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## **6.0 BIOLOGICAL RESOURCES**

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This section described the biological resources present at the Dollar General project sites, including a discussion of the special-status species and sensitive habitats occurring in the vicinity of the sites. This section analyzes impacts that could occur to biological resources due to project implementation and includes appropriate mitigation measures to reduce or avoid these impacts. Information in this section is based on a review of documents pertaining to the natural resources of the project areas; examination of aerial photography, biological resources, and vegetation maps; and field investigations (**Appendix 6.0**).

### 6.0 GENERAL ENVIRONMENTAL CONDITIONS AND REGULATIONS

#### 6.0.1 REGIONAL ENVIRONMENTAL SETTING

The proposed project sites are located in the Sierra Nevada foothills. This area is dominated by oak woodlands and low elevation montane forest. The shrub layer generally comprises Manzanita chaparral. In general, the shrubs form a very dense layer of thickets along the hillslopes.

The region has a Mediterranean climate with warm to hot summers and wet, cool, and rainy winters. Average high temperatures are around 70 degrees Fahrenheit and average lows are approximately 46 degrees Fahrenheit. The elevation of the sites vary from approximately 1,400 feet to 2,500 feet above mean sea level (amsl).

#### 6.0.2 REGULATORY FRAMEWORK

This section identifies environmental review and consultation requirements, as well as permits and approvals that must be obtained from local, state, and federal agencies prior to implementation of the projects.

##### **Federal**

##### Endangered Species Act

The Endangered Species Act of 1973 (ESA), as amended, includes protective measures for federally listed threatened and endangered species, including their habitats, from unlawful take (16 United States Code [USC] Sections 1531–1544). The ESA defines “take” to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Title 50, Part 222 of the Code of Federal Regulations (50 CFR Section 222) further defines “harm” to include “an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns including feeding, spawning, rearing, migrating, feeding, or sheltering.”

ESA Section 7(a)(1) requires federal agencies to use their authority to further the conservation of listed species. ESA Section 7(a)(2) requires consultation with the US Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) if a federal agency undertakes, funds, permits, or authorizes (termed the federal nexus) any action that may affect endangered or threatened species, or designated critical habitat. For projects that may result in the incidental take of threatened or endangered species, or critical habitat, and that lack a federal nexus; a Section 10(a)(1)(b) incidental take permit can be obtained from the USFWS and/or the NMFS.

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### Clean Water Act

The basis of the Clean Water Act (CWA) was established in 1948; however, it was referred to as the Federal Water Pollution Control Act. The act was reorganized and expanded in 1972 (33 USC Section 1251), and at this time the Clean Water Act became the act's commonly used name. The basis of the CWA is the regulation of pollutant discharges into waters of the United States, as well as the establishment of surface water quality standards.

### Section 404

The Section 404(b)(1) Guidelines (40 CFR Part 230) are mandatory criteria used for evaluating discharges of dredged or fill material into waters of the United States. The guidelines prohibit discharges to waters of the United States where a practicable alternative exists that would have less adverse effects on the environment, so long as the alternative does not have other significant adverse environmental effects. Project applicants must demonstrate that impacts to waters of the United States have been avoided to the extent possible. Compensatory mitigation is not considered during the evaluation of potentially practicable alternatives, but is typically required for unavoidable impacts to waters of the United States.

The primary objective of this program is to ensure that the discharge of dredged or fill material is not permitted if a practicable alternative to the proposed activities exists that results in less impact to waters of the United States or the proposed activity would result in significant adverse impacts to these waters. To comply with these objectives, a permittee must document the measures taken to avoid and minimize impacts to waters of the United States and provide compensatory mitigation for any unavoidable impacts.

The US Environmental Protection Agency (EPA) and the USFWS are assigned roles and responsibilities in the administration of this program; however, the US Army Corps of Engineers (USACE) is the lead agency in the administration of day-to-day activities, including issuance of permits. The agencies will typically assert jurisdiction over the following waters: (1) traditional navigable waters (TNW); (2) wetlands adjacent to TNWs; (3) relatively permanent waters (RPW) that are non-navigable tributaries to TNWs and have relatively permanent flow or seasonally continuous flow (typically three months); and (4) wetlands that directly abut RPWs. Case-by-case investigations are usually conducted by the agencies to ascertain their jurisdiction over waters that are non-navigable tributaries and do not contain relatively permanent or seasonal flow, wetlands adjacent to the aforementioned features, and wetlands adjacent to but not directly abutting RPWs (USACE 2007). Jurisdiction is not generally asserted over swales or erosional features (e.g., gullies or small washes characterized by low-volume/short-duration flow events) or ditches constructed wholly within and draining only uplands that do not have relatively permanent flows.

The extent of jurisdiction within waters of the United States which lack adjacent wetlands is determined by the ordinary high water mark, which is defined in 33 CFR Section 328.3(e) as the "line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas." Wetlands are further defined under 33 CFR Section 328.3 and 40 CFR Section 230.3 as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" and typically include "swamps, marshes, bogs, and similar areas." The USACE (1987) Wetland Delineation Manual (1987 Manual) sets forth a standardized methodology for delineating the extent of wetlands under federal jurisdiction.

The 1987 Manual outlines three parameters that all wetlands, under normal circumstances, must contain positive indicators for to be considered jurisdictional. These parameters include (1) wetland hydrology, (2) hydrophytic vegetation, and (3) hydric soils (USACE 1987). In 2006, the USACE issued a series of regional supplements to address regional differences that are important to the functioning and identification of wetlands. The supplements present “wetland indicators, delineation guidance, and other information” that is specific to the region. The USACE requires that wetland delineations submitted after June 5, 2007, be conducted in accordance with both the 1987 Manual and the applicable supplement.

### Section 401

Under CWA Section 401 (33 USC Section 1341), federal agencies are not authorized to issue a permit and/or license for any activity that may result in discharges to waters of the United States, unless a state or tribe where the discharge originates either grants or waives CWA Section 401 certification. CWA Section 401 provides states or tribes with the ability to grant, grant with conditions, deny, or waive certification. Granting certification, with or without conditions, allows the federal permit/license to be issued and remain consistent with any conditions set forth in the CWA Section 401 certification. Denial of the certification prohibits the issuance of the federal license or permit, and waiver allows the permit/license to be issued without state or tribal comment. Decisions made by states or tribes are based on the proposed project's compliance with EPA water quality standards as well as applicable effluent limitations guidelines, new source performance standards, toxic pollutant restrictions, and any other appropriate requirements of state or tribal law. In California, the State Water Resources Control Board is the primary regulatory authority for CWA Section 401 requirements (additional details below).

### Migratory Bird Treaty Act

Migratory birds are protected under the Migratory Bird Treaty Act (MBTA) of 1918 (16 USC Sections 703–711). The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 CFR Section 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 CFR Section 21). The majority of birds found in the vicinity of the project sites would be protected under the MBTA.

### Bald and Golden Eagle Protection Act

The bald eagle and golden eagle are federally protected under the Bald and Golden Eagle Protection Act (16 USC Sections 668–668c). Under the act, it is illegal to take, possess, sell, purchase, barter, offer to sell or purchase or barter, transport, export, or import at any time or in any manner a bald or golden eagle, alive or dead, or any part, nest, or egg of these eagles, unless authorized by the Secretary of the Interior. Violations are subject to fines and/or imprisonment for up to one year. Active nest sites are also protected from disturbance during the breeding season.

### Executive Order 13112 – Invasive Species

This executive order directs all federal agencies to refrain from authorizing, funding, or carrying out actions or projects that may spread invasive species. The order further directs federal agencies to prevent the introduction of invasive species, control and monitor existing invasive species populations, restore native species to invaded ecosystems, research and develop prevention and control methods for invasive species, and promote public education on invasive species. As part of the proposed action, the USFWS and the USACE would issue permits and therefore would be responsible for ensuring that the proposed action complies with Executive Order 13112 and does not contribute to the spread of invasive species.

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### Fish and Wildlife Coordination Act of 1958 (16 USC 661 et seq.)

The Fish and Wildlife Coordination Act requires that whenever any body of water is proposed or authorized to be impounded, diverted, or otherwise controlled or modified, the lead federal agency must consult with the USFWS, the state agency responsible for fish and wildlife management, and the National Marine Fisheries Service. Section 662(b) of the act requires the lead federal agency to consider the recommendations of the USFWS and other agencies. The recommendations may include proposed measures to mitigate or compensate for potential damages to wildlife and fisheries associated with a modification of a waterway.

### Executive Order 11990 Protection of Wetlands (42 FR 26961, May 25, 1977)

Executive Order 11990 requires federal agencies to provide leadership and take action to minimize destruction, loss, or degradation of wetlands and to preserve and enhance the natural qualities of these lands. Federal agencies are required to avoid undertaking or providing support for new construction located in wetlands unless (1) no practicable alternative exists and (2) all practical measures have been taken to minimize harm to wetlands.

### **State**

#### Public Resources Code Section 21083.4:

Oak Woodland Mitigation. Counties determine if a project could result in significant conversion of oak woodlands. Mitigation options include, but are not limited to:

- 1) Conserving oaks through conservation easements
- 2) Planting and maintaining an appropriate number of trees (either on-site or by restoring former oak woodlands); tree planting limited to half the mitigation requirement
- 3) Contribute funds to Oak Woodland Conservation Fund for the purpose of purchasing conservation easements.

#### California Endangered Species Act

Under the California Endangered Species Act (CESA), the CDFW has the responsibility for maintaining a list of endangered and threatened species (Fish and Game Code [FGC] Section 2070). The CDFW also maintains a list of "candidate species," which are species formally noticed as being under review for potential addition to the list of endangered or threatened species, and a list of "species of special concern," which serve as species "watch lists."

Pursuant to the requirements of the CESA, an agency reviewing a proposed project within its jurisdiction must determine whether any State-listed endangered or threatened species may be present and determine whether the proposed project will have a potentially significant impact on such species. In addition, the CDFW encourages informal consultation on any proposed project that may impact a candidate species.

Project-related impacts to species on the CESA endangered or threatened list would be considered significant. State-listed species are fully protected under the mandates of the CESA. Take of protected species incidental to otherwise lawful management activities may be authorized under FGC Section 206.591. Authorization from the CDFW would be in the form of an incidental take permit.

### California Fish and Game Code

#### Native Plant Protection Act

The Native Plant Protection Act (FGC Sections 1900–1913) prohibits the taking, possessing, or sale within the state of any plants with a state designation of rare, threatened, or endangered (as defined by the CDFW). An exception in the Act allows landowners, under specified circumstances, to take listed plant species, provided that the owners first notify the CDFW and give that state agency at least 10 days to retrieve the plants before they are plowed under or otherwise destroyed (FGC Section 1913). Project impacts to these species are not considered significant unless the species are known to have a high potential to occur within the area of disturbance associated with construction of a proposed project.

#### Birds of Prey

Under FGC Section 3503.5, it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.

#### Fully Protected Species

California statutes also afford “fully protected” status to a number of specifically identified birds, mammals, reptiles, and amphibians. These species cannot be taken, even with an incidental take permit. FGC Sections 3505, 3511, 4700, 5050, and 5515 protect from take a number of fully protected birds, mammals, reptiles, amphibians, and fish.

#### California Wetlands and Other Waters Policies

The California Resources Agency and its various departments do not authorize or approve projects that fill or otherwise harm or destroy coastal, estuarine, or inland wetlands. Exceptions may be granted if all of the following conditions are met:

- The project is water-dependent.
- No other feasible alternative is available.
- The public trust is not adversely affected.
- Adequate compensation is proposed as part of the project.

#### Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act of 1966 (California Water Code Section 13000 et seq.; California Code of Regulations [CCR] Title 23, Chapter 3, Subchapter 15) is the primary state regulation that addresses water quality. The requirements of the act are implemented by the State Water Resources Control Board at the state level and by the Regional Water Quality Control Board (RWQCB) at the local level. The RWQCB carries out planning, permitting, and enforcement activities related to water quality. The act provides for waste discharge requirements and a permitting system for discharges to land or water. Certification is required by the RWQCB for activities that can affect water quality.

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### Clean Water Act, Section 401 Water Quality Certification

CWA Section 401 (33 USC Section 1341) requires that any applicant for a federal license or permit which may result in a pollutant discharge to waters of the United States obtain a certification that the discharge will comply with EPA water quality standards. The state or tribal agency responsible for issuance of the Section 401 certification may also require compliance with additional effluent limitations and water quality standards set forth in state/tribal laws. In California, the RWQCB is the primary regulatory authority for CWA Section 401 requirements.

The Central Valley RWQCB is responsible for enforcing water quality criteria and protecting water resources in Nevada County. In addition, the RWQCB is responsible for controlling discharges to surface waters of the State by issuing waste discharge requirements (WDR) or commonly by issuing conditional waivers to WDRs. The RWQCB requires that a project proponent obtain a CWA Section 401 water quality certification for CWA Section 404 permits issued by the US Army Corps of Engineers. A request for water quality certification (including WDRs) by the RWQCB and an application for a General Permit for Storm Water Discharges Associated with Construction Activities are prepared and submitted following completion of the CEQA environmental document and submittal of the wetland delineation to the USACE.

### Delegated Permit Authority

California has been delegated permit authority for the National Pollutant Discharge Elimination System (NPDES) permit program, including stormwater permits for all areas except tribal lands. Issuance of CWA Section 404 dredge and fill permits remains the responsibility of the USACE; however, the State actively uses its CWA Section 401 certification authority to ensure CWA Section 404 permits are in compliance with state water quality standards.

### State Definition of Covered Waters

California Water Code Section 13050(e) defines waters of the State as "any surface water or groundwater, including saline waters, within the boundaries of the state." Therefore, water quality laws apply to both surface water and groundwater. After the US Supreme Court decision in *Solid Waste Agency of Northern Cook County v. US Army Corps of Engineers*, the Office of Chief Counsel of the State Water Resources Control Board released a legal memorandum confirming the State's jurisdiction over isolated wetlands. The memorandum stated that under the California Porter-Cologne Water Quality Control Act (Porter-Cologne), discharges to wetlands and other waters of the State are subject to state regulation, and this includes isolated wetlands. In general, the Board regulates discharges to isolated waters in much the same way as it does for waters of the United States, using Porter-Cologne rather than Clean Water Act authority.

## **Local**

### Nevada County General Plan

The Wildlife and Vegetation Element of the General Plan contains the following policy that would pertain to the project.

- Policy 13.9      Development in the vicinity of significant oak groves of all oak species shall be designed and sited to maximize the long-term preservation of the trees and the integrity of their natural setting. The County shall adopt a regulation to protect native heritage oak trees and significant oak groves. All native oak tree species with a trunk diameter of 36" or greater shall be protected.

Nevada County Land Use and Development Code

Section L-II 4.3.7 – Deer Habitat, Major

Section L-II 4.3.7 includes regulations intended to avoid the impact of development on major deer migration corridors, critical winter and summer rangers, and critical fawning areas as defined by the State Department of Fish and Wildlife or migratory deer range maps. The regulations indicate that a project may only be approved when it is determined by the County Planning Agency that the project is not within a defined deer habitat area. When it is determined that a project will adversely affect a defined species or their habitat, the regulations require that a site-specific habitat management plan be prepared.

Section L-II 4.3.12 – Rare, Threatened and Endangered Species and Their Habitat

Section L-II 4.3.12 includes regulations intended to avoid the impact of development on rare, threatened, endangered, and special-status species and their habitat, or where avoidance is not possible, to minimize or compensate for such impacts and to retain their habitat as non-disturbance open space. The regulations indicate that a project may only be approved when it is determined by the County Planning Agency that the project will not adversely affect rare, threatened, or endangered species or their habitat and that it will result in no net loss of habitat function or value for the defined species. When it is determined that a project will adversely affect a defined species or their habitat, the regulations require that a site-specific habitat management plan be prepared.

Section L-II 4.3.15 – Trees

Section L-II 4.3.15 includes regulations intended, among other things, to preserve and minimize the disturbance of landmark and heritage trees and groves from development projects through on-site vegetation inventories, mandatory clustering, and other measures necessary to protect such habitat. The regulations indicate that a project may only be approved when they do not remove or disturb defined trees or groves, unless a management plan is prepared consistent with the regulations.

Section L-II 4.3.17 – Watercourses, Wetlands and Riparian Areas

Section L-II 4.3.17 includes regulations intended to preserve the integrity and minimize the disruption of watersheds and watercourses; to preserve stream corridors and riparian habitat, ensure adequate protection of stream values, and protect stream corridors for wildlife movement and foraging; and to avoid the impact of development on wetlands, or where avoidance is not possible, to minimize or compensate for such impacts, to provide for minimum setbacks to protect resources values, and to retain wetlands as non-disturbance open space. The regulations identify non-disturbance buffers, generally 100 feet, around water, wetland, and riparian resources unless a management plan is prepared.

**Other**

California Native Plant Society

The California Native Plant Society (CNPS) is a nongovernmental agency that classifies native plant species according to current population distribution and threat level in regard to extinction. The CNPS uses the data to create/maintain a list of native California plants that have low numbers, limited distribution, or are otherwise threatened with extinction. This information is published in the

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Inventory of Rare and Endangered Vascular Plants of California (CNPS 2016). Potential impacts to populations of CNPS-listed plants receive consideration under CEQA review.

The following identifies the definitions of the CNPS listings:

- List 1A: Plants believed to be extinct
- List 1B: Plants that are rare, threatened, or endangered in California and elsewhere
- List 2: Plants that are rare, threatened, or endangered in California, but are more numerous elsewhere

All of the plant species on List 1 and 2 meet the requirements of the Native Plant Protection Act Section 1901, Chapter 10, or FGC Section 2062 and Section 2067 and are eligible for state listing. Plants appearing on List 1 or 2 are considered to meet the criteria of CEQA Section 15380, and effects on these species are considered "significant." Classifications for plants on List 3 (plants about which more information is needed) and/or List 4 (plants of limited distribution), as defined by the CNPS, are not currently protected under state or federal law. Therefore, no detailed descriptions or impact analysis was performed on species with these classifications.

### 6.0.3 IMPACT METHODOLOGY

#### Standards of Significance

Section 15064.7 of the CEQA Guidelines encourages local agencies to develop and publish the thresholds that the agency uses in determining the significance of environmental effects caused by projects under its review. However, agencies may also rely upon the guidance provided by the expanded Initial Study checklist contained in Appendix G of the CEQA Guidelines. Appendix G provides examples of impacts that would normally be considered significant.

Impacts to biological resources are considered significant if a project would:

- 1) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or US Fish and Wildlife Service, including those special-status species protected by the MBTA and California Fish and Game Code Section 3503.5.
- 2) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or US Fish and Wildlife Service.
- 3) Have a substantial adverse effect on federally protected wetlands as protected by Nevada County Land Use and Development Code Section L-II 4.3.17 and as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- 4) Interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites, including those corridors and sites identified as major deer habitat pursuant to Nevada County Land Use and Development Code Section L-II

4.3.7 and migratory bird nesting sites pursuant to the MBTA and California Fish and Game Code Section 3503.5.

- 5) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance, including landmark trees and groves as protected by Nevada County Land Use and Development Code Section L-II 4.3.15.
- 6) Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

### Methodology

Available information pertaining to the natural resources of the region was reviewed including biological resource documentation from other recent projects in the vicinity. Literature review included:

- CDFW (2016) California Natural Diversity Database (CNDDDB)
- USFWS (2016) Information for Planning and Conservation (IPaC)
- CNPS (2016) Inventory of Rare and Endangered Plants of California
- CDFW BIOS Viewer Essential Connectivity Areas [ds623] layer and Missing Linkages in California [ds420] layer
- Nevada County General Plan (1996)

A site-specific biological resource assessment was conducted for each of the project sites and the results are incorporated into the description of the existing setting and impacts for each site. A search of the CNDDDB and CNPS database was conducted using the French Corral, Nevada City, North Bloomfield, Rough and Ready, Grass Valley, Chicago Park, Wolf, Lake Combie, and Colfax 7.5-minute US Geological Survey (USGS) quadrangles. A search of the USFWS IPaC database was also conducted for the project sites. Special-status species were considered for this analysis based on field survey results and a review of the database searches.

## 6.1 ALTA SIERRA SITE

### 6.1.1 PROJECT-SPECIFIC LOCATION AND SETTING

The Alta Sierra project site is located in the Sierra Nevada foothills, in the community of Alta Sierra. Specifically, the project site is located in Township 15 North, Range 8 East, and Section 22 of the Grass Valley 7.5-minute USGS quadrangle.

Salix Consulting prepared a biological resources report in June 2014 (**Appendix 6.0-AS**), which provides a description of the existing site conditions and potential biological resources present on the site. An Oak Management Plan was drafted as an Addendum to the Biological Resources Report in 2015 (**Appendix 6.0-AS**).

The Alta Sierra project site consists of three parcels, one (APN 25-430-08) for the construction of the retail store and two (APNs 25-430-10 and -12) for an off-site septic system. The store site is currently undeveloped, dry, and has evidence of previous disturbance. Steep-cut slopes occur along the western, southern, and eastern boundaries with elevation ranging from 1,964 to 1,994 feet amsl.

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This site is covered entirely with montane hardwood-conifer forest and is dominated by California black oak (*Quercus kelloggii*) and ponderosa pine (*Pinus ponderosa*) with a few valley oaks (*Quercus lobata*) and gray pines (*Pinus sabiniana*) interspersed. The understory consists of native and non-native grasses and weedy forbs. Dominant species include soap plant (*Chlorogalum pomeridianum*), field hedge parsley (*Torilis arvensis*), hedgehog dogtail (*Cynosurus echinatus*), narrowleaf mule's-ears (*Wyethia angustifolia*), wild oat (*Avena sp.*), California mugwort (*Artemisia douglasiana*), Himalayan blackberry (*Rubus armeniacus*), prickly lettuce (*Lactuca serriola*), Italian ryegrass (*Festuca perennis*), and Italian thistle (*Carduus pycnocephalus*). APNs 25-430-10 and -12 are developed with commercial and office uses, but also contain some areas of montane hardwood-conifer forest.

One soil unit has been mapped on the project site: Secca-Rock outcrop complex, 2 to 5 percent slopes. This soil type occurs on mountains and hillsides. It is moderately well drained and made up of igneous and metamorphic rock.

A tree survey identified the presence of 85 oak trees on the project site, including 71 California black oaks and 3 small valley oaks. There are four landmark oak trees on the project site, three located on the store site (APN 25-430-08) and the fourth on APN 25-430-12, all of which are California black oaks. Because the canopy cover is greater than 33 percent, the site has been determined to be a landmark grove according to the Nevada County General Plan. All impacts to oak trees, whether permanent or temporary, must be mitigated. An Oak Management Plan was developed by Costella Environmental Consulting in November 2014 and amended in March 2015. This plan outlines the oak protection and mitigation required for the project (**Appendix 6.0-AS**).

There are no aquatic features within the project site.

### 6.1.2 SPECIAL-STATUS SPECIES

The results of the database searches for this project site are found in **Appendix 6.0-AS**.

#### Plants

Several special-status plants are known to occur in the vicinity of the project site; four of the species are known to occur within 5 miles of the site. Many of the special-status plant species that occur in the region require either gabbro or serpentine soils, which are not present on the Alta Sierra project site. Other plant species were eliminated due to lack of suitable habitat (i.e., rock outcrops or wetland habitat). As a result, no special-status plant species are expected to occur on the project site.

#### Animals

Based on database search results, 13 special-status animals were identified as occurring in the vicinity of the project site. Three species were documented as occurring within a 5-mile radius of the site. Most of the 13 species were determined to have minimal to no potential for occurring within the study area due to the absence of suitable habitat and because the site is outside the current range for the species. Those species with potential to occur based on previous observations in the project vicinity and the presence of suitable habitat are discussed below.

### Amphibians and Reptiles

One federally listed species, California red-legged frog (*Rana draytonii*), and two California species of concern, western pond turtle (*Emys marmorata*) and foothill yellow-legged frog (*Rana boylei*), are documented as occurring in the project region. However the project site lacks aquatic features that are required for these species. There are no CNDDDB occurrences for any of these species within a 5-mile radius.

The coast horned lizard (*Phrynosoma blainvillii*), a California species of concern, has been documented as occurring within a 5-mile radius of the project site. However, this species requires sandy soils with low vegetation cover. The project site has dense vegetation and rocky soils and does not provide suitable habitat for this species.

### Mammals

The CNDDDB lists potential for two special-status mammals to occur in the project vicinity, the state threatened Sierra Nevada red fox (*Vulpes vulpes necator*) and the fisher (*Martes pennanti*), a state and federal candidate species. Both of these species are generally found in old growth coniferous forest at high elevation. These species are associated with undisturbed areas in high elevation away from human disturbance. The project vicinity is developed with relatively high levels of human disturbance; therefore, it is unlikely that these species will occur in the vicinity of the project site.

Signs of mule deer were observed on the site, which is located within the territory of the resident Motherlode Deer Herd. However, per Figure 5.4 in the Nevada County Master Environmental Inventory of the General Plan, the project site does not occur in the vicinity of the areas identified as crucial deer winter range, major deer migration corridor, or known critical fawning habitats (Harland Bartholomew and Associates 1991).

### Birds

It is expected that a variety of common wildlife and bird species could be present on the project site. Species observed on the site include American robin (*Turdus migratorius*), white-breasted nuthatch (*Sitta carolensis*), spotted towhee (*Pipilo maculatus*), western scrub jay (*Aphelocoma californica*), Anna's hummingbird (*Calypte anna*), acorn woodpecker (*Melanerpes formicivorus*), oak titmouse (*Baeolophus inornatus*), and American crow (*Corvus brachyrhynchos*). The project site provides suitable habitat for these species and other birds protected under the MBTA.

The northern goshawk (*Accipiter gentilis*), a state species of concern, is documented as occurring in vicinity of the project site. This species prefers old growth stands of conifers and deciduous forests near water. Although the project site does not contain highly suitable habitat, there is potential for the northern goshawk and other raptors to nest in or adjacent to the project site.

The California black rail (*Laterallus jamaicensis coturniculus*), a state threatened and fully protected species, has been documented multiple times as occurring within 5 miles of the project site. This species feed and nests in marsh and wetland habitat with dense vegetation. Because of the lack of aquatic habitat, this species is not expected to occur on the project site.

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### IMPACTS AND MITIGATION MEASURES

#### Impacts to Candidate, Sensitive, or Special-Status Plant Species (Standards of Significance 1 and 7)

**Impact 6.1.1(AS)** The Alta Sierra project site does not provide suitable habitat for any special-status plant species that may occur in the vicinity. Therefore, there would be **no impact**.

Several special-status plant species are known to occur in the vicinity of the project site, with four species documented as occurring within a 5-mile radius. However, the project site does not provide suitable habitat for any of these plant species due to lack of aquatic habitat or lack of suitable soils. Because suitable habitat is not present on the site, no special-status plants are expected to occur on the project site, and there would be **no impact**.

#### Mitigation Measures

None required.

#### Impacts to Listed Special-Status Wildlife Species (Standards of Significance 1 and 7)

**Impact 6.1.2(AS)** Project-related activities could result in loss of habitat for northern goshawk, other nesting raptors, and migratory birds. (**Less than Significant with Mitigation Incorporated**)

Implementation of the proposed project could result in impacts to northern goshawk, a state species of concern, and birds protected under the MBTA. The project site is covered with montane hardwood-conifer forest. This habitat provides marginally suitable habitat for northern goshawk, raptors, and other migratory bird species protected under the MTBA.

Construction activities could cause direct impacts to nesting raptors and migratory birds, if birds are actively nesting during construction. Nests may be located in trees, shrubs, or emergent vegetation, on the ground, and in burrows. The Alta Sierra project may cause direct mortality to raptors or migratory birds through removal of vegetation that contains active nests. Construction could also result in noise, dust, increased human activity, and other indirect impacts to nesting raptor or migratory bird species in the project vicinity. Excessive noise, disturbance, and vibrations can cause nest abandonment and mortality to eggs and chicks, as well as stress from loss of foraging areas. This is a **potentially significant** impact. If construction occurs during the non-nesting season, no impacts are expected.

The loss or disturbance of active nests or direct mortality is prohibited by the MBTA and California Fish and Game Code Section 3503.5. With the implementation of mitigation measure **MM AS-6.1.2**, impacts would be reduced to **less than significant**.

#### Mitigation Measures

**MM AS-6.1.2** If construction is proposed during the breeding season (February–August), a focused survey for raptors and other migratory bird nests shall be conducted within 14 days prior to the beginning of construction activities by a qualified biologist in order to identify active nests on-site. If active nests are found, no construction activities shall take place within 500 feet of the nest until the young have fledged. This 500-foot construction prohibition zone may be reduced based on consultation with and approval by the California Department of Fish

and Wildlife. Trees containing nests or cavities that must be removed as a result of project implementation shall be removed during the non-breeding season (late September to January). If no active nests are found during the focused survey, no further mitigation will be required. To the extent feasible, necessary tree removal should occur outside of the typical nesting season to minimize or avoid adverse effects to all nesting birds.

*Timing/Implementation:* Prior to construction activities

*Enforcement/Monitoring:* Nevada County Planning Department

**Impacts to Riparian Habitat, Sensitive Natural Communities, or Federally Protected Wetlands (Standards of Significance 2 and 3)**

**Impact 6.1.3(AS)** Project-related activities could result in loss of landmark oak groves and landmark oak trees. **(Less than Significant with Mitigation Incorporated)**

The project would result in direct and indirect impacts on 1.40 acres of landmark oak groves as well as four landmark oak trees. Three of these oak trees are located on the store site (APN 25-430-08) and would be directly impacted by the construction of the retail store. The fourth tree is located on APN 25-430-12 and would be indirectly impacted by the septic leach field. The Nevada County Land Use and Development Code Section L-II 4.3.15 has established landmark oak groves and landmark oak trees as environmentally sensitive areas. Under Section L-II 4.3.15, projects may only be approved when they do not disturb landmark oaks or groves. When avoidance is not feasible, a Management Plan must be prepared by a qualified biologist. A Biological Management Plan (management plan) was prepared in November 2014 and amended in March 2015. The management plan determined that on-site replacement of the landmark trees is not feasible; therefore, off-site mitigation is required. Nevada County has not established a tree preservation fund, so mitigation measures are required in order to mitigate for the loss of landmark oaks. These mitigation measures will mitigate this impact to a level that is **less than significant**.

As described in the Biological Resources and Wetland Constraints Analysis (**Appendix 6.0-AS**), there are no wetlands, riparian habitat, or other sensitive communities on the project site or in the vicinity.

Mitigation Measures

**MM AS-6.1.3a** Construction activities, such as grading, shall avoid impacts to existing mature trees and other native vegetation to the maximum extent possible. Mature trees and native vegetation shall be marked as Environmentally Sensitive Areas (ESA) and the project site should be designed to avoid these areas where feasible. All ESAs shall be fenced with orange fencing and maintained until project completion. In addition, any tree and native vegetation that is to be retained shall be shown on the final landscaping plans.

*Timing/Implementation:* Prior to construction activities

*Enforcement/Monitoring:* Nevada County Planning Department

**MM AS-6.1.3b** Seventeen trees (10 oaks and 7 pines) are to be retained. The developer shall flag the trees to ensure their protection. The Building Department shall verify the

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trees to be retained have been properly marked and construction personnel should be made aware of these trees in order to minimize direct and indirect impacts. In addition, a note shall be included on all plans and specifications stating that "The existing ground surface within 6 feet of the drip line of any oak tree and within 10 feet of the dripline of any landmark oak tree to be preserved shall not be cut, filled, compacted or pared." A qualified biologist, botanist, professional forester, or certified arborist shall be consulted prior to any excavation that will occur adjacent to any oak tree that is to be retained to ensure that there will be no damage to the root system. Exceptions may be approved by the Nevada County Planning Department based on consultation with a qualified professional resulting in reasonable assurance that they tree will not be damaged.

*Timing/Implementation: Prior to construction activities*

*Enforcement/Monitoring: Nevada County Planning Department*

### **MM AS-6.1.3c**

For oak trees that are to be retained on any of the three parcels, the following measures shall be taken to prevent impacts during and after construction activities.

1. Plans and specifications shall clearly state protection procedures for oaks on the project site. The specification shall also require contractors to stay within designated work areas and shall include provisions for penalties if the retained oak trees are damaged;
2. Protective fencing not less than 4 feet in height shall be placed at the limits of the protective root zone of any individual oak tree or stand to remain, whether it is a Landmark oak or a small cluster of oak trees within 50 feet of the grading limits, and shall be inspected by the contractor prior to commencement of any grading activity on site, and shall remain in place until construction is completed;
3. Damage to oak trees during construction shall be immediately reported to the Nevada County Planning Department. The contractor shall be responsible for correcting any damage to oak trees that will be retained on the property in a manner specified by a qualified professional.
4. Equipment damage to limbs, trunks, and roots of all retained trees shall be avoided during project construction and development. Even slight trunk injuries can result in susceptibility to long-term pathogenic maladies.
5. Grading restrictions near protective root zones shall limit grade changes near the protected root zone of any oak tree to be retained. Grade changes can lead to plant stress from oxygen deprivation or oak root fungus at the root collar of oaks. Minor grade changes further from the trunk are not as critical but can negatively affect the health of the tree if not carefully monitored by a County approved professional.
6. The root protective zone grade shall not be lowered or raised around the trunks (i.e. within the protective zone) of any oak tree to be retained. A County approved professional shall supervise all excavation or grading

proposed within the protective zone of a tree, and/or the excavation, or clearance of vegetation within the protective zone of an oak tree shall be accomplished by the use of hand tools or small hand-held power tools. Any major roots encountered shall be conserved to the greatest extent possible and treated as recommended by the professional.

7. Utility trenches shall not be routed within the protective zone of an oak tree unless no feasible alternative locations are available, and shall be approved by a County approved professional.
8. No storage of equipment, supplies, vehicles, or debris shall be permitted within the protective root zone of any retained tree.
9. No dumping of construction wastewater, paint, stucco, concrete, or any other cleanup waste shall occur within the protective zone of an oak tree.
10. No temporary structures shall be placed within the protective zone of any retained oak tree.
11. Necessary drains shall be installed according to County specifications so as to avoid harm to the oak trees due to excess watering.
12. Wires, signs, and other similar items shall not be attached to the oak trees.

*Timing/Implementation: Prior to construction activities*

*Enforcement/Monitoring: Nevada County Planning Department*

**MM AS-6.1.3d**

Prior to the start of construction activities, a qualified biologist, botanist, registered forester or certified arborist (qualified professional) shall schedule a field meeting to inform the construction personnel where all protective zones are and the importance of avoiding encroachment into the protective zones. A signed affidavit documenting the meeting shall be provided prior to the issuance of project permits. Additionally, a qualified professional shall periodically monitor on-site construction activities to ensure that damage to retained oak trees does not occur. Prior to scheduling final inspection for the grading, pipe trenching, septic placement, retaining walls, and building foundation, the developer shall provide a brief report from the qualified professional documenting the findings in the monitoring.

*Timing/Implementation: Prior to issuance of permits*

*Enforcement/Monitoring: Nevada County Planning Department*

**MM AS-6.1.3e**

Prior to the issuance of any grading or improvement permits for the project, the applicant shall pay \$42,900 in mitigation costs to the Bear Yuba Land Trust (BYLT) for replanting, management, and restoration of black oak habitat on the Clover Valley Preserve Property located on the eastern side of the Alta Sierra subdivision 2 air miles from the project site. The BYLT shall implement the restoration plan consistent with the approach outlined in the Appendix B of the Oak Resources Management Plan (Appendix 6.0-AS), which includes but is not limited to planting approximately 220-250 black oak seedlings with a goal of a

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60% survival rate; monitoring for the first 5 years following replanting; and restoration of the existing oak woodlands. Prior to issuance of grading or improvement permits, the developer and the BYLT shall also enter into a contractual agreement that must be reviewed and approved by the Nevada County Planning Department prior to finalization. Once finalized, the agreement shall be submitted to the Nevada County Planning Department and will be kept on file. The contractual agreement shall outline the specific steps of the Restoration Project that will occur, consistent with Appendix B of the Oak Tree Management Plan, including a clause to trigger the attachment of a conservation easement on the property if the BYLT should ever transfer the property to non-land trust ownership. In addition, the contractual agreement shall provide specific steps for annual monitoring of the success of the project and reporting to the County Planning Department by a qualified professional.

*Timing/Implementation:*        *Prior to issuance of permits*

*Enforcement/Monitoring:*        *Nevada County Planning Department*

### Impacts to Wildlife Movement (Standard of Significance 4)

**Impact 6.1.4 (AS)** The proposed Alta Sierra project would not interfere with the movement of native resident or migratory wildlife species. **(Less than Significant)**

Based on available data on movement corridors and linkages accessed via the CDFW BIOS Viewer, the project site is not located within an identified wildlife migratory corridor. In addition, the Nevada County Master Environmental Inventory of the General Plan indicates that the project site is not located within a deer migration corridor. Therefore, impacts to the movement of native resident or migratory wildlife species would be **less than significant**.

#### Mitigation Measures

None required.

### Conflict with Local Policies and Ordinances (Standard of Significance 5)

**Impact 6.1.5 (AS)** Development of the project site could result in the loss of landmark oak trees and groves, which could conflict with the Nevada County General Plan. **(Less than Significant with Mitigation Incorporated)**

Nevada County General Plan Policy 13.9 specifies that development in the vicinity of significant oak groves of all oak species be designed and sited to maximize the long-term preservation of the trees and integrity of their natural setting.

The proposed project would result in direct and indirect impacts on approximately 1.40 acres of landmark oak groves and four landmark black oak trees. The implementation of mitigation measures **MM AS-6.1.3a** through **MM AS-6.1.3e** would reduce the impacts to landmark oak trees and groves to **less than significant**.

The proposed project would not conflict with other local policies and ordinances.

Mitigation Measures

Implement mitigation measures **MM AS-6.1.3a** through **MM AS-6.1.3e**.

**Conflict with Conservation Plans (Standard of Significance 6)**

**Impact 6.1.6(AS)** The proposed project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. **(No Impact)**

There are no adopted habitat conservation plans (HCP) or natural community conservation plans (NCCP) in Nevada County, and the project site is not subject to any such plans. Therefore, the proposed project would not conflict with an HCP or NCCP and there will be **no impact**.

Mitigation Measures

None required.

**6.2 PENN VALLEY SITE**

**6.2.1 PROJECT-SPECIFIC LOCATION AND SETTING**

The Penn Valley project site is located in the Sierra Nevada foothills in the community of Penn Valley, approximately 7 miles southwest of Grass Valley. Specifically, the project site is located in Section 2, Township 16 North, and Range 7 East of the Rough and Ready USGS 7.5-minute quadrangle.

Greg Matuzak prepared an Environmental Setting, Plant Community, and Special-Status Species Evaluation and a Management Plan for Encroachment within the Non-disturbance 50-foot Buffer of a Seasonal Stream and Non-disturbance 100-foot Buffer of Wetlands for the project site was in August 2015 (**Appendix 6.0-PV**), and a Wetland Delineation Report was prepared by Heal Environmental Consulting in 2010 (**Appendix 6.0-PV**). These reports provided the description of the existing site conditions and potential biological resources present on the project site.

The approximately 1.2-acre project site is currently undeveloped and is generally flat with a slight elevation variance. The project site consists mostly of annual grasslands with a small wetland and scattered valley oak (*Quercus lobata*) trees. Native and non-native grasses on the site include wild oats (*Avena fatua*), wild rye (*Elymus glaucus*) and soft chess (*Bromus hordeaceus*). A full list of species observed on the project site is in **Appendix 6.0-PV**.

Jurisdictional features on the project site were identified and outlined in a wetland delineation conducted on May 3, 2000, and February 22, 2010 (**Appendix 6.0-PV**). Both of these delineations were previously verified by the USACE; however, the verifications have expired. The delineations identified approximately 0.42 acre of palustrine emergent seasonal marshes and 0.60 acre of jurisdictional water associated with Squirrel Creek and an unnamed tributary. An additional wetland was observed on-site; however, this feature is considered isolated and not subject to jurisdiction under the Clean Water Act. The USACE concurred with the findings of the wetland delineations. Based on the review of recent aerials of the project site, the current conditions of the project site are consistent with the previous wetland delineations.

The palustrine emergent marsh is dominated by sedges (*Carex sp.*), rushes (*Juncus sp.*), and other hydrophytic grasses and forbs. Soils are mapped as Alluvial Land, Loamy. The soils contain bright

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mottles and sulfidic odor, which are both primary hydric indicators. Water-stained leaves and oxidized root channels show sufficient hydrology indicators. Squirrel Creek is tributary to Deer Creek, which flows into the Yuba River. Riparian habitat around the creek consists of valley oak, Oregon ash (*Fraxinus latifolia*), white alder (*Alnus rhombifolia*), and arroyo willow (*Salix lasiolepis*). The delineation report and data sheets are shown in **Appendix 6.0-PV**.

### 6.2.2 SPECIAL-STATUS SPECIES

The results of the database search for this project can be found in **Appendix 6.0-PV**.

#### Plants

The database search identified two special-status plant species that have been documented within 3 miles of the project site: Scadden flat checkerbloom (*Sidalcea stipularis*) and Brandegee's clarkia (*Clarkia bilboea ssp. brandegeae*).

Scadden flat checkerbloom is state listed as endangered, has no federal status, and is a CNPS List 1B plant. This plant is a rhizomatous herb and is a Nevada County endemic. Scadden flat checkerbloom typically grows in montane freshwater marshes and swamps. This species typically blooms from July through August and grows at elevations between 2,297 and 2,395 feet amsl. Suitable habitat is not present and this species was not observed during the site visit that occurred during the blooming period; therefore, this species is not expected to occur on the project site.

Brandegee's clarkia is a CNPS List 4.2 plant; it has no state or federal status. This species inhabits chaparral, cismontane woodland, and lower montane forests; most likely on north-facing slopes. This species blooms May through July and is found at elevations of 275 to 3,000 feet amsl. Suitable habitat is not present and this species was not observed during the site visit that occurred during the blooming period; therefore, this species is not expected to occur on the project site.

#### Animals

Based on the database searches, four special-status wildlife species were evaluated to determine the potential to occur on-site. These species are further discussed below.

#### Amphibians and Reptiles

The federally listed California red-legged frog and two California species of concern, foothill yellow-legged frog and western pond turtle, are documented as occurring in the vicinity of the project site.

The California red-legged frog is known in Nevada County; however, suitable breeding habitat was not observed on the project site. If suitable breeding locations are present within 1.25 miles of the project site, suitable dispersal habitat could be present. However, this species has not been observed in the Rough and Ready quadrangle or the watershed associated with the project site. This species is not expected to occur on the project site.

Foothill yellow-legged frog occurs in the Coast Ranges from the Oregon border south to the Transverse Mountains of Los Angeles County, as well as in the majority of Northern California west of the Cascade crest, and along the western flank of the Sierra Nevada south to Kern County. This species requires shallow streams with cobble-sized substrate; it is rarely found far from a permanent water source. Squirrel Creek and its associated tributary are perennial and therefore do not

provide suitable habitat for this species. In addition, this species has not been observed within 3 miles of the project site. This species is not expected to occur on the project site or in the vicinity.

Western pond turtle is commonly associated with lakes, ponds, streams, and other water features. This species requires basking sites, such as partially submerged logs, floating vegetation, or open mud banks. Western pond turtle estivates in the mud bottom or banks during the summer months. The project site provides marginally suitable habitat for this species. Although this species was not observed during the site visit, it may potentially occur on the project site.

### Mammals

According to the Nevada County General Plan, the project site is not located within any migratory deer corridors, holding areas, or critical fawning areas. However, the General Plan mapped the project site as being located within an area of a potential Resident Deer Herd. No signs of deer or deer trails were observed on the project site.

### Birds

The California black rail, a state threatened and fully protected species, has been documented as occurring within 3 miles of the project site. California black rail requires constant standing water and dense vegetation for nesting. The aquatic features on the project site do not hold water throughout the year and the associated vegetation is not dense enough to support this species. Therefore, although wetlands are present on the project site, this species is not expected to occur.

The project site provides suitable nesting habitat for raptors and other birds protected under the MBTA. Suitable habitat for cavity-nesting birds, ground-nesting birds, and tree-nesting birds was observed on the project site. Northern flicker (*Colaptes auratus*), black-headed grosbeak (*Pheucticus melanocephalus*), and spotted towhee are some of the birds that could potentially nest on the project site.

### 6.2.3 IMPACTS AND MITIGATION MEASURES

#### **Impacts to Candidate, Sensitive, or Special-Status Plant Species (Standards of Significance 1 and 7)**

**Impact 6.2.1(PV)** The project site does not provide suitable habitat for any special-status plant species that may occur in the vicinity. **(No Impact)**

Two special-status plant species are known to occur in the project region, with four species documented as occurring within a 3-mile radius. However, the project site does not provide suitable habitat for these species. In addition, the species were not observed during the site visit that occurred during the blooming period for Scadden flat checkerbloom and Brandegees clarkia. No special-status plants are expected to occur on the project site; therefore, there will be **no impact**.

### Mitigation Measures

None required.

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### Impacts to Listed Special-Status Wildlife Species (Standards of Significance 1 and 7)

**Impact 6.2.2(PV)** Project-related activities could result in loss of nesting habitat for raptors and other birds protected by the MTBA. **(Less than Significant with Mitigation Incorporated)**

The project site provides suitable habitat for a variety of tree-nesting, cavity-nesting, and ground-nesting bird species. Nesting birds are protected under the MBTA; it is unlawful for the project to result in the take of nesting raptors or birds. Implementation of the proposed project could result in impacts to birds protected under the MBTA.

Construction activities could cause direct impacts to nesting raptors and migratory birds, if birds are actively nesting during construction. Nests may be located in trees, shrubs, or emergent vegetation, on the ground, and in burrows. The Penn Valley project may cause direct mortality to raptors or migratory birds through removal of vegetation that contains active nests. Construction could also result in noise, dust, increased human activity, and other indirect impacts to nesting raptor or migratory bird species in the project vicinity. Excessive noise, disturbance, and vibrations can cause nest abandonment and mortality to eggs and chicks, as well as stress from loss of foraging areas. This is a **potentially significant** impact. If construction occurs during the non-nesting season, no impacts are expected.

The loss or disturbance of active nests or direct mortality is prohibited by the MBTA and California Fish and Game Code Section 3503.5. With the implementation of mitigation measure **MM PV-6.2.2** below, impacts would be reduced to **less than significant**.

#### Mitigation Measures

**M.M PV-6.2.2** If construction is proposed during the breeding season (February–August), a focused survey for raptors and other migratory bird nests shall be conducted within 14 days prior to the beginning of construction activities by a qualified biologist in order to identify active nests on-site. If active nests are found, no construction activities shall take place within 500 feet of the nest until the young have fledged. This 500-foot construction prohibition zone may be reduced based on consultation with and approval by the California Department of Fish and Wildlife. Trees containing nests or cavities that must be removed as a result of project implementation shall be removed during the non-breeding season (late September to January). If no active nests are found during the focused survey, no further mitigation will be required. To the extent feasible, necessary tree removal should occur outside of the typical nesting season to minimize or avoid adverse effects to all nesting birds.

*Timing/Implementation:* Prior to construction activities

*Enforcement/Monitoring:* Nevada County Planning Department

**Impact 6.2.3(PV)** Project-related activities could impact western pond turtle **(Less than Significant with Mitigation Incorporated)**

Squirrel Creek provides marginally suitable habitat for western pond turtle. Construction activities could impact western pond turtles if one were to be present during construction. This impact could be considered **potentially significant**.

Implementation of **MM PV 6.2.3** requires pre-construction surveys for western pond turtle. If turtles are found, measures would be implemented to protect it. This would reduce the impact to **less than significant**.

Mitigation Measure

**MM PV-6.2.3** Within 48 hours prior to any disturbance within suitable habitat for western pond turtle, proposed disturbance areas shall be surveyed for this presence of this species by a qualified biologist. Surveys of the area shall be repeated if a lapse in construction activity of two weeks or greater occurs. If the species is detected, individuals shall be relocated to a suitable site within the same drainage by a qualified biologist. If the species is detected during the pre-construction survey, a monitoring biologist will be onsite during initiation of construction activities to ensure that no turtles are present during the onset of disturbance activities. If a western pond turtle is encountered during construction, activities shall cease until appropriate corrective measures have been implemented or it has been determined that the turtle will not be harmed. Any trapped, injured, or killed western pond turtles shall be reported immediately to the CDFW.

*Timing/Implementation:* Prior to construction activities

*Enforcement/Monitoring:* Nevada County Planning Department

**Impacts to Riparian Habitat, Sensitive Natural Communities, or Federally Protected Wetlands (Standards of Significance 2 and 3)**

**Impact 6.2.4(PV)** One stream and associated wetlands that are considered waters of the United States are present on-site. A portion of these features will be impacted by the project. **(Less than Significant with Mitigation Incorporated)**

Sensitive habitats include those that are of special concern to resource agencies and those that are protected under CEQA, Section 1600 of the Fish and Game Code, and Section 404 of the Clean Water Act. Two wetland delineations of the site were previously conducted and verified by the USACE. The USACE concurred that 1.02 acres of waters of the United States are present on the project site. These water features consist of 0.42 acre of palustrine emergent wetland and 0.60 acre associated with Squirrel Creek.

The proposed project would result in permanent impacts to the palustrine emergent wetlands, totaling 0.16 acre. The Nevada County Land Use and Development Code, Chapter II; Zoning Regulations, Section L-II 4.3 17C.3 requires a Management Plan be prepared for projects in non-disturbance buffers, including areas that are within 100 feet of wetlands and riparian areas. The Management Plan was completed by Greg Matuzak in August 2015 **(Appendix 6.0-PV)**.

The project applicant will coordinate with the USACE to determine the appropriate mitigation to ensure no net loss of wetlands. Impacts to wetlands could result in a significant impact; however, with implementation of mitigation measure **MM PV-6.2.4**, these impacts will be reduced to **less than significant**.

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### Mitigation Measures

#### **MM PV-6.2.4**

The following measures shall be implemented prior to or during construction, as appropriate.

- The project applicant shall either obtain a qualified biologist to conduct a preliminary delineation or shall resubmit the expired jurisdictional determination for reverification from the USACE.
- Prior to initiation of construction activities within jurisdictional features, construction best management practices (BMPs) shall be employed on-site to prevent degradation to on-site and off-site waters of the United States. Methods shall include the use of appropriate measures to intercept and capture sediment prior to entering jurisdictional features, as well as erosion control measures along the perimeter of all work areas to prevent the displacement of fill material. All BMPs shall be in place prior to initiation of any construction activities and shall remain until construction activities are completed. All erosion control methods shall be maintained until all on-site soils are stabilized. BMPs include, but are not limited to:
  - a) Minimize the number and size of work areas for equipment and spoil storage sites in the vicinity of the stream. Place staging areas and other work areas outside of the 50-foot and 100-foot non-disturbance buffers.
  - b) The contractor shall exercise reasonable precaution to protect this stream, wetlands, and adjacent non-disturbance buffers from pollution with fuels, oils and other harmful materials. Construction byproducts and pollutant such as oil, cement, and wash water shall be prevented from discharging into or near these resources and shall be collected for removal off the site. All construction debris and associated materials and litter shall be removed from the work site immediately upon completion.
  - c) No equipment for vehicle maintenance or refueling shall occur within the 50-foot and 100-foot non-disturbance buffers. The contractor shall immediately contain and clean up any petroleum or other chemical spills with absorbent materials such as sawdust or kitty litter. For other hazardous materials, follow the cleanup instruction on the label.
  - d) Exposed bare soil along the stream embankment and including non-disturbance buffer should be protected against loss from erosion by the seeding of an erosion control mixture and restored with native grasses and mulching. Non-native species that are known to invade with lands, such as orchard grass, velvet grass, rose clover, winter and spring vetch, and wild oats should not be used as they displace native species. The contractor shall follow the permit requirements obtained from the USACE and Central Valley Regional Water Quality Control Board before, during, and after construction.
- Standard staging area practices for sediment-tracking reduction shall be implemented where necessary and may include vehicle washing and street sweeping.

- All exposed/disturbed areas and access points left barren of vegetation as a result of construction activities shall be restored at the end of construction using locally native grass seeds, locally native grass plugs, and/or a mix of quick-growing sterile non-native grass with locally native grass seeds. Seeded areas shall be covered with broadcast straw and/or jute netted (monofilament erosion blankets are not permitted).
- Protective silt fencing shall be installed between the adjacent wetland habitats and the construction area limits to prevent accidental disturbance during construction and to protect water quality within the aquatic habitats during construction.
- The County shall ensure there is no net loss of wetlands or other waters of the United States through impact avoidance, impact minimization, and/or compensatory mitigation, as determined in CWA Section 404 and 401 permits and/or 1602 Streambed Alteration Agreement. Evidence of compliance with this mitigation measure shall be provided prior to construction.
- The applicant shall ensure no net loss of wetlands. Impacts on any wetland permanently or temporarily affected by the proposed project shall be offset through the dedication of mitigation credit(s) within a USACE-approved mitigation bank or through the payment of in-lieu fees to an approved conservation bank.
- Construction periods shall be limited to periods of extended dry weather and dry summer seasons.
- No fill or dredge material will enter or be removed from the stream channel during construction or thereafter.
- Use appropriate machinery and equipment to limit disturbance in the area.
- No dewatering of the stream will occur during construction or thereafter.

*Timing/Implementation:*      *Prior to and during construction activities*

*Enforcement/Monitoring:*      *Nevada County Planning Department*

### **Impacts to Wildlife Movement (Standard of Significance 4)**

**Impact 6.2.5(PV)** The proposed project would not interfere with the movement of native resident or migratory wildlife species. **(Less than Significant)**

Based upon available data on movement corridors and linkages from the CDFW BIOS Viewer, the project site is not located within an identified migratory corridor. In addition, the Nevada County Master Environmental Inventory of the General Plan indicates that the project site is not located within a deer migration corridor. Therefore, impacts to the movement of native resident or migratory wildlife species as a result of the project would be **less than significant**.

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### Mitigation Measures

None required.

### **Conflict with Local Policies and Ordinances (Standard of Significance 5)**

**Impact 6.2.6(PV)** Development of the project area would not result in conflict with local policies or ordinances. **(Less Than Significant with Mitigation Incorporated)**

Nevada County General Plan and Nevada County Land Use and Development Code has several ordinances that protect biological resources, specifically native oaks, rare, threatened and endangered species, and watercourses. There are several oak trees on the project site that would be considered landmark oak trees per the definition in the Nevada County Ordinance Section L-11 4.3.15. In addition, the project site is considered to be oak woodland due to a canopy cover greater than 33 percent. However, the project has been designed to avoid the landmark oak trees, and the 33 percent canopy cover will remain intact.

Nevada County Ordinance Section L-11 4.3.17 protects wetlands and other watercourses in the County. The proposed project would permanently impact wetlands on the project site. However, the project would comply with measures within the Ordinance, including the completion of a Management Plan. With implementation of mitigation measure **MM PV-6.2.4** to offset the impacts to wetlands, the impact would be **less than significant**.

### Mitigation Measures

Implement mitigation measure **MM PV-6.2.4**.

### **Conflict with Conservation Plans (Standard of Significance 6)**

**Impact 6.2.7(PV)** The proposed project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. **(No Impact)**

There are no adopted HCPs or NCCPs in Nevada County and the project site is not subject to any such plans. Therefore, the proposed project would not conflict with an HCP or NCCP and there would be **no impact**.

### Mitigation Measures

None required.

## **6.3 ROUGH AND READY HIGHWAY SITE**

### 6.3.1 PROJECT-SPECIFIC LOCATION AND SETTING

The Rough and Ready Highway project site is located in Grass Valley, California. Specifically, the site is located at 12345 Rough and Ready Highway in Section 20, Township 16 North, and Range 8 East of the Grass Valley 7.5-minute quadrangle. A Biological Inventory Report was prepared by Costella Environmental Consulting in January 2015 (**Appendix 6.0-RR**).

The project site is a highly disturbed infill site that is dominated by non-native horticultural and ruderal plants. The only native plants within the project site are gray pines and ponderosa pines.

The Nevada County General Plan's Wildlife and Vegetation Element indicates that there are no gabbro or serpentine rock soils on the project site. There is one small building located on the northwest corner of the property. No wetlands or other waters of the United States are present on the project site. Site photos are shown in **Appendix 6.0-RR**.

### 6.3.2 SPECIAL-STATUS SPECIES

A search of the CNDDDB and CNPS database was conducted using the Grass Valley, French Corral, and Nevada County 7.5-minute USGS quadrangles. A USFWS IPaC database search was also conducted for the project site (**Appendix 6.0-RR**). Special-status species were considered for this analysis based on field survey results and a review of the database searches.

#### **Plants**

The database search resulted in multiple special-status plant species that may occur in the quadrangle search. However, plant species require either wet meadows, rocky outcrops, or specific soil types (gabbro or serpentine rock), none of which are not present on the project site. The project site is highly disturbed and does not support habitat for special-status plant species.

#### **Animals**

Based on database search results, eight special-status animals were identified as occurring within the quadrangle search. All of the species were determined to have minimal to no potential for occurring within the study area due to absence of suitable habitat or due to the site being outside the current range for the species.

#### **Invertebrate**

The valley elderberry longhorn beetle (*Democerus californicus dimorphus*) is a federally listed species. This species is completely dependent on its hostplant, blue elderberry shrub (*Sambucus mexicana*). Elderberry shrubs are generally found in riparian woodlands and grasslands. There are no elderberry shrubs on the project site; therefore, this species is not expected to be present. In addition, there are no occurrences for this species within 5 miles of the project site.

#### **Amphibians and Reptiles**

The California red-legged frog, western pond turtle, and foothill yellow-legged frog are documented as occurring in the project region. However, the project site and vicinity lack aquatic features that are required for these species. There are no CNDDDB occurrences for any of these species within a 5-mile radius.

The coast horned lizard has been documented as occurring within a 5-mile radius of the project site. However, this species requires sandy soils with low vegetation cover. There are no sandy soils present and the ground cover vegetation is too dense to support this species.

These species are not expected to occur on the project site.

#### **Birds**

The California black rail, a state threatened and fully protected species, has been documented multiple times as occurring within 5 miles of the project site. This species feeds and nests in marsh

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and wetland habitat with dense vegetation. Because of the lack of aquatic habitat, this species is not expected to occur on the project site.

### Mammals

The fisher is a state and federal candidate species. This species is generally found in old growth coniferous forests at high elevation and is associated with undisturbed areas in high elevation away from human disturbance. The project vicinity is highly disturbed and developed; therefore, it is unlikely that this species will occur in the vicinity of the project site.

### Fish

Three federally listed fish species, Central Valley steelhead (*Oncorhynchus mykiss*), Central Valley spring run chinook salmon (*Oncorhynchus tshawytscha*), and winter run chinook salmon (*Oncorhynchus tshawytscha*) are shown as occurring in the Rough and Ready quadrangle. There are no aquatic features on the project site; therefore, these species will not be present.

### 6.3.3. IMPACTS AND MITIGATION MEASURES

#### Impacts to Candidate, Sensitive, or Special-Status Plant Species (Standards of Significance 1 and 7)

**Impact 6.3.1(RR)** The project site does not provide suitable habitat for any special-status plant species that may occur in the vicinity. **(No Impact)**

The project site is highly disturbed and does not provide suitable habitat for special-status plant species. Therefore, no special-status plants are expected to occur on the project site. There will be **no impact**.

#### Mitigation Measures

None required.

#### Impacts to Listed Special-Status Wildlife Species (Standards of Significance 1 and 7)

**Impact 6.3.2(RR)** Implementation of the project-related activities could result in loss of nesting habitat for raptors and other birds protected by the MTBA. **(Less than Significant with Mitigation Incorporated)**

The project site provides suitable habitat for a variety of tree-nesting, cavity-nesting, and ground-nesting bird species. Nesting birds are protected under the MBTA; it is unlawful for the project to result in the take of nesting raptors or birds. Implementation of the proposed project could result in impacts to birds protected under the MBTA.

Construction activities could cause direct impacts to nesting raptors and migratory birds, if birds are actively nesting during construction. Nests may be located in trees, shrubs, or emergent vegetation, on the ground, and in burrows. The Rough and Ready Highway project may cause direct mortality to raptors or migratory birds through removal of vegetation that contains active nests. Construction could also result in noise, dust, increased human activity, and other indirect impacts to nesting raptor or migratory bird species in the project vicinity. Excessive noise, disturbance, and vibrations can cause nest abandonment and mortality to eggs and chicks, as well as stress from loss of foraging areas. This is a **potentially significant** impact. If construction occurs during the non-nesting season, no impacts are expected.

The loss or disturbance of active nests or direct mortality is prohibited by the MBTA and California Fish and Game Code Section 3503.5. With the implementation of mitigation measure **MM RR-6.3.2**, impacts would be reduced to **less than significant**.

Mitigation Measures

**MM RR-6.3.2** If construction is proposed during the breeding season (February–August), a focused survey for raptors and other migratory bird nests shall be conducted within 14 days prior to the beginning of construction activities by a qualified biologist in order to identify active nests on-site. If active nests are found, no construction activities shall take place within 500 feet of the nest until the young have fledged. This 500-foot construction prohibition zone may be reduced based on consultation with and approval by the California Department of Fish and Wildlife. Trees containing nests or cavities that must be removed as a result of project implementation shall be removed during the non-breeding season (late September to January). If no active nests are found during the focused survey, no further mitigation will be required. To the extent feasible, necessary tree removal should occur outside of the typical nesting season to minimize or avoid adverse effects to all nesting birds.

*Timing/Implementation:* Prior to construction activities

*Enforcement/Monitoring:* Nevada County Planning Department

**Impacts to Riparian Habitat, Sensitive Natural Communities, or Federally Protected Wetlands (Standards of Significance 2 and 3)**

**Impact 6.3.3(RR)** There is no riparian habitat, sensitive natural community, or federally protected wetlands within the project site. **(No Impact)**

There are no wetlands, riparian habitat, or sensitive communities on the project site or in the immediate vicinity of the project site. Therefore, there would be **no impact** on these resources.

Mitigation Measures

None required.

**Impacts to Wildlife Movement (Standard of Significance 4)**

**Impact 6.3.4(RR)** Implementation of the proposed project would not interfere with the movement of native resident or migratory wildlife species. **(No Impact)**

Available data on movement corridors and linkages was accessed via the CDFW BIOS Viewer. Data reviewed included the Essential Connectivity Areas [ds623] layer and the Missing Linkages in California [ds420] layer. It was determined that the project site is not located within an essential connectivity area or known migration corridor. In addition, the Nevada County Master Environmental Inventory of the General Plan indicates that the project site is not located within a deer migration corridor. Therefore, there will be **no impact** to wildlife movement as a result of the project.

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### Mitigation Measures

None required.

### **Conflict with Local Policies and Ordinances (Standard of Significance 5)**

**Impact 6.3.5(RR)** Development of the project area will not result in conflict with and local policies or ordinances. **(No Impact)**

Nevada County General Plan and Nevada County Land Use and Development Code has several ordinances that protect biological resources, specifically native oaks, rare, threatened and endangered species, and watercourses. There are no oak trees, landmark oak groves, watercourse or rare, threatened, or endangered species on the project site. Therefore, there would be **no impact**.

### Mitigation Measures

None required.

### **Conflict with Conservation Plans (Standard of Significance 6)**

**Impact 6.3.6(RR)** Implementation of the proposed project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. **(No Impact)**

There are no adopted HCPs or NCCPs in Nevada County and the project site is not subject to any such plans. Therefore, the proposed project would not conflict with an HCP or NCCP. There will be **no impact**.

### Mitigation Measures

None required.

## **6.4 CUMULATIVE SETTING, IMPACTS, AND MITIGATION MEASURES**

### CUMULATIVE SETTING

The cumulative context for biological resources is the development assumed to occur in Nevada County. Development in the county is dominated by rural residential and businesses, with some areas that are more densely developed. The habitat generally consists of oak woodlands and low elevation montane forest. The woodlands and forest provide nesting and foraging habitat for several special-status species including northern goshawk and other raptors and nesting birds protected by the MBTA.

### CUMULATIVE IMPACTS AND MITIGATION MEASURES

#### **Cumulative Impacts on Biological Resources**

**Impact 6.4.1** Cumulative development of the proposed projects could affect biological resources **(Less than Cumulatively Considerable with Mitigation Incorporated)**

Anticipated development and urban expansion in the county is expected to contribute to disturbance to special-status species, their habitat, and other sensitive biological habitats. This is considered a significant cumulative impact on biological resources. As discussed in Impact 6.1.5(AS), the Alta Sierra project site would result in the loss of 1.40 acres of landmark groves as well as four landmark oak trees. Implementation of mitigation measures **MM AS-6.1.3a through MM AS-6.1.3e**, which would include funding the BYLT for the Clover Valley Preserve black oak restoration project, would provide compensation for the project's impacts to landmark oaks and oak groves. Given this compensation and the fact that the removal of 1.40 acres of landmark groves and four landmark trees would represent a loss of only approximately 0.004 percent of Nevada County's montane hardwood habitat, this project would not result in a significant loss of oak woodland habitat. Neither of the other project sites would impact landmark oak trees or landmark groves, so the projects would not combine to result in a significant cumulative impact on trees. Therefore, the projects' contributions to cumulative impacts on landmark oaks and oak groves, individually and in combination, would be **less than cumulatively considerable with mitigation**.

As discussed in Impact 6.2.3(PV), the implementation of the Penn Valley project would result in the fill of 0.16 acre of palustrine emergent wetlands. The County will ensure there is no net loss to wetlands or other waters of the United States as a result of the project with the implementation of mitigation measure **MM PV-6.2.4**. Neither of the other project sites contain wetlands or other waters of the United States and the projects would not combine to result in a significant cumulative impact on wetlands. With implementation of mitigation measure MM PV-6.2.4, the projects' contributions to cumulative impacts on wetlands, individually and in combination, would be **less than cumulatively considerable with mitigation**.

Because each project site would not result in significant impacts on special-status species, their habitat, and other sensitive biological habitats, they would not individually contribute to cumulative impacts in the county. Further, because the habitat types on each site differs from the habitat on the other sites, the projects would not combine to increase the impact on any particular resource. Therefore, the projects' contributions to cumulative biological resources impacts related to special-status species and sensitive biological habitats, individually and in combination, would be **less than cumulatively considerable**.

### Mitigation Measures

Implement mitigation as follows:

Alta Sierra project: Implement mitigation measures **MM AS-6.1.3a** through **MM AS-6.1.3e**

Penn Valley project: Implement mitigation **MM PV-6.2.4**.

Rough and Ready Highway project: None required.

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