



LIVE OAK

ASSOCIATES, INC.

January 11, 2023

Richard Norris
Development Manager
SummerHill Apartment Communities
777 S. California Avenue
Palo Alto, CA 94304

Subject: Biological Technical Report for a project site located at 11 El Camino Real in the City of San Carlos, San Mateo County, California (PN 2759-01)

Dear Mr. Norris,

At your request, Live Oak Associates, Inc. (LOA), completed an analysis of potential biological constraints for the site, approximately 2.2-acre, located at 11 El Camino Real in the City of San Carlos, San Mateo County, California. As we understand it, the applicant, SummerHill Apartment Communities is proposing a project which consists of re-developing a commercial building and parking lot into a multi-family residential structure with associated amenities. Therefore, this report assesses whether re-development of this site would result in any adverse significant impacts to biological resources as defined by CEQA. The site currently consists of a commercial building (currently occupied by a CVS pharmacy) and an active parking lot.

LOA ecologist Cristal Romero conducted a site survey on January 3, 2023. The primary objectives of this survey and report are to 1) identify habitats onsite, 2) discuss the suitability of the site to support habitat for special-status plant or animal species, 3) identify and discuss biological resource issues specific to the site.

Sources of information used in the preparation of this analysis include, but are not limited to, the *California Natural Diversity Data Base* (CDFW 2023), special status species lists prepared by the California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS), City of San Carlos Tree Ordinance, City of Carlos General Plan: Envision 2030, and manuals and references related to plants and animals found in and around San Mateo County.

OAKHURST

P.O. Box 2697 | 39930 Sierra Way #B
Oakhurst, CA 93644

P: (559) 642-4880 | F: (559) 642-4883

SAN JOSE

6840 Via Del Oro, Suite 220
San Jose, CA 95119

(408) 224-8300

SOUTH LAKE TAHOE

P.O. Box 7314
South Lake Tahoe, CA 96158

(408) 281-5885



EXISTING CONDITIONS

Regional Setting

The site is located at 11 El Camino Real in the City of San Carlos, San Mateo County, California. The project site is located in the San Mateo 7.5" U.S. Geological Survey (USGS) quadrangle in Section 11 of Township 5 south, Range 4 west.

The site is currently fully developed with a occupied commercial building and an active parking lot. The site is surrounded by a mix of commercial and residential development which includes hotels, apartments, restaurants, and small businesses. Topographically, the site is relatively flat.

Habitats

One land use, Developed, was identified on the site, and is described in more detail below.

Developed.

This site consists of a commercial building that is currently occupied by an operational pharmacy, CVS, and paved parking upon which cars actively and continuously use. The parking lot extends offsite and serves adjacent operational buildings/businesses. There is ornamental vegetation on islands throughout the parking lot as well as in park strips along the northeast and southwest perimeters. This vegetation is comprised of mostly shrubs with some trees including, but not limited to, *Eucalyptus spp.*, *Pinus spp.*, and *Platanus spp.*

Animals observed on the site during the January 2023 site visit include the American crow (*Corvus brachyrhynchos*), Brewer's blackbird (*Euphagus cyanocephalus*), and house sparrow (*Passer domesticus*). Other migratory bird species are likely to occur and nest onsite, and typical urban mammals such as raccoon (*Procyon lotor*), opossum (*Didelphis virginiana*), and feral and domestic cats (*Felis catus*) and dogs (*Canis lupus familiaris*) are also expected to occur onsite.

Special Status Species

A search of published accounts for all relevant special status plant and animal species was conducted for the San Mateo USGS 7.5" quadrangle in which the project site occurs and for the eight surrounding quadrangles (San Francisco South, Hunters Point, San Leandro, Redwood Point, Palo Alto, Woodside, Half Moon Bay, and Montara Mountain) using the California Natural Diversity Data Base (CNDDDB) Rarefind (CDFW 2022). A number of special status plants and animals occur in the vicinity of the study area. These species, and their potential to occur in the study area, are summarized in Appendix A. Species that may pose constraints to the proposed project are included in the discussion below.

Jurisdictional Waters

Jurisdictional waters include rivers, creeks, and drainages that have a defined bed and bank and that, at the very least, carry ephemeral flows. Jurisdictional waters also include lakes, ponds, reservoirs, and wetlands. Such waters may be subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Wildlife (CDFW), and the California Regional Water Quality Control Board (RWQCB).



No areas meeting the regulatory definition of jurisdictional waters, including wetlands, were identified on the site.

POTENTIAL IMPACTS

Jurisdictional Waters

No areas meeting the regulatory definition of jurisdictional waters, including wetlands, were identified on the site. Thus, the project would have no impacts to jurisdictional waters.

Findings: Less than significant impacts to jurisdictional water or other special habitats.

Mitigation: No mitigation warranted.

Riparian Habitat and Other Sensitive Natural Communities

The site does not support riparian habitat or other sensitive natural communities.

Findings: Less than significant impacts to riparian habitat and other sensitive natural communities.

Mitigation: No mitigation warranted.

Special Status Plants

The site is completely developed; as such, the site does not support habitat suitable for special status plant species. Therefore, impacts to special status plants would not constrain site development.

Findings: Less than significant impacts to special status plants and loss of habitat for special status plants.

Mitigation: No mitigation warranted.

Special Status Wildlife

Special status animal species known to occur in the region would not be impacted by future site construction because habitats on the site are not suitable for them or the site is located outside of the species' known range. Special status species that may have the potential to forage over the site include the Townsend's big-eared bat, pallid bat, and big free-tailed bat. Although special status bats may forage over the site, suitable roosting habitat for these species is absent from the site, therefore, they would not constrain development of the site. For a more detailed treatment of individual special status wildlife species that occur regionally, refer to Appendix A.

Common species of migratory birds may nest on the site (see section below). However, since the site is already developed, the construction of a multi-residential structure and associated amenities would not result in any decrease in foraging or breeding habitat for these common species regionally. The redevelopment of this site would not have any appreciable effect on the few special status species that may pass through the site or forage over the site (e.g., bats). Therefore, this proposed project would have no impact on special status animal species nor in the loss of habitat for native wildlife.

Findings: Less than significant impacts to loss of habitat for special status wildlife species and native wildlife.

Mitigation: No mitigation warranted.



Interference with the Movement of Native Wildlife

Buildout of the site would not constrain native wildlife movement, as the site and the properties surrounding the site are already developed and do not support a major wildlife movement corridor. Any wildlife using site would continue to use it in the same manner after site development.

Findings: Less than significant impacts to interference of native wildlife movement.

Mitigation: No mitigation warranted.

Nesting Migratory Birds and Raptors

Trees and shrubs occurring on and adjacent to the site could be used by nesting migratory birds and raptors for breeding. All nesting migratory birds and raptors, regardless of their status, are protected by state and federal laws. Therefore, project-related activities that occur during the breeding season should be preceded by pre-construction surveys to remain consistent with state and federal laws.

Findings: Less than significant impacts to nesting migratory birds and raptors with mitigation.

Mitigation: If tree removal or ground disturbance activities are scheduled to commence during the breeding season (February 1 through August 31), preconstruction nesting bird surveys should be conducted by a qualified biologist to identify possible nesting activity. A construction-free buffer of suitable dimensions would be established by a qualified biologist around active nests (typically up to 50 feet for passerines and up to 250 feet for raptors, depending on the location and species) for the duration of the project or until a qualified biologist has determined that the chicks have fledged and are independent of their parents. With this measure in place, the project would remain eligible for a Categorical Exemption from CEQA.

Degradation of Water Quality in Seasonal Drainages, Stock Ponds, and Downstream Waters

Eventual site development and construction may require grading that leaves the soil of construction zones barren of vegetation and, therefore, vulnerable to sheet, rill, or gully erosion. Eroded soil is generally carried as sediment in surface runoff to be deposited in natural creek beds, canals, and adjacent wetlands. Furthermore, urban runoff is often polluted with grease, oil, pesticide and herbicide residues, heavy metals, etc. These pollutants may eventually be carried to sensitive wetland habitats used by a diversity of native wildlife species. The deposition of pollutants and sediments in sensitive riparian and wetland habitats would be considered a potentially significant adverse environmental impact. The project would comply with the City's grading requirements.

Findings: Less than significant impacts to water quality.

Mitigation: No mitigation warranted.

City of San Carlos Tree Ordinance

The City of San Carlos has a Tree Ordinance (Section 18.18.070 of the Municipal Code, most recently revised in July 2022; included in Appendix B of this report) that requires a permit for removal of Protected Trees. A tree survey was conducted by HortScience Bartlett Consulting (December 2022), the results of which will inform which trees onsite are protected. The project will be required to obtain and follow a tree removal permit for trees qualifying as a Protected Tree.

Findings: Less than significant impacts to protected trees with mitigation.

Mitigation: Appropriate tree removal permits will be obtained and followed accordingly.



City of Carlos General Plan: Envision 2030

Chapter 6 of the City of San Carlos's General Plan outlines several goals, policies, and actions for biological resources (See Appendix B). Redevelopment of the site will not negatively impact these goals, policies, or actions.

Findings: Less than significant impacts.

Mitigation: No mitigation warranted.

Habitat Conservation Plan, Natural Community Conservation Plan or Other Approved Local, Regional, or State Habitat Conservation Plan

The only Habitat Conservation Plan (HCP) or Natural Communities Conservation Plan that San Mateo County is currently participating in is the San Bruno Mountain HCP (2010), which does not include the project site. The county is not participating in any other such plans.

Findings: Less than significant impacts.

Mitigation: No mitigation warranted.

CONCLUSION

In summary, development of the site would have no significant adverse biological impacts as defined by CEQA with regards to biological resources. As with all projects, a nesting bird survey should be conducted prior to any ground or vegetation disturbance (including tree trimming) if within nesting season (February 1-August 31) to remain consistent with state and federal law.

If you have any questions regarding our conclusions, please contact me at cromero@loainc.com or (408) 605-6077 at your earliest convenience.

Sincerely,

Cristal Romero
Assistant Project Manager



LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2023a. State and federally listed endangered, threatened, and rare plants of California. Natural Resources Agency, Sacramento, CA.

_____. 2023b. State and federally listed endangered and threatened animals of California. Natural Resources Agency, Sacramento, CA.

_____. 2023c. California Natural Diversity Database. The Resources Agency, Sacramento, CA.

U. S. Fish and Wildlife Service. 2023. Endangered and threatened wildlife and plants.

San Carlos Municipal Code (2022). Section 18.18.070. Retrieved January 4, 2023, from: <https://www.codepublishing.com/CA/SanCarlos/#!/SanCarlos18/SanCarlos1818.html#18.18.070>

San Carlos 2030 General Plan (2009). Retrieved January 4, 2023, from <https://www.cityofsancarlos.org/government/departments/community-development/planning/plans-document-library/general-plan>.



**APPENDIX A:
SPECIAL STATUS SPECIES**

A search of published accounts for all relevant special status plant and animal species was conducted for the San Mateo USGS 7.5” quadrangles in which the project site occurs and for the eight surrounding quadrangles (San Francisco South, Hunters Point, San Leandro, Redwood Point, Palo Alto, Woodside, Half Moon Bay and Montara Mountain) using the California Natural Diversity Data Base (CNDDB) Rarefind (CDFW 2022). These species and their potential to occur in the study area are summarized in Table 1 below.

Special status plants are not expected to occur onsite, as the site is currently completely developed.

Special statues animals with ranges that occur outside of the vicinity of the site or in habitats not found onsite (e.g., redwoods, riparian, marshes, coastal scrub, etc.) are considered absent from the site and have been excluded from the table. Species that have potential to occur on the project site or local vicinity because suitable habitats are present onsite or in the local vicinity are discussed further below.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS (adapted from CDFW 2023 and USFWS 2023)

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	Occurrence in the Study Area
San Bruno elfin butterfly <i>Callophrys mossii bayensis</i>)	FE	Eggs are laid on the host plant <i>Callophrys mossii bayensis</i> in coastal grassland and low scrub habitat within the fog belt at elevations from 275 to 325 meters.	Absent. Suitable habitat for this species is absent from the site. The host plant does not occur onsite.
Mission blue butterfly <i>Plebejus icarioides missionensis</i>)	FE	Occurs in Marin, San Francisco, and San Mateo Counties, CA. Eggs are laid in grassland habitats on the larval food plant <i>Lupinus albifrons</i> , <i>L. varicolor</i> , or <i>L. formosus</i> .	Absent. Suitable habitat for this species is absent from the site. The host plant does not occur onsite.
Callippe silverspot butterfly <i>Speyeria callippe callippe</i>	FE	Occurs on grassy hills surrounding the San Francisco Bay that support the host plant <i>Viola pedunculata</i> .	Absent. Suitable habitat for this species is absent from the site. The host plant does not occur onsite.
Myrtle’s silverspot butterfly <i>Speyeria zerene myrtleae</i>	FE	Occurs near Point Reyes, Martin County, and Sonoma County, CA in coastal dunes, coastal scrub, and coastal prairie habitats less than 300 meters in elevation and up to 5 km inland. Also historically found in San Mateo County, CA.	Absent. Suitable habitat for this species is absent from the site. The host plant does not occur onsite.



TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS (Continued adapted from CDFW 2023 and USFWS 2023)

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	Occurrence in the Study Area
California tiger salamander <i>Ambystoma californiense</i>	FT, CT	Breeds in vernal pools and stock ponds of central California; adults aestivate in grassland habitats adjacent to the breeding sites.	Absent. Suitable breeding habitat for this species in the form of stagnant pools with continuous inundation for a minimum of three months is absent from the site and the immediate vicinity.
Foothill yellow-legged frog <i>Rana boylei</i>	CE	Occurs in swiftly flowing streams and rivers with rocky substrate with open, sunny banks in forest, chaparral, and woodland habitats, and can sometimes be found in isolated pools.	Absent. Suitable habitat for this species is absent from the site.
California red-legged frog <i>Rana aurora draytonii</i>	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and Bay Area, preferring pools with overhanging vegetation.	Absent. This site is completely developed and isolated from any of the regionally occurring locations of CRLF by development and roads.
San Francisco garter snake <i>Thamnophis sirtalis terataenia</i>	FE, CE, CP	Occur in and around standing water such as ponds on the San Francisco Peninsula south to Ano Nuevo Point, San Mateo County, CA.	Absent. Suitable breeding and foraging habitat for this species is absent from the site. CNDDDB (CDFW 2023) shows undisclosed records within the quadrangle that contains this site.
Bald eagle <i>Haliaeetus leucocephalus</i>	CE, CP	Breeding habitat is usually within 4 km of a water source in a tall tree or cliffs; roosting in large numbers in winter is common.	Absent. Breeding and preferred foraging habitat are absent from site. Could potentially pass through the site on its way to more suitable areas but would be unlikely to stay for any significant amount of time.
California least tern <i>Sterna antillarum browni</i>	FE, CE, CP	Occurs in central to southern California April to November. Found in and near coastal habitat including coasts, beaches, bays, estuaries, lagoons, lakes, and rivers.	Absent. Breeding and preferred foraging habitat are absent from site. Could potentially pass through the site on its way to more suitable areas but would be unlikely to stay for any significant amount of time.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

State Species of Special Concern and Protected Species



Species	Status	Habitat	Occurrence in the Study Area
Western pond turtle <i>Actinemys marmorata</i>	CSC	Intermittent and permanent waterways including streams, marshes, rivers, ponds, and lakes. Open slow-moving water of rivers and creeks of central California with rocks and logs for basking.	Absent. Suitable breeding and upland habitat for the WPT are absent from the site.
Peregrine falcon <i>Falco peregrinus</i>	CP	Individuals breed on cliffs in the Sierra or in coastal habitats; occurs in many habitats of the state during migration and winter.	Absent. Nesting and foraging habitat is not present on the site or in the immediate vicinity of the site.
Burrowing owl <i>Athene cunicularia</i>	CSC	Found in open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. This species is often associated with California ground squirrels.	Absent. Suitable habitat for BUOW is absent from the site, as the entire site is developed and absent of mammal burrows and other burrowing opportunities.
Saltmarsh common yellowthroat <i>Geothlypis trichas sinuosa</i>	CSC	Breeds in herbaceous wetlands and salt marshes of the San Francisco Bay area, can also be found in non-breeding along the California Coast. Nests in thick herbaceous vegetation up to one meter above the ground or over water	Absent. Breeding habitat is absent from the site. This species is unlikely to travel this far inland.
Northern harrier <i>Circus cyaneus</i>	CSC	Frequents meadows, grasslands, open rangelands, freshwater emergent wetlands; uncommon in wooded habitats.	Unlikely. Breeding and preferred foraging habitat are absent from site. This species could potentially pass through the site on its way to more suitable areas but would be unlikely to stay for any significant amount of time.
Short-eared owl <i>Asio flammeus</i>	CSC	Occur in wide open spaces including marshes, open shrublands, grassland, prairie, and agricultural field habitats, and need dense ground cover to conceal nests.	Unlikely. Breeding and preferred foraging habitat are absent from site. Could potentially pass through the site on its way to more suitable areas but would be unlikely to stay for any significant amount of time.
White-tailed kite <i>Elanus leucurus</i>	CP	Open grasslands and agricultural areas throughout central California.	Unlikely. Preferred breeding and foraging habitat are absent from site. This species could potentially pass through the site on its way to more suitable areas but is unlikely to stay for any significant amount of time.
Alameda song sparrow <i>Melospiza melodia pusillula</i>	CSC	Found in tidal salt marsh habitat with exposed ground for foraging with no more than 2-5 cm between bases of plants. Current range is generally only along the San Francisco Bay.	Unlikely. Although this species is known to occur in San Carlos, breeding habitat is absent from the site. It may be possible that this species may move through the site during migration.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

State Species of Special Concern and Protected Species (Continued)



Species	Status	Habitat	Occurrence in the Study Area
Townsend's big-eared bat <i>Corynorhinus townsendii</i>	CSC	Primarily a cave-dwelling bat that may also roost in buildings. Occurs in a variety of habitats.	Possible. Although roosting habitat is absent from the site, Townsend's big-eared bats may forage on or over the site from time to time.
Pallid bat <i>Antrozous pallidus</i>	CSC	Grasslands, chaparral, woodlands, and forests; most common in dry rocky open areas providing roosting opportunities.	Possible. Although roosting habitat is absent from the site, pallid bats may forage on or over the site from time to time.
Big free-tailed bat <i>Nyctinomops macrotis</i>	CSC	Migrant bats using elevations from 0-2600 meters. Roosts in rock crevices cliffs as well as in buildings, caves, and tree cavities.	Possible. Although roosting habitat is absent from the site, big free-tailed bats may forage on or over the site from time to time.
San Francisco dusky-footed woodrat <i>Neotoma fuscipes annectens</i>	CSC	Found in hardwood forests, oak riparian, and shrub habitats.	Absent. Suitable habitat is absent from the site; additionally, woodrat nests would have been observed during the site visit if they occurred onsite.

***Explanation of Occurrence Designations and Status Codes**

Present: Species observed on the sites at time of field surveys or during recent past.

Likely: Species not observed on the site, but it may reasonably be expected to occur there on a regular basis.

Possible: Species not observed on the sites, but it could occur there from time to time.

Unlikely: Species not observed on the sites, and would not be expected to occur there except, perhaps, as a transient.

Absent: Species not observed on the sites; and precluded from occurring there because habitat requirements not met.

STATUS CODES

FE Federally Endangered

FT Federally Threatened

FPE Federally Endangered (Proposed)

FC Federal Candidate

CSC California Species of Special Concern

CE California Endangered

CT California Threatened

CR California Rare

CP California Protected

CCE California Candidate Endangered

CNPS California Native Plant Society Listing

1A Plants Presumed Extinct in California

1B Plants Rare, Threatened, or Endangered in California and elsewhere

2 Plants Rare, Threatened, or Endangered in California, but more common elsewhere

3 Plants about which we need more information – a review list

4 Plants of limited distribution – a watch list



APPENDIX B:
SIGNIFICANCE CRITERIA AND RELEVANT GOALS, POLICIES, AND LAWS

Significance Criteria

Approval of general plans, area plans, and specific projects is subject to the provisions of the California Environmental Quality Act (CEQA). The purpose of CEQA is to assess the significance of a proposed project's impacts on the environment before they are carried out. Whenever possible, public agencies are required to avoid or minimize environmental impacts by implementing practical alternatives or mitigation measures.

According to 2022 CEQA Status and Guidelines (2022), a significant effect on the environment means a "substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest."

Specific project impacts to biological resources may be considered "significant" if they would:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
- 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;
- 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 or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Furthermore, CEQA Guidelines Section 15065(a) states that a project may trigger the requirement to make a "mandatory findings of significance" if the project has the potential to "substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory."



Relevant Goals, Policies, and Laws

Threatened and Endangered Species

State and federal “endangered species” legislation has provided the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Species listed as threatened or endangered under provisions of the state and federal endangered species acts, candidate species for such listing, state species of special concern, and some plants listed as endangered by the California Native Plant Society are collectively referred to as “species of special status.” Permits may be required from both the CDFW and USFWS if activities associated with a proposed project will result in the “take” of a listed species. “Take” is defined by the state of California as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill” (California Fish and Wildlife Code, Section 86). “Take” is more broadly defined by the federal Endangered Species Act to include “harm” (16 USC, Section 1532(19), 50 CFR, Section 17.3). Furthermore, the CDFW and the USFWS are responding agencies under the California Environmental Quality Act (CEQA). Both agencies review CEQA documents in order to determine the adequacy of their treatment of endangered species issues and to make project-specific recommendations for their conservation.

Migratory Birds

Most bird species are protected by state and federal laws. The State of California signed Assembly Bill 454 into law in 2019, which clarifies native bird protection and increases protections where California law previously deferred to Federal law. The Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., sec. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

Birds of Prey

Birds of prey are also protected in California under provisions of the State Fish and Wildlife Code, Section 3503.5, 1992), which states that it is “unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto”. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered “taking” by the CDFW.

Bats

Section 2000 and 4150 of the California Fish and Wildlife Code states that it is unlawful to take or possess a number of species, including bats, without a license or permit as required by Section 3007. Additionally, Title 14 of the California Code of Regulations states it is unlawful to harass, herd, or drive a number of species, including bats. To harass is defined as “an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering.” For these reasons, bat colonies in particular are considered to be sensitive and therefore, disturbances that cause harm to bat colonies are unlawful.



Wetlands and Other Jurisdictional Waters

Jurisdictional waters include waters of the United States subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE) and waters of the State of California subject to the regulatory authority of the California Department of Fish and Wildlife (CDFW) and the California Regional Water Quality Control Board (RWQCB).

Clean Water Act, Section 404. The USACE regulates the filling or grading of Waters of the U.S. under the authority of Section 404 of the Clean Water Act. Drainage channels and adjacent wetlands may be considered “waters of the United States” or “jurisdictional waters” subject to the jurisdiction of the USACE. The extent of jurisdiction has been defined in the Code of Federal Regulations and clarified in federal courts.

The definition of waters of the U.S. have changed several times in recent years. In January 2020, the Environmental Protection Agency (EPA) and USACE jointly issued the Navigable Waters Protection Rule. The new rule was published in the Federal Register on April 21, 2020 and became effective on June 22, 2020.

The Navigable Waters Protection Rule (33 CFR §328.3(a)) defines waters of the U.S. as:

Territorial Seas and Traditional Navigable Waters (TNWs)

- The territorial seas and traditional navigable waters include large rivers and lakes and tidally influenced waterbodies used in interstate or foreign commerce.

Tributaries

- Tributaries include perennial and intermittent rivers and streams that contribute surface flow to traditional navigable waters in a typical year. These naturally occurring surface water channels must flow more often than just after a single precipitation event—that is, tributaries must be perennial or intermittent.
 - Tributaries can connect to a traditional navigable water or territorial sea in a typical year either directly or through other “waters of the United States,” through channelized non-jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).
 - Ditches are to be considered tributaries only where they satisfy the flow conditions of the perennial and intermittent tributary definition, and either were constructed in or relocate a tributary or were constructed in an adjacent wetland and contribute perennial or intermittent flow to a traditional navigable water in a typical year.

Lakes, Ponds, and Impoundments of Jurisdictional Waters

- Lakes, ponds, and impoundments of jurisdictional waters are jurisdictional where they contribute surface water flow to a traditional navigable water or territorial sea in a typical year either directly or through other waters of the United States, through channelized non-jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).



-
- Lakes, ponds, and impoundments of jurisdictional waters are also jurisdictional where they are flooded by a water of the United States in a typical year, such as certain oxbow lakes that lie along the Mississippi River.

Adjacent Wetlands

- Wetlands that physically touch other jurisdictional waters are “adjacent wetlands.”
- Wetlands separated from a water of the United States by only a natural berm, bank or dune are also “adjacent.”
- Wetlands inundated by flooding from a water of the United States in a typical year are “adjacent.”
- Wetlands that are physically separated from a jurisdictional water by an artificial dike, barrier, or similar artificial structure are “adjacent” so long as that structure allows for a direct hydrologic surface connection between the wetlands and the jurisdictional water in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.
- An adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, as long as the structure allows for a direct hydrologic surface connection through or over that structure in a typical year.

The Navigable Waters Protection Rule also outlines what do not constitute waters of the United States. The following waters/features are not jurisdictional under the rule:

- Waterbodies that are not included in the four categories of waters of the United States listed above.
- Groundwater, including groundwater drained through subsurface drainage systems, such as drains in agricultural lands.
- Ephemeral features, including ephemeral streams, swales, gullies, rills, and pools.
- Diffuse stormwater run-off and directional sheet flow over upland.
- Many farm and roadside ditches.
- Prior converted cropland retains its longstanding exclusion but is defined for the first time in the final rule. The agencies are clarifying that this exclusion will cease to apply when cropland is abandoned (i.e., not used for, or in support of, agricultural purposes in the immediately preceding five years) and has reverted to wetlands.
- Artificially irrigated areas, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease.
- Artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in upland or in non-jurisdictional waters.
- Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel.



-
- Stormwater control features excavated or constructed in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off.
 - Groundwater recharge, water reuse, and wastewater recycling structures, including detention, retention and infiltration basins and ponds, that are constructed in upland or in non-jurisdictional waters.
 - Waste treatment systems have been excluded from the definition of waters of the United States since 1979 and will continue to be excluded under the final rule. Waste treatment systems include all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater or stormwater prior to discharge (or eliminating any such discharge).

All activities that involve the discharge of dredge or fill material into waters of the U.S. are subject to the permit requirements of the USACE under Section 404 of the Clean Water Act. Such permits are typically issued on the condition that the applicant agrees to provide mitigation that result in no net loss of wetland functions or values. No permit can be issued without a CWA Section 401 Water Quality Certification (or waiver of such certification) verifying that the proposed activity will meet state water quality standards (Section 3.6.2).

- Porter-Cologne Water Quality Act/Clean Water Act, Section 401. There are nine Regional Water Quality Control Boards statewide; collectively, they oversee regional and local water quality in California. The RWQCB administers Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act. The RWQCB for a given region regulates discharges of fill or pollutants into waters of the State through the issuance of various permits and orders.

Pursuant to Section 401 of the Clean Water Act, the RWQCB regulates waters of the State that are also waters of the U.S. Discharges into such waters require a Section 401 Water Quality Certification from the RWQCB as a condition to obtaining certain federal permits, such as a Clean Water Act Section 404 permit (Section 3.6.1). Discharges into all Waters of the State, even those that are not also Waters of the U.S., require Waste Discharge Requirements (WDRs), or a waiver of WDRs, from the RWQCB.

The Porter-Cologne Water Quality Control Act, Water Code Section 13260, requires that “any person discharging waste, or proposing to discharge waste, within any region that could affect the ‘waters of the State’ to file a report of discharge” with the RWQCB. Waters of the State as defined in the Porter-Cologne Act (Water Code Section 13050[e]) are “any surface water or groundwater, including saline waters, within the boundaries of the state.” This gives the RWQCB authority to regulate a broader set of waters than the Clean Water Act alone; specifically, in addition to regulating waters of the U.S. through the Section 401 Water Quality Certification process, the RWQCB also claims jurisdiction and exercises discretionary authority over “isolated waters,” or waters that are not themselves waters of the U.S. and are not hydrologically connected to waters of the U.S.



The RWQCB also administers the Construction Stormwater Program and the federal National Pollution Discharge Elimination System (NPDES) program. Projects that disturb one or more acres of soil must obtain a Construction General Permit under the Construction Stormwater Program. A prerequisite for this permit is the development of a Stormwater Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer. Projects that discharge wastewater, stormwater, or other pollutants into a Water of the U.S. may require a NPDES permit.

California Department of Fish and Game Code, Section 1602. The CDFW has jurisdiction over the bed and bank of natural drainages and lakes according to provisions of Section 1602 of the California Fish and Game Code. Activities that may substantially modify such waters through the diversion or obstruction of their natural flow, change or use of any material from their bed or bank, or the deposition of debris require a Notification of Lake or Streambed Alteration. If the CDFW determines that the activity may adversely affect fish and wildlife resources, a Lake or Streambed Alteration Agreement will be prepared. Such an agreement typically stipulates that certain measures will be implemented to protect the habitat values of the lake or drainage in question.

Local Ordinances and Policies:

City of San Carlos Tree Ordinance

The City of San Carlos has a Tree Ordinance (Section 18.18.070), revised as of July 2022, that defines a Protected Tree as:

“—any significant or heritage tree, any tree as part of a replacement requirement, an approved development permit or an approved landscaping plan.”

- “Heritage tree” means any:
 - a. Indigenous tree whose size, as measured at fifty-four inches (54") above natural grade (unless otherwise indicated), is defined below:
 - i. *Aesculus californica* (buckeye) with a single stem or multiple stems touching each other at fifty-four inches (54") above natural grade and measuring nine inches (9") in diameter or greater.
 - ii. *Arbutus menziesii* (madrone) with a single stem or multiple stems touching each other at fifty-four inches (54") above natural grade and measuring nine inches (9") in diameter or greater.
 - iii. *Quercus agrifolia* (coast live oak) measuring nine inches (9") in diameter or greater.
 - iv. *Quercus lobata* (valley oak) measuring nine inches (9") in diameter or greater.
 - v. *Quercus douglassii* (blue oak) measuring nine inches (9") in diameter or greater.
 - vi. *Quercus wislizenii* (interior live oak) measuring nine inches (9") in diameter or greater.
 - vii. *Sequoia sempervirens* (redwood) measuring fifteen inches (15") in diameter or greater.



- viii. *Umbrellularia californica* (California bay laurel) with a single stem or multiple stems touching each other at fifty-four inches (54") above natural grade and measuring eleven inches (11") in diameter or greater.
- b. Community of trees;
- c. Trees designated by the City Council, based upon findings that the particular tree is unique and of importance to the public due to its unusual age, appearance, location, or other factors.
- “Significant tree” means any tree that is eleven inches (11") in diameter (or more), outside of bark, measured at fifty-four inches (54") above natural grade. The following trees shall not be classified as significant or heritage trees regardless of size:
 - a. Bailey, Green or Black Acacia: *A. baileyana*, *A. decurrens* or *A. melanoxyton*;
 - b. Tree of Heaven: *Ailanthus altissima*;
 - c. Fruit trees of any kind;
 - d. Monterey Pine: *Pinus radiata*;
 - e. Eucalyptus genera;
 - f. Monocot trees including palms and palm relatives

City of San Carlos General Plan: Envision 2030

Chapter 6 of the City of Belmont’s General Plan outlines several goals, policies, and actions for biological resources. These are included below.

GOAL EM.1 Protect natural habitat and other biological resources.

Policies:

Policy EM-1.1 Ensure that potential impacts to biological resources and sensitive habitat are carefully evaluated when considering development project applications.

Policy EM-1.2 Ensure that development is consistent with all federal, State, and regional regulations for habitat and species protection.

Policy EM-1.3 Work to manage or eliminate nonnative invasive species from City owned property and open space.

Policy EM-1.4 Protect and preserve the circadian cycle (the cycle of night and day) by limiting sources of light during nighttime hours.

Policy EM-1.5 Promote the preservation of native species, habitat and vegetation types and overall natural diversity.

Actions

Action EM-1.1 Continue to cooperate with local, regional, and State agencies involved in protecting critical habitat.

Action EM-1.2 Seek grant funding for the removal of invasive plants and installation of native trees and shrubs.

Action EM-1.3 Use native plants wherever possible on City-owned and controlled property.



Action EM-1.4 Enforce rules and regulations in public open space areas to minimize the impacts of destructive activities.

GOAL EM.2 Promote healthy streams and riparian corridors.

Policies:

Policy EM-2.1 Preserve and enhance riparian areas.

Policy EM-2.2 Continue to enforce the City's Riparian Ordinance for all four of the City's creeks (Pulgas, Brittan, Cordilleras and Belmont) and their tributaries.

Policy EM-2.3 Carefully evaluate the cumulative and compounding impacts of incremental creek encroachments.

Policy EM-2.4 Restore culverted or buried channels to their natural state wherever feasible.

Policy EM-2.5 Promote the establishment of native vegetation and the removal of nonnative invasive plants in riparian areas.

Policy EM-2.6 Encourage property owners to replace fallen trees along waterways to maintain an upper canopy of vegetation. The species shall be as approved by the City arborist. Encourage use of trees native to the area.

Policy EM-2.7 Retain Pulgas, Brittan, Cordilleras and Belmont Creek channels and their 100year floodplains wherever possible as natural open space areas. These areas are to function as storm drainage facilities and as open space greenbelts to support natural habitat.

Policy EM-2.8 Participate and help coordinate with neighboring jurisdictions' watershed management efforts

Actions

Action EM-2.1 Consider amending the Riparian Ordinance to strengthen stream protection requirements and reduce potential for flooding. Potential amendments may include evaluation of increased setbacks, limited walls, and fences, requiring Best Management Practices (BMPs) for biotechnical bank stabilization and erosion control and vegetation management requirements

Action EM-2.2 Consider establishing incentives to stabilize creek banks utilizing natural methods.

Action EM-2.3 Provide information to the public on City regulations and best practices for riparian corridor management.

Action EM-2.4 Develop a citywide policy that applies to all City properties and operations and establishes protocols to work with water service providers to determine appropriate location(s) for and implementation of a reclaimed (recycled) water distribution system (purple pipe) for landscaping and other non-potable water uses for residential, commercial, and industrial consumers.

Action EM-2.5 Explore availability of grant funding for removal of invasive plants from riparian areas and planting of native and appropriate trees and shrubs.



Action EM-2.6 Consider preparation of Watershed Management Plans for all watersheds, addressing flooding causes, improvement of creek functionality and water quality and creek channel restoration

GOAL EM.3 Enhance the urban forest.

Policies:

Policy EM-3.1 Implement Climate Action Plan measures to require tree planting.

Policy EM-3.2 Review and amend the Zoning Ordinance as needed to identify barriers to the effective enhancement of the urban forest and the protection of heritage trees.

Policy EM-3.3 Assist community groups with tree planning efforts.

Actions

Action EM-3.1 Continue to cooperate with local, regional, and State agencies involved in protecting critical habitat.

Action EM-3.2 Seek grant funding for the removal of invasive plants and installation of native trees and shrubs.

Action EM-3.3 Establish and implement a program to protect existing and plant new trees at city facilities, public parks and in public planting strips and parking lots, working with non-profit volunteer groups if possible.