

BIOLOGICAL RESOURCES

4.2 BIOLOGICAL RESOURCES

This chapter includes an evaluation of the potential environmental consequences on biological resources from construction and operation of the proposed project. This chapter also describes the environmental setting, including regulatory framework and existing biological resources in the vicinity of the proposed project, and identifies mitigation measures, if required, that would avoid or reduce significant impacts.

Biological resources associated with the proposed project were identified through a review of available information concerning biological resources in the central Santa Clara County area, presence of sensitive natural communities, and the distribution and habitat requirements of special-status species which have been recorded from or are suspected to occur in the project vicinity, including a record search conducted by the California Natural Diversity Data Base (CNDDB) of the California Department of Fish and Wildlife (CDFW) and mapping of habitat types prepared as part of the Classification and Assessment with Landsat of Visible Ecological Groupings (CALVEG)¹ habitat mapping program by the United States Department of Agriculture Forest Service (USDA).

In addition, this chapter includes information from the *Preliminary Arborist Report* (Arborist Report) that was prepared for the project applicant by HortScience, Inc. dated July 2018, which includes a tree assessment completed in May 2018. This Arborist Report was reviewed and approved by Michael Bench, Consulting Arborist for the City of Cupertino, and is included in Appendix D, Arborist Report and Tree Removal Plan, of this Draft EIR.

4.2.1 ENVIRONMENTAL SETTING

4.2.1.1 REGULATORY FRAMEWORK

This section summarizes existing federal, State, regional, and local policies and regulations that apply to biological resources.

State and Federal

State and federal agencies have a lead role in the protection of biological resources under their permit authority set forth in statutes and regulations. The United States Fish and Wildlife Service (USFWS) is responsible for administering the Migratory Bird Treaty Act (MBTA) and the federal Endangered Species Act (ESA).

At the State level, the California Department of Fish and Wildlife (CDFW) is responsible for administration of the California Endangered Species Act (CESA). Sections 3500-3516, 4700, 5050, and 5515 of the California Fish and Game Code address Fully Protected species.

¹ The CALVEG system was initiated in January 1978 by the Region 5 Ecology Group of the US Forest Service to classify California's existing vegetation communities for use in statewide resource planning. CALVEG maps use a hierarchical classification on the following categories: forest; woodland; chaparral; shrubs; and herbaceous.

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Special-status species are plants and animals that are legally protected under the ESA/CESA or other laws and regulations, and also include other species considered rare enough by the scientific community and trustee agencies to warrant special consideration, particularly with regard to protection of isolated populations, nesting or denning locations, communal roosts, and other essential habitat. Species with legal protection under the ESA/CESA may present major constraints to development, particularly when they are wide-ranging or highly sensitive to habitat disturbance and where proposed development would result in a "take" of these species. "Take" is a term used in the ESA to include, "harass, harm, pursue, hunt, shoot, wound, kill trap, capture, or collect, or to attempt to engage in any such conduct."²

The primary information source on the distribution of special-status species in California is the CNDDDB inventory, which is maintained by the Natural Heritage Division of the CDFW. Occurrence data is obtained from a variety of scientific, academic, and professional organizations, private consulting firms, and knowledgeable individuals, and is entered into the inventory as expeditiously as possible. The presence of a population of species of concern in a particular region is an indication that an additional population may occur at another location within the region, if habitat conditions are suitable. However, the absence of an occurrence in a particular location does not necessarily mean that special-status species are absent from the area in question, only that no data has been entered into the CNDDDB inventory. Detailed field surveys are generally required to provide a conclusive determination of the presence or absence of sensitive resources from a particular location, unless suitable habitat is determined to be absent.

In addition to species-oriented management, protecting habitat on an ecosystem-level is increasingly recognized as vital to the protection of natural diversity in the State. The CNDDDB also monitors the locations of natural communities that are considered rare or threatened, known as sensitive natural communities. The CNDDDB has compiled a list of sensitive natural communities that are given a high inventory priority for mapping and protection. Although these natural communities have no legal protected status under the ESA/CESA, they are provided some level of protection under the CEQA Guidelines. A project would normally be considered to have a significant effect on the environment if it would substantially affect a sensitive natural community, such as a riparian woodland, native grassland, or coastal salt marsh. Further loss of a sensitive natural community could also be interpreted as substantially diminishing habitat, depending on the relative abundance, quality and degree of past disturbance, and the anticipated impacts.

Local

Cupertino General Plan

The Cupertino General Plan (Community Vision 2015-2040) includes policies that are relevant to the protection of biological resources and applicable to the proposed project. The policies are identified in Chapter 6, Environmental Resources and Sustainability, of the General Plan and listed below in Table 4.2-1.

² United States Fish & Wildlife Services Endangered Species Act 40 Years of Conserving Endangered Species, https://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf.

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TABLE 4.2-1 GENERAL PLAN POLICIES RELEVANT TO BIOLOGICAL RESOURCES

| Policy Number | Policy |
|---|--|
| Chapter 6, Environmental Resources and Sustainability (ES) | |
| Policy ES-5.1 | Urban Ecosystem. Manage the public and private development to ensure the protection and enhancement of its urban ecosystem. |
| Policy ES-5.2 | Development near Sensitive Areas. Encourage the clustering of new development away from sensitive areas such as riparian corridors, wildlife habitat and corridors, public open space preserves and ridgelines. New developments in these areas must have a harmonious landscaping plan approved prior to development. |
| Policy ES-5.3 | Landscaping in and near Natural Vegetation. Preserve and enhance existing natural vegetation, landscape features and open space when new development is proposed within existing natural areas. When development is proposed near natural vegetation, encourage the landscaping to be consistent with the palate of vegetation found in the natural vegetation. |
| Policy ES-5.6 | Recreation and Wildlife. Provide open space linkages within and between properties for both recreational and wildlife activities, most specifically for the benefit of wildlife that is threatened, endangered or designated as species of special concern. |

Source: Cupertino General Plan (Community Vision 2015-2040).

Cupertino Municipal Code

The Cupertino Municipal Code (CMC) includes various directives to minimize adverse impacts to biological resources. The provisions related to potential impacts from the proposed project are included in Title 14, Streets, Sidewalks, and Landscaping, as follows:

- **Chapter 14.12, Trees.** This chapter provides regulations for the planting, care, and maintenance of public trees. “Public trees” are park trees and street trees collectively. For continued funding for maintenance of public trees, this chapter establishes requirement for the payment of reimbursement costs to the City to plant street trees as a condition of building permit issuance.
- **Chapter 14.15, Landscape Ordinance.** This chapter implements the California Water Conservation in Landscaping Act of 2006 by establishing new water-efficient landscaping and irrigation requirements. In general, any building or landscape projects that involve more than 2,500 square feet of landscape area are required to submit a Landscape Project Submittal to the Director of Community Development for approval. Existing and established landscapes over 1 acre, including cemeteries, are required to submit water budget calculations and audits of established landscapes.
- **Chapter 14.18, Protected Trees.** This chapter contains regulations for the protection, preservation, and maintenance of trees of certain species and sizes. Removal of a protected tree requires a permit from the City. “Protected” trees include trees of a certain species and size in all zoning districts; heritage trees in all zoning districts; any tree required to be planted or retained as part of an approved development application, building permit, tree removal permit, or code enforcement action in all zoning districts; and approved privacy protection planting in R-1 zoning districts. Protected trees include trees of the following species that have a minimum single trunk diameter of 10 inches (31-inch circumference) or a minimum multi-trunk diameter of 20 inches (63-inch circumference) measured as 4.5 feet from the natural grade: native oak tree species (*Quercus spp.*), including coast live oak (*Quercus agrifolia*), valley oak (*Quercus lobata*), black oak (*Quercus kelloggii*), blue oak (*Quercus douglasii*), and interior live oak (*Quercus wislizeni*); California buckeye (*Aesculus californica*); big leaf maple (*Acer macrophyllum*); deodar cedar (*Cedrus deodara*); blue atlas cedar (*Cedrus*

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atlantica 'Gluca'); bay laurel or California bay (*Umbellularia californica*); and western sycamore (*Platanus racemosa*).

4.2.1.2 EXISTING CONDITIONS

This section describes the existing conditions of the plant and wildlife resources in Cupertino and the project area. The following descriptions are based on available background data and review of aerial photographs of the project site and surrounding vicinity, as well as site visits by arborists from HortScience on May 9, 2018 (see Appendix D of this Draft EIR).

Biological Communities

The project site and surrounding area has been urbanized and now supports roadways, structures, other impervious surfaces, areas of turf, and ornamental landscaping. Remnant native trees are scattered throughout the urbanized area, together with non-native trees, shrubs, and groundcovers. The site includes a one-story shopping center that is currently operating. The project site is bound by roadways on all sides and property, and land beyond the roadways is developed with residential, senior services, and educational land uses. As previously described, the CALVEG habitat mapping program classifies the site as an “urban area” that tends 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. 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. Numerous bat species are also known to be in the Cupertino area, most of which are relatively common and are not considered special-status species.

Special-Status Plant and Wildlife Species

Given the urbanized and built-out nature of the site and the surrounding area, a search of CNDDDB records was conducted within a 1-mile radius surrounding the project site on September 18, 2019. The results of this search show no record of special-status plant or animal species on the project site. However, there are two occurrences of special-status animal species within the 1-mile buffer of the project site, to the west of the project site across SR-85. A White-tailed kite occurrence was reported approximately 0.45 miles to the southwest of the project site, and a Yuma myotis occurrence was reported approximately 0.6 miles to the west of the project site. However, no essential habitat for these special-status species is present on the site, due to its developed and urbanized nature.

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Protected Nesting Birds

There is a possibility that birds could nest in trees and other landscaping on the project site. The nests of most bird species are protected under the MBTA when in active use, and there is a remote possibility that one or more raptor species protected under the MBTA and CFG Code could nest on the project site. These include both the Cooper's hawk (*Accipiter cooperi*) and white-tailed kite (*Elanus leucurus*), which have reported CNDDDB occurrences within the city boundary, together with more common raptors such as red-tailed hawk, great horned owl, and American kestrel, all of which are protected by the MBTA and CFG Code when their nests are in active use. However, no essential habitat for these or other special-status species is present on the site due to its developed condition.

Protected Bats

Numerous bat species are known to be in the Cupertino area, most of which are relatively common and are not considered special-status species. As previously stated, the CNDDDB does not show any occurrences of special-status bats within the site vicinity. However, there has been one Yuma myotis bat species occurrence recorded approximately 0.65 miles west of the project site. The CNDDDB also shows records within several miles of Cupertino. The records include occurrences of Townsend's big-eared bat (*Corynorhinus townsendii*), hoary bat (*Lasiurus cinereus*), and Yuma myotis (*Myotis yumanensis*). These three species have no legal protected status under the ESA or CESA, but the Townsend's big-eared bat is considered a Species of Special Concern by the CDFW. These species have priority rankings assigned by the Western Bat Working Group (WBWG), which range from "High" for Townsend's big-eared bat, "Medium" for hoary bat, to "Low-Medium" for Yuma myotis. Bat species found in the Cupertino vicinity may forage and occasionally roost in the site vicinity, but because the Oaks Shopping Center is occupied, no suitable habitat for maternity roosts are on the site.

Protected Trees

According to the Vegetation Map shown in the Environmental Resources and Sustainability Element of the General Plan, most of the City, including the project site, is within the urban forest.³ The City recognizes that every tree on both public and private property is an important part of Cupertino's urban forest and contributes significant economic, environmental and aesthetic benefits of the community.⁴

The Arborist Report was prepared for the proposed project to assess the health and structural conditions of the trees on the project site, identify all "protected trees" as defined by CMC Chapter 14.18 (Protected Tree Ordinance) described in the regulatory setting above, assess the impacts of constructing the proposed project on the trees, and present guidelines for tree preservation.⁵ The Arborist Report evaluated the 83 trees on the site. These trees represent the following species: Japanese maple (*Acer*

³ City of Cupertino General Plan (Community Vision 2015-2040), Chapter 6, Environmental Resources and Sustainability Element, Figure ES-1.

⁴ City of Cupertino, Tree Protection and Tree Removal link on the City's website. <https://www.cupertino.org/our-city/departments/community-development/planning/residential-development/tree-protection-tree-removal>, accessed on May 6, 2019.

⁵HortScience, Inc., July 2018, Preliminary Arborist Report: The Oaks Shopping Center, Cupertino, CA.

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palmatum), Deodar cedar (*Cedrus deodara*), Nichol's gum (*Eucalyptus nicholii*), Evergreen ash (*Fraxinus uhdei*), Crape myrtle (*Lagerstroemia indica*), Canary Island pine (*Pinus canariensis*), Monterey pine (*Pinus radiata*), Chinese pistache (*Pistacia chinensis*), Victorian box (*Pittosporum undulatum*), Callery pear (*Pyrus calleryana*), Evergreen pear (*Pyrus kawakamii*), Coast live oak (*Quercus agrifolia*), and Holly oak (*Quercus ilex*).

The project site includes a mix of young trees planted throughout the parking lots, semi-mature trees along the perimeter, and four veteran oak trees likely preserved during the last site development. Veteran oaks may be indigenous to the site, but the remaining trees are planted exotics.

The professional arborist evaluated the health and structural condition of the 83 trees on the project site, applying a scale of 1 to 5, with 1 being the poorest condition and 5 being a good condition. These are defined as follows:

- **Good Condition:**
 - **5:** A healthy, vigorous tree, reasonably free of signs and symptoms of disease, with good structure and form typical of the species.
 - **4:** Tree with slight decline in vigor, small amount of twig dieback, minor structural defects that could be corrected.
- **Fair Condition:**
 - **3:** Tree with moderate vigor, moderate twig and small branch dieback, thinning of crown, poor leaf color, moderate structural defects that might be mitigated with regular care.
- **Poor Condition:**
 - **2:** Tree in decline, epicormic growth, extensive dieback of medium to large branches, significant structural defects that cannot be abated.
 - **1:** Tree in severe decline, dieback of scaffold branches and/or trunk; most of foliage from epicormics; extensive structural defects that cannot be abated.

A majority of the trees were in fair (approximately 40 percent) and poor (approximately 39 percent) condition, with 18 trees (approximately 21 percent) in good condition. Tree sizes range from 2 to 51 inches in diameter.

Out of the 83 trees surveyed, the Arborist Report identified 74 trees, including 14 protected trees, that would be directly impacted by development and would require removal. The professional arborist assigned a preservation suitability rating for each of the 83 trees of either "high", "moderate", or "low." Suitability for preservation considers the health, age, and structural condition of the tree, and its potential to remain an asset to the site for years to come. Preservation suitability ratings are defined as follows:

- **High:** Trees with good health and structural stability that have the potential for longevity at the site. The following seven trees were determined to be highly suitable for preservation: three crape myrtles, two Nichol's gum, one deodar cedar, and one coast live oak.

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- **Moderate:** Trees with somewhat declining health and/or structural defects than can be abated with treatment. The tree will require more intensive management and monitoring and may have shorter life span than those in “high” category. Thirty-four (34) trees were determined to be of moderate suitability for preservation: 14 evergreen ash, 13 coast live oaks, 2 evergreen pears, 2 Chinese pistache, one Victorian box, one Japanese maple, and one Canary Island pine.
- **Low:** Trees in poor health or with significant structural defects that cannot be mitigated, and which are expected to continue to decline, regardless of treatment. The species or individual may have characteristics that are undesirable for landscapes and generally are unsuited for use areas. Forty-two (42) trees were determined to have low suitability for preservation: 22 Chinese pistache, 10 evergreen ash, four coast live oaks, two callery pears, one Monterey pine, one holly oak, one Victorian box, and one Nichol’s gum.

Of the 74 trees in the proposed development areas subject to removal, 14 of the trees qualify as protected trees. Nine trees have been preliminarily identified for preservation, including one protected tree. Impacts to protected trees are discussed in Section 4.2.3, Impact Discussion, below.

4.2.2 THRESHOLDS OF SIGNIFICANCE

An Initial Study was prepared for the proposed project (see Appendix A of this Draft EIR). Based on the analysis contained in the Initial Study and comments received during the scoping process, it was determined that development of the proposed project would not result in significant environmental impacts related to the following significance standards and, therefore, are not discussed in this chapter.

- Have a substantial adverse effect on any riparian habitat or other sensitive natural community type.
- 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.
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species, their wildlife corridors, or nursery sites.
- Conflict with an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or State habitat conservation plan.

Based on the Initial Study and comments received during the scoping process it was determined that the proposed project could result in a potentially significant impact to biological resources if it would:

1. Have a substantial adverse effect, either directly or through habitat modifications, on a plant or animal population, or essential habitat, defined as a candidate, sensitive or special-status species.
2. Conflict with any local ordinances or policies protecting biological resources.

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4.2.3 IMPACT DISCUSSION

BIO-1 **The proposed project would not have a substantial adverse effect, either directly or through habitat modifications, on a plant or animal population, or essential habitat, defined as a candidate, sensitive, or special-status species.**

Nesting Birds

As stated above in the existing conditions discussion, there are no known occurrences of special-status plant or animal species and no suitable habitat for such species on the project site, but there is a possibility that birds that are protected by the MBTA and CFG Code could nest in trees and other landscaping on the project site. However, no essential habitat for these or other special-status species is present on the site due to its developed condition. Mitigation Measure BIO-1 would be required for the proposed project to reduce impacts to a *less-than-significant* level.

Impact BIO-1: Tree removal and demolition activities during site clearance could destroy active nests, and/or otherwise interfere with nesting of birds protected under federal and State law.

Mitigation Measure BIO-1: Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31).

Preconstruction surveys shall:

- Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period.
- Be conducted no more than 14 days prior to the start of tree removal or construction.
- Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped.
- Document locations of active nests containing viable eggs or young birds.

Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds.

Protective measures shall include:

- Establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds.

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- Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status.
- An increase in the radius of an exclusion zone by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife.
- The protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

Significance With Mitigation: Less than significant.

Bird Collision

Avian injury and mortality resulting from collisions with buildings, towers and other man-made structures is a common occurrence in city and suburban settings. Some birds are unable to detect and avoid glass and have difficulty distinguishing between actual objects and their reflected images, particularly when the glass is transparent and views through the structure are possible. Night-time lighting can interfere with movement patterns of some night-migrating birds, causing disorientation or attracting them to the light source. The frequency of bird collisions in a particular area is dependent on numerous factors, including: characteristics of building height, fenestration (the arrangement of windows and doors on the sides of a building), and exterior treatments of windows and their relationship to other buildings and vegetation in the area; local and migratory avian populations, their movement patterns, and proximity of water, food and other attractants, time of year; prevailing winds; weather conditions; and other variables.

The proposed mixed-use development would alter the physical characteristics of the site; however, this change is not expected to contribute to a substantial increase in the risk of local and migratory bird collisions. This is due to several reasons, including the fact that the surrounding area is already developed with urban structures of similar bulk and surface treatment. As discussed below, the proposed building materials would be non-reflective; and the proposed lighting would be low-level illumination with no up-lighting. In addition, the site is occupied by five existing structures, and, as under the existing conditions, most birds would likely acclimate to the presence of the new buildings once completed. Therefore, the potential risk of bird collision with the new buildings would be a less-than-significant impact.

There are design options to minimize the risk of bird collisions through the use of bird-safe design for window treatments, rooftop equipment, and night-time lighting. While any bird collisions that do occur should not have a substantial adverse effect on special-status bird species or more common bird species that may be flying through the vicinity, the applicant has committed to implementing bird-safe design measures in the new buildings, which would further address the low risk of collision. These design measures include the following:⁶

- Reduce large areas of transparent or reflective glass:

⁶ Bird safe design element examples were provided in a letter from Steven Ohlhaber at C2K Architecture to the Gian Martire at the City of Cupertino dated July 5, 2019.

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- The proposed project would be primarily solid wall buildings with punched and recessed windows to help reduce the overall visibility of windows.
- Residential windows areas would use mullions and/or muttons to divide overall window size.
- Balcony railings would be picket style with no reflective glass railings on the proposed project.
- The largest areas of glass are at the retail storefront level, where fritting or appliques and louvers and opaque spandrel panels at the tops of the retail storefront windows would be used to deter birds.
- Some of the primary retail storefront would be set back from the façade or in an arcade, reducing the view angle and visibility of these retail storefront windows to birds.
- The buildings would incorporate overhanging roofs and projecting balconies that shield windows from overhead flying birds.
- Avoid transparent glass skyways, walkways and entryways, as well as free-standing glass walls and transparent building corners.
 - There would be no glass skyways, walkways or large commercial glass style entryways, freestanding glass walls or transparent building corners in the design.
 - The largest areas of glass would be at the retail storefront level, where fritting or appliques may be used to deter birds and louvers or opaque spandrel panels at the tops of the storefront windows.
- Avoid the funneling of open space toward a building façade.
 - The project site plan would be open with no narrow, dead-end alley ways.
- Landscaping to reduce reflections and views of foliage through glass.
 - The townhome/ rowhome design of the proposed project would use primarily opaque walls, which would reduce the amount of any vegetation reflection.
 - The lowest windows of the townhome / rowhomes would be fitted with fritting, exterior shutters or translucent film as these are primarily garage windows. This would reduce ground level vegetation reflections in these windows without diminishing the living spaces.
 - Low reflectivity glass would be implemented on the store fronts to reduce vegetation reflectivity.
- Reduced or eliminated up-lighting and spotlights on buildings.
 - No up-lighting and/or spot lighting would be planned for the buildings or landscape.
 - The proposed project would use shielded, dark sky compliant fixtures for exterior lighting.
- Turning off-non-emergency lighting at night, especially during migration.
 - At the retail areas, reduced lighting at non-operating hours would be required for the commercial uses.

The location of the project site, the building design features, and selected materials were determined to adequately address the remote potential for special-status bird species dispersing through the site vicinity to collide with the new structure and be injured or killed. These measures would serve to minimize the potential for bird strikes through the use of bird-friendly design guidelines in the treatment of windows and other aspects of the proposed mixed-use building and would ensure any potential impact would be less than significant for special-status birds and more common bird species.

Significance Without Mitigation: Less than significant.

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Roosting Bats

As described in the existing conditions, the recent CNDDDB records search included occurrences of Townsend's big-eared bat (*Corynorhinus townsendii*), hoary bat (*Lasiurus cinereus*), and Yuma myotis (*Myotis yumanensis*). These three species have no legal protected status under the federal or State Endangered Species Acts, but Townsend's big-eared bat is considered a Species of Special Concern by the CDFW. Bat species found in the Cupertino vicinity may forage and occasionally roost in the site vicinity, but suitable habitat conditions for maternity roosts is absent from the site. The potential for any special-status bat species to be present on the site is considered highly remote, given the urbanization of the site vicinity and intensity of human activity, which typically discourages possible occupation by special-status bats. Accordingly, the construction and operation of the proposed project would not result in the inadvertent loss of any bats and impacts would be *less than significant*.

Significance Without Mitigation: Less than significant.

BIO-2 The proposed project would not conflict with a local ordinances or policies protecting biological resources.

As described below, the proposed project would not conflict with any relevant goals and policies in the General Plan related to protection of biological resources:

- Policy ES-5.1 encourages the management of public and private development, specifically landscaping and the built environment, to ensure the protection and enhancement of its urban ecosystem. The proposed project would include planting approximately 400 trees on-site, 87,846 square feet of landscaping, and 10,320 square feet of bioretention areas, which would enhance urban ecosystem while also providing stormwater treatment that is beneficial to the environment.
- Policy ES-5.2 encourages the clustering of new development away from sensitive areas such as riparian corridors, wildlife habitat and corridors, public open space preserves and ridgelines. The proposed project would be located in an infill, urban area, which does not contain any sensitive habitat of special concern.
- Policy ES-5.3 calls for the preservation and enhancement of existing natural vegetation, landscape features, and open space when new development is preserved in existing natural areas. As described above, the project site currently contains open space and vegetated areas, but these areas are currently landscaped and are not in their natural state. The project site is previously disturbed, is developed for private use, and is located within an urban area; therefore, it does not serve as a natural open space area. The project site would provide landscaping throughout the project site's interior and the surrounding perimeter and would comply with City's Landscape Ordinance (CMC Chapter 14.15). Proposed landscaping would be consistent with the Northern California landscape and would include native and/or adaptive, and drought resistant plant materials. The majority of plantings would be drought tolerant groundcovers and shrubs, once established, would be adapted to a dry summer and intermittent rain in the winter season.
- Policy ES-5.6 calls for open space linkages within and between properties, most specifically to benefit threatened or endangered wildlife and species of concern. As described under impact discussion BIO-

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1, the project site is not recorded as containing any special-status wildlife species. In addition, the project site is currently developed and located in an urban area. The proposed project would also include approximately 400 new trees that would support the ongoing movement of migratory birds as under current conditions. Therefore, redevelopment of the project site is would not disrupt any important wildlife linkages.

CMC Chapter 14.18, Protected Trees Ordinance, provides regulations for the protection, preservation, and maintenance of trees of certain species and sizes. As previously described under the existing conditions section, the Arborist Report prepared for the proposed project identified 14 trees that are proposed for removal that qualify as *Specimen* trees pursuant to the Protected Trees Ordinance. Specimen trees that would be removed as part of the proposed project including their species, size, condition and preservation suitability rating are listed in Table 4.2-2.

TABLE 4.2-2 PROTECTED TREES TO BE REMOVED BY THE PROPOSED PROJECT

| Arborist Report Tree No. | Species | Trunk Diameter (inches) | Condition Poor/Fair/Good ^a | Suitability for Preservation (Low/Moderate/High) ^b |
|-----------------------------|----------------|----------------------------|--|---|
| 1 | Coast live oak | 39 | 4 | Moderate |
| 2 | Coast live oak | 16 | 4 | Moderate |
| 3 | Coast live oak | 21 | 3 | Moderate |
| 4 | Coast live oak | 51 | 4 | Moderate |
| 5 | Coast live oak | 11 | 4 | Moderate |
| 6 | Coast live oak | 34 | 4 | Moderate |
| 7 | Coast live oak | 15 | 3 | Moderate |
| 8 | Coast live oak | 22 | 2 | Moderate |
| 16 | Coast live oak | 23 | 4 | Moderate |
| 17 | Coast live oak | 13 | 3 | Low |
| 18 | Coast live oak | 49 | 4 | Low |
| 19 | Coast live oak | 29 | 4 | Low |
| 22 | Coast live oak | 11, 10, 10 | 4 | Moderate |
| 30 | Coast live oak | 28, 21 | 4 | Moderate |

Notes:

a. Tree Condition Ratings:

Good Condition:

5: A healthy, vigorous tree, reasonably free of signs and symptoms of disease, with good structure and form typical of the species;

4: Tree with slight decline in vigor, small amount of twig dieback, minor structural defects that could be corrected.

Fair Condition:

3: Tree with moderate vigor, moderate twig and small branch dieback, thinning of crown, poor leaf color, moderate structural defects that might be mitigated with regular care.

Poor Condition:

2: Tree in decline, epicormic growth, extensive dieback of medium to large branches, significant structural defects that cannot be abated;

1: Tree in severe decline, dieback of scaffold branches and/or trunk; most of foliage from epicormics; extensive structural defects that cannot be abated.

b. Tree Preservation Rating:

High Suitability: Trees with good health and structural stability that have the potential for longevity at the site;

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TABLE 4.2-2 PROTECTED TREES TO BE REMOVED BY THE PROPOSED PROJECT

| Arborist Report Tree No. | Species | Trunk Diameter (inches) | Condition Poor/Fair/Good ^a | Suitability for Preservation (Low/Moderate/High) ^b |
|-----------------------------|---------|----------------------------|--|---|
|-----------------------------|---------|----------------------------|--|---|

Moderate Suitability: Trees with somewhat declining health and/or structural defects than can be abated with treatment. The tree will require more intense management and monitoring, and may have shorter life span than those in ‘high’ category;
Low Suitability: Tree in poor health or with significant structural defects that cannot be mitigated. Tree is expected to continue to decline, regardless of treatment. The species or individual may have characteristics that are undesirable for landscapes, and generally are unsuited for use areas.

Source: HortScience, 2018, *Preliminary Arborist Report, The Oaks Shopping Center Cupertino, CA*, Tree Assessment table.

Removal of a protected tree is permitted by the City, with approval of a tree removal permit. In some circumstances, the City requires tree management plans and tree replacement. The removal of trees protected under the City’s Protected Trees Ordinance is considered a *significant* impact.

Impact BIO-2: Proposed development would result in removal of trees protected under City ordinance.

Mitigation Measure BIO-2: The proposed project shall comply with the City of Cupertino’s Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any “protected tree,” and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino’s Tree Fund as compensation for “protected trees” removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.

In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of “protected trees,” as defined by the City’s Municipal Code. The Program shall include the following provisions:

- Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet.
- Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist.
- No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within he TPZ.
- Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ.

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- Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity.
- All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist.
- The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.
- All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans.
- Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300).
- Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist.
- Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Any root pruning required for construction purposes shall receive prior approval of, and be supervised by, the consulting arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw.
- Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface.
- All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree

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pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1)

- The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwards to the consulting arborist for review and comment.
- Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots.
- Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use.
- Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall be between 2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees.
- All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.

Significance With Mitigation: Less than significant.

4.2.4 CUMULATIVE IMPACTS

BIO-3 The proposed project in combination with past, present, and reasonably foreseeable projects, would/would not result in significant cumulative impacts with respect to biological resources.

The geographic scope of the cumulative analysis for biological resources considers the surrounding incorporated and unincorporated lands, and the region. The potential impacts of proposed development on biological resources 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. At the same time, cumulative development can contribute incrementally to regionwide impacts, such as reductions in the amount of existing wildlife habitat, particularly for birds and larger mammals. As discussed in Chapter 4, Environmental Evaluation, the cumulative development projects within the city are located in urbanized areas of the city and contain limited biological resource value. Redevelopment and infill projects, including those in built-out urban areas, would remove vegetation that could be used for nesting by birds protected under various laws and would remove buildings and trees that could be used for roosting by sensitive bat species. However, these development projects would be required to comply with the federal Migratory Bird Treaty Act and the CFG Code, which require pre-construction surveys and protective measures for active nests. Furthermore, cumulative projects would be required to obtain a tree removal permit and adhere to the tree removal requirements for protected trees under CMC Chapter 14.18, Protected Trees.

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As described above, the CNDDDB has no record of special-status plant or animal species on the project site or urbanized areas surrounding the project site. The project site is previously disturbed, is developed for private use, and is located within an urban area; therefore, it does not serve as a wildlife corridor. Potential impacts to nesting birds and the removal of protected trees would be mitigated to less-than-significant levels through the implementation of Mitigation Measure BIO-1 and BIO-2, respectively. Given the relatively low natural resource quality of the project site and the project's mitigation of on-site impacts to less-than-significant levels, the proposed project would result in a *less-than-significant* cumulative impact on biological resources.

Significance With Mitigation: Less than significant.