4.3 BIOLOGICAL RESOURCES

This section evaluates the potential for implementation of the proposed project to have substantial adverse impacts on biological resources. The Initial Study/Notice of Preparation (Appendix A) originally scoped this issue area out of the analysis in the EIR; however, it was subsequently determined that the EIR should analyze the potential for impacts associated with the effect on candidate, sensitive or special status species, and local policies or ordinances protecting biological resources. Data used to prepare this section were obtained through the California Natural Diversity Database, USFWS Endangered and Threatened Species List, California Native Plant Society Electronic Inventory search for the proposed project (Appendix C), and City of Huntington Beach General Plan (1996). Full bibliographic entries for all reference materials are provided in Section 4.3.8 (References) at the end of this section.

4.3.1 Environmental Setting

Site Characteristics

The project site is currently developed for retail and auto service use. A vacant 190,100 sf retail building, formerly occupied by a Montgomery Ward department store, occupies the central portion of the project site. This building was originally an anchor tenant of the former Huntington Center. A vacant 18,600 sf auto repair facility associated with the Montgomery Ward store is located on the southwestern portion of the project site. The project site and surrounding vicinity is generally flat with no pronounced highs or lows. Vegetation on the project site consists of trees and ornamental shrubs, with the majority of trees lining the western boundary of the site adjacent to the Union Pacific Railroad (UPRR) tracks.

Adjacent and Existing Land Uses

A mixture of commercial, office, hotel, and residential uses are located to the north/northeast of the project site. The Old World Village, a Bavarian-themed shopping, dining, and entertainment center, is located north of the project site across Center Avenue. Seawind Village, a multi-family apartment development is further to the north along Huntington Village Lane. The Towers at Bella Terra (formerly called One Pacific Plaza), a 400,000 sf office development, and Hotel Huntington Beach, a 224-room hotel development, are located to the northeast between Center Avenue and I-405. The Bella Terra Mall (Phase I) is located directly adjacent to the project site to the east.

Commercial and office development is located to the south of the project site across Edinger Avenue, with single-family residential units located further to the south. The College Country Center, a shopping center containing approximately 60,000 square feet of retail and office space, is located to the west of the project site on the opposite side of the UPRR tracks just south of Center Avenue. The Ripcurl Project, a mixed-use residential and commercial project containing approximately 440 residential units and 10,000 square feet of retail space is currently proposed on the College Country Center site. A small site with two transmission towers also abuts the northwest corner of the project site. The transmission towers are owned and operated by Southern California Edison (SCE).

A former Levitz furniture store, consisting of approximately 230,000 square feet of retail showroom and distribution space and 331 parking stalls on 11.7 acres, is also located to the west of the project site on the opposite side of the UPRR tracks, immediately south of The Ripcurl proposed project site and along Edinger Avenue. Golden West College, an educational institution consisting of 14,000 students and staff, is located further to the west across Gothard Street.

4.3.2 Methodology

Database Search

A database survey was conducted for the proposed project. Information on occurrences of special-status species in the vicinity of the project site was obtained from searching databases and lists such as the California Department of Fish and Game California Natural Diversity Database (CNDDB, December 2007), the Carlsbad Fish and Wildlife Office Endangered or Threatened Species List (USFWS, March 2008) and the California Native Plant Society Electronic Inventory of Rare and Endangered Plants (CNPS, March 2008). The CNDDB is based on reports of actual occurrences of regional habitat diversity and does not constitute an exhaustive inventory of every resource. CNDDB inventories the status and location of rare plants and animals in California.

4.3.3 Special-Status Biological Resources

The following section addresses special-status biological resources reported, or having the potential to occur within the project site. These resources include plant and wildlife species that have been afforded special status and/or recognition by federal and the state. In general, the principal reason an individual taxon (species, subspecies, or variety) is given such recognition is the documented or perceived decline or limitation of its population size or geographical extent and/or distribution, resulting in most cases from habitat loss. Special-status biological resources include vegetation types and habitats that are unique, of relatively limited distribution in the region, or of particularly high wildlife value. The following sources were used to determine the special status of biological resources:

- **Plants**—CNDDB, December 2007; USFWS, March 2008; CNPS, March 2008.
- **Wildlife**—CNDDB, December 2007, USFWS, March 2008.
- **Habitats**—CNDDB, December 2007

The potential to occur within the project site was based on the following criteria:

- *Absent:* Identification of the species or species is restricted to habitats that do not occur within the project site.
- *Low:* No records exist of the species occurring within the project site or its vicinity, or habitats needed to support the species are of poor quality.
- *Moderate:* A historical record exists of the species within the vicinity of the project site and/or the habitat requirements associated with the species occur within the project site.

- *High:* Both a historical record exists of the species within the project site or its immediate vicinity (approximately one mile) and the habitat requirements associated with the species occur within the project site.
- *Species Observed:* The species are known to be observed within the project site.

Federally and State-Listed Species

Based on CNDDB literature review, a total of twelve state- and/or federally listed threatened or endangered species were identified as potentially occurring within the area. The CNDDB report was conducted for four USGS quads Newport Beach, Seal Beach, Los Alamitos and Anaheim. The CNDDB is based on reports of actual occurrences and does not constitute an exhaustive inventory of every resource. Lists from the USFWS and CNPS were also reviewed. These databases contain records of reported occurrences of federal- or state-listed endangered, threatened, rare, or proposed endangered or threatened species, state species of special concern, or otherwise sensitive species or habitat that may occur within or in the immediate vicinity of the project area. This search range encompasses a sufficient distance to accommodate for regional habitat diversity and to overcome the limitations of the CNDDB.

In total, 77 listed species were identified as potentially occurring within the project site according to the CNDDB, CNPS and USFWS. However, the project site is fully developed in an urbanized area of the City, adjacent to existing commercial, office, and institutional uses. Additionally, a major freeway (I-405) is located very near the project site. The potential for any identified species to occur on the project site is considered low. Standard industry practice for CEQA documents identifies listed CNDDB species, as this database covers both federally and State-listed species. Therefore, due to the size limitation and the low probability of occurrence, species identified on the CNPS and USFWS databases are listed in Appendix C (along with species identified on the CNDDB). As discussed below, all twelve CNDDB listed species are considered to be *absent* due to lack of suitable habitat within the project site and/or distance from closest known occurrence.

Wildlife

San Diego Fairy Shrimp (*Branchinecta sandiegonensis*). The San Diego fairy shrimp is listed as endangered by the U.S. Fish and Wildlife Service (USFWS). The San Diego fairy shrimp is known to occur within a limited area of coastal mesas in Orange and San Diego counties. The San Diego fairy shrimp appears when late fall, winter, and spring rains fill small, shallow, unpredictable seasonal vernal pools. Maximum longevity of adults in the field is about forty-two days, following a ten- to twenty-day maturation period. Though the San Diego fairy shrimp has been observed within 5 miles of the project site, there is no suitable habitat within the project site. As such, this species can be considered absent.

Western Snowy Plover (*Charadrius alexandrinus nivosus*). The western snowy plover was listed as threatened by the USFWS. The Western snowy plover have declined as a nesting species throughout California, in part due to human disturbance of sandy beaches typically used for nesting and roosting. The Pacific coast population of the western snowy plover breeds primarily on coastal beaches from southern Washington to southern Baja California, Mexico. The nesting season extends from early March through late September. The breeding season generally begins earlier in more southerly latitudes, and

may be two to four weeks earlier in southern California than in Oregon and Washington. The western snowy plover nests on sandy beaches and dunes by creating a shallow depression as a nest, using driftwood, rocks, or bushes as cover; nests may also be entirely out in the open. Nests typically occur in flat, open areas with sandy or saline substrates. Vegetation and driftwood are usually sparse or absent. Though the western snowy plover has been observed within 5 miles of the project site, there is no suitable habitat within the project site. As such, this species can be considered absent.

Western Yellow-billed Cuckoo (*Coccyzus americanus occidentalis*). The yellow-billed cuckoo is listed as endangered by the CDFG. In California, the western yellow-billed cuckoo requires dense, wide riparian woodlands, with well-developed understories for breeding. It occurs in densely foliaged, deciduous trees and shrubs, especially willows that are required for roost sites. It is restricted when breeding to river bottoms and other mesic habitats where humidity is high and where the dense understory abuts slow-moving watercourses, backwaters, or seeps. Willow is almost always a dominant component of the vegetation. The western yellow-billed cuckoo has not been observed within 5 miles of the project site, nor is suitable habitat located on site. As such, this species can be considered absent.

California Black Rail (*Laterallus jamaicensis coturniculus*). The California black rail is listed as threatened by the CDFG. The historical distribution of the California black rail ranged from the San Francisco Bay area and the delta of the Sacramento and San Joaquin rivers south, along the coast to northern Baja California. California black rails are still present within the remaining tidal marshlands of northern and coastal southern California. Significant loss of saltwater and freshwater wetland habitat in recent decades has significantly reduced the populations of California black rail. California black rails prefer to live in tidal salt marshes with a heavy canopy of pickleweed and an open structure below the canopy for nesting. The breeding season begins in February, normally with a single brood with an average clutch size of six eggs. California black rails have been reported to abandon their nests if disturbed before completing their clutch, but have not been noted in the area since 1970. There is no suitable habitat for the California black rail within the project site. The California black rail has not been observed within 5 miles of the project site, nor is suitable habitat located on site. As such, this species can be considered absent.

Belding's Savannah Sparrow (*Passerculus sandwichensis* ssp. *beldingi*). The Belding's savannah sparrow is listed as endangered by the CDFG. The Belding's savannah sparrow is a small, brown, resident songbird. The Belding's savannah sparrow occurs in coastal areas of southern California and Baja California where it is a year-round resident of coastal salt marshes and associated mudflats and salt flats. Dense stands of pickleweed in the upper region of salt marshes that flood only during extremely high spring tides are its preferred nesting habitat. Belding's savannah sparrow forages on insects in the marsh and intertidal zone as well as in nearby mudflats and salt flats. Although very little is known about the Belding's savannah sparrow's breeding habits, nesting season is typically from April through July. The females build a nest above the highest tide line to avoid being flooded. The nest materials are comprised of pickleweed twigs and hair. The Belding's savannah sparrow occurs within wetland habitat of Long Beach, Seal Beach, and Newport Beach. Though the Belding's savannah sparrow has been observed within five miles of the project site, there is no suitable habitat within the project site. As such, this species can be considered absent.

Coastal California Gnatcatcher (*Polioptila californica californica*). The coastal California gnatcatcher is listed as threatened by the USFWS. The coastal California gnatcatcher is an obligate resident of southern California coastal sage scrub communities near arid hillsides, mesas, and washes. Though the coastal California gnatcatcher has been observed within 5 miles of the project site, there is no suitable habitat within the project site. As such, this species can be considered absent.

Light-footed Clapper Rail (*Rallus longirostris levipes*). The light-footed clapper rail is listed as endangered by both the USFWS and CDFG. The light-footed clapper rail inhabits coastal salt and freshwater marshes, containing cordgrass, cattails or tules, and rushes and forages in higher marsh vegetation, along vegetation and mudflat interface, and along tidal creeks. Light-footed clapper rail population declines were due to habitat loss of floodplain river areas and tidal estuaries. It is found within Seal Beach National Wildlife Refuge, Upper Newport Bay, and Bolsa Chica Ecological Reserve. Though the light-footed clapper rail has been observed within five miles of the project site, there is no suitable habitat within the project site. As such, this species can be considered absent.

California Least Tern (*Sterna antillarum* ssp. *browni*). The California least tern is listed as endangered by both the USFWS and CDFG. The California least tern is a medium-sized black and white migratory bird. Historic nesting sites were primarily sandy, ocean beach strand areas near estuaries and river mouths. Locally, it breeds from April to September along the coast of southern California in abandoned salt ponds, on sandy beaches, and along estuarine shores. Though the California least tern has been observed within one mile of the project site, there is no suitable habitat within the project site. As such, this species can be considered absent.

Plants

Ventura Marsh Milk-vetch (*Astragalus pycnostachyus* var. *lanosisimus*). The Ventura marsh milk-vetch is listed as endangered by both the USFWS and CDFG. The Ventura marsh milk-vetch is a herbaceous perennial in the pea family, typically found within coastal dunes, coastal scrub, marshes and swamps. The Ventura marsh mil--vetch has a thick taproot and multiple erect, reddish stems, 16 to 36 inches tall that emerge from the root crown. The blooming time has been recorded as July to October. With the exception of the extant Ventura County population, the species is believed extirpated from all other areas from which it has been collected. The single known population of the Ventura Marsh Milk-vetch occurs in a degraded site near the City of Oxnard. The Ventura marsh milk-vetch has not been observed within five miles of the project site, and can be considered absent.

San Fernando Valley Spineflower (*Chorizanthe parryi* var. *fernandin*). The San Fernando Valley spineflower is listed as endangered by the CDFG and is a candidate species with the USFWS. The San Fernando Valley spineflower is a member of the buckwheat family and grows in coastal scrub, sandy or gravelly soils along dry washes. The San Fernando Valley Spineflower typically blooms with tiny white flowers from April to June. It is threatened by loss of habitat and competition with exotic invasive plants. It formerly occurred in San Bernardino, Riverside, Orange, Ventura, and Los Angeles Counties, but now known only to occur in a few locations. Though the San Fernando Valley spineflower has been observed within 5 miles of the project site, the last documented observation was in 1902 and the CDFG considers

the occurrence extirpated. There is no suitable habitat within the project site. As such, this species is considered absent.

Salt Marsh Bird's Beak (*Cordylanthus maritimus* ssp. *maritimus*). The salt marsh bird's beak is listed as endangered by both the USFWS and CDFG. The salt marsh bird's beak occurs in coastal dunes, coastal salt marshes, and swamps along coastal Southern California to Baja. The salt marsh bird's beak flowers from May to October, and can be found at elevations up to 100 feet. Though the salt marsh bird's beak has been observed within one mile of the project site, there is no suitable habitat within the project site. As such, this species can be considered absent.

California Orcutt grass (*Orcuttia californica*). The California Orcutt grass is listed as endangered by both the USFWS and CDFG. The California Orcutt grass is a member of the grass family (Poaceae) that is a bright green, sticky, aromatic annual with flowers borne in dense spikes. This species was once commonly found in the volcanic terrace and valley vernal pool systems of southern California in Los Angeles, Riverside and San Diego counties. This species was last collected near Lakewood, sometime prior to 1977 and is listed as extirpated by the CNDDB. The California Orcutt grass has not been observed within five miles of the project site, and there is no suitable habitat within the project site. As such, this species can be considered absent.

Other Sensitive Biological Resources

Vegetation

Sensitive Plants

In addition to the federal and State listed species detailed above, the CNDDB database review resulted in the identification of twenty-two additional sensitive plant species that have a potential to occur on, or within the vicinity of, the project site. The sensitive plant species are included in Appendix C. Taking into account the habitat, elevation, and blooming periods of each species, none of the twenty-two sensitive plant species have a potential to occur within the project site. Although non-listed, special-status species carry no official State or federal listing, the California Environmental Quality Act (CEQA) requires consideration of them during the environmental documentation process due to their limited distribution and/or declining numbers.

Sensitive Habitats

In addition to individual plant species, special-status habitats are considered important because of their high species diversity, high productivity, limited distribution, declining status, or a combination of these qualities. These habitats are recognized as important by local, State, and federal agencies, and identified by the CNDDB. The proposed project is located within a commercially developed site and no sensitive habitats exist within the project site.

Wildlife

In addition to the federal and State listed species detailed above, the CNDDB review resulted in the identification of thirty-two sensitive wildlife species that have the potential to occur on or within the vicinity of the project site. The sensitive wildlife species are included in Appendix C. Taking into account the habitat, elevation, and habitat requirements/restrictions of each species, none of the thirty-two sensitive wildlife species have a potential to occur within the project site:

4.3.4 Wildlife Movement

Wildlife corridors link together areas of suitable wildlife habitat that are otherwise separated by rugged terrain, changes in vegetation, or human disturbance. The fragmentation of open space areas by urbanization creates isolated "islands" of wildlife habitat. Fragmentation can also occur when a portion of one or more habitats is converted into another habitat, such as when woodland or scrub habitat is altered or converted into grasslands after a disturbance such as fire, mudslide, or grading activities. In the absence of habitat linkages that allow movement to adjoining open space areas, various studies have concluded that some wildlife species, especially the larger and more mobile mammals, would not likely persist over time in fragmented or isolated habitat areas because they prohibit the infusion of new individuals and genetic information (Soule 1987; Harris and Gallagher 1989; Bennett 1990). Wildlife corridors mitigate the effects of this fragmentation by (1) allowing animals to move between remaining habitats, thereby permitting depleted populations to be replenished and promoting genetic exchange; (2) providing escape routes from fire, predators, and human disturbances, thus reducing the risk of catastrophic events (such as fire or disease) on population or local species extinction; and (3) serving as travel routes for individual animals as they move within their home ranges in search of food, water, mates, and other needs (Noss 1983; Simberloff and Cox 1987; Harris and Gallagher 1989).

Wildlife movement activities usually fall into one of three movement categories: (1) dispersal (e.g., juvenile animals from natal areas, or individuals extending range distributions); (2) seasonal migration; and (3) local movements related to home range activities (foraging for food or water, defending territories, searching for mates, breeding areas, or cover). A number of terms have been used in various wildlife movement studies, such as "wildlife corridor," "travel route," "habitat linkage," and "wildlife crossing," to refer to areas in which wildlife move from one area to another. To clarify the meaning of these terms and facilitate the discussion of wildlife movement in this analysis, these terms are defined as follows:

- **Travel route**—A landscape feature (such as a ridgeline, drainage, canyon, or riparian strip) within a larger natural habitat area that is used frequently by animals to facilitate movement and provide access to necessary resources (e.g., water, food, cover, den sites). The travel route is generally preferred because it provides the least amount of topographic resistance in moving from one area to another. It contains adequate food, water, and/or cover while moving between habitat areas and provides a relatively direct link between target habitat areas.
- **Wildlife corridor**—A piece of habitat, usually linear in nature, that connects two or more habitat patches that would otherwise be fragmented or isolated from one another. Wildlife corridors are usually bounded by urban land areas or other areas unsuitable for wildlife. The corridor generally

contains suitable cover, food, and/or water to support species and facilitate movement while in the corridor. Larger, landscape-level corridors (often referred to as "habitat or landscape linkages") can provide both transitory and resident habitat for a variety of species.

- **Wildlife crossing**—A small, narrow area, relatively short in length and generally constricted in nature, that allows wildlife to pass under or through an obstacle or barrier that otherwise hinders or prevents movement. Crossings typically are manmade and include culverts, underpasses, drainage pipes, and tunnels to provide access across or under roads, highways, pipelines, or other physical obstacles. These often represent "choke points" along a movement corridor.

Within a large open space area in which there are few or no manmade or naturally occurring physical constraints to wildlife movement, wildlife corridors, as defined above, may not yet exist. Given an open space area that is both large enough to maintain viable populations of species and provide a variety of travel routes (canyons, ridgelines, trails, riverbeds, and others), wildlife would use these "local" routes while searching for food, water, shelter, and mates, and would not need to cross into other large open space areas. Based on their size, location, vegetative composition, and availability of food, some of these movement areas (e.g., large drainages and canyons) are used for longer lengths of time and serve as source areas for food, water, and cover, particularly for small- and medium-size animals. This is especially true if the travel route is within a larger open space area. However, once open space areas become constrained and/or fragmented as a result of urban development or construction of physical obstacles, such as roads and highways, the remaining landscape features or travel routes that connect the larger open space areas can "become" corridors as long as they provide adequate space, cover, food, and water, and do not contain obstacles or distractions (e.g., manmade noise, lighting) that would generally hinder wildlife movement.

The proposed project site is located within a developed urban landscape and is not part of a major or local wildlife corridor/travel route, as it does not serve to connect two significant habitats. The site is generally surrounded by commercial, office, and institutional development. There is an existing small site with two transmission towers that abuts the northwest corner of the project site. This small site is used by SCE as a power line right-of-way. In addition, running along the east edge of the SCE right-of-way and on the western boundary of the project site is the UPRR right-of-way. The two right-of-ways exist side by side extending north, past the I-405 freeway. Adjacent to the project site, the right-of-way area consists of a vacant landscape that is occupied with sparse vegetative cover. The site does not connect to a larger open space area and does not provide adequate space, cover, food, and water for wildlife movement. The vacant land northwest of the proposed project across Center Avenue is constrained and fragmented as a result of urban development and the I-405 freeway.

Open fields associated with the Golden West College exist further northwest of the proposed project site; however, the existing right-of-way land does not provide a direct connection to this space as they are separated by Gothard Street. The areas immediately surrounding the right-of-way are highly urbanized, including a major freeway. Further north, the I-405 freeway divides the right-of-way and disturbs any potential migratory paths. With the possible exception of migratory birds, wildlife does not use the vacant area near the proposed project to travel from one habitat or resources area to the next. As such, the project area does not fit in to any of the wildlife movement categories previously described (travel

route, wildlife crossing, wildlife corridor), and development of the proposed project would only disrupt local foraging of the avian and ground-dwelling species.

4.3.5 Regulatory Framework

Federal

Endangered Species Act of 1973

The Endangered Species Act (ESA) and implementing regulations, Title 16 *United States Code* (USC) §1531 et seq. (16 USC 1531 et seq.), Title 50 *Code of Federal Regulations* (CFR) §17.1 et seq. (50 CFR §17.1 et seq.), includes provisions for the protection and management of federally listed threatened or endangered plants and animals and their designated critical habitats. Section 7 of the ESA requires a permit to take threatened or endangered species during lawful project activities. The administering agency for the above authority is the USFWS for terrestrial, avian, and most aquatic species. The National Marine Fisheries Service is responsible for administering the federal ESA as it applies to marine species and anadromous fish.

Fish and Wildlife Coordination Act

Section 7 of *Fish and Wildlife Coordination Act*, 16 USC 742 et seq., 16 USC 1531 et seq., and 50 CFR 17 requires consultation if any project facilities could jeopardize the continued existence of an endangered species. Applicability depends on federal jurisdiction over some aspect of the project. The administering agency for these authorities is expected to be the Corps in coordination with the USFWS.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) (16 USC §§703–711) includes provisions for protection of migratory birds, including the non-permitted take of migratory birds, under the authority of the USFWS and CDFG. The MBTA protects over 800 species including geese, ducks, shorebirds, raptors, songbirds, and many relatively common species.

Clean Water Act of 1977, Section 404

This section of the Act (33 USC 1251 et seq., 33 CFR §§320 and 323) gives the Corps authority to regulate discharges of dredge or fill material into waters of the U.S., including wetlands. There are no wetlands located within the project site, as defined by the *Clean Water Act*.

Clean Water Act of 1977, Section 401

This section of the Act requires a state-issued Water Quality Certification for all projects regulated under Section 404. In California, the RWQCB issues Water Quality Certifications with jurisdiction over the project site. The RWQCB, Santa Ana Region, issues Section 401 Water Quality Certifications for Orange County.

State

California Endangered Species Act

The California Endangered Species Act (CESA) declares that deserving plant or animal species will be given protection by the state because they are of ecological, educational, historical, recreational, aesthetic, economic, and scientific value to the people of the state. CESA established that it is state policy to conserve, protect, restore, and enhance endangered species and their habitats. Under State law, plant and animal species may be formally designated rare, threatened, or endangered by official listing by the California Fish and Game Commission. Listed species are generally given greater attention during the land use planning process by local governments, public agencies, and landowners than are species that have not been listed.

CESA authorizes that "Private entities may take plant or wildlife species listed as endangered or threatened under the federal ESA and CESA, pursuant to a federal incidental take permit issued in accordance with Section 10 of the federal ESA, if the California Department of Fish and Game (CDFG) certifies that the incidental take statement or incidental take permit is consistent with CESA (Fish & Game Code § 2080.1(a))."

California Environmental Quality Act—Treatment of Listed Plant and Animal Species

Although threatened and endangered species are protected by specific federal and State statutes, Section 15380(b), (c) and (d) of the CEQA Guidelines provides that a species not listed on the federal or State list of protected species may be considered rare or endangered if the species can be shown to meet certain specified criteria. These would include those species identified as endangered, rare, or threatened as defined in Section 15380 (b) of the State CEQA Guidelines.

1) "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or
2) "Rare" when either:
   (A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environmental worsens; or
   (B) The species is likely to become endangered within the foreseeable future throughout all or significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.

Under Section 15380 (c) of the State CEQA Guidelines, "a species of animal or plant shall be presumed to be endangered, rare or threatened, if it is listed in:

1. Sections 670.2 or 670.5, Title 14, California Code of Regulations [otherwise known as the California Endangered Species Act, CESA]; or
2. Title 50, Code of Federal Regulations Section 17.11 or 17.12 pursuant to the Federal Endangered Species Act [FESA] as rare, threatened, or endangered."

Under Section 15380 (d) of the State CEQA Guidelines, "A species not included in any listing identified in subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the following criteria:

- When its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including the loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or
- Although not presently threatened with extinction, the species is existing in such small numbers through all or a significant portion of its range that it may become endangered if its environment worsens; or
- The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered 'threatened' as the term is used in the FESA."

Two other sources for sensitive species are the California Species of Special Concern and Fully Protected Species lists; and the CNPS "RARE" listings. The status "State Species of Special Concern" and "Fully Protected Species" apply to animals not listed under the FESA and CESA, but which nonetheless either (1) are declining at a rate that could result in listing or (2) historically occurred in low numbers and known threats to their persistence currently exist. The CNPS Inventory of Rare and Endangered Vascular Plants of California is sanctioned by CDFG, and serves as a Species of Special Concern list for plants. For purposes of CEQA review, observed plant and wildlife Species of Special Concern, and plants with a CNPS designation of 1a, 1b, and 2 that could potentially occur in the area, are considered sensitive species, as well as any others that meet the requirements under the State CEQA Guidelines Section 15380 (b), (c), or (d).

The significance of impacts to a species under CEQA must be based on analyzing actual rarity and threat of extinction despite legal status or lack thereof.

Porter-Cologne Water Quality Control Act

Under the *Porter-Cologne Act*, the State Water Resources Control Board (SWRCB) is responsible for adopting water quality standards as required to fulfill the state's responsibilities under the federal CWA (Sections 401 and 402), and for regulating discharges to groundwater.

Fish and Game Code of California

The *Fish and Game Code* provides specific protection and listing for several types of biological resources.

Section 1600 of the *Fish and Game Code* requires a Streambed Alteration Agreement for any activity that may alter the bed and/or bank of a stream, river, or channel. Typical activities that require a Streambed Alteration Agreement include excavation or fill placed within a channel, vegetation clearing, structures for diversion of water, installation of culverts and bridge supports, cofferdams for construction dewatering, and bank reinforcement. There is no riparian habitat within the project site.

Section 2081(b) and (c) of the CESA allows CDFG to issue an incidental take permit for a state-listed threatened and endangered species only if specific criteria are met. These criteria can be found in Title 14 CCR, Sections 783.4(a) and (b). No Section 2081(b) permit may authorize the take of "fully protected" species and "specified birds." If a project is planned in an area where a species or specified bird occurs, an Applicant must design the project to avoid all take; the CDFG cannot provide take authorization under CESA.

Native Plant Protection Act of 1977

The *Native Plant Protection Act of 1977* and implementing regulations in Section 1900 et seq. of the *Fish and Game Code* designates rare and endangered plants, and provides specific protection measures for identified populations. It is administered by the CDFG.

Wetlands Conservation Policy of 1993

This policy provides for the protection, preservation, restoration, enhancement, and expansion of wetland habitats in California. Primarily it acts to ensure no overall net loss of wetlands within the state and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property. The administering agencies for this authority are the CDFG, the California Environmental Protection Agency (Cal-EPA), and the RWQCB. There are no wetlands located within the project site.

Local

The goals and policies of the City's General Plan that are potentially relevant to the proposed project are identified below.

City of Huntington Beach General Plan—Land Use Element

The Land Use Element includes goals and policies that have been developed to minimize potential impacts to biological resources.

Goal LU 5 Ensure that significant environmental habitats and resources are maintained.

Policy LU 5.1.1 Require that development protect environmental resources by consideration of the policies and standards contained in the Environmental Resources/ Conservation Element of the General Plan and federal (NEPA) and state (CEQA) regulations.

Goal LU 14.1 Preserve the City's open spaces.

Objective LU 14.1 Preserve and acquire open spaces for the City's existing and future residents that provide, maintain, and protect significant

environmental resources, recreational opportunities, and visual relief from development.

Policy LU 14.1.1 Accommodate the development of public parks, water-related recreational uses, and the conservation of environmental resources in areas designated for Open Space on the Land Use Plan Map and in accordance with Policy LU 7.1.1.

City of Huntington Beach General Plan—Environmental Resource/Conservation Element

Goals and Policies listed in the Environmental Resources/Conservation Element of the General Plan have been developed to minimize potential impacts to biological resources.

Goal ERC 2 Protect and preserve significant habitats of plant and wildlife species, including wetlands, for their intrinsic values.

Objective ERC 2.1 Evaluate, enhance, and preserve the City's important habitat areas.

Policy ERC 2.1.9 Preserve the habitat of endangered species, including those listed in Table BR-1 of the Technical Background Report and those which may be considered by the City in the future.

Policy ERC 2.1.10 Conduct construction activities to minimize adverse impacts on existing wildlife resources.

An analysis of consistency with the above policies is provided below under Impact 4.3-3. The proposed project would not conflict with applicable policies.

4.3.6 Project Impacts and Mitigation

Analytic Method

The following analysis considers the potential effects of the proposed project described in Chapter 3, Project Description, of this EIR. Both GPA/ZTA options would result in an increase in allowable uses compared to the existing General Plan and Zoning designations for the project site; however, the ratios of the type of land uses would differ. Implementation of the proposed project would result in the development of a mixed-use scenario in which *either* more residential uses would be permitted (Option 1) *or* more commercial uses would be permitted (Option 2).

For the purposes of this analysis, full buildout under either scenario would result in similar impacts regardless of the type of land use proposed because the same overall building footprint would result

under either option. Additionally, all future development, regardless of which Option is implemented, would adhere to the same existing standards related to biological resources. Since Option 1 and Option 2 propose the same land uses, with the difference lying in the ratio of commercial and residential uses, implementation of one GPA/ZTA Option would not be inherently different from the other in terms of potential impacts to biological resources. Therefore, the following impact analysis applies to both Option 1 and Option 2, as impacts would be the same for either GPA/ZTA.

Thresholds of Significance

The following thresholds of significance are based on Appendix G to the 2008 CEQA Guidelines. For purposes of this Environmental Impact Report, implementation of the proposed project may have a significant adverse impact if it would do any of the following:

- Have a substantial adverse effect, either directly (e.g., habitat loss) or indirectly (e.g., noise effects on wildlife) through habitat modifications, on any species identified or published as an endangered, threatened, rare, candidate, sensitive, or special-status species by CDFG or USFWS, and meets the definition of Section 15380 (b), (c) or (d) of the CEQA
- 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 Game or US Fish and Wildlife Service
- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan

Effects Not Found to Be Significant

Threshold	Would the project 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 Game or US Fish and Wildlife Service?

No riparian habitat or other sensitive natural communities exist within the project site. As such, the proposed project would not have a direct effect upon any riparian habitat or other sensitive natural communities. No impact would occur, and no further analysis of this issue is required.

Threshold	Would the project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

There are no wetlands within the project site, as defined by the *Clean Water Act* or the *Fish and Game Code* of California. No impact would occur, and no further analysis of this issue is required.

Threshold	Would the project 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?

There are no wildlife nursery sites within the project site. The project site is not part of a major or local wildlife corridor/travel route, as it does not serve to connect two significant habitats. It is located within a developed urban landscape, surrounded by existing commercial, office, and institutional uses. The existing right-of-way that is located northwest of the site does not connect to a larger open space area and does not provide adequate space, cover, food, and water for wildlife movement. The area is constrained and fragmented as a result of urban development and the I-405 freeway. As such, the project site does not fit in to any of the wildlife movement categories previously described (travel route, wildlife crossing, wildlife corridor). No impact would occur, and no further analysis of this issue is required.

Threshold	Would the project 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 habitat conservation plan or natural community conservation plan affects the project site. Therefore, no conflict with conservation plans would occur, and no further analysis of this issue is required.

Impacts and Mitigation Measures

Threshold	Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified or published as an endangered, threatened, rare, candidate, sensitive, or special-status species by CDFG or USFWS, and meets the definition of Section 15380 (b), (c) or (d) of the CEQA?

Impact 4.3-1 **Future development under Option 1 or Option 2 could have a substantial adverse impact either directly or through habitat modifications, on any species identified or published as an endangered, threatened, rare, candidate, sensitive, or special-status species by CDFG or USFWS, and meets the definition of Section 15380 (b), (c), or (d) of the CEQA guidelines.**

Migratory avian species may use portions of the site (e.g., the large trees along the western boundary) for nesting during breeding season, which are protected under the *Migratory Bird Treaty Act* (MBTA). Project implementation and future construction-related activities including, but not limited to, grading, materials

laydown, facilities construction, vegetation removal, and construction vehicle traffic may result in the disturbance of nesting species protected by the MBTA. The MBTA protects over 800 species including geese, ducks, shorebirds, raptors, songbirds, and many relatively common species. The loss of nesting efforts of sensitive avian species, raptors, and species protected by the MBTA would be considered a potentially significant impact.

Prior to the onset of ground disturbance activities under either Option 1 or Option 2, the City shall implement mitigation measure **MM4.3-1**, which entails nesting surveys and avoidance measures for sensitive nesting and MBTA species, and appropriate agency consultation.

MM4.3-1 *Nesting habitat for protected or sensitive avian species:*

1) *Vegetation removal and construction shall occur between September 1 and January 31 whenever feasible.*
2) *Prior to any construction or vegetation removal between February 15 and August 31, a nesting survey shall be conducted by a qualified biologist of all habitats within 500 feet of the construction area. Surveys shall be conducted no less than 14 days and no more than 30 days prior to commencement of construction activities and surveys will be conducted in accordance with CDFG protocol as applicable. If no active nests are identified on or within 500 feet of the construction site, no further mitigation is necessary. A copy of the pre-construction survey shall be submitted to the City of Huntington Beach. If an active nest of a MBTA protected species is identified onsite (per established thresholds) a 250-foot no-work buffer shall be maintained between the nest and construction activity. This buffer can be reduced in consultation with CDFG and/or USFWS.*
3) *Completion of the nesting cycle shall be determined by qualified ornithologist or biologist.*

There are no sensitive species anticipated to exist on the proposed project site. However, Implementation of mitigation measure **MM4.3-1** would require surveys for MBTA-protected species, and includes impact-avoidance measures to ensure that the substantial loss of these species will not occur. These measures would reduce this impact to a ***less-than-significant*** level.

Threshold	Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Impact 4.3-2 The proposed project would not conflict with local policies or ordinances protecting biological resources.

Applicable City policies and/or ordinances are detailed in Section 4.3.5 (Regulatory Framework) of this document. As discussed above, migratory avian species protected under the MBTA may use portions of the site (e.g., the large trees along the western boundary) for nesting during breeding season. Implementation of the mitigation measure **MM4.3-1** would ensure the protection of migratory bird species/habitat. In addition, there are approximately 78 mature trees on-site. Although the City does not have a tree protection ordinance, it is anticipated that under either Option 1 or Option 2, these trees may be removed and replaced at a two-to-one ratio with 36-inch box trees or palm equivalent, or some trees may be transplanted on site. As such, through implementation of the proposed mitigation measure, implementation of the proposed project would not conflict with any local policies or ordinances protecting biological resources (e.g., Policies ERC 2.1.9 and ERC 2.1.10 of City's General Plan—

Environmental Resource/Conservation Element), which are designed to protect sensitive species and their habitats within the City from development and related construction activities. Impacts would be ***less than significant***.

4.3.7 Cumulative Impacts

This cumulative impact analysis considers development of the proposed project, in conjunction with other development within the vicinity of the proposed project in the cities of Huntington Beach and Westminster. The primary effects of the proposed project, when considered with the past, present, and probable future projects in the vicinity of the project site, would be the cumulative direct loss of undeveloped land (if any of the identified cumulative projects from Table 3-3 are proposed on undeveloped land) and the potential removal of sensitive wildlife and habitat. Loss of sensitive habitat within the localized areas would further decrease the amount of this habitat within the immediate area and add to the cumulative loss of sensitive species in the region.

If MBTA-protected species' nests are identified on the project site, avoidance measures identified in mitigation measure **MM4.3-1** would establish setbacks to ensure active nests are not lost. Although these should be sufficient to avoid substantial impacts, should they be needed, mitigation measure **MM4.3-1** also identifies mechanisms to develop as-needed mitigation measures should the CDFG or USWFS establish the need for them. As such, the proposed project would not contribute to a cumulative loss of MBTA-protected species. Therefore, because the proposed project does not contribute considerably to the decline of MBTA-protected species, the cumulative impact from the project is considered ***less than significant***.

4.3.8 References

Bennett, A. F. 1990. *Habitat corridors and the conservation of small mammals in a fragmented forest environment*. Landscape Ecol. 4:109–122.

California Native Plant Society (CNPS). 2008. Inventory of Rare and Endangered Plants (online edition, v7-08a). California Native Plant Society. Sacramento, CA. Accessed on Thu, Mar. 13, 2008 from http://www.cnps.org/inventory

California Natural Diversity Data Base (CNDDB). 2007. List of special plants. Heritage section, California Department of Fish and Game, March.

Harris, L. D., and P.B. Gallagher. 1989. *New Initiatives for Wildlife Conservation: The Need for Movement Corridors*. Pages 11-34 in G. Mackintosh, ed., *Preserving Communities and Corridors*. Defenders of Wildlife. Washington, DC. 96 pp.

———. 1996. *General Plan*. Prepared by Envicom Corporation, 13 May.

———. 1995. *General Plan Update Draft Environmental Impact Report*. State Clearinghouse No. 94091018. Prepared by Envicom Corporation.

Noss, R. F. 1983. *A Regional Landscape Approach to Maintain Diversity*. BioScience 33:700–706.

Simberloff, D., and J. Cox. 1987. *Consequences and Costs of Conservation Corridors*. Conser. Biol. 1:63–71.

Soule, M.E. 1987. *Viable populations for conservation*. Cambridge Univ. Press: New York, NY.

United States Fish and Wildlife Service (USFWS). Carlsbad Office. 2008. Carlsbad Fish and Wildlife Office Endangered and Threatened Species List. Accessed on Thu. Mar. 13, 2008 from http://www.fws.gov/carlsbad/CFWO_Species_List.htm