

**BIOLOGICAL RESOURCE ANALYSIS  
BAYVIEW PARK PROJECT  
CITY OF BURLINGAME, CALIFORNIA**

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**Prepared for**

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## **ATTACHMENTS**

Attachment A. *Conceptual Master Plan for the Bayview Park prepared by John Cahalan Landscape Architect (revised July 31, 2015).*

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## **1. INTRODUCTION**

Monk & Associates, Inc. (M&A) has prepared this biological resource analysis for the proposed Bayview Park Project Site (herein referred to as the project site) located at 430-450 Airport Boulevard in the City of Burlingame, San Mateo County, California (Figures 1 and 2). The purpose of our analysis is to provide a description of existing biological resources on the project site and to identify potentially significant impacts that could occur to sensitive biological resources from the construction of a proposed city park.

Biological resources include common plant and animal species, and special-status plants and animals as designated by the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (the Department), National Marine Fisheries Service (NMFS), and other resource organizations including the California Native Plant Society. Biological resources also include waters of the United States and State, as regulated by the U.S. Army Corps of Engineers (Corps), California Regional Water Quality Control Board (RWQCB), and the Department. It is important to note that our analysis includes an assessment of the potential for impacts to regulated waters.

This biological resources analysis also provides mitigation measures for “potentially significant” and “significant” impacts that could occur to biological resources. When implemented, the mitigation measures would reduce impacts to levels considered less than significant pursuant to the California Environmental Quality Act (CEQA). Accordingly, this report is suitable for review and inclusion in any review being conducted by the City of Burlingame for the proposed project pursuant to the CEQA.

## **2. PROPERTY LOCATION AND SETTING**

The proposed project site consists of 8.81 acres of land leased by the City of Burlingame from the State Lands Commission. The project site is located at 430-450 Airport Boulevard, in the City of Burlingame, California (Figures 1 and 2). The property is located within the San Mateo, California U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle (Figure 2). Figure 3 provides an aerial photograph of the project site showing the land use of the site and the surrounding area. The project site is located approximately 1.5 miles southeast of the San Francisco International Airport; therefore, it is subject to a constant stream of air traffic noise from approaching inbound flights (Figure 2). The project site is designated as “Waterfront Commercial” in the General Plan, and in the Burlingame Specific Plan this area is zoned for hotels, restaurants and recreational uses.

The project site is located on “reclaimed” land on the edge of the San Francisco Bay. The project site is undeveloped land comprised primarily of ruderal (weedy) vegetation growing on highly compacted fill material mixed with gravel. Along the northern edge of the site there is a gravel pedestrian trail, and concrete rubble provides erosion protection along the edge of the San Francisco Bay. Adjacent to the west is a vacant, compacted gravel parking area and a restaurant with a parking lot. The southern project site boundary is defined by Bayview Place and Airport Boulevard. Power lines are located along Airport Boulevard, and there are office buildings and a

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high rise hotel with additional parking lots adjacent to the south. To the east there is a parking lot and the Sanchez Creek Lagoon (Figure 3).

### **3. PROPOSED PROJECT**

The City of Burlingame is proposing to develop the project site into a city park. The park would include a picnic area, a group picnic area, and a restroom facility. Park improvements included in the proposed project include an 8 to 10-foot wide asphalt path along the San Francisco Bay edge with benches and landscaping that will connect to the existing public access pathway. Two parking lots are proposed on either side of the park as well as turf and other landscaping around the site perimeter. The *Conceptual Master Plan "Option B" for the Bayview Park* prepared by John Cahalan Landscape Architect (revised June 7, 2013) is provided in Attachment A.

### **4. ANALYSIS METHODS**

#### **4.1 Background Research**

Prior to preparing this biological resource analysis report, M&A researched the most recent version of the Department's Natural Diversity Database, RareFind 3.1 application (CNDDDB 2013) for historic and recent records of special-status plant and animal species (that is, threatened, endangered, rare) known to occur in the region of the project site. All special-status species records were compiled in tables. M&A examined all known record locations for special-status species to determine if special-status species could occur on the project site or within an area of affect.

M&A also reviewed the *Biological Constraints Analysis for the Burlingame Bayfront Specific Plan Area* prepared by Environmental Collaborative (September 2002) and the *Initial Study and Mitigated Negative Declaration* prepared by the City of Burlingame (February 2013, updated October 2015). In addition, M&A reviewed the *Conceptual Master Plan for the Bayview Park* prepared by John Cahalan Landscape Architect (revised July 31, 2015).

#### **4.2 Field Reconnaissance**

M&A biologists Geoff Monk and Tim O'Donnell conducted a general survey of the project site on July 23, 2013 to record biological resources and to assess the likelihood of agency regulated areas on the project site. The survey involved searching all habitats on the site and recording all plant and wildlife species observed. M&A also noted potential habitats on or adjacent to the project site that could support special-status species.

#### **4.3 Wetland Delineation**

A wetland delineation was conducted by M&A biologists Hope Kingma and Tim O'Donnell on July 16, 2013. The wetland delineation was conducted according to the Corps' 1987 *Wetlands Delineation Manual* in conjunction with the regional supplement for the Arid West Region. The jurisdictional determination request report and draft wetland delineation map were prepared in compliance with the Corps' 2001 Minimum Standards for Acceptance for Preliminary Delineations and the Corps' 2012 Final Map and Drawing Standards for the South Pacific Division Regulatory Program.

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Vegetation, hydrology, and soils information were taken at 15 data points to confirm the boundaries of Corps jurisdiction and to characterize the remaining portions of the project site (Sheet 1, Attachment B). Data points, potential wetlands, and other features were mapped using a Trimble Pro-XH Global Positioning System (GPS) having sub-meter accuracy. The delineation map was made from the GPS files using ArcMap 10.3. All spatial data was projected into the California State Plane, NAD 83 (feet) coordinate system, Zone 2. Using GPS technology, the boundaries (within 30 inches) of each delineated feature were transferred to an aerial photograph of the project site and presented in Sheet 1.

M&A submitted a Request for a Preliminary Jurisdictional Determination on February 10, 2015. The Corps conducted a site verification visit on March 5, 2015. On April 1, 2015 the Corps confirmed jurisdiction over 0.42-acre of waters of the U.S. on the project site. The confirmed Preliminary Jurisdictional Determination Map is provided as Sheet 1, Attachment B.

The results of our literature research and field surveys are provided in the sections below.

## **5. RESULTS OF RESEARCH AND PROJECT SITE ANALYSES**

### **5.1 Soils**

The Soil Conservation Service (SCS), now called the Natural Resource Conservation Service (NRCS), mapped one soil type for the project site (NRCS 2013). The mapped soil unit is Urban land – Orthents, reclaimed complex, 0 to 2 percent slopes. Figure 4 provides a soil map of the project site.

#### **5.1.1 URBAN LAND-ORTHENTS**

This soil type is generally characterized as fill material, and is found on, and in tidelands, marsh or bay areas that are covered with fill. Orthents consist of cut or fill areas, or both, that vary greatly in depth and drainage. The fill areas consist of soil, gravel, broken cement, asphalt, rock, bay mud, and other material from urban construction. In some places, the original soils have been graded and the layers mixed. Inclusions in this soil unit are small areas of soils adjacent to the bay that are subject to brief periods of flooding during storms and high tides.

The properties of Orthents are highly variable because of the kinds and amount of fill material in the profile or because of the amount of cutting and grading of the soils. Runoff is rapid and the hazard of water erosion is slight. This soil type/unit is used for home sites, urban and recreational development. The main limitations are the susceptibility of the soils to subsidence and the hazard of erosion. *Urban land-Orthents is classified as a hydric soil* by the Natural Resources Conservation Service.

### **5.2 Topography and Hydrology**

The project site is protected from San Francisco Bay wave action by several feet of concrete rubble along the banks that form the edge of the bay. The site elevation is several feet above the mean high tide and therefore is not subject to any tidal inundation. The project site consists of highly compacted fill material and gravel that has uneven, undulating topography.

There are several topographic low areas on the project site that support potential seasonal wetlands. These topographic low areas receive water from direct precipitation and runoff from the adjacent upland areas, and hold water or remain saturated long enough to allow wetlands to develop.

### 5.3 Plant Communities and Associated Wildlife Habitats

M&A biologists examined the habitats and characterized the vegetation present within the project site. Two communities were identified within the project site: anthropogenic /ruderal habitat and seasonal wetlands. A complete list of plant species observed on the project site is presented in Table 1. Nomenclature used for plant names follows *The Jepson Manual, 2<sup>nd</sup> edition* (Baldwin 2012) and changes made to this manual as published on the Jepson Interchange Project website.

#### 5.3.1 ANTHROPOGENIC /RUDERAL HABITAT

Ruderal (weedy) communities are assemblages of plants that thrive in waste areas, roadsides and other sites that have been disturbed by human activity. Typically hardpacked soils of roadsides, parking lots, industrial areas and construction sites support communities of ruderal species. The majority of the project site is highly disturbed with compacted fill material and gravel deposits. The project site has been left undeveloped and has become overgrown with ruderal species throughout the project site. Ruderal species found onsite include fennel (*Foeniculum vulgare*), rip-gut brome (*Bromus diandrus*), slender wild oat (*Avena barbata*), Italian rye grass (*Festuca perennis*), common vetch (*Vicia sativa*), bristly ox-tongue (*Helminthotheca echioides*), Bermuda grass (*Cynodon dactylon*) and English plantain (*Plantago lanceolata*). Non-native invasives such as pampas grass (*Cortaderia selloana*), Scotch broom (*Cytisus scoparius*), and French broom (*Genista monspessulana*) also occur scattered throughout the project site. A long row of landscaping evergreen trees occurs along the southern project site boundary and is dominated by ngaio trees (*Myoporum laetum*) and also includes spider gum (*Eucalyptus conferruminata*) and the native shrub toyon (*Heteromeles arbutifolia*) in the understory.

Typically, anthropogenic influenced communities provide habitat for those animal species adapted to man. Examples of animals associated with these communities include Anna's hummingbird (*Calypte anna*), American crow (*Corvus brachyrhynchos*), common raven (*Corvus corax*), European starling (*Mimus polyglottos*), mourning dove (*Zenaida macroura*), and rock pigeon (*Columba livia*), all of which have been observed on the project site. Flocks of grassland bird species, such as western meadowlark (*Sturnella neglecta*) and house sparrow (*Passer domesticus*) were also observed on the project site. Other species observed at the project site include turkey vulture (*Cathartes aura*), California gull (*Larus californicus*), northern flicker (*Colaptes auratus*), black phoebe (*Sayornis nigricans*), chestnut-backed chickadee (*Poecile rufescens*), bushtit (*Psaltriparus minimus*), Bewick's wren (*Thryomanes bewickii*), house finch (*Carpodacus mexicanus*), and lesser goldfinch (*Spinus psaltria*). As the project site has been left undeveloped for many years, a network of well-worn wildlife trails and an abundance of raccoon (*Procyon lotor*) scat occurs throughout the site.

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### 5.3.2 SEASONAL WETLAND

Seasonal wetlands occur in the topographic low areas on the highly compacted fill and gravel of the project site (Sheet 1, Attachment B). These seasonal wetlands are dominated by non-native species such as Mediterranean barley (*Hordeum marinum* ssp. *gussoneanum*), Italian ryegrass, rabbit's-foot grass (*Polypogon monspeliensis*), curly dock (*Rumex crispus*), cut-leaf plantain (*Plantago coronopus*), and to a lesser extent, the native grass creeping wildrye (*Elymus triticoides* subsp. *triticoides*).

Seasonal wetlands on the project site are of low value to wildlife. These wetlands sit on top of fill material and only shallowly inundate during normal to above normal rainfall years. Also, they are vegetated with non-native plant species which provide limited foraging value. Thus, while they do provide wildlife with a seasonal water source, their value as foraging and breeding habitat is restricted. These wetlands likely provide amphibians such as the Sierran treefrog (*Pseudacris sierra*) with an egg-laying habitat and the larvae will complete their life cycle in the wetlands. Invertebrates such as mayflies (Ephemeroptera), damselflies (Odonata), and predaceous diving beetles (Dytiscidae) are commonly associated with inundated seasonal wetland habitats and complete their life cycle in the wetlands. Finally, it is expected that urban-adapted wildlife such as mallards (*Anas platyrhynchos*), raccoons, striped skunks (*Mephitis mephitis*), and Virginia opossums (*Didelphis virginiana*) will forage in the shallow water.

## 6. SPECIAL-STATUS SPECIES DEFINITION

### 6.1 Definitions

For purposes of this analysis, special-status species are plants and animals that are legally protected under the California and Federal Endangered Species Acts (CESA and FESA, respectively) or other regulations, and species that are considered rare by the scientific community (for example, the CNPS). Special-status species are defined as:

- plants and animals that are listed or proposed for listing as threatened or endangered under the CESA (Fish and Game Code §2050 *et seq.*; 14 CCR §670.1 *et seq.*) or the FESA (50 CFR 17.12 for plants; 50 CFR 17.11 for animals; various notices in the Federal Register [FR] for proposed species);
- plants and animals that are candidates for possible future listing as threatened or endangered under the FESA (50 CFR 17; FR Vol. 64, No. 205, pages 57533-57547, October 25, 1999); and under the CESA (California Fish and Game Code §2068);
- plants and animals that meet the definition of endangered, rare, or threatened under the California Environmental Quality Act (CEQA) (14 CCR §15380) that may include species not found on either State or Federal Endangered Species lists;
- Plants occurring on Ranks 1A, 1B, 2A, 2B, 3, and 4 of CNPS' electronic *Inventory* (CNPS 2001). The California Department of Fish and Wildlife (CDFW) recognizes that Ranks 1A, 1B, 2A and 2B of the CNPS inventory contain plants that, in the majority of cases, would qualify for State listing, and CDFW requests their inclusion in EIRs. Plants

occurring on CNPS Ranks 3 and 4 are "plants about which more information is necessary," and "plants of limited distribution," respectively (CNPS 2001). Such plants may be included as special-status species on a case by case basis due to local significance or recent biological information (more on CNPS Rank species below);

- migratory nongame birds of management concern listed by U.S. Fish and Wildlife Service (Migratory Nongame Birds of Management Concern in the United States: The list 1995; Office of Migratory Bird Management; Washington D.C.; Sept. 1995);
- animals that are designated as "species of special concern" by CDFW (2013);
- Animal species that are "fully protected" in California (Fish and Game Codes 3511, 4700, 5050, and 5515).
- Bat Species that are designated on the Western Bat Working Group's (WBWG) Regional Bat Species Priority Matrix as: "RED OR HIGH." This priority is justified by the WBWG as follows: "Based on available information on distribution, status, ecology, and known threats, this designation should result in these bat species being considered the highest priority for funding, planning, and conservation actions. Information about status and threats to most species could result in effective conservation actions being implemented should a commitment to management exist. These species are imperiled or are at high risk of imperilment."

In the paragraphs below we provide further definitions of legal status as they pertain to the special-status species discussed in this report or in the attached tables.

Federal Endangered or Threatened Species. A species listed as Endangered or Threatened under the FESA is protected from unauthorized "take" (that is, harass, harm, pursue, hunt, shoot, trap) of that species. If it is necessary to take a Federal listed Endangered or Threatened species as part of an otherwise lawful activity, it would be necessary to receive permission from the USFWS prior to initiating the take.

State Threatened Species. A species listed as Threatened under the state Endangered Species Act (§2050 of California Fish and Game Code) is protected from unauthorized "take" (that is, harass, pursue, hunt, shoot, trap) of that species. If it is necessary to "take" a state listed Threatened species as part of an otherwise lawful activity, it would be necessary to receive permission from CDFW prior to initiating the "take."

California Species of Special Concern. These are species in which their California breeding populations are seriously declining and extirpation from all or a portion of their range is possible. This designation affords no legally mandated protection; however, pursuant to the CEQA Guidelines (14 CCR §15380), some species of special concern could be considered "rare." Pursuant to its rarity status, any unmitigated impacts to rare species could be considered a "significant effect on the environment" (§15382). Thus, species of special concern must be

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considered in any project that will, or is currently, undergoing CEQA review, and/or that must obtain an environmental permit(s) from a public agency.

CNPS Rank Species. The CNPS maintains an “Inventory” of special status plant species. This inventory has four lists of plants with varying rarity. These lists are: Rank 1, Rank 2, Rank 3, and Rank 4. Although plants on these lists have no formal legal protection (unless they are also state or federal listed species), CDFW requests the inclusion of Rank 1 species in environmental documents. In addition, other state and local agencies may request the inclusion of species on other lists as well. The Rank 1 and 2 species are defined below:

- Rank 1A: Presumed extinct in California;
- Rank 1B: Rare, threatened, or endangered in California and elsewhere;
- Rank 2A: Plants presumed extirpated in California, but more common elsewhere;
- Rank 2B: Rare, threatened, or endangered in California, but more common elsewhere.

All of the plants constituting Rank 1B meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act) of the Fish and Game Code, and are eligible for state listing (CNPS 2001). Rank 2 species are rare in California, but more common elsewhere. Ranks 3 and 4 contain species about which there is some concern, and are reviewed by CDFW and maintained on “watch lists.”

Additionally, in 2006 CNPS updated their lists to include “threat code extensions” for each list. For example, Rank 1B species would now be categorized as Rank 1B.1, Rank 1B.2, or Rank 1B.3. These threat codes are defined as follows:

- .1 is considered “seriously endangered in California (over 80% of occurrences threatened/high degree and immediacy of threat)”;
- .2 is “fairly endangered in California (20-80% of occurrences threatened)”;
- .3 is “not very endangered in California (less than 20% of occurrences threatened or no current threats known).”

Under the CEQA review process only CNPS Rank 1 and 2 species are considered since these are the only CNPS species that meet CEQA’s definition of “rare” or “endangered.” Impacts to Rank 3 and 4 species are not regarded as significant pursuant to CEQA.

Fully Protected Birds. Fully protected birds, such as the white-tailed kite and golden eagle, are protected under California Fish and Game Code (§3511). Fully protected birds may not be “taken” or possessed (i.e., kept in captivity) at any time.

## **6.2 Potential Special-Status Plants on the Bayview Park Project Site**

Figure 5 provides a graphical illustration of the closest known records for special-status species within 5 miles of the project site and helps readers visually understand the number of sensitive species that occur in the vicinity of the project site. No special-status plants have been mapped on or adjacent the project site. However, according to the Department’s CNDDDB, a total of 22 special-status plant species are known to occur in the region of the project site. A discussion of each special-status plant considered for the project site individually, taking into consideration their habitat requirements, is provided in Table 3. Most of these plants occur in specialized

habitats such as woodland, chaparral, coastal scrub, serpentine, marshes, and swamps. Owing to the excessively disturbed and unnatural conditions found at the project site (that is, fill soils and ruderal/anthropogenic habitat), special-status plants would not be likely to occur. No special-status plants were observed on the project site during surveys conducted in July 2013 and March 2015. **Consequently, M&A biologists conclude that the proposed project would not result in impacts to special-status plants. Mitigation for special-status plant species would not be warranted for this project site.**

### 6.3 Potential Special-Status Animals in the Bayview Park Project Site Area

Figure 5 provides a graphical illustration of the closest known records for special-status species within 5 miles of the project site and helps readers visually understand the number of sensitive species that occur in the vicinity of the project site. No special-status animals have ever been mapped on the project site; this is likely due to the absence of natural and/or native habitats on the project site and the amount of disturbance that has occurred onsite over the years. However, according to the CNDDDB, a total 15 special-status animal species are known to occur in the region of the project site (Table 4). Only one of these fifteen special-status animal species has any possibility of occurring on the project site: western burrowing owl (*Athene cunicularia hypugaea*). This owl is discussed below. In addition, due to the sensitivity of two species, the Ridgeway's rail (formerly known as the California clapper rail) (*Rallus obsoletus obsoletus*) and the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), these federally listed species are discussed below. Finally, the eucalyptus trees and some of the tall shrubs may provide nesting habitat for the white-tailed kite (*Elanus leucurus*). The northern harrier (*Circus cyaneus*) may also nest on the ground in the level to near level uplands. These two raptors (birds of prey) are also discussed below.

#### 6.3.1 WESTERN BURROWING OWL

The western burrowing owl is a California species of special concern. Its nest, eggs, and young are also protected under California Fish and Game Code (§3503, §3503.5, and §3800). The burrowing owl is also protected from direct take under the Migratory Bird Treaty Act (50 CFR 10.13). Finally, based upon this species' rarity status, any unmitigated impacts to rare species would be considered a "significant effect on the environment" pursuant to §21068 of the CEQA Statutes and §15382 of the CEQA Guidelines. Thus, this owl species must be considered in any project that will, or is currently, undergoing CEQA review, and/or that must obtain an environmental permit(s) from a public agency. When these owls occur on a project site, typically, mitigation requirements are mandated in the conditions of project approval by the CEQA lead agency.

Burrowing owl habitat is usually found in annual and perennial grasslands, characterized by low-growing vegetation. Often the burrowing owl utilizes rodent burrows, typically ground squirrel burrows, for nesting and cover. They may also on occasion dig their own burrows, or use man-made objects such as concrete culverts or rip-rap piles for cover. They exhibit high site fidelity, reusing burrows year after year. Occupancy of suitable burrowing owl habitat can be verified at a site by observing these owls during the spring and summer months or, alternatively, the presence of its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement (white wash) at or near a burrow entrance. Burrowing owls typically are not found in grasslands with tall

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vegetation or wooded areas because the vegetation obscures their ability to detect avian and terrestrial predators. Since burrowing owls spend the majority of their time sitting at the entrances of their burrows, grazed grasslands seem to be their preferred habitat because it allows them to view the world at 360 degrees without obstructions.

The closest known record for western burrowing owl is located 2.3 miles southeast of the project site in the City of San Mateo (CNDDDB Occurrence No. 1106). There is a low potential for this species to nest in the anthropogenic/ruderal habitat on the project site due to the overgrown vegetation and a noticeable absence of burrowing mammals (e.g. ground squirrels). M&A did not identify any suitable burrows within the project area during our surveys. M&A biologists have not observed this owl on or adjacent to the project site.

While western burrowing owls are not currently known to occur on the site, this is a mobile species that could move onto the project site in the future. Impacts to nesting western burrowing owls are regarded as potentially significant pursuant to CEQA. In order to avoid potential impacts to burrowing owls, a survey should be conducted the year that development of the project site commences. The survey should follow the survey methodology prescribed in CDFG's *Staff Report on Burrowing Owl Mitigation* (CDFG 1995). If burrowing owls are identified nesting on or immediately adjacent to the project site, mitigation measures should be implemented (see the "Impacts and Mitigation" section for further details).

#### 6.3.2 CALIFORNIA CLAPPER RAIL

The California clapper rail was federally listed as an endangered species throughout its entire range on October 13, 1970 (Federal Register 35: 1604). Critical habitat has not been designated for this species. It was state listed as an endangered species on June 6, 1971.

The closest CNDDDB record for California clapper rail dates from 1975 in the Sanchez Marsh vicinity. Surveys conducted in Sanchez Marsh in 2003 did not identify any clapper rails in this marsh. The CNDDDB considers this location record to be "possibly" extirpated. Regardless, there is no suitable marsh habitat along the bay margin adjacent to the project site. The distance between the proposed project site along the bay margin and the closest suitable marsh habitat in Sanchez Marsh is 0.6 mile or greater. There is also existing development to the shoreline both east and west of the proposed project site, isolating this bay shoreline area from extant habitats that could support the clapper rail. M&A believes that there is an appropriate protective buffer between potential suitable habitat of the clapper rail and the proposed project. Moreover, this buffer is permanent as it consists of developed areas. Thus, use of the park site by people would also not be expected to impact the California clapper rail. *Consequently, implementation of the proposed project is not expected to affect the California clapper rail.*

#### 6.3.3 SAN FRANCISCO GARTER SNAKE

The San Francisco garter snake is a slender multi-colored subspecies of the common garter snake. Designated as an endangered subspecies since the year 1967 it is endemic to San Mateo County and the extreme northern part of coastal Santa Cruz County in California.

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This subspecies of the common garter snake is found in scattered wetland areas on the San Francisco Peninsula from approximately the northern boundary of San Mateo County south along the eastern and western bases of the Santa Cruz Mountains, at least to the Upper Crystal Springs Reservoir, and along the Pacific coast south to Año Nuevo Point, and thence to Waddell Creek in Santa Cruz County. The U.S. Fish and Wildlife Service has stated that many locations that previously had healthy populations of garter snakes are now in decline due to land development pressure and the filling of wetlands in San Mateo County over the last sixty years.

The snake's preferred habitat is a densely vegetated pond near an open hillside where it can sun, feed, and find cover in rodent burrows. This subspecies avoids brackish marsh areas because its preferred prey, the California red-legged frog (*Rana draytonii*), cannot survive in saline water.

The shallow, very small seasonal wetlands within the project site do not provide suitable habitat for the San Francisco garter snake. The seasonal wetlands are shallow depressions that do not support obligate wetland vegetation, and provide very marginal wildlife habitat. The San Francisco garter snake could not survive on the proposed project site and this site is separated from other potentially suitable San Francisco garter snake habitat by extensive commercial development. The San Francisco garter snake would not occur along the tidally influenced shoreline of the Bay. *Consequently, implementation of the proposed project is not expected to affect the San Francisco garter snake.*

#### 6.3.4 WHITE-TAILED KITE

The white-tailed kite is "fully protected" under the California Fish and Game Code. Fully protected birds may not be "taken" or possessed (i.e., kept in captivity) at any time (§3511). It is also protected under the Federal Migratory Bird Treaty Act (50 CFR 10.13). The white-tailed kite is typically found foraging in grassland, marsh, or cultivated fields where there are dense-topped trees or shrubs for nesting and perching. They nest in a wide variety of trees of moderate height and sometimes in tall bushes, such as coyote bush (*Baccharis pilularis*). Native trees used are live and deciduous oaks (*Quercus* spp.), willows (*Salix* spp.), cottonwoods (*Populus* spp.), sycamores (*Platanus* spp.), maples (*Acer* spp.), toyon (*Heteromeles arbutifolia*), and Monterey cypress (*Cupressus macrocarpa*). Although the surrounding terrain may be semiarid, kites often reside near water sources, where prey is more abundant. The particular characteristics of the nesting site do not appear to be as important as its proximity to a suitable food source (Shuford 1993). Kites primarily hunt small mammals, with California meadow voles (*Microtus californicus*) accounting from between 50-100% of their diet (Shuford 1993).

The eucalyptus trees, willows, and toyon on the project site provide suitable nesting habitat for white-tailed kite. Hence, preconstruction nesting surveys should be conducted to ensure that there are no project-related impacts to nesting white-tailed kites (see the "Impacts and Mitigation" section for further details).

#### 6.3.5 NORTHERN HARRIER

The northern harrier is a state species of special concern. This raptor is also protected under California Fish and Game Code §3503.5 that protects nesting raptors and their eggs/young. The northern harrier is also protected from direct take under the Migratory Bird Treaty Act (50 CFR

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10.13). Northern harriers build grass-lined nests on the ground within dense, low-lying vegetation in a variety of habitats, though they are typically found nesting in grassland or marsh habitats. They usually nest on level to near level ground. This species is particularly vulnerable to ground predators such as coyotes (*Canis latrans*), red fox (*Vulpes vulpes*), and various snake species. Ground nesting birds in general are also subject to disturbance by agricultural practices.

The project site's level to near level uplands provide suitable nesting habitat for the northern harrier. Hence, development of the proposed project without conducting nesting surveys could result in impacts to nesting northern harriers. Preconstruction surveys would have to be conducted prior to grading the project site to ensure that direct take of this species would not occur. If northern harriers were found nesting on the project site an adequate buffer would have to be established around the nesting site until the nesting cycle ended, typically in August. It is imperative to have a qualified raptor biologist determine the size of the buffer so that direct take is minimized and the project otherwise remains in compliance with the Federal Migratory Bird Treaty Act. Please see the "Impacts and Mitigation" section for further details.

## **7. REGULATORY FRAMEWORK FOR NATIVE WILDLIFE, FISH, AND PLANTS**

This section provides a discussion of those laws and regulations that are in place to protect native wildlife, fish, and plants. Under each law we discuss their pertinence to the proposed development.

### **7.1 Federal Endangered Species Act**

The Federal Endangered Species Act (FESA) forms the basis for the federal protection of threatened or endangered plants, insects, fish and wildlife. FESA contains four main elements, they are as follows:

Section 4 (16 USCA §1533): Species listing, Critical Habitat Designation, and Recovery Planning: outlines the procedure for listing endangered plants and wildlife.

Section 7 (§1536): Federal Consultation Requirement: imposes limits on the actions of federal agencies that might impact listed species.

Section 9 (§1538): Prohibition on Take: prohibits the "taking" of a listed species by anyone, including private individuals, and State and local agencies.

Section 10: Exceptions to the Take Prohibition: non-federal agencies can obtain an incidental take permit through approval of a Habitat Conservation Plan.

In the case of salt water fish and other marine organisms, the requirements of FESA are enforced by the National Marine Fisheries Service (NMFS). The USFWS enforces all other cases. Below, Sections 9, 7, and 10 of FESA are discussed since they are the sections most relevant to the proposed project.

Section 9 of FESA as amended, prohibits the "take" of any fish or wildlife species listed under FESA as endangered. Under Federal regulation, "take" of fish or wildlife species listed as

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threatened is also prohibited unless otherwise specifically authorized by regulation. "Take," as defined by FESA, means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." "Harm" includes not only the direct taking of a species itself, but the destruction or modification of the species' habitat resulting in the potential injury of the species. As such, "harm" is further defined to mean "an act which actually kills or injures wildlife; such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering" (50 CFR 17.3). A December 2001 decision by the 9th Circuit Court of Appeals (*Arizona Cattle Growers' Association, Jeff Menges, vs. the U.S. Fish and Wildlife Service and Bureau of Land Management, and the Southwest Center for Biological Diversity*) ruled that the USFWS must show that a threatened or endangered species is present on a project site and that it would be taken by the project activities. According to this ruling, the USFWS can no longer require mitigation based on the probability that the species could use the site. Rather they must show that it is actually present.

Section 9 applies to any person, corporation, federal agency, or any local or State agency. If "take" of a listed species is necessary to complete an otherwise lawful activity, this triggers the need to obtain a incidental take permit either through a Section 7 Consultation as discussed further below (for federal actions or private actions that are permitted or funded by a federal agency), or requires preparation of a Habitat Conservation Plan (HCP) pursuant to Section 10 of FESA (for state and local agencies, or individuals, and projects without a federal "nexus").

Section 7(a)(2) of the Act requires that each federal agency consult with the USFWS to ensure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat for listed species. Critical habitat designations mean: (1) specific areas within a geographic region currently occupied by a listed species, on which are found those physical or biological features that are essential to the conservation of a listed species and that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a listed species that are determined essential for the conservation of the species.

The Section 7 consultation process only applies to actions taken by federal agencies that are considering authorizing discretionary projects. Section 7 is by and between the NMFS and/or the USFWS and the federal agency contemplating a discretionary approval (that is, the "federal nexus agency," for example, the Corps or the Federal Highway Administration). Private parties, cities, counties, etc. (i.e., applicants) may participate in the Section 7 consultation *at the discretion of the federal agencies conducting the Section 7 consultation*. The Section 7 consultation process is triggered by a determination of the "action agency" – that is, the federal agency that is carrying out, funding, or approving a project - that the project "may affect" a listed species or critical habitat. If an action is likely to adversely affect a listed species or designated critical habitat, formal consultation between the nexus agency and the USFWS/NMFS is required. As part of the formal consultation, the USFWS/NMFS may resolve any issues informally with the nexus agency or may prepare a formal Biological Opinion assessing whether the proposed action would be likely to result in "jeopardy" to a listed species or if it could adversely modify designated critical habitat. If the USFWS/NMFS prepares a Biological Opinion

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it will contain either a “jeopardy” or “non-jeopardy” decision. If the USFWS/NMFS concludes that a proposed project would result in adverse modification of critical habitat or would jeopardize the continued existence of a federal listed species (that is, it will issue a jeopardy decision), the nexus federal agency would be most unlikely to authorize its discretionary permit. If the USFWS/NMFS prepares a “non-jeopardy” Biological Opinion, the nexus federal agency may authorize the discretionary permit making all conditions of the Biological Opinion conditions of its discretionary permit. A non-jeopardy Biological Opinion constitutes an “incidental take” permit that allows applicants to “take” federally listed species while otherwise carrying out legally sanctioned projects.

For non-federal entities, for example private parties, cities, counties that are considering a discretionary permit, Section 10 provides the mechanism for obtaining take authorization. Under Section 10 of FESA, the applicant for an "incidental take permit" is required to submit a "conservation plan" to the USFWS or NMFS that specifies, among other things, the impacts that are likely to result from the taking, and the measures the permit applicant will undertake to minimize and mitigate such impacts, and the funding that will be available to implement those steps. Conservation plans under FESA have come to be known as "habitat conservation plans" or "HCPs" for short. The terms incidental take permit, Section 10 permit, and Section 10(a)(1)(B) permit are used interchangeably by the USFWS. Section 10(a)(2)(B) of FESA provides statutory criteria that must be satisfied before an incidental take permit can be issued.

#### 7.1.1 RESPONSIBLE AGENCY

FESA gives regulatory authority over terrestrial species and non-anadromous fish to the USFWS. The NMFS has authority over marine mammals and anadromous fish.

#### 7.1.2 APPLICABILITY TO THE PROPOSED PROJECT

The project site does not provide fisheries habitat. Hence, there would be no impacts to federal listed fish species. Also, the site does not provide suitable habitat for federal listed plants and none have been identified onsite during surveys conducted by M&A. Thus, no impacts to federally-listed plants are expected. The project site does not provide suitable habitat conditions for any federally-listed animal species and none have been observed on the project site during multiple site visits. **No impacts to federally listed species are expected from the proposed project and Section 7 consultation is not warranted for this project.**

## 7.2 Federal Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (16 U.S.C. §§ 703-712, July 3, 1918, as amended 1936, 1960, 1968, 1969, 1974, 1978, 1986 and 1989) makes it unlawful to “take” (kill, harm, harass, shoot, etc.) any migratory bird listed in Title 50 of the Code of Federal Regulations, Section 10.13, including their nests, eggs, or young. Migratory birds include geese, ducks, shorebirds, raptors, songbirds, wading birds, seabirds, and passerine birds (such as warblers, flycatchers, swallows, etc.).

Executive Order 13186 for conservation of migratory birds (January 11, 2001) requires that any project with federal involvement address impacts of federal actions on migratory birds. The order is designed to assist federal agencies in their efforts to comply with the MBTA and does not constitute any legal authorization to take migratory birds. The order also requires federal

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agencies to work with the USFWS to develop a memorandum of understanding (MOU). Protocols developed under the MOU must promote the conservation of migratory bird populations through the following means:

- avoid and minimize, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;
- restore and enhance habitat of migratory birds, as practicable; and prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable.

#### 7.2.1 APPLICABILITY TO THE PROPOSED PROJECT

To comply with the Migratory Bird Treaty Act, all active nest sites would have to be avoided while birds were nesting. Upon completion of nesting, the project could commence as otherwise planned. As long as there is no direct mortality of species protected pursuant to this Act caused by development of the site, there should be no constraints to development of the site. Please review specific requirements for avoidance of nest sites for potentially occurring species in the "Impacts and Mitigation" section below.

### 7.3 California Endangered Species Act

#### 7.3.1 SECTION 2081 OF THE CALIFORNIA ENDANGERED SPECIES ACT

In 1984, the state legislated the California Endangered Species Act (CESA) (Fish and Game Code §2050). The basic policy of CESA is to conserve and enhance endangered species and their habitats. State agencies will not approve private or public projects under their jurisdiction that would impact threatened or endangered species if reasonable and prudent alternatives are available. Because CESA does not have a provision for "harm" (see discussion of FESA, above), CDFW considerations pursuant to CESA are limited to those actions that would result in the direct take of a listed species.

If CDFW determines that a proposed project could impact a State listed threatened or endangered species, CDFW will provide recommendations for "reasonable and prudent" project alternatives. The CEQA lead agency can only approve a project if these alternatives are implemented, unless it finds that the project's benefits clearly outweigh the costs, reasonable mitigation measures are adopted, there has been no "irreversible or irretrievable" commitment of resources made in the interim, and the resulting project would not result in the extinction of the species. In addition, if there would be impacts to threatened or endangered species, the lead agency typically requires project applicants to demonstrate that they have acquired "incidental take" permits from CDFW and/or USFWS (if it is a Federal listed species) prior to allowing/permitting impacts to such species.

If proposed projects would result in impacts to a State listed species, an "incidental take" permit pursuant to §2081 of the Fish and Game Code would be necessary (versus a Federal incidental take permit for Federal listed species). CDFW will issue an incidental take permit only if:

- 1) The authorized take is incidental to an otherwise lawful activity;
- 2) the impacts of the authorized take are minimized and fully mitigated;
- 3) measures required to minimize and fully mitigate the impacts of the authorized take:

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- a) are roughly proportional in extent to the impact of the taking on the species;
  - b) maintain the project applicant's objectives to the greatest extent possible; and,
  - c) capable of successful implementation; and,
- 4) adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with, and the effectiveness of, the measures.

If an applicant is preparing a habitat conservation plan (HCP) as part of the federal 10(a) permit process, the HCP might be incorporated into the §2081 permit if it meets the substantive criteria of §2081(b). To ensure that an HCP meets the mitigation and monitoring standards in Section 2081(b), an applicant should involve CDFW staff in development of the HCP. If a final Biological Opinion (federal action) has been issued for the project pursuant to Section 7 of the federal Endangered Species Act, it might also be incorporated into the §2081 permit if it meets the standards of §2081(b).

No §2081 permit may authorize the take of a species for which the Legislature has imposed strict prohibitions on all forms of "take." These species are listed in several statutes that identify "fully protected" species and "specified birds." *See* Fish and Game Code §§ 3505, 3511, 4700, 5050, 5515, and 5517. If a project is planned in an area where a "fully protected" species or a "specified bird" occurs, an applicant must design the project to avoid all take.

Fish and Game Code §2080.1 allows an applicant who has obtained a "non-jeopardy" federal Biological Opinion pursuant to Section 7 of the FESA, or who has received a federal 10(a) permit (federal incidental take permit) pursuant to the FESA, to submit the federal opinion or permit to CDFW for a determination as to whether the federal document is "consistent" with CESA. If after 30 days CDFW determines that the federal incidental take permit is consistent with state law, and that all state listed species under consideration have been considered in the federal Biological Opinion, then no further permit or consultation is required under CESA for the project. However, if CDFW determines that the federal opinion or permit is not consistent with CESA, or that there are state listed species that were not considered in the federal Biological Opinion, then the applicant must apply for a state CESA permit under Section 2081(b). Section 2081(b) is of no use if an affected species is state-listed, but not federally listed.

State and federal incidental take permits are issued on a discretionary basis, and are typically only authorized if applicants are able to demonstrate that impacts to the listed species in question are unavoidable, and can be mitigated to an extent that the reviewing agency can conclude that the proposed impacts would not jeopardize the continued existence of the listed species under review. Typically, if there would be impacts to a listed species, mitigation that includes habitat avoidance, preservation, and creation of endangered species habitat is necessary to demonstrate that projects would not threaten the continued existence of a species. In addition, management endowment fees are usually collected as part of the agreement for the incidental take permit(s). The endowment is used to manage any lands set-aside to protect listed species, and for biological mitigation monitoring of these lands over (typically) a five-year period.

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### 7.3.2 APPLICABILITY TO PROPOSED PROJECT

The project site supports disturbed, ruderal/anthropogenic habitat. It does not support any native habitats/plant communities. Thus, no state listed plant or animal species are expected onsite and none would likely be impacted by the proposed project (see Tables 3 and 4 respectively).

## 7.4 California Fish and Game Code § 3503, 3503.5, 3511, and 3513

California Fish and Game Code §3503, 3503.5, 3511, and 3513 prohibit the “take, possession, or destruction of birds, their nests or eggs.” Disturbance that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered “take.” Such a take would also violate federal law protecting migratory birds (Migratory Bird Treaty Act).

All raptors (that is, hawks, eagles, owls) their nests, eggs, and young are protected under California Fish and Game Code (§3503.5). Additionally, “fully protected” birds, such as the white-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*), are protected under California Fish and Game Code (§3511). “Fully protected” birds may not be taken or possessed (that is, kept in captivity) at any time.

### 7.4.1 APPLICABILITY TO THE PROPOSED PROJECT

Preconstruction surveys would have to be conducted to ensure that there is no direct take of nesting birds including their eggs or young. Any active nests that were found during preconstruction surveys would have to be avoided by the project. Suitable non-disturbance buffers would have to be established around nest sites until the nesting cycle is complete. More specifics on the size of buffers are provided below in the “Impacts and Mitigation” section.

## 7.1 City of Burlingame General Plan

Below we provide language from the portions of the City’s General Plan that pertain to Biological Resources.

### 7.1.1 CONSERVATION ELEMENTS OF THE GENERAL PLAN

The following issues and programs listed below are taken from the City of Burlingame’s Conservation Element of the General Plan (City of Burlingame Conservation Element 1973).

**Issues:** The bayshore is the habitat for shore birds attracted there because of other aquatic life and vegetation. Disturbances to their food supply, in the form of water pollution and destruction of mudflats, have diminished the bird population of the area. Water fowl are an integral part of the ecological system. They also add interest and visual enjoyment.

**Program:** Maintain an appropriate environment for this wildlife by providing a sanctuary along the bayshore. Mudflats, marshland, and clean water are essential ingredients of this environment.  
 - Regulate development and the discharge of pollutants along the bayshore.

### 7.1.2 APPLICABILITY TO THE PROPOSED PROJECT

The proposed project is the conversion of undeveloped, disturbed land into a city park. This park will have benches for wildlife viewing. The project will tie into the existing storm water system

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owned and operated by the City of Burlingame. No impacts to the bayshore are expected to occur based on the proposed project.

#### 7.1.3 AREAS OF CHANGE AFFECTING NATURAL RESOURCES

Areas include: developed and undeveloped properties adjacent to the Bay:

Characteristics: This large expanse of land to the northeast of Bayshore freeway was created by one of the last extensive landfills in the South Bay. The major portion is in private ownerships, in part already developed, and the remaining open land is planned for extensive development in the future. This area includes the waste water treatment plant and the solid waste disposal site to be incorporated in the City's proposed aquatic park. This fill area lacks a comprehensive plan and guidelines. There is severely limited capacity for traffic into the area. Some of the development that has already occurred, though well maintained, is not easily compatible with the atmosphere of the Bay.

Program: Develop comprehensive designs giving special attention to the natural resources.

- Institute stronger zoning regulations to protect the natural resources.

#### 7.1.4 APPLICABILITY TO THE PROPOSED PROJECT

The project site falls into Area 3, an undeveloped property adjacent to the Bay. This undeveloped piece of land created by Bay fill is proposed to be developed into a City park. By creating a public park on this property it is anticipated that the "Program" regarding special attention to the natural resources of the property will be considered in the park design.

## 7.2 Burlingame Bayfront Specific Plan

The Burlingame Bayfront Specific Plan (amended June 2012) (City of Burlingame 2012) has goals and development policies that pertain to the project site. These goals and development policies are discussed below.

### 7.2.1 II. GOALS AND DEVELOPMENT POLICIES

GOAL A: Land uses in the Bayfront Area should reflect the special locational value of the area including its adjacency to San Francisco Bay, a regional freeway (US 101) and to San Francisco International Airport.

A-1. Encourage a vibrant visitor oriented destination which includes hotels, corporate campus, biotech and commercial employment centers and supports the developed residential area of the city.

A-2. Land uses on the east side of US 101 should be environmentally consistent with, and supportive of, Burlingame's main function as a residential community.

A-3. Future design and development of the Bayfront Area should be based on the unique attributes of each Bayfront Subarea and its special contribution to the community's economy and sense of place.

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A-4. Given the proximity to San Francisco Bay and the history of fill and development of Burlingame's bay front, the area should be tied together by the Bay Trail system and focal points of active and passive recreation and open space.

A-5. Encourage land uses which provide a connection between the east and west sides of U.S. 101.

GOAL B: Protect and enhance the unique qualities of Burlingame's shoreline environment.

B-1. New development should be designed to respect the unique environmental characteristics of the Bayfront Area including wind, noise and public safety.

B-2. Enhance the role of Burlingame's bay front and shoreline, including all areas affected by tidal waters, in the San Francisco Bay ecosystem and consider the impact of future development on the viability of the Bay's ecosystem and recreational use of the Bay.

B-3. Especially in the areas with water frontage, promote development which is compatible with the existing environmental constraints in the area; discourage uses in the area where the existing environmental influences will affect the economic viability of the use or have a negative impact on the local recreation, visitor-oriented and employee center uses.

B-4. Continue measures to protect, preserve and enhance, but provide visual access to the valuable designated wetland areas within the planning area.

#### 7.2.2 APPLICABILITY TO THE PROPOSED PROJECT

The proposed project will connect the Bay Trail system and the park facility will provide a focal point for active and passive recreation and open space, while protecting and enhancing the unique qualities of Burlingame's shoreline environment. The proposed project is consistent with the Burlingame Bayfront Specific Plan.

### 7.3 City of Burlingame Bayfront Specific Plan Area

The Bayfront Specific Plan designates the project site and the surrounding area for waterfront commercial uses. The project site is located within the Anza Area of the Bayfront Specific Plan. The Specific Plan notes that the Anza Area has been developed as a visitor oriented destination with bay and airport oriented hotels, destination restaurants and offices which support the local and visitor economy. It indicates that there are several vacant and underused parcels suitable for development in the Anza Area, one of which is owned by the State of California and is designated for hotels, destination restaurants and commercial recreation uses. The plan further states that pedestrian and recreational access is a major land use theme in the Anza Area, surrounded by San Francisco Bay and estuaries, and indicates that projects should provide and maintain Bay trail improvements, and project design should continue to encourage the integration and placement of passive and, where appropriate, active recreation areas accessible to the public.

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#### 7.3.1 APPLICABILITY TO THE PROPOSED PROJECT

The site is zoned AA (Anza Area), and public parks are a permitted use within this zone district. The proposed development of a public park would be consistent with the plan, as well as the policies contained in the plan.

#### 7.3.2 MINIMUM SETBACKS

According to the Bayfront Specific Plan Area, the following minimum setbacks from San Francisco Bay and its estuaries Anza Lagoon, Sanchez Channel, and Burlingame Lagoon shall apply to any lot that is adjacent to these water features. In case of conflict between these provisions and other setback requirements in this section, the greatest minimum setback shall apply.

- (A) On San Francisco Bay Proper. An average setback of seventy-five (75) feet between any structure and the shoreline as defined by the Bay Conservation and Development Commission approved Public Access Guidelines for the City of Burlingame.
  
- (B) On the Estuaries Anza Lagoon, Sanchez Channel, and Burlingame Lagoon. An average setback of sixty five (65) feet between any structure and the shoreline as defined by the Bay Conservation and Development Commission approved Public Access Guidelines for the city of Burlingame.
  
- (C) In addition, for structures taller than forty (40) feet, the minimum setback from the Bay Conservation and Development Commission bayside jurisdiction line shall be equal to the height of the structure, and where there is no structure, the setback from the top of bank shall not be less than the minimum width for the Bay Trail as required by the Bay Conservation and Development Commission.

#### 7.3.3 APPLICABILITY TO THE PROPOSED PROJECT

The proposed park structures will be in compliance with these setback requirements.

#### 7.3.4 PARKING LOCATION

No parking spaces shall be provided within the front setback on any property; driveways shall be allowed in the front setback; parking spaces at the rear of a building shall be set back twenty (20) feet from the inner edge of the Bay Trail.

#### 7.3.5 APPLICABILITY TO THE PROPOSED PROJECT

The proposed parking areas associated for the park project are in compliance with these setback requirements.

#### 7.3.6 PUBLIC ACCESS

Public access shall be maintained and developed based on the city-adopted and Bay Conservation and Development Commission-approved public access guidelines for Burlingame based on the applicable water frontage as follows:

(a) On San Francisco Bay Proper. An average setback of seventy-five (75) feet of the lot as measured from the shoreline as defined by the Bay Conservation and Development Commission; in no case shall the area as measured from the top of bank be less than the minimum width for the Bay Trail as required by the Bay Conservation and Development Commission; and

(b) On Anza Lagoon, Sanchez Channel, and Burlingame Lagoon. An average setback of sixty-five (65) feet as measured from the shoreline as defined by the Bay Conservation and Development Commission; in no case shall the area as measured from the top of bank be less than the minimum width for the Bay Trail as required by the Bay Conservation and Development Commission.

(c) All areas improved for public access within the jurisdiction of the Bay Conservation and Development Commission shall be maintained by the property owner and shall be available to the public in perpetuity as determined by the Bay Conservation and Development Commission. (Ord. 1766 § 2 (part), (2005))

#### 7.3.7 APPLICABILITY TO THE PROPOSED PROJECT

The proposed park project provides improved public access and will be in compliance with Bay Conservation and Development Commission requirements.

### 7.4 City of Burlingame Tree Ordinance

The City's "Urban Reforestation and Tree Protection Ordinance" provides for the preservation of protected trees in the City of Burlingame.

#### 7.4.1 DEFINITIONS

(a) "Protected tree" means:

- (1) Any tree with a circumference of forty-eight (48) inches or more when measured fifty-four inches above natural grade; or
- (2) A tree or stand of trees so designated by the city council based upon findings that it is unique and of importance to the public due to its unusual appearance, location, historical significance or other factor; or
- (3) A stand of trees in which the director has determined each tree is dependent upon the others for survival.

#### 7.4.2 PERMITS REQUIRED

(a) No protected tree shall be removed from any parcel without a permit except as provided in Section 11.06.040.

(b) The following conditions shall be observed during construction or development of property:

- (1) Protected trees are to be protected by a fence which is to be maintained at all times;
- (2) Protected trees that have been damaged or destroyed by construction shall be replaced or the city shall be reimbursed, as provided in Section 11.06.090;
- (3) Chemicals or other construction materials shall not be stored within the drip line of protected trees;

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- (4) Drains shall be provided as required by the director whenever soil fill is placed around protected trees; and
- (5) Signs, wires or similar devices shall not be attached to protected trees. (Ord. 1057 § 1 (part), (1975); Ord. 1470 § 1, (1992); Ord. 1598 § 1 (part), (1998))

#### 7.4.3 TREE REQUIREMENTS AND REFORESTATION

(a) Permits for removal of protected tree(s) shall include replanting conditions with the following guidelines:

- (1) Replacement shall be three (3) fifteen (15)-gallon size, one twenty-four (24)-inch box size, or one thirty-six (36)-inch box size landscape tree(s) for each tree removed as determined below.
- (2) Any tree removed without a valid permit shall be replaced by two (2) 24-inch box size, or two (2) 36-inch box size landscape trees for each tree so removed as determined below.
- (3) Replacement of a tree be waived by the director if a sufficient number of trees exists on the property to meet all other requirements of the Urban Reforestation and Tree Protection ordinance.
- (4) Size and number of the replacement tree(s) shall be determined by the director and shall be based on the species, location and value of the tree(s) removed.
- (5) If replacement trees, as designated in subsection (b)(1) or (2) above, as applicable, cannot be planted on the property, payment of equal value shall be made to the city. Such payments shall be deposited in the tree planting fund to be drawn upon for public tree planting. (Ord. 1470 § 1, (1992); Ord. 1492 § 3, (1993); Ord. 1598 § 1 (part), (1998)).

#### 7.4.4 APPLICABILITY TO THE PROPOSED PROJECT

The City of Burlingame requires a tree removal permit to remove any protected tree with a single trunk circumference of forty-eight (48) inches or more when measured fifty-four inches above natural grade, located on private or public property. There are no trees on the project site that would be considered a “protected tree” and therefore, a tree removal permit will not be required for the proposed project.

### **8. SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

The San Francisco Bay Conservation and Development Commission (BCDC) administers a comprehensive plan (*i.e.*, the San Francisco Bay Plan) for the conservation of the San Francisco Bay through regulation of development. BCDC regulates all filling and dredging in the San Francisco Bay, regulates new development within the first 100 feet inland from the Bay to ensure that maximum feasible public access, minimizes pressure to fill the Bay by ensuring that the limited amount of shoreline area suitable for high priority water-oriented used (ports, water-related industries, water-oriented recreation, airports and wildlife areas) is reserved for these purposes, active planning and study programs, administers the federal Coast Zone Management Act within the Bay, and preserves Suisun Marsh by administering the Suisun Marsh Preservation Act in cooperation with local governments.

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The BCDC area or jurisdiction includes:

1. Areas subject to tidal action from the south end of the Bay to the Golden Gate and the Sacramento River line, including all sloughs, and specifically, the marshlands lying between mean high tide and five feet above mean sea level; tidelands (land lying between mean high tide and mean low tide); and submerged lands (land lying below mean low tide);
2. 100-foot inland of the shoreline extending around San Francisco Bay, which includes the South Bay, Central Bay, San Pablo Bay and Suisun Bay;
3. Salt ponds diked off from the Bay and used as such from 1966-1969;
4. Managed wetlands diked off from the Bay and used as duck hunting preserve, game refuge, or farms from 1966-1969;
5. Specified waterways subject to tidal action and tributaries up to five feet above mean sea level on or tributary to the following waterways:

Plummer Creek; Redwood Creek; Petaluma River; Sonoma Creek; Coyote Creek; Tolay Creek; Napa River; and Corte Madera Creek.

If it is determined that the project site falls within BCDC jurisdiction, it is likely that an Administrative permit or a Regionwide permit would be necessary. Such permits authorize minor repairs and improvements, as defined by BCDC regulations. If the activity is not classified as a minor repair or improvement, a major permit would have to be required. Major permits are subject to public hearings and can only be issued if the project is consistent with the policies of the San Francisco Bay Plan and the McAteer-Petris Act. Administrative permit applications can be reviewed by the Commission and would then be subject to the public hearing process as well. Regionwide permits may be issued for project involving routine repair, replacement and maintenance of existing facilities, as specified by the Commission's regulations.

### **8.1 BCDC Policies**

To assure full compliance with the Commission's laws and policies, permits granted by the Commission generally include several conditions that must be carried out as part of the authorized project. Typical permit conditions include requirements to construct, guarantee and maintain public access to the Bay, specified construction methods to assure safety or to protect water quality, plan review requirements that must be met before construction can begin, and mitigation requirements to offset the adverse environmental impacts of the project. Failure to comply with permits conditions can invalidate the permit and lead to fines and legal action against the permittee. To avoid unnecessary delays in project completion, applicants should consider all aspects of a proposed project with particular attention to the public access and any necessary mitigation early in the project's design. [Government Code section 66632 and Public Resources Code Section 29500].

The Commission considers only two factors in determining whether to issue a permit for work within its 100-foot *shoreline band* jurisdiction:

Within *priority use areas* (those parts of the shoreline that the Commission has reserved for ports, water-related industries, airports, wildlife refuges and water-related recreation), the Commission can authorize only either the use for which the area has been reserved or an interim use that will not preclude the site from being converted to the priority use. Maximum feasible public access to the shoreline must be provided as part of the project.

Outside of the *priority use areas* the Commission can authorize any use if the project provides the maximum feasible public access to the Bay consistent with the project. Applications for projects anywhere along the Bay shoreline can be denied if the required public access is not provided as part of the project [Government Code section 66632.4].

#### 8.1.1 APPLICABILITY TO THE PROPOSED PROJECT

A permit from the BCDC is required for the Bay Trail improvements within 100 feet of the Bay shoreline. The *Conceptual Master Plan for the Bayview Park Project* (see Attachment A) indicates the 100-foot BCDC setback. The project is in compliance with BCDC policies since the proposed project will improve public access to the Bay, and will incorporate mitigation requirements to offset the adverse environmental impacts of the project.

In addition, the City of Burlingame Design Guidelines for Bayfront Development (City of Burlingame, 1980) provides standard setbacks for proposed buildings along the shoreline area within the jurisdiction of the BCDC. The proposed restroom facility meets the setback requirements. Regardless, a BCDC permit application will be required for this project (see Impacts and Mitigation Section for further details).

## 9. CALIFORNIA STATE LANDS COMMISSION

The California State Lands Commission (Commission) has jurisdiction and management control over certain public lands of the State that were received by the State from the United States. These lands are of two distinct types - sovereign and school lands.

### 9.1 Sovereign Lands

When California became a state in 1850, it acquired approximately four million acres of land underlying the State's navigable and tidal waterways. Known as sovereign lands, these lands include the beds of California's navigable rivers, lakes and streams, as well as the state's tide and submerged lands along the State's more than 1,100 miles of coastline and offshore islands from the mean high tide line to three nautical miles offshore.

The Commission holds its sovereign lands for the benefit of all the people of the State, subject to the Public Trust for water related commerce, navigation, fisheries, recreation, open space and other recognized Public Trust uses. The Commission maintains a multiple use management policy to assure the greatest possible public benefit is derived from these lands. The Commission will consider numerous factors in determining whether a proposed use of the State's land is appropriate, including, but not limited to, consistency with the Public Trust under which the Commission holds the State's sovereign lands. Authorization from the Commission is required if

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there are plans to build upon or otherwise occupy any lands described above, such activity may be within the Commission's jurisdiction.

## **9.2 Applicability to Project**

The project site is owned by the State of California. On June 24, 2015 the California State Lands Commission (State Lands) issued a letter regarding the City of Burlingame's application for General Lease-Agency Use of sovereign land in San Mateo County, California (File Ref: W2669). The City has since been granted a lease agreement by the California State Lands Commission.

## **10. REGULATORY REQUIREMENTS PERTAINING TO WATERS OF THE UNITED STATES AND STATE**

This section presents an overview of the criteria used by the U.S. Army Corps of Engineers, the California Regional Water Quality Control Board, the State Water Resources Control Board, and CDFW to determine those areas within a project area that would be subject to their regulation.

### **10.1 U.S. Army Corps of Engineers Jurisdiction and General Permitting**

#### 10.1.1 SECTION 404 OF THE CLEAN WATER ACT

Congress enacted the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. §1251(a)). Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), the U.S. Army Corps of Engineers (Corps) regulates the disposal of dredged or fill material into "waters of the United States" (33 CFR Parts 328 through 330). This requires project applicants to obtain authorization from the Corps prior to discharging dredged or fill materials into any water of the United States.

In the Federal Register "waters of the United States" are defined as, "...all interstate waters including interstate wetlands...intrastate lakes, rivers, streams (including intermittent streams), wetlands, [and] natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce..." (33 CFR Section 328.3).

Limits of Corps' jurisdiction:

(a) Territorial Seas. The limit of jurisdiction in the territorial seas is measured from the baseline in a seaward direction a distance of three nautical miles. (See 33 CFR 329.12)

(b) Tidal Waters of the United States. The landward limits of jurisdiction in tidal waters:

- (1) Extends to the mean high tide line, or
- (2) When adjacent non-tidal waters of the United States are present, the jurisdiction extends to the limits identified in paragraph (c) of this section.

(c) Non-Tidal Waters of the United States. The limits of jurisdiction in non-tidal waters:

- (1) In the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark, or

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- (2) When adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands.
- (3) When the water of the United States consists only of wetlands the jurisdiction extends to the limit of the wetland.

Section 404 jurisdiction in "other waters" such as lakes, ponds, and streams, extends to the upward limit of the ordinary high water mark (OHWM) or the upward extent of any adjacent wetland. The OHWM on a non-tidal water is:

- the "line on shore established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter or debris; or other appropriate means that consider the characteristics of the surrounding areas" (33 CFR Section 328.3[e]).

Wetlands are defined as: "...those areas that are inundated or saturated by surface or ground water at a frequency and duration to support a prevalence of vegetation adapted for life in saturated soil conditions" (33 CFR Section 328.8 [b]). Wetlands usually must possess hydrophytic vegetation (i.e., plants adapted to inundated or saturated conditions), wetland hydrology (e.g., topographic low areas, exposed water tables, stream channels), and hydric soils (i.e., soils that are periodically or permanently saturated, inundated or flooded) to be regulated by the Corps pursuant to Section 404 of the Clean Water Act.

#### 10.1.1.1 Significant Nexus of Tributaries

On December 2, 2008, the Corps and the Environmental Protection Agency (EPA) issued joint guidance on implementing the U.S. Supreme Court decision in the consolidated cases *Rapanos v. United States* and *Carabell v. United States* (herein referred to simply as "Rapanos") which address the jurisdiction over waters of the United States under the Clean Water Act. In this joint guidance these agencies provide guidance on where they will assert jurisdiction over waters of the U.S.

The EPA and Corps will assert jurisdiction over the following waters:

- Traditional navigable waters
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (for example, typically three months).
- Wetlands that directly abut such tributaries.

The agencies generally will not assert jurisdiction over the following features:

- Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow); and
- Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water.

The agencies will apply the significant nexus standard as follows:

- A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters; and
- Significant nexus includes consideration of hydrologic and ecologic factors.

#### 10.1.1.2 Isolated Areas Excluded from Section 404 Jurisdiction

In addition to areas that may be exempt from Section 404 jurisdiction, some isolated wetlands and waters may also be considered outside of Corps jurisdiction as a result of the Supreme Court's decision in *Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers* (531 U.S. 159 [2001]). Isolated wetlands and waters are those areas that do not have a surface or groundwater connection to, and are not adjacent to a navigable "Waters of the U.S.," and do not otherwise exhibit an interstate commerce connection.

#### 10.1.1.3 Permitting Corps Jurisdictional Areas

To remain in compliance with Section 404 of the Clean Water Act, project proponents and property owners (applicants) are required to be permitted by the Corps prior to discharging or otherwise impacting waters of the United States. In many cases, the Corps must visit a proposed project area (to conduct a "jurisdictional determination") to confirm the extent of area falling under their jurisdiction prior to authorizing any permit for that project area. Typically, at the time the jurisdictional determination is conducted, applicants (or their representative) will discuss the appropriate permit application that would be filed with the Corps for permitting the proposed impact(s) to "waters of the United States."

Pursuant to Section 404 of the Clean Water Act, the Corps normally provides two alternatives for permitting impacts to the type of "waters of the United States" found in the project area. The first alternative would be to use Nationwide Permit(s) (NWP). The second alternative is to apply to the Corps for an Individual Permit (33 CFR Section 235.5(2)(b)). The application process for Individual Permits is extensive and includes public interest review procedures (i.e., public notice and receipt of public comments) and must contain an "alternatives analysis" that is prepared pursuant to Section 404(b) of the Clean Water Act (33 U.S.C. 1344(b)). The alternatives analysis is also typically reviewed by the federal EPA and thus brings another resource agency into the permitting framework. Both the Corps and EPA take the initial viewpoint that there are practical alternatives to the proposed project if there would be impacts to waters of the U.S., and the proposed permitted action is not a water dependent project (e.g. a pier or a dredging project). Alternative analyses therefore must provide convincing reasons that the proposed permitted impacts are unavoidable. Individual Permits may be available for use in the event that discharges into regulated waters fail to meet conditions of NWP(s).

NWPs are a type of general permit administered by the Corps and issued on a nationwide basis that authorize minor activities that affect Corps regulated waters. Under NWP, if certain conditions are met, the specified activities can take place without the need for an individual or

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regional permit from the Corps (33 CFR, Section 235.5[c][2]). In order to use NWP(s), a project must meet 27 general nationwide permit conditions, and all specific conditions pertaining to the NWP being used (as presented at 33 CFR Section 330, Appendices A and C). It is also important to note that pursuant to 33 CFR Section 330.4(e), there may be special regional conditions or modifications to NWPs that could have relevance to individual proposed projects. Finally, pursuant to 33 CFR Section 330.6(a), Nationwide permittees may, and in some cases must, request from the Corps confirmation that an activity complies with the terms and conditions of the NWP intended for use (*i.e.*, must receive “verification” from the Corps).

Prior to finalizing design plans, the applicant needs to be aware that the Corps maintains a policy of “no net loss” of wetlands (waters of the United States) from project area development. Therefore, it is incumbent upon applicants that propose to impact Corps regulated areas to submit a mitigation plan that demonstrates that impacted regulated areas would be recreated (*i.e.*, impacts would be mitigated). Typically, the Corps requires mitigation to be “in-kind” (*i.e.*, if a stream channel would be filled, mitigation would include replacing it with a new stream channel), and at a minimum of a 1:1 replacement ratio (*i.e.*, one acre or fraction thereof of recreated for each acre or fraction thereof lost). Often a 2:1 replacement ratio is required. Usually the 2:1 ratio is met by recreation or enhancement of an equivalent amount of wetland as is impacted, in addition to a requirement to preserve an equivalent amount of wetland as is impacted by the project. In some cases, the Corps allows “out-of-kind” mitigation if the compensation site has greater value than the impacted site. For example, if project designs call for filling an intermittent drainage, mitigation should include recreating the same approximate jurisdictional area (same drainage widths) at an offsite location or on a set-aside portion of the project area. Finally, there are many Corps approved wetland mitigation banks where wetland mitigation credits can be purchased by applicants to meet mitigation compensation requirements. Mitigation banks have defined service areas and the Corps may only allow their use when a project would have minimal impacts to wetlands.

#### 10.1.2 APPLICABILITY TO THE PROPOSED PROJECT

A wetland delineation was conducted by M&A biologists Hope Kingma and Tim O’Donnell on July 16, 2013. M&A submitted a Request for a Preliminary Jurisdictional Determination on February 10, 2015. The Corps conducted a site verification visit on March 5, 2015. On April 1, 2015 the Corps confirmed jurisdiction over 0.42-acre of waters of the U.S. on the project site. The confirmed Preliminary Jurisdictional Determination Map is provided as Sheet 1, Attachment B.

The project as proposed will impact Clean Water Act defined Corps regulated areas. This would be a significant impact that would be mitigated to a level considered less than significant. Since the proposed project would result in less than 0.5-acre or 300 linear feet of impact, this project would qualify to use NWP 42 (Recreational Facilities). A permit will be required from the Corps for the proposed project, and appropriate mitigation measures will be implemented (see Impacts and Mitigation Section for further details).

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## 10.2 State Water Resources Control Board (SWRCB) / California Regional Water Quality Control Board (RWQCB)

### 10.2.1 SECTION 401 OF THE CLEAN WATER ACT

The SWRCB and RWQCB regulate activities in "waters of the State" (which includes wetlands) through Section 401 of the Clean Water Act. While the Corps administers a permitting program that authorizes impacts to waters of the United States, including wetlands and other waters, any Corps permit authorized for a proposed project would be inoperative unless it is a NWP that has been certified for use in California by the SWRCB, or if the RWQCB has issued a project specific certification of water quality. Certification of NWPs requires a finding by the SWRCB that the activities permitted by the NWP will not violate water quality standards individually or cumulatively over the term of the permit (the term is typically for five years). Certification must be consistent with the requirements of the federal Clean Water Act, the California Environmental Quality Act, the California Endangered Species Act, and the SWRCB's mandate to protect beneficial uses of waters of the State. Any denied (i.e., not certified) NWPs, and all Individual Corps permits, would require a project specific RWQCB certification of water quality.

### 10.2.2 APPLICABILITY TO THE PROPOSED PROJECT

The Corps would regulate impacts to seasonal wetlands within their jurisdiction pursuant to the Clean Water Act. Any Section 404 permit authorized by the Corps for the project would be inoperative without also obtaining authorization from the RWQCB pursuant to Section 401 of the Clean Water Act (i.e., without obtaining a certification of water quality). Since the RWQCB does not have a formal method for technically defining what constitutes waters of the state, M&A expect that the RWQCB should remain consistent with the Corps' determination. Therefore, if the Corps determines there are a specified number of acres of wetland or other waters within the project site boundaries, the RWQCB will likely concur.

Any impacts to waters of the State would have to be mitigated to the satisfaction of the RWQCB prior to the time this resource agency would issue a permit for impacts to such features. The RWQCB requirements for issuance of a "401 Permit" typically parallel the Corps requirements for permitting impacts to Corps regulated areas pursuant to Section 404 of the Clean Water Act. The RWQCB will likely require that the applicant prepare an alternatives analysis for the proposed project to demonstrate that the proposed impacts are unavoidable, and that the proposed project is the Least Environmentally Damaging Practicable Alternative (LEDPA).

Please refer to the applicability section of the Porter-Cologne Water Quality Control Act below for other applicable actions that may be imposed on the project by the RWQCB prior to the time any certification of water quality is authorized for the project.

### 10.2.3 PORTER-COLOGNE WATER QUALITY CONTROL ACT

The Porter-Cologne Water Quality Control Act, Water Code § 13260, requires that "any person discharging waste, or proposing to discharge waste, that could affect the waters of the State to file a report of discharge" with the RWQCB through an application for waste discharge (Water Code Section 13260(a)(1). The term "waters of the State" is defined as any surface water or groundwater, including saline waters, within the boundaries of the State (Water Code § 13050(e)). It should be noted that pursuant to the Porter-Cologne Water Quality Control Act, the

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RWQCB also regulates “isolated wetlands,” or those wetlands considered to be outside of the Corps’ jurisdiction pursuant to the SWANCC decision (see Corps Section above).

The RWQCB generally considers filling in waters of the State to constitute “pollution.” Pollution is defined as an alteration of the quality of the waters of the state by waste that unreasonably affects its beneficial uses (Water Code §13050(1)). The RWQCB litmus test for determining if a project should be regulated pursuant to the Porter-Cologne Water Quality Control Act is if the action could result in any “threat” to water quality.

The RWQCB requires complete pre- and post-development Best Management Practices Plan (BMPs) of any portion of the project site that is developed. This means that a water quality treatment plan for the pre- and post-developed project site must be prepared and implemented. Preconstruction requirements must be consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES). That is, a *Stormwater Pollution Prevention Plan* (SWPPP) must be developed prior to the time that a site is graded (see NPDES section below). In addition, a post construction BMPs plan, or a Stormwater Management Plan (SWMP) must be developed and incorporated into any site development plan.

#### 10.2.4 APPLICABILITY TO PROPOSED PROJECT

If the Corps determines there are waters of the U.S. on the project site, the RWQCB would also exert its jurisdiction over these areas pursuant to the Porter-Cologne Water Quality Control Act. Since any “threat” to water quality could conceivably be regulated pursuant to the Porter-Cologne Water Quality Control Act, care will required be when constructing the proposed project to be sure that adequate pre and post construction Best Management Practices Plan (BMPs) are incorporated into the project implementation plans.

It should also be noted that prior to issuance of any permit from the RWQCB this agency will require submittal of a Notice of Determination from the City of Burlingame indicating that the proposed project has completed a review conducted pursuant to CEQA. The pertinent sections of the CEQA document (typically the biology section) are often submitted to the RWQCB for review prior to the time this agency will issue a permit for a proposed project.

The project site does not have a stormwater drainage system. Development of the proposed project would require compliance with the City of Burlingame Municipal Code which requires that all storm drain systems shall be designed to remove stormwater from the area at a maximum rainfall intensity of 1 inch per hour and that properties shall be graded to provide stormwater removal at this rainfall rate (Municipal Code Section 26.16.090). The project will tie into the existing stormwater system owned and operated by the City of Burlingame.

#### 10.2.5 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

In 1972 the Clean Water Act was amended to state that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the Clean Water Act added Section 402(p) which establishes a framework for regulating municipal and industrial stormwater discharges under the NPDES Program.

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While federal regulations allow two permitting options for stormwater discharges (individual permits and General Permits), the SWRCB has elected to adopt only one statewide Construction General Permit at this time that will apply to all stormwater discharges associated with construction activity, except from those on Tribal Lands, in the Lake Tahoe Hydrologic Unit, and those performed by the California Department of Transportation (CalTrans).

The Construction General Permit requires all dischargers where construction activity disturbs greater than one acre of land or those sites less than one acre that are part of a common plan of development or sale that disturbs more than one acre of land surface to:

1. Develop and implement a Storm Water Pollution Prevention Plan (SWPPP) which specifies Best Management Practices (BMPs) that will prevent all construction pollutants from contacting stormwater with the intent of keeping all products of erosion from moving off site into receiving waters.
2. Eliminate or reduce non-stormwater discharges to storm sewer systems and other waters of the nation. Achieve quantitatively-defined (i.e., numeric) pollutant-specific discharge standards, and conduct much more rigorous monitoring based on the project's projected risk level.
3. Perform inspections of all BMPs.

This Construction General Permit is implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs). It is also enforceable through citizens' suits and represents a dramatic shift in the State Water Board's approach to regulating new and redevelopment sites, imposing new affirmative duties and fixed standards on builders and developers.

#### Types of Construction Activity Covered by the Construction General Permit

- clearing,
- grading,
- disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least one acre or more of total land area.

Construction activity that results in soil disturbances to a smaller area would still be subject to this General Permit if the construction activity is part of a larger common plan of development that encompasses greater than one acre of soil disturbance, or if there is significant water quality impairment resulting from the activity.

Construction activity does not include:

- routine maintenance to maintain original line and grade,
- hydraulic capacity, or original purpose of the facility,
- nor does it include emergency construction activities required to protect public health and safety.

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Project proponents (landowners) should confirm with the local RWQCB whether or not a particular routine maintenance activity is subject to this General Permit.

The State Water Board's new quantitative standards (Order 2009-0009-DWQ) take a two-tiered approach, depending on the risk level associated with the site in question. Exceedance of a benchmark Numeric Action Level ("NAL") measured in terms of pH and turbidity (a measure related to both the amount of sediment in and the velocity of site runoff) triggers an additional obligation to implement additional BMPs and corrective action to improve SWPPP performance. New minimum BMPs include Active Treatment Systems, which may be necessary where traditional erosion and sediment controls do not effectively control accelerated erosion; where site constraints inhibit the ability to construct a correctly-sized sediment basin; where clay and/or highly erosive soils are present; or where the site has very steep or long slope lengths.

In addition, the Construction General Permit includes several "post-construction" requirements. These requirements entail that site designs provide no net increase in overall site runoff and match pre-project hydrology by maintaining runoff volume and drainage concentrations. To achieve the required results where impervious surfaces such as roofs and paved surfaces are being increased, developers must implement non-structural off-setting BMPs, such as landform grading, site design BMPs, and distributed structural BMPs (bioretention cells, rain gardens, and rain cisterns). This "runoff reduction" approach is essentially a State Water Board-imposed regulatory requirement to implement Low Impact Development ("LID") design features. Volume that cannot be addressed using non-structural BMPs must be captured in structural BMPs that are approved by the RWQCB.

Improving the quality of site runoff is necessary to improve water quality in impaired and threatened streams, rivers, and lakes (that is, water bodies on the EPA's 303(d) list). The RWQCB prioritizes the water bodies on the 303(d) list according to potential impacts to beneficial uses. Beneficial uses can include a wide range of uses, such as nautical navigation; wildlife habitat; fish spawning and migration; commercial fishing, including shellfish harvesting; recreation, including swimming, surfing, fishing, boating, beachcombing, and more; water supply for domestic consumption or industrial processes; and groundwater recharge, among other uses. The State is required to develop action plans and establish Total Maximum Daily Loads (TMDLs) to improve water quality within these impaired water bodies. The TMDL is the quantity of a pollutant that can be safely assimilated by a water body without violating the applicable water quality standards.

The uncontrolled discharge of pollutants into impaired water bodies is considered particularly detrimental. According to the U.S. Environmental Protection Agency (USEPA), sediment is one of the most widespread pollutants contaminating U.S. rivers and streams. Sediment runoff from construction sites is 10 to 20 times greater than from agricultural lands and 1,000 to 2,000 times greater than from forest lands (EPA 2005). Consequently, the discharge of stormwater from large construction sites is regulated by the RWQCB under the federal CWA and California's Porter-Cologne Water Quality Control Act. Pursuant to the CWA, the RWQCB regulates construction discharges under the National Pollutant Discharge Elimination System (NPDES). The project sponsor of construction or other activities that disturb more than 1 acre of land must obtain

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coverage under NPDES Construction General Permit Order 2009-0009-DWQ, administered by the RWQCB<sup>1</sup>.

#### 10.2.6 APPLICABILITY TO THE PROPOSED PROJECT

The project applicant, before project approval, shall prepare the appropriate documents consistent with San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) and NPDES Provisions C.3 and C.6 requirements for post-construction treatment and control of storm water runoff from the site. Post-construction treatment measures must be designed, installed and hydraulically sized to treat a specified amount of runoff. Furthermore, the project plan submittals shall identify the owner and maintenance party responsible for the ongoing inspection and maintenance of the post-construction stormwater treatment measure in perpetuity. A maintenance agreement or other maintenance assurance must be submitted and approved by the City prior to the issuance of a final construction inspection.

### 10.3 RWQCB Municipal Storm Water Permitting Program

The Municipal Storm Water Permitting Program regulates storm water discharges from municipal separate storm sewer systems (MS4s). MS4 permits were issued in two phases. Under Phase I, which started in 1990, the RWQCBs have adopted NPDES storm water permits for medium (serving between 100,000 and 250,000 people) and large (serving 250,000 people) municipalities. Most of these permits are issued to a group of co-permittees encompassing an entire metropolitan area. These permits are reissued as the permits expire.

As part of Phase II, the SWRCB adopted a General Permit for the Discharge of Storm Water from Small MS4s (WQ Order No. 2003-0005-DWQ) to provide permit coverage for smaller municipalities, including non-traditional Small MS4s, which are governmental facilities such as military bases, public campuses, and prison and hospital complexes.

The MS4 permits require the discharger to develop and implement a Storm Water Management Plan/Program (SWMP) with the goal of reducing the discharge of pollutants to the maximum extent practicable (MEP). MEP is the performance standard specified in Section 402(p) of the Clean Water Act. The management programs specify what best management practices (BMPs) will be used to address certain program areas. The program areas include public education and outreach; illicit discharge detection and elimination; construction and post-construction; and good housekeeping for municipal operations. In general, medium and large municipalities are required to conduct chemical monitoring, though small municipalities are not.

#### 10.3.1 RWQCB PHASE II PROGRAM REQUIREMENTS

The Federal Clean Water Act (CWA) provides that National Pollutant Discharge Elimination System (NPDES) permits for Municipal Separate Storm Sewer Systems (MS4) must require municipalities to reduce pollutants in their storm water discharges to the “maximum extent

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<sup>1</sup> CGP Order 2009-0009-DWQ remains in effect, but has been amended by CGP Order 2009-0014-DWQ, effective February 14, 2011, and CGP Order 2009-0016-DWQ, effective July 17, 2012. The first amendment merely provided additional clarification to Order 2009-0009-DWQ, while Order 2009-0016-DWQ eliminated numeric effluent limits on pH and turbidity (except in the case of active treatment systems), in response to a legal challenge to the original order.

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practicable” (CWA §402(p)(3)(B).) MS4 permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods.” Under the Phase II Requirements implemented by the RWQCB, permittees that operate an MS4 that serves 50,000 people or more, or that serve an area of high growth (which is defined as more than 25% over 10 years), must comply with the Supplemental Provisions contained in Attachment 4 of the Small MS4 General Permit.

The General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems WQO No. 2003-0005-DWQ (Small MS4 General Permit) requires that dischargers develop and implement a Storm Water Management Program (SWMP) that describes the best management practices (BMPs), measurable goals, and time schedules of implementation as well as assigns responsibility of each task. Also, as required by the Small MS4 General Permit, the SWMP must be available for public review and must be approved by the appropriate RWQCB, or its Executive Officer (EO), prior to permit coverage commencing. This information is provided to facilitate the process of an MS4 obtaining Small MS4 General Permit coverage.

The General Permit requires all Permittees to develop and implement a SWMP designed to reduce the discharge of pollutants through their MS4s to the maximum extent practicable. The General Permit requires the SWMP to be fully implemented by the end of the permit term (or five years after designation for those designated subsequent to General Permit adoption).

Permittees must have a Post Construction SWMP for new developments and redevelopment projects. The maximum extent practicable standard involves applying BMPs that are effective in reducing the discharge of pollutants in storm water runoff. In discussing the maximum extent practicable standard, the State Board has said the following: “There must be a serious attempt to comply, and practical solutions may not be lightly rejected. If, from the list of BMPs, a permittee chooses only a few of the least expensive methods, it is likely that the maximum extent practicable has not been met. On the other hand, if a permittee employs all applicable BMPs, except those that are demonstrated to be not technically feasible in the locality, or whose cost would exceed any benefit to be derived, it would have met the standard.”

The MS4 municipality is required to develop and implement a program that provides local oversight of construction projects within the municipality to ensure that pollutants being discharged from construction sites into the MS4 are reduced. The program must include adopting an ordinance requiring storm water quality controls at construction sites, reviewing site plans, receiving comments from the public regarding the discharge of pollutants from construction sites, inspecting construction sites to ensure that pollutants are not being discharged in storm water runoff, and taking enforcement when necessary. In contrast, the General Construction Permit requires projects to have a site specific SWPPP and to implement BMPs specific to activities at the construction site. The General Construction Permit directly regulates landowners engaged in construction involving land disturbance of one acre or more.

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#### 10.3.2 APPLICABILITY TO THE PROPOSED PROJECT

The City of Burlingame is a MS4 permittee. As an MS4 permittee the City of Burlingame would be required to enforce implementation of a SWMP containing pre and post construction BMPs. Stormwater falling on impervious surfaces in the city park will need to be treated onsite prior to discharging into the City stormdrain system. Because development of the proposed project would include parking lots with more than 10,000 square feet of impervious surfaces, the project would be required to meet Provisions C.3 and C.6 of the Municipal Regional Stormwater Permit (MRP), Order No. R2-2009-0074 and Order No. R2-2011- 0083, NPDES No. CAS612008.

### 10.4 California Department of Fish and Wildlife Protections

#### 10.4.1 SECTION 1602 OF CALIFORNIA FISH AND GAME CODE

Pursuant to Section 1602 of the California Fish and Game Code, California Department of Fish and Wildlife (the Department) regulates activities that divert, obstruct, or alter stream flow, or substantially modify the bed, channel, or bank of a stream which the Department typically considers to include its riparian vegetation. Any proposed activity in a natural stream channel that would substantially adversely affect an existing fish and/or wildlife resource, would require entering into a Streambed Alteration Agreement (SBAA) with the Department prior to commencing with work in the stream. However, prior to authorizing such permits, the Department typically reviews an analysis of the expected biological impacts, any proposed mitigation plans that would be implemented to offset biological impacts and engineering and erosion control plans.

#### 10.4.2 APPLICABILITY TO PROPOSED PROJECT

There are no streams or drainages that would likely be regulated by the Department. Hence, a SBAA with the Department would not be necessary for this project.

## 11. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REGULATIONS

A CEQA lead agency must determine if a proposed activity constitutes a project requiring further review pursuant to the CEQA. Pursuant to CEQA, a lead agency would have to determine if there could be significant adverse impacts to the environment from a proposed project.

Typically, if within the city limits, the city would be the CEQA lead agency. If a discretionary permit (i.e., conditional use permit) would be required for a project (e.g. an occupancy permit must be issued), the lead agency typically must determine if there could be significant environmental impacts. This is usually accomplished by an "Initial Study." If there could be significant environmental impacts, the lead agency must determine an appropriate level of environmental review prior to approving and/or otherwise permitting the impacts. In some cases, there are "Categorical Exemptions" that apply to the proposed activity; thus the activity is exempt from CEQA. The Categorical Exemptions are provided in CEQA. There are also Statutory Exemptions in CEQA that must be investigated for any proposed project. If the project is not exempt from CEQA, the lowest level of review typically reserved for projects with no significant effects on the environment would be for the lead agency to prepare a "Negative Declaration." If a proposed project would have only minimal impacts that can be mitigated to a level of no significance pursuant to the CEQA, then a "Mitigated Negative Declaration" is typically prepared by the lead agency. Finally those projects that may have significant effects on the environment, or that have impacts that can't be mitigated to a level considered less than

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significant pursuant to the CEQA, typically must be reviewed via an Environmental Impact Report (EIR). All CEQA review documents are subject to public circulation, and comment periods.

Section 15380 of CEQA defines “endangered” species as those whose survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. “Rare” species are defined by CEQA as those who are in such low numbers that they could become endangered if their environment worsens; or the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered “threatened” as that term is used in FESA. The CEQA Guidelines also state that a project will normally have a significant effect on the environment if it will “substantially affect a rare or endangered species of animal or plant or the habitat of the species.” The significance of impacts to a species under CEQA, therefore, must be based on analyzing actual rarity and threat of extinction to that species despite its legal status or lack thereof.

#### 11.1.1 APPLICABILITY TO THE PROPOSED PROJECT

This report has been prepared as a Biology Section that is suitable for incorporation into the biology section of a CEQA review document such as a Mitigated Negative Declaration or Negative Declaration. This document addresses potential impacts to species that would be defined as endangered or rare pursuant to Section 15380 of the CEQA. This document is suitable for use by the CEQA lead agency, the City of Burlingame, for preparation of any CEQA review document prepared for the proposed project.

## 12. IMPACTS ANALYSIS

In this section we discuss potential impacts to sensitive biological resources including special-status animal species and waters of the United States and/or State. We follow each impact with a mitigation prescription that when implemented would reduce impacts to the greatest extent possible.

### 12.1 Significance Criteria

Below the criteria used in assessing impacts to Biological Resources is presented.

### 12.2 Significance Criteria

A significant impact is determined using CEQA and CEQA Guidelines. Pursuant to CEQA §21068, a significant effect on the environment means a substantial, or potentially substantial, adverse change in the environment. Pursuant to CEQA Guideline §15382, a significant effect on the environment is further defined as 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 historical or aesthetic significance. Other Federal, State, and local agencies’ considerations and regulations are also used in the evaluation of significance of proposed actions.

Direct and indirect adverse impacts to biological resources are classified as “significant,” “potentially significant,” or “less than significant.” Biological resources are broken down into

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four categories: vegetation, wildlife, threatened and endangered species, and regulated “waters of the United States” and/or stream channels.

#### 12.2.1 THRESHOLDS OF SIGNIFICANCE

##### 12.2.1.1 Plants, Wildlife, Waters

In accordance with Appendix G (Environmental Checklist Form) of the CEQA Guidelines, implementing the project would have a significant biological impact if it 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 US Fish and Wildlife Service.
- Have a substantial adverse effect on federally protected “wetlands” as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, 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.
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

##### 12.2.1.2 Waters of the United States and State.

Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), the U.S. Army Corps of Engineers (Corps) regulates the discharge of dredged or fill material into waters of the United States, which includes wetlands, as discussed in the bulleted item above, and also includes “other waters” (stream channels, rivers) (33 CFR Parts 328 through 330). Substantial impacts to Corps regulated areas on a project site would be considered a significant adverse impact. Similarly, pursuant to Section 401 of the Clean Water Act, and to the Porter-Cologne Water Quality Control Act, the RWQCB regulates impacts to waters of the state. Thus, substantial impacts to RWQCB regulated areas on a project site would also be considered a significant adverse impact.

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### 12.2.1.3 Stream Channels

Pursuant to Section 1602 of the California Fish and Game Code, CDFW regulates activities that divert, obstruct, or alter stream flow, or substantially modify the bed, channel, or bank of a stream which CDFW typically considers to include riparian vegetation. Any proposed activity that would result in substantial modifications to a natural stream channel would be considered a significant adverse impact.

## 13. IMPACT ASSESSMENT AND PROPOSED MITIGATION

### 13.1 Impact BIO-1. Development of the project would have a potentially significant impact on tree nesting raptors and other nesting birds (Potentially Significant)

All raptors (that is, birds of prey) and all migratory birds are protected under the Migratory Bird Treaty Act (50 CFR 10.13) and their eggs and young are protected under California Fish and Game Codes Sections 3503, 3503.5. Any project-related impacts to nesting and migratory bird species would be considered a significant adverse impact. Potential impacts from the proposed project could include disturbance to nesting birds, and possibly death of adults and/or young. No nesting raptors (birds of prey) have been identified on the proposed project site; however, no specific surveys for nesting raptors have been conducted. As such, in the absence of survey results, it must be concluded that impacts to nesting raptors and other bird species projected pursuant to the Migratory Bird Act from the proposed project would be **potentially significant pursuant to CEQA**. This impact could be mitigated to a level considered less than significant.

### 13.2 Mitigation Measure BIO-1. Nesting Raptors and Other Nesting Birds (excluding Burrowing Owl)

In order to avoid impacts to nesting raptors and other bird species projected pursuant to the Migratory Bird Act, nesting surveys shall be conducted prior to commencing with construction work if this work would commence between February 1<sup>st</sup> and August 31<sup>st</sup>. The nesting surveys shall include examination of all trees within 200 feet of the entire project site, not just trees slated for removal on the project site.

An early survey should be conducted in February or March if construction is proposed to commence between February 1<sup>st</sup> and June 1<sup>st</sup>. If construction has not commenced by the end of March, a second nesting survey shall be conducted in April/May, whichever month is within 30 days of the commencement of construction. If construction would commence after May but before September 1<sup>st</sup>, then the second survey shall be conducted within the 30 day period prior to site disturbance.

If nesting raptors are identified during the surveys, the dripline of the nest tree must be fenced with orange construction fencing (provided the tree is on the project site), and a 200-foot radius around the nest tree must be staked with bright orange lath or other suitable staking. If the tree is located off the project site, then the buffer shall be demarcated per above where the buffer occurs on the project site. *The size of the buffer may be altered if a qualified raptor biologist conducts behavioral observations and determines the nesting raptors are well acclimated to disturbance.* If this occurs, the raptor biologist shall prescribe a modified buffer that allows sufficient room to prevent undue disturbance/harassment to the nesting raptors. No construction or earth-moving activity shall occur within the established buffer until it is determined by a qualified raptor

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biologist that the young have fledged (that is, left the nest) and have attained sufficient flight skills to avoid project construction zones. This typically occurs by July 15th. This date may be earlier or later, and would have to be determined by a qualified raptor biologist. If a qualified biologist is not hired to watch the nesting raptors then the buffers shall be maintained in place through the month of August and work within the buffer can commence September 1<sup>st</sup>.

If common (that is, not special-status) birds for example, California towhee, western scrub jay, or acorn woodpeckers are identified nesting on or adjacent to the project site, a non-disturbance buffer of 50 feet should be established or as otherwise prescribed by a qualified ornithologist. The buffer should be demarcated with painted orange lath or via the installation of orange construction fencing. Disturbance within the buffer should be postponed until it is determined by a qualified ornithologist that the young have fledged and have attained sufficient flight skills to leave the area or that the nesting cycle has otherwise completed. Typically, most passerine birds in the region of the project site are expected to complete nesting by August 1<sup>st</sup>. However, many species can complete nesting by the end of June or in early to mid-July. Regardless, nesting buffers should be maintained until August 1<sup>st</sup> unless a qualified ornithologist determines that young have fledged and are independent of their nests at an earlier date. If buffers are removed prior to August 1<sup>st</sup>, the qualified biologist conducting the nesting surveys should prepare a report that provides details about the nesting outcome and the removal of buffers. This report should be submitted to the City of Burlingame prior to the time that nest protection buffers are removed if the date is before August 1st.

This mitigation measure would reduce impacts to nesting raptors and other nesting bird species to a level considered **less-than-significant pursuant to the CEQA**.

### **13.3 Impact BIO-2. Development of the project would have a potentially significant impact on Western Burrowing Owl**

The western burrowing owl is a California Species of Special Concern. This raptor (that is, bird of prey) is also protected under the Migratory Bird Treaty Act (50 CFR 10.13) and its nest, eggs, and young are protected under California Fish and Game Code Sections 3503, 3503.5. The closest known record for western burrowing owl is located 2.3 miles southeast of the project site in the City of San Mateo (CNDDDB Occurrence No. 1106). There is a low potential for this species to nest in the anthropogenic/ruderal habitat on the project site due to the overgrown vegetation and a noticeable absence of burrowing mammals (e.g. ground squirrels). M&A did not identify any suitable burrows within the project area during our surveys. M&A biologists have not observed this owl on or adjacent to the project site.

While western burrowing owls are not currently known to occur on the site, this is a mobile species that could move onto the project site in the future. Impacts to western burrowing owls from the proposed project could be **potentially significant pursuant to CEQA**. This impact could be mitigated to a level considered less than significant.

### **13.4 Mitigation Measure BIO-2. Western Burrowing Owl**

Based on the presence of this species in the project vicinity and the potential habitat found on the project site, a preconstruction survey for burrowing owls should be conducted 14 days prior or

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less to initiating ground disturbance. As burrowing owls may recolonize a site after only a few days, time lapses between project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance to ensure absence. If no owls are found during these surveys, no further regard for the burrowing owl would be necessary.

a. Burrowing owl surveys should be conducted by walking the entire project site. Pedestrian survey transects should be spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines should be 7 meters to 20 meters and should be reduced to account for differences in terrain, vegetation density, and ground surface visibility. Poor weather may affect the surveyor's ability to detect burrowing owls thus, avoid conducting surveys when wind speed is greater than 20 kilometers per hour and there is precipitation or dense fog. To avoid impacts to owls from surveyors, owls and/or occupied burrows should be avoided by a minimum of 50 meters (approximately 160 ft.) wherever practical to avoid flushing occupied burrows. Disturbance to occupied burrows should be avoided during all seasons.

b. If burrowing owls are detected on the site, the following restricted activity dates and setback distances are recommended per CDFW's Staff Report (2012).

- From April 1 through October 15, low disturbance and medium disturbance activities should have a 200 meter buffer while high disturbance activities should have a 500 meter buffer from occupied nests.
- From October 16 through March 31, low disturbance activities should have a 50 meter buffer, medium disturbance activities should have a 100 meter buffer, and high disturbance activities should have a 500 meter buffer from occupied nests.
- No earth-moving activities or other disturbance should occur within the aforementioned buffer zones of occupied burrows. These buffer zones should be fenced as well. If burrowing owls were found in the project area, a qualified biologist would also need to delineate the extent of burrowing owl habitat on the site.

Implementation of these mitigation measures would reduce potential impacts to burrowing owls to a level considered **less-than-significant pursuant to the CEQA**.

### **13.5 Impact BIO-3. Development of the proposed project would have a potentially significant impact on Waters of the United States and/or State (Significant)**

The proposed project will result in impacts to areas subject to Corps' and RWQCB jurisdiction pursuant to Sections 404 and 401 of the Clean Water Act, respectively. Such impacts would be regarded as **significant impacts**. Such impacts could be mitigated to a level considered less than significant.

### **13.6 Mitigation Measure BIO-3. Impacts to Waters of the United States and/or State**

Impacts to waters of the United States and/or State can be reduced to less-than-significant levels through various means, including avoidance, minimization of impacts, and mitigation compensation.

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Based on the Corps confirmed map, jurisdictional areas will be avoided by the project where possible. Because full avoidance of waters of the United States is probably not possible, potential impacts shall be minimized to the extent feasible through changes to project design. Impacts shall also be minimized by the use of Best Management Practices to protect preserved features and ensure water quality. These practices can include installing orange construction fencing, hay or gravel waddles, and other protective measures. During project construction, a biological monitor shall be on-site to monitor the integrity of waters and prevent impacts to the adjacent San Francisco Bay.

The proposed project will fill all the wetlands mapped on this project site. For those wetland areas that cannot be avoided, permits from the Corps and RWQCB shall be acquired that allows the removal of specified wetlands. An Alternative Analysis will be prepared as part of the permit applications for the RWQCB and the Corps. The City of Burlingame proposes to purchase wetland mitigation credits from the San Francisco Bay Wetland Mitigation Bank to satisfy the wetland mitigation requirements for this project.

Implementation of the measures described above would reduce potentially significant impacts to waters of the United States/State to a level considered **less-than-significant pursuant to the CEQA**.

### **13.7 Impact BIO-4. Development of the proposed project would have a potentially significant impact on BCDC Jurisdiction (Significant)**

The project site is within BCDC jurisdiction. A portion of the park project will be within 100 feet of the Bay shoreline. Impacts to BCDC jurisdiction would be regarded as a **significant impact**. This impact could be mitigated to a level considered less than significant.

### **13.8 Mitigation Measure BIO-3. Impact on BCDC Jurisdiction**

A BCDC permit application will be required for this project. The project is in compliance with BCDC policies since the proposed project will improve public access to the Bay, and will incorporate mitigation requirements to offset the adverse environmental impacts of the project.

This mitigation measures would reduce impacts to BCDC jurisdiction to a level considered **less-than-significant pursuant to the CEQA**.

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#### 14. LITERATURE CITED

Baldwin D.H, Goldman D.H., Keil D.J., Patterson R, Rosatti T.J., Wilken D.H. (ed.). 2012. The Jepson Manual Vascular Plants of California: Second Edition. University of California Press, Berkeley. 1568 pps.

California Department of Fish and Game. 1995. Staff report on burrowing owl mitigation. September 25, 1995. 8 pages and an attachment.

City of Burlingame. 2012. Burlingame Bayfront specific plan. As approved by the Burlingame city council. Resolution No. 26-2004 and as amended by the city council. Resolution No. 58-2006. August 21, 2006. Resolution No. 44-2012. June 18, 2012.

City of Burlingame. 1973. General Plan. Conservation Element. Adopted August 6, 1973 by Resolution # 58-73. <http://www.burlingame.org/index.aspx?page=151>  
 CNDDDB (California Natural Diversity Data Base). 2013. RareFind 3.2. Computer printout for special-status species within a 5-mile radius of the project site. California Natural Heritage Division, California Department of Fish and Game, Sacramento, CA.

CNPS (California Native Plant Society). 2001. Inventory of rare and endangered plants of California (sixth edition). Rare plant scientific advisory committee, David P. Tibor, convening editor. California Native Plant Society. Sacramento, CA. x+338 pps.

Environmental Laboratory. 1987. U.S. Army Corps of Engineers Wetlands Delineation Manual. Department of the Army, Waterways Experiment Station, Vicksburg, MS.

Jepson Interchange Project. INTERNET: <http://ucjeps.berkeley.edu/interchange/index.html>

NRCS. 2013. Web Soil Survey. INTERNET: <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

Shuford, W.D. 1993. The Marin County Breeding Bird Atlas: A Distributional and Natural History of Coastal California Birds. California Avifauna Series 1. Bushtit Books, Bolinas, California.

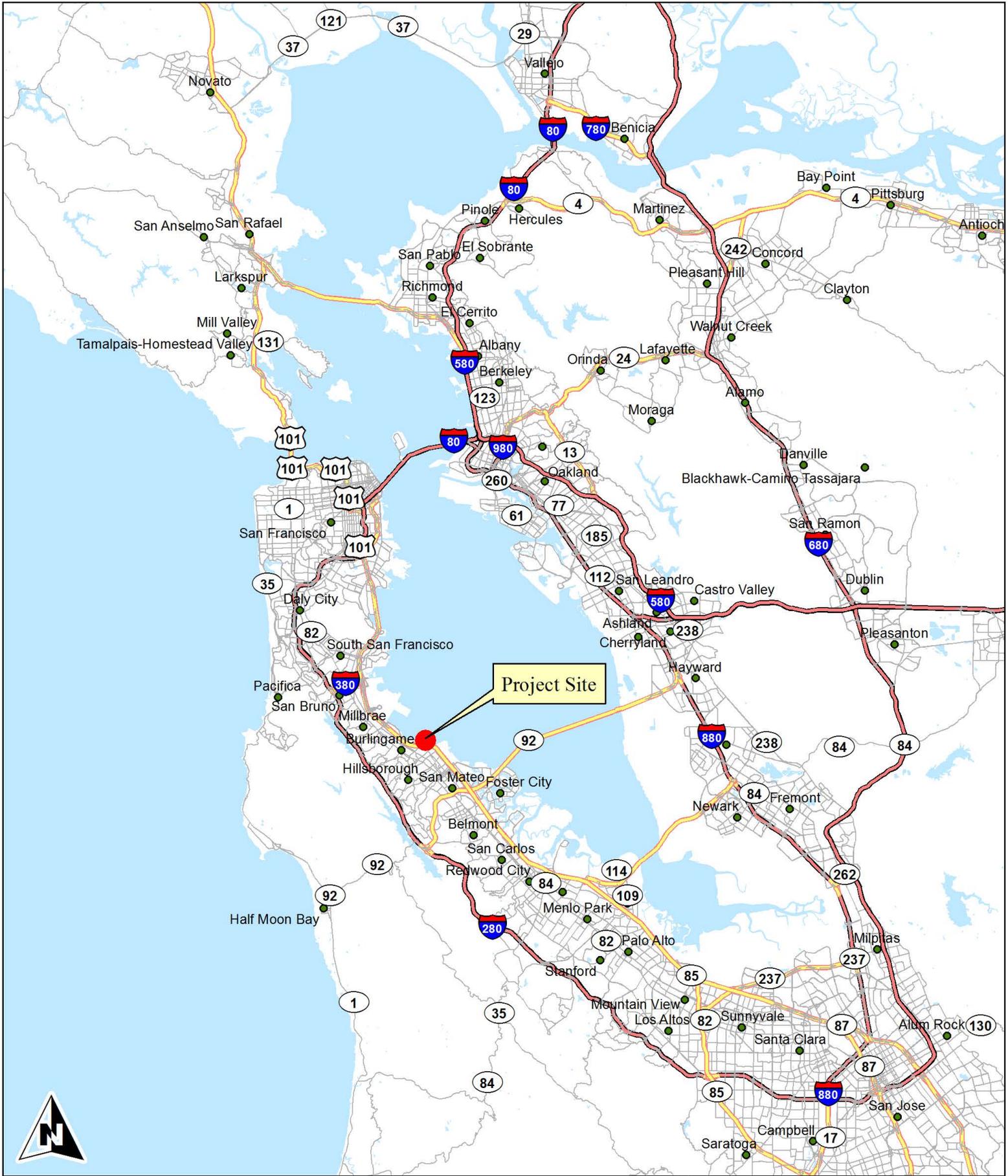
U.S. Army Corps of Engineers. 1987. Corps of Engineers wetlands delineation manual. Waterways Experiment Station. Technical Report, Y-87-1. Vicksburg, Mississippi. 100 pp.

U.S. Army Corps of Engineers. 2008. Regional supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2). Ed. J.S. Wakeley, R.W. Lichvar, and C.V. Noble. ERDC/EL TR-06-16. Vicksburg, MS: U.S. Army Engineer Research and Development Center. September 2008.

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Bayview Park Project  
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U.S. Army Corps of Engineers. 2001. Minimum Standards for Acceptance for Preliminary Delineations. Regulatory Branch of the Sacramento District, U.S. Army Corps of Engineers. November 30, 2001.

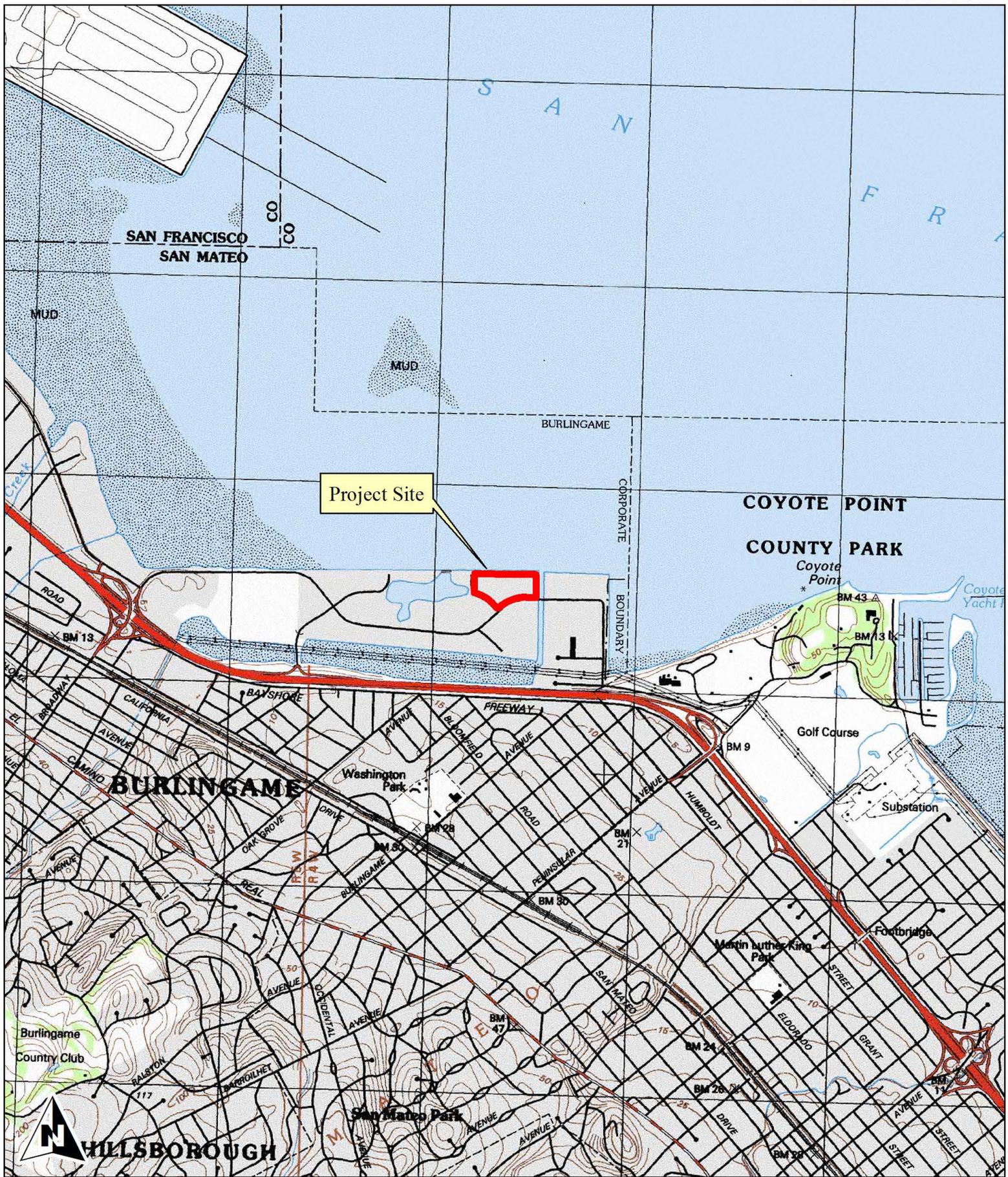
U.S. Army Corps of Engineers. 2012. Final Map and Drawing Standards for the South Pacific Division Regulatory Program, U.S. Army Corps of Engineers Regulatory Program in South Pacific Division. August 6, 2012.



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Figure 1. Bayview Park  
Project Site Regional Map  
City of Burlingame, California

County: San Mateo  
Map Preparation Date: June 28, 2013



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Figure 2. Bayview Park  
Project Site Location Map  
City of Burlingame, California

7.5-Minute San Mateo quadrangle  
Topography Source: <http://gis.ca.gov>  
Map Preparation Date: June 28, 2013



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0 35 70 140 210 280 350 Feet

Figure 3. Aerial Photograph of the  
Bayview Park Project Site  
City of Burlingame, California

Aerial Photographic Source: ESRI  
Map Preparation Date: December 22, 2014



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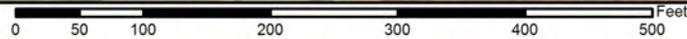
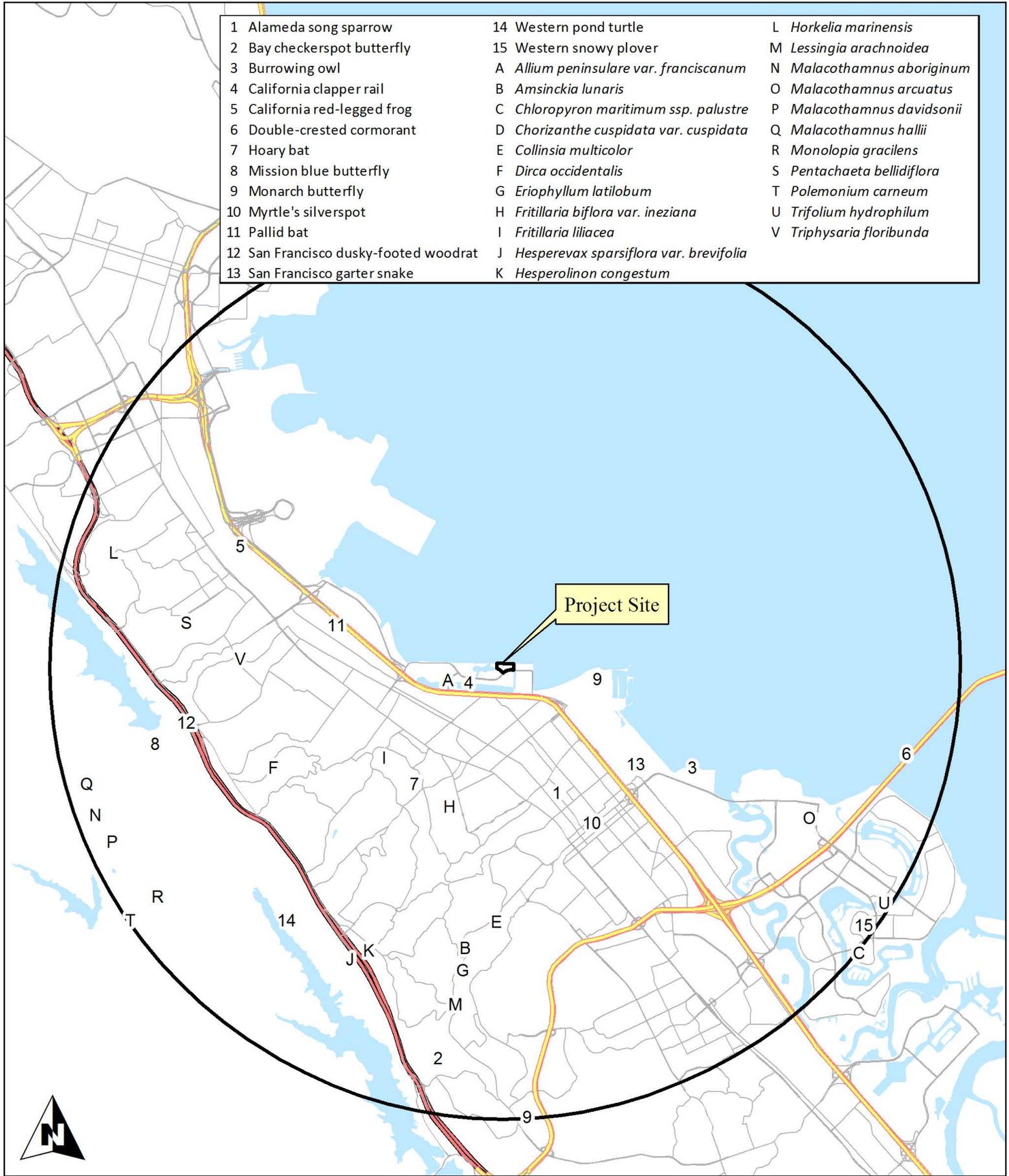


Figure 4. Soils of the  
 Bayview Park Project Site  
 City of Burlingame, California

Soils Data Source  
<http://soildatamart.nrcs.usda.gov>  
 Aerial Photographic Source: ESRI  
 Map Preparation Date: January 20, 2015

- |                                       |  |                                   |
|---------------------------------------|--|-----------------------------------|
| 1 Alameda song sparrow                | 14 Western pond turtle                                 | L <i>Horkelia marinensis</i>      |
| 2 Bay checkerspot butterfly           | 15 Western snowy plover                                | M <i>Lessingia arachnoidea</i>    |
| 3 Burrowing owl                       | A <i>Allium peninsulare</i> var. <i>franciscanum</i>   | N <i>Malacothamnus aboriginum</i> |
| 4 California clapper rail             | B <i>Amsinckia lunaris</i>                             | O <i>Malacothamnus arcuatus</i>   |
| 5 California red-legged frog          | C <i>Chloropyron maritimum</i> ssp. <i>palustre</i>    | P <i>Malacothamnus davidsonii</i> |
| 6 Double-crested cormorant            | D <i>Chorizanthe cuspidata</i> var. <i>cuspidata</i>   | Q <i>Malacothamnus hallii</i>     |
| 7 Hoary bat                           | E <i>Collinsia multicolor</i>                          | R <i>Monolopia gracilens</i>      |
| 8 Mission blue butterfly              | F <i>Dirca occidentalis</i>                            | S <i>Pentachaeta bellidiflora</i> |
| 9 Monarch butterfly                   | G <i>Eriophyllum latilobum</i>                         | T <i>Polemonium carneum</i>       |
| 10 Myrtle's silverspot                | H <i>Fritillaria biflora</i> var. <i>ineziana</i>      | U <i>Trifolium hydrophilum</i>    |
| 11 Pallid bat                         | I <i>Fritillaria liliacea</i>                          | V <i>Triphysaria floribunda</i>   |
| 12 San Francisco dusky-footed woodrat | J <i>Hesperovax sparsiflora</i> var. <i>brevifolia</i> |                                   |
| 13 San Francisco garter snake         | K <i>Hesperolinon congestum</i>                        |                                   |



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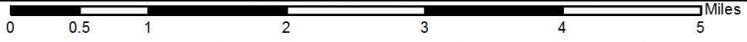


Figure 5. Closest Known Special-Status Species within 5 Miles of the Bayview Park Project Site

Map Preparation Date:  
 December 23, 2014  
 — 5-Mile Radius  
 Source: CDFW,  
 California Natural Diversity Data Base, 2013

**Table 1**  
**Plant Species Observed at the Bayview Park Project Site**

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**Angiosperms - Dicots**

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**Apiaceae**

\**Foeniculum vulgare* Sweet fennel

**Asteraceae**

\**Cotula coronopifolia* Brass-buttons  
 \**Helminthotheca echioides* Bristly ox-tongue  
 \**Lactuca serriola* Prickly lettuce

**Brassicaceae**

\**Lepidium latifolium* Broadleaf pepperweed  
 \**Raphanus sativus* Wild radish

**Chenopodiaceae**

\**Atriplex prostrata* Hastate orache

**Convolvulaceae**

\**Convolvulus arvensis* Bindweed

**Fabaceae**

\**Cytisus scoparius* Scotch broom  
 \**Genista monspessulana* French broom  
 \**Lotus corniculatus* Birdfoot trefoil  
 \**Trifolium hirtum* Rose clover  
 \**Vicia sativa* Common vetch

**Myrtaceae**

\**Eucalyptus conferruminata* Spider gum

**Orobanchaceae**

\**Bellardia trixago* Mediterranean linseed

**Plantaginaceae**

\**Plantago coronopus* Cut-leaf plantain  
 \**Plantago lanceolata* English plantain

**Polygonaceae**

\**Rumex crispus* Curly dock

**Rosaceae**

*Heteromeles arbutifolia* Toyon  
 \**Rubus armeniacus* Himalayan blackberry

**Salicaceae**

*Salix lasiolepis* Arroyo willow

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**Angiosperms - Monocots**

---

**Poaceae**

\**Avena barbata* Slender wild oat  
 \**Bromus diandrus* Ripgut grass  
 \**Cortaderia selloana* Pampas grass

**Table 1**

**Plant Species Observed at the Bayview Park Project Site**

---

<i>*Cynodon dactylon</i>	Bermudagrass
<i>*Dactylis glomerata</i>	Orchard grass
<i>Distichlis spicata</i>	Saltgrass
<i>Elymus triticoides subsp. triticoides</i>	Creeping wildrye
<i>*Festuca bromoides</i>	Brome fescue
<i>*Festuca perennis</i>	Italian ryegrass
<i>*Hordeum marinum subsp. gussoneanum</i>	Mediterranean barley
<i>*Phalaris aquatica</i>	Harding grass
<i>*Polypogon monspeliensis</i>	Annual beard grass
<i>*Stipa miliacea var. miliacea</i>	Smilo grass

---

\* Indicates a non-native species

**Table 2**  
**Wildlife Species Observed at the Bayview Park Project**

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**Reptiles**

Western fence lizard	<i>Sceloporus occidentalis</i>
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**Birds**

Turkey vulture	<i>Cathartes aura</i>
California gull	<i>Larus californicus</i>
Rock pigeon	<i>Columba livia</i>
Mourning dove	<i>Zenaida macroura</i>
Anna's hummingbird	<i>Calypte anna</i>
Northern flicker	<i>Colaptes auratus</i>
Black phoebe	<i>Sayornis nigricans</i>
American crow	<i>Corvus brachyrhynchos</i>
Chestnut-backed chickadee	<i>Poecile rufescens</i>
Bushtit	<i>Psaltriparus minimus</i>
Bewick's wren	<i>Thryomanes bewickii</i>
European starling	<i>Sturnus vulgaris</i>
Western meadowlark	<i>Sturnella neglecta</i>
House finch	<i>Carpodacus mexicanus</i>
Lesser goldfinch	<i>Spinus psaltria</i>
House sparrow	<i>Passer domesticus</i>

Table 3

## Special-Status Plant Species Known to Occur Within 5 Miles of the Bayview Park Project Site

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
<b>Alliaceae</b>					
<i>Allium peninsulare franciscanum</i> Franciscan onion	Fed: - State: - CNPS: Rank 1B	May-June	Cismontane woodland; valley and foothill grassland [clay, often serpentine]. 100- 300 m.	Closest record located 0.5 miles west of the project site (Occurance No.6)	None. No suitable habitat on the project site.
<b>Asteraceae</b>					
<i>Eriophyllum latilobum</i> San Mateo woolly sunflower	Fed: FPE State: CE CNPS: Rank 1B	May-June	Cismontane woodland (serpentine, often on roadcuts).	Closest record located 2.9 miles south of the project site (Occurance No. 1)	None. No suitable habitat on the project site.
<i>Hesperevax sparsiflora brevifolia</i> Short-leaved evax	Fed: - State: - CNPS: Rank 1B.2	April-June	Coastal bluff scrub; coastal dunes.	Closest record located 3.5 miles south of the project site (Occurance No. 30)	None. No suitable habitat on the project site..
<i>Lessingia arachnoidea</i> Crystal Springs lessingia	Fed: - State: - CNPS: Rank 1B	July-October	Cismontane woodland; coastal scrub; valley and foothill grassland; [serpentine, often roadsides].	Closest record located 3.7 miles south of the project site (Occurance No. 5)	None. No suitable habitat on the project site..
<i>Monolopia gracilens</i> Small-flowered monolopia	Fed: State: CNPS: Rank 1B.2	March-July	Coniferous and broadleaved upland forest openings, chaparral openings, and serpentine valley and foothill grassland. Elevation 100- 1200 m.	Closest record located 4.6 miles southwest of the project site (Occurance No. 40)	None. No suitable habitat on the project site..
<i>Pentachaeta bellidiflora</i> White-rayed pentachaeta	Fed: FE State: CE CNPS: Rank 1B	March-May	Valley and foothill grassland (often serpentine).	Closest record located 3.4 miles west of the project site (Occurance No. 2)	None. No suitable habitat on the project site. Site is too disturbed to support this species.

**Table 3****Special-Status Plant Species Known to Occur Within 5 Miles of the Bayview Park Project Site**

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
<b>Boraginaceae</b>					
<i>Amsinckia lunaris</i> Bent-flowered fiddleneck	Fed: - State: - CNPS: Rank 1B.2	March-June	Cismontane woodland, Valley and foothill grassland	Closest record located 3.0 miles south of the project site (Occurrence No. 5)	None. No suitable habitat on the project site.
<b>Fabaceae</b>					
<i>Trifolium hydrophilum</i> Saline clover	Fed: - State: - CNPS: Rank 1B.2	April-June	Marshes and swamps; valley and foothill grassland (mesic, alkaline); vernal pools. 0-300 m.	Closest record located 5 miles southeast of the project site (Occurance No. 8)	None. No suitable habitat on the project site. Site is too disturbed to support this species.
<b>Liliaceae</b>					
<i>Fritillaria biflora ineziana</i> Hillsborough chocolate lily	Fed: - State: - CNPS: Rank 1B	March-April	Cismontane woodland; valley and foothill grassland; [serpentinite].	Closest record located 1.5 miles south of the project site (Occurance No. 1)	None. No suitable serpentinite habitat on the project site.
<i>Fritillaria liliacea</i> Fragrant fritillary	Fed: - State: - CNPS: Rank 1B.2	February-April	Coastal prairie; coastal scrub; valley and foothill grassland; [often serpentinite].	Closest record located 1.7 miles south of the project site (Occurance No. 59)	None. No suitable habitat on the project site.
<b>Linaceae</b>					
<i>Hesperolinon congestum</i> Marin dwarf flax	Fed: FT State: CT CNPS: Rank 1B	April-July	Chaparral; valley and foothill woodland; [serpentinite].	Closest record located 3.4 miles south of the project site (Occurance No. 1)	None. No suitable habitat on the project site.

**Table 3****Special-Status Plant Species Known to Occur Within 5 Miles of the Bayview Park Project Site**

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
<b>Malvaceae</b>					
<i>Malacothamnus aboriginum</i> Indian Valley bush mallow	Fed: - State: - CNPS: Rank 1B	April-October	Chaparral; cismontane woodland; [rocky].	Closest record located 4.8 miles west of the project site (Occurance No. 26)	None. No suitable habitat on the project site..
<i>Malacothamnus arcuatus</i> Arcuate bush mallow	Fed: - State: - CNPS: Rank 4	April-July	Chaparral.	Closest record located 4.5 miles southwest of the project site (Occurance No. 32)	None. No suitable habitat on the project site.
<i>Malacothamnus davidsonii</i> Davidson's bush mallow	Fed: - State: - CNPS: Rank 1B	June-September	Chaparral; coastal scrub; riparian woodland.	Closest record located 4.8 miles west of the project site (Occurance No. 40)	None. No suitable habitat on the project site.
<i>Malacothamnus hallii</i> Hall's bush mallow	Fed: - State: - CNPS: Rank 1B.2	May-September	Chaparral.	Closest record located 4.8 miles west of the project site (Occurance No. 24)	None. No suitable habitat in the project vicinity.
<b>Orobanchaceae</b>					
<i>Chloropyron maritimum palustre</i> Point Reyes salty bird's-beak	Fed: - State: - CNPS: Rank 1B.2	June-October	Marshes and swamsp (coastal salt).	Closest record located 4.9 miles southeast of the project site (Occurance No. 62)	None. No suitable habitat on the project site.
<i>Triphysaria floribunda</i> San Francisco Owl's-clover	Fed: - State: - CNPS: Rank 1B	April-May	Coastal prairie, Valley and foothill grassland; (serpentine)	Closest record located 2.8 miles west of the project site (Occurance No. 16)	None. No suitable serpentinite habitat on the project site.

**Table 3****Special-Status Plant Species Known to Occur Within 5 Miles of the Bayview Park Project Site**

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
<b>Plantaginaceae</b>					
<i>Collinsia multicolor</i> San Francisco collinsia	Fed: - State: - CNPS: Rank 1B	March-May	Closed-cone coniferous forest; coastal scrub	Closest record located 2.8 miles south of the project site (Occurance No. 11)	None. No suitable habitat on the project site.
<b>Polemoniaceae</b>					
<i>Polemonium carneum</i> Oregon polemonium	Fed: - State: - CNPS: Rank 2	April-September	Coastal prairie; coastal scrub; lower montane coniferous forest.	Closest record located 5 miles southwest of the project site (Occurance No. 2)	None. No suitable habitat on the project site.
<b>Polygonaceae</b>					
<i>Chorizanthe cuspidata cuspidata</i> San Francisco Bay spineflower	Fed: - State: - CNPS: Rank 1B	April-July	Coastal bluff scrub; coastal dunes; coastal prairie; coastal scrub [sandy]	Closest record located 4.9 miles south of the project site (Occurance No. 1)	None. No suitable habitat on the project site.
<b>Rosaceae</b>					
<i>Horkelia marinensis</i> Point Reyes horkelia	Fed: - State: - CNPS: Rank 1B.2	May-September	Coastal dunes; coastal prairie; coastal scrub.	Closest record located 4.3 miles west of the project site (Occurance No. 26)	None. No suitable habitat on the project site.
<b>Thymelaeaceae</b>					
<i>Dirca occidentalis</i> Western leatherwood	Fed: - State: - CNPS: Rank 1B.2	January-April	Chaparral; riparian, broadleaf, and coniferous woodlands and forests; [mesic locations].	Closest record located 3.5 miles south of the project site (Occurance No. 52)	None. No suitable habitat on the project site.

**Table 3**

**Special-Status Plant Species Known to Occur Within 5 Miles of the Bayview Park Project Site**

Family	Taxon	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
Common Name						

**\*Status**

Federal:

- FE - Federal Endangered
- FT - Federal Threatened
- FPE - Federal Proposed Endangered
- FPT - Federal Proposed Threatened
- FC - Federal Candidate

State:

- CE - California Endangered
- CT - California Threatened
- CR - California Rare
- CC - California Candidate
- CSC - California Species of Special Concern

CNPS Continued:

CNPS:

- Rank 1A - Presumed extinct in California
- Rank 1B - Plants rare, threatened, or endangered in California and elsewhere
- Rank 1B.1 - Seriously endangered in California (over 80% occurrences threatened/ high degree and immediacy of threat)
- Rank 1B.2 - Fairly endangered in California (20-80% occurrences threatened)
- Rank 1B.3 - Not very endangered in California (<20% of occurrences threatened or no current threats known)

- Rank 2 - Plants rare, threatened, or endangered in California, but more common elsewhere
- Rank 2A - Extirpated in California, common elsewhere
- Rank 2B.1 - Seriously endangered in California, but more common elsewhere
- Rank 2B.2 - Fairly endangered in California, but more common elsewhere
- Rank 2B.3 - Not very endangered in California, but more common elsewhere
- Rank 3 - Plants about which we need more information (Review List)
- Rank 3.1 - Plants about which we need more information (Review List)  
Seriously endangered in California
- Rank 3.2 - Plants about which we need more information (Review List)  
Fairly endangered in California
- Rank 4 - Plants of limited distribution - a watch list

**Table 4**  
**Special-Status Wildlife Species Known to Occur Within 5 Miles of the Bayview Park Project Site**

Species	*Status	Habitat	Closest Locations	Probability on Project Site
<b>Insects</b>				
Monarch butterfly <i>Danaus plexippus</i>	Fed: - State: - Other: *	Winters in tall trees along the coast. Prefers eucalyptus, Monterey pine, and Monterey cypress.	Closest record located 0.9 miles east of the project site (Occurrence No. 56)	None. The few eucalyptus that line the southern boundary of the project site do not constitute a grove as this species requires for roosting. Implementation of the project is not expected to affect this species.
Bay checkerspot butterfly <i>Euphydryas editha bayensis</i>	Fed: FT State: - Other:	Found in serpentine grasslands around San Francisco Bay. Dwarf plantain ( <i>Plantago erecta</i> ) is the larvae's host plant. Owl's-clover ( <i>Castilleja</i> spp.) is a nectar source.	Closest record located 4.1 miles south of the project site (Occurrence No. 3)	None. The host plant does not occur on the project site. Implementation of the project is not expected to affect this species.
Mission blue butterfly <i>Icaricia icariodes missionensis</i>	Fed: FE State: - Other:	Found in the grasslands of the San Francisco Peninsula. Various perennial lupines are the host plant.	Closest record located 3.7 miles west of the project site (Occurrence No. 11)	None. The host plant, perennial lupines do not occur on the project site. Implementation of the project is not expected to affect this species.
Myrtle's silverspot butterfly <i>Speyeria zerene myrtleae</i>	Fed: FE State: - Other:	Inhabits coastal terrace prairie, coastal bluff scrub, and associated non-native grassland habitats in w. Marin and SW Sonoma Counties. Extirpated from San Mateo County. <i>Viola adunca</i> is the larval food plant.	Closest record located 1.5 miles south of the project site (Occurrence No. 12)	None. The host plant does not occur on the project site. Implementation of the project is not expected to affect this species.
<b>Amphibians</b>				
California red-legged frog <i>Rana draytonii</i>	Fed: FT State: CSC Other:	Occurs in lowlands and foothills in deeper pools and streams, usually with emergent wetland vegetation. Requires 11-20 weeks of permanent water for larval development.	Closest record located 3.2 miles southwest of the project site (Occurrence No. 269)	None. No suitable habitat present on or adjacent to the project site to support this species. Implementation of the project is not expected to affect this species.

**Table 4**  
**Special-Status Wildlife Species Known to Occur Within 5 Miles of the Bayview Park Project Site**

Species	*Status	Habitat	Closest Locations	Probability on Project Site
<b>Reptiles</b>				
Western pond turtle <i>Emys marmorata</i>	Fed: -- State: CSC Other:	Inhabits ponds, marshes, rivers, streams, and irrigation ditches with aquatic vegetation. Needs suitable basking sites and upland habitat for egg laying. Occurs in the Central Valley and Contra Costa County.	Closest record located 3.6 miles southwest of the project site (Occurrence No. 350)	None. No suitable habitat on or near the project site. Implementation of the project is not expected to affect this species.
San Francisco garter snake <i>Thamnophis sirtalis tetrataenia</i>	Fed: FE State: CE Other: *	Found in freshwater marshes, ponds, and slow-moving streams on the San Francisco peninsula. Prefers dense cover and water depths of at least one foot.	Occurs within San Mateo County.	None. No suitable habitat on or near the project site. Implementation of the project is not expected to affect this species.
<b>Birds</b>				
Double-crested cormorant <i>Phalacrocorax auritus</i>	Fed: - State: WL Other:	Colonial nester on coastal cliffs on in tall trees along river and lake margins in the interior of the state. Nest along coast on sequestered islets, usually on ground with sloping surface, or in tall trees along lake margins.	Closest record located 4.8 miles west of the project site (Occurrence No. 40)	None. No suitable habitat or rookeries on or near the project site. Implementation of the project is not expected to affect this species.
American peregrine falcon <i>Falco peregrinus anatum</i>	Fed: - State: CE Other: *	Nests on high cliffs. Also nests on human-made structures. Nest consists of a scrape on a depression or ledge in an open site.	Occurs within San Mateo County	None. No suitable habitat on or near the project site. Implementation of the project is not expected to affect this species.
California clapper rail <i>Rallus longirostris obsoletus</i>	Fed: FE State: CE Other: *	Inhabits salt water and brackish marshes with tidal sloughs in San Francisco Bay. Prefers dense pickleweed for cover, but forages for invertebrates along mud-bottomed sloughs.	Closest record located 0.5 miles west of the project site (Occurrence No. 43)	None. The project site is highly disturbed. No tidal marsh occurs on or adjacent to the project site. Implementation of the project is not expected to affect this species.

**Table 4**  
**Special-Status Wildlife Species Known to Occur Within 5 Miles of the Bayview Park Project Site**

Species	*Status	Habitat	Closest Locations	Probability on Project Site
Western snowy plover <i>Charadrius nivosus nivosus</i>	Fed: FT State: CSC Other:	Prefers sandy beaches, salt pond levees, and shores of large alkali lakes. Requires sandy, gravelly, or friable soil for nesting.	Closest record located 4.6 miles southwest of the project site (Occurrence No. 40)	None. No suitable habitat on or near the project site. Implementation of the project is not expected to affect this species.
Western burrowing owl <i>Athene cucularia hypugaea</i>	Fed: -- State: CSC Other:	Found in open, dry annual or perennial grasslands, deserts and scrublands characterized by low-growing vegetation. Subterranean nester, dependent upon burrowing mammals, most notably, the California ground squirrel.	Closest record located 2.3 miles southeast of the project site (Occurrence No. 1106)	Low. Not known to occur on the project site. Unlikely to nest on the project site due to absence of mammal burrows. Regardless, preconstruction surveys will be conducted.
Alameda song sparrow <i>Melospiza melodia pusillula</i>	Fed: -- State: CSC Other:	Found in Salicornia marshes in the southern arm of San Francisco Bay. Nests in low Grindelia bushes and in Salicornia.	Closest record located 1.3 miles south of the project site (Occurrence No. 27)	None. No suitable habitat on the project site. Implementation of the project is not expected to affect this species.
<b>Mammals</b>				
Pallid bat <i>Antrozous pallidus</i>	Fed: - State: CSC Other:	Occurs in deserts, grasslands, shrublands, woodlands, and forests. Most common in dry habitats with rocky areas for roosting. Roosts in caves, crevices, mines, and occasionally hollow trees. Night roosts in open areas such as porches and open buildings.	Closest record located 1.8 miles west of the project site (Occurrence No. 294)	Low. Unlikely to roost on the project site. No maternity sites likely. Regardless, preconstruction surveys will be conducted.
San Francisco dusky-footed woodrat <i>Neotoma fuscipes annectens</i>	Fed: -- State: CSC Other:	Inhabits forests, woodlands, and chaparral with a moderate canopy and moderate to dense understory. Uses shredded grass, leaves, and other material for nests.	Closest record located 3.5 miles west of the project site (Occurrence No. 10)	None. No suitable habitat on or near the project site. Implementation of the project is not expected to affect this species.

**Table 4**

**Special-Status Wildlife Species Known to Occur Within 5 Miles of the Bayview Park Project Site**

Species	*Status	Habitat	Closest Locations	Probability on Project Site
<b>*Status</b>				
Federal:	State:	*Other:		
FE - Federal Endangered	CE - California Endangered	Most birds have protection under the Migratory Bird Treaty Act. Raptors and their nests are protected by provisions of the California Fish and Game Code. A few species, such as the monarch butterfly and "California Fully Protected Animals," may be protected by policies of the California Department of Fish and Game.		
FT - Federal Threatened	CT - California Threatened			
FPE - Federal Proposed Endangered	CR - California Rare			
FPT - Federal Proposed Threatened	CC - California Candidate			
FC - Federal Candidate	CSC - California Species of Special Concern			
FPD - Federally Proposed for delisting	WL - Watch List. Not protected pursuant to CEQA			

SAN FRANCISCO BAY



**BAYVIEW PARK**  
BURLINGAME, CALIFORNIA

CONCEPTUAL MASTER PLAN AND PUBLIC ACCESS & OPEN SPACE EXHIBIT

JULY 31, 2015



JOHN CAHALAN  
LANDSCAPE ARCHITECT  
15559 Union Avenue  
Suite 206 • Los Gatos CA 95032  
T 408-358-5122 • F 408-358-5133  
CA Reg. No. 2294

● Data Point  
 Wetlands (18,128 Sq. Ft., 0.42 Acre)  
 Mean High High Water (High Tide Line) (7.06 ft)  
 Limits of Delineation

Wetland Number	Area (Sq. Ft.)
W 1	380
W 2	10
W 3	2,210
W 4	3,818
W 5	202
W 6	68
W 7	101
W 8	277
W 9	5,564
W10	335
W11	4,225
W12	163
W13	333
W14	22
W15	360
W16	60



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the City User Community



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Sheet 1. Confirmed Wetland Delineation Map  
 Bayview Park Project Site  
 City of Burlingame, California

Scale: 1 inch = 100 feet  
 Aerial Photographic Source: ESRI  
 Confirmed By: Janelle Leeson, Corps; Hope Kingma & Tim O'Donnell  
 Corp Confirmation Date: March 5, 2015  
 Map Revision Date: March 19, 2015