Section 3.3
Biological Resources

Summary

Table 3.3-1 below provides a summary of the potential environmental impacts of the Proposed Project related to biological resources. As shown in Table 3.3-1, the Proposed Project would have no significant impacts on biological resources within the project area.

Table 3.3-1. Summary of Potential Impacts on Biological Resources

Impact	Level of Significance before Mitigation	Mitigation Measures	Level of Significance after Mitigation
Impact BIO-1: Potential Loss or Disturbance of Candidate, Sensitive, or Special-Status Species or Their Habitat	No Impact	Mitigation not required.	N/A
Impact BIO-2: Potential Loss or Disturbance of On-Site Trees, Vegetation, and/or Natural Communities	No Impact	Mitigation not required.	N/A
Impact BIO-3: Potential Disturbance or Loss of Waters of the United States (including Wetlands)	No Impact	Mitigation not required.	N/A
Impact BIO-4: Affect Wildlife Dispersal or Migration Corridors	No Impact	Mitigation not required.	N/A
Impact BIO-5: Conflict with any Local Policies or Ordinances Protecting Biological Resources	No Impact	Mitigation not required.	N/A
Impact BIO-6: Potential Conflict with Adopted Habitat Conservation Plan, Natural Community Conservation Plan, or Other Approved Local, Regional, or State Habitat Conservation Plan	No Impact	Mitigation not required.	N/A

Introduction

This section describes the biological resources located in the Proposed Project area. It includes a discussion of federal, state, and local laws, policies, and regulations that influence these resources. Potential impacts of the Proposed Project on biological resources that would result from the project and mitigation measures that would reduce these impacts are identified.

Methodology

The methods used to identify biological resources in the Proposed Project study area included a pre-field investigation and a field survey.

Pre-Field Investigation

To prepare for the field surveys, biologists reviewed existing resource information related to the project area to evaluate whether special-status species or their habitats could occur there. The key sources of data and information used in the preparation of this section are as follows.

- California Department of Fish and Game Natural Diversity Database (CNDDB) search for the Newark, San Leandro, Redwood Point, Palo Alto, Hayward, Mountain View, Niles, Milpitas, and Dublin 7.5 minute quadrangles (CNDDB, 2008), accessed on January 9, 2008
- California Native Plant Society (CNPS). 2008. Inventory of Rare and Endangered Plants (online edition, v7-08a). California Native Plant Society. Sacramento, CA
- Hickman, J. C. (ed.), 1993. The Jepson Manual: Higher Plants of California. University of California Press, Berkeley, CA
- U.S. Fish and Wildlife Service (USFWS) Species list for the Newark 7.5 minute quadrangle (Doc no. 080218052235 dated February 18, 2008) (U. S. Fish and Wildlife Service, 2008)

The information gathered was used to develop lists of special-status species and other sensitive biological resources that could be present in the region. Species were included in these lists if they were known to occur in the project region and if their habitats could be located in the Proposed Project area.

Field Surveys

An ICF Jones & Stokes botanist and wildlife biologist conducted field surveys of the study area on February 6 and February 18, 2008, respectively. The purpose of the surveys was to collect information on the habitats present in the study area, to identify potential wetlands and waters, and to evaluate the potential for occurrence of special-status plants and wildlife species. This survey was

performed at the reconnaissance level and did not include a formal delineation or protocol-level surveys for wildlife or plants.

Special-Status Species

Special-status species are defined as follows:

- Species listed or proposed for listing as threatened or endangered under the federal Endangered Species Act (ESA) (Title 50, Code of Federal Regulations [CFR], Section 17.12 for listed plants, 50 CFR 17.11 for listed animals, and various notices in the Federal Register [FR] for proposed species)
- Species that are candidates for possible future listing as threatened or endangered under ESA (67 FR 40657; June 13, 2002)
- Species that are federal species of concern (i.e., former U.S. Fish and Wildlife Service [USFWS] C1 or C2 candidates);
- Species that are listed or proposed for listing by the State of California as threatened or endangered under the California Endangered Species Act (CESA) (Title 14, California Code of Regulations [CCR], Section 670.5);
- Plants listed as rare under the California Native Plant Protection Act of 1977 (California Fish and Game Code Section 1900 et seq.);
- Plants considered by CNPS to be "rare, threatened, or endangered in California";
- Species that meet the definitions of rare or endangered under CEQA Guidelines (Section 15380); and,
- Animals fully protected in California (California Fish and Game Code Section 3511 [birds], 4700 [mammals], and 5050 [reptiles and amphibians]).

Regulatory Setting

Federal

Endangered Species Act

The federal Endangered Species Act (ESA) of 1973 protects fish and wildlife species (and their habitats) that have been identified by the USFWS and/or the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) as threatened or endangered, and their habitats. *Endangered* refers to species, subspecies, or distinct population segments that are in danger of extinction through all or a significant portion of their range; *threatened* refers to species, subspecies, or distinct population segments likely to become endangered in the near future.

The ESA is administered by the USFWS and NOAA Fisheries. In general, NOAA Fisheries is responsible for protection of ESA-listed marine species and anadromous fishes while other listed species are under USFWS jurisdiction.

The following sections summarize specific provisions of the ESA (Sections 9, 7, and 10) that are relevant to the Proposed Project.

ESA Prohibitions (Section 9)

ESA Section 9 prohibits the *take* of any fish or wildlife species listed under the ESA as endangered. Take of threatened species is also prohibited under Section 9 unless otherwise authorized by federal regulations. *Take*, as defined by the ESA, means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." *Harm* is defined as "…any act that kills or injures the species, including significant habitat modification." In addition, Section 9 prohibits removing, digging up, cutting, and maliciously damaging or destroying federally listed plants on sites under federal jurisdiction.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (16 USC 703) enacts the provisions of treaties between the United States, Great Britain, Mexico, Japan, and the former Soviet Union and authorizes the U.S. Secretary of the Interior to protect and regulate the taking of migratory birds. It establishes seasons and bag limits for hunted species and protects migratory birds, their occupied nests, and their eggs (16 USC 703, 50 CFR 21, 50 CFR 10). Most actions that result in taking or in permanent or temporary possession of a protected species constitute violations of the Act. Examples of permitted actions that do not violate the Act include the possession of a hunting license to pursue specific game birds; legitimate research activities; display in zoological gardens; bird-banding; and other similar activities. USFWS is responsible for overseeing compliance with the Migratory Bird Treaty Act, and the U.S. Department of Agriculture's Animal Damage Control Officer makes recommendations on related animal protection issues.

Clean Water Act

The Clean Water Act (CWA) is the primary federal law protecting the quality of the nation's surface waters, including lakes, rivers, and coastal wetlands. As such, it empowers the EPA to set national water quality standards and effluent limitations and establishes permit review mechanisms to enforce them, operating on the principle that all discharges into the nation's waters are unlawful unless specifically authorized by a permit. Key provisions of the CWA are described in detail in Section 3.8, Hydrology and Water Quality.

Most of the CWA's provisions are at least indirectly relevant to the management and protection of biological resources because of the link between water quality and ecosystem health. The portions of the CWA that are most directly relevant to biological resources management are contained in CWA Section 404, which

regulates the discharge of dredged and fill materials into waters of the United States, including the following:

- Areas within the ordinary high water mark of a stream, including non-perennial streams with a defined bed and bank and any stream channel that conveys natural runoff, even if it has been realigned.
- Seasonal and perennial wetlands, including coastal wetlands.

Wetlands are defined for regulatory purposes as areas "inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (33 CFR 328.3, 40 CFR 230.3).

CWA Section 404 requires project proponents to obtain a permit from the U.S. Army Corps of Engineers (Corps) for all discharges of dredged or fill material into waters of the United States, including oceans, bays, rivers, streams, lakes, ponds, and wetlands, before proceeding with a proposed activity. The Corps may issue either an individual permit (evaluated on a case-by-case basis) or a general permit (evaluated at a program level for a series of related activities). General permits are preauthorized and issued to cover multiple instances of similar activities expected to cause only minimal adverse environmental effects. Nationwide permits (NWPs) are a type of general permit issued to cover particular fill activities. Each NWP specifies particular conditions that must be met in order for the NWP to apply to a particular project. Waters of the United States in the project area are under the jurisdiction of the Corps, San Francisco District.

Compliance with CWA Section 404 requires compliance with several other environmental laws and regulations, including the National Environmental Policy Act (NEPA), the ESA, the federal Coastal Zone Management Act, and the National Historic Preservation Act. In addition, the Corps cannot issue or verify any permit until a water quality certification, or waiver of certification, has been issued pursuant to CWA Section 401 (see Section 3.8, Hydrology and Water Quality). Section 404 permits may be issued only if there is no practicable alternative to the proposed discharge that would have less impact to the aquatic ecosystem and has no other significant adverse environmental consequences. Section 3.8 provides additional information on Section 404 permitting.

State

California Endangered Species Act

The California Endangered Species Act (CESA) protects wildlife and plants listed as threatened and endangered by the California Fish and Game Commission; it is administered by the California Department of Fish and Game (CDFG). CESA prohibits all persons from taking species that are state-listed as threatened or endangered except under certain circumstances; the CESA

definition of *take* is any action or attempt to "hunt, pursue, catch, capture, or kill."

CESA Section 2081 provides a means by which agencies or individuals may obtain authorization for incidental take of state-listed species, except for certain species designated as *fully protected* under the California Fish and Game Code (see below). Take must be incidental to—and not the purpose of—an otherwise lawful activity. Requirements for a Section 2081 permit are similar to those used in the ESA Section 7 process. They include identification of impacts on listed species, development of mitigation measures that minimize and fully mitigate impacts, development of a monitoring plan, and assurance of funding to implement mitigation and monitoring.

California Native Plant Protection Act

The California Native Plant Protection Act (CNPPA) of 1977 prohibits importation of rare and endangered plants into California; take of rare and endangered plants; and sale of rare and endangered plants. The *threatened* category replaced *rare* when CESA was enacted in 1984. CESA prohibits take of listed plants except as otherwise authorized by the CNPPA, which ensures that state-listed plant species are protected when state agencies are involved in projects subject to CEQA.

Removal of plants for performance of a public service by a public agency or a publicly or privately owned public utility is exempt from CNPPA. Accordingly, some Proposed Project activities may be considered exempt from the CNPPA. However, evaluation of potential impacts on state-listed plant species is required pursuant to CEQA Guidelines Section 15380(c)(1).

California Fish and Game Code

Protections for Individual Species

The California Fish and Game Code (Code) provides protection from take for a variety of species, defining take as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

Certain species are considered fully protected, meaning that the Code explicitly prohibits all take of individuals of these species, except for take required for scientific research, which may be authorized by CDFG in some situations. Section 5050 of the Code lists fully protected amphibians and reptiles, Section 5515 lists fully protected fishes, Section 3511 lists fully protected birds, and Section 4700 lists fully protected mammals.

The Code provides less stringent protection for other species, prohibiting most take, but permitting CDFG to issue regulations authorizing take under some circumstances. Eggs and nests of all birds are protected under Section 3503, nesting birds (including raptors and passerines) under Sections 3513 and 3503.5,

birds of prey under Section 3503.5, migratory nongame birds under Section 3800, and other specified birds under Section 3505.

Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act (Porter-Cologne Act), also known as the California Water Code, is California's statutory authority for the protection of water quality. Under this act, the state must adopt water quality policies, plans, and objectives that protect the state's waters. The act sets forth the obligations of the SWRCB and RWQCBs pertaining to the adoption of water quality control plans (basin plans) and establishment of water quality objectives. Unlike the federal CWA, which regulates only surface water, the Porter-Cologne Act regulates both surface water and groundwater.

Under this act, the SWRCB and RWQCBs have authority over both waters that are under the jurisdiction of the Clean Water Act as well as isolated and other waters and wetlands that are outside federal jurisdiction.

Local

Union City General Plan

The Union City's General Plan states that "Specimen trees and significant stands of existing trees will be protected to the extent possible in the design of new development" (City of Union City 2002, NCR-D.1.10). Union City's General Plan designates riparian woodland and scrub, freshwater marsh/wetland areas, and grassland areas as "sensitive habitat areas." (Union City 2002, NCR-A.1.1).

Environmental Setting

The Proposed Project site is a highly disturbed vacant lot consisting of ruderal vegetation. Typical vegetation on the site consists of invasive weeds and non-native plant species such as jubata grass (*Cortaderia jubata*), milk thistle (*Silybum marianum*), common groundsel (*Senecio vulgaris*), bristly ox tongue (*Picris echioides*), bull mallow (*Malva nicaeensis*), Russian-thistle (*Salsola tragus*), Himalayan blackberry (*Rubus discolor*), prickly lettuce (*Lactuca serriola),* fennel (*Foeniculum vulgare*), wild radish (*Raphanus sativus),* shortpod mustard (*Hirschfeldia incana*), smilo grass (*Piptatherum milliaceum*), annual bluegrass (*Poa annua*), foxtail barley (*Hordeum murinum*), oats (*Avena fatua*), and Italian ryegrass (*Lolium perenne* ssp*. multiflorum*).

Wildlife observed on or near the Proposed Project site included red-winged blackbird (*Agelaius phoeniceus*), red-tailed hawk (*Buteo jamaicensis*), American crow (*Corvus brachyrhynchos*), and signs of raccoon (*Procyon lotor*) and broad-footed mole (*Scapanus latimanus*) were also observed.

Impact Analysis

This section describes the impact analysis relating to biological resources for the Proposed Project. It describes the methods used to determine the impacts of the project and lists the thresholds used to conclude whether an impact would be significant. Measures to mitigate (i.e., avoid, minimize, rectify, reduce, eliminate, or compensate for) significant impacts accompany each impact discussion.

Methods

The methods used to determine whether biological resources would be impacted by the project were qualitative. This included combining the information learned during the pre-field investigation of biological resources known from the project region, and professional judgment of whether any of those biological resources occurred in the project area during the field visit. The most important information was gathered during the reconnaissance level field investigation. This allowed ICF Jones & Stokes biologists to assess the project area for the presence of sensitive biological resources, including potential habitat for special-status species. When biological resources were found in the field, ICF Jones & Stokes biologists made a determination of whether those resources would be compromised by the project itself, based on the Chapter 2.0, Project Description. The significance of each impact that the project would have on each resource in the project area is based on the Thresholds of Significance discussed below.

Thresholds of Significance

Thresholds of significance were determined based on Appendix G of the State CEQA Guidelines and by using professional judgment and standard practices. An impact was considered to be significant if it would:

- have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations or by CDFG or USFWS;
- have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service;
- have a substantial adverse effect on federally protected wetlands, as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, and coastal wetlands) or state waters or wetlands under the authority of the Porter Cologne Water Quality Act through direct removal, filling, hydrological interruption, or other means;
- interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;

- conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or,
- conflict with the provisions of an adopted habitat conservation plan (HCP), natural communities conservation plan (NCCP), or other approved local, regional, or state habitat conservation plan.

Impacts and Mitigation Measures

Impact BIO-1: Potential Loss or Disturbance of Candidate, Sensitive, or Special-Status Species or Their Habitat

Special-Status Plants
Thirty-three special status plant species have potential to occur on the site based on the search of CNDDB and CNPS records for the nine quads centered on the project site (Appendix F). Seventeen of these species were eliminated before visiting the site because the species range does not extend into the study area. None of the special status plant species were identified during the field survey.

Special-Status Wildlife
Of the 37 special-status wildlife species resulting from CNDDB and USFWS database searches, all were eliminated from further consideration as having potential to occur on the site. This is due to the fact that suitable habitat for these species is not present, or the species' range does not extend into the study area. This is primarily due to the highly disturbed nature of the site and lack of connectivity with population sources for these species. A brief explanation for the absence of these species and their habitats is provided in Appendix F. Although special status wildlife species do not occur on the project site, they have been identified in the project vicinity.

No special status species or their habitats were identified on the project site. Therefore, the Proposed Project would have no impacts related to the potential loss or disturbance of candidate, sensitive, or special-status species or their habitat.

Impact BIO-2: Potential Loss or Disturbance of On-Site Trees, Vegetation, and/or Natural Communities

There are no trees or natural plant communities located on the project site. Therefore, the Proposed Project would have no impacts related to the potential loss or disturbance of on-site trees, vegetation, and/or to natural communities.

Impact BIO-3: Disturbance or Loss of Waters of the United States or California (including Wetlands)

The project site does not support any wetland habitats such as riparian or vernal pool habitats. Therefore, the Proposed Project would have no impacts related to the disturbance or loss of waters of the United States or California (including wetlands).

Impact BIO-4: Affect Wildlife Dispersal or Migration Corridors

The project site is completely surrounded by urban development and does not connect any areas of substantial wildlife habitat. Therefore, the Proposed Project would have no impact to wildlife dispersal or migration corridors.

Impact BIO-5: Conflict with any Local Policies or Ordinances Protecting Biological Resources

There are no trees on the project site and the project would not conflict with any other local policy or ordinance that protects biological resources. Therefore, the Proposed Project would have no impacts related to conflict with local policies or ordinances protecting biological resources.

Impact BIO-6: Potential Conflict with Adopted Habitat Conservation Plan, Natural Community Conservation Plan, or Other Approved Local, Regional, or State Habitat Conservation Plan

A habitat conservation plan (HCP) exists within Alameda County; however it is under the jurisdiction of the San Francisco Public Utilities Commission and does not include the project site area. The HCP is located in the Fremont/Sunol area and extends into the unincorporated areas of the County, south of these cities. There are no other adopted HCPs or natural community conservation plans (NCCPs) in the project vicinity. As such, the Proposed Project would not conflict with an adopted HCP or NCCP. Therefore, the Proposed Project would have no impacts related to potential conflict with an adopted HCP, NCCP, or other approved local, regional, or state HCP.

Cumulative Impacts

The Proposed Project does not have the potential to impact biological resources on the project site or the surrounding area because the project site is surrounded by urban development. Thus, the Proposed Project would not have any cumulative impacts on biological resources.