5.3 BIOLOGICAL RESOURCES

This section of the Draft Environmental Impact Report (DEIR) evaluates the potential for the Hyatt Regency Newport Beach expansion (proposed project) to impact biological resources in the local and regional context of the City of Newport Beach and Orange County, respectively. The analysis in this section is based in part on the following technical reports:

- *Results of Biological Surveys and Impact Analysis Conducted for the Newport Hyatt Regency Golf Course*, Glenn Lukos Associates, November 3, 2007.
- *Fire Protection Plan-Hyatt Regency Newport Beach*, Dudek, October 18, 2007.

A copy of the biological survey is included in its entirety in Appendix D of this DEIR. The Fire Protection Plan is included as Appendix H of this DEIR.

5.3.1 Environmental Setting

Applicable Plans and Regulations

Federal and State Regulations

Endangered Species Act

The Federal Endangered Species Act (FESA) of 1973, as amended, was promulgated to protect and conserve any species of plant or animal that is endangered or threatened with extinction and the habitats in which these species are found. "Take" of endangered species is prohibited under Section 9 of the FESA. "Take," as defined under the FESA, means to "harass, harm, pursue, hunt, wound, kill, trap, capture, collect, or attempt to engage in any such conduct." Section 7 of the FESA requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) on proposed federal actions that may affect any endangered, threatened, or proposed (for listing) species or critical habitat that may support the species. Section 4(a) of the FESA requires that critical habitat be designated by the USFWS "to the maximum extent prudent and determinable, at the time a species is determined to be endangered or threatened." Critical habitat is formally designated by USFWS to provide guidance for planners/managers and biologists with an indication of where suitable habitat may occur and where high priority of preservation for a particular species should be given. Section 10 of the FESA provides the regulatory mechanism that allows the incidental take of a listed species by private interests and nonfederal government agencies during lawful activities. Habitat conservation plans (HCPs) for the impacted species must be developed in support of incidental take permits for nonfederal projects to minimize impacts to the species and develop viable mitigation measures to offset the unavoidable impacts.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (MBTA) is the domestic law that affirms and implements the United States' commitment to four international conventions with Canada, Japan, Mexico, and Russia for the protection of shared migratory bird resources. The MBTA governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. It prohibits the take, possession, import, export, transport, sale, purchase, barter, or offering of these activities, except under a valid permit or as permitted in the implementing regulations. USFWS administers permits to take migratory birds in accordance with the regulations promulgated by the MBTA.

Clean Water Act, Section 404

The United States Army Corps of Engineers (USACE) regulates discharges of dredged or fill material into "waters of the U.S."[1] pursuant to Section 404 of the federal Clean Water Act (CWA), a permit is required for any filling or dredging within waters of the U.S. The permit review process entails an assessment of potential adverse impacts to USACE wetlands and jurisdictional waters, wherein the USACE may require mitigation measures. Where a federally listed species may be affected, a Section 7 consultation with USFWS may be required. If there is potential for cultural resources to be present, Section 106 review may be required. Also, where a Section 404 permit is required, a Section 401 Water Quality Certification would also be required from the Regional Water Quality Control Board (RWQCB).

Clean Water Act, Section 401and 402

Section 401(a)(1) of the CWA specifies that any applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters shall provide the federal permitting agency a certification, issued by the state in which the discharge originates, that any such discharge will comply with the applicable provisions of the CWA. In California, the applicable RWQCB must certify that the project will comply with water quality standards. Permits requiring Section 401 certification include USACE Section 404 permits and National Pollutant Discharge Elimination System (NPDES) permits issued by the Environmental Protection Agency (EPA) under Section 402 of the CWA. NPDES permits are issued by the applicable RWQCB. The City of Newport Beach is within the jurisdiction of the Santa Ana RWQCB (Region 8).

California Fish and Game Code, Section 1600

Section 1600 of the California Fish and Game Code requires that a project proponent notify the California Department of Fish and Game (CDFG) of any proposed alteration of streambeds, rivers, and lakes. The intent is to protect habitats that are important to fish and wildlife. CDFG may review a project and place conditions on the project as part of a Streambed Alteration Agreement (SAA). The conditions are intended to address potentially significant adverse impacts within CDFG's jurisdictional limits.

California Endangered Species Act

The California Endangered Species Act (CESA) generally parallels the main provisions of the FESA and is administered by the CDFG. Its intent is to prohibit take and protect state-listed endangered and threatened species of fish, wildlife, and plants. Unlike its federal counterpart, CESA also applies the take prohibitions to species petitioned for listing (state candidates). At the discretion of the Fish and Game Commission, candidate species may be afforded temporary protection as though they were already listed as threatened or endangered. Unlike the FESA, CESA does not include listing provisions for invertebrate species. Under certain conditions, CESA has provisions for take through a 2081 permit or Memorandum of Understanding (MOU). In addition, some sensitive mammals and birds are protected by the state as Fully Protected Species. California Species of Special Concern are species designated as vulnerable to extinction due to declining population levels, limited ranges, and/or continuing threats. This list is primarily a working document for the CDFG's California Natural Diversity Database (CNDDB) project, which maintains a database of known and recorded occurrences of sensitive species. Informally listed taxa are not protected per se, but warrant consideration in the preparation of biological resources assessments.

[1] "Waters of the United States," as it applies to the jurisdictional limits of the authority of the Corps of Engineers under the Clean Water Act, includes: all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce; water impoundments; tributaries of waters; territorial seas; wetlands adjacent to waters. The terminology used by Section 404 of the Clean Water Act includes "navigable waters," which is defined at Section 502(7) of the Act as "waters of the United States including the territorial seas."

California Coastal Act

Chapter 3 of the California Coastal Act contains policies to protect water quality and the biological productivity of coastal waters; avoid and minimize dredging, diking, and filling sediments; and mitigate wetland impacts. Under the California Coastal Act, environmentally sensitive area means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Implementation of Coastal Act policies is accomplished primarily through the preparation of a Local Coastal Program (LCP). The LCP is typically prepared and adopted by a municipality or county, then it is reviewed and approved by the Coastal Commission. A LCP typically consists of a land use plan and an implementation plan. The land use plan indicates the kinds, location, and intensity of land uses, the applicable resource protection and development policies, and, where necessary, a listing of implementing actions. The implementation plan consists of the zoning ordinances, zoning district maps, and other legal instruments necessary to implement the land use plan.

The city's certified Coastal Land Use Plan (CLUP) contains extensive policy language addressing biological, habitat, and resource protection. The CLUP policies are applicable only in the Coastal Zone, which includes the Hyatt Regency project site.

Regional Resource Planning

The preparation of a comprehensive natural resources management conservation plan for central and coastal Orange County was completed in 1996. The Central and Coastal Orange County Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) and the associated Implementation Agreement (IA) covers thirteen cities. In July 1996, the city of Newport Beach became a signatory agency in the NCCP/HCP. The purpose of the NCCP/HCP is to create a multispecies, multihabitat reserve system and to implement a long-term management program. It was developed to satisfy the requirements for both the FESA and CESA.

The NCCP/HCP generally addresses vegetation communities and species associated with upland coastal sage scrub habitat. It is intended to focus on multiple species and habitats and address conservation of these species on a regional context. The three main target species are the coastal California gnatcatcher, cactus wren, and orange-throated whiptail. There are 26 other species that are also identified and afforded management protection under the NCCP/HCP. An additional 10 species of plants and animals that are either federally listed or treated as if they were listed according to FESA Section 10(a) are addressed within the NCCP/HCP.

The measures incorporated in the NCCP/HCP are intended to address the federal, state, and local project-specific mitigation requirements for the species and habitats addressed in the NCCP/HCP under FESA, CESA, CEQA, NEPA, and the MBTA. The NCCP/HCP is intended to streamline review of individual projects with respect to the species and habitats addressed in the NCCP/HCP, and to provide for an overall Habitat Reserve System.

CIOSA Development Agreement

In 1993, the City of Newport Beach and The Irvine Company entered into the Circulation Improvement and Open Space Agreement (CIOSA). The CIOSA pertains to 12 parcels and grants vested development rights for 11 projects. The Hyatt Regency was one of the 11 projects that received vested entitlements. The Irvine Company prepaid “fair share” road improvement fees, constructed road improvements, and granted the City

of Newport Beach an interest-free loan. In consideration of the vested right, approximately 140 acres of property were also conveyed to the City for open space and parks. As shown in Figure 5.3-1, *CIOSA Open Space Dedication Adjacent to Hyatt Regency*, the natural open space directly north and northeast of the project site was part of the open space dedication included in the CIOSA. The Newporter Knoll site (as shown on this exhibit) was also designated for open space.

Local Ordinances

Newport Beach Tree Ordinance

The City of Newport Beach has several ordinances and policies that relate to the protection and preservation of trees. Regulations for the retention, removal, maintenance, reforestation, and supplemental trimming of City trees are included in Chapter 13.0, *Streets, Sidewalks and Public Property*, of the City's Municipal Code. In addition, City Council Policy G-3 (Retention or Removal of City Trees) was adopted with the intent to preserve views and to preserve and promote the aesthetic and environmental benefits provided by trees. Both the tree ordinance and the City's policies relating to trees are applicable only to City trees, i.e., those on City property and within public parkways.

Site Reconnaissance

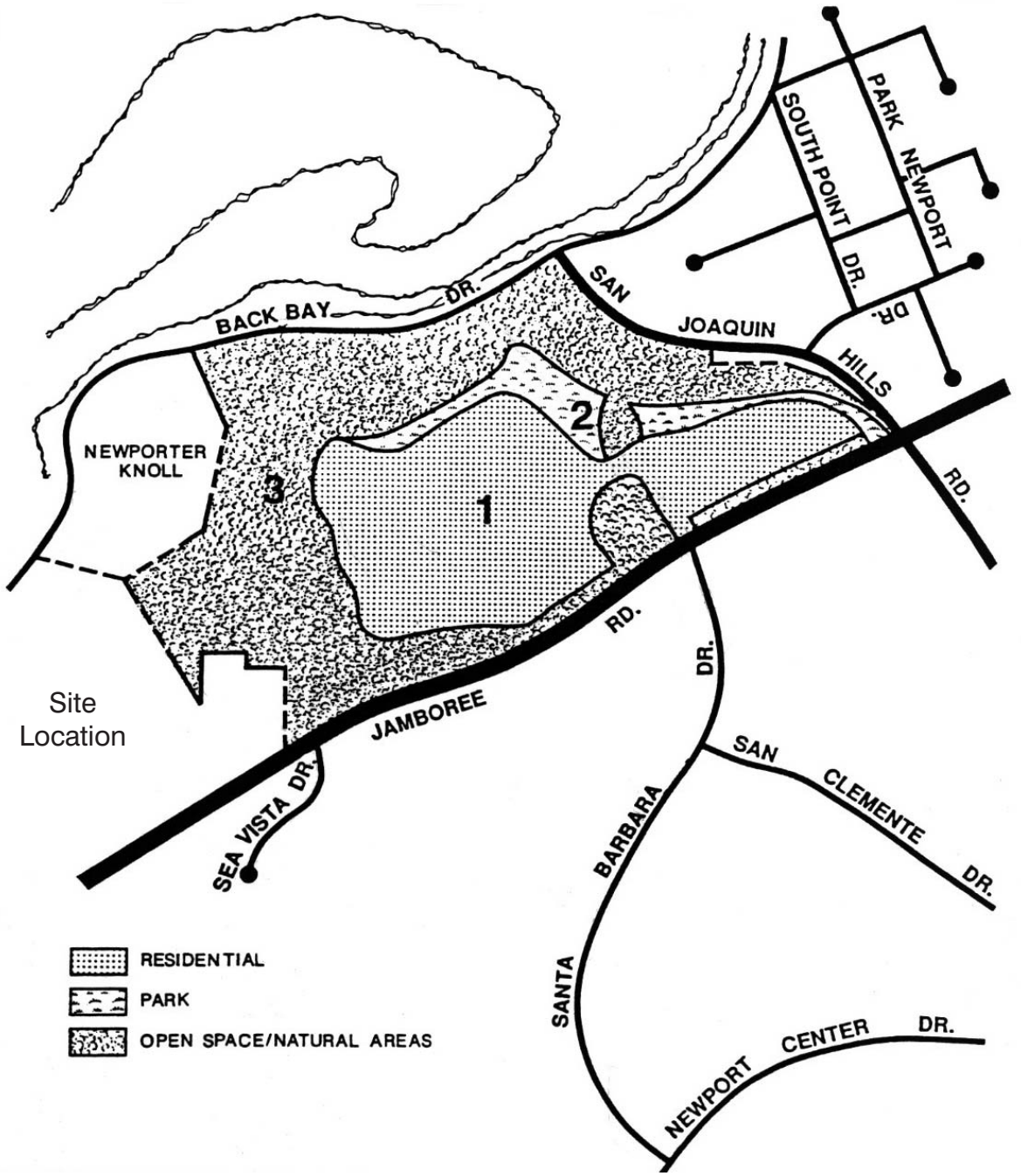
A site reconnaissance by Glenn Lukos and Associates was performed February 14 and 15, 2006, as well as January 10, February 17, March 1, May 3, May 10, and May 21, 2007, to identify the presence of special-status species or habitats capable of supporting special-status species on the site or adjacent to the site in areas that could be adversely affected by the project. The three surveys in May 2007 were protocol surveys for the California gnatcatcher. Site reconnaissance was conducted to allow inspection of the entire site by direct observation, including the use of binoculars. The site was inspected to determine whether any sensitive species, sensitive habitats, or potential jurisdictional areas (subject to USACE or CDFG jurisdiction) are present on-site as well as determine whether such resources are present on surrounding adjacent open space. In addition to the site reconnaissance and focused surveys, evaluation of the property included a review of the CNDDB and a review of the 2001 California Native Plant Society (CNPS) inventory.

Habitat

The Hyatt Regency golf course, on the northern portion of the Hyatt Regency property, is comprised of open green space consisting of turf grass interspersed with mostly ornamental landscaping. The golf course is bordered by off-site open space that includes coastal sage scrub, emergent marsh, and ruderal areas associated with Newport Back Bay to the north and west, and ornamental vegetation associated with the neighboring tennis club to the east. Figure 5.3-2, *Vegetation Map*, depicts existing habitat types.

The golf course consists of well-manicured turfgrass with various ornamental plantings, including jelly palm (*Butia capitata*), fish tail palm (*Caryota mitis*), Mediterranean fan palm (*Chamaerops humilis*), windmill palm (*Trachycarpus fortunei*), Calabrian pine (*Pinus brutia*), Aleppo pine (*Pinus halepensis*), Canary Island pine (*Pinus canariensis*), plumeria (*Plumeria* spp.), blue gum (*Eucalyptus globulus*), bougainvillea (*Bougainvillea spectabilis*), bird of paradise (*Strelitzia reginae*), and Nile lily (*Agapanthus africanus*).

Newporter North PC Text Map



NOT TO SCALE

Source: Circulation Improvement & Open Space Agreement - City of Newport Beach, ASB Planning, Vail Speck Assoc.

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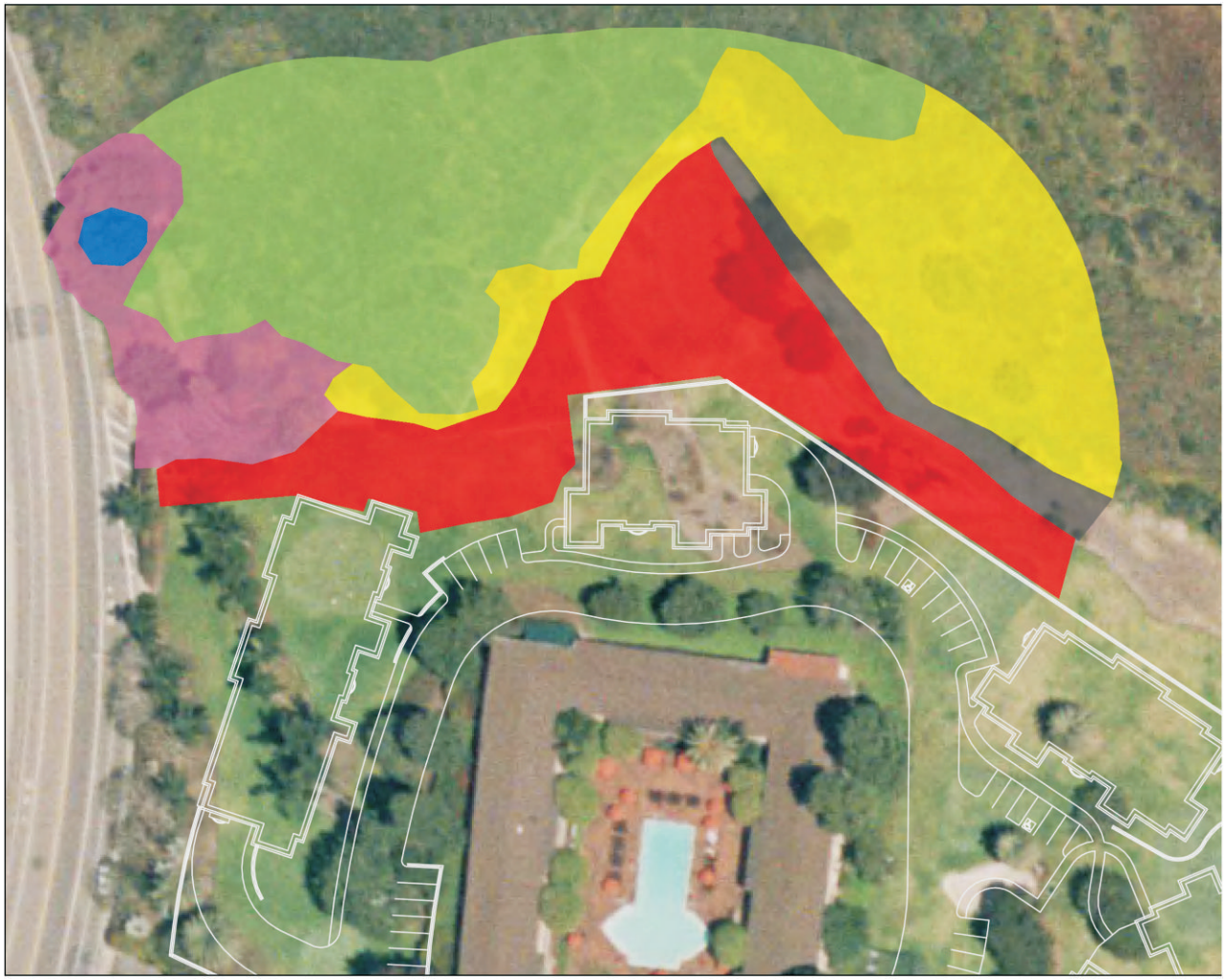
Vegetation Map



Source: Glenn Lukos Associates, November 2007

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Off-site of the golf course to the north and west are open space areas. Immediately adjacent to the northern boundary of the golf course is a steep, descending slope that supports a mixture of native and exotic species. Nonnative species include castor bean (*Ricinus communis*), horehound (*Marrumbium vulgare*), Asian mustard (*Brassica tournefortii*), pampas grass (*Cortaderia selloana*), tacalote (*Centaurea melitensis*), ice plant (*Carpobrotus edulis*), African daily (*Osteospernum fruticosum*), Bermuda grass (*Cynodon dactylon*), and red brome (*Bromus madritensis* ssp. *Rubens*). Native vegetation occurring on the slope is a mixture of coastal sage scrub species and riparian/marsh species, including California coastal sagebrush (*Artemesia californica*), deerweed (*Lotus scoparius*), buckwheat (*Erigonum fasiculatum*), coyote bush (*Baccharis pilularis*), and arroyo willow (*Salix lasiolepis*). Immediately adjacent to the northwestern boundary of the golf course is a bluff supporting dense coastal sage scrub dominated by California coastal sagebrush, deerweed, coastal encelia (*Encelia californica*), and buckwheat.

Wildlife

Birds observed within the property include American crow (*Corvus brachyrhnchos*), American kestrel (*Falco sparverius*), Anna's hummingbird (*Calypte anna*), marsh wren ((*Cistothorus palustris*), mourning dove (*Zenaida macroura*), Allen's hummingbird (*Melanerpes formicivorus*), house finch (*Carpodacus mexicanus*), yellow-rumped warbler (*Dendroica coronata*), bushtit (*Psaltriparus aminimus*), red-tailed hawk (*Buteo jamaicensis*), white-crowned sparrow (*Zonotrichia leucophrys*), and northern mockingbird (*Mimus polyglottos*).

Birds observed within the adjacent open space include the above-mentioned birds in addition to turkey vulture (*Cathartes aura*), white-tailed kite (*Elanus leucurus*), Cassin's kingbird (*Tyrannus vociferans*), sharp-shinned hawk (*Accipter striatus*), and coastal California gnatcatcher (*Polioptila californica californica*).

Reptiles observed on-site include side-blotch lizard (*Uta stansburiana*).

Mammals either observed by direct observation or by the presence of diagnostic sign (i.e., tracks, scat, etc.) within the property include Audobon's cottontail (*Sylvilagus audubonii*) and Beechey ground squirrel (*Spermophylus beecheyi*). Mammals observed within the adjacent open space include coyote (*Canis latrans*), meadow vole (*Microtus californicus*), Audobon's cottontail, and dusky-footed wood rat (*Neotoma fuscipes*).

Sensitive Resources

Sensitive Wildlife

Table 5.3-1 provides a summary of all animal species considered for the biological resources constraints analysis. Species listed were considered according to several factors, including: (1) species identified by the September 2005 CNDDB as occurring (either currently or historically) on or in the vicinity of the property, and (2) any other special-status species that are known to occur within the vicinity of the property, or for which potentially suitable habitat occurs on the site.

Table 5.3-1
Sensitive Animal Species Potentially Present on or in the Vicinity of the Project Site

Species Name	Status	Habitat Requirements	Occurrence On Site
American badger *Taxidea Taxus*	Federal: None State: None CDFG: CSC	Occurs in drier shrub, forest, and herbaceous habitats. Needs open, uncultivated ground and friable soils for digging burrows. Preys on burrowing rodents.	Not expected to occur on-site due to a lack of suitable habitat.
Belding's savannah sparrow *Passerculus sandwichensis beldingi*	Federal: None State: SE CDFG: None	Coastal marshes.	Not expected to occur on-site due to a lack of suitable habitat.
Big free-tailed bat *Nyctinomops mactotis*	Federal: None State: None CDFG: CSC	Occurs in low-lying areas in southern California. Roosts in high cliffs or rocky outcrops.	Not expected to occur on-site due to a lack of suitable habitat.
California black rail *Laterallus jamaicensis coturniculus*	Federal: None State: ST CDFG: None	Coastal spartina marshes, inland in dense, shortgrass, shallow marshes.	Not expected to occur on-site due to a lack of suitable habitat.
California least tern *Sterna antillarum browni*	Federal: FE State: SE CDFG: CFP	Flat vegetated substrates near the coast. Occurs near estuaries, bays, or harbors where fish are abundant.	Not expected to occur on-site due to a lack of suitable habitat.
Coastal California gnatcatcher *Polioptila californica californica*	Federal: FT State: None CDFG: CSC	Low-elevation coastal sage scrub and coastal bluff scrub.	Not expected to occur on-site due to a lack of suitable habitat; occurs in coastal sage scrub habitat directly adjacent to project site.
Cooper's hawk (nesting) *Accipiter cooperi*	Federal: None State: None CDFG: CSC	Primarily occurs in riparian areas and oak woodlands, most commonly in montane canyons. Known to use urban areas, occupying trees among residential and commercial.	May occur on-site for foraging only.
Globose dune beetle *Coelus globosus*	Federal: None State: SE CDFG: None	Coastal sand dunes.	Not expected to occur on-site due to a lack of suitable habitat.
Light-footed clapper rail *Rallus longirostris levipes*	Federal: FE State: SE CDFG: CFP	Marsh vegetation of coastal wetlands.	Not expected to occur on-site due to a lack of suitable habitat.
Monarch butterfly (wintering) *Danaus plexippus*	Federal: None State: None	Roosts in winter in wind-protected tree groves along the California coast from northern Mendocino to Baja California, Mexico.	Not expected to occur on-site due to a lack of suitable habitat.
Northern harrier (nesting) *Circus cyaneus*	Federal: None State: None CDFG: CSC	A variety of habitats, including open wetlands, grasslands, wet pasture, old fields, dry uplands, and croplands.	May occur as rare visitor for foraging only.
San Diego fairy shrimp *Branchinecta sandiegonensis*	Federal: FE State: None CDFG: CSC	Seasonal vernal pools.	Not expected to occur on-site due to a lack of suitable habitat.
San Diego horned lizard *Phrynosoma coronatum blainvillei*	Federal: None State: None CDFG: CSC	Occurs in a variety of vegetation types including coastal sage scrub, chaparral, annual grassland, oak woodland, and riparian woodlands.	Not expected to occur on-site due to a lack of suitable habitat.
Southern California saltmarsh shrew *Sorex ornatus salicornicus*	Federal: None State: None CDFG: CCSC	Presumed to be coastal marshes.	Not expected to occur on-site due to a lack of suitable habitat.

Table 5.3-1
Sensitive Animal Species Potentially Present on or in the Vicinity of the Project Site

Species Name	Status	Habitat Requirements	Occurrence On Site
Western snowy plover *Charadrius alexandrinus nivosus*	Federal: FT State: None CDFG: CSC	Sandy or gravelly beaches along the coast, estuarine salt ponds, alkali lakes, and at the Salton Sea.	Not expected to occur on-site due to a lack of suitable habitat.
White-tailed kite (nesting) *Elanus leucurus*	Federal: FSC State: None CDFG: CFP	Low-elevation open grasslands, savannah-like habitats, agricultural areas, wetlands, and oak woodlands. Dense canopies used for nesting and cover.	May occur as rare visitor for foraging only.

Source: Glen Lukos Associates, 2006

Federal Classifications
FE – Federally Endangered
FT – Federally Threatened
FPT – Federally Proposed Threatened
FSC – Federal Species of Concern

CDFG
CSC – California Species of Concern
CFP – California Fully-Protected Species

State Classifications
SE – State Endangered
ST – State Threatened

Coastal California Gnatcatcher

The coastal California gnatcatcher (CAGN) is a federally listed threatened species and a CDFG-designated species of concern. This small songbird is a year-round, obligate resident of coastal sage scrub (CSS) communities in southern California and northwestern Baja California, Mexico. CAGN is insectivorous, and nests and forages in moderately dense stands of sage scrub on arid hillsides, mesas, and in washes. CAGN generally occur below 1,200 feet in elevation. Coastal sage scrub communities dominated by California sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), white sage (*Salvia apiana*), and black sage (*Salvia mellifera*) are preferred by this species. Loss and fragmentation of suitable habitat due to expanding development have been major factors in the decline of this bird in southern California. Implementation of Habitat Conservation Plans and/or Natural Community Conservation Plans throughout most of the range in southern California, however, have ensured the long-term persistence of this species in the United States.

As shown on Figure 5.3-3, *Coastal California Gnatcatcher, Observed Locations*, three individuals of this species were observed in the coastal sage scrub to the northwest of the site during site visits in early 2007. However, because only individual gnatcatchers were detected, (outside of the nesting season when gnatcatchers are still dispersing and potentially finding mates), it was determined that nesting season surveys would be appropriate to determine whether nesting individuals were using CSS within the areas that could be subject to direct or indirect impacts. Protocol surveys for the gnatcatcher were conducted during May 2007 by GLA biologists with section 10(a)(1)(A) permits.

During the May 2007 surveys, paired gnatcatchers were detected on two occasions many hundreds of feet from the project site near Back Bay Road, confirming that the better habitat is well removed from the golf course edge. On one occasion, a pair of gnatcatchers was observed approximately 30 feet beyond the limits of the proposed fuel modification zone, as depicted on Figure 3-10, *Conceptual Fuel Modification.* Based on these sightings, these off-site areas could be considered "potentially occupied" by the gnatcatcher and potential Environmentally Sensitive Habitat Area (ESHA) in accordance with the City's Coastal Land Use Policies, as discussed below (*Sensitive Habitats/ESHA)*.

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Coastal California Gnatcatcher, Observed Locations

Legend

- Project Boundary
- CSS
- Observed CAGN Individuals (Early 2006 or Early 2007)
- Observed CAGN Pairs (May 2007)

0 200
Scale (Feet)

Source: Glenn Lukos Associates, November 2007

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Special-Status Plants

No special-status plants were observed during the site reconnaissance. There is no potential for special status plants to occur within the project boundary, as the entire site is landscaped.

Table 5.3-2 provides a summary of all plants considered for the biological resources constraints analysis. Species were considered based on a number of factors, including: (1) species identified by the September 2005 CNDDB as occurring (either currently or historically) on or in the vicinity of the project site, and (2) any other special-status plants that are known to occur within the vicinity of the property or for which potentially suitable habitat occurs on the site.

Table 5.3-2
Sensitive Plant Species Potentially Present on or in the Vicinity of the Project Site

Species Name	*Status*	*Habitat Requirements*	*Occurrence On-Site*
Aphanisma *Aphanisma blitoides*	Federal: None State: None CNPS: List 1B	On south-facing slopes above coastal salt marsh. Occurs with California sagebrush, California buckwheat, and bladderpod in clay soils.	Does not occur on-site due to lack of suitable habitat.
Chaparral sand verbena *Abronia villosa* var. *Aurita*	Federal: None State: None CNPS: List 1B	Sandy soils in chaparral, coastal sage scrub.	Does not occur on-site due to lack of suitable habitat.
Coast woolly-heads *Neemacaulis denudate* var. *denudate*	Federal: None State: None CNPS: List 1B	Coastal dunes.	Does not occur on-site due to lack of suitable habitat.
Coulter's goldfields *Lasthenia glabrata* ssp. *Coulteri*	Federal: None State: None CNPS: List 1BC	Playas, vernal pools, marshes, and swamps (coastal salt).	Does not occur on-site due to lack of suitable habitat.
Coulter's saltbush *Atriplex coulteri*	Federal: None State: None CNPS: List 1B	Coastal bluff scrub, coast dunes, coastal sage scrub, valley and foothill grassland. Occurring on alkaline or clay soils.	Does not occur on site due to lack of suitable habitat.
Davidson's saltscale *Atriplex serenana* var. *davidsonii*	Federal: None State: None CNPS: List 1B	Alkaline soils in coastal sage scrub, coastal bluff scrub.	Does not occur on-site due to lack of suitable habitat.
Estuary seablite *Suaeda esteroa*	Federal: None State: None CNPS: List 1B	Coastal march and swamps. Occurring in sandy soils.	Does not occur on-site due to lack of suitable habitat.
Los Angeles Sunflower *Helianthus nuttallii* ssp. *Parishii*	Federal: None State: None CNPS: List 1A	Salt and freshwater marshes, historically in Los Angeles, Orange, Riverside, and San Bernardino counties.	Does not occur on-site due to lack of suitable habitat.
Many-stemmed dudleya *Dudleya multicaulis*	Federal: None State: None CNPS: List 1B	Chaparral, coastal sage scrub, valley and foothill grassland. Often occurring in clay soils.	Does not occur on-site due to lack of suitable habitat.
Mud nama *Nama stenocarpum*	Federal: None State: None CNPS: List 2	Marshes and swamps.	Does not occur on-site due to lack of suitable habitat.
Prostrate navarretia *Navarretia prostrate*	Federal: None State: None CNPS: List 1B	Coastal sage scrub, valley and foothill grassland (alkaline), vernal pools. Occurring in mesic soils.	Does not occur on-site due to lack of suitable habitat.
Salt marsh bird's-beak *Cordylanthus maritimus* ssp.	Federal: None State: None	Coastal dune, coastal salt marshes, and swamps.	Does not occur on-site due to lack of suitable habitat.

Table 5.3-2
Sensitive Plant Species Potentially Present on or in the Vicinity of the Project Site

Species Name	Status	Habitat Requirements	Occurrence On-Site
Maitimus	CNPS: List 1B		
San Fernando Valley spineflower *Chorizanthe parryi* var. *Fernandina*	Federal: None State: None CNPS: List 1B	Coastal sage scrub, occurring on sandy soils.	Does not occur on-site due to lack of suitable habitat.
Southern tarplant *Centromadia parri* ssp. *Australus*	Federal: None State: None CNPS: List 1B	Disturbed habitats, margins of marshes and swamps, vernally mesic valley and foothill grassland, vernal pools.	Does not occur on-site due to lack of suitable habitat.
South coast saltscale *Atriplex pacifica*	Federal: None State: None CNPS: List 1B	Coastal bluff scrub, coastal dunes, coastal sage scrub, playas.	Does not occur on-site due to lack of suitable habitat.

Source: Glen Lukos Associates, 2006
Federal Classifications
FE – Federally Endangered
FT – Federally Threatened
State Classifications
SE – State Endangered
ST – State Threatened
CNPS
List 1B – Plants rare, threatened, or endangered in California and elsewhere.
List 2 – Plants rare, threatened, or endangered in California, but more common elsewhere.
List 3 – Plants about which more information is needed.

Sensitive Habitats/ESHA

A review of the September 2005 CNDDB identified the following special-status habitats occurring within the Newport Beach Quadrangle: southern coastal salt marsh, southern cottonwood willow riparian forest, southern dune scrub, and southern foredunes. None of these special-status habitats occurs within the golf course project area. Moreover, the property does not occur within any USFWS critical habitat units. Coastal sage scrub, however, does occur immediately adjacent to the site along the northern and northwesterly boundary. This habitat is identified as a potential ESHA by the City of Newport Beach (pursuant to the Local Coastal Program Coastal Land Use Plan[2]). Section 30107.5 of the Coastal Act defines "environmentally sensitive habitat area" as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

The coastal sage scrub immediately north of the site was evaluated in accordance with the policies set forth below under Coastal Land Use Policies. The following criteria were used to determine whether the CSS would be considered ESHA under Section 4.1.1 of the Coastal Land Use Plan:

- The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
- The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal Law.
- The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.

[2] Coastal Land Use Policies, Section 4.0 Coastal Resource Protection, Section 4.1 Biological Resources

- The presence of coastal streams.

- *The degree of habitat integrity and connectivity to other natural areas.*

In addition, in accordance with Section 4.1.1, CSS is specifically identified by the City as potential ESHA as follows:

> Another important habitat within the Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem. CSS is important transitional or "edge" habitat adjacent to saltmarsh, providing important function such as supporting pollinators for wetland plants and essential habitat for edge-dependent animals like several species of butterflies that nectar on upland plants but whose caterpillars require wetland vegetation. CSS also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species designated threatened under the Federal Endangered Species Act.
>
> [Areas of CSS] are presumed to be ESHA unless there are strong site-specific reasons to rebut that presumption. Factors that should be considered when making site-specific assessments include:
>
> - Patch size and connectivity. Very small patches of habitat that are effectively isolated from other natural areas may lose many of their natural ecological functions. Functional patch size is dependent upon both the ecological needs of the species of importance supported by the habitat and the spatial scale of the habitat. For example, what is isolated for a small mammal may not be for a bird and what is small for a coyote may not be for some insects.
>
> - Dominance by invasive, non-native species. Non-native species often provide poorer habitat for wildlife than native vegetation and proliferation of exotic plant species alters ecosystem processes and may threaten certain native species with extirpation. However, there are probably no habitats in southern California that have not been invaded by exotic species, and the remaining stands of native grassland are almost always dominated by non-native annual species. Only where exotic species are so overwhelmingly dominant that the native community can no longer perform its functions in the ecosystem should the presence of exotic species rebut the presumption of ESHA.
>
> - Disturbance and proximity to development. Disturbance is the negative effect of human activities such as dumping, vegetation removal, development, pollution, etc. Habitat areas bordering development may be subject to impacts from negative edge effects, such as lighting, non-native invasive plant species, domestic animals, and human activity. The negative effects of disturbance are strongest immediately adjacent to development and decline with distance from the edge. However, where very small patches of habitat are effectively surrounded by development, these impacts may be severe. In general, disturbance by itself is not enough to rebut the finding of ESHA. Disturbance that is clearly reversible (e.g., presence of trash or illegal dumping) is not determinative.

- Fragmentation and isolation. Where there are large areas of more-or-less continuous development, native communities may be reduced to small islands of habitat that are distant from other natural habitats. This fragmentation and isolation can create barriers to migration, reduce wildlife food and water resources and generally compress territory size to reduce existing wildlife populations to non-viability. This smaller a particular habitat patch is, the greater the proportion of its area that experiences negative edge effects.

Based on the gnatcatcher sightings (including a pair that was observed approximately 30 feet beyond the limits of the proposed fuel modification zone), the off-site area could be considered "potentially occupied" by the gnatcatcher and potential ESHA in accordance with the City's coastal Land Use Policies. Furthermore, application of the criteria that would allow rebutting of the presumed ESHA status does not lead to a conclusion that the subject CSS is not ESHA:

Patch size and connectivity. The subject off-site CSS is part of a large natural area that consists of CSS and wetland habitats that are connected to the larger adjacent reserve area. The subject CSS is of sufficient size to support at least one and potentially two pairs of breeding coastal California gnatcatchers and the patch is within dispersal distance of other gnatcatcher pairs in the reserve.

Dominance by invasive nonnative species/disturbance. The subject CSS is not dominated by nonnative invasive species and is not significantly disturbed and would not be considered as non-ESHA based on dominance by nonnative invasive species or other types of disturbance.

Fragmentation and isolation. The subject CSS is not fragmented or isolated; rather, as described above, is connected to a mosaic of other habitat types as well as CSS within a larger reserve area.

5.3.2 Thresholds of Significance

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project would:

B-1 Have a substantial effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

B-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 California Department of Fish and Game or U.S. Fish and Wildlife Service.

B-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.

B-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.

B-5 Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

B-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.

The Initial Study, included as Appendix A, substantiates that impacts associated with the following threshold would be less than significant:

- Threshold B-3.

This impact will not be addressed in the following analysis

5.3.3 Environmental Impacts

The following discussion examines the potential impacts to wildlife resources that may occur as a result of implementation of the proposed project. Project-related impacts can be direct or indirect. Direct impacts involve the loss, modification, or disturbance of plant communities. Direct impacts also include the destruction of individual plants or wildlife, which may also directly affect regional population numbers of a species or result in the physical isolation of populations, thereby reducing genetic diversity and population stability.

Other impacts, such as loss of foraging habitat, can occur as indirect impacts even if they are not directly removed by project development. Indirect impacts can also involve the effects of increased ambient noise or light, unnatural predators (domestic cats and other nonnative animals), competition with exotic plants and animals, and increased human disturbance such as hiking and dumping of green waste. Short- and long-term indirect impacts may result from the day-to-day activities associated with project buildout, such as increased traffic use, permanent concrete barrier walls or chain-link fences, exotic ornamental plantings that provide a local source of seed, etc. These impacts are commonly referred to as "edge effects" and may result in a slow replacement of native plants by exotics, and changes in the behavioral patterns of wildlife and reduced wildlife diversity and abundance in habitats adjacent to the project site.

Impact Analysis

The following impact analysis addresses thresholds of significance for which the Initial Study disclosed potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

IMPACT 5.3-1: THE PROPOSED DEVELOPMENT AND RELATED FUEL MODIFICATION WOULD NOT REMOVE ANY COASTAL SAGE SCRUB AND WOULD COMPLY WITH THE CITY'S COASTAL ACT POLICIES SET FORTH TO PROTECT ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHAS). [THRESHOLD B-2]

Impact Analysis: As detailed in Section 5.3.1, *Environmental Setting*, the coastal sage scrub habitat adjacent to the project site is assumed ESHA. In addition to the policies reviewed in that section to determine ESHA, Chapter 4, *Coastal Resource Protection*, of the Coastal Land Use Plan includes the following policies to protect ESHAs:

4.1.1.-3	Prohibit new development that would necessitate fuel modification in ESHA.
4.1.1-4	Protect ESHAs against any significant disruption of habitat values.
4.1.1-5	Design land divisions, including lot line adjustments, to preclude new development within and minimize impacts to ESHAs.

4.1.1-6	Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.
4.1.1.-10	Require buffer areas of sufficient size to ensure the biological integrity and preservation of the hatibat they are desitged to protect. Terrestrial ESHA shall have a minimum buffer width of 50 feet wherever possible. Smaller ESHA buffers may be allowed only where it can be demonstrated that 1) a 50-foot-wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply ptotective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and sensitivity of disturbance.
4.1.1.-11	Provide buffer areas around ESHAs and maintain with exclusively native vegetation to serve as transitional habitat and provde distance and physical barriers to human and domestic pet intrusion.
4.1.1.-12	Require the use of native vegetation and prohibit invasive plant species within ESHAs and ESHA buffer areas.
4.1.1.-13	Shield and direct exterior lighting away from ESHAs to minimize impacts to wildlife.

The project design would result in complete avoidance of off-site CSS. As shown on Figure 5.3-4, *Vegetation and Fuel Modification*, neither grading nor fuel modification activities would remove any CSS. In addition, the project design includes a minimum 50-foot buffer between developed areas and off-site CSS to assure full compliance with the City's Coastal Land Use Policies.

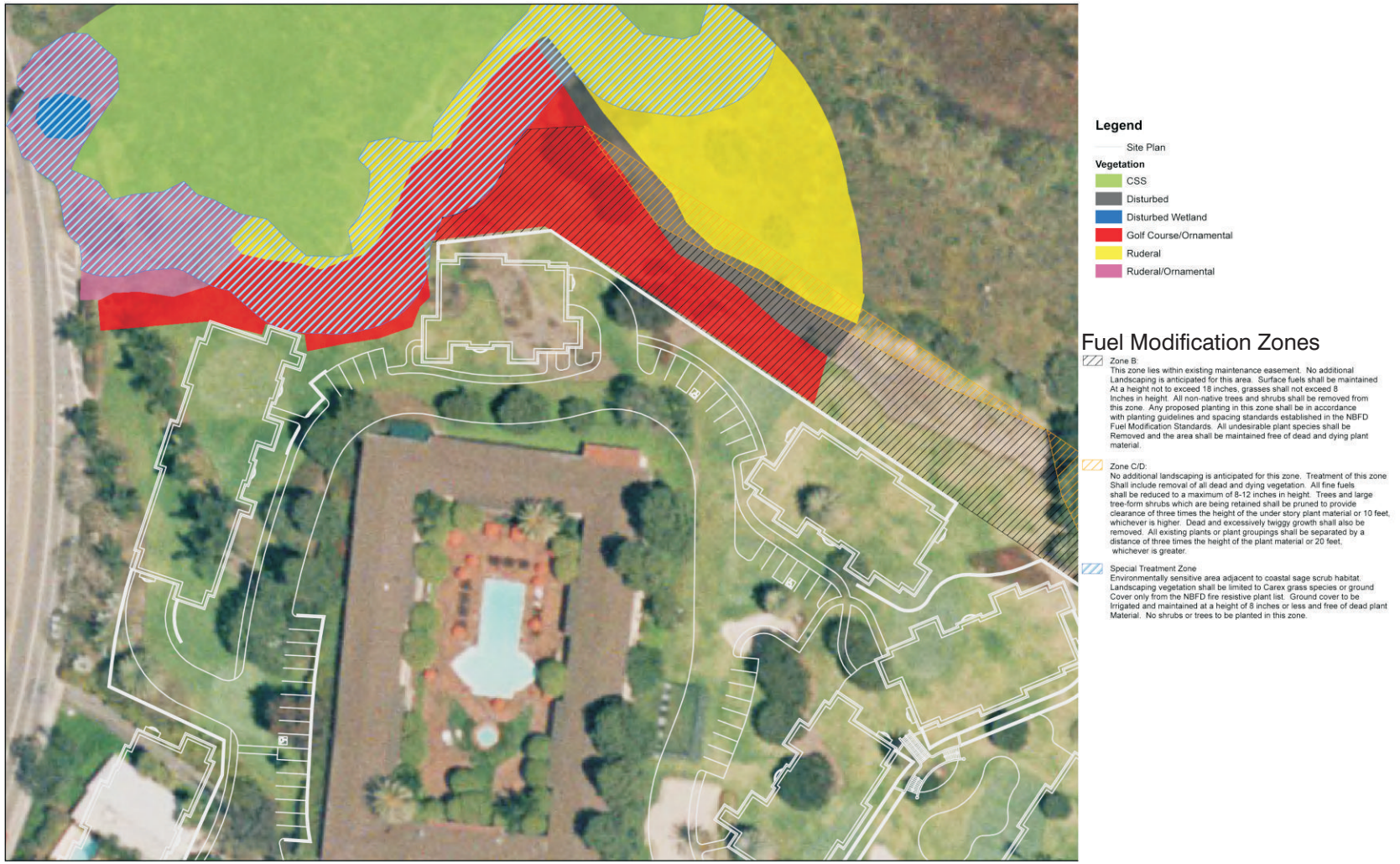
IMPACT 5.3-2: CONSTRUCTION-RELATED ACTIVITIES COULD HAVE A TEMPORARY ADVERSE IMPACT ON COASTAL CALIFORNIA GNATCATCHERS NESTING IN PRESERVED AREAS OF COASTAL SAGE SCRUB ADJACENT TO THE SITE. [THRESHOLDS B-1]

Impact Analysis: Construction of the project could have a temporary adverse impact on CAGN nesting within preserved areas of coastal sage scrub adjacent to the site due to construction noise, which could disrupt breeding activities. Potential impacts due to construction noise could be considered harassment under the FESA and would be addressed through coordination with USFWS. Such impacts could potentially require authorization through the Section 7 or Section 10 process.

IMPACT 5.3-3: DEVELOPMENT OF THE PROPOSED PROJECT WOULD NOT IMPACT ANY SENSITIVE PLANT SPECIES. [THRESHOLD B-1]

The majority of the project site includes existing golf course, which is predominantly turf grass with ornamental landscaping. The conversion of turf and ornamental landscaping to hotel uses would not be considered a significant impact on biological resources. No special status plants were observed during site reconnaissance, and none have the potential to occur, as the entire site is landscaped.

Vegetation & Fuel Modification



Source: Glenn Lukos Associates, November 2007

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IMPACT 5.3-4: PROJECT DEVELOPMENT COULD IMPACT MIGRATORY BIRDS AND RAPTOR FORAGING HABITAT. [THRESHOLD B-2]

The Hyatt Regency golf course property currently contains ornamental trees and shrubs that have the potential to support nesting birds. Impacts to such species are prohibited under the Migratory Bird Treaty Act. The property is an open golf course adjacent to open space that supports, at best, moderate-quality foraging habitat for common raptor species. Impacts to potential foraging area would not be considered significant. However, to assure protection of potential foraging habitat, mitigation has been provided at the end of this section.

IMPACT 5.3-5: THE PROPOSED PROJECT WOULD NOT AFFECT WILDLIFE MOVEMENT. [THRESHOLD B-4]

Impact Analysis: The existing golf course does not function as a wildlife movement corridor and the proposed project would not impact wildlife movement.

IMPACT 5.3-6: THE PROPOSED PROJECT WOULD NOT CONFLICT WITH ANY LOCAL POLICIES OR ORDINANCES AND WOULD COMPLY WITH THE PROVISIONS OF THE CENTRAL/COASTAL HCP/NCCP. [THRESHOLD B-5]

Impact Analysis: As discussed under Impact 5.3-1, project development would completely avoid CSS and would comply with ESHA policies as detailed in the City's Coastal Land Use Plan. Also, as indicated in the previous discussion of the Newport Beach Tree Ordinance, the City's local tree ordinance and tree policies only apply to City trees, i.e., those located on public property and within public parkways. There are numerous palm trees located on the project site, and although these trees are not protected by any of the City's local ordinances or policies regarding trees, the majority of the trees would be retained in place or transplanted within the property boundaries.

IMPACT 5.3-7: THE PROPOSED PROJECT WOULD COMPLY WITH THE PROVISIONS OF THE CENTRAL/COASTAL HCP/NCCP. [THRESHOLD B-6]

Impact Analysis: Although the proposed project would not be required to comply with the NCCP, the project applicant would voluntarily adopt the NCCP Construction Minimization Measures outlined in Mitigation Measure 3-3, as they have been vetted and approved and as such represent a highly acceptable approach to minimizing construction-related impacts.

5.3.4 Cumulative Impacts

Related cumulative projects are described and mapped in Chapter 4, *Environmental Setting,* of this DEIR. Potential impacts to coastal sage scrub and the sensitive species associated with this habitat would be addressed in a regional context through the NCCP/HCP or through existing regulatory permitting for nonparticipating landowners. Several areas of the City are already within the reserve system of the NCCP/HCP. Additionally, the CIOSA development agreement assured the preservation of undisturbed open space adjacent to the project site.

5.3.5 Existing Regulations and Standard Conditions

Existing Regulations

- Federal Endangered Species Act
- California Endangered Species Act
- Migratory Bird Treaty Act
- Clean Water Act, Sections 401, 402, and 404
- California Fish and Game Code, Section 1600
- California Endangered Species Act
- California Coastal Act

City of Newport Beach Standard Conditions

Refer to Sections 5.1, *Aesthetics,* and 5.9, *Noise,* for standard conditions related to lighting and construction noise, respectively, that could result in indirect impacts to wildlife.

5.3.6 Level of Significance Before Mitigation

Upon implementation of regulatory requirements and standard conditions of approval, the following impacts would be less than significant: 5.3-1, 5.3-3, 5.3-5, and 5.3-6.

Without mitigation, the following impacts would be **potentially significant**:

- Impact 5.3-2 Construction-related activities could have a temporary adverse impact on coastal California gnatcatchers nesting in preserved areas of coastal sage scrub adjacent to the site.

- Impact 5.3-4 Project development could impact migratory birds.

- Impact 5.3-7 The proposed project would comply with the provisions of the Central/Coastal HCP/NCCP.

5.3.7 Mitigation Measures

Impacts 5.3-2 and 5.3-7

3-1 The applicant shall comply with requirements of the NCCP/HCP, including construction-related minimization and mitigation measures that minimize impacts to the coastal California gnatcatcher and other coastal sage scrub species. These include:

- To the maximum extent practicable, no grading of coastal sage scrub habitat that is occupied by nesting gnatcatchers shall occur during the breeding season (February 15 though 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 could require 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 will provide 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 coastal sage scrub Identified Species that are not otherwise flushed, and shall carry out the following measures only to the extent practicable in the context of public health and safety considerations.

- Prior to commencement of grading operations or other activities involving significant soil disturbance, all areas of coastal sage scrub 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 coastal sage scrub, 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.

- Following the completion of initial grading/earth-moving activities, all areas of coastal sage scrub habitat to be avoided by construction equipment and personnel shall be marked with temporary fencing and other appropriate markers clearly visible to construction personnel. No construction access, parking, or storage of equipment or materials shall be permitted within such marked areas.

- In areas bordering the NCCP Reserve System or Special Linkage/Special Management areas containing significant coastal sage scrub identified in the NCCP/HCP for protection, vehicle transportation routes between cut-and-fill locations shall be restricted to a minimum number during construction consistent with project construction requirements. Waste dirt or rubble shall not be deposited on adjacent coastal sage scrub identified in the NCCP/HCP for protection. Preconstruction meetings involving the monitoring biologist, construction supervisors, and equipment operators shall be conducted and documented to ensure maximum practicable adherence to these measures.

- Coastal sage scrub identified in the NCCP/HCP for protection and location 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.

3-2 If construction occurs during the CAGN breeding season (February 15 to July 15), a biological monitor shall conduct weekly surveys of the coastal sage scrub within 300 feet of grading activities. If CAGN nest are located within 300 feet, noise monitoring shall be implemented and where construction noise exceeds 60 decibels and the birds appear to be distressed, noise mitigation shall be implemented and may include (but is not limited to) construction of noise barriers, change in grading arrays, or other means determined appropriate by the project biologist.

3-3 To ensure that project lighting along the northern perimeter of the site does not cause significant impacts to nesting gnatcatchers, the following measures shall be implemented:

- All lighting within 100 feet of coastal sage scrub shall be directed away from coastal sage scrub habitat.

- All lighting within 100 feet of coastal sage scrub shall consist of the lowest intensities that still provide for adequate safety.

- A qualified biologist shall review lighting plans prior to construction to ensure that the proposed lighting minimizes potential impacts on the California gnatcatcher.

Impact 5.3-4

3-4 During project construction, all trees to be removed shall be identified. Such trees should be removed outside the avian nesting season, which extends from March 14 to July 15.

3-5 If for some reason it is not possible to remove all trees during the nonnesting season, then trees to be removed shall be surveyed by a qualified biologist no more than three days prior to removal. If no nesting birds are found, the tree may be removed. If nesting birds are detected, then removal must be postponed until the fledglings have vacated the nest or the biologist has determined that the nest has failed. Furthermore, the biologist shall establish an appropriate buffer zone where construction activity may not occur until the fledglings have vacated the nest or the biologist has determined that the nest has failed.

3-6 For trees being preserved, if construction is to occur during the nesting season, preserved trees shall be surveyed for the presence of nesting birds. If nesting birds are detected, the biologist shall establish an appropriate buffer zone where construction activity may not occur until the fledglings have vacated the nest or the biologist has determined that the nest has failed.

5.3.8 Level of Significance After Mitigation

The mitigation measures identified above would reduce potential impacts associated with biological resources to a level that is less than significant. Therefore, no significant unavoidable adverse impacts relating to biological resources would result on a project-specific or cumulative basis.