

3.3 Biological Resources

This section describes the potential biological resources impacts associated with the proposed changes to the approved project.

Environmental Setting

This section describes the changes to the existing biological resources conditions and applicable regulations subsequent to the certification of the 2014 Subsequent IS/MND. This analysis is based on and supported by the March 28, 2017, *Capitol Expressway Corridor Project – Biological Resources Update* prepared by H.T. Harvey & Associates (H.T. Harvey & Associates 2017). The update included a review of recent information on special-status species occurrences based on the California Natural Diversity Database (CNDDDB), Santa Clara Valley Habitat Plan (a combined Habitat Conservation Plan and Natural Community Conservation Plan), and other relevant documents, and a March 2017 reconnaissance survey of the project alignment to assess existing conditions, noting any differences between existing conditions and those previously mapped within the project corridor for the 2005 Final EIR (which was based on 2001–2006 information).

As with the approved project, the proposed changes to the approved project are located within an urban environment consisting of mostly developed habitat with scattered vegetation such as trees and shrubs. Most existing habitat conditions were found to be generally unchanged from those described and mapped for the 2005 Final EIR; changes to existing habitats are described below. Figure 3.3-1 shows the biological habitats in the vicinity of the location of the proposed changes to the approved project. Freshwater marsh habitat is still present as previously mapped along Thompson Creek, and ruderal/burrowing owl (*Athene cunicularia*) habitat is still present in a number of areas on the west side of Capitol Expressway between Ocala Avenue and Tully Road, and on the east side of Capitol Expressway between Cunningham Avenue and Tully Road. Ruderal/streambank habitat is still present in most areas along Silver Creek both upstream and downstream of Capitol Expressway. Conclusions from the 2005 Final EIR regarding special-status wildlife species that remain applicable for the proposed changes to the approved project are as follows.

- California red-legged frogs (*Rana draytonii*) are not expected to disperse to the project corridor, and California red-legged frogs and California tiger salamanders (*Ambystoma californiense*) are both determined to be absent from the project corridor.
- The 2005 Final EIR discussion on aquatic habitat included the western pond turtle (*Actinemys marmorata*) in the list of “special-status species that could occur in aquatic habitat” but indicated that the potential for occurrence of western pond turtles on the site is low. The potential still exists for occurrence of western pond turtles in Thompson Creek or Silver Creek, at least in low numbers.
- The great horned owl (*Bubo virginianus*), red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo lineatus*), and Cooper’s hawk (*Accipiter cooperii*) are

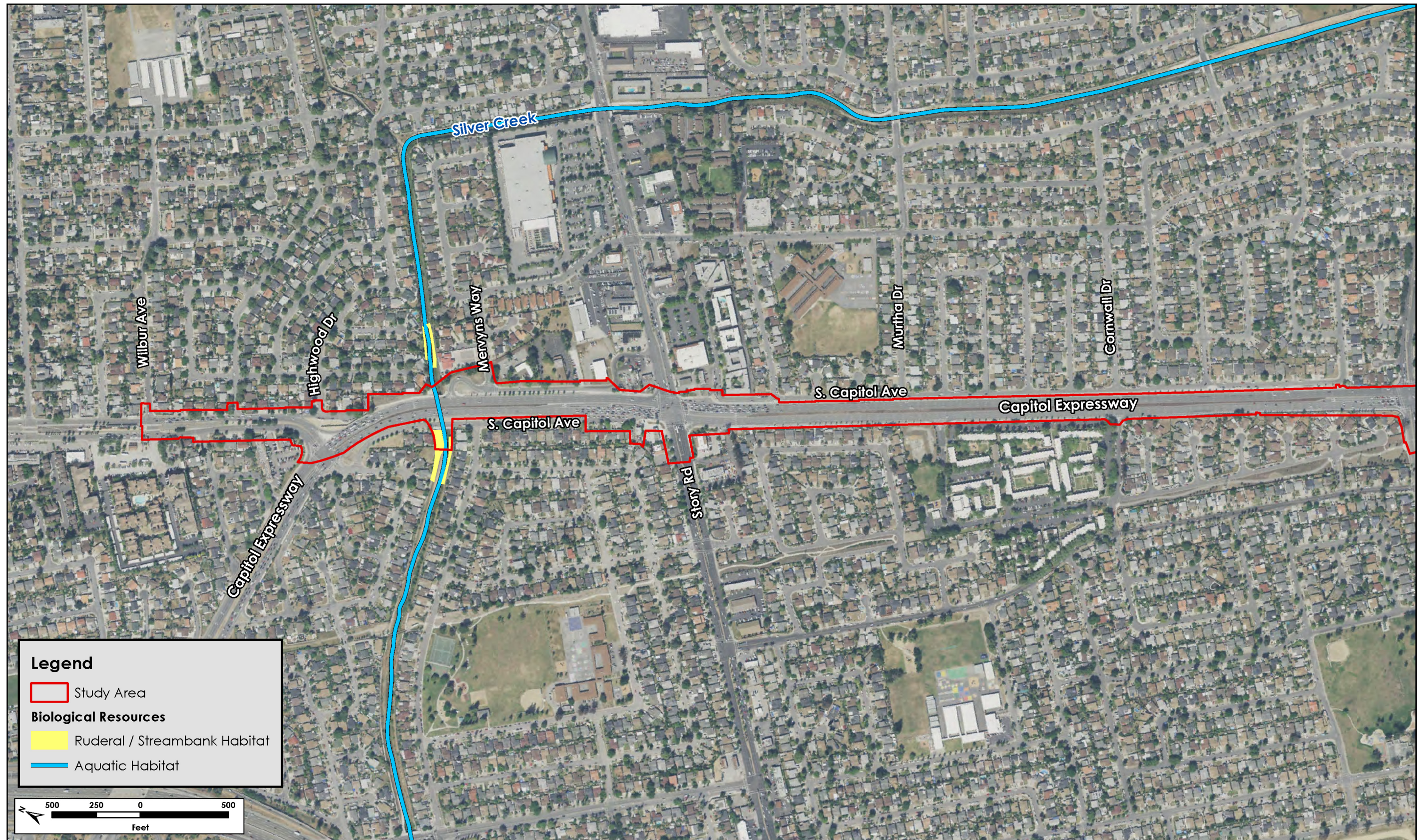
raptors that could nest in the project vicinity. A number of other (non-raptor) bird species could also nest in the project area.

Important changes regarding general habitat conditions within the project corridor since the previous biological resources mapping prepared for the 2005 Final EIR are as follows.

- **Burrowing Owl Habitat.** The extent of ruderal/burrowing owl habitat has been reduced substantially at several locations. Some areas that provided grassy or weedy habitat suitable for burrowing owl nesting, roosting, and/or foraging during the period of 2001 to 2006 currently support bare dirt and gravel without any burrows. The most substantial change has been the replacement of ruderal/burrowing owl habitat on the southwest corner of Tully Road and Capitol Expressway with an auto dealership.
- **Ruderal/streambank habitat transforming to future riparian woodland.** The majority of habitat along Silver Creek on either side of Capitol Expressway, near the north end of the study area, is consistent with ruderal/streambank habitat as described in the 2005 Final EIR. The number and density of willows in this area is not sufficient to characterize the community as riparian at this time, though eventually these willows are expected to mature into riparian woodland.
- **Removal of “California Red-Legged Frog” habitat designation.** The 2005 Final EIR mapped the grassy area on the east side of Capitol Expressway between Cunningham Avenue and Tully Road as “Ruderal/Burrowing Owl and California Red-Legged Frog Upland Habitat.” This grassy area is currently unchanged, and still provides ruderal/burrowing owl habitat. However, the “California Red-Legged Frog” habitat designation has been removed, as it is no longer expected to occur in the study area.
- **Nesting Raptors.** The northern harrier (*Circus cyaneus*), identified in the 2005 Final EIR as possibly nesting within the project vicinity, is no longer expected to occur as a breeder.

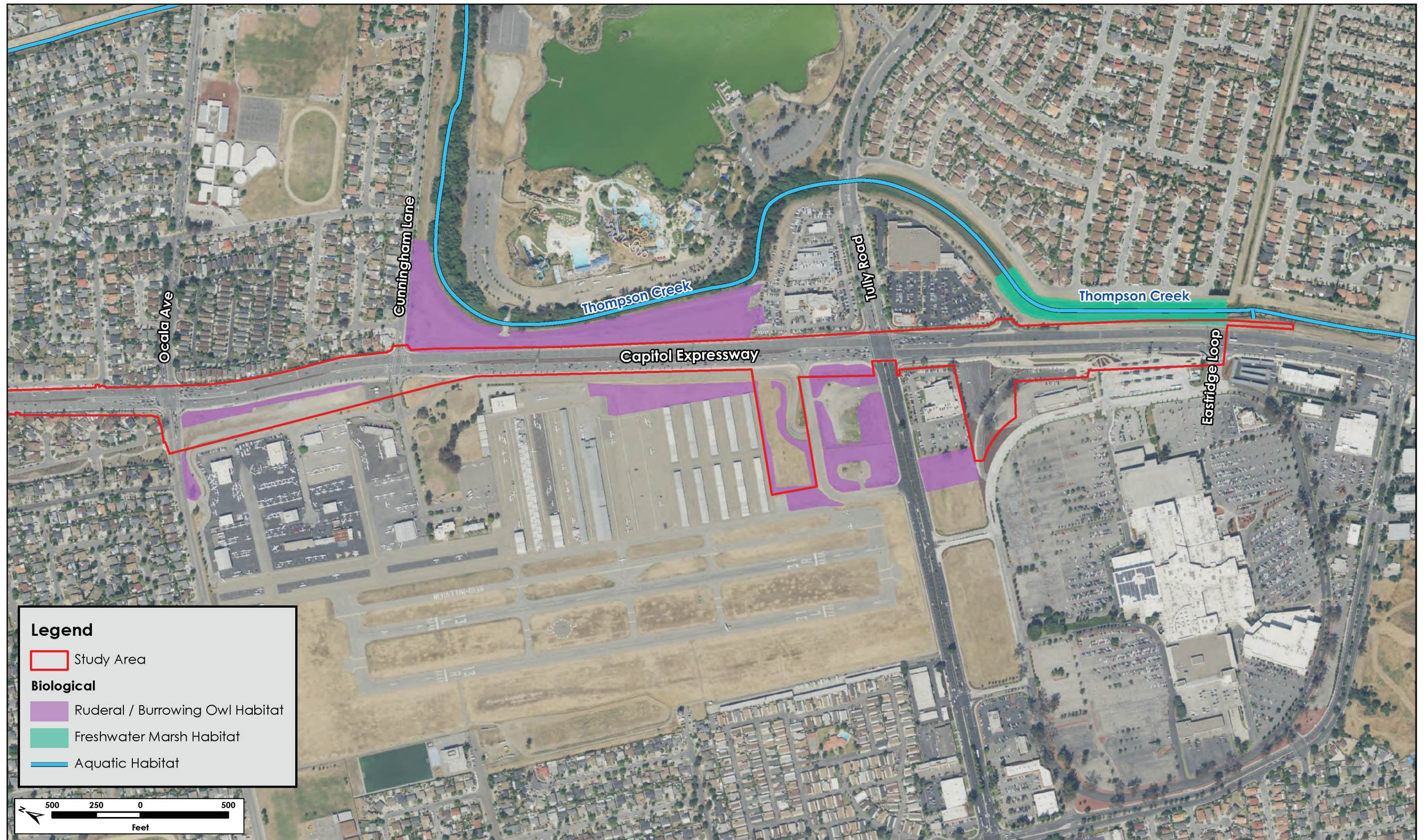
No changes in habitat conditions or the known distributions of special-status plant species have occurred since 2006 that would suggest that any special-status plant species are expected to occur in the project area. The conclusions of the 2005 Final EIR that no special-status plants occur within the project corridor are still valid. Attachment A of the Second Subsequent IS contains an updated list of special-status species known to occur or with the potential to occur within the project corridor. The updated list was compiled from information provided in the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife databases, including the CNDDDB and California Native Plant Society.¹

¹ This information was generated in February 2018. The USFWS information was generated for the project corridor; the CNDDDB and California Native Plant Society information was generated for the San Jose East Quadrangle, which includes the project corridor.



Source: H.T. Harvey & Associates 2017.

Figure 3.3-1
Biological Habitats in the Vicinity of the Proposed Changes (sheet 1 of 2)



Source: H.T. Harvey & Associates 2017.

Figure 3.3-1
Biological Habitats in the Vicinity of the Proposed Changes (sheet 2 of 2)

In 2013 the Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, Santa Clara County, and the cities of Gilroy, Morgan Hill, and San Jose adopted the Santa Clara Valley Habitat Plan (Santa Clara Valley Habitat Agency 2012). The Plan promotes the protection and recovery of certain special status species, called “covered species”, while accommodating planned public and private development infrastructure, and maintenance activities in accordance with applicable laws. The Plan encompasses the Llagas/Uvas/Pajaro watersheds within Santa Clara County; all of the Coyote Creek watershed, except for the Baylands; a large portion of the Guadalupe watershed; and small areas outside of these watersheds. The Plan was developed in association with USFWS and the California Department of Fish and Wildlife and in consultation with a stakeholder group and the general public with the goal of protecting and enhancing ecological diversity in more than 500,000 acres of Santa Clara County. To this end, the Plan describes how to avoid, minimize, and mitigate impacts on covered species, thereby addressing the permitting requirements relevant to these species for activities conducted in the Plan area. The approved project and the proposed changes to the approved project are not a “covered activity” under the Plan. Therefore, any impacts to covered species or natural habitats would not be mitigated through the Plan unless the project “opts in” to the Plan.

Environmental Impacts and Mitigation

This impact discussion primarily focuses on the proposed changes to the approved project that could result in new or more significant biological resource impacts compared to the impacts previously identified and analyzed for the approved project. Regarding burrowing owls, this impact discussion focuses on the reduced impacts associated with the proposed changes to the approved project.

The majority of proposed changes to the approved project (including the revisions to Capitol Expressway roadway lane configurations; modifications to the Eastridge Station platforms and tracks; reduction in parking spaces at the Eastridge Park-and-Ride lot; minor shift in the location and straightening of the Story Station pedestrian overcrossing; and modification to Story Station pedestrian access) would involve modifications to approved project structures that are located fully within an urbanized, developed environment, such as existing paved arterial roadways, sidewalks, and parking areas. Similarly, although the proposed extension of the aerial guideway to grade-separate the Ocala Avenue and Cunningham Avenue intersections would require a greater amount of ground-disturbing activities compared to the approved project, it would be located in the median, which is an urbanized, developed environment. In addition, the proposed relocation of a construction staging area would involve the use of a different vacant area along the project corridor, which is unlikely to include sensitive biological resources due to the disturbed nature of the habitat within the project corridor. Furthermore, Pacific Gas & Electric (PG&E) updated its design to relocate approximately 1.4 miles of PG&E’s double-circuit Milpitas- Swift and McKee- Piercy 155 kilovolt (kV) power line electrical facilities (lines) as part of the proposed changes to the approved project. There are currently six steel lattice towers and two tubular steel poles (TSPs) located along the Capitol Expressway between Ocala Avenue and Quimby Road in the City of San Jose.

These eight structures would be replaced with a total of 10 TSPs as part of the proposed changes compared to the 8 TSPs that were included in the approved project. It is unlikely that the TSPs would be located in an area that includes sensitive biological resources due to the disturbed nature of the habitat within the project corridor and this change would not increase the potential construction impacts beyond the impacts previously identified and analyzed for the approved project. Due to the absence of biological resources in these areas, the proposed changes to the approved project would not introduce new or more significant impacts related to biological resources, and many impacts identified in the 2005 Final EIR would not apply to the proposed changes to the approved project.

One proposed change to the approved project (the revisions to Capitol Expressway roadway lane configurations) would require a greater amount of ground-disturbing activities compared to the approved project that could impact adjacent biological resources. The proposed change would require limited amounts of roadway widening that could encroach on greater amounts of adjacent ruderal and freshwater marsh habitat. The impact discussion below focuses on these proposed change to the approved project that could result in new or greater impacts, beyond those identified and analyzed for the approved project.

Impact: The following impacts from the 2005 Final EIR would still apply to the proposed changes to the approved project:

- BIO-7 (Permanent Loss of Biological Habitats or Disturbance to Inhabiting Species),
- BIO-14 (Temporary Disturbance of Nesting Raptors during Construction, Including Swallows),
- BIO-15 (Temporary Disturbance of Nesting Habitat for Migratory Birds, Including Swallows), and
- BIO-18 (Loss of Urban Trees).

The March 28, 2017 *Capitol Expressway Corridor Project – Biological Resources Update* determined that burrowing owls do not currently nest on or near the project corridor, and have not nested in the vicinity in three or more years. Thus, it is assumed that breeding burrowing owls are currently absent from the study area. As a result, the proposed changes to the approved project would not result in a significant impact on burrowing owl habitat. Ruderal habitat impacted by the proposed changes to the approved project is ostensibly suitable for the species, and it is possible that occasional migrant or wintering owls may roost or forage on the site. However, because burrowing owls are more abundant and widespread in the South Bay in winter than during the breeding season, suitable habitat for migrants and wintering owls is unlikely to limit South Bay burrowing owl populations. Therefore, impacts on potential, but unoccupied, burrowing owl habitat resulting from the proposed changes to the

approved project would not adversely affect baseline regional burrowing owl populations. Thus, the compensatory mitigation for habitat impacts described in the 2005 Final EIR as part of Mitigation Measure BIO-7 is not necessary and the mitigation measure has been revised below accordingly. Nevertheless, ostensibly suitable habitat is present within the project corridor, and there is some potential for burrowing owls to occur in the project corridor, at least as occasional migrants or winter visitors.

The 2005 Final EIR includes the western pond turtle in the discussion of special-status species that could occur in aquatic habitat, but indicates that the potential for its occurrence on the site is low. The Santa Clara Valley Habitat Plan maps the reach of Thompson Creek south and west of Lake Cunningham as “primary habitat” for the western pond turtle, however biologists did not observe any western pond turtles in either Thompson Creek or Silver Creek during surveys. Nevertheless, this species has the potential to occur in either creek. Western pond turtles are known to occur in permanent or ephemeral aquatic habitats such as rivers, streams, lakes, ponds, lagoons, and marshes, as well as artificial aquatic habitats such as reservoirs, stock ponds, gravel pits, and sewage treatment plants. Turtles use these aquatic habitats for both foraging and dispersing, with known dispersal distances along stream corridors of over 3.1 miles. Stagnant or slack-water relatively deep pools within these aquatic habitats that contain suitable basking and hiding spots (such as exposed and subsurface woody debris, exposed rocks, rooted or undercut banks, emergent vegetation, and branches at the water surface) are important habitat elements for this species, and western pond turtles seem to avoid aquatic habitats that lack these habitat elements. Although neither creek currently contains optimal habitat for the western pond turtle, some of the habitat elements preferred by western pond turtles are present and thus this species could occur here, at least in low numbers. The magnitude of anticipated impacts on this species due to the proposed changes to the approved project would be very low, if at all, given the low number of western pond turtles that may be present in or near the project area. Nevertheless, Mitigation Measure BIO-12 would ensure that impacts to individual western pond turtles do not occur during project construction.

Mitigation: The following mitigation measures identified in the 2005 Final EIR would still apply to the proposed changes to the approved project:

- BIO-7 (Conduct Preconstruction Surveys for Nesting and Wintering Western Burrowing Owls and Implement Measures to Avoid or Minimize Adverse Effects if Owls Are Present),

- BIO-12 (Conduct Preconstruction Surveys for Western Pond Turtles and Implement Measures to Avoid or Minimize Adverse Effects if Turtles are Present),
- BIO-14a (Conduct a Preconstruction Survey for Nesting Raptors),
- BIO-14b (Avoid Active Raptor Nests during the Nesting Season),
- Mitigation Measure BIO-15 (Conduct Preconstruction Surveys for Nesting Migratory Birds),
- BIO-18a (Conduct a Tree Survey to Assess Tree Resources Impacted), and
- BIO-18b (Replace Trees).

Mitigation Measure BIO-7 has been revised based on the recommendations in the March 28, 2017 *Capitol Expressway Corridor Project – Biological Resources Update*. In addition, Mitigation Measures BIO-12, BIO-14a, and BIO-15 have been modified to reflect current conditions as well as current biological resources standards and recommendations by the California Department of Fish and Wildlife (CDFW).

Mitigation Measure BIO-7

Preconstruction surveys for Western burrowing owls shall be conducted by a qualified ornithologist before any development within the habitat identified in Figure 3.3-1. These surveys, which shall include any potentially suitable habitat within 250 feet of construction areas, shall be conducted no more than 30 days before the start of site grading, regardless of the time of year in which grading occurs. If breeding owls are located on or immediately adjacent to the site, a construction-free buffer zone (typically 250 feet) around the active burrow must be established as determined by the ornithologist in consultation with CDFW. No activities, including grading or other construction work or relocation of owls, would proceed that may disturb breeding owls. If owls are resident within 250 feet of the Project Area during the nonbreeding season a qualified ornithologist, in consultation with CDFW, shall passively relocate (evict) the owls to avoid the loss of any individuals if the owls are close enough that they or their burrows could potentially be harmed by associated activities.

Mitigation Measure BIO-12

Preconstruction surveys for western pond turtles shall be conducted by a qualified biologist just prior to (i.e., the day of) initiation of any construction in non-developed habitat that occurs within 100 feet of Thompson Creek. If any individual western pond turtles are detected within the project's impact areas, the individuals will be moved to

suitable habitat within the nearest creek, at least 300 feet outside the project area.

Mitigation Measure BIO-14a

Preconstruction surveys for nesting raptors will be conducted by a qualified ornithologist to ensure that no raptor nests will be disturbed during implementation of the light rail alternative. This survey shall be conducted within 48 hours of construction activity during the breeding season. For nesting raptors, the breeding season is from January 1 to August 31. During this survey, the ornithologist would inspect all trees and suitable grassland habitat in and immediately adjacent to the affected areas for raptor nests. If the survey does not identify any nesting special-status raptor species in the area potentially affected by the proposed activity, no further mitigation is required.

Mitigation Measure BIO-15

If construction activities are scheduled to occur during the migratory bird breeding season (February 1-August 31), a preconstruction survey for nesting migratory birds shall be conducted prior to commencement of construction activities. If an active nest is identified within the study area, construction activities will stop (only where a nest is located) until the young fledge or the nest is removed in accordance with CDFW approval.

Inclusion of these mitigation measures would reduce these impacts to “Less than Significant.”

Less-than-significant impact with mitigation.

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