

## 4.5 BIOLOGICAL RESOURCES

This section provides a discussion of the existing biological resources within the boundaries of proposed project site and provides an analysis of potential impacts to biological resources from implementation of the proposed project. Where impacts are identified, mitigation measures pursuant to the California Environmental Quality Act (CEQA), the State and federal Endangered Species Act (CESA and FESA respectively), and other pertinent regulations are recommended. The biological resources section is based on the information and findings of the Biological Resources Assessment (BRA) (LSA Associates, Inc. [LSA], July 2009), which is included in Appendix D.

### Scoping Process

During the scoping process, it was determined that the proposed project could potentially result in adverse impacts on biological resources, including effects on candidate, sensitive, or special status species, riparian habitats, and jurisdictional waters of the United States (US). The Initial Study also identified potential impacts related to the alteration of wildlife corridors and consistency with established policies and plans.

One comment letter associated with biological resources was received in response to the Initial Study/ Notice of Preparation (IS/NOP) circulated for the proposed project. A City resident commented that the biological resources studies should include a reference to a previous report prepared by Rob Hamilton (1998). The letter went on to state that the biological resources study should investigate the possibility of, and mitigate as appropriate, California gnatcatchers, Coulters saltbush, and seasonal ponds/vernal pools being present on the site. The letter also suggests that the City consider maintaining existing areas of coastal sage scrub (CSS), using native plants and grasses in the park, and planting native trees such as coastal live oak near the project entrance. The following section provides a discussion and analysis of these topics.

### 4.5.1 Methodology

**Literature Review and Records Search.** LSA biologists examined a variety of database records and technical documents from previous biological studies of the site to better understand the particular biological issues associated with the proposed project area. Database records from the California Department of Fish and Game (CDFG) Rarefind 3 and the California Native Plant Society (CNPS) Online Inventory of Rare and Endangered Plants of California were utilized to assist in determining the existence or potential occurrence of any special-interest plant and animal species in or immediately adjacent to the proposed project site. LSA also reviewed the findings presented in previous Biological Resource Assessments (BRAs), including one prepared by Robert A. Hamilton (1998) and another prepared by Michael Brandman Associates (MBA) (2004). LSA also reviewed a jurisdictional delineation report previously prepared by MBA (2004).

**Biological Field Surveys.** LSA biologists conducted botanical surveys of the proposed project site on February 4 and 12, April 1 and 29, and June 29, 2009. These surveys were conducted on foot and included a floristic inventory and habitat mapping of the proposed project site. A recently flown aerial photograph showing the proposed project site was used in the field for both orientation and mapping. The minimum polygon size for habitat mapping purposes was 0.02 acre. Particular attention was

placed on identifying the presence of any special-interest plant species on site. Detailed information regarding special-interest species observed on site or potentially occurring in the area can be found in Appendix C of the BRA, which is provided as Appendix D of this EIR. Plant taxonomy conforms to The Jepson Manual (1993). Generally, plant communities were classified and mapped according to the Orange County Habitat Classification System (OCHCS) (Dames & Moore, et al. 1992; Jones & Stokes Associates 1993). Additional habitat categories were created where site-specific conditions made this applicable.

Most of the special-interest species with the potential to occur on site were identified by LSA as having a “low” or “not expected” probability of occurrence (see Appendix C of the BRA, which is provided as Appendix D of this EIR). The species identified as having a “moderate” or “high” probability of occurring, and those observed on site, are listed below.

- **Intermediate mariposa lily** is a CNPS List 1B.2 species that was identified as having a moderate potential to occur, based on the presence of suitable habitat on site; however, this plant was not observed on site.
- **Coulter’s saltbush** is a CNPS List 1B.2 that was observed on site.
- **Allen’s pentachaeta** is a CNPS List 1B.1 species that was identified as having a low to moderate probability of occurrence, but was not observed on site.
- **Vernal barley** is a CNPS List 3.2 species that was identified as having a moderate probability of occurrence, based on previously reported sightings of this species on site; however, this plant was not observed on site.
- **Northern harrier** is a California Species of Special Concern that was observed on site; however, the existing habitat on site is unlikely to support nesting of this species.
- **Allen’s hummingbird** is included on the California Natural Diversity Database (CNDDDB) Special Animals list, was observed on site, and is considered likely to nest on site.
- **California horned lark** is included on the CNDDDB Special Animals list. A horned lark was observed on site, although its subspecies cannot be readily determined in the field. Based on the small size and disturbed nature of the site, California horned lark is not expected to nest on site.
- **California gnatcatcher** is a federally listed Threatened species and a California Species of Special Concern. Although reported as present on site in 1998, none were present on the site during the 2009 surveys conducted pursuant to United States Fish and Wildlife Service (USFWS) protocols.
- **Merlin** is included on the CNDDDB Special Animals list, and has a moderate likelihood of occurring on site. It was not observed during 2009 surveys.
- **American peregrine falcon** is a California Fully Protected species under special legislation enacted prior to the CESA. Although it has a moderate probability of occurring on site, it was not observed during the 2009 surveys. On August 6, 2009, the California Fish and Game Commission voted unanimously to remove this species from California’s Endangered Species list. The official delisting is pending agency finalization.
- **Least Bell’s vireo, Pacific pocket mouse, and San Diego fairy shrimp** are listed species. Although not expected to occur on site, focused surveys for each of these species were conducted in 2009. None of these species were found to occur on site.

An LSA biologist conducted six California gnatcatcher surveys pursuant to USFWS protocol of the proposed project site from March 17 to April 21, 2009. During each of the surveys, the biologist walked slowly through the CSS and adjacent habitats, listening for coastal California gnatcatchers. Taped recordings of coastal California gnatcatchers were played periodically to solicit a response from any California gnatcatchers in the area. A recently flown aerial photograph showing the proposed project site was used in the field for orientation and mapping.

To determine the presence or absence of the endangered Pacific pocket mouse (*Perognathus longimembris pacificus*), an LSA biologist conducted small mammal trapping on site from April 26 through May 1, 2009. This trapping was specifically conducted in habitat on site that could potentially support the Pacific pocket mouse, and the trapping was conducted in accordance with the survey guidelines established by the USFWS.

In addition to the other numerous surveys conducted on site, an LSA Biologist also conducted additional on-site surveys specifically for least Bell's vireo on June 9 and June 30, 2009. These surveys were conducted in the only riparian habitat on site and during the least Bell's vireo breeding season to better support the conclusion that this species is not expected to occur on site. It is important to note that the limited quantity and marginal quality of the riparian habitat on site is not typical of that normally occupied by least Bell's vireo.

Dry season fairy shrimp surveys of these two topographic depressions were conducted by an LSA biologist, who collected soil samples from the two depression areas. Then, the soil samples were processed and closely analyzed for any fairy shrimp eggs or cysts.

As a result of all the surveys conducted on site, LSA biologists were able to thoroughly assess the biological resources present. This included vegetation, wildlife, and suitability of habitat to support various special-interest species. All plant and animal species observed or otherwise detected on site were noted and are listed in Appendices A and B, respectively, of the BRA, which is Appendix D of this EIR.

**Delineation of Jurisdictional Waters.** LSA biologists conducted an evaluation of the wetlands and jurisdictional waterbodies on site. A previous jurisdictional delineation report was prepared by MBA in 2004. LSA conducted a routine jurisdictional delineation of areas of potential jurisdiction in accordance with current United States Army Corps of Engineers (ACOE) and CDFG guidelines. A Trimble global positioning system (GPS) unit was used in the field to record the delineated jurisdictional limits.

**Shallow Topographic Depressions.** In February and April of 2009, LSA biologists conducted a detailed evaluation of two shallow topographic depressions referred to by MBA as "disturbed ephemeral ponds" in its 2004 Biological Assessment. On April 1, 2009, LSA biologists examined soils and evaluated the vegetation associated with these two depression areas. Biologists also compared the hydrologic conditions of these two depressions with areas having analogous features at the vernal pools located at Fairview Park in Costa Mesa, California. On February 6, 9, and 19, 2009, LSA biologists visited Fairview Park to examine and photograph the ponding conditions present

there. In each instance, the biologist drove immediately to the proposed project site to examine and photograph the conditions associated with the two subject depressions.

## 4.5.2 Regulatory Setting

### Federal Regulations and Policies.

**United States Army Corps of Engineers.** The ACOE regulates discharges of dredged or fill material into waters of the US. These waters include wetlands and nonwetland bodies of water that meet specific criteria. The ACOE regulatory jurisdiction pursuant to Section 404 of the federal CWA is founded on a connection, or nexus, between the water body in question and interstate commerce. This connection may be direct, through a tributary system linking a stream channel with traditional navigable waters used in interstate or foreign commerce, or may be indirect, through a nexus identified in the ACOE regulations. The following definition of waters of the US is taken from the discussion provided in 33 Code of Federal Regulations (CFR) 328.3:

“The term waters of the United States means:

- (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce . . . ;
- (2) All interstate waters including interstate wetlands;
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams) . . . the use, degradation or destruction of which could affect interstate or foreign commerce . . . ;
- (4) All impoundments of waters otherwise defined as waters of the United States under the definition; and
- (5) Tributaries of waters defined in paragraphs (a) (1)–(4) of this section.”

The ACOE typically regulates as waters of the United States (US) any body of water displaying an ordinary high water mark (OHWM). The landward limits of ACOE jurisdiction in tidal waters of the US extend to the high tide line, and ACOE jurisdiction over nontidal waters of the US extends laterally to the OHWM or beyond the OHWM to the limit of any adjacent wetlands, if present (33 CFR 328.4). The OHWM is defined as “that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area” (33 CFR 328.3). Jurisdiction typically extends upstream to the point where the OHWM is no longer perceptible.

The ACOE and United States Environmental Protection Agency (EPA) define wetlands as follows:

“Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions.”

In order to be considered a jurisdictional wetland under Section 404, an area must possess three wetland characteristics: hydrophytic vegetation, hydric soils, and wetland hydrology. Each characteristic has a specific set of mandatory wetland criteria that must be satisfied in order for that particular wetland characteristic to be met. Several parameters may be analyzed to determine whether the criteria are satisfied.

**United States Fish and Wildlife Service.** The USFWS, pursuant to the FESA, protects Endangered and Threatened species (listed species). An Endangered species is defined as a species “in danger of extinction throughout all or a significant portion of its range;” a Threatened species is one that is likely to become endangered in the foreseeable future.

The USFWS also identifies species that are proposed for listing as Endangered or Threatened. Other than for federal actions, there is no formal protection for these species under the FESA. However, consultation with the USFWS regarding proposed species can prevent project delays that could occur if a species is listed prior to project completion.

“Take” of a listed species is prohibited under Section 9 of the FESA. “Take” is to harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect or attempt to engage in any such conduct. Harm is further defined as significant habitat alteration that results in death or injury to listed species by significantly impairing behavior patterns such as breeding, feeding, or sheltering. “Take” of a listed species incidental to otherwise lawful activities can be authorized by the USFWS. The take of federally listed species can be authorized under Section 10(a) of the FESA, with development of a Habitat Conservation Plan (HCP) or as part of a Section 7 consultation between the USFWS and another federal agency if the project is subject to federal action (e.g., a Section 404 Permit). In certain instances, such as for the California gnatcatcher, take of a Threatened species can be authorized by special rule (i.e., 4[d]). In the case of the California gnatcatcher, the 4(d) rule applies in jurisdictions that are participating in the State’s Natural Communities Conservation Plan (NCCP) program dealing with CSS plant communities.

### **State Regulations and Policies.**

**California Endangered Species Act.** The CDFG, via policies formulated by the California Fish and Game Commission (Commission), regulates species of plants and animals that are in danger of, or threatened with, extinction. The Commission has established a list of Endangered, Threatened, and candidate species that are regulated by the CDFG. Endangered species are native species or subspecies of plants and animals that are in serious danger of becoming extinct throughout all or a significant portion of their range. Threatened species are those species that, although not presently threatened with extinction, are likely to become

Endangered species in the foreseeable future in the absence of special protection and management efforts. Candidate species are those species the Commission has formally noticed as being under review for addition to either the list of Endangered or Threatened species or a species proposed for listing.

**California Natural Diversity Data Base.** The CDFG administers the CNDDDB, which maintains lists of special-interest plants, animals, and natural communities that occur within California. These particular natural communities, or habitat types, are designated as sensitive because of their rarity (e.g., very localized distribution, few scattered occurrences) and/or because of some threat (e.g., development, off-road vehicles) to this specific habitat type. The purpose of these listings is solely informational; there is no regulatory protection of these communities afforded by these CNDDDB listings.

**Wetlands/Streambeds.** The CDFG, through provisions of the State of California Administrative Code, is empowered to issue agreements for any alteration of a river, stream, or lake where fish or wildlife resources may be adversely affected. Streams (and rivers) are defined by the presence of a channel bed and banks and at least a periodic flow of water. The CDFG regulates wetland areas only to the extent that those wetlands are part of a river, stream, or lake as defined by the CDFG. The CDFG also includes nonwetland riparian communities that are associated with rivers and streams as part of jurisdictional waters of the State. These areas may extend beyond jurisdictional waters of the US.

**California Native Plant Society.** The CNPS is a nonprofit organization whose purpose is to promote the preservation of native California plants. CNPS created and maintains an Online Inventory of Rare and Endangered Plants of California. This extensive database is used by amateur and professional biologists and identifies four specific designations, or "Lists," of special-interest plant species.

### **Local Regulations and Policies.**

**Natural Communities Conservation Plan.** In an effort to respond to growing concern over the conservation of CSS and other biological communities, federal, State, and local agencies have developed a multispecies approach to habitat conservation planning known as the NCCP process. The goal of this NCCP program is to identify significantly important CSS habitat and to develop ways and means to preserve and/or restore the ecological value of this and associated plant communities and their attendant sensitive species in a rapidly urbanizing setting. This was made possible by legislation (Assembly Bill [AB] 2172) that authorized the CDFG to enter into agreements for the preparation and implementation of NCCPs. The USFWS joined in this effort, utilizing both the Section 4(d) Special Rule and the HCP processes.

In Orange County, the development of two subregional NCCP/HCPs for CSS and three other covered habitats was undertaken jointly by the County of Orange, the Transportation Corridor Agencies (TCA), USFWS, and CDFG, in cooperation with several large private landowners,

including the Irvine Company, with the County of Orange as the Lead Agency and other cities, including the City of Newport Beach, as participating agencies. The NCCP/HCP for the Central/Coastal Subregion, which was approved by the participating agencies in July 1996, addresses a range of species issues and, in particular, subregional habitat needs of the coastal California gnatcatcher.

The site is located within the jurisdiction of the Central and Coastal Orange County NCCP/HCP, and a Section 10(a) permit has been issued for participating landowners and signatory agencies. The Irvine Company is an NCCP participating landowner and owned the northern and central parcels of the study area in 1996, when the Implementation Agreement for the Orange County Central and Coastal Region NCCP/HCP was signed. The City acquired the Central Parcel from the Irvine Company in November 2007 and acquired the northern parcel in October 2008. All of the approvals and authorizations that the Irvine Company agreed to in the NCCP Implementation Agreement remain with the property and are transferred to the new property owner (i.e., City). Within the study area, take of CSS, gnatcatchers, cactus wrens, and other species and habitats covered by the NCCP has been mitigated through the Irvine Company's participation in the NCCP/HCP, which included the Irvine Company's commitment of thousands of acres of land to the NCCP/HCP Reserve.

**City of Newport Beach Natural Resource Element of the General Plan.** The City's Natural Resource Element of the General Plan contains goals and policies that provide direction regarding the conservation, development, and utilization of natural resources. The Natural Resource Element addresses: water supply (as a resource), water quality (includes bay and ocean quality, and potable drinking water), air quality, terrestrial and marine biological resources, open space, archaeological and paleontological resources, mineral resources, visual resources, and energy.

A variety of diverse, valuable, and sensitive biological resources occur within the City of Newport Beach. The undeveloped areas within the City that support natural habitats capable of supporting sensitive biological resources are referred to as Environmental Study Areas (ESAs) by the General Plan. An ESA may support species and habitats that are sensitive and rare within the region or may function as a migration corridor for wildlife. There are 28 identified ESAs within the City. Many of these sites may contain one or more sensitive plant communities and many species of wildlife. Some of the ESAs may also contain endangered species of plants and animals. Most of these ESAs are protected as parks, conservation areas, nature preserves, and other open space areas. However, each of these ESAs is subjected to various threats from the surrounding urban environment that include degraded water quality, traffic, noise, public access, development encroachment, erosion and sedimentation, dredging or filling, storm water runoff, invasive species, and feral animals. The proposed project site includes areas contained within the MacArthur and San Miguel (25), and MacArthur and San Joaquin Hills (26) ESAs.

The following Natural Resource Element goals and policies apply to the proposed project:

- Goal NR 10. Protection of sensitive and rare terrestrial and marine resources from urban development.

- **Policy NR 10.2: Orange County Natural Communities Conservation Plan.** Comply with the policies contained within the Orange County Natural Communities Conservation Plan. (Imp 2.1)<sup>1</sup>
- **Policy NR 10.3: Analysis of Environmental Study Areas.** Require a site-specific survey and analysis prepared by a qualified biologist as a filing requirement for any development permit applications where development would occur within or contiguous to areas identified as ESAs. (Imp 2.1, 6.1)
- **Policy NR 10.4: New Development Siting and Design.** Require that the siting and design of new development, including landscaping and public access, protect sensitive or rare resources against any significant disruption of habitat values. (Imp 2.1)
- **Policy NR 10.5: Development in Areas Containing Significant Rare Biological Resources.** Limit uses within an area containing any significant or rare biological resources to only those uses that are dependent on such resources, except where application of such a limitation would result in a taking of private property. If application of this policy would likely constitute a taking of private property, then a non-resource-dependent use shall be allowed on the property, provided development is limited to the minimum amount necessary to avoid a taking and the development is consistent with all other applicable resource protection policies. Public access improvements and educational, interpretative and research facilities are considered resource dependent uses. (Imp 2.1)
- **Policy NR 10.6: Use of Buffers.** Maintain a buffer of sufficient size around significant or rare biological resources, if present, to ensure the protection of these resources. Require the use of native vegetation and prohibit invasive plant species within these buffer areas. (Imp 2.1)
- **Policy NR 10.7: Exterior Lighting.** Shield and direct exterior lighting away from significant or rare biological resources to minimize impacts to wildlife. (Imp 2.1)
- Goal NR 13. Protection, maintenance, and enhancement of Southern California Wetlands.
  - **Policy NR 13.1: Wetland Protection.** Recognize and protect wetlands for their commercial, recreational, water quality, and habitat value. (Imp 1.2, 2.1, 21.1)
  - **Policy NR 13.2: Wetland Delineation.** Require a survey and analysis with the delineation of all wetland areas when the initial site survey indicates the presence or potential for wetland species or indicators. Wetland delineations will be conducted in accordance with the definitions of wetland boundaries established by California Department of Fish and Game, and/or United States Fish and Wildlife Service. (Imp 14.7, 14.11, 14.12)

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<sup>1</sup> The reference in the Natural Resource Element to the “Orange County Natural Communities Conservation Plan” is the central and coastal NCCP/HCP described above.



### 4.5.3 Existing Environmental Setting

**Plant Communities.** The 20-acre proposed project site supports 16 habitat types/plant communities, including the already-developed southern parcel (i.e., Newport Beach Central Library) (see Figure 4.5.1). With the exception of some concrete drainage ditches, standpipes, two concrete box culverts, and some riprap in the natural drainages, the northern and central parcels are essentially undeveloped.

Each plant community identified on site is described in more detail below and has a corresponding numerical code that is consistent with the OCHCS. The acreages of each plant community are provided in Table 4.5.A.

**Table 4.5.A: Acreages of Plant Communities within the Study Area**

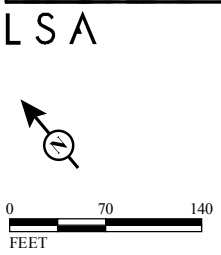
OCHCS No. <sup>1</sup>	Plant Community Designation	Total Acreage
2.3.6	Sagebrush Scrub	3.16
2.3.6.1	Sagebrush-Mulefat Complex	0.16
2.3.9	Coyote Brush Scrub	0.07
2.3.10	Mixed Scrub	0.50
2.4	Southern Cactus Scrub	0.06
2.8.1	Sagebrush-Grassland Ecotone/Sere	0.14
2.8.6	Deerweed-Grassland Ecotone/Sere	0.73
2.9	Scrub-Eucalyptus Planting	0.03
4.1	Annual Grassland	2.67
4.6	Ruderal Grassland	5.25
6.4	Freshwater Marsh	0.28
7.2	Willow Riparian Scrub	0.11
7.3	Mulefat Scrub	0.08
15.1	Developed	3.07
15.5	Ornamental Landscaping	3.18
16.1	Disturbed	0.51
<b>Total</b>		<b>20.00</b>

<sup>1</sup> Number scheme and habitat designations based on the Orange County Habitat Classification System (OCHCS) prepared by Jones & Stoke Associates, Inc. (1993).

OCHCS = Orange County Habitat Classification System

**Sagebrush Scrub (2.3.6).** This habitat type, also referred to as “Venturan-Diegan Transitional CSS” in the OCHCS, is dominated on site primarily by California sagebrush (*Artemisia californica*) and sometimes codominant with California encelia (*Encelia californica*). Other native species associated with the CSS on site include coastal deerweed (*Lotus scoparius* var. *scoparius*), coyote bush (*Baccharis pilularis*), coast goldenbush (*Isocoma menziesii* var. *vernonioides*), coastal prickly pear (*Opuntia littoralis*), and scattered individuals of bladderpod (*Isomeris arborea*) and lemonadeberry (*Rhus integrifolia*). Invasive, exotic plants associated with portions of this habitat type include myoporum (*Myoporum laetum*) and hottentot-fig (*Carpobrotus edulis*).

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**LEGEND**

Project Boundary

Habitat Types (codes from OC Habitat Classification System)

- 2.3.6 Sagebrush Scrub
- 2.3.6.1 Sagebrush-Mulefat Complex
- 2.3.9 Coyote Brush Scrub

- 2.3.10 Mixed Scrub
- 2.4 Southern Cactus Scrub
- 2.8.1 Sagebrush-Grassland Ecotone/Sere
- 2.8.6 Deerweed-Grassland Ecotone/Sere
- 2.9 Scrub-Eucalyptus Planting
- 4.1 Annual Grassland
- 4.6 Ruderal Grassland
- 6.4 Freshwater Marsh

- 7.2 Willow Riparian Scrub
- 7.3 Mulefat Scrub
- 15.1 Developed
- 15.5 Ornamental Landscaping
- 16.1 Disturbed

FIGURE 4.5.1

*Newport Beach City Hall  
and Park Development Plan Project  
Habitat Map*

SOURCE: MSVE (2008); City of Newport Beach (1/09)  
I:\CNB0901\GIS\HabitatMap.mxd (6/9/2009)

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The habitat quality and species diversity of CSS on site are generally “moderate” to “good.” While the vegetation appears healthy and relative cover is good, there is some visible evidence of current and past disturbances to portions of the CSS. The CSS habitat is restricted to the central parcel of the proposed project site, which is an isolated fragment of habitat surrounded by urban development. Human-induced disturbances are common and expected where islands of native habitat occur in urban areas such as this.

**Sagebrush-Mulefat Complex (2.3.6.1).** This habitat type is generally the same as Sagebrush Scrub, described above. However, mulefat (*Baccharis salicifolia*) is also a dominant plant species in these areas on site. It is important to note that these areas are upland and are not directly associated with any wetlands or drainages. This association of mulefat and CSS species is not uncommon in Southern California and does occur where mulefat has had the past opportunity to become established in habitat adjacent to drainages and other waterbodies located nearby, where mulefat occurs in greater abundance. A dense stand of mulefat is located nearby in a natural drainage channel on site. The habitat quality and species diversity of this habitat type on site are generally “moderate” to “good.” Evidence of transient use (e.g., people walking across the site) in this habitat type was observed during the surveys.

**Coyote Brush Scrub (2.3.9).** Coyote bush is the exclusive dominant plant of this habitat type. Although coyote bush is common and scattered about the proposed project site, only one polygon of Coyote Brush Scrub occurs on site. The habitat quality is “moderate.” Human disturbances associated with this habitat were evident.

**Mixed Scrub (2.3.10).** This CSS habitat type is a mixture of several different species. While California sagebrush is common, it is not exclusively dominant here. The primary plant species include California sagebrush, California encelia, coyote bush, black sage (*Salvia mellifera*), and island buckwheat (*Eriogonum grande*). Invasive, exotic plant species present include pampas grass (*Cortaderia selloana*) and hottentot-fig. This habitat type is located on a slope adjacent to the existing library facility and appears to be part of a previous restoration or revegetation effort. The habitat quality is “fair” to “moderate.”

**Southern Cactus Scrub (2.4).** A solitary occurrence of this habitat type exists in the northern portion of the central parcel. Southern cactus scrub is composed of CSS habitat with at least a 20 percent relative cover of cacti. In this particular case, the habitat type is dominated by California encelia, California sagebrush, and coastal prickly pear (*Opuntia littoralis*). The habitat quality is “good” with little evidence of disturbance.

**Sagebrush-Grassland Ecotone/Sere (2.8.1).** This is a successional plant community, transitioning from a ruderal grassland habitat to a Sagebrush Scrub habitat. The grassland component consists primarily of a variety of ruderal, nonnative grasses and forbs with scattered California sagebrush, California encelia, and coyote bush individuals interspersed. The habitat

quality is generally “good” based primarily on the health and diversity of the CSS plant species present.

**Deerweed-Grassland Ecotone/Sere (2.8.6).** This is also a successional plant community, transitioning from a ruderal grassland habitat to a sagebrush scrub habitat. The grassland component consists primarily of a variety of ruderal, nonnative grasses and forbs with scattered California sagebrush, coastal deerweed (*Lotus scoparius*), and coastal goldenbush (*Isocoma menziesii* var. *vernonioides*) individuals interspersed. The habitat quality ranges from “moderate” where disturbance has been more prevalent and “good” where disturbance has been low.

**Scrub-Eucalyptus Planting (2.9).** A small cluster of eucalyptus trees having a sparse understory of CSS plant species comprises this habitat type. The eucalyptus trees are nonnative and could have been previously planted, but it is more likely that they invaded from adjacent urban/commercial uses. The CSS vegetation was likely present before the eucalyptus trees became established. The habitat quality is “fair” to “moderate.” While eucalyptus trees are exotic, invasive plant species, they also provide potential nesting and perching habitat for birds, especially raptors.

**Annual Grassland (4.1).** This habitat type consists of a relatively dense cover of mostly low-growing herbaceous vegetation dominated primarily by a variety of nonnative grasses and forbs. Annual Grassland occurs as the dominant habitat type on the northern parcel. The dominant grass species include wild oats (*Avena* spp.), brome grasses (*Bromus* spp.), and hare barley (*Hordeum murinum* ssp. *leporinum*). Ruderal forbs that are typically interspersed with the annual nonnative grasses include filaree (*Erodium* spp.), black mustard (*Brassica nigra*), common silver scale (*Atriplex argentea* var. *argentea*), cudweed aster (*Corethrogyne filaginifolia* var. *filaginifolia*), and tocalote (*Centaurea melitensis*). The habitat quality of annual grassland is “low.”

**Ruderal Grassland (4.6).** Under the OCHCS system, the division between Ruderal Grassland and Annual Grassland plant communities is somewhat subjective. However, in this case, ruderal forbs are more prevalent than nonnative grasses where ruderal grassland has been mapped. Dominant plant species include filaree, tocalote, yellow sweet clover (*Melilotus indica*), Bermuda-buttercup (*Oxalis pes-caprae*), and sand pygmy-stonecrop (*Crassula connata*). Within the proposed project site, Ruderal Grassland contains less than 5 percent cover of CSS species, and native grasses are essentially absent from these areas. The areas corresponding to the Ruderal Grasslands appear to have been extensively disturbed in the past. Most ruderal species become established rapidly following disturbance, which is what has apparently happened here. The habitat quality of the ruderal grassland on site is “low.”

**Freshwater Marsh (6.4).** This wetland habitat is associated with portions of both of the natural drainages (Drainages A and B) on site. Freshwater Marsh typically has a regular, if not perennial, water source. In this case, perennial urban runoff from the local storm drain system provides sufficient water to support this habitat type. Dominant plant species associated with this habitat

type on site include cat-tails (*Typha* spp.), California bulrush (*Scirpus californicus*), white water-cress (*Rorippa nasturium-aquaticum*), water speedwell (*Veronica anagallis-aquatica*), and marsh fleabane (*Pluchea odorata*). The habitat quality is “good.”

**Willow Riparian Scrub (7.2).** Willow Riparian Scrub occurs in the southernmost natural drainage (Drainage A) on site and is dominated by arroyo willows (*Salix lasiolepis*), with an understory consisting primarily of mulefat and some freshwater marsh plant species. Goodding’s black willow (*Salix gooddingii*) is also present but in less abundance than the arroyo willow. The habitat quality is “good.”

**Mulefat Scrub (7.3).** This dense stand of mulefat is located in the southernmost of the two natural drainages (Drainage A) in the central parcel. Mulefat is the exclusive dominant plant species of this habitat type. There is essentially no understory to this habitat type. Riprap is associated with most of this habitat type on site. The habitat quality is “moderate.”

**Developed (Library Facility) (15.1).** The southern parcel is composed primarily of an existing library facility and is classified as developed. As is typical of similar developed areas, disturbance is quite high and native vegetation is all but nonexistent, thereby resulting in “low” habitat quality.

**Ornamental Landscaping (15.5).** This habitat type is associated with the library facility and along portions of the road edges (i.e., MacArthur Boulevard, Avocado Avenue, and San Miguel Drive) surrounding the perimeter of much of the proposed project site. This habitat type was intentionally planted in the past and is dominated by nonnative ornamental shrubs and trees. Where ornamental vegetation is installed adjacent to native habitat, competition between native and exotic plants increases and overall native habitat value decreases. The habitat quality is “low.”

**Disturbed (16.1).** The two areas on site classified as disturbed are located along Avocado Avenue on the western edges of the northern and central parcels (Figure 4.5.1). The areas are characterized by concrete v-ditches and primarily unvegetated, compacted dirt. These Disturbed areas are highly disturbed, and the habitat quality is “low.”

**Wildlife.** A number of wildlife species typically associated with the habitat types identified within the proposed project site were observed. Given that the site has been isolated from adjoining natural areas for many years, it is not surprising that species diversity was relatively low. The numbers of native vertebrates observed or otherwise detected on site during the site surveys include 1 amphibian, 4 reptile, 46 bird, and 6 mammal species. No active raptor (e.g., hawk) nests were observed on or immediately adjacent to the proposed project site, and the general lack of trees on site (with the exception of some eucalyptus trees) makes the potential for raptor nesting on site low.

Because of the isolation of this site amidst urban development, the proposed project site does not function as a wildlife movement corridor. Those species present on site are either able to fly in, are able to navigate on the ground through long stretches of residential development, or have been able to sustain a small population in spite of the isolation.

**Special-Interest Species.** For purposes of this analysis, any plant species listed or proposed for listing<sup>1</sup> by federal and/or State resource agencies, as well as plant species not listed or proposed for listing by any resource agency but having some other special designation from a resource agency or a recognized conservation organization (e.g., CNPS), are considered “special-interest species.” Some of the special-interest species identified in the literature review are not expected to occur on site due to the absence of suitable habitat or conditions on site, or the distant location of the proposed project site from a species’ known distribution. These species are excluded from further discussion in this report. As provided in Appendix C of the BRA (Appendix D of this EIR), a list of special-interest plant and animal species potentially occurring in the local region was compiled from records found in the literature review and database records in the CNPS Online Inventory and the CNDDDB. The Table contains detailed information regarding special-interest plant and animal species observed or potentially present within the proposed project site or vicinity, including species’ habitat and distribution, activity period, State and federal status designations, and probability of occurrence.

**Special-Interest Plant Species.** Of the 20 special-interest plant species identified as potentially occurring on site, only four have a “moderate” or greater probability of occurrence on site. These four plant species include Coulter’s saltbush (*Atriplex coulteri*), intermediate mariposa lily (*Calochortus weedii* var. *intermedius*), vernal barley (*Hordeum intercedens*), and Allen’s pentachaeta (*Pentachaeta aurea* ssp. *allenii*). None of these four species is federally or State listed; all four are “Special Plants,” included on the CNDDDB “Special Plants” list. Suitable habitat and conditions exist on site to potentially support both intermediate mariposa lily and Allen’s pentachaeta, but neither was observed on site, which was carefully inspected during the LSA surveys. Vernal barley was reportedly observed in the central parcel during previous biological studies of the site, but no vernal barley was observed during any of the numerous LSA surveys on site. Coulter’s saltbush has been observed on site during previous biological studies, and LSA observed a solitary population consisting of 18 individuals of Coulter’s saltbush located along the eastern edge of the central parcel (See Figure 4.5.2). This population occurs along a disturbed foot trail and along the ecotonal edge between ornamental landscaping (consisting primarily of acacia) and ruderal grassland. The remaining 16 special-interest plant species identified in Appendix C of the BRA (Appendix D of this EIR) have either a “low” probability of occurring on site or are “not expected” to occur on site. None of these or any other special-interest plant species were observed on site during the LSA surveys.

**Special-Interest Animal Species.** Of the 37 special-interest animal species potentially occurring on site, five have a “moderate” or greater probability of occurrence on site. These five animal species include northern harrier (*Circus cyaneus*), merlin (*Falco columbarius*), American peregrine falcon

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<sup>1</sup> Includes species already listed or proposed for listing by the federal government as “Threatened” or “Endangered.” In addition to the Threatened or Endangered designations, the State of California also has a third listing designation of “Rare,” but only with regard to specific plant species.



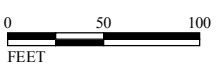


FIGURE 4.5.2

LSA

LEGEND

- Project Boundary
- Coulter's saltbush (*Atriplex coulteri*) (18 individuals)



SOURCE: City of Newport Beach (2/06, 1/09)

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(*Falco peregrinus anatum*), Allen's hummingbird (*Selasphorus sasin*), and California horned lark (*Eremophila alpestris actia*). Neither merlin (special animal) nor peregrine falcon (California Fully Protected species) were observed on site during any of the LSA surveys. None of these five species are federally or State listed.

A northern harrier was one of three special-interest animal species observed on site. It was flying over the proposed project site when observed. No northern harriers are expected to nest on site. The relatively small size of the project site, ongoing disturbance of the site, and marginal habitat quality makes the site unsuitable for this ground-nesting raptor. In addition, northern harriers are extremely rare as a nesting bird in Orange County. Two horned larks were observed on site on April 7, 2009, and may have been California horned larks, but the subspecies could not be determined. California horned larks are expected to occasionally visit the site, but nesting by this open ground-nesting species would be highly unlikely given the amount of human foot traffic and disturbance observed on site. Allen's hummingbirds were seen during every bird survey in 2009 and probably nest on site. This species thrives in the ornamental plantings of Orange County.

The remaining 32 special-interest animal species potentially occurring on site have either a "low" probability of occurring on site or are "not expected" to occur on site. Although noted as previously occurring on site by Hamilton (1998), no coastal California gnatcatchers, a federally Threatened bird species, were observed or detected during any of the six protocol surveys conducted by LSA. Also, no coastal California gnatcatchers were observed on site by MBA in 2004. More detailed information regarding the protocol coastal California gnatcatcher surveys conducted by LSA is provided in Appendix D of the BRA, which can be found in Appendix D of the EIR. Focused small mammal trapping surveys for Pacific pocket mouse, a federally listed Endangered species, were conducted by LSA. No Pacific pocket mice were captured during the live trapping on site. More details regarding the Pacific pocket mouse surveys conducted pursuant to USFWS protocol are provided in Appendix E of the BRA, which can be found in Appendix D of the EIR.

The San Diego fairy shrimp is a federally listed Endangered species identified in the list of special-interest species. San Diego fairy shrimp were identified as not expected to occur on site. LSA did not identify any typical habitat for fairy shrimp on site, but previous biological studies identified the possibility that fairy shrimp could occupy two shallow, topographical depressions located in the central portion of the property. Therefore, to conclusively determine whether any fairy shrimp occupied either of the two shallow depressions, LSA biologists conducted dry season fairy shrimp surveys. The survey resulted in negative findings.

In addition to the other numerous surveys conducted on site, an LSA Biologist also conducted additional on-site surveys specifically for least Bell's vireo on June 9 and June 30, 2009. These surveys were conducted in the only riparian habitat on site and during the least Bell's vireo breeding season to better support the conclusion that this species is not expected to occur on site. It is important to note that the limited quantity and marginal quality of the riparian habitat on site is not typical of that normally occupied by least Bell's vireo. The surveys resulted in negative findings.

**Wetlands and Potential Jurisdictional Drainages.** LSA conducted a jurisdictional delineation that included both the central and northern parcels. Details concerning the LSA Jurisdictional Delineation are provided in Appendix G of the BRA, which is found in Appendix D of the EIR.

LSA identified potential ACOE and CDFG jurisdiction associated with two primary drainages located on the central parcel of the proposed project site (Figure 4.5.3). These unnamed drainages are situated in two small ravines on site. The main drainage (hereinafter referred to as Drainage A) extends generally east to west. Runoff in this drainage is conveyed onto the site from a large concrete box culvert and ultimately drains into a large standpipe on the western end of the drainage. The other drainage (hereinafter referred to as Drainage B) extends southwesterly from near the northeast corner of the Central Parcel to Drainage A. Runoff in this drainage is conveyed onto the site from an existing underground concrete culvert at the northeast end of the drainage and ultimately empties into Drainage A. Overall, runoff is conveyed onto the site, into these earthen-bottomed drainage courses, and then back into the underground storm drain system, where it is ultimately conveyed to the Pacific Ocean, a traditional navigable water of the US.

Although the primary source of water in both Drainages A and B is from urban runoff, the drainage courses are essentially natural. Both drainages exhibit an ordinary high water mark (OHWM) and have connectivity to a traditional navigable water (the Pacific Ocean). Consequently, the boundary of potential ACOE jurisdiction in both drainages extends to the OHWM. In this case, there were no adjacent wetlands extending beyond the limits of the OHWM in either Drainage A or Drainage B. In other words, potential jurisdictional wetlands are confined to within the OHWMs.

The potential wetland waters of the US in Drainages A and B, as shown on Figure 4.5.3, have a prevalence of hydrophytic vegetation and evidence of hydric soils. Also, these drainages were inundated during survey work conducted by LSA. Drainage A may have perennial flows, but certainly appears to receive sufficient runoff to stay inundated for much of the year in most years, thus satisfying the wetland hydrology criterion. Drainage B appears to have either perennial or intermittent flows in at least the northern portion of the drainage; however, the southern portion of Drainage B does not appear to remain inundated for very long during most years and would not satisfy the wetland hydrology criterion (see Appendix G of the BRA for more details). The potential nonwetland waters of the US lacked a predominance of hydrophytic vegetation and thereby failed to satisfy the ACOE wetland criteria.





Drainages A and B exhibit a definable streambed and banks and have associated riparian habitat. Potential CDFG jurisdiction in Drainages A and B, as shown on Figure 4.5.3, not only includes the area corresponding to the drainage bottoms and banks but also extends beyond to include associated riparian canopy.

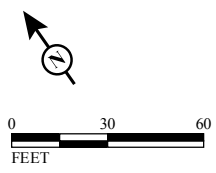
LSA thoroughly assessed the hydrology, vegetation, and soils associated with the two shallow depressions described in the following section. Although some wetland indicator plants (e.g., mulefat, curly dock) were present, the vegetation was dominated by upland indicator plants. The wetland indicator plants present are likely remnants from an extraordinary rainfall event that occurred in the past and resulted in the inundation of these shallow depressions. The presence of some relict mottles in the soils further confirms this notion of past inundation. Moreover, the two shallow depressions on site failed to become inundated or even exhibit saturated soils following several days of steady



LSA

LEGEND

-  Project Boundary
-  CDFG Jurisdiction (0.55 ac)
- ACOE Jurisdiction
-  Non-Wetland Waters (0.05 ac)
-  Wetland Waters (0.36 ac)



SOURCE: City of Newport Beach (2/06, 1/09)  
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FIGURE 4.5.3

*Newport Beach City Hall  
 and Park Development Plan Project  
 Potential Jurisdictional Areas*

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rainfall on two separate occasions in 2009. At the same time, LSA noted inundation at vernal pools/seasonal wetlands not far from the project area. LSA concluded that these two shallow depressions on site only become inundated during years, or following a concentrated period, of extraordinary rainfall. Neither of these two isolated depressions would be subject to ACOE or CDFG jurisdiction, pursuant to Section 404 of the Clean Water Act (CWA) or Section 1602 of the California Fish and Game Code.

LSA observed several concrete drainage ditches located in both the northern and central parcels. These artificial ditches were constructed for the purpose of collecting surface runoff and conveying the runoff into the storm drain system to prevent surface erosion and the flooding of adjacent landscape and structures. These concrete v-ditches and other concrete drainages are not considered waterbodies by the ACOE since nothing more than rills and other erosion features would form in the absence of these concrete-lined drainage systems. Therefore, these concrete v-ditches and drainages would not be subject to ACOE or CDFG jurisdiction.

**Shallow Topographic Depressions.** Previous biological studies cite the occurrence of two “ephemeral ponds” in the central parcel of the proposed project site. Hamilton (1998) reported observing “two seasonal ponds” on the central parcel. The general location of these two seasonal ponds was described by Hamilton, but no map was provided. In a follow-up biological study, MBA (2004) did create an exhibit showing the general locations of the two ponds identified by Hamilton; however, MBA indicated that no ponding was present during its surveys. MBA referred to these two areas as “ephemeral ponds.” LSA carefully examined these areas in February 2009 and noted a very subtle, shallow depression in the two corresponding areas but could not at that time find enough visible indicators to accurately map the extent of previous ponding in these areas. The shallow low-lying area located nearer the intersection of Avocado Avenue and Farallon Drive is referred to as Area A, and the shallow depression located nearer MacArthur Boulevard is referred to as Area B (Figure 4.5.4).

The two areas referred to above were further studied to determine whether they functioned as vernal pools capable of supporting crustaceans, particularly the San Diego fairy shrimp. In February 2009, LSA compared the hydrologic conditions of Areas A and B with areas having analogous features associated with the vernal pools located at Fairview Park in Costa Mesa, California. These shallow depressions at Fairview Park were used as reference sites for comparing instances of inundation at Fairview Park with Areas A and B on site. On February 6, 2009, LSA examined the vernal pools at Fairview Park and then immediately drove to the project site to examine Areas A and B. February 6 was the first rainy day in a series of five consecutive days with measureable rainfall. There was no evidence of inundation (soils were dry) at either Fairview Park or Areas A and B on site. On February 9, 2009, LSA repeated the visits to Fairview Park followed immediately by a visit to the site. Approximately 0.7 inch of cumulative rainfall occurred in the previous three days. LSA observed inundation in several shallow depressions at Fairview Park but noted no inundation at the two areas on site. Likewise, on February 19, 2009, LSA repeated the same methodology and observed extensive



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LSA

LEGEND

-  Project Boundary
-  Shallow Topographic Depressions



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SOURCE: City of Newport Beach (2/06, 1/09)  
I:\CNB0901\GIS\Topo\_Depressions.mxd (6/9/2009)

FIGURE 4.5.4

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ponding at Fairview Park but still did not observe any inundation or even soil saturation at Areas A and B. Approximately 1 inch of cumulative rainfall had occurred in the previous 5 days.

The observed ponding in 1998 occurred in the rainy season of an exceptionally wet year and shortly following one of the wettest Februarys on record, and the frequency of inundation associated with these two areas is likely very low. Many upland areas throughout the County were inundated as a result of the extremely heavy rainfall occurring in February 1998.

On April 1, 2009, LSA conducted a detailed evaluation of the soils and vegetation associated with Areas A and B. The presence of mottles in the soils associated with Areas A and B resulted from some past instance of inundation such as that which occurred in 1998. Where mottles form, the soils have become saturated for a sufficient duration to cause the formation of anaerobic soil conditions and to trigger the reduction of iron in the soils. However, once formed, these mottles can persist in the soils for years or even decades, provided the soils are not disturbed. Mottles in the soil are not necessarily an indication of the frequency of inundation or soil saturation, but rather are an indication of at least some past inundation or soil saturation event where anaerobiosis and reduction has occurred.

Woolly marbles (*Psilocarphus brevissimus* var. *brevissimus*) were observed in the two areas previously identified as “ephemeral ponds” by MBA (2004). Woolly marbles were not observed at any other location on site. The presence of woolly marbles does indicate some level of previous soil saturation that was sufficient enough to support the initial introduction and continued persistence of that particular plant species. However, the occurrence of woolly marbles does not equate to the regular frequency of ponding at the two sites. In this particular instance, the woolly marbles would appear to be persistent remnants, initially introduced on site from some previous event dating back to 1998, or possibly earlier. Although a vernal pool indicator plant, woolly marbles are not always associated with vernal pools. In some cases, this species can occur in nonvernal pools where soils, such as heavy clays, retain sufficient moisture to allow the species to germinate and continue to persist at that site. No other vernal pool indicator plants or other signs of vernal pools were observed in Areas A and B, nor anywhere else on site.

The presence of upland perennial shrubs such as California sagebrush (*Artemisia californica*) in and around these shallow topographic depressions further supports the assertion that these areas do not pond with any regularity; otherwise, these uplands shrubs could not persist. Also, Areas A and B were dominated primarily by upland plant species. Dominant plants in Area A included California sagebrush, coastal deerweed, scarlet pimpernel (*Anagallis arvensis*), sand pygmy-stonecrop, tocalote, filaree, and mulefat. Dominant plants in Area B included yellow sweet clover, red-stemmed filaree, short-fruited filaree, sand pygmy-stonecrop, tocalote, and scarlet pimpernel. Woolly marbles were common but not dominant in both areas. LSA used the extent of the woolly marble distribution at each area to more definitively delineate the extent of Areas A and B.

In addition, LSA conducted fairy shrimp dry season surveys of Areas A and B. Soil samples were collected, processed, and carefully examined using a microscope to determine whether any fairy shrimp cysts were present in the soils. No fairy shrimp cysts were present in either Area A or Area B. Therefore, since fairy shrimp cysts can persist for several years without a ponding event of sufficient duration (i.e., 1–2 weeks), clearly instances of ponding are too infrequent on site to sustain a viable population of fairy shrimp in either Area A or Area B.

Based on the data presented above, it is clear that ponding only occurs in these areas during extraordinarily wet years or after a series of exceptionally heavy rainfall events. Therefore, Areas A and B have no substantially greater biological significance than the surrounding habitat areas.

#### **4.5.4 Impact Significance Criteria**

The following thresholds of significance are based on Appendix G of the State CEQA Guidelines. For purposes of this EIR, implementation of the proposed project may have a significant adverse impact on biological resources if it would:

- Threshold 4.5.1:** Have a substantial adverse effect, either directly or indirectly through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or the CDFG or USFWS;
- Threshold 4.5.2:** Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFG or USFWS;
- Threshold 4.5.3:** 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;
- Threshold 4.5.4:** Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- Threshold 4.5.5:** Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
- Threshold 4.5.6:** Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

#### 4.5.5 Project Impacts

**Threshold 4.5.1:**        **Would the project have a substantial adverse effect, either directly or indirectly through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or the CDFG or USFWS?**

##### **Less than Significant with Mitigation.**

**NCCP.** Federal, state, and local agencies have developed a multispecies approach to habitat conservation planning known as the NCCP process in an effort to respond to growing concern over the conservation of coastal sage scrub and other biological communities. This was made possible by legislation (Assembly Bill [AB] 2172) that authorized the CDFG to enter into agreements for the preparation and implementation of Natural Community Conservation Plans. The USFWS joined in this effort, utilizing both the Section 4(d) Special Rule and the Habitat Conservation Plan (HCP) processes.

The Central/Coastal Orange County Subregion NCCP/HCP was approved in July 1996 and establishes a 37,380-acre Reserve system that includes significant areas of 12 major habitat types and covers 39 sensitive plant and animal species. The NCCP includes Reserve areas where development is not allowed, allowable development areas, and areas that are not designated for either conservation or development. The environmental effects of the NCCP/HCP are addressed in the "Joint Environmental Impact Report and Environmental Impact Statement Regarding Take Authorization for Implementation of the County of Orange Central and Coastal Subregion Natural Community Conservation Plan and Habitat Conservation Plan, May 1996." The goal of the Orange County Central and Coastal Region NCCP/HCP is to identify significantly important CSS habitat and to develop ways and means to preserve and/or restore the ecological value of this and associated plant communities and their attendant sensitive species in a rapidly urbanizing setting.

The proposed project is located within the broad planning boundaries of the Central/Coastal Subregion NCCP/HCP, and potential impacts to habitat and species are addressed through the NCCP/HCP. The Irvine Company is an NCCP-participating landowner and previously owned the northern and central parcels of the study area in 1996, when the Implementation Agreement (IA) for the Orange County Central and Coastal Region NCCP/HCP was signed. The City acquired the Central Parcel from the Irvine Company in November 2007 and acquired the northern parcel in October 2008. All of the approvals and authorizations that the Irvine Company agreed to in the NCCP IA remain with the property and are transferred to the new property owner (i.e., City). Within the study area, take of CSS, gnatcatchers, cactus wrens, and other species and habitats covered by the NCCP is already mitigated through the Irvine Company's participation in the NCCP/HCP, which included the Irvine Company's commitment of thousands of acres of land to the NCCP/HCP Reserve System.

The project site is currently characterized by various habitat types composed of native and nonnative vegetation. The proposed project would result in the loss of 11.68 acres of native habitat. This habitat provides foraging opportunities for a variety of wildlife on site.

Therefore, while the proposed project would result in the loss of native habitat, including some foraging habitat for raptors such as the northern harrier, merlin, and peregrine falcon, development of the project site is covered by the Central/Coastal Orange County NCCP/HCP that provides tens of thousands of acres of habitat reserve, including substantial areas suitable for raptor foraging. For example, the NCCP/HCP includes conservation of approximately 9,500 acres of potential habitat for the northern harrier.

The NCCP/HCP does not list all species that occur within the NCCP/HCP planning boundaries. Rather the species that are identified are ones that are important to predators or species that were anticipated might become listed as Threatened or Endangered and therefore would require the regulatory coverage that the NCCP/NCP confers. The key benefit of the Central/Coastal Orange County NCCP/HCP is the dedication and management of large amounts of natural open space for the good of the Identified Species and other species that utilize the same habitats. The identified species include California gnatcatcher, least Bell's vireo, Pacific pocket mouse, peregrine falcon, and northern harrier, as well as many others. Based on the combination of physical and biological attributes of the Reserve and implementation of the adaptive management approach applicable to the Reserve System, the NCCP/HCP provides regulatory coverage for particular species and ensures long-term conservation of geographically broad and biodiverse areas in the NCCP/HCP planning area.

The assembly of the habitat Reserve depends on the assembly of Reserve lands through a system of preservation actions, usually associated with ongoing development. NCCPs are routinely and reasonably relied upon to provide adequate mitigation for the impacts associated with authorized projects, consistent with the USFWS and CDFG memorandum dated March 17, 1995, that acknowledges the adequacy of the NCCP program in general for mitigation purposes:

*After a subregional NCCP has been prepared and approved, project-related impacts to CSS and target species (including all species receiving regulatory coverage under the NCCP) shall be considered to be mitigated to insignificant levels and consistent with the NCCP Guidelines if the project and its related impacts to CSS/target species are carried out (siting, mitigation, etc.) consistent with the subregional or subarea NCCP and its associated Implementing Agreement.<sup>1</sup>*

One of the strengths of the Central/Coastal Orange County NCCP is that, for the most part, it does not rely on a complex system for assembly of the Reserve lands. Instead, the Reserve lands were originally held by a relatively small number of Participating Landowners, who immediately, upon implementation of the NCCP/HCP, placed the identified habitat Reserve areas into the Nature Reserve of Orange County (NROC). Thus, NROC is already a fully functioning, managed habitat Reserve. Some of the Participating Landowners have asked for modifications of the Reserve boundaries to accommodate development plans that changed since the NCCP/HCP was implemented, but this process is specifically recognized in the NCCP/HCP IA, and in every case of minor amendments to the Reserve boundaries, there has been a no net loss of Reserve area and a net increase in Reserve function. In addition, Reserve Owners/Managers have been diligently preparing Resource Management Plans for publicly accessible open space, with required reviews

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<sup>1</sup> Excerpted from March 17, 1995, Memorandum from USFWS and CDFG, *Jurisdictions within the Natural Community Conservation Planning (NCCP) Area*.

by the USFWS and CDFG. In addition, “NROC” is not only the name of the nonprofit entity responsible for overseeing management of Reserve lands, but is also the name of those Reserve lands. NROC is also actively conducting studies and implementing habitat improvement activities as originally foreseen in the NCCP/HCP and IA. The Irvine Company (the Participating Landowner that owned the project site at the time of NCCP/HCP adoption) has fulfilled and exceeded all of its obligations under the NCCP/HCP.

Only one aspect of the NCCP/HCP process was originally left to future planning efforts: the North Ranch Policy Planning Area (which does not include the proposed project site). Planning of development and Reserve boundaries in this 9,500-acre area in the Central Subarea was deferred at the time of the IA because the Participating Landowner, the Irvine Company, had not yet developed plans for this area, and additional studies of the resources in this area had not been completed. However, upon further evaluation of development options and philosophical goals, the Irvine Company elected to dedicate the entire area to carefully managed habitat conservation through the Irvine Ranch Conservancy. The Irvine Company also scaled back several development areas that were authorized under the NCCP/HCP, providing additional unanticipated conservation areas. The total of this additional conservation area is over 12,000 acres, largely in addition to the original 37,000 acres that were deemed necessary by USFWS and CDFG to adequately conserve the Identified Species. The formation of the Irvine Ranch Conservancy, and the management resources that it brings to the Reserve, further enhances the function of the NCCP/HCP program, bringing the total of conserved lands to approximately 50,000 acres.

Therefore, the Central/Coastal Orange County NCCP was designed to set aside Reserve lands to protect the covered species and was intended to be relied upon for mitigation purposes for areas identified for development when it was approved in 1996. Since that time, it has been strengthened by an overall reduction in planned land development intensity and by an increase in the size of Reserve lands. The development of the project site is recognized in the NCCP/HCP. Within the study area, take of CSS, gnatcatchers, cactus wrens, and other species and habitats covered by the NCCP is already mitigated through the Irvine Company’s participation in the NCCP/HCP. Specifically, the conservation of Reserve areas and implementation of adaptive management methods and other conditions of the Central/Coastal Orange County NCCP/HCP reduce potential adverse impacts as a result of the loss of native vegetation, much of which is potential raptor foraging habitat.

Although potential impacts to habitat and species are adequately addressed by the NCCP/HCP, additional information regarding direct impacts to species is provided below.

**Special-Interest Plant Species.** Four special-interest plant species were identified as having a “moderate” or greater probability of occurrence on site: Coulter’s saltbush, intermediate mariposa lily, vernal barley, and Allen’s pentachaeta. Suitable habitat and conditions exist on site to potentially support both intermediate mariposa lily and Allen’s pentachaeta, but neither plant was observed. Vernal barley was reportedly observed in the central parcel during previous biological studies of the site, but no vernal barley was observed during any of the numerous LSA biological surveys on site. Therefore, implementation of the proposed project would not have a significant adverse impact on intermediate mariposa lily, vernal barley, and Allen’s pentachaeta.

The population of 18 individuals of Coulter's saltbush located along the eastern edge of the Central Parcel (see Figure 4.5.2) would be completely eliminated on site as a result of the proposed grading activities. Therefore, implementation of the proposed project would have a significant adverse impact on Coulter's saltbush, and mitigation is required. Coulter's saltbush is not an Identified Species in the NCCP/HCP. Mitigation Measure 4.5.1 requires preparation of a translocation plan, translocation of Coulter's saltbush, and monitoring of the population for 5 years. Implementation of Mitigation Measure 4.5.1 would reduce project-related impacts to Coulter's saltbush to a less than significant level.

**Special-Interest Animal Species.** Two special-interest animal species were identified as having a "moderate" or greater probability of occurrence on site, but were not observed: merlin and American peregrine falcon. Three special-interest animal species were observed on site: Allen's hummingbird, northern harrier, and likely California horned lark.

Although none were observed, it is possible that merlins and peregrine falcons may occasionally forage on site. However, implementation of the proposed project would not result in significant adverse impacts to merlins or peregrine falcons as neither species was observed on site or found to be nesting on site. In addition, large tracts of coastal lands supporting raptor foraging habitat have been set aside for permanent preservation. These lands include the Seal Beach National Wildlife Refuge and Bolsa Chica Ecological Reserve, as well as lands set aside as a result of NCCP implementation such as lands in the NROC, including the Upper Newport Bay Ecological Reserve. When viewed in the context of how much raptor foraging habitat has already been conserved in Orange County, the quantity of raptor foraging habitat lost on site is not substantial. No additional mitigation is required.

Allen's hummingbirds were seen during every bird survey in 2009 and probably nest on site. This species thrives in the ornamental plantings of Orange County and is unlikely to suffer any adverse effects as a result of project implementation. In fact, the increase in ornamental trees and shrubs as a result of project landscaping may well benefit the species. Implementation of the proposed project would result in a less than significant impact to Allen's hummingbirds, and no mitigation is required.

A northern harrier was seen flying over the proposed project site but was not observed nesting. Although the possibility of northern harriers nesting on site is considered to be unlikely, impacts to northern harriers would be considered significant if they were found to be actively nesting on site. The City would be required to comply with the federal Migratory Bird Treaty Act (MBTA) (Mitigation Measure 4.5.2), which would reduce potential impacts to this species to a less than significant level.

California horned larks are expected to occasionally visit the proposed project site, but nesting by this open ground-nesting species would be highly unlikely given the amount of human foot traffic and disturbance observed on site. Therefore, implementation of the proposed project would have a less than significant impact on California horned larks, and no mitigation is required.

Focused surveys for coastal California gnatcatcher (federally listed Threatened species and a California Species of Special Concern), Pacific pocket mouse (federally listed Endangered



species and California Species of Special Concern), and fairy shrimp (federally listed Endangered species) yielded negative results. Therefore, implementation of the proposed project would not have a significant adverse impact on coastal California gnatcatcher, Pacific pocket mouse, or fairy shrimp, and no mitigation is required. Similarly, least Bell's vireo, a federally and state listed Endangered species, was not observed during 2009 surveys. Since no least Bell's vireo were detected on site and since there is limited quantity and marginal quality of riparian habitat to support this species, implementation of the project would have no significant adverse impact on this species.

**Threshold 4.5.2: Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFG or USFWS?**

**Less than Significant with Mitigation.** Implementation of the proposed 20-acre project would result in the direct loss of 11.68 acres of native plant communities. The proposed project also includes the preservation of 1.56 acres of native plant communities and 0.24 acre of landscaped and disturbed plant communities associated with the two natural drainages on site. A breakdown and comparison of the plant communities that would be lost and the plant communities that would be preserved based on the proposed project are provided in Table 4.5.B.

As described above, the Orange County Coastal subregional NCCP, approved in July 1996, establishes a 37,380-acre reserve system in a 208,000-acre planning area. The plan protects significant areas of 12 major habitat types and covers 39 sensitive plant and animal species. Reserve lands are managed by Participating Landowners or their designated Reserve Managers in coordination with The Nature Reserve of Orange County.

The NCCP/HCP provides for the protection of a number of plant and animal species, referred to as Target Species and Identified Species. Generally, inside the Reserve, only land uses that are compatible with habitat and wildlife preservation are allowed, while economic growth and development may occur outside the Reserve. More specifically, if a proposed project site is identified in the NCCP for the allowance of future development (i.e., it is located outside the Reserve area or other planned open space), and it is/was owned by a Participating Landowner, development is permitted without any further mitigation.

When the Implementation Agreement for the Orange County Central and Coastal Region NCCP/HCP was signed 1996, the northern and central parcels of the proposed project site were owned by the Irvine Company. The City acquired the central parcel from the Irvine Company in November 2007 and acquired the northern parcel in October 2008. All of the approvals and authorizations the Irvine Company agreed to in the NCCP Implementation Agreement remain with the property and were transferred to the City of Newport Beach when the City took ownership of the property under

**Table 4.5.B: Impacts to and Preservation of Plant Communities within the Study Area**

OCHCS No.	Plant Community Designation	Permanent Loss of Habitat; Northern + Central Parcels (acres)	Preservation of Habitat; Central Parcel (acres)
2.3.6	Sagebrush Scrub	0 + 2.18	0.98
2.3.6.1	Sagebrush-Mulefat Complex	0 + 0.15	0.01
2.3.9	Coyote Brush Scrub	0 + 0.07	
2.3.10	Mixed Scrub	0 + 0.50	
2.4	Southern Cactus Scrub	0 + 0.06	
2.8.1	Sagebrush-Grassland Ecotone/Sere	0 + 0.14	
2.8.6	Deerweed-Grassland Ecotone/Sere	0 + 0.73	
2.9	Scrub-Eucalyptus Planting	0 + 0.01	0.02
4.1	Annual Grassland	2.67 + 0	
4.6	Ruderal Grassland	0 + 5.17	0.08
6.4	Freshwater Marsh		0.28
7.2	Willow Riparian Scrub		0.11
7.3	Mulefat Scrub		0.08
15.1	Developed	0 + 3.07	
15.5	Ornamental Landscaping	0.16 + 2.81 = 2.97	0.21
16.1	Disturbed <sup>1</sup>	0.35 + 0.13 = 0.48	0.03
<b>Total</b>		<b>18.2</b>	<b>1.8</b>
<b>Grand Total</b>		<b>20.00</b>	

<sup>1</sup> The Disturbed (OCHCS No. 16.1) area may increase as the project boundary changes to include the roadway widening between the northern and central parcels.  
OCHCS = Orange County Habitat Classification System

the terms of the Circulation Improvement and Open Space Agreement (CIOSA).<sup>1</sup> In addition, the City is a signatory jurisdiction. Signatory jurisdictions are responsible for ensuring that the provisions of the NCCP are implemented with respect to activities that are under their jurisdiction. The proposed project site is located within the boundaries of the Orange County Central Coastal NCCP/HCP planning area; however, it is an area identified as urbanized and is located well outside the Reserve.

Compliance with the terms and conditions of the NCCP Implementation Agreement and construction minimization measures identified in the NCCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) serve as suitable mitigation for project-specific and cumulative impacts to native habitat and associated general wildlife on site. The construction minimization measures referred to above are listed in Appendix H of the BRA (Appendix D of this EIR). Minimization measures applicable to the project site are listed in Mitigation Measure 4.5.4. Overall, the proposed project would result in the direct loss of approximately 88 percent of the total native habitat on site. Implementation of the proposed project could result in significant adverse impacts to native habitat on

<sup>1</sup> CIOSA pertains to 12 parcels and grants and vested development rights for 11 projects. In consideration of the vested rights granted, the Irvine Company prepaid “fair-share” road improvement fees, constructed road improvements, and granted the City of Newport Beach an interest-free loan. The value of these traffic improvement benefits totaled approximately \$20 million. In consideration of the vested right, approximately 140 acres of property were also conveyed to the City for open space and park purposes. The proposed project was one of the sites conveyed to the City under the agreement.

site. Compliance with the provisions of the NCCP as identified in Mitigation Measure 4.5.4 reduces project-related impacts to wildlife habitat on site to a less than significant level.

Wildlife may be subject to the adverse effects of noise from construction activities. These effects would be temporary and, with the possible exception of nesting birds (including birds that nest in scrub habitat), would not constitute a significant adverse impact to wildlife on site or in the adjacent areas. Construction noise could potentially disrupt normal nesting behavior in birds, aside from just raptors, on site and/or immediately adjacent to the study area. Also, removing or trimming trees or shrubs on site in association with proposed construction activities could potentially result in significant adverse impacts to nesting birds, which are protected under the MBTA. Implementation of Mitigation Measure 4.5.2 ensures that nesting birds would be protected during construction activity and reduces potential adverse effects to nesting birds to below a level of significance.

**Threshold 4.5.3: 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?**

**Less than Significant with Mitigation.**

**Shallow Topographic Depressions.** As already indicated, the two shallow upland depressions (i.e., Areas A and B on Figure 4.5.4), which were referred to by Hamilton (1998) and MBA (2004), have no substantially greater biological significance than the surrounding habitat areas, and they are not subject to either ACOE or CDFG jurisdiction. Therefore, implementation of the proposed project would not result in a significant adverse impact to biological resources associated with these two shallow upland depressions, and no mitigation is required.

**Wetlands.** The proposed project would include the construction of three pedestrian footbridges across the jurisdictional drainages on site. These bridges are proposed to span the drainages and avoid any direct impacts to the ACOE or CDFG jurisdictional areas (subject to verification by the ACOE). There are no proposed support structures or other portions of the bridges that would be installed within the ACOE or CDFG jurisdictional limits on site. Furthermore, grading and other construction disturbances are not proposed to occur within the ACOE or CDFG jurisdictional limits. Consequently, no discharge of fill material into any of the federal (Section 404 of the CWA) jurisdictional waters or wetlands identified and delineated on site is proposed as part of the construction activities. Therefore, construction of the proposed project would result in less than significant impacts to the ACOE or CDFG jurisdictional areas, and no mitigation is required.

The construction of footbridges across the jurisdictional drainages would provide shade to the vegetation growing under the proposed bridges. Therefore, constructing the pedestrian bridges could indirectly impact vegetation under the bridges. It is estimated that the pedestrian bridges would range from approximately 4 ft above the wetlands for the smaller bridges and between 14 and 17 ft above the wetlands for the larger bridges. The bridges would be approximately 12 to 15 ft in width. The resulting shadow would be relatively narrow and therefore temporally fleeting with the movement of the sun across the sky. Also, the areas of the site exposed to shade would vary with the seasons and time of day. The existing habitat appears to be thriving in conditions

that include shade from existing on-site trees. Much of the understory of the wetlands habitat on site is thus already subject to shading. The existing trees below the proposed bridges are not currently shaded, with the exception of shadows created by the variable topography on site. The exposure of the vegetation to shade as a result of the pedestrian bridges would likely have a negligible effect on the performance of the vegetation and would not adversely affect the viability of the wetland habitat on site. There are no federally or state listed species within the wetland habitat. Therefore, the localized areas of shade corresponding to the location of the proposed pedestrian footbridges, would have a less than significant impact on vegetation or wildlife, and no mitigation is required. Although this is a less than significant project impact, CDFG may require a streambed alteration agreement to address the effects of shading.

Grading and other proposed construction work would occur around the perimeter of, and in relatively close proximity to, the jurisdictional areas associated with the two drainages on site. Grading and construction work could result in incidental, or accidental, discharge of materials into jurisdictional areas, which would be a significant project impact. Therefore, implementation of Mitigation Measure 4.5.3 is required to prevent any incidental or accidental discharge of fill into jurisdictional areas during construction activities. Implementation of Mitigation Measure 4.5.3 would reduce the potential impacts to the jurisdictional areas related to incidental, or accidental, discharge of materials into jurisdictional areas associated with the two drainages to a less than significant level.

**Threshold 4.5.4: 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?**

**Less than Significant with Mitigation.** The proposed project would result in the direct loss of approximately 88 percent of the total native habitat on site, resulting in a locally significant loss of foraging habitat for wildlife. Implementation of the proposed project would have a direct, locally significant adverse effect on wildlife and wildlife habitat on site. Implementation of Mitigation Measure 4.5.4 is expected to reduce project-related impacts to wildlife and wildlife habitat on site to a less than significant level. As stated above, compliance with the terms and conditions of the NCCP Implementation Agreement and construction minimization measures identified in the NCCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) serve as suitable mitigation for project-specific and cumulative impacts to native habitat and associated general wildlife on site.

Temporary impacts associated with construction-related noise would not constitute a significant adverse impact to wildlife on site or in the adjacent areas. However, construction-related noise could potentially serve as a nuisance to nesting birds, particularly raptors, and disrupt normal nesting behavior in birds. Also, removing or trimming trees or shrubs on site in association with the proposed construction activities could result in significant adverse impacts to nesting birds. As such, the City would be required to comply with the federal MBTA through Mitigation Measure 4.5.2. Implementation of Mitigation Measure 4.5.2, MBTA, will reduce the potential significant impacts to nesting birds to a less than significant level.

**Threshold 4.5.5: Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?**

**Less than Significant.** The project site includes areas contained within the MacArthur and San Miguel (25), and MacArthur and San Joaquin Hills (26) ESAs. The proposed project is consistent with the following Natural Resource Element goals and policies:

- Goal NR 10. Protection of sensitive and rare terrestrial and marine resources from urban development.

- **Policy NR 10.2: Orange County Natural Communities Conservation Plan.** Comply with the policies contained within the Orange County Natural Communities Conservation Plan. (Imp 2.1)

*Consistency:* The site is located within the jurisdiction of the Central and Coastal Orange County NCCP/HCP, and a Section 10(a) permit has been issued for participating landowners and signatory agencies. The Irvine Company is an NCCP participating landowner and owned the northern and central parcels of the study area in 1996, when the Implementation Agreement for the Orange County Central and Coastal Region NCCP/HCP was signed. The City acquired the central parcel from the Irvine Company in November 2007 and acquired the northern parcel in October 2008. All of the approvals and authorizations that the Irvine Company obtained through the NCCP Implementation Agreement remain with the property and are transferred to the new property owner (i.e., City). Within the study area, take of CSS, gnatcatchers, cactus wrens, and other species and habitats covered by the NCCP is already mitigated through the Irvine Company's participation in the NCCP/HCP, including fulfillment of its obligations under the Implementation Agreement.

- **Policy NR 10.3: Analysis of Environmental Study Areas.** Require a site-specific survey and analysis prepared by a qualified biologist as a filing requirement for any development permit applications where development would occur within or contiguous to areas identified as ESAs. (Imp 2.1, 6.1)

*Consistency:* The project site includes areas contained within ESAs 25 and 26, and multiple site specific surveys and analyses have been prepared for the project site, including a general BRA as well as specific surveys, such as a Jurisdictional Delineation, plant surveys, and focused species surveys for the Pacific pocket mouse, San Diego fairy shrimp, and coastal California gnatcatcher.

- **Policy NR 10.4: New Development Siting and Design.** Require that the siting and design of new development, including landscaping and public access, protect sensitive or rare resources against any significant disruption of habitat values. (Imp 2.1)

*Consistency:* The project includes features including use of native species (PDF BIO-2), wetland habitat enhancement (PDF BIO-1), and the preservation of open space on site in the form of a passive park. The project's potentially significant impacts to biological resources are reduced to below a level of significance with implementation of mitigation measures that protect the wetlands during construction activities, translocate the Coulter's saltbush population, require a preconstruction nesting bird survey, and compliance with the Orange County Central and Coastal Subregion NCCP/HCP. Therefore, the siting and design of the proposed new development protect sensitive or rare resources against any significant disruption of habitat values.

- **Policy NR 10.5: Development in Areas Containing Significant Rare Biological Resources.** Limit uses within an area containing any significant or rare biological resources to only those uses that are dependent on such resources, except where application of such a limitation would result in a taking of private property. If application of this policy would likely constitute a taking of private property, then a non-resource-dependent use shall be allowed on the property, provided development is limited to the minimum amount necessary to avoid a taking and the development is consistent with all other applicable resource protection policies. Public access improvements and educational, interpretative and research facilities are considered resource dependent uses. (Imp 2.1)

*Consistency:* The project site is publically owned. With voter approval of Measure B, the City Charter was amended, requiring that City Hall be located on the proposed project site. The existing wetlands on site would be preserved and enhanced. Coulter's saltbush, a CNPS List 1B.2 species that was observed on site, is not a Threatened or Endangered species. The project impact of eliminating the population of 18 Coulter's saltbush is mitigated with the requirements that the population be translocated to a suitable receptor site in an area to be permanently preserved. Site development is limited to the area necessary to meet the project objectives, and includes 14.3 acres of passive park space.

- **Policy NR 10.6: Use of Buffers.** Maintain a buffer of sufficient size around significant or rare biological resources, if present, to ensure the protection of these resources. Require the use of native vegetation and prohibit invasive plant species within these buffer areas. (Imp 2.1)

*Consistency:* The existing wetlands are located within the area of the site proposed for open space and are therefore physically separated from the portion of the site proposed for development. Uses within the passive park are limited to walking trails, picnic areas, etc., with no active sports fields. Therefore, the passive park would serve as a buffer to the existing wetlands. Furthermore, prescribed mitigation measures would require the presence of an experienced biologist to monitor during project construction and development to ensure that sensitive plant communities designated for preservation and associated wildlife are protected during project construction activities. New planting in the open

space area would include native plant species, and the project includes removal of existing invasive plant species.

- **Policy NR 10.7: Exterior Lighting.** Shield and direct exterior lighting away from significant or rare biological resources to minimize impacts to wildlife. (Imp 2.1)

*Consistency:* The project site is currently exposed to ambient night lighting from the street lighting on adjacent roadways. New lighting fixtures on site would be shielded to limit spill light. The wetlands area of the site would be further protected from new lighting sources by the existing topography, including the hill between the proposed Civic Center and the park/wetlands area. Furthermore, Mitigation Measures 4.3.1 through 4.3.3 require the City to prepare a lighting plan, a photometric study, and conduct an inspection prior to occupancy in order to minimize impacts of new sources of light and glare to adjacent land uses and limit nighttime lighting to that necessary for security.

- Goal NR 13. Protection, maintenance, and enhancement of Southern California Wetlands.
  - **Policy NR 13.1: Wetland Protection.** Recognize and protect wetlands for their commercial, recreational, water quality, and habitat value. (Imp 1.2, 2.1, 21.1)

*Consistency:* The proposed project protects the existing wetlands in place. The construction of three pedestrian footbridges across the jurisdictional drainages would span across the drainages and avoid any direct impacts to the ACOE or CDFG jurisdictional areas delineated by LSA. Since grading and other proposed construction work would occur around the perimeter of, and in relatively close proximity to, the jurisdictional areas associated with the two drainages on site, incidental or accidental discharge of materials could occur. Therefore, mitigation is included in this EIR to require the installation of orange snow fencing along the entire construction perimeter of the jurisdictional drainages. Although the proposed project would result in the reduction of approximately 11 percent of the storm water runoff presently conveyed into Drainage B, and the pedestrian bridges will result in some shading of the existing drainages and wetlands, the wetland plants are well established and the relatively small fluctuations in water conveyance and shading are not expected to threaten the viability and value of the wetlands habitat on site.

- **Policy NR 13.2: Wetland Delineation.** Require a survey and analysis with the delineation of all wetland areas when the initial site survey indicates the presence or potential for wetland species or indicators. Wetland delineations will be conducted in accordance with the definitions of wetland boundaries established by California Department of Fish and Game, and/or United States Fish and Wildlife Service. (Imp 14.7, 14.11, 14.12)

*Consistency:* LSA identified potential ACOE and CDFG jurisdiction associated with areas of potential jurisdiction, specifically the two primary drainages located

on the central parcel of the study area. All federal agencies (e.g., USFWS) have agreed to use the ACOE method of delineating wetlands, which was used by LSA.

In summary, the goals and policies that apply to the proposed project from the City of Newport Beach's Natural Resource Element of the General Plan speak to the protection of sensitive and rare terrestrial resources from urban development, including the protection, maintenance, and enhancement of Southern California wetlands. As discussed under Thresholds 4.5.1 through 4.5.4 and Threshold 4.5.6, implementation of the proposed project is designed to comply with the Orange County NCCP/HCP; avoid impacts to sensitive natural plant communities, sensitive wildlife, and wildlife movements; and avoid direct impact to jurisdictional wetlands. Furthermore, prescribed mitigation measures would require the presence of an experienced biologist to monitor project construction and development to ensure that sensitive plant communities designated for preservation and associated wildlife are protected during project construction activities. Therefore, implementation of the proposed project would not conflict with any local policies or ordinances protecting biological resources, and no mitigation is required.

**Threshold 4.5.6: 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?**

**Less than Significant.** As described above, the NCCP is an effort by the State, and numerous private and public partners. It takes a broad-based ecosystem approach to planning for the protection and perpetuation of biological diversity. An NCCP identifies and provides for the regional or areawide protection of plants, animals, and their habitats while allowing compatible and appropriate economic activity. The primary objective of the NCCP is to conserve natural communities at the ecosystem scale while accommodating compatible land use. In most cases the NCCP program is implemented with a companion HCP under the jurisdiction of the USFWS. The NCCP/HCP program focuses on the long-term stability of wildlife and plant communities and includes key interests in the process.

As stated above, compliance with the terms and conditions of the NCCP Implementation Agreement and construction minimization measures identified in the NCCP EIR/EIS serve as suitable mitigation for project-specific and cumulative impacts to native habitat and associated general wildlife on site (see Mitigation Measure 4.5.4). Coulter's saltbush is not a covered species in the NCCP, and identified impacts to Coulter's saltbush are addressed in Mitigation Measure 4.5.1. Implementation of Mitigation Measure 4.5.4 would ensure that the proposed project would not conflict with the existing NCCP/HCP. No additional mitigation is required.

#### **4.5.6 Cumulative Impacts**

**Less than Significant.** The cumulative study area includes the 208,000-acre planning area established by the Orange County Coastal subregional NCCP. The proposed project site is located within the boundaries of the Orange County Coastal subregional NCCP planning area. The purpose of the NCCP/HCP is to take a broad-based ecosystem approach to planning for the protection and perpetuation of biological diversity, which is the most appropriate way to assess and address the potential cumulative impacts stemming from multiple projects in the same geographic area. The



NCCP/HCP program focuses on the long-term stability of wildlife and plant communities and includes key interests in the process. An NCCP identifies and provides for the regional or areawide protection of plants, animals, and their habitats while allowing compatible and appropriate economic activity. Potential impacts to native habitats and associated wildlife have been addressed in a regional context through the NCCP/HCP. Large tracts of coastal lands supporting native habitat have already been set aside for permanent preservation. These lands include the Seal Beach National Wildlife Refuge, Bolsa Chica Ecological Reserve, as well as lands in the NROC, including the Upper Newport Bay Ecological Reserve. When viewed in the context of how much native habitat has already been conserved in Orange County, the quantity of native habitat on site that would be lost is not cumulatively considerable. Therefore, implementation of the proposed project would not result in potentially significant adverse cumulative impacts to native habitats and associated wildlife.

#### **4.5.7 Level of Significance Prior to Mitigation**

Potential significant adverse impacts to Coulter's saltbush, native plant communities, jurisdictional areas, wildlife and wildlife habitat, and nesting birds would be significant prior to implementation of the proposed mitigation measures.

#### **4.5.8 Project Design Features and Mitigation Measures**

The following Project Design Feature (PDF) commitments identified in Chapter 3.0 of this EIR are intended to address potential impacts related to biological resources. In addition, the following mitigation measures are incorporated to offset potentially significant adverse impacts to biological resources associated with implementation of the proposed project.

**PDF BIO -1:** **Removal of Invasive Exotic Plants.** Invasive exotic plant species (e.g., myoporum, castor bean, pampas grass) associated with the wetland/riparian habitat shall be removed, and mulefat and willow cuttings and other appropriate plant species shall be installed.

**PDF BIO -2:** **Native Plants.** The landscaping palette to be used on site shall include the use of native plant species in addition to drought tolerant, ornamental, and turf species. The landscaping palette shall also prohibit the use of invasive exotic plants (i.e., those plant species rated as "High" or "Moderate" in the California Invasive Plant Council's [Cal-IPC] Invasive Plant Inventory).<sup>1</sup>

**Mitigation Measure 4.5.1:** **Translocation of Coulter's Saltbush Population.** Prior to commencement of grading activities, the City of Newport Beach (City) Director of Planning, or designee, shall verify that the City has contracted a qualified, experienced biologist to prepare a comprehensive translocation plan for Coulter's saltbush which includes the location of the suitable receptor site. The plan shall be

<sup>1</sup> <http://www.cal-ipc.org/ip/inventory/index.php>.

prepared in cooperation with representatives from the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG). The project biologist shall supervise and monitor implementation of the plan. Once the population of Coulter's saltbush on site is transplanted to the suitable receptor site, the project biologist shall monitor the population for 5 years, documenting the methods and results, including implementation of any requisite maintenance and/or remedial measures in annual reports. Establishment of a viable population shall be deemed successful and the performance standards met if at least half (i.e., nine) of the plants are evident in any given year following the third year of the monitoring period. This mitigation standard may be adjusted any time prior to the end of the monitoring period under mutual agreement by the City and the resource agencies (i.e., USFWS and CDFG), particularly if factors beyond human control limit the ability to establish a viable population of Coulter's saltbush within the 5-year monitoring period. If it becomes apparent that the performance standards cannot be achieved, the City and resource agencies may agree to extend the monitoring period and/or implement remedial measures.

**Mitigation Measure 4.5.2: Migratory Bird Treaty Act.** In the event that project construction or grading activities should occur within the active breeding season for birds (i.e., February 15–August 15), a nesting bird survey shall be conducted by the designated project biologist prior to commencement of construction activities. If active nesting of birds is observed within 100 feet (ft) of the designated construction area prior to construction, the construction crew shall establish an appropriate buffer around the active nest. The designated project biologist shall determine the buffer distance based on the specific nesting bird species and circumstances involved. Once the designated project biologist verifies that the birds have fledged from the nest, the buffer may be removed. Prior to commencement of grading activities or issuance of any building permits, the City of Newport Beach Director of Planning, or designee, shall verify that all project grading and construction plans include specific documentation regarding the requirements of the Migratory Bird Treaty Act (MBTA), that preconstruction surveys have been completed and the results reviewed by staff, and that the appropriate buffers (if needed) are noted on the plans and established in the field with orange snow fencing.

**Mitigation Measure 4.5.3: Wetland/Riparian Habitat Enhancement.** Prior to the commencement of grading activities associated with the central parcel, the City of Newport Beach (City) Director of Planning, or designee, shall verify that grading plans require the installation of orange snow fencing along the entire construction perimeter of the

jurisdictional drainages. The City of Newport Beach Director of Planning, or designee, shall also verify that the City has contracted a qualified, experienced biologist to be present on site when the orange snow fence is installed to ensure that it is installed at the appropriate location outside of the United States Army Corps of Engineers (ACOE) and the California Department of Fish and Game (CDFG) jurisdictional limits. The orange snow fencing shall be maintained and left in place until all construction activities in the Central Parcel are complete. The biological monitor shall be present during any grading or vegetation removal activities occurring within 300 feet of the orange snow fencing. Prior to removal of the orange snow fencing at the completion of construction activities in the central parcel, the biological monitor shall conduct a final inspection of the area. The biological monitor shall, as necessary, maintain direct contact with the City representative throughout the construction process.

**Mitigation Measure 4.5.4:**

**Orange County Central and Coastal Subregion NCCP/HCP.**

Prior to commencement of grading activities, the City of Newport Beach (City) shall comply with the terms and conditions of the Orange County Central and Coastal Subregion Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) Implementation Agreement and construction minimization measures identified in the NCCP. The following five minimization measures, as outlined in the NCCP, are designed to reduce potential impacts associated with native habitat and associated general wildlife and are applicable to the proposed project site.

1. To the maximum extent practicable, no grading of coastal sage scrub (CSS) habitat that is occupied by nesting gnatcatchers shall occur during the breeding season (February 15–July 15). It is expressly understood that this provision and the remaining provisions of these “construction-related minimization measures” are subject to public health and safety considerations. These considerations include unexpected slope stabilization, erosion control measures, and emergency facility repairs. In the event of such public health and safety circumstances, landowners or public agencies/utilities shall provide the United States Fish and Wildlife Service/California Department of Fish and Game (USFWS/CDFG) with the maximum practicable notice (or such notice as is specified in the NCCP/HCP) to allow for capture of gnatcatchers, cactus wrens, and any other CSS Identified Species that are not otherwise flushed and shall carry out the following measures only to the extent as practicable in the context of the public health and safety considerations.

2. Prior to the commencement of grading operations or other activities involving significant soil disturbance, all areas of CSS habitat to be avoided under the provisions of the NCCP/HCP shall be identified with temporary fencing or other markers clearly visible to construction personnel. Additionally, prior to the commencement of grading operations or other activities involving disturbance of CSS, a survey shall be conducted to locate gnatcatchers and cactus wrens within 100 feet of the outer extent of projected soil disturbance activities, and the locations of any such species shall be clearly marked and identified on the construction/grading plans.
3. A monitoring biologist, acceptable to USFWS/CDFG, shall be on site during any clearing of CSS. The City of Newport Beach Director of Planning or designee shall advise USFWS/CDFG at least 7 calendar days (and preferably 14 calendar days) prior to the clearing of any habitat occupied by Identified Species to allow USFWS/CDFG to work with the monitoring biologist in connection with bird flushing/capture activities. The monitoring biologist shall flush Identified Species (avian or other mobile Identified Species) from occupied habitat areas immediately prior to brush-clearing and earth-moving activities. If birds cannot be flushed, they shall be captured in mist nets, if feasible, and relocated to areas of the site to be protected or to the NCCP/HCP Reserve System. It shall be the responsibility of the monitoring biologist to assure that Identified bird species will not be directly impacted by brush-clearing and earth-moving equipment in a manner that also allows for construction activities on a timely basis.
4. Following the completion of initial grading/earth movement activities, all areas of CSS habitat to be avoided by construction equipment and personnel shall be marked with temporary fencing or other appropriate markers clearly visible to construction personnel. No construction access, parking, or storage of equipment or materials will be permitted within such marked areas.
5. CSS identified in the NCCP/HCP for protection and located within the likely dust drift radius of construction areas shall be periodically sprayed with water to reduce accumulated dust on the leaves as recommended by the monitoring biologist.

#### **4.5.9 Level of Significance after Mitigation**

Potential impacts to biological resources from the proposed project would be mitigated to levels that are less than significant with implementation of the above mitigation measures. Therefore, the

proposed project would not result in any significant unavoidable impacts related to biological resources.

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