

3.3 BIOLOGICAL RESOURCES

This EIR section analyzes the potential for adverse impacts on biological resources, including sensitive plants, animals, and habitats, resulting from implementation of the proposed project. The Initial Study (Appendix A) identified the potential for impacts associated with the effect on candidate, sensitive, or special status species. The Initial Study identified project consistency with local policies or ordinances that are applicable to the site as less than significant; however, this section will address the project's compliance with coastal resource policies of the Coastal Act. Issues scoped out in the in the Initial Study include effects on riparian habitats, other sensitive natural communities, or wetlands; movement of fish or wildlife species or migratory wildlife corridors; or conflicts with habitat conservation plans or natural community conservation plans. Data used to prepare this section were taken from the City's General Plan Coastal Element, the Biological Technical Report (included in Appendix I), which involved information from a biological survey of the project site, and taxa information of species currently listed as Threatened or Endangered, proposed for listing, and/or candidates for listing by the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (USFWS), or California Native Plant Society (CNPS).

The information in this section has been reported in accordance with accepted scientific and technical standards that are consistent with the requirements of USFWS and CDFG. Sources used to determine the special status of biological resources include the following:

- **Plants**—*Electronic Inventory of Rare and Endangered Vascular Plants of California* (CNPS 2001); Natural Diversity Database *List of Special Plants* (CDFG 2001a); various Federal Register notices from the USFWS regarding listing status of plant species
- **Wildlife**—California Natural Diversity Database (CNDDDB) (CDFG 2001b); *List of Special Animals* (CDFG 2001c); various Federal Register notices from the USFWS regarding listing status of wildlife species
- **Habitats**—CNDDDB (CDFG 2001b)

Full bibliographic entries for all reference materials are provided in Chapter 7 (References) of this document.

3.3.1 Existing Conditions

The proposed project site is currently undeveloped. Land uses surrounding the proposed project site include residential and commercial uses. The natural topography of the project site is generally flat with a grade differential of 30 feet and has been disced regularly to maintain the site and prevent the growth of unwanted vegetation. The site was most recently disced in July 2003, with additional vegetation removal occurring in

September 2003. The natural topography of the site has been temporarily altered by the recent soil remediation activities, which commenced in 2002 and are anticipated to be completed in early 2004. These activities are permitted by Conditional Use Permit 00-36 and Coastal Development Permit (CDP) 00-09 and involve digging several trenches and pits in the southern section of the site to remove up to 30,000 cubic feet of contaminated soil. The actual digging of each remediation pit occurred sometime after the CDP was approved (May 22, 2002) and before the hazardous materials consultant temporarily halted work (December 2002). Therefore, as of September 2003, these pits have been active between 10 and 17 months. The pits were up to 14 feet deep in places, and allow small amounts of groundwater to seep into the pits when they were deeper than about 5 feet. When a site survey was conducted in September 2003, small amounts of vegetation normally associated with wet soils were located in the remediation pits where groundwater was seeping in (see Table 3.3-1).

This section addresses special status biological resources observed, reported, or having the potential to occur on the proposed project site. These resources include plant and wildlife species that have been afforded special status and/or recognition by federal and state resource agencies, as well as private conservation organizations. In general, the principal reason an individual taxon (i.e., species, subspecies, or variety) is given such recognition is the documented or perceived decline or limitations of its population size, geographic range, and/or distribution resulting, in most cases, from habitat loss. A number of Special Status plant and wildlife species are known to occur in the region of the project site, as shown in Table 1 and Table 2 of Appendix I. Special status biological resources also include vegetation types and habitats that are either unique, of relatively limited distribution in the region, or of particularly high wildlife value. These resources have been defined by federal, State, and local government conservation programs.

Survey Methods

A general survey of plant species was conducted as part of the Biological Technical Report. Plant species were identified in the field or collected for later identification. Plants were identified using taxonomic keys in Hickman (1993), Munz (1974), and Abrams (1923, 1960). Taxonomy follows Hickman (1993) for scientific and common names. Vegetation within the study area was classified into the communities listed in the *Habitat Classification System Natural Resources Geographic Information System (GIS) Project*, prepared for the County of Orange Environmental Management Agency (Gray and Bramlett 1992). Plant species observed on the proposed project site are included in Table 3.3-1 (Plants Observed on the Project Site). EIP biologists performed an additional survey on September 24, 2003. This survey involved assessing the site for any wetland habitat not previously reported in the 2002 Biological Assessment and documenting additional plant species.

Table 3.3-1 Plants Observed on the Project Site

ANGIOSPERMAE—FLOWERING PLANTS
DICOTYLEDONES
AIZOACEAE—FIG-MARIGOLD FAMILY
<i>Mesembryanthemum crystallinum</i> ¹ Crystalline iceplant
ANACARDIACEAE—SUMAC FAMILY
<i>Rhus integrifolia</i> ¹ Lemonade berry
APIACEAE (UMBELLIFERAE)—CARROT FAMILY
<i>Foeniculum vulgare</i> ¹ Sweet fennel
ARALIACEAE—GINSENG FAMILY
<i>Hedera helix</i> ¹ English ivy
ASTERACEAE (COMPOSITAE)—SUNFLOWER FAMILY
<i>Heterotheca grandiflora</i> ¹ Telegraph weed
<i>Isocoma menziesii</i> ¹ Coastal goldenbush
BRASSICACEAE (CRUCIFERAE)—MUSTARD FAMILY
<i>Brassica nigra</i> ¹ Black mustard
CARYOPHYLLACEAE—PINK FAMILY
<i>Spergularia marina</i> ¹ Salt-marsh sand spurry
CHENOPODIACEAE—GOOSEFOOT FAMILY
<i>Atriplex semibaccata</i> ¹ Australian saltbush
<i>Atriplex lentiformis</i> ssp. <i>lentiformis</i> ² Brewer's saltbrush
<i>Bassia hyssopifolia</i> ² Five-horn bassia
<i>Suaeda taxifolia</i> ² Woolly sea-blite
<i>Chenopodium californicum</i> ² California goosefoot
<i>Salsola tragus</i> ¹ Russian thistle
CYPERACEAE—SEDGE FAMILY
<i>Cyperus eragrostis</i> ² Tall flatsedge
FABACEAE (LEGUMINOSAE)—LEGUME/PEA FAMILY
<i>Acacia</i> sp. ¹ Acacia

Table 3.3-1	Plants Observed on the Project Site
FAGACEAE—OAK/BEECH FAMILY	
<i>Quercus</i> sp. ¹	Ornamental oak
JUNCAGINACEAE—Arrowgrass family	
<i>Triglochin concinna</i> ²	Arrowgrass
MALVACEAE—MALLOW FAMILY	
<i>Malva parviflora</i> ¹	Cheeseweed
MYRTACEAE—MYRTLE FAMILY	
<i>Eucalyptus globules</i> ¹	Tasmanian blue gum
OXALIDACEAE—WOOD-SORREL FAMILY	
<i>Oxalis pes-caprae</i> ¹	Bermuda buttercup/sour grass
POLYGONACEAE—BUCKWHEAT FAMILY	
<i>Rumex crispus</i> ¹	Curly dock
POACEAE—GRASS FAMILY	
<i>Cynodon dactylon</i> ¹	Bermuda grass
<i>Polypogon monspeliensis</i> ²	Rabbitsfoot grass
<i>Parapholis incurve</i> ²	Sicklegrass
<i>Spartina</i> sp. ²	Saltgrass
1. Species observed during the December 19, 2001, site visit.	
2. Additional species observed by EIP Biologist on September 24, 2003	
SOURCE: Appendix I	

A general wildlife survey was conducted simultaneously with the general plant survey. Taxonomy and nomenclature for wildlife generally follows American Ornithologist's Union (AOU) (1998) for birds and Laudenslayer *et al.* (1991) for all other terrestrial vertebrates. The survey included active searches for reptiles and amphibians by lifting, overturning, and carefully replacing rocks and debris where appropriate. Birds were identified by standard visual and auditory recognition. Surveys for mammals included searching for and identifying diagnostic signs, including scat, footprints, scratch-outs, dusting bowls, burrows, and trails. All wildlife species observed on the proposed project site were recorded in field notes and are included in Table 3.3-2, Wildlife Observed on the Project Site.

Table 3.3-2 Wildlife Observed on the Project Site

<i>Birds</i>	
Laridae—Gulls & Terns	
<i>Larus occidentalis</i> Western gull	
Columbidae—Pigeons & Doves	
<i>Zenaida macroura</i> Mourning dove	
Corvidae—Jays & Crows	
<i>Corvus brachyrhynchos</i> American crow	
Sturnidae—Starlings	
<i>Sturnus vulgaris</i> European starling	
<i>Mammals</i>	
Leporidae—Hares & Rabbits	
<i>Sylvilagus audubonii</i> Desert cottontail	
This table consists of only those species observed during the December 19, 2001, site visit.	
SOURCE: Appendix I	

Definitions of Special Status Biological Resources

Special status habitats are vegetation types, associations, or sub-associations that support concentrations of special status plant or wildlife species, are of relatively limited distribution, or are of particular value to wildlife. Although special status habitats are not afforded legal protection unless they support protected species, potential impacts on them may increase concerns and mitigation suggestions by resources agencies.

A *federally Endangered species* is one facing extinction throughout all or a significant portion of its geographic range. A *federally Threatened species* is one likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The presence of any federally Threatened or Endangered species on a proposed project site generally imposes constraints on development or requires mitigation to offset impacts, particularly if development would result in “take” of the species or its habitat. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in such conduct. Harm in this sense can include any disturbance to habitats used by the species during any portion of its life history.

Proposed species are those officially proposed by the USFWS for addition to the federal Threatened and Endangered species list. Because proposed species may soon be listed as Threatened or Endangered, these species could become listed prior to or during implementation of a proposed development project.

The State of California considers an *Endangered species* as one whose prospects of survival and reproduction are in immediate jeopardy, a *Threatened species* as one present in such small numbers throughout its range that it is likely to become an Endangered species in the near future in the absence of special protection or management, and a *Rare species* as one present in such small numbers throughout its range that it may become Endangered if its present environment worsens. Rare species apply primarily to California native plants. State Threatened and Endangered species are protected against take unless an incidental take permit is obtained from the wildlife agencies (Section 2080–2081.1 of the Fish and Game Code of California).

Federal Species of Concern are species (a “term of art” for former Category 2 candidates) with an informal designation by the USFWS for some declining species that are not federal candidates for listing at this time, but are noted as species of concern in the California Natural Diversity Database (CNDDDB) (California Department of Fish and Game 2001b). This list has not been updated by the USFWS since 1996 and is included for informational purposes only.

California Species of Special Concern is an informal designation used by the CDFG for some declining wildlife species that are not state candidates. This designation does not provide legal protection but signifies that these species are recognized as special status by the CDFG.

Species that are *California Fully Protected* and *Protected* include those protected by special legislation for various reasons, such as the mountain lion and white-tailed kite. Fully protected species may not be taken or possessed at any time. California Protected Species include those species that may not be taken or possessed at any time except under special permit from the department issued pursuant to Sections 650 and 670.7 of the California Code of Regulations, or Section 2081 of the Fish and Game Code.

A species that is considered a *Special Animal* is one that is tracked by the CNDDDB. Species of *Local Concern* are those that have no official status with the resource agencies, but are being watched because either there is a unique population or the species is declining in the region.

The CNPS is a resource conservation organization that has developed an inventory of California’s special status plant species (CNPS 2001). This inventory is the summary of information on the distribution, rarity, and endangerment of California’s vascular plants. This rare plant inventory is comprised of four lists. CNPS presumes that *List 1A* plant species are extinct in California because they have not been seen in the wild for many years. CNPS considers *List 1B* plants as rare, threatened, or endangered throughout their range. *List 2* plant species are considered rare, threatened, or endangered in California but more common in the rest of its range. Plant species for which CNPS needs additional information are included on *List 3*. *List 4* plant species are those of limited distribution in California whose susceptibility to threat appears low at this time.

Biological Resources

Vegetation Types

This section describes the vegetation types that occur on the proposed project site, as shown in Figure 3.3-1 (Vegetation Types). Three vegetation types occur within the proposed project site, none of which are considered native. These vegetation types are ornamental, disturbed, and developed.

Ornamental vegetation covers approximately 0.5 acre of the proposed project site. This vegetation is associated with previously developed areas and typically consists of nonnative species planted for their aesthetic values. Ornamental species present within the proposed project site include acacia (*Acacia* sp.), eucalyptus seedlings (*Eucalyptus* spp.), English ivy (*Hedera helix*), crystalline iceplant (*Mesembryanthemum crystallinum*), and an ornamental oak (*Quercus* sp.).

Approximately 27.2 acres of disturbed vegetation type is found throughout the proposed project site. This vegetation type is comprised of primarily disced bare ground with ruderal species. These species included black mustard (*Brassica nigra*), Bermuda grass (*Cynodon dactylon*), sweet fennel (*Foeniculum vulgare*), telegraph weed (*Heterotheca grandiflora*), cheeseweed (*Malva parviflora*), sweet clover (*Melilotus* sp.), sour grass (*Oxalis pes-caprae*), and Russian thistle (*Salsola tragus*). This vegetation type also includes areas that consist of bare ground.

Approximately 4.5 acres of developed areas consisting of paved parking lots occur on the proposed project site. These areas typically support no vegetation.

Small patches within the remediation pits had vegetation that are commonly found in moist to wet soils. These species include tall flat sedge (*Cyperus eragrostis*), rabbit's foot grass (*Polypogon monspeliensis*), saltgrass (*Spartina* sp), woolly sea-blite (*Suaeda taxifolia*), salt-marsh sand spurry (*Spergularia marina*), and Arrowgrass (*Triglochin concinna*). Due to the temporary nature of the pits, and the short duration that they were present (between 10 and 17 months), the vegetation was sparse, poorly developed, and had extremely low to no habitat value.

Special Status Vegetation Types

The proposed project site contains no special status vegetation types.

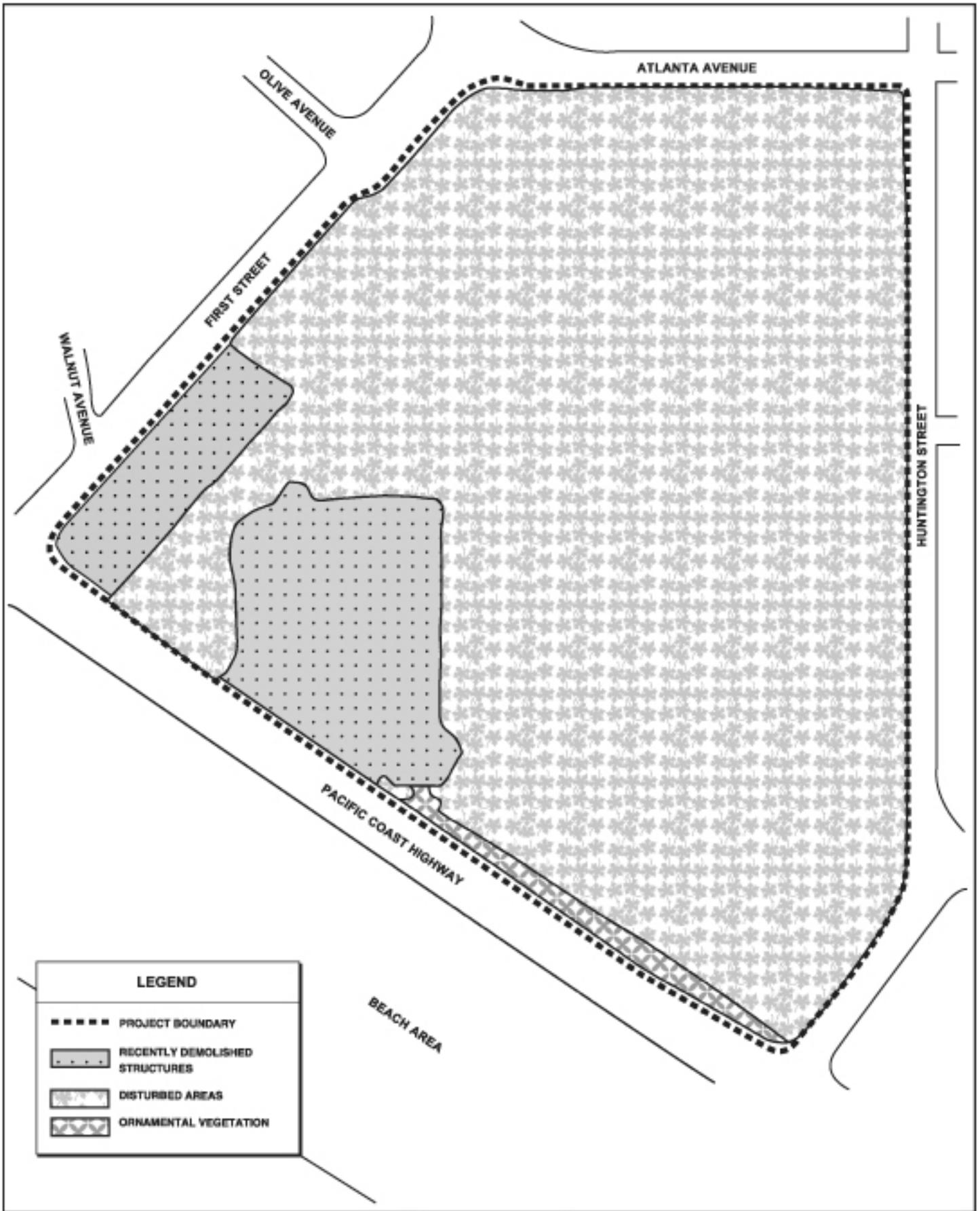


FIGURE 3.3-1

On-Site Vegetation Types

Not to Scale



SOURCE: Bonterra Consulting 2002

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Special Status Plants

As previously described, the site consists of disturbed, ornamental, or developed vegetation areas. Undeveloped areas on the site have periodically been disced, as required by City regulations, thus preventing the growth of much vegetation. Prior to the biological surveys conducted on December 19, 2001, the site had recently been disced. The site was most recently disced in July 2003. Three of the 29 special status plant species known to occur in the region have a limited potential to occur on the proposed project site because they are known to occur in disturbed habitats. These species are the southern tarplant (*Centromadia parryi* ssp. *australis*), vernal barley (*Hordeum intercedens*), and Coulter's goldfields (*Lasthenia glabrata* ssp. *coulteri*). Special status plant species known to occur in the proposed project region are summarized in identified in Table 1 of Appendix I. No special status plant species have been identified or are expected to occur on the project site.

Wildlife

The following discussion describes the wildlife species observed or that have potential to occur within the proposed project site. Figure 3.3-1, above, illustrates the distribution of vegetation types representing wildlife habitat of the proposed project site.

No amphibians were detected during the field surveys. Areas of wet ornamental vegetation may provide limited suitable habitat for the Pacific tree frog (*Hylla regilla*). This species may occupy wet ornamental areas and semi permanent runoff. Ornamental areas occur adjacent to PCH on the proposed project site. An area of run-off that drains from the water detention basin occurs in the southwest corner of the proposed project site. None of these areas provide enough moisture or vegetation to support amphibian species, and they are not expected to occur on the proposed project site.

No reptile species were observed during the field surveys. However, the western fence lizard (*Sceloporus occidentalis*), side-blotched lizard (*Uta stansburiana*), and southern alligator lizard (*Gerrhonotus multicarinatus*) are expected to occur on the proposed project site.

A variety of bird species are expected to occur on the proposed project site as either migrants, winter visitors, summer visitors, or year-round residents. Species observed on the proposed project site include the western gull (*Larus occidentalis*), mourning dove (*Zenaida macroura*), and European starling (*Sturnus vulgaris*). Year-round residents expected to use the proposed project site at least occasionally include Anna's hummingbird (*Calypte anna*), American crow (*Corvus brachyrhynchos*), house finch (*Carpodacus mexicanus*), and house sparrow (*Passer domesticus*). Cooper's hawks (*Accipiter cooperii*) are commonly found within residential

areas preying on small birds that frequent backyard habitats. Although a single Cooper's hawk was observed foraging within the residential areas south of the project site, the proposed site lacks suitable nesting and/or roosting sites for this species. Given that the site is devoid of any suitable nesting habitat (tall trees) this species, as well as other raptor species, are not expected to nest on the proposed project site.

The proposed project site provides suitable habitat for a few common species that are adapted to urban environments. Small mammals such as the California desert cottontail (*Sylvilagus audubonii*), California ground squirrel (*Spermophilus beecheyi*), black rat (*Rattus rattus*), and California mouse (*Peromyscus californicus*) are expected to occur on the proposed project site. Medium- to large-sized mammals such as the Virginia opossum (*Didelphis virginiana*) and coyote (*Canis latrans*) are also expected to occasionally occur on the proposed project site.

Special Status Wildlife

The proposed project site contains very little native vegetation, and therefore, has a low potential to support most special status wildlife species. However, 11 of the 51 special status wildlife species known to occur in the proposed project region have the potential to occur on the proposed project site. They include the monarch butterfly (*Danaus plexippus*), Cooper's hawk, sharp-shinned hawk (*Accipiter striatus*), northern harrier (*Circus cyaneus*), white-tailed kite (*Elanus leucurus*), merlin (*Falco columbarius*), American peregrine falcon (*Falco peregrinus*), California gull (*Larus californicus*), California horned lark (*Eremophila alpestris actia*), loggerhead shrike (*Lanius ludovicianus*) tricolored blackbird (*Agelaius tricolor*), and large-billed savannah sparrow (*Passerculus sandwichensis rostratus*). Most of these species are expected to occur briefly on the proposed project site for foraging only and have no potential to nest on the proposed project site. The California horned lark and the loggerhead shrike both have a limited potential to nest on the proposed project site in the disturbed field and in the ornamental vegetation, respectively. Special status wildlife species known to occur in the proposed project region are summarized in Table 2 of Appendix I.

Wildlife Movement

Wildlife corridors vary greatly in their overall significance. General information that currently exists on corridors suggests that major drainages, canyon bottoms, and ridgetops, as well as areas that provide important resources for wildlife, will be the most significant for wildlife movement. In general, two types of corridors exist. Regional corridors are generally those that allow movement between large, often widely separated areas. These may connect National Forests, mountain ranges, or other major wildlife use areas. Local wildlife corridors are those that allow dispersion between smaller, generally more adjacent areas, such as between canyons or ridges, or important resource areas.

The proposed project site is not expected to support any appreciable wildlife movement because it is bounded by urban development and Pacific Coast Highway. The surrounding expanses of urban habitats offer poor cover for movement across the site.

3.3.2 Regulatory Framework

Numerous regulations protecting biological resources are in place at the federal, State, regional, and local levels. This section discusses the Federal Endangered Species Act, the California Endangered Species Act, and other regulations relevant to the proposed project.

Federal

Federal Endangered Species Act

As defined within the Federal Endangered Species Act of 1973, an endangered species is any animal or plant listed by regulation as being in danger of extinction throughout all or a significant portion of its geographical range. A threatened species is any animal or plant that is likely to become endangered within the foreseeable future throughout all or a significant portion of its geographical range. Without a special permit, federal law prohibits the “take” of any individuals or habitat of federally listed species. Under Section 9 of the ESA, take is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” The term “harm” has been clarified to include “any act which actually kills or injures fish or wildlife, and emphasizes that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.” Enforcement of the Federal Endangered Species Act is administered by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

Section 404 of the Clean Water Act

Section 404 of the Clean Water Act requires that a permit be obtained from the U.S. Army Corps of Engineers (Corps) prior to the discharge of dredged or fill materials into any “waters of the United States” (33 CFR Part 323). The term “waters of the United States” or “jurisdictional waters”, has a broad meaning that includes special aquatic sites, such as wetlands. Waters of the United States, as defined by regulation and refined by case law, include: (1) the territorial seas; (2) coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States, including their adjacent wetlands; (3) tributaries to navigable waters of the United States, including adjacent wetlands; (4) interstate waters and their tributaries, including adjacent wetlands; and (5) all other waters of the United States not identified above, such as some isolated wetlands and lakes, intermittent and ephemeral streams, prairie potholes, and other

waters that are not a part of a tributary system to interstate waters or navigable waters of the United States, the degradation or destruction of which could affect interstate commerce.

With respect to wetlands, the Corps definition is commonly referred to as a “three parameter definition” because three key parameters—hydrology, soil, and vegetation—must all occur and meet the defined characteristics in order for a location to be classified a wetland. Simply stated, a wetland under the Corps definition should meet all of the following three criteria:

1. More than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the National List of Plant Species that Occur in Wetlands)
2. Soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions)
3. Hydrologic characteristics must indicate that the ground is saturated to within 12 inches of the surface (“normal conditions” grade) for at least five percent of the growing season

Projects that require Section 404 Permits can require mitigation to offset losses of wetlands and jurisdictional waters. The Corps is required to consult with the USFWS, Environmental Protection Agency (EPA), State Regional Water Quality Control Board (RWQCB), and the CDFG in carrying out its discretionary authority under Section 404.

State

California Endangered Species Act

In addition to federal laws, the State of California has its own Endangered Species Act (CESA), enforced by the CDFG. The CESA program maintains a separate listing of species beyond the FESA, although the provisions of each act are similar.

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

The Federal Endangered Species Act and California Endangered Species Act protect only those species formally listed as threatened or endangered (or rare in the case of the State list). However, Section 15380 of the CEQA Guidelines independently defines “endangered” species of plants or animals as those whose survival and reproduction in the wild are in immediate jeopardy and “rare” species as those who are in such low numbers that they could become endangered if their environment worsens.

Sections 1600–1607 of the Fish and Game Code

Under Sections 1600–1607 of the California Fish and Game Code, the CDFG regulates activities that would alter the flow, bed, channel, or bank of streams and lakes. The limits of CDFG jurisdiction are defined in the code as “the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit...” (Section 1601).

This broad definition gives CDFG great flexibility in deciding what constitutes a river, stream, or lake. The CDFG defines streams under the jurisdiction of Sections 1600–1607 as follows:

1. The term stream can include intermittent and ephemeral streams, rivers, creeks, dry washes, sloughs, blue-line streams (United States Geological Survey [USGS] maps), and watercourses with subsurface flows. Canals, aqueducts, irrigation ditches, and other means of water conveyance can also be considered streams if they support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife.
2. Biological components of any stream may include aquatic and riparian vegetation, all aquatic animals including fish, amphibians, reptiles, invertebrates, and terrestrial species which derive benefits from the stream system.
3. As a physical system, a stream not only includes water (at least on an intermittent or ephemeral basis), but also a bed or channel, a bank and/or levee, instream features such as logs or snags, and various flood plains, depending on the return frequency of the flood event being considered.
4. The lateral extent of a stream can be measured in several ways depending on a particular situation and the type of fish or wildlife resource at risk. The following criteria are presented in order from the most inclusive to the least inclusive:
 - The flood plain of a stream can be the broadest measurement of a stream’s lateral extent depending on the return frequency of the flood event used. For most flood control purposes, the 100-year event is the standard measurement. However, because it may include significant amounts of upland or urban habitat, in many cases the 100-year floodplain may not be appropriate.
 - The outer edge of riparian vegetation is generally used as the line of demarcation between riparian and upland habitats and is, therefore, a reasonable and identifiable boundary for the lateral extent of a stream. In most cases, the use of this criterion should result in protecting the fish and wildlife resources at risk.
 - Most streams have a natural bank which confines flows to the bed or channel, except during flooding. In some instances, particularly on smaller streams or dry washes with little or no riparian habitat, the bank should be used to mark the lateral extent of a stream.
 - A levee or other artificial stream bank could also be used to mark the lateral extent of a stream. However, in many instances, there can be extensive areas of valuable riparian habitat located behind a levee (CDFG, 1992).

In practice, CDFG usually marks its jurisdictional limit at the top of the stream or bank or at the outer edge of the riparian vegetation, whichever is wider.

California Coastal Act—Protection and Management of Wetlands in the California Coastal Zone

In the California coastal zone, the California Coastal Commission (CCC), with the assistance of the CDFG is responsible for determining the presence of wetlands subject to regulation under the California Coastal Act of 1976 (CCA) and the federal Coastal Zone Management Act (CZMA). Under the CCA, wetlands are defined as “land within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens” (Public Resource Code §30121).

However, further precision in wetlands jurisdiction is provided to the Coastal Commission under the California Code of Regulations. Under these provisions wetlands are defined as:

...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some during each year and their location within, or adjacent to vegetated wetland or deepwater habitats. (14 CCR 13577)

The CDFG wetland definition and classification system is the delineation methodology generally followed by the CCC. One important difference in the CDFG wetlands definition compared to that under Section 404 of the CWA (Corps definition listed above) is that the CDFG only requires the presence of one attribute (e.g., hydrology, hydric soils, or hydrophytic vegetation) for an area to qualify as a wetland.

Local

Southern California Association of Governments

SCAG’s Regional Comprehensive Plan and Guide (RCPG) and RHNA are tools for coordinating regional planning and development strategies in southern California. Policies contained in the RCPG identified by SCAG as relevant to the proposed project are identified in Table 3.3-3, and this table also includes an assessment of the proposed project’s consistency with these policies.

Table 3.3-3 SCAG Regional Comprehensive Plan and Guide—Policies Applicable to Biological Resources

<i>Policy</i>	<i>Project Consistency</i>
Policy 3.20. Support the protection of vital resources such as wetlands, groundwater recharge areas, woodlands, production lands, and land containing unique and endangered plants and animals.	<p>As described above in Section 3.3-1 (Existing Conditions), vegetation on the site consists primarily of ornamental species and other common species associated with disturbed areas: under normal conditions no sensitive natural communities, such as wetlands, as defined by the Corps, CDFG and/or the California Coastal Commission, or woodlands, have been observed on the site. Although three special-status plant species—southern tarplant, vernal barley, and Coulter’s goldfields—have the potential to occur on the site, consultation with appropriate agencies and implementation of the mitigation measures proposed for the project would ensure that any potential impacts to these species (if present), would be avoided or reduced to a less-than-significant level.</p> <p>Sensitive wildlife species with the potential to occur on the project site consist of one butterfly and several bird species; however, as described in Sections 3.3.1 (Existing Conditions) and 3.3.3 (Impacts and Mitigation Measures), the majority of these species are expected to occur only briefly for foraging, and only two species—California horned lark and loggerhead shrike—have a limited potential to nest on the site, which provides only low-quality habitat that would not be favored by these species. The biological assessment prepared for the project site concluded that a less-than-significant impact would occur with respect to these species. The proposed project would, therefore, be consistent with this policy.</p>

General Plan Land Use Element

The Land Use Element includes goals and policies that have been developed to minimize potential impacts to biological resources. Table 3.3-4 identifies goals and objectives presented in the Land Use Element of the General Plan related to biological resources that are potentially relevant to the proposed project. This table also includes an assessment of the proposed project’s consistency with the policies adopted in support of these goals and objectives.

Table 3.3-4 General Plan Land Use Element—Policies Applicable to Biological Resources

<i>Goal, Objective, or Policy</i>	<i>Project Consistency</i>
Goal LU 5. Ensure that significant environmental habitats and resources are maintained.	Conformance with implementing policies, as discussed below, results in conformance with this goal.
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.	NEPA would not apply to the proposed project; however, this EIR has been prepared for the project in accordance with all applicable requirements of CEQA and the State CEQA Guidelines.
Goal LU14.1. Preserve the City’s open spaces.	Conformance with implementing policies, as discussed below, results in conformance with this goal.
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.	Conformance with implementing policies, as discussed below, results in conformance with this objective.

Table 3.3-4 General Plan Land Use Element—Policies Applicable to Biological Resources

<i>Goal, Objective, or Policy</i>	<i>Project Consistency</i>
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.	The proposed project is not designated for Open Space by the General Plan Land Use Plan map: the site is designated for high-density residential uses and visitor-serving commercial uses.
Policy LU 14.1.2. Permit the acquisition and/or dedication of lands for new open space purposes in any land use zone where they complement and are compatible with adjacent land uses and development, contingent on City review and approval.	The proposed project is not designated for Open Space by the General Plan Land Use Plan map: the site is designated for high-density residential uses and visitor-serving commercial uses.

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. Table 3.3-5 identifies goals and objectives presented in the Environmental Resource/Conservation Element of the General Plan related to biological resources that are potentially relevant to the proposed project. This table also includes an assessment of the proposed project’s consistency with the policies adopted in support of these goals and objectives.

Table 3.3-5 General Plan Environmental Resource/Conservation Element—Policies Applicable to Biological Resources

<i>Goal, Objective, or Policy</i>	<i>Project Consistency</i>
Goal ERC 2. Protect and preserve significant habitats of plant and wildlife species, including wetlands, for their intrinsic values.	Conformance with implementing policies, as discussed below, results in conformance with this goal
Objective ERC 2.1. Evaluate, enhance, and preserve the City’s important habitat areas.	Conformance with implementing policies, as discussed below, results in conformance with this objective.

Table 3.3-5 General Plan Environmental Resource/Conservation Element—Policies Applicable to Biological Resources

<i>Goal, Objective, or Policy</i>	<i>Project Consistency</i>
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.	<p>As described above in Section 3.3-1 (Existing Conditions), under normal conditions no sensitive natural communities or habitats, including wetlands as defined by the Corps, CDFG, and/or California Coastal Commission, have been observed on the site. Although three special-status plant species have a limited potential to occur on the site, none have been observed, and consultation with appropriate agencies and implementation of the mitigation measures proposed for the project would ensure that any potential impacts to these species (if present), would be avoided or reduced to a less-than-significant level.</p> <p>Sensitive wildlife species with the potential to occur on the project site consist of one butterfly and several bird species; however, as described in Sections 3.3.1 (Existing Conditions) and 3.3.3 (Project Impacts), the majority of these species would be expected to occur only briefly for foraging. Only two bird species—California horned lark and loggerhead shrike—have even a limited potential to nest on the site, which provides only low-quality habitat for these species. The biological assessment prepared for the project site concluded that a less-than-significant impact would occur with respect to these species; as no high-quality habitat for these species would be eliminated as a result of the project.</p>
Policy ERC 2.1.10. Conduct construction activities to minimize adverse impacts on existing wildlife resources.	<p>As described below in Section 3.3.3 (Project Impacts), the biological resources impact assessment concluded that some limited loss of common reptiles and mammals would occur as a result of the loss of low-quality habitat associated with development. However, this impact would be less than significant. Further, all sensitive wildlife species that are considered to have the (very low) potential to occur on the project site are avian; consequently, even if such species are foraging on the project site, they are unlikely to be affected by site clearance activities.</p>

General Plan Coastal Element

The City of Huntington Beach General Plan’s Coastal Element, updated in 2001, includes goals, objectives, and policies intended to protect and enhance environmentally sensitive habitat areas in accordance with the Coastal Act. Table 3.3-6 identifies goals and objectives presented in the Coastal Element of the General Plan related to biological resources that are potentially relevant to the proposed project. This table also includes an assessment of the proposed project’s consistency with the policies adopted in support of these goals and objectives.

Several of the policies related to biological resources focus on Environmentally Sensitive Habitat Areas (ESHAs). The City’s Coastal Element identifies two ESHAs within the City: (1) The Huntington Beach wetland areas and (2) the California least tern nesting sanctuary. As neither of these ESHAs occur within or adjacent to the project area, related goals, policies and objectives are not relevant to the project.

Table 3.3-6 General Plan Coastal Element—Policies Applicable to Biological Resources

<i>Goal, Objective, or Policy</i>	<i>Project Consistency</i>
Goal C 7. Preserve, enhance, and restore, where feasible, environmentally sensitive habitat areas (ESHAs) in the City’s Coastal Zone, including the Bolsa Chica, which is within the City’s Sphere of Influence.	Conformance with implementing policies, as discussed below, results in conformance with this goal.
Objective C 7.1. Regulate new development through design review and permit issuance to ensure consistency with Coastal Act requirements and minimize adverse impacts to identified environmentally sensitive habitats and wetland areas.	Conformance with implementing policies, as discussed below, results in conformance with this objective.
Policy C 7.1.3. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.	The proposed project site is not designated and does not have the characteristics of an environmentally sensitive habitat area and is not located adjacent to an environmentally sensitive habitat area.

3.3.3 Thresholds of Significance

Project impacts would be considered significant if any of the following would occur:

- 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 Game or U.S. Fish and Wildlife Service
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance
- 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

3.3.4 Project Impacts

Both direct and indirect impacts on biological resources have been evaluated. Direct impacts are those that involve the initial loss of habitats due to grading and construction. Indirect impacts are those that would be related to disturbance from construction activities (e.g., noise, dust) and use of the proposed project.

As stated above, Section 15380 of CEQA indicates that a lead agency can consider a nonlisted species to be Rare or Endangered for the purposes of CEQA if the species can be shown to meet the criteria in the definition of Rare or Endangered. For the purposes of this discussion, the current scientific knowledge on the population size and distribution for each special status species was considered according to the definitions for Rare and Endangered listed in Section 15380 of CEQA.

Direct Impacts

Impact BIO-1 Proposed project implementation may result in impacts on special status plant species, if present on the proposed project site.

As discussed above in Section 3.3.1 (Existing Conditions), the southern tarplant, vernal barley, and Coulter's goldfields have a limited potential to occur on the site. Although general botanical surveys failed to identify any of these species on site, there is a slight potential for these species to inhabit areas of the site, or become established on site after the general surveys were performed. As such, construction and operational activities on the project site would have the potential to disturb these resources if present on site. Because these plants are listed as special status species, removal of these plant species would be a potentially significant impact. However, the incorporation of Mitigation Measure BIO-1 would reduce these impacts to less than significant.

Impact BIO-2 Proposed project implementation would not significantly impact special status wildlife species.

Implementation of the proposed project would result in the loss of potential foraging habitat for special status wildlife species with potential to occur on the project site. In addition, the proposed project site also provides limited suitable nesting habitat for the California horned lark and loggerhead shrike. However, the project site does not provide suitable nesting habitat for any Threatened or Endangered raptor species. Due to the lack of quality natural habitat onsite that would be removed compared to the amount and high quality of habitat available in the region, these impacts would be considered less than significant.

Impact BIO-3 Proposed project implementation would be consistent with local policies or ordinances protecting biological resources.

As discussed above, project implementation is anticipated to be consistent with local policies or ordinances protecting biological resources, including the SCAG Regional Comprehensive Plan and Guide and the City of Huntington Beach General Plan Land Use, Environmental Resource/Conservation, and Coastal Elements. Therefore, impacts associated with consistency with local plans or ordinances protecting biological resources are anticipated to be less than significant.

Impact BIO-4 The project would not have an adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act.

As discussed in the Regulatory Setting discussion above, for an area to be considered a wetland under Section 404 of the Clean Water Act it must meet a series of specific criteria. Specifically, the Corps definition (Environmental Laboratory, 1987) states:

The following definition, diagnostic environmental characteristics, and technical approach comprise a guideline for the identification and delineation of wetlands.

- a. Definition: The ACOE (Federal Register, Section 328.3(b), 1991) and the EPA (Federal Register, Section 230.4(t), 1991) jointly define wetlands 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. Wetlands generally include swamps, marshes, bogs, and similar areas.
- b. Diagnostic environmental characteristics: Wetlands have the following general diagnostic environmental characteristics:
 1. Vegetation: The prevalent vegetation consists of macrophytes that are typically adapted to areas having hydrologic and soil conditions described in (a) above. Hydrophytic species, due to morphological, physiological, and/or reproductive adaptation(s), have the ability to grow, effectively compete, reproduce, and/or persist in anaerobic soil conditions.
 2. Soil: Soils are present and have been classified as hydric, or they possess characteristics that are associated with reducing soil conditions.
 3. Hydrology: The area is inundated either permanently, or periodically at mean water depths < 6.6 ft. (~ 2 m), or the soil is saturated to the surface at some time during the growing season of the prevalent vegetation. The period of inundation or soil saturation varies according to the hydrologic/soil moisture regime and occurs in both tidal and non-tidal situations

Technical approach for the identification and delineation of wetlands: Except in certain situations defined in this manual, evidence of a minimum of one positive wetland indicator from each parameter (hydrology, soil, and vegetation) must be found in order to make a positive wetland determination.

In addition to this definition, the Corps issues Regulatory Guidance Letters (RGLs). The purpose of RGLs is to transmit guidance on the permit program (33 CFR parts 320-330) to its division and district commanders. RGLs were developed by the Corps as a system to organize and track written guidance issued to its field agencies. RGLs are normally issued as a result of evolving policy, judicial decisions and changes to the Corps regulations or another agency's regulations, which affect the permit program. They are used only to interpret or clarify existing Regulatory Program policy, but do provide mandatory guidance to Corps district offices. RGLs are sequentially numbered and expire on a specified date. However, unless superseded by specific provisions of subsequently issued regulations or RGLs, the guidance provided in RGLs generally remains valid after the expiration date.

Regulatory Guidance Letter 86-09 was issued August 27, 1986, and is currently still valid (refer to Appendix I for the full text of this letter). This RGL, titled, *Clarification of "Normal Circumstances" in the Wetland Definition (33 CFR 323.2 (c))* was issued to serve as continued guidance for "situations involving

changes in the physical characteristics of a wetland which cause the area to lose or gain characteristics which would alter its status of “waters of the United States” for purposes of the Section 404 regulatory program.” Specifically it clarifies that the term “under normal circumstances” is “meant to respond to those areas that are not aquatic but experience an abnormal presence of aquatic vegetation.” This RGL stated that the abnormal presence of aquatic vegetation in a nonaquatic area would not be sufficient to include that area within the Section 404 program. It further notes that:

“Normal circumstances” are determined on the basis of an area’s characteristics and use, at present and in the recent past. Thus, if a former wetland has been converted to another use (other than by recent unpermitted action not subject to 404(f) or 404(r) exemptions) and that use alters its wetland characteristics to such an extent that it is no longer a “water of the United States”, that area will no longer come under the Corps regulatory jurisdiction for purposes of Section 404.

Recent uses documented within the project area include a motel, a restaurant, an equipment storage yard, and vacant land. No surface water sources, such as streams or channels, have been documented on site. Although a slight gradient does exist at the site, aerial photos (see Appendix I) document that the topography of the site has been generally flat for many years, which inhibits the retention or ponding of surface water from either precipitation or off-site sources for any significant amount of time.. Further, the depth to groundwater is approximately 5 to 24 feet below ground surface (See Section 3.6 Geology and Soils of this EIR). The lack of suitable hydrology is assumed to also prevent hydric soils from forming in the first 12 inches of the soil. These conditions would constitute the “normal conditions” of the site. Therefore no areas within the site appeared to have a situation where all three parameters of the Corps wetland definition would be met.

The physical site conditions that exist after the remediation pits were dug represent non-normal conditions as described above by the Corps RGL 86-09. Although sparse areas of hydrophytic (water loving) vegetation were temporarily established within this area, its presence is directly related to the presence of non-normal circumstances (e.g., groundwater seeping from the remediation pits). As such, in accordance with RGL 86-09, the area would not be considered wetlands under Section 404 of the CWA. Thus, no impact would occur.

Impact BIO-5 Implementation of the project would not significantly impact sensitive habitat types, including wetlands as defined by the CDFG.

Wetlands in California are generally defined as sensitive habitat by the CDFG, and the State has adopted a “no net loss” policy to ensure the long-term preservation and/or enhancement of wetlands in the State. As discussed within the Regulatory Setting discussion of this Section, in addition to the Corps definition of wetlands, when development is located within the coastal zones, or could affect coastal zones, the California Coastal Commission (CCC), with the assistance of the CDFG, is responsible for determining the presence of

wetlands subject to regulation under the California Coastal Act. The CDFG essentially relies on the USFWS wetland definition and classification system, with some minor changes in classification terminology, as the methodology for wetland determinations. In general, the USFWS wetland criteria used by the CDFG to delineate wetlands states that the areas must:

...have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year (Classification of Wetlands and Deepwater Habitats of the United States; USFWS/OBS 79:31; December 1979)

One important difference in the CDFG delineation process compared to the USACE process is that the CDFG wetland definition commonly uses a “one parameter” definition, in which only one of three wetland attributes (hydrophytic vegetation, hydric soils, or wetland hydrology) needs to be present in order for an area to be considered a wetland.

As noted under Impact BIO-4 above, soil within the project areas was contaminated and required remediation. A remediation plan, which involved the creation and filling of soil remediation pits, was submitted to the City for approval. The City found that the plan was in conformance with the General Plan, including the Local Coastal Plan, and under the regulatory power granted to them by Section 30519 (a) of the Coastal Act, the City approved Coastal Development Permit (CDP) 00-09 and Conditional Use Permit 00-36. The permit did not indicate that sensitive areas such as wetlands were present onsite. Instead, as previously noted, it appears that the hydrophytic vegetation currently located onsite is the direct result of below-grade groundwater seepage from the remediation pits. However, unlike the Corps RGLs, the CDFG does not provide specific guidance regarding “normal conditions.” Therefore, it is up to the discretion of CDFG to determine the “normal circumstances” that exist on the site and to decide if the area meets the definition of a wetland as defined above. Given this broad discretionary authority, and the one-parameter wetland definition used by the CDFG, the area, in its current state, could be considered a wetland due to the presence of hydrophytic vegetation within the remediation pits. However, in order to comply with the laws governing wetland resources as established by the California Fish and Game Code (2003), the Applicant, or the Applicant’s designated representative, must review the conditions that exist at the project site after the soil remediation pits have been refilled and before development occurs to evaluate the conditions that exist under natural grade. If potential wetlands are identified at that time, the Applicant would be required to obtain all necessary permits required by the City (as trustee for the CCC) and the CDFG in order to be in compliance with the Fish and Game Code of California and the California Coastal Act. Compliance with these existing laws including the State’s no net loss policy would ensure that impacts are less than significant.

Indirect Impacts

Impact BIO-6 Construction activities at the project site would not significantly disturb wildlife in the project site vicinity.

Noise levels at the proposed project site would incrementally increase over present levels during construction activities. Currently, the proposed project site is surrounded by developed land uses typical of an urban environment, and species in the vicinity of the proposed project site are considered to be tolerant of humans. There is a lack of quality habitat onsite for most species, and the increased noise levels associated with project implementation would have limited effects.

In addition to noise, site disturbance from construction activities at the project site may affect rodents that seek refuge or forage at the site. However, due to the site location and sparse vegetation cover on the project site, it is anticipated that rodent populations would be small. Construction activities including grading and excavation could disturb rodents on-site. Many rodents would be eradicated during grading operations, although those that persist could disperse into adjacent areas (Gary Reynolds 2003). These limited rodent populations may be a temporary nuisance to adjacent uses. Disturbance of the project site resulting from construction activities would be temporary, and rodents would not pose a long-term nuisance. Therefore, this impact would be less than significant.

Impact BIO-7 An increase in night lighting from the proposed project would not significantly affect behavioral patterns of wildlife at the project site.

Implementation of the proposed project would include visitor-serving commercial and residential uses on site, which would require additional lighting. Lighting of the development can indirectly affect the behavioral patterns of nocturnal and crepuscular (active at dawn and dusk) urban wildlife at the proposed project site. Currently, the proposed project site is surrounded by urban development. Although the proposed project would increase existing night lighting, the change would not be substantially different than the current conditions in the proposed project vicinity. Therefore, this impact would be less than significant.

3.3.5 Cumulative Impacts

This cumulative impact analysis considers development of the proposed project, in conjunction with other development within the vicinity of the project in the City of Huntington Beach. Biological resources on the site may include site-specific resources, although none are anticipated. If any of these species are found to be present on the proposed project site, then measures would be developed in consultation with the appropriate resource agencies. The project site does not provide important natural habitat or wildlife corridors. Therefore, the project has a limited potential to contribute to cumulative impacts. Other

cumulative projects may include disturbance to natural habitat, and projects potentially affecting biological resources would undergo CEQA documentation that would address site-specific impacts. These impacts would not be cumulatively considerable.

3.3.6 Mitigation Measures and Residual Impacts

The following mitigation measure (MM) would be required to reduce impacts to biological resources as described above under Impact BIO-1.

MM BIO-1 If before the start of construction, substantial growth of native vegetation or sensitive habitats has occurred on the project site as determined by a qualified biologist, then special status plant or habitat surveys shall be conducted during the appropriate time of the year prior to construction of the proposed project, to determine the presence or absence of special status plant species or habitats. These surveys shall be conducted during the appropriate blooming period as determined by a qualified biologist. If any of these species are found to be present on the proposed project site, then measures would be developed in consultation with the appropriate resource agencies, if the status of the species and the size of the population warrant a finding of significance. Appropriate measures may include avoidance of the populations, relocation, or purchase of offsite populations for inclusion to nearby open space areas. A City-qualified biologist shall present recommendations to the city for review and approval. Any subsequent avoidance, relocation, or other mitigation strategies required to reduce impacts to a less-than-significant level shall be implemented prior to issuance of a grading permit.

Although Impact BIO-5 is a less-than-significant impact, MM BIO-2 would be recommended to further reduce the potential for nuisance rodent issues.

MM BIO 2 To further reduce potential rodent dispersal to adjacent residences, grading shall begin at the perimeter, near existing residences, and proceed toward the center of the site.

MM BIO-1 would ensure identification of any special status plant species on site prior to construction. If species are identified, appropriate mitigation would be developed to ensure that impacts would be reduced to less than significant. Impact BIO-2 through Impact BIO-7 would result in no impacts or less-than-significant impacts, as described above. Implementation of recommended MM BIO-2 would discourage rodents from dispersing toward nearby residences, instead pushing them toward the center of the site, and would further reduce this less-than-significant impact, discussed in Impact BIO-6.