Environmental Setting

## 4.1 General Project Area Description

A review of historical aerial photographs indicates that the site was agricultural until at least 1975, and was commercially developed as early as 1985. The project site is currently surrounded by dense commercial development. Athletic fields at Mission College are located approximately 0.1 mile to the south, Calabazas Creek is located approximately 95 feet to the west, Fairwood Park is located approximately 0.1 mile to the west, Lakewood Park is located approximately 0.7 mile to the west, and San Tomas Aquino Creek is located approximately 0.9 mile to the east. No other parks or open habitats are located within an approximately 1-mile radius of the project site.

## 4.2 Biotic Habitat

The project site and surrounding areas are heavily urbanized, consisting of dense commercial development. The reconnaissance-level survey identified one habitat/land use type on the project site: developed/landscaped. This habitat/land use type is described in detail below.

### 4.2.1 Developed/Landscaped

Vegetation. The site consists of a single commercial building surrounded by a paved parking lot with landscape trees and vegetation in islands located along the peripheries of the building and on the boundaries of the site (Photo 1). The majority of the vegetation on the project site is non-native, including holly oak (*Quercus ilex*), broad-leaved paperbark (*Melaleuca quinquenervia*), crapemyrtle (*Lagerstroemia indica*), oleander (*Nerium oleander*) and carob tree (*Ceratonia siliqua*), privet (*Ligustrum* sp.), and Indian hawthorne (*Rhaphiolepis indica*).

**Photo 1. Developed/landscaped habitat on the project site.**

**Wildlife.** The developed/landscaped habitat on the project site is of low value to wildlife, compared to sites that are more heavily vegetated or that are dominated by a more native plant community. However, the site still provides nesting and foraging opportunities for some urban-adapted species of birds. Native bird species that were observed on or near the site during the August 2023 site visit include the California scrub-jay (*Aphelocoma californica*), American crow (*Corvus brachyrhynchos*), Anna's hummingbird (*Calypte anna*), chestnut-backed chickadee (*Poecile rufescens*) and dark-eyed junco (*Junco hyemalis*). Each of these species may use the trees, landscaped vegetation, or structures on the site for nesting. Additional common bird species that could nest on

the site include the house finch (*Haemorhous mexicanus*), black phoebe (*Sayornis nigricans*), California towhee (*Melozone crissalis*), lesser goldfinch (*Spinus psaltria*), and bushtit (*Psaltriparus minimus*). Common raptors such as the red-tailed hawk (*Buteo jamaicensis*) or Cooper's hawk (*Accipiter cooperii*) may perch and forage on the site occasionally. Such raptors could possibly nest on or near the site as well, though no nests of raptors (e.g., hawks, owls, and falcons) were observed on the project site or in immediately adjacent areas during the reconnaissance-level survey.

No signs of the presence of roosting bats (e.g., guano, urine staining, or visual or auditory detections of bats) were observed in trees or buildings on the site during the August 2023 site assessment.

Common urban-adapted mammals that may occur on the project site include nonnative eastern gray squirrels (*Sciurus carolinensis*), house mouse (*Mus musculus*), Norway rat (*Rattus norvegicus*), black rat (*Rattus rattus*), and Virginia opossum (*Didelphis virginiana*), as well as the native raccoon (*Procyon lotor*) and striped skunk (*Mephitis mephitis*). Native western fence lizards (*Sceloporus occidentalis*), which are common in urban areas, were also observed in landscaped areas of the project site.

# Section 5. Special-Status Species and Sensitive Habitats

CEQA requires assessment of the effects of a project on species that are protected by state, federal, or local governments as "threatened, rare, or endangered"; such species are typically described as "special-status species". For the purpose of the environmental review of the project, special-status species have been defined as described below.

For purposes of this analysis, "special-status" plants are considered plant species that meet one or more of the following criteria:

- Listed under FESA as threatened, endangered, proposed threatened, proposed endangered, or a candidate species.
- Listed under CESA as threatened, endangered, rare, or a candidate species.
- Listed by the CNPS as CRPR 1A, 1B, 2, 3, or 4.

For purposes of this analysis, "special-status" animals are considered animal species that meet one or more of the following criteria:

- Listed under FESA as threatened, endangered, proposed threatened, proposed endangered, or a candidate species.
- Listed under CESA as threatened, endangered, or a candidate threatened or endangered species.
- Designated by the CDFW as a California species of special concern.
- Listed in the California Fish and Game Code as fully protected species (fully protected birds are provided in Section 3511, mammals in Section 4700, reptiles and amphibians in Section 5050, and fish in Section 5515).

Information concerning threatened, endangered, and other special-status species that potentially occur on the project site was collected from several sources and reviewed by H. T. Harvey & Associates biologists as described in Section 2.1 above.

## 5.1 Special-Status Plant Species

The CNPS (2023) and CNDDB (2023) identify a number of special-status plant species as potentially occurring in at least one of the nine U.S. Geological Survey 7.5-minute quadrangles containing or surrounding the project site for species in CRPR 1, 2, 3, and 4 species. However, only two species, Congdon's tarplant and arcuate bush mallow, were identified as potentially occurring within the PHD Specific Plan area in the PHD EIR (MIG 2021). The project site is dominated by heavily disturbed anthropogenic habitat (i.e., developed/landscaped areas), which precludes the presence of special-status plant species that occur in more natural habitats in the region. All of the special-status plant species identified as potentially occurring in the region, including

Congdon's tarplant and arcuate bush mallow, were determined to be absent from the project site for at least one of the following reasons: (1) absence of suitable habitat types; (2) lack of specific microhabitat or edaphic requirements, such as serpentine soils; (3) the elevation range of the species is outside of the range on the project site; and/or (4) the species is considered extirpated from the project region. Furthermore, a focused survey for arcuate bush-mallow and Congdon's tarplant conducted on the project site on September 24, 2023, per Mitigation Measure 6.3 of the PHD EIR, did not detect either species, nor any other special-status species. In conclusion, special-status plant species are determined to be absent from the project site.

## 5.2 Special-Status Animal Species

A number of special-status animal species are known to occur (or to have occurred historically) in the project region (CNDDB 2023), but most of these species are absent from the project site due to the absence of suitable habitat. For example, the project site lacks any aquatic or wetland habitat, and therefore, special-status fish and other special-status species associated with wetland, marsh, pond, and stream habitats are absent from the site.

Special-status animal species identified in the PHD EIR as having potential to occur in the PHD area are the burrowing owl (*Athene cunicularia*), white-tailed kite (*Elanus leucurus*), pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynorhinus townsendii*). However, the dense urban surroundings and absence of specific habitat features favored by these, and all other special-status animal species known to occur in the region, make the site unsuitable, as follows:

- The burrowing owl, a California species of special concern, nests and roosts in burrows of California ground squirrels (*Otospermophilus beecheyi*) and forages in open grassland areas. No suitable grasslands with small mammal burrows are present on the project site to provide suitable nesting or roosting habitat for this species. The closest extant occurrences of burrowing owls to the project site are located at Moffett Federal Airfield approximately 3.1 miles to the west and at the Mineta San José International Airport approximately 2.3 miles to the southeast. Burrowing owls were formerly known to occur at Mission College approximately 0.3 mile to the southwest, where potentially suitable habitat is present in athletic fields and remnant grasslands, but the last reported observations at that location were in 2011 (CNDDB 2023, Cornell Lab of Ornithology 2023). The developed nature of the project site and its surroundings to the north, west, and the lack of California ground squirrels and ground squirrel burrows on the project site precludes the presence of suitable habitat for this species. Therefore, burrowing owls are determined to be absent from the project site and the immediate surrounding areas.

- The white-tailed kite, a California fully protected species, nests in tall shrubs and trees and forages in grasslands, marshes, and ruderal habitats. Mature trees adjacent to the site provide ostensibly suitable nesting sites for white-tailed kites; however, sufficient open foraging habitat to support a nesting pair of this species is not present in the site vicinity, and the nearest area of reported nesting activity of white-tailed kites is located approximately 1.2 miles to the northwest at the Sunnyvale Baylands Park (Cornell Lab of Ornithology 2023). Therefore, this species is not expected to occur on the site.

- The pallid bat and Townsend's big-eared bat, both California species of special concern, may forage on or aerially over habitats in the site vicinity, and a few recent and/or historical records of pallid and Townsend's big-eared bats are located in the site vicinity (CNDDB 2023). However, the building and trees on the site do not provide suitable roosting habitat for either of these species, and the site does not provide suitable foraging habitat. Therefore, these species are not expected to occur on the site.

The PHD EIR concluded that potential habitat for the burrowing owl was present in landscape vegetation along the eastern edge of the PHD Specific Plan area, that white-tailed kites could occasionally roost or forage in the Plan area but were not expected to nest, and habitat for the Townsend's big-eared bat and pallid bat was present in large landscaped trees or abandoned/vacant structures in the Plan area. However, for reasons stated above, the burrowing owl, white-tailed kite, and special-status bats are not expected to occur on the project site. The PHD EIR did not indicate any other special-status animals could occur on the project site.

In addition to the special-status animals considered in the PHD EIR, we considered two additional special-status species for potential occurrence on the project site due to their occurrence in region:

- The monarch butterfly could occasionally occur on the site. This species lays its eggs, and larvae develop, on milkweeds, which are absent from the site. Therefore, the monarch does not breed on the site. However, monarchs are expected to fly through the site as occasional migrants, and they may nectar on flowers on or adjacent to the project site in small numbers. This species is not known to form large migratory or wintering roosting aggregations in Santa Clara County, and thus no large roosts are present.

- Recent surveys for the Crotch's bumble bee (*Bombus crotchii*) have found the species in scattered locations in Santa Clara County, including in some urban areas. The nearest record to the project site is approximately 2.2 miles to the north, at Alviso Marina County Park (iNaturalist 2023; CNDDB 2023). The project site does not provide high-quality floral resources (i.e., flowers that provide high-quality foraging habitat for the species), and no small mammal burrows or other features providing high-quality nest sites for this species were observed during project surveys. Therefore, Crotch's bumble bee is not expected to occur on the site.

## 5.3 Sensitive and Regulated Habitats

Sensitive and regulated habitats are rare, ecologically valuable, and/or protected by federal, state, regional, and/or local laws. Generally, such habitats require permits from regulatory agencies if they are to be disturbed, altered, or lost. The CDFW ranks certain rare or threatened plant communities, such as wetlands, tracked in the CNDDB. The most commonly regulated habitats are wetland and aquatic habitats including rivers, streams, ponds, and seasonal wetlands, which fall under the jurisdiction of the U. S. Army Corps of Engineers via Section 404 of the Clean Water Act, the Regional Water Quality Control Board via Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act, and/or the CDFW via Section 1602 of the California Fish and Game Code.

No potentially jurisdictional features (e.g., wetlands or drainages that would be subject to jurisdiction of any resource agencies) were identified on or immediately adjacent to the site during the reconnaissance-level survey of the project site. Similarly no sensitive communities of concern that are tracked by the CNDDB, or any features regulated under Section 1602 of the California Fish and Game Code, were identified on the site. Thus, sensitive and regulated habitats are determined to be absent from the project site, and the project will have no direct impacts on these sensitive resources.

# Section 6. Impacts and Mitigation Measures

CEQA and the State CEQA Guidelines provide direction for evaluating impacts of projects on biological resources and determining which impacts will be significant. The Act defines a "significant effect on the environment" as "a substantial adverse change in the physical conditions which exist in the area affected by the proposed project." Under State CEQA Guidelines Section 15065, a project's effects on biological resources are deemed significant where the project would:

- "substantially reduce the habitat of a fish or wildlife species"
- "cause a fish or wildlife population to drop below self-sustaining levels"
- "threaten to eliminate a plant or animal community"
- "reduce the number or restrict the range of a rare or endangered plant or animal"

In addition to the Section 15065 criteria that trigger mandatory findings of significance, Appendix G of the State CEQA Guidelines provides a checklist of other potential impacts to consider when analyzing the significance of project effects. The impacts listed in Appendix G may or may not be significant, depending on the level of the impact. For biological resources, these impacts include whether 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 Wildlife 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, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service"

C. "have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling hydrological interruption, or other means)"

D. "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites"

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"

Following is an assessment of potential impacts of the 4590 Patrick Henry Drive project on biological resources; whether those impacts are within the scope of the impacts disclosed in the PHD EIR; and, if not, any conceptual mitigation measures necessary to mitigate potentially significant impacts to less-than-significant levels under CEQA.

A brief discussion of biological resources impacts identified in the PHD EIR is provided in Section 6.1. The impact assessment provided in Sections 6.2 to 6.7 is structured based on the six significance criteria (A–F) listed above. All significance determinations provided herein were made by H. T. Harvey but are consistent with the determinations in the PHD EIR, and applicable PHD EIR mitigation measures are listed.

## 6.1 Patrick Henry Drive Specific Plan Environmental Impact Report

The PHD EIR assessed the potential for sensitive biological resources to occur within the PHD Specific Plan area, and for the implementation of the PHD Specific Plan to result in impacts on existing biological resources. In addition, the PHD EIR identified measures necessary to mitigate potentially significant impacts on biological resources to less-than-significant levels under CEQA. A summary of biological resources impacts identified in the PHD EIR is as follows:

- Impact 6-1 Impacts on Riparian Habitat, Sensitive Natural Communities, Wetlands, Fish and Wildlife Corridors, and Fish and Wildlife Nursery Sites: *Less than Significant with Mitigation*
- Impact 6-2 Potential Impacts on Threatened and Endangered Habitat: *Less than Significant with Mitigation*
- Impact 6-3 Potential Impacts on Special-Status Plants: *Less than Significant with Mitigation*
- Impact 6-4 Potential Impacts on Nesting Birds or Roosting Bats: *Less than Significant with Mitigation*
- Impact 6-5 Impacts on Protected Trees, Plants, and Shrubs: *Less than Significant*

The PHD EIR includes a number of mitigation measures where necessary to reduce impacts to biological resources to less-than-significant levels under CEQA. With the implementation of these mitigation measures, the PHD EIR determined that all potential impacts on biological resources resulting from implementation of the PHD Specific Plan (i.e., Impacts 6-1 to 6-5, listed above) would be less than significant under CEQA.

The project will comply with all applicable mitigation measures determined necessary by the PHD EIR to reduce project impacts to less-than-significant levels under CEQA. These mitigation measures are listed in the sections below, where applicable. This biological resources report satisfies Mitigation Measure 6-2, which requires that the project proponent conduct a survey of biological resources that may be impacted by the project and prepare a report documenting the results and any applicable measures to protect special-status species.

## 6.2 Impacts on Special-Status Species: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS (PHD EIR: Less than Significant with Mitigation)

### 6.2.1 Impacts on Special-Status Plants (PHD EIR: Less than Significant with Mitigation)

As described in Section 5.1 above, no special-status plant species have potential to occur on or adjacent to the project site. Therefore, in our opinion, the project will have no impact on these species. Nevertheless, the PHD EIR determined that project construction within the PHD Specific Plan area could potentially result in impacts on Congdon's tarplant and arcuate bush mallow, and identified this as a potentially significant impact under CEQA for projects within the Plan area. To reduce impacts on special-status plants to less-than-significant levels under CEQA (Impact 6-3 in the PHD EIR), the PHD EIR requires all projects to comply with the following mitigation measure:

- **Mitigation Measure 6-3.** Before any project work within the PHD Specific Plan area, a qualified botanist shall conduct site-specific, focused surveys according to CDFW guidelines to determine presence or absence of special-status plant species on the individual project site and any adjacent potential area of disturbance. A comprehensive, site-wide survey should be conducted within May to September before project work begins, to encompass the Congdon's tarplant and arcuate bush mallow's blooming periods. Following the completion of the surveys, a survey results report shall be prepared and provided to the City. This report should include, but should not be limited to, the following: (1) a description of the survey methodology; (2) a discussion of the survey results; and (3) a map showing the survey area and the location of any special-status plants encountered. If no rare plants are found, then no further mitigation would be required.
    - If rare plants are found during the survey, the number of individuals present shall be documented and the limits of population shall be marked with flagging. The flagged border of the population shall be avoided by construction personnel for the duration of the project. If the species cannot be avoided or may be indirectly impacted, the applicant shall notify CDFW to discuss avoidance, minimization, and mitigation measures as appropriate for each species population, including measures to be taken and protocols to be followed if special-status plants are inadvertently disturbed during construction activities.
    - CDFW may require the preparation and implementation of a mitigation plan that details avoidance, preservation, and/or compensation for the loss of individual special-status plant species. Mitigation may include the purchase of mitigation bank credits, preserving and enhancing existing on-site populations, creation of off-site populations through seed collection and/or transplantation and monitoring these populations to ensure their successful establishment, and/or preserving occupied habitat off-site in perpetuity. Specific amounts and

methods of mitigation and/or credits shall be determined in formal consultation with CDFW and USFWS.

Per Mitigation Measure 6.3 of the PHD EIR, H. T. Harvey & Associates senior ecologist S. Rottenborn conducted a focused survey for arcuate bush-mallow and Congdon's tarplant on the project site on September 24, 2023. No individuals of these species were observed on or immediately adjacent to the site. Therefore, based on the absence of suitable habitat for special-status plants and the negative results of this survey, the project will have no impacts on special-status plants, and the project would be consistent with requirements of the PHD EIR.

### 6.2.2 Impacts on Special-Status Animals (PHD EIR: Less than Significant with Mitigation)

The PHD EIR found that suitable habitat for burrowing owls was only present within a strip of landscaped grass along the eastern edge of the PHD Specific Plan area (i.e., along Great America Parkway), more than 2,000 feet east of the project site. Our August 2023 site visit confirmed that no suitable habitat for burrowing owls is present on the project site, which is currently developed. Our site visit also confirmed that no suitable habitat for burrowing owls (i.e., burrows of California ground squirrels) is present within 500 feet of the site in athletic fields and remnant grasslands at Mission College, where burrowing owls were formerly known to occur. Therefore, the project will have no impact on burrowing owls, in our opinion.

Several additional special-status animals, such as the white-tailed kite and pallid bat, have the potential to fly over the project site. However, no suitable habitat for these species is present on or immediately adjacent to the site, and these species are not expected to use the project vicinity even for foraging. Therefore, in our opinion, no project impacts on roosting bats would occur. Therefore, the project will have no impact on these species.

Nevertheless, the PHD EIR determined that there is a low potential for burrowing owls, white-tailed kites, pallid bats, and Townsend's big-eared bats to use landscape vegetation in the PHD Specific Plan area for roosting or nesting, and identified this as a potentially significant impact under CEQA for projects within the Plan area. To reduce impacts on these species to less-than-significant levels under CEQA (Impact 6-4 in the PHD EIR), the PHD EIR requires all projects to comply with the following mitigation measure:

- **Mitigation Measure 6-4.** The demolition of any buildings, disturbance of gravel substrate, and/or removal of trees, shrubs, or weedy vegetation shall be avoided during the February 1 through August 31 bird nesting period to the extent possible. If no demolition, gravel disturbance, vegetation, or tree removal is proposed during the nesting period, no further action is required. If it is not feasible to avoid the nesting period, the project applicant shall retain a qualified wildlife biologist to conduct a survey for nesting birds at most 14 days prior to the start of removal of trees, shrubs, grassland vegetation, or buildings, including prior to grading or other construction activity. If demolition of buildings, disturbance of gravel substrate, or vegetation removal efforts do not begin within the 14 days following the nesting bird survey, another survey shall be required. The area surveyed shall include all construction sites, access roads, and staging areas, as well as reasonably accessible areas within 150

feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist and dependent on species' life history requirements.

- If an active nest is discovered in the areas to be directly physically disturbed, or in other habitats within the vicinity of construction boundaries and may be disturbed by construction activities (as determined by the qualified biologist), clearing and construction shall be postponed until the qualified biologist has determined that the young have fledged (left the nest), the nest fails, or the nest is otherwise determined to be inactive by the biologist (i.e. predation).

- To avoid impacts to roosting bats that may rarely utilize the PHD Specific Plan area vegetation and/or vacant buildings for day roosting, the project applicant shall retain a qualified wildlife biologist to conduct a survey for roosting bats at most 14 days prior to the start of demolition of any vacant buildings left with entry and egress points accessible to bats or removal of suitable bat roosting vegetation. If roosting bats are detected, the biologist shall enact a minimum of a 150-foot no-work buffer and confer with CDFW to determine potential roost protection or roost eviction practices. After conferring with CDFW, the protective buffer may be adjusted based on specific roost needs. Once bats have been suitably protected by a buffer and/or safely evicted from roosting sites (as approved by CDFW), construction may resume outside the buffered area.

- A nesting bird and roosting bat survey report prepared with the methods and results of the pre-project survey will be submitted to the City for review and approval prior to commencement of construction activities. Any additional construction monitoring, as determined through any necessary coordination/discretionary approvals with the resource agencies, will be documented per requirements set forth in an approved mitigation monitoring and reporting program.

Again, in our opinion, there is no potential for the project to result in impacts on the burrowing owl, white-tailed kite, pallid bat, or Townsend's big-eared bat as no suitable habitat for these species is present on or adjacent to the project site. Nevertheless, with implementation of Mitigation Measure 6-4, the project would be consistent with requirements of the PHD EIR with respect to these species.

The only other special-status animal that could occur on the project site is the monarch butterfly, which was not addressed in the PHD EIR. Because the monarch would not breed on the site (due to the absence of milkweed), the project would not result in the loss of eggs, larvae, or pupae, and adult monarchs would fly away from any construction activities before injury or mortality could occur. Further, the project site does not provide large numbers of flowering plants that would attract monarchs, so project construction would not result in a loss of high-quality habitat. In short, the project would not impact populations of, or availability of high-quality habitat for, the monarch butterfly, and impacts of the project on this species would be less than significant.

## 6.3 Impacts on Sensitive Communities: Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFW or USFWS (PHD EIR: Less than Significant)

No riparian habitats or other sensitive natural communities are present on the project site. Calabazas Creek, which is approximately 65 feet west of the project site, contains riparian habitat. The project therefore may result in indirect impacts on this riparian habitat, as discussed in Section 6.3.1 below. However, no expansion outside the existing boundary is proposed.

The PHD EIR (Impact 6-1) does not identify any mitigation measures to ensure that impacts on sensitive communities are reduced to less-than-significant levels under CEQA.

### 6.3.1 Impacts on Riparian Habitat (PHD EIR: Less than Significant)

Under existing conditions, the 1-story building is located approximately 185 ft from Calabazas Creek. The proposed project calls for construction of the new 8-story, 84-foot-high building to within 10 ft of the existing property boundary, which would be 100 feet from the edge of riparian habitat along Calabazas Creek west of the project site. No project work is planned or proposed outside the existing property boundary, and no extension of the property boundary is planned. Therefore, no direct loss of riparian woodland will occur, as all project work is confined to the existing property boundary.

Because the new building will be 84-feet high and built much closer to the creek than the existing building, it is possible that the building will shade some of the mixed riparian woodland along Calabazas Creek to the west. In general, shading impacts alone will not alter the ecological functions and values of a stream, unless the shading occurs on multiple sides of the corridor, and/or occurs throughout the day. Permanently shaded vegetation would weaken, decrease in cover, or even die off leaving bare soil exposed. On the project site, the new building will shade riparian habitat along the creek during a portion of the early morning hours. However, there will be ample direct sunlight available to the riparian corridor throughout most of the day, and we do not expect shading to result in any loss or substantial degradation of riparian habitat. Therefore, the shading impacts are considered to be less than significant.

### 6.3.2 Encroachment into the Stream/Riparian Buffer (Project-Specific: Less than Significant; Cumulative: Less than Significant with Mitigation)

To protect the ecological functions and values of a stream, buffers are often prescribed between new development and the stream (or its banks or associated riparian habitat). These buffers provide habitat for plants and animals associated with the stream, provide habitat connectivity (i.e., areas used for wildlife movement, including flight paths for birds), reduce indirect effects of adjacent development (e.g., noise, lighting, human activity, or invasive species) on the natural stream and riparian habitats, allow for the possible future expansion of natural habitat, help to maintain site hydrology, and in some areas allow for runoff to be treated (e.g., by flowing through vegetated areas) before it enters the stream. In addition, along streams such as

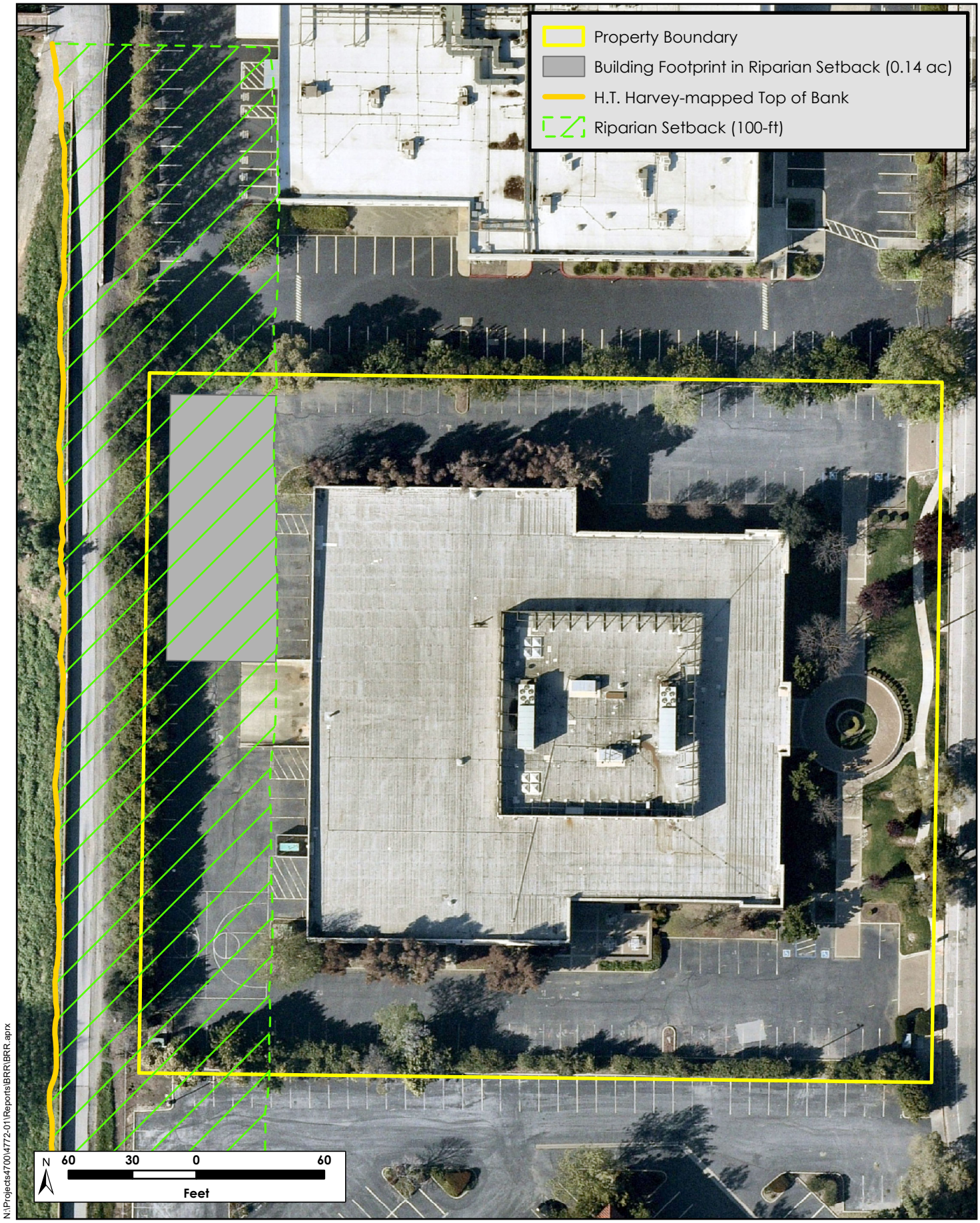
Calabazas Creek, vegetative communities within stream buffers may provide important refugia for animals associated with wetland and riparian habitats along the river during flood events, when little to no such refugia may be present within the banks of the river itself. In general, larger/wider buffers protect more of the ecological functions and values of the stream than smaller buffers.

The City of Santa Clara does not have a riparian buffer policy, and riparian buffers were not prescribed in the *Patrick Henry Drive Specific Plan*. However, the ecological principles underpinning riparian buffer policies in the region, such as the policies of the City of San José' (1999, 2011, 2016) and the Santa Clara Valley Habitat Plan (ICF International 2012), suggest that a 100-foot setback from the top of bank is appropriate for major streams such as Calabazas Creek. In our opinion, based on the moderate quality of the riparian habitat present and the native bird community present at this location, coupled with the ecological value of Calabazas Creek within the urban Santa Clara Valley, a 100-foot standard setback is appropriate between activities that could adversely affect riparian communities (described in the paragraph below) and Calabazas Creek to maintain suitable riparian functions and values. For the purposes of this project, the 100-foot setback extends landward from the top of bank along Calabazas Creek (Figure 2).

The proposed building will be set back approximately 45 feet from the top of bank and will encroach within 0.14 acre of the 100-foot setback area (Figure 2). We acknowledge that the project site is currently developed, that it currently supports an existing building, and that the new building will be constructed entirely within areas that are currently developed. However, the project would adversely affect the ecological value of the riparian corridor along Calabazas Creek because the new building would be substantially taller (84 feet high; eight stories vs. one story) than the existing building, and it would be constructed much closer to the creek than the existing building, which is approximately 115 feet from top of bank. This would be considered an adverse effect because of the high ecological value of Calabazas Creek on the scale of the urban Santa Clara Valley and the degradation to that value that would occur due to encroachment. Encroachment of the project within the 100-foot riparian setback would result in the following impacts on the adjacent riparian communities along Calabazas Creek:

- Wildlife using the creek and its riparian corridor may get the sense that they are "hemmed in" by development and unsuitable habitat if tall buildings are constructed very close to Calabazas Creek (i.e., within the 100-foot standard setback), potentially reducing wildlife use of the adjacent portion of the river (Chamberlain et al. 2007, Fontana et al. 2011). Research on riparian birds along South Bay streams has found that distance between riparian habitat and buildings, and the percent cover by buildings in the vicinity of riparian habitat, influences the abundance of certain bird species and affects the overall riparian bird community (Rottenborn 1997, 1999). Birds may be less likely to use areas that are in close proximity to tall buildings that they cannot see over when using a habitat area, or that they will have to fly around/between when moving to and from the habitat area. As a result, bird use of adjacent high-quality habitat is expected to decline following the construction of tall buildings within the riparian setback due to the proximity of the new towers to the riparian habitat.

- The new building will be located on the east side of Calabazas Creek, and this tall building will cast some shade on the adjacent riparian habitat during the early morning hours. Although shading will not

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Ecological Consultants

**Figure 2. Project Impacts**
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- result in a substantial adverse effect on health of riparian vegetation (as discussed in Section 6.3.1 above), it may affect some ecological functions and services, potentially affecting how wildlife use riparian vegetation when it is shaded vs. sunlit.

- Some birds using the habitat along Calabazas Creek are expected to collide with the new towers, thus reducing bird diversity and abundance in this area (this impact is discussed in greater detail under *Impacts from Avian Collisions with New Buildings* below).

Collectively, these impacts would reduce the quality of the riparian habitat, reduce wildlife use of this habitat, and result in some bird collisions with buildings over the long term. Because the existing riparian habitat adjacent to the project site is of only moderate quality (as opposed to high quality) and is not expected to attract large numbers of birds, and because of the limited extent of the impacts discussed above, these impacts are not expected to affect regional populations of bird species that use the site, nor would these impacts result in substantial degradation of riparian bird communities in the segment of Calabazas Creek adjacent to the project site. Hence, in our opinion, this encroachment impact on riparian birds would not rise to a level of significance under CEQA on a project-specific basis.

However, cumulative impacts arise due to the linking of impacts from past, current, and reasonably foreseeable future projects in the region. Along Calabazas Creek and other streams on the Santa Clara Valley floor, the encroachment of development toward the riparian corridor has resulted in a cumulative impact on riparian bird communities over time due to the degradation of the riparian habitat, increase in human activity in and along the riparian corridor, and loss/degradation of open areas adjacent to the riparian corridor that birds can use for foraging or as flight paths in and out of the riparian corridor. Given the importance of riparian habitat and riparian bird communities along Calabazas Creek and other streams on the Santa Clara Valley floor to regional bird diversity and abundance (e.g., on the scale of the South Bay), we consider this cumulative impact on riparian bird communities to be significant under CEQA. Maintenance of appropriate setbacks between new development and riparian habitat along Calabazas Creek would avoid projects' contributions to this significant cumulative impact. Thus, we also assessed the potential for encroachment of the 4590 Patrick Henry project within the standard riparian setback to contribute to this cumulative impact on riparian functions and values along Calabazas Creek and other streams on the Santa Clara Valley floor. Future development activities along these streams may result in impacts on the same habitat types and species that will be affected by the proposed project. Whether or not individual projects, including the 4590 Patrick Henry project and other future projects, make a considerable contribution to the significant cumulative impact on riparian bird communities along these streams depends on the nature and extent of direct and indirect impacts of those projects. Impact avoidance and minimization efforts prescribed by planning documents, CEQA mitigation measures, and permit requirements for each project, including whether projects maintain appropriate setbacks (to be determined on a project-specific basis) from riparian corridors, as well as compensatory mitigation measures are all taken into account when determining whether a project makes a considerable contribution to significant cumulative impacts.

The purpose of riparian setbacks is to preserve riparian functions and values on a site-by-site basis in order to avoid a significant cumulative impact on these important resources. It is our opinion that encroachment of the project within the 100-foot riparian setback would result in a considerable contribution to significant cumulative impacts on the functions and values of remaining areas of riparian habitat in the City of Santa Clara and along streams on the urban Santa Clara Valley floor in general, in the absence of mitigation measures. If encroachment that results in an adverse effect on the ecological value of riparian corridors is generally permitted because the adjacent riparian habitat is determined to be moderate or low in quality, or because project sites are already developed, the encroaching developments will contribute to a significant cumulative impact by further reducing habitat quality throughout a large area.

Under CEQA, it is appropriate to analyze the effects of development on the project site relative to existing conditions. Currently, the majority of the project site located within 100 feet of the top of bank of Calabazas Creek is developed as a parking lot, with the existing one story building located approximately 115 feet from the top of bank, and approximately 180 feet from the edge of the current riparian canopy. The only area of the project site currently located within 100 ft of the top of bank that is not hardscape is a narrow, approximately 10-12 foot deep band of landscaped vegetation along the west property line, and approximately 25 ft from the top of bank. In contrast, the project proposes to construct a new, 84-foot tall, 8-story building with its western edge located approximately 10 feet from the property line, approximately 35-45 feet from the top of bank, and approximately 100 feet from the edge of the current riparian canopy. As proposed, the new building will develop approximately 0.14 acre of the 100-ft riparian setback, as mapped from top of bank (Figure 2). Thus, the contribution to cumulative impacts due to encroachment into the riparian buffer would be considerable for construction of the new building within this area, as it represents a new type of development that will have a greater impact on the adjacent riparian corridor (due to hemming in the riparian habitat and potentially reducing wildlife use of the adjacent portion of the river, shading riparian habitat and potentially affecting the health and growth of adjacent riparian plants, and bird collisions with new buildings, as discussed above) compared to existing conditions. Implementation of Mitigation Measure BIO-1 would reduce the contribution of this project to cumulative impacts to levels that are less than cumulatively considerable.

**Mitigation Measure BIO-1. Provide Compensatory Mitigation for Riparian Buffer Encroachment.** Compensatory mitigation shall be provided to offset project impacts on the ecological functions and values of the riparian corridor by increasing the intensity of development within the 100-foot riparian setback. Such compensatory mitigation will be provided as follows:

Native habitat will be provided, on-site and/or elsewhere on the Santa Clara Valley floor, at a minimum ratio of 1:1 (compensation : impact) on an acreage basis, for a total of 0.14 acre of native habitat to compensate for 0.14 acre of project impacts within the 100-foot setback. Restoration/enhancement would consist of the complete removal of nonnative trees, shrubs, and vines, as well as hardscape, and the planting of native trees and shrubs appropriate for streamside areas in Santa Clara, in areas contiguous with riparian habitat or, in cases like the project site, separated from riparian habitat only by a levee. No night lighting should be present within, or should shine directly into, the mitigation area.

Restoration/enhancement on the project site itself would be sufficient, provided that the total acreage is a single area or patch, rather than multiple small patches of native vegetation summed to meet the required areal acreage extent. In other words, to qualify, the mitigated/restored area must be contiguous, and not bisected or fragmented by other unrestored areas. Although the 0.555-acre proposed park that is slated for the southern edge of the project site may contain some native trees and shrubs, and may meet some of the criteria for restored riparian habitat, it would not qualify as appropriate mitigation acreage as currently envisioned because it is currently proposed to serve primarily as a park, with features (e.g., table tennis equipment, fitness equipment, picnic tables, and lawn) that, if incorporated, would render it incompatible as mitigation habitat because they would reduce the quality of the habitat, and therefore not provide ecological functions and values equal to or exceeding those in the riparian habitat affected.

However, on-site mitigation for the riparian encroachment can be achieved by revising the design of the proposed park such that a 0.14-acre area immediately adjacent to the western site boundary incorporates native trees and shrubs; excluding the use of non-native grasses, forbs, shrubs, and trees; omitting any night lighting of the area used for mitigation; and concentrating high-human use areas (such as exercise equipment and picnic tables) in eastern portions of the park, outside the 0.14-acre area used as on-site mitigation. Restoration/enhancement that is provided must restore or augment high-quality habitat for birds, in the opinion of a qualified biologist.

- Either on-site or off-site restoration/enhancement would need to be performed according to a *Habitat Mitigation and Monitoring Plan* that will be prepared to describe the mitigation and will contain the following components:
    - Summary of habitat impacts and proposed mitigation ratios
    - Goal of the restoration to achieve no net loss of habitat functions and values
    - Location of mitigation site(s) and description of existing site conditions
    - Mitigation design:
        - Existing and proposed site hydrology
        - Grading plan if appropriate, including bank stabilization or other site stabilization features
        - Soil amendments and other site preparation elements as appropriate
        - Planting plan
        - Irrigation and maintenance plan
        - Remedial measures and adaptive management
- Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, and monitoring schedule). Success criteria will include quantifiable measurements of vegetation type (e.g., dominance by natives) and extent appropriate for the restoration location. At a minimum, success criteria will include the following:

- At Year 5 post-planting, canopy closure at the mitigation site will be at least 60 percent of the canopy closure at a nearby reference site (i.e., a site supporting the same habitat type as that being established at the mitigation site).

Monitoring methods and frequency will be outlined in the Monitoring Plan. The Monitoring Plan is expected to include monitoring between Years 1 and 5 to document progress toward meeting this or other success criteria so that any necessary remedial actions can be taken to ensure that the success criteria are met. Monitoring beyond Year 5 would be necessary if success criteria have not been met by Year 5, as monitoring would be necessary until all success criteria defined in the Riparian Habitat Mitigation and Monitoring Plan have been met.

The Habitat Mitigation and Monitoring Plan must be approved by the City of Santa Clara prior to project impacts on riparian woodland, and it must be implemented within one year following completion of construction of the new building within the riparian setback.

### 6.3.3 Impacts on Riparian Animal Communities from Artificial Lighting (Less than Significant with Mitigation)

The installation of lighting on buildings and around paths and parking areas may result in potential impacts on animal species. Many animals, both special-status and common species, are sensitive to light cues, which influence their physiology and shape their behaviors, particularly during the breeding season (Ringer 1972, de Molenaar et al. 2006). Artificial light has been used as a means of manipulating breeding behavior and productivity in captive birds for decades (de Molenaar et al. 2006), and has been shown to influence the territorial singing behavior of wild birds (Longcore and Rich 2004, Miller 2006, de Molenaar et al. 2006). While it is difficult to extrapolate results of experiments on captive birds to wild populations, it is known that photoperiod (the relative amount of light and dark in a 24-hour period) is an essential cue triggering physiological processes as diverse as growth, metabolism, development, breeding behavior, and molting (de Molenaar et al. 2006). This holds true for mammals and other taxa as well (Beier 2006), suggesting that increases in ambient light may interfere with these processes across a wide range of species, resulting in impacts on wildlife populations.

Artificial lighting may also indirectly affect animals by increasing the nocturnal activity of predators such as owls, hawks, and mammalian predators (Negro et al 2000, Longcore and Rich 2004, DeCandido and Allen 2006, Beier 2006). The presence of artificial light may influence habitat use by rodents (Beier 2006) and breeding birds (Rogers et al. 2006, de Molenaar et al. 2006) by causing avoidance of well-lit areas, resulting in a net loss of habitat availability and quality.

The PHD EIR did not address potential impacts of lighting on biological communities. The project description for the 4590 Patrick Henry Drive project does not include details on lighting, and the June 6, 2023 submittal plans provide only limited lighting information. Because the height of the proposed building is well above the height of the adjacent levee, lighting on the west side of the building (and elsewhere on the site, depending on the height and orientation of the light fixtures) could illuminate the Calabazas Creek riparian corridor. Increased

illuminance of the riparian corridor and increased glare perceived by animals in the riparian corridor could adversely affect animals' use of the corridor, potentially reducing habitat quality and reducing populations of animals using the riparian corridor if animals disperse to less well-lit areas. Up-lighting could disorient nocturnal migrant birds, potentially increasing the risk of collisions with project buildings. Increased night lighting that results in a substantial reduction in wildlife use of the Calabazas Creek and up-lighting that disorients nocturnal migrant birds would be a significant impact due to the value of riparian habitats to animal communities within the urban Santa Clara Valley. Implementation of Mitigation Measure BIO-2 will reduce impacts from night lighting to less-than-significant levels.

- **Mitigation Measure BIO-2. Implement Lighting Impact Minimization Measures.** The project will implement the following measures to minimize impacts of new lighting on animal communities.
    - Up-lighting (i.e., lighting that projects upward above the fixture) shall be avoided in the project design. All lighting shall be fully shielded to block illumination from shining upward above the fixture. If up-lighting cannot be avoided in the project design, up-lights shall be shielded and/or directed such that no luminance projects above/beyond objects at which they are directed (e.g., trees and buildings) and such that the light would not shine directly into the eyes of a bird flying above the object. If the objects themselves can be used to shield the lights from the sky beyond, no substantial adverse effects on migrating birds are anticipated.
    - All lighting shall be directed downward and fully shielded as necessary to block illumination from shining towards Calabazas Creek to the west. This measure only pertains to lighting along the western edge of the site or lighting elsewhere that has potential to illuminate the Calabazas Creek riparian corridor.

## 6.4 Impacts on Wetlands: Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (PHD EIR: Less than Significant)

No wetlands or other waters of the U.S./state occur on, or immediately adjacent to, the project site. Thus, the project would result in no direct or indirect impacts on jurisdictional wetlands.

The PHD EIR (Impact 6-1) does not identify any mitigation measures to ensure that impacts on wetlands are reduced to less-than-significant levels under CEQA, and our findings are therefore consistent with the PHD EIR.

## 6.5 Impacts on Wildlife Movement or Native Wildlife Nursery Sites: 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 (PHD EIR: Less than Significant with Mitigation)

### 6.5.1 Impacts on Wildlife Movement (PHD EIR: Less than Significant)

For many species, the landscape is a mosaic of suitable and unsuitable habitat types. Environmental corridors are segments of land that provide a link between these different habitats while also providing cover. Development that fragments natural habitats (i.e., breaks them into smaller, disjunct pieces) can have a twofold impact on wildlife: first, as habitat patches become smaller they are unable to support as many individuals (patch size), and second, the area between habitat patches may be unsuitable for wildlife species to traverse (connectivity).

All proposed project activities are located within the footprint of the existing development on the site, which is surrounded by a dense urban matrix of residential and commercial development. Therefore, the project would not result in the fragmentation of natural habitats. Any common, urban-adapted wildlife species that currently move through the project site would continue to be able to do so following project construction. Thus, the project would not interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors in the site vicinity.

The PHD EIR (Impact 6-1) does not identify any mitigation measures to ensure that impacts on wildlife movement are reduced to less-than-significant levels under CEQA, and our findings therefore do not conflict with the PHD EIR.

### 6.5.2 Impacts on Nesting Birds (PHD EIR: Less than Significant with Mitigation)

Although no special-status birds are expected to nest on or near the site, a variety of common, urban-adapted species could nest on the site. Construction disturbance during the bird nesting season (February 1 through August 31, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests or indirectly by causing the abandonment of nests. Due to the absence of native or sensitive habitats from the project site, the habitat on the site supports only regionally common, urban-adapted breeding birds, and the numbers that occur on the site (i.e., one to several pairs of each species) represent only a very small proportion of these species' regional populations. This type of impact would not be considered significant under CEQA, in our opinion, because of the local and regional abundances of the species that could potentially nest on the site and the very low magnitude of the potential impact of development on these species (i.e., the project is expected to impact only a few pairs of these species, which is not a substantial impact on their regional populations). Therefore, in our opinion, project impacts on nesting and foraging birds that occur on the site would not rise to the CEQA standard of having a substantial adverse effect.

Nevertheless, several species of common native birds protected by the MBTA and California Fish and Game Code may nest in trees and shrubs, on the ground, or on structures on or immediately adjacent to the project site. The removal of vegetation or demolition of structures supporting active nests may cause the direct loss of eggs or young, while construction-related activities located near an active nest may cause adults to abandon their eggs or young.

To reduce impacts on native nesting birds to less-than-significant levels under CEQA (Impact 6-4 in the PHD EIR), the PHD EIR requires the project to implement Mitigation Measure 6-4, provided in Section 6.2.2 above. With implementation of Mitigation Measure 6-4, the project would be consistent with the requirements of the PHD EIR.

### 6.5.3 Impacts due to Bird Collisions (Less than Significant)

The PHD EIR did not address the risk of bird collisions with project buildings. However, the 4590 Patrick Henry site plan includes landscape trees and vegetation planted in small areas along the peripheries of the project site, two level four courtyards (approximately 10,000 square feet in size) (Figure 3), and on one roof courtyard (approximately 2,000 square feet) (Figure 4). The majority (51 of 71) of the existing on-site trees will be removed.

Based on this preliminary design and the limited extent of trees and vegetation currently present on the site, no substantial changes in the extent of landscape trees and plants, or their value to birds, are anticipated to occur as part of the project, in the absence of on-site restoration or mitigation. In general, we expect that the majority of birds that will occur on the site following project construction would be resident species, both because the low-quality habitat on the site is more conducive to use by urban-adapted resident birds than by migrants and because resident birds would spend far more time on the site than would birds that are migrating through the region and are present in the vicinity only briefly.

However, should the project applicant choose to create on-site mitigation habitat in the proposed park, as described above, in Section 6.3.2., there would be a change in the extent and value of the vegetation and its value to birds, particularly migrants, particularly in the years following the restoration, as the habitat gains values with age and increasing size and structural complexity. While we do not anticipate a substantial and immediate increase in the numbers of migrants using the site, if the restoration is successful in providing appropriate and suitable riparian habitat, an increase in the number of migrants, albeit small, should occur over time, presenting a possible risk of increased collisions with glass windows and building façades as more migrants use the site, as described below.

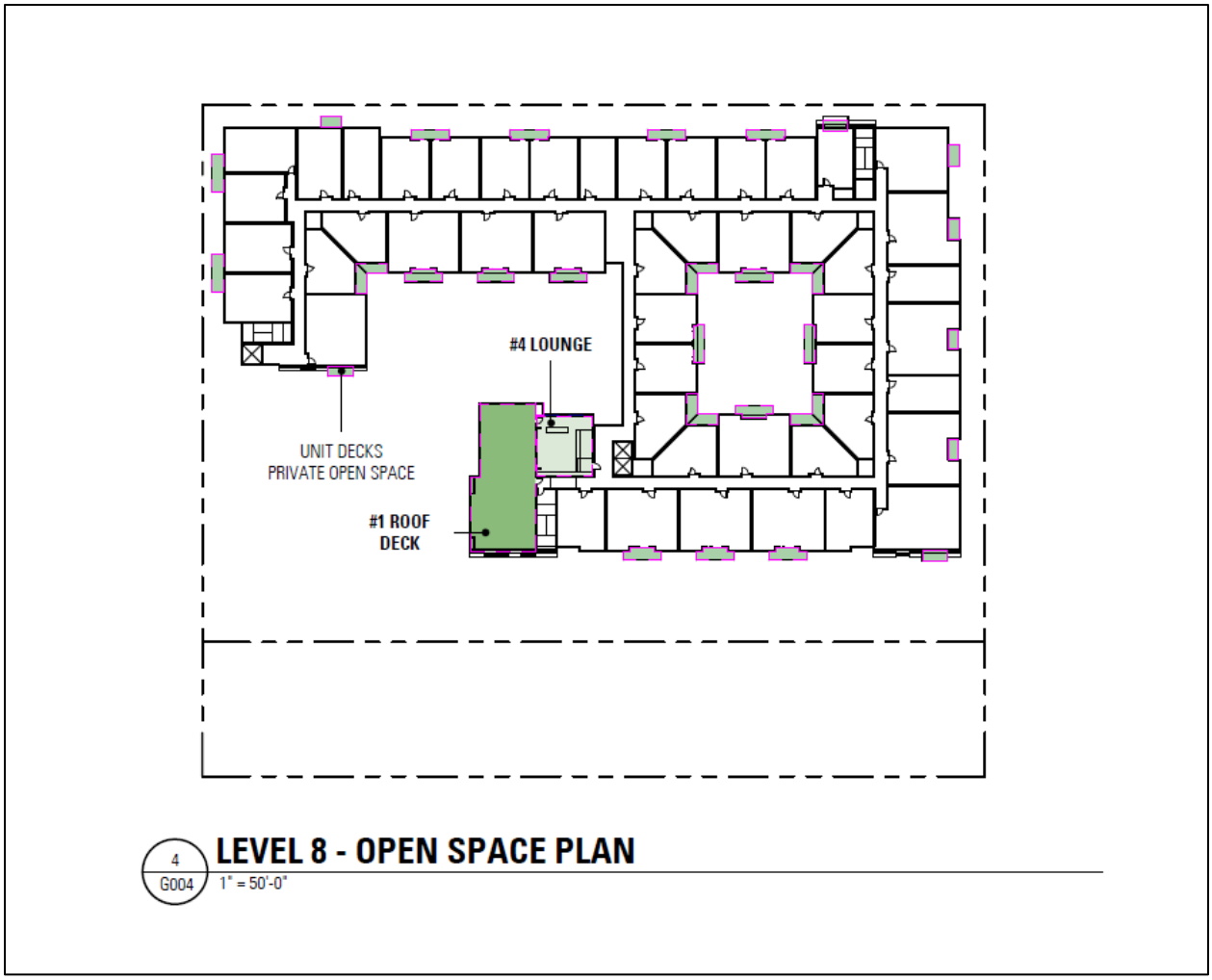


**Figure 3. 4590 Patrick Henry Drive Level 8 site plan showing open space area on the roof where landscape vegetation will be located (shaded in green).**

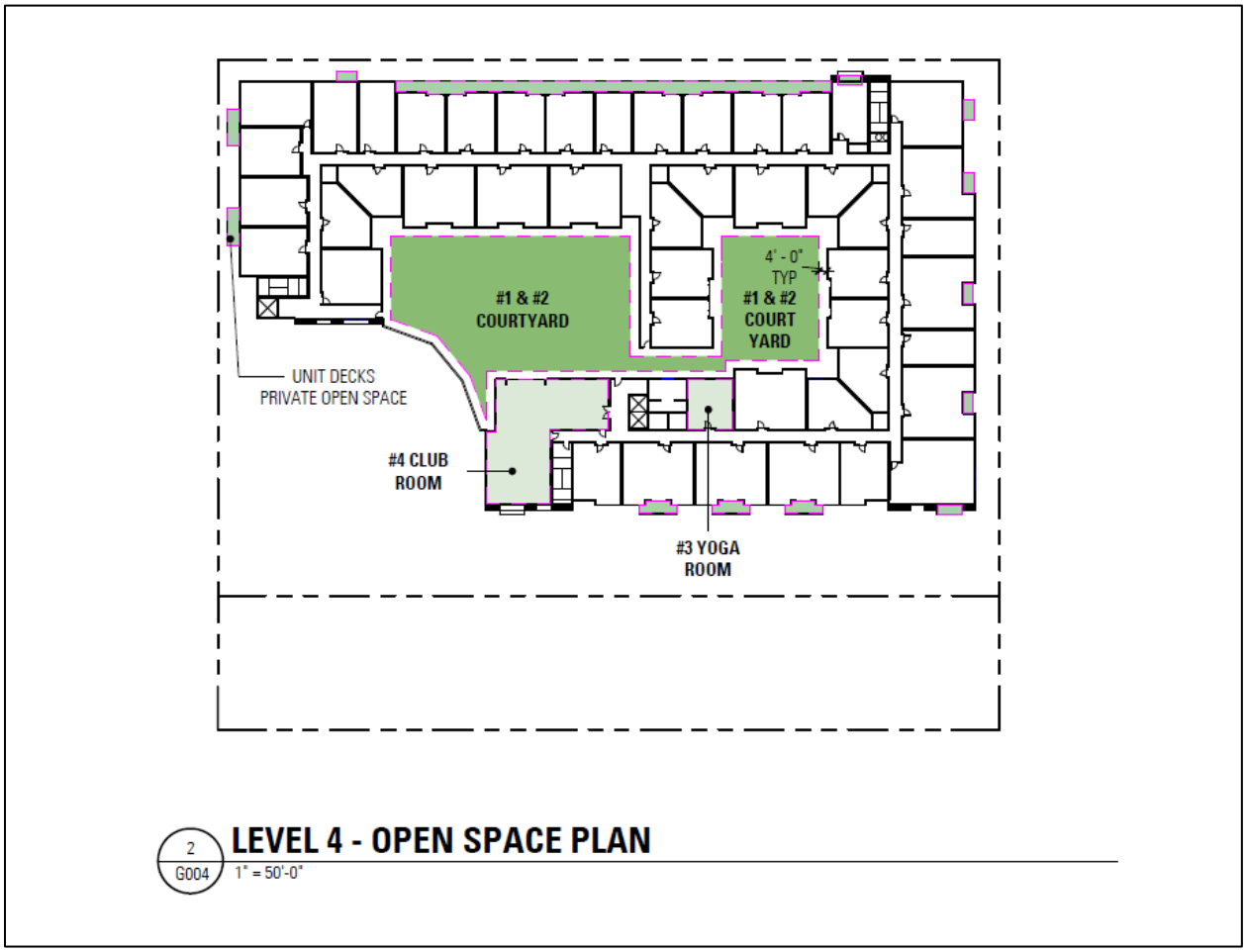


**Figure 4. 4590 Patrick Henry Drive site plan showing open space area on Level 4 where landscape vegetation will be located (shaded in green).**

It has been well documented that glass windows and building façades can result in injury or mortality of birds due to birds' collisions with these surfaces (Klem et al. 2009, Sheppard and Phillips 2015). Because birds do not perceive glass as an obstruction the way humans do, they may collide with glass when the sky or vegetation is reflected in glass (e.g., they see the glass as sky or vegetated areas); when transparent windows allow birds to perceive an unobstructed flight route through the glass (such as at corners); and when the combination of transparent glass and interior vegetation (such as in planted atria) results in attempts by birds to fly through glass to reach that vegetation. The greatest risk of avian collisions with buildings occurs in the area within 40–60 feet of the ground because this is the area in which most bird activity occurs (San Francisco Planning Department 2011, Sheppard and Phillips 2015).

Some bird collisions with the façades of the 4590 Patrick Henry building are expected to occur. Features of the architecture of these buildings where collision risk is expected to be relatively higher include transparent glass corners, free-standing glass railings (present in the conceptual plans), at roof courtyards and decks with landscape vegetation (which is expected to attract birds towards glazing on the building, and is also present in the conceptual plans for the building), and at areas of contiguous glazing that face landscape vegetation within

approximately 60 feet of the ground (which is not present in conceptual plans). Therefore, we expect that some birds will collide with these facades over time.

However, as indicated in Figure 5, a number of features of the architecture of the building would reduce the potential for avian collisions. These include facades that primarily consist of plaster, adhered tile veneer, aluminum, or simulated limestone broken up by smaller windows (Figure 5). In general, birds would be better able to perceive these facades as solid obstructions to flight than if the glassy surface appeared more uniform. Based on the extent of non-glazed surfaces and the absence of features that would pose a high collision risk, we expect the number and frequency of avian collisions with glass façades on the proposed buildings to be low. Therefore, the project would not result in the loss of a substantial proportion of any species' Bay-area populations or any Bay-area bird community, and according to CEQA standards, we would consider such impacts to be less than significant.

**Figure 5. A conceptual rendering of the 4590 Patrick Henry building.**

## 6.6 Impacts due to Conflicts with Local Policies: Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance (PHD EIR: Less than Significant)

### 6.6.1 Impacts due to the Removal of Protected Trees (PHD EIR: Less than Significant)

Implementation of the proposed project will result in the removal of protected trees that are present within the project footprint. The PHD EIR requires the project to comply with the City tree preservation ordinance and

plant, preserve, and/or replace protected trees to ensure that impacts due to tree removal are reduced to less-than-significant levels under CEQA.

The project proponent will submit a permit application for tree removal. Standard permit conditions in accordance with Chapter 12.35.090 of the Municipal Code may require replacement trees as a condition of issuance of a protected tree removal permit.

Project compliance with the City of Santa Clara tree preservation ordinance will reduce any potential impacts related to conflicts with local policies or ordinances protecting trees to less-than-significant levels under CEQA, in accordance with the PHD EIR.

## 6.7 Impact due to Conflicts with an Adopted Habitat Conservation Plan: Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan (PHD EIR: Less than Significant)

The project site is not located within an area covered by an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. Therefore, the project would not conflict with any such plans.

The PHD EIR (Impact 6-1) does not identify any adopted Habitat Conservation Plan that overlaps the project site, and our findings therefore do not conflict with the PHD EIR.

## 6.8 Cumulative Impacts

Cumulative impacts arise due to the linking of impacts from past, current, and reasonably foreseeable future projects in the region. Future development activities in the City of Santa Clara will result in impacts on the same habitat types and species that will be affected by the proposed project. The proposed project, in combination with other projects in the area and other activities that impact the species that are affected by this project, could contribute to cumulative effects on special-status species. Other projects in the area include office/retail/commercial development, mixed use, and residential projects that could adversely affect these species.

The cumulative impact on biological resources resulting from the project in combination with other projects in the larger region would be dependent on the relative magnitude of adverse effects of these projects on biological resources compared to the relative benefit of impact avoidance and minimization efforts prescribed by planning documents, CEQA mitigation measures, and permit requirements for each project; as well as compensatory mitigation and proactive conservation measures associated with each project. The PHD EIR evaluated the impacts of potential development within the PHD Specific Plan area and identified the measures necessary to reduce impacts on biological resources to less-than-significant levels. Specifically, the PHD EIR concluded that cumulative biological resource impacts associated with implementation of the PHD would be less than cumulatively considerable with the implementation of Mitigation Measures 6-2, 6-3, and 6-4 of the PHD EIR.

The PHD EIR did not evaluate encroachment into riparian setbacks and therefore did not address the potential for projects such as the 4590 Patrick Henry Drive project to contribute to significant cumulative impacts resulting from riparian encroachment. However, implementation of Mitigation Measure BIO-1, as described in Section 6.3.2 above, would reduce the project's contribution to such cumulative impacts to levels that are less than cumulatively considerable.

Thus, compliance with the mitigation measures required by the PHD EIR and with Mitigation Measure BIO-1 will avoid significant cumulative impacts on biological resources.

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