4.3 BIOLOGICAL RESOURCES

This chapter describes existing biological resources in the Specific Plan Area and evaluates the potential biological resource impacts associated with future development that could occur by adopting and implementing the proposed Specific Plan Update, and approval and development of the proposed Transit-Oriented Developments (TOD) #1 and #2 (together referred to as the "proposed Project"). A summary of the relevant regulatory setting and existing conditions is followed by a discussion of the project-specific and cumulative impacts.

4.3.1 ENVIRONMENTAL SETTING

4.3.1.1 REGULATORY FRAMEWORK

This section describes the federal, State, regional, and local regulations that provide for the protection and management of sensitive biological resources.

Federal Regulations

The federal laws that regulate the treatment of biological resources include the Endangered Species Act, the Clean Water Act, and the Migratory Bird Treaty Act. The following sections outline the relevant principles of each.

Federal Endangered Species Act

The US Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) are responsible for implementation of the federal Endangered Species Act (ESA). The Act protects fish and wildlife species that are listed as threatened or endangered, as well as their habitats. Endangered species, subspecies, or distinct population segments are those that are in danger of extinction throughout all or a significant portion of their range; threatened species, subspecies, or distinct population segments are those that are likely to become endangered in the near future.

Section 9 of the ESA prohibits the "take" of any fish or wildlife species listed as endangered, including the destruction of habitat that prevents the species' recovery. Take is defined as an action or attempt to hunt, harm, harass, pursue, shoot, wound, capture, kill, trap, or collect a species. Section 9 prohibitions also apply to threatened species unless a special rule has been defined with regard to take at the time of listing. Under Section 9 of the ESA, the take prohibition applies only to wildlife and fish species. However, Section 9 does prohibit the unlawful removal and reduction to possession, or malicious damage or destruction, of any endangered plant from federal land. Section 9 prohibits acts to remove, cut, dig up, damage, or destroy an endangered plant species in nonfederal areas in knowing violation of any State law or in the course of criminal trespass. Candidate species and species that are proposed, or under petition for listing, receive no protection under Section 9.

Clean Water Act

The federal Clean Water Act (CWA) is administered by the US Environmental Protection Agency (EPA) and the US Army Corps of Engineers (USACE). USACE is responsible for regulating the discharge of fill material into waters of the United States, including lakes, rivers, streams, and their tributaries, as well as wetlands that are navigable or adjacent to a navigable waterway or that have an interstate or foreign commerce connection. In 2008, USACE published the Wetlands Regulatory Assistance Program: Regional Supplements to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), which provides detailed information for the Arid West Region. 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 support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

The discharge of dredged or fill material into waters of the United States is subject to permitting under Section 404 (Discharges of Dredge or Fill Material) of the CWA. Section 401 (Certification) specifies additional requirements for permit review, particularly at the State level. Project proponents must obtain a permit from USACE for all discharges of dredged or fill material into waters of the United States, including wetlands, before proceeding with a proposed action. USACE permits must be certified by the State Water Resources Control Board (SWRCB) in order to be valid. Thus, certification from the SWRCB should be requested at the same time an application is filed with USACE. Certification from the local Regional Water Quality Control Board (RWQCB) is also required when a proposed activity may result in discharge into navigable waters, pursuant to Section 401 of the CWA and EPA 404(b)(1) Guidelines.

National Pollutant Discharge Elimination System Program

The 1972 amendments to the federal Water Pollution Control Act established the National Pollutant Discharge Elimination System (NPDES) permit program to control discharges of pollutants from point sources (Section 402). The NPDES Permit Program is the primary federal program that regulates point-source and nonpoint-source discharges to waters of the United States. The SWRCB issues both general and individual NPDES permits for certain activities.

Migratory Bird Treaty Act

The USFWS is also responsible for implementing the Migratory Bird Treaty Act (MBTA). The MBTA implements a series of treaties between the United States, Mexico, and Canada that provide for the international protection of migratory birds. Wording in the MBTA makes it clear that most actions that result in "taking" or possession (permanent or temporary) of a protected species can be a violation of the Act. The word "take" is defined as "pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect." The provisions of the MBTA are nearly absolute; "except as permitted by regulations" is the only exception. Examples of permitted actions that do not violate the law are the possession of a hunting license to pursue specific game birds, legitimate research activities, display in zoological gardens, bird-banding, and similar activities.

State Regulations

California Endangered Species Act

The California Endangered Species Act (CESA) establishes State policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. CESA mandates that State agencies should not approve projects that jeopardize the continued existence of threatened or endangered species, if reasonable and prudent alternatives are available that would avoid jeopardy. For projects that would affect species that are on the federal and State endangered species lists, compliance with the federal ESA satisfies CESA if the California Department of Fish and Wildlife (CDFW) determines that the federal incidental take authorization is consistent with CESA under California Fish and Game Code Section 2080.1. For projects that would result in take of species that are only State-listed, the project proponent must apply for a take permit under Section 2081(b) of the California Fish and Game Code.

California Fish and Game Code

Under the California Fish and Game Code, CDFW provides protection from "take" for a variety of species, including Fully Protected species. "Fully Protected" is a legal protective designation administered by the CDFW, intended to conserve wildlife species that risk extinction within California. Lists have been created for birds, mammals, fish, amphibians, and reptiles. The Fish and Game Code sections dealing with Fully Protected species state that these animals "...may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected" species, although take may be authorized for necessary scientific research. In 2003, the code sections dealing with fully protected species were amended to allow CDFW to authorize take resulting from recovery activities for State-listed species. The CDFW also protects streams, water bodies, and riparian corridors through the streambed alteration agreement process under Section 1601 to 1606 of the California Fish and Game Code. The Fish and Game Code stipulates that it is "unlawful to substantially divert or obstruct the natural flow or substantially change the bed, channel or bank of any river, stream or lake" without notifying CDFW, incorporating necessary mitigation, and obtaining a streambed alteration agreement. Through policy, CDFW asserts jurisdiction to the top of banks of all streams, including intermittent and ephemeral streams, extending laterally to the upland edge of adjacent riparian vegetation. The CDFW uses the Cowardin system for wetland identification and classification, which typically results in a larger jurisdictional area than federal jurisdiction under the CWA. Under this system, wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

California Native Plant Protection Act

The California Native Plant Protection Act of 1977 (CNPPA) prohibits importation of rare and endangered plants into California, "take" of rare and endangered plants, and sale of rare and endangered plants. CESA defers to the CNPPA, which ensures that State-listed plant species are protected when State agencies are involved in projects subject to CEQA. In this case, plants listed as rare under the CNPPA are not protected under CESA; however, impacts to endangered, rare, or threatened species, including plants, are evaluated under CEQA.

Porter-Cologne Water Quality Act

The SWRCB and RWQCBs maintain independent regulatory authority over the placement of waste, including fill, into waters of the State under the Porter-Cologne Water Quality Act of 1969. This Act is similar to and largely based off the federal Clean Water Act and is intended to preserve and enhance all beneficial uses of the waters of the State. The RWQCB currently employs the USACE procedures and definitions for defining the physical boundaries of wetlands and waters. However, there are differences in the State and federal ability to regulate these features. In order to be subject to federal regulation as waters of the United States, wetlands and waters must demonstrate that water is, or is adjacent to, a navigable waterway or a tributary to a navigable waterway, or have an interstate or foreign commerce connection. Under the Porter-Cologne Act, the State has regulatory authority over what are termed "isolated" waters and wetlands, in addition to waters of the United States.

Local Regulations

Millbrae 1998-2015 General Plan

The City of Millbrae General Plan outlines various goals, policies, and implementing programs relevant to biological resources in the Land Use Element and Parks, Open Space, and Conservation Element. The policies relevant to the proposed Project are listed in Table 4.3-1.

TABLE 4.3-1 GENERAL PLAN POLICIES RELEVANT TO BIOLOGICAL RESOURCES

Number	Policy
Land Use (LU) Element	
LU2.5	**Historic Preservation.** Identify and protect sites and structures of architectural, historical, archaeological, and cultural significance, including significant trees and other plant materials. Require new development in historic areas to complement the character of nearby historic structures.
LU4.5	**Sustainable Millbrae.** In order to assure the long-term quality of life in Millbrae, consider the integration of the health of the local economy along with environmental integrity and human well-being when considering future projects.
LUIP-29	**Environmentally Sensitive and Hazardous Areas.** Prepare an integrated map identifying environmentally sensitive areas and generalized locations and boundaries of all geotechnical and safety hazard zones in the City, including faults, slide areas, flood plains, and high noise areas, among others. Require all proposed developments within such areas to prepare schematic site plans showing the exact locations of natural resources and hazard constraints, potential access points, and developable areas within each site.
Parks, Open Space, and Conservation (PC) Element	
PC4.1	**Open Space Protection and Preservation.** Protect and preserve open space lands in the City, and maintain them as necessary to protect the public health, safety and welfare. Protected open space areas should include: (1) Portions of property which have significant value to the public as scenic resources or which serve public recreation purposes. (2) Portions of property which are identified through the EIR process as environmentally sensitive habitat areas or archaeological sites, with development setbacks and other mitigation measures as recommended in the EIR to

TABLE 4.3-1 GENERAL PLAN POLICIES RELEVANT TO BIOLOGICAL RESOURCES

Number	Policy
	ensure protection of such resources. (3) Portions of property subject to geologic or seismic hazards, erosion, flooding, liquefaction, or other hazards, unless such hazards can be adequately mitigated to assure the protection of public health and safety for the life of the project.
PC4.2	Development Review Process. Maximize open space preservation opportunities in the private development review process and other approaches that minimize on-going City costs and liability exposure and still achieve City open space goals.
PC4.3	Open Space Preservation. The following means will be considered for preserving open space resources, in order of priority: (1) private development review process; (2) public-private partnerships; and lastly, (3) public funds. Possible means are described below. *Private Resources* (1) Require permanent dedication of open space areas with high habitat, visual, recreational, or archaeological value as a condition of development. These lands should be owned and maintained by private parties unless they are appropriate for use as trails or other public-access uses. (2) Use visual or public-access easements and building setbacks to protect open space resources while allowing development on private parcels. (3) Use impact fees from development of land with lower open-space values to acquire easements or ownership on land with higher open-space values. (4) Encourage clustering of units to protect areas with high open space values. (5) Encourage grants and donations of undeveloped property with high open-space values from private individuals or organizations. (6) Encourage private, nonprofit and other public agencies to acquire and maintain undeveloped land for open space preservation. These methods are preferred over the use of city funds for acquisition. *Public-Private Partnerships* (1) When parcels on planned trail or pathway corridors are developed, require the developer to construct the portion of the trail crossing the parcel as one of the conditions of development. (2) Work with organizations such as the Urban Creeks Council, Trust for Public Lands, Nature Conservancy, Coastal Conservancy, and other cities to perform creek restoration and other tasks related to open space. *Public (City) Funds* (1) Prioritize parcels with high habitat, visual, archaeological or recreational values for purchase by the City if funds become available.
PC4.4	Improvements in Open Space. Design any improvements in open space areas to minimize adverse impacts to habitats (including provision of a buffer to minimize human disturbances), views, and other open space resources.
PC4.5	Trees and Landscaping. Protect existing trees and encourage drought-tolerant landscaping, including new tree plantings, in private and public areas, including street medians. Utilize the design review process to review landscaping plans and enforce tree and landscape goals, consistent with the preservation of views.
PC5.2	Access Design and Protection of Natural Resources. For open space areas in public ownership, clearly delineate areas which are appropriate for public use and access, and differentiate them from those areas to be protected from human disturbance. In areas where public access is appropriate, provide access points and accessible design features (e.g. trails and related facilities).
PC6.1	Habitat Protection. Preserve important plant and wildlife habitats, including chaparral, broadleaf/riparian woodlands, open grasslands, marshy areas, creeks, and sensitive nesting sites. Loss of these habitats should be

TABLE 4.3-1 GENERAL PLAN POLICIES RELEVANT TO BIOLOGICAL RESOURCES

Number	Policy
	fully offset through creation of habitat of equal value, with the compensation rate for habitat recreation determined by a qualified biologist.
PC6.2	Rare and Endangered Species. Limit development in areas which support the San Francisco garter snake, red-legged frog, and other rare or endangered species. If development of these areas must occur, any loss of habitat should be fully compensated on-site. If off-site mitigation is necessary, it should occur within the Millbrae planning area whenever possible, and must be accompanied by plans and a monitoring program prepared by a qualified biologist.
PC6.3	Development Patterns. Encourage development patterns which minimize impacts on the City's environmental resources and integrate development with open space areas. Cluster development and other creative site planning techniques should be encouraged to preserve open space, habitat, and other environmental or recreational resources.
PC6.4	Development Setbacks. Lands adjacent to sensitive habitat areas should be protected as public or private permanent open space through dedication or easements. New developments adjacent to such areas should provide adequate building setbacks to buffer against potential impacts, with adequate access easements provided to allow for necessary open space maintenance.

Source: City of Millbrae, 1998-2015 General Plan adopted 1998.

Millbrae Municipal Code

The City of Millbrae Municipal Code contains all ordinances for the city. The Municipal Code is organized by Title, Chapter, and Section. The current Municipal Code is up to date through Ordinance 747, passed May 27, 2014. The following provisions of the Municipal Code help to minimize adverse effects to biological resources as a result of development in Millbrae.

- **Chapter 8.60 City of Millbrae Municipal Tree Protection and Urban Forestry Program**. This program is intended to promote diversity in street tree species, an appropriate amount of street trees, the value of properties, and the aesthetics of the community. Section 8.60.060 requires all property owners to maintain street trees fronting upon the property in a healthy condition, including watering and weeding. Permits from the parks and recreation director or designee are required to prune, plant, or remove any street tree in Millbrae. Section 8.60.070 contains standards, methods, and conditions for authorized pruning, planting, and removing street trees.

4.3.1.2 EXISTING CONDITIONS

This section describes the existing conditions of the plant and wildlife resources in Millbrae and the Specific Plan Area, including the TOD #1 and #2 project sites. The following descriptions are based primarily on available background data and review of aerial photographs.

Vegetation and Wildlife Habitat

The majority of the Specific Plan Area has been urbanized and now supports roadways, structures, other impervious surfaces, areas of turf, and ornamental landscaping. As such, only a small portion of the city, mostly in the west side of Millbrae near the Junipero Serra County Park, Millbrae Creek, and San Andreas Lake, supports wildlife habitats.

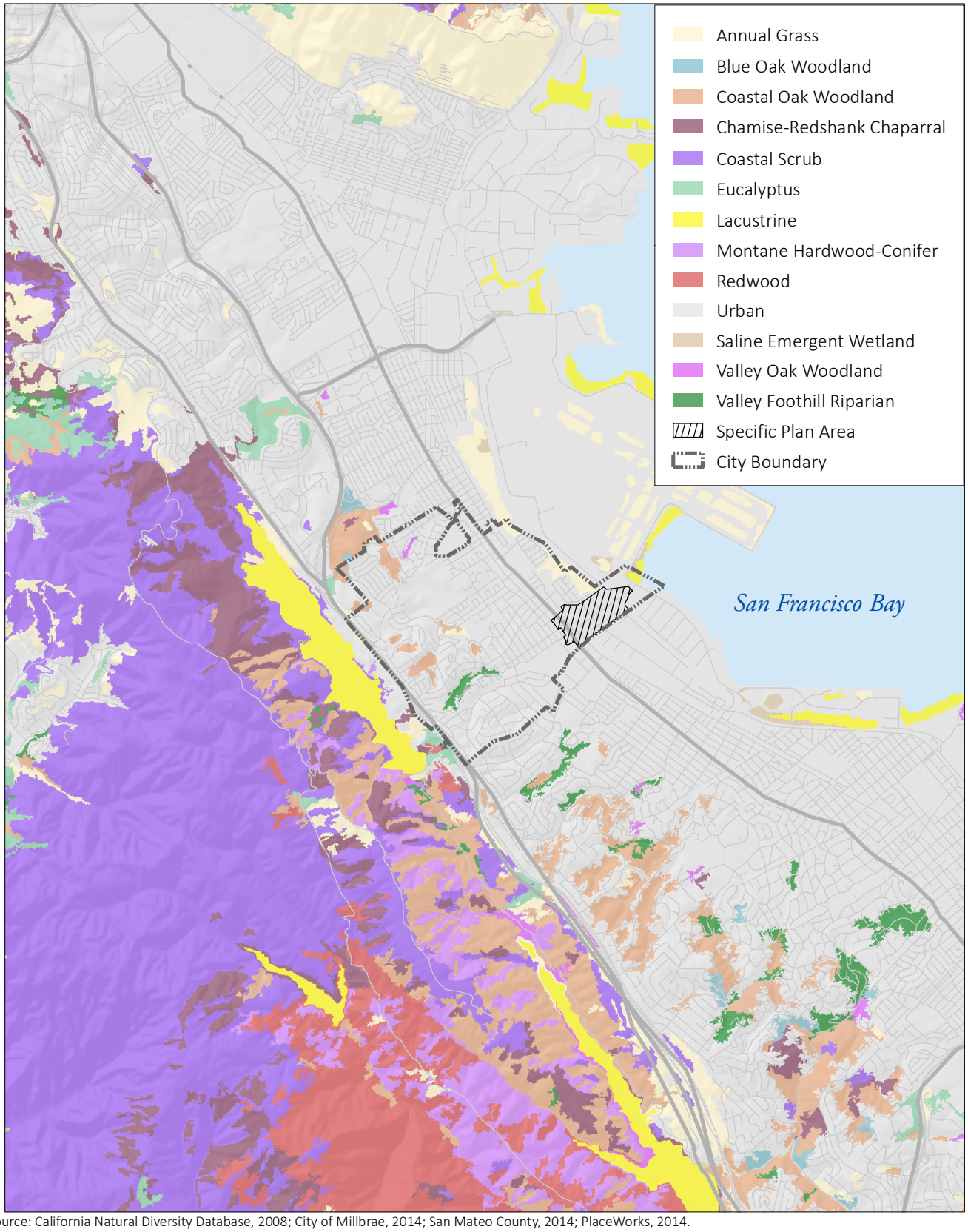
Specific Plan Area Vegetation and Wildlife

The Specific Plan Area is highly developed and now occupied by structures, pavement, other impervious surfaces, and train tracks. See Figure 3-3 in Chapter 3, Project Description. Only a few areas within the Specific Plan Area remain without structures or pavement: the Public Works storage yard (immediately north of the Millbrae Station parking structure), the SFO-owned property (immediately west of Highway 101), and the areas surrounded by Highway 101 on- and off-ramps (except for the wastewater facility site in the northeast corner of the interchange). Concentrations of mature trees exist within the areas surrounded by Highway 101 and its on- and off-ramps and along the southbound on-ramp. In the rest of the Specific Plan Area, street trees have been planted along the frontages of many locations, and varying amounts of landscaping is present on individual sites ranging from scattered trees and shrub plantings to limited areas of groundcover plantings.

A short stretch of the Highline Drainage Canal runs along the northern boundary of the Specific Plan Area. This canal is an approximately 70-foot-wide engineered channel with concrete lining. As such, the establishment of any vegetation is precluded, and their value to wildlife is limited; several street trees are planted along the edge of the canal. Another engineered channel, El Portal Canal, runs along just outside of the southern boundary of the Specific Plan Area.

As shown in Figure 4.3-1, the Classification and Assessment with LANDSAT™ of Visible Ecological Groupings (CALVEG) mapping program indicates that there are eight existing habitat types in Millbrae: Coastal Oak woodland, Blue Oak woodland, Valley Oak woodland, annual grass, Lacustrine, Saline emergent wetland, valley foothill riparian, and urban. The Coastal Oak woodland, Blue Oak woodland, Valley Oak woodland, and valley foothill riparian are considered sensitive natural communities due to rarity and continuing loss as a result of development, flood control improvements, and other factors. However, the Specific Plan Area, including the TOD #1 and TOD #2 project sites, are classified as urban habitat type and do not contain occurrences of sensitive natural communities.

These type of urbanized areas tend to have low to poor wildlife habitat value due to replacement of natural communities, fragmentation of remaining open space areas and parks, and intensive human disturbance. The diversity of urban wildlife depends on the extent and type of landscaping and remaining open space, as well as the proximity to natural habitat. Trees and shrubs used for landscaping provide nest sites and cover for wildlife adapted to developed areas. Typical native bird species include the mourning dove, scrub jay, northern mockingbird, American robin, brown towhee, American crow, and Anna's hummingbird, among others. Introduced species include the rock dove, European starling, house finch, and house sparrow.



Source: California Natural Diversity Database, 2008; City of Millbrae, 2014; San Mateo County, 2014; PlaceWorks, 2014.

Figure 4.3-1
Vegetatation Habitat

Urban areas can also provide habitat for several species of native mammals such as the California ground squirrel and striped skunk, as well as the introduced eastern fox squirrel and eastern red fox. Introduced pest species such as the Norway rat, house mouse, and opossum are also abundant in developed areas.

Common wildlife species found in the Specific Plan Area include: European starling, house finch, English sparrow, northern mocking bird, house mouse, Bottae pocket gopher, Norway rat, raccoon, and opossum.[1]

TOD #1 Project Site Vegetation and Wildlife

As described in Chapter 3, Project Description, of this Draft EIR, this project site is highly urbanized and primarily surrounded by paved roadways: Caltrain's right-of-way to the east; single-family properties and a surface parking lot to the north; El Camino Real and Serra Avenue to the west; and Linden Avenue and an access road to the south. The majority of vegetation on this site consists of ornamental trees and shrubs at the peripheral of the properties. Mature trees are found mostly in the grassy backyard of the existing convalescent home and along the southern edge of the associated surface parking lot. There are three street trees on the sidewalk along El Camino Real adjacent to the project site. See Figure 3-18 in Chapter 3, Project Description. Similar to the Specific Plan Area, as a whole, the site has low to poor wildlife habitat value because it is built out.

TOD #2 Project Site Vegetation and Wildlife

As described in Chapter 3, Project Description, of this Draft EIR, this project site is this project site is highly urbanized and primarily surrounded by paved roadways: the railroad tracks to the west; single-family properties to the north; Aviador Avenue to the east; and Millbrae Avenue to the south. The vast majority of the project site has been paved and is used as BART's surface parking lots. The only unpaved area is the northeast portion the City's storage yard just north of the Highline Drainage Canal. The majority of vegetation on this site consists of ornamental trees and shrubs at the periphery of BART's surface parking lots. A portion of the Highline Drainage Canal runs through this site. As described above, several street trees are planted along the street at the edge of the canal. See Figure 3-26 in Chapter 3, Project Description. Similar to the Specific Plan Area as a whole, the site has low to poor wildlife habitat value because it is built out.

Habitat Connectivity

The spatial arrangement of habitat and barriers affects the location, movement patterns, foraging dynamics, and persistence of plant and animal species.[2] The extent of urbanization limits opportunities for movement and dispersal of native wildlife and plant species through the Specific Plan Area, including the TOD #1 and TOD #2 project sites. Common urban features such as freeways, paved roads, retaining walls, rail lines, fencing, buildings, and hardscape represent barriers to wildlife movement and dispersal. In general, riparian corridors typically provide the best opportunity for plant and animal movement through urbanized areas. However, there are no such riparian corridors within or adjoining the Specific Plan Area.

[1] City of Millbrae, 1998, Millbrae Station Area Specific Plan EIR, page 4.12.5.

[2] Malcolm L. Hunter, 1999. *Maintaining Biodiversity in Forest Ecosystems.* Cambridge University Press. Accessed at books.google.com, March 12, 2012.

Special-Status Species

Special status plants include those listed as "Endangered," "Threatened," or "Candidate for Listing" by the CDFW or USFWS; those included on Lists 1 and 2 of the California Native Plant Society Inventory; or those considered special-status in local or regional plans, policies, or regulations. Special status animals include those listed as "Endangered," "Threatened," or "Candidate for Listing" by the CDFW or USFWS; those designated as "Watch List," "Species of Special Concern," or "Fully Protected" by the CDFW; or those considered "Birds of Conservation Concern" by the USFWS.

The California Natural Diversity Database (CNDDB) compiles inventories of known occurrences of rare plants and animals for a variety of purposes, including to provide data to government agencies and to assist in environmental review, such as that required by CEQA.[3] Many non-listed special-status species are not monitored by the CNDDB and occurrence data is therefore not available. In general, the highly urbanized character of the Specific Plan Area, including the TOD #1 and TOD #2 project sites, coupled with the predominance of hardscape surfaces and ornamental plantings, offers limited potential for habitat that supports special-status species. However, a search of the CNDDB, together with other relevant information, indicates that some occurrences of plant and animal species with special status have been recorded or are suspected to occur in the Millbrae vicinity. Figures 4.3-2 and 4.3-3 show the distribution of the CNDDB records within a 5-mile radius of the Specific Plan Area for special-status plant and wildlife species, respectively.

Plant Species

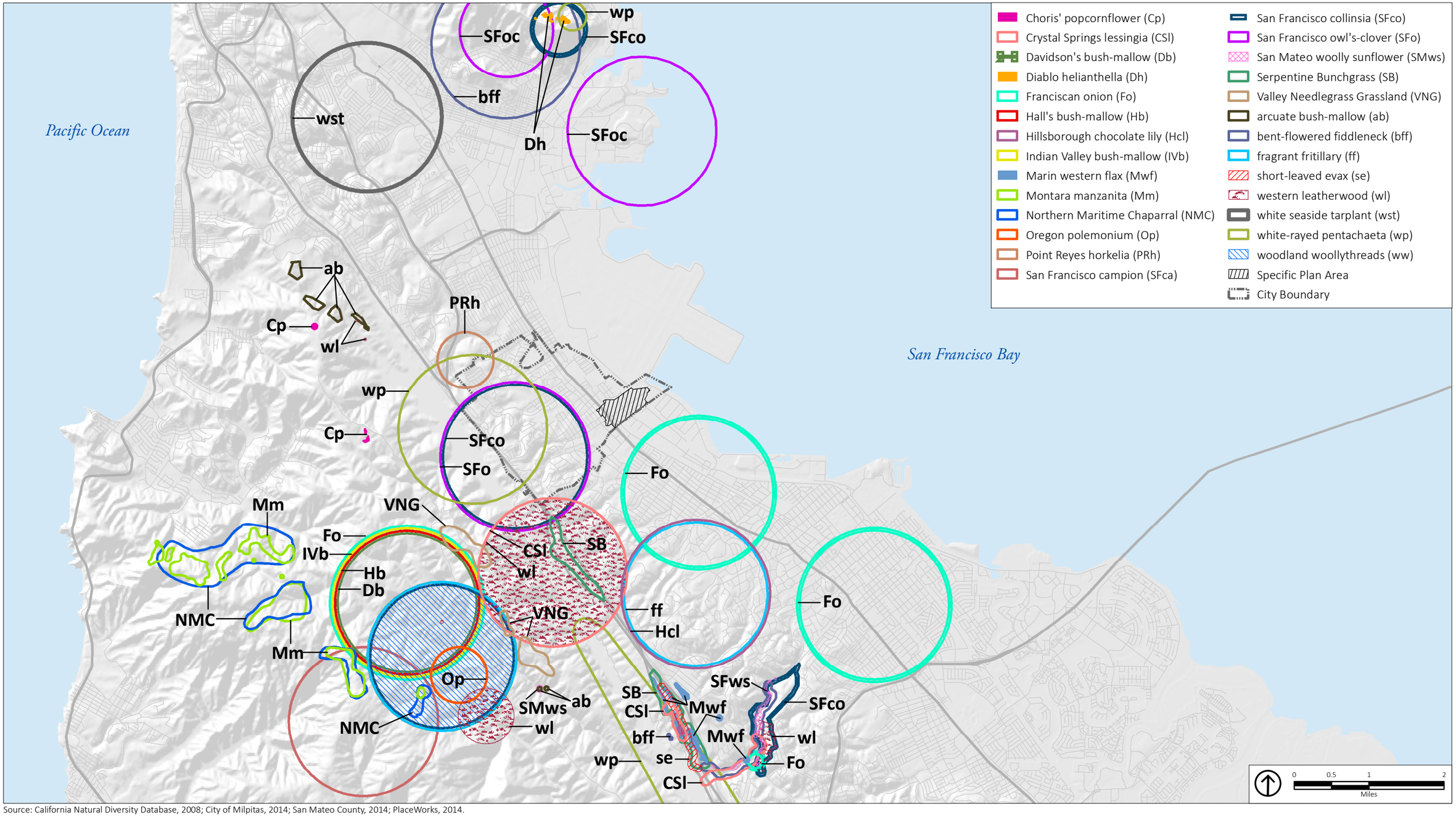
As shown on Figure 4.3-2, no special-status plant species have known occurrences in the vicinity of the Specific Plan Area. The existing urbanization in the Specific Plan Area precludes the likelihood of occurrence of any populations of special-status plant species.

Wildlife Species

There are known historic occurrence records of a number of special-status animal species in the Millbrae vicinity, as indicated in Figure 4.3-3. While there are historical occurrences of San Francisco garter snake in all of Millbrae, existing urban development in the Specific Plan Area, including the TOD #1 and TOD #2 project sites, precludes occurrence of the San Francisco garter snake, which requires habitat with permanent freshwater marsh densely vegetated by rush and grass; coastal scrub and riparian scrub in some areas. Special-status bat species, such as pallid bat, have been known to roost in unused structures in the Millbrae vicinity and may continue to use structures or tree cavities with suitable roosting conditions and limited human disturbance.

[3] California Department of Fish and Wildlife, *California Natural Diversity Database*, http://www.dfg.ca.gov/biogeodata/cnddb/, accessed on March 2015.

BIOLOGICAL RESOURCES

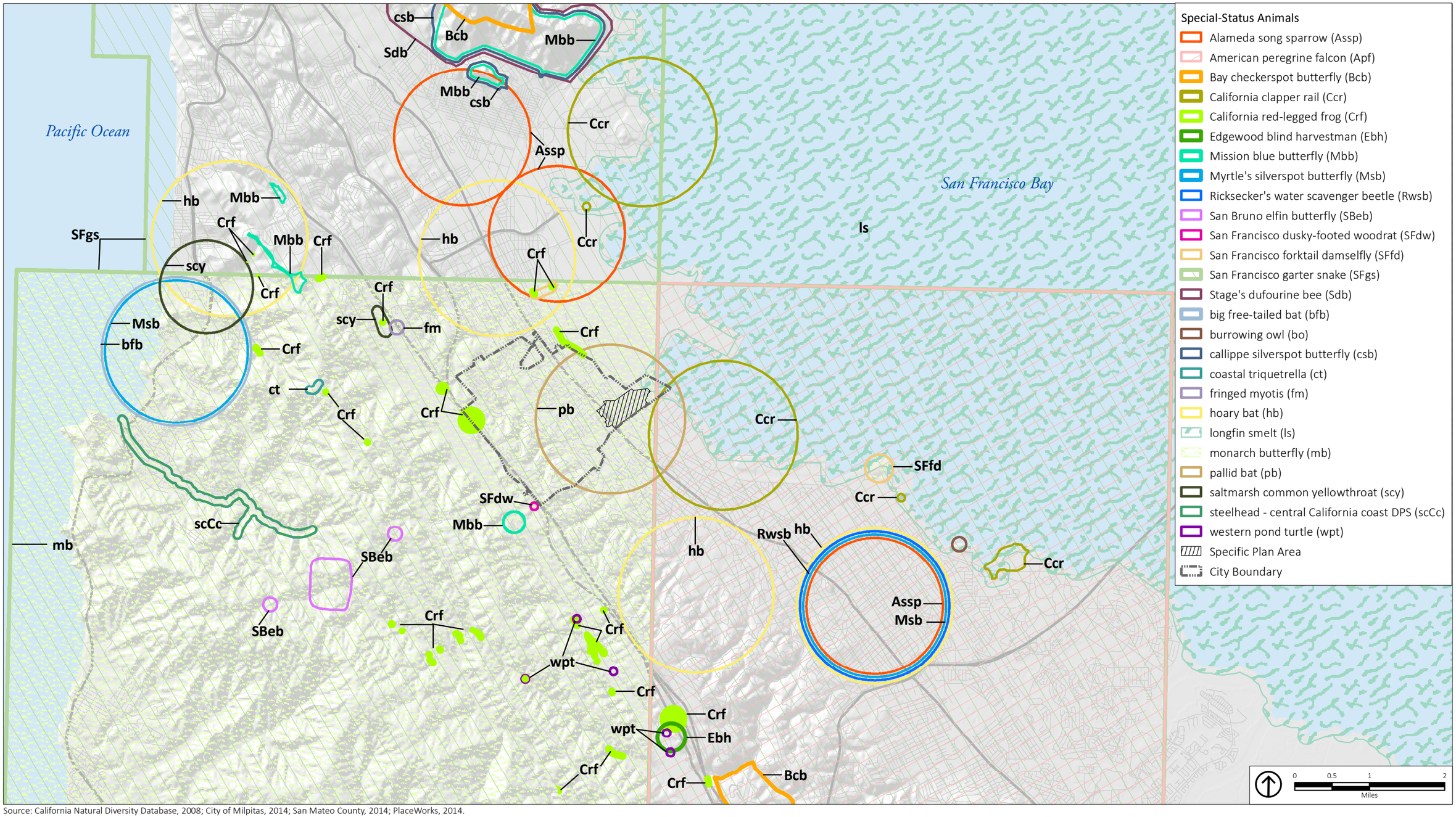


Source: California Natural Diversity Database, 2008; City of Milpitas, 2014; San Mateo County, 2014; PlaceWorks, 2014.

Figure 4.3-2
Special-Status Plant Species

PLACEWORKS

BIOLOGICAL RESOURCES



Source: California Natural Diversity Database, 2008; City of Milpitas, 2014; San Mateo County, 2014; PlaceWorks, 2014.

Figure 4.3-3
Special-Status Wildlife Species

Wetlands

Due to the urbanized nature of the Specific Plan Area, through the Specific Plan Area, including the TOD #1 and TOD #2 project sites, seasonal wetlands are absent in the areas where there is potential for development in the Specific Plan Area. While potential wetlands may exist within the Specific Plan Area in the undeveloped lands at the Highway 101 interchange right-of-way and the SFO property between Aviador Avenue and Highway 101, these areas are not subject to development under the 1998 Specific Plan or the Specific Plan Update. In addition, the Highline and El Portal Canals are likely to be considered jurisdictional "other waters of the U.S." by the USACE although they do not support any emergent vegetation.[4]

Habitat Conservation Plans

There is no adopted habitat conservation plan or natural community conservation plan covering the Specific Plan Area or the TOD #1 and TOD #2 project sites.

4.3.2 STANDARDS OF SIGNIFICANCE

The proposed Project would result in a significant biological resources impact if it would:

1. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations by the California Department of Fish and Wildlife, or U.S. Fish and Wildlife Service;
2. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife, or U.S. Fish and Wildlife Service;
3. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
4. Interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
5. Conflict with any local policies or ordinances protecting biological resources; or
6. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

With regards to Standard of Significance 6, there is no adopted habitat conservation plan or natural community conservation plan covering the Specific Plan Area; therefore, this issue will not be discussed further.

[4] City of Millbrae, 1998, Millbrae Station Area Specific Plan EIR, page 4.12.7.

4.3.3 IMPACT DISCUSSION

BIO-1	The proposed Project would have a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations by the California Department of Fish and Wildlife, or U.S. Fish and Wildlife Service.

Specific Plan Update

Due to the extent of past development and absence of suitable habitat, special-status species are generally not believed to occur in the Specific Plan Area, and no adverse impacts are anticipated. This includes suitable habitat for special-status plants, the San Francisco garter snake, California red-legged frog, among others.

There is remote potential that one or more species of bird protected under the Migratory Bird Treaty Act and State Fish and Wildlife Code could nest in the Specific Plan Area or establish new nests in the future before vegetation removal and building demolition occurs. If active nests are present, vegetation removal and construction-related disturbance during the breeding and rearing season could inadvertently result in the destruction or abandonment of a nest in active use, which would be a violation of the Migratory Bird Treaty Act and California Fish and Game Code. Appropriate timing of vegetation removal or preparation of a preconstruction survey to confirm absence, with appropriate restrictions if any active nests are encountered, would serve to avoid an inadvertent loss of nesting birds, if any are present in the Specific Plan Area. This would be considered a *significant* impact if any active nests are present before vegetation removal and demolition.

Impact BIO-SP-1.1: Implementation of the Specific Plan Update could result in inadvertent loss of bird nests in active use, which would conflict with the federal Migratory Bird Treaty Act and California Fish and Game Code if adequate controls and preconstruction surveys are not implemented.

Mitigation Measure BIO-SP-1.1: Adequate measures shall be taken to avoid inadvertent take of raptor nests and other nesting birds protected under the Migratory Bird Treaty Act when in active use. This shall be accomplished by taking the following steps.

- If vegetation removal and initial construction is proposed during the nesting season (March to August), a focused survey for nesting raptors and other migratory birds shall be conducted by a qualified biologist within 14 days prior to the onset of vegetation removal or construction, in order to identify any active nests on the proposed project site and in the vicinity of proposed construction.
- If no active nests are identified during the construction survey period, or if development is initiated during the non-breeding season (September to February), vegetation removal and construction may proceed with no restrictions.
- If bird nests are found, an adequate setback shall be established around the nest location and vegetation removal and construction activities shall be restricted within this no-disturbance zone until the qualified biologist has confirmed that any young birds have fledged and are able to function outside the nest

location. Required setback distances for the no-disturbance zone shall be based on input received from the CDFW, and may vary depending on species and sensitivity to disturbance. As necessary, the no-disturbance zone should be fenced with temporary orange construction fencing if construction is to be initiated on the remainder of the development site.

- A report of findings shall be prepared by the qualified biologist and submitted to the City for review and approval prior to initiation of construction within the no-disturbance zone during the nesting season (March to August). The report shall either confirm absence of any active nests or confirm that any young are located within a designated no-disturbance zone and construction can proceed.

Significance With Mitigation: Less than significant

Similarly, there is remote possibility that one or more species of special-status bats, such as pallid bat, could occur in existing unused attic spaces, tree cavities, and other locations in the Specific Plan Area. If present, building demolition or tree removal could result in the loss of individual bats or entire colonies, which would be a significant impact. Appropriate timing of building demolition and tree removal, preparation of preconstruction surveys to confirm absence, and appropriate restrictions if any active roosts are encountered would serve to avoid inadvertent loss of roosting bats, if any are present in the Specific Plan Area. This would be considered a *significant* impact if any active nests are present before vegetation removal and demolition.

Impact BIO-SP-1.2: Implementation of the Specific Plan Update could adversely affect the pallid bat if adequate controls are not implemented.

Mitigation Measure BIO-SP-1.2: Measures shall be taken to avoid possible loss of pallid bats and other special-status bat species during construction of future projects allowed by the proposed Specific Plan Update. This shall be accomplished using the following provisions:

- Existing buildings should preferably be demolished between February 15 to April 15, or from August 15 to October 15, to minimize the likelihood of removal during the winter roosting period when individual bats are less active and more difficult to detect, and the critical pupping period (April 16 to August 14) when young cannot disperse.
- Buildings shall be surveyed by a qualified bat biologist no more than two weeks before demolition to determine whether any signs of bat roosting is present, and to avoid "take" of any bats that may have begun to use the structures for day-roosting.
- If the pre-demolition survey reveals bats or bat roosting activity, a plan shall be developed by the qualified bat biologist to provide for exclusion and/or passive relocation, such as leaving all doors and windows open continually until demolition. Additional recommendations may be made by the qualified bat biologist following the pre-demolition survey, including monitoring of demolition, possible restriction on timing and procedures for demolition to allow escape, and other measures to avoid take of individual bats.
- A tree roost habitat assessment shall be conducted by a qualified bat biologist for trees to be removed as part of development projects. The habitat assessment shall be conducted no more than two weeks prior to tree removal and vegetation clearing. Additional detailed measures may be required based on the results of the habitat assessment if evidence of bat roosting is observed. This may include restrictions on timing

and supervision of tree removal by the qualified bat biologist, and systematic removal of select trees and major limbs to encourage dispersal and avoid "take" of individual bats.

Significance With Mitigation: Less than significant.

TOD #1 Project

Due to the extent of past development and absence of suitable habitat, special-status species are generally not believed to occur on the TOD #1 project site. Similar to the proposed Specific Plan Update, however, there is still remote potential that one or more special-status species of birds or bats could occur in unused building space or tree cavities on the project site. Since a survey has not been conducted to confirm the absence of active nests or roosts on the site, construction of the project could result in the destruction or abandonment of a nest or a roost in active use, which would be a violation of the federal MBTA and CDFG Code. This would be considered a *significant* impact if any active nests or roosts are present before vegetation removal and demolition.

Impact BIO-TOD#1-1.1: The proposed TOD #1 project could result in inadvertent loss of bird nests in active use, which would conflict with the federal Migratory Bird Treaty Act and California Fish and Game Code if adequate controls and preconstruction surveys are not implemented.

Mitigation Measure BIO-TOD#1-1.1: Implement Mitigation Measure BIO-SP-1.1.

Significance With Mitigation: Less than significant

Impact BIO-TOD#1-1.2: The proposed TOD #1 project could result adversely affect the pallid bat if adequate controls are not implemented.

Mitigation Measure BIO-TOD#1-1.2: Implement Mitigation Measure BIO-SP-1.2.

Significance With Mitigation: Less than significant

TOD #2 Project

Due to the extent of past development and absence of suitable habitat, special-status species are generally not believed to occur on the TOD #2 project site. Because there are only a few ornamental trees and bushes on surface parking lots and no existing buildings would be demolished on the project site, it is highly unlikely that an active nest or roost either exists onsite or would be destroyed due to the construction of the project. As such, construction of the project would not result in the destruction or abandonment of a nest or a roost in active use. Therefore, impacts would be *less than significant*.

Significance Without Mitigation: Less than significant

BIO-2	The proposed Project would not have a substantial adverse effect on riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife, or U.S. Fish and Wildlife Service.

Specific Plan Update

The Specific Plan Update would have a significant impact if development or infrastructure projects allowed by the proposed Specific Plan Update would result in direct or indirect impacts to riparian resources or a sensitive natural community. As described in Section 4.3.1.2, there are no riparian corridors or sensitive natural communities within or adjoining the Specific Plan Area. Therefore, the Specific Plan Update would have *no impact* on riparian habitat or sensitive natural communities.

Significance Without Mitigation: No impact.

TOD #1 Project

The discussion under the Specific Plan Update applies to the TOD #1 project site; thus, *no impact* would occur as a result of construction of the project.

Significance Without Mitigation: No impact.

TOD #2 Project

The discussion under the Specific Plan Update applies to the TOD #1 project site; thus, *no impact* would occur as a result of construction of the project.

Significance Without Mitigation: No impact.

BIO-3	The proposed Project would not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

Specific Plan Update

As described in Section 4.3.1 above, potential wetlands exist within the Specific Plan Area. However, the land use regulations in the proposed Specific Plan Update would not allow new development within the areas with potential wetlands; development under the proposed Specific Plan Update would only occur in the areas where potential wetlands are absent. Therefore, no direct impact to wetlands would occur.

Indirect impacts to wetlands and jurisdictional other waters include: 1) an increase in the potential for sedimentation due to construction grading and ground disturbance, 2) an increase in the potential for erosion due to increased runoff volumes generated by impervious surfaces, and 3) an increase in the potential for water quality degradation due to increased levels in non-point pollutants. However, indirect impacts could be largely avoided through effective implementation of Best Management Practices (BMP) during construction and compliance with water quality controls. The indirect water quality-related issues are discussed further in Chapter 4.8, Hydrology and Water Quality, of this Draft EIR. As discussed in Impact HYDRO-1, water quality impacts would be less than significant.

Because no development would occur in areas where potential wetlands are present and indirect impacts would be less than significant, potential impacts on wetlands would also be considered *less than significant*.

Significance Without Mitigation: Less than significant.

TOD #1 Project Site

The discussion under the Specific Plan Update applies to the TOD #1 project site; thus, construction of the project would result in *less-than-significant* impacts.

Significance Without Mitigation: Less than significant.

TOD #2 Project

The discussion under the Specific Plan Update applies to the TOD #2 project site; thus, construction of the project would result in *less-than-significant* impacts.

Significance Without Mitigation: Less than significant.

BIO-4	The proposed Project would not 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.

Specific Plan Update

The extent of urbanization and urban features (such as roadways, rail lines, fencing, buildings, and hardscape) within the Specific Plan Area limits opportunities for movement and dispersal of native wildlife and plant species. No established wildlife or riparian corridors exist in the Specific Plan Area. Therefore, there would be *no impact*.

Significance Without Mitigation: No impact.

TOD #1 Project

The discussion under the Specific Plan Update applies to the TOD #1 project site; thus, *no impact* would occur.

Significance Without Mitigation: No impact.

TOD #2 Project

The discussion under the Specific Plan Update applies to the TOD #2 project site; thus, *no impact* would occur.

Significance Without Mitigation: No impact.

BIO-5	The proposed Project would not conflict with any local polices or ordinances protecting biological resources.

Specific Plan Update

Development and land use activities consistent with the proposed Specific Plan Update would occur in urbanized areas where sensitive biological and wetland resources are generally considered to be absent, and no major conflicts with the relevant policies or ordinances in the Millbrae General Plan and Municipal Code are anticipated. The proposed Specific Plan Update also contains regulations and policies that would supplement the General Plan policies by requiring new development to provide landscaped open spaces and consistent tree canopies

Additionally, future development would be required to comply with the City's Tree Protection and Urban Forestry Program, Chapter 8.60 of the Millbrae Municipal Code, which requires permit approval prior to removal of any street trees. Therefore, impacts would be *less than significant*.

Significance Without Mitigation: Less than significant.

TOD #1 Project

The discussion under the Specific Plan Update also applies to the TOD #1 project site; thus, construction of the project would result in *less-than-significant* impacts.

Significance Without Mitigation: Less than significant.

TOD #2 Project

The discussion under the Specific Plan Update also applies to the TOD #2 project site; thus, construction of the project would result in *less-than-significant* impacts.

Significance Without Mitigation: Less than significant.

4.3.4 CUMULATIVE IMPACTS

BIO-6	The proposed Project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to biological resources.

As discussed in Chapter 4, Environmental Evaluation, of this Draft EIR, this EIR takes into account growth projected by the proposed Project, in combination with impacts from projected growth in the rest of the City of Millbrae. The geographic scope of the cumulative analysis for biological resources considers the 5-mile radius of the Specific Plan Area. Cumulative impacts would occur if development or infrastructure projects allowed by the proposed Specific Plan Update, together with other cumulative projects, would substantially and adversely affect a special-status species, a riparian habitat, or a federally protected wetland; substantially interfere with the movement of native resident fish or wildlife species or wildlife corridors or impede the use of native wildlife nursery sites; or conflict with local policies protecting biological resources or with an adopted habitat conservation plan.

Due to the urbanized nature of the Specific Plan Area and limited biological resources in the Specific Plan Area, the proposed Project would not have any biological resource impacts that would be cumulatively considerable. The Specific Plan Area is extensively disturbed by urban and suburban uses. No sensitive resources would be affected by the proposed Project, and trees would be removed and replaced in compliance with the City's Tree Protection Ordinance. There are no habitat conservation plans applicable to Millbrae, and therefore development of the proposed Specific Plan Update and cumulative projects would not result in any cumulative impacts with respect to habitat conservation plan conflicts. Although the proposed Project could impact migratory birds and pallid bats, a special-status species, such impacts can be mitigated, as described further in Section 4.3.3. Furthermore, impacts of the proposed Specific Plan Update on migratory birds and pallid bats would be short-term from construction-associated redevelopment activities; the general nature of areas used by migratory birds and pallid bats would not be significantly changed (e.g. changing from an undeveloped to developed site). Given the short-term nature of the proposed Project's impact and its ability to be mitigated by Mitigation Measures BIO-SP-1.1 and BIO-SP-1.2, the proposed Project would not contribute to a significant cumulative impact.

The potential impacts of cumulative development on biological resources would tend to be site specific, and the overall cumulative effect would be dependent on the degree to which significant vegetation and wildlife resources are protected on a particular site. This includes preservation of well-developed native vegetation (e.g. marshlands, native grasslands, oak woodlands, riparian scrub, and woodland), populations of special-status plant or animal species, and wetland features (including seasonal wetlands and drainages). Cumulative projects would also be required to comply with federal and State regulations that protect special-status species and sensitive biological resources. Therefore, the proposed Project would result in a *less-than-significant* cumulative impact to biological resources.

Significance Before Mitigation: Less than significant.