

## 4.3 BIOLOGICAL RESOURCES

### 4.3.1 Introduction

This section provides an overview of the existing biological resources that could be potentially impacted by implementation of the City of Newport Beach General Plan Housing Element Implementation Program (Project). Potential impacts from future development associated with the Project are evaluated at a programmatic level, where reasonably foreseeable, direct, and indirect physical changes in the environment could be considered. No site-specific surveys or technical studies were conducted for this analysis.

### 4.3.2 Regulatory Setting

Several federal, State, and local regulations govern biological resources. The following is a summary of the regulatory framework that provides the context for the protection of biological resources in the City of Newport Beach and its Sphere of Influence (collectively referred to as the City).

#### Federal

##### *Federal Endangered Species Act (16 United States Code [USC] 153 et seq.)*

The U.S. Fish and Wildlife Service (USFWS) administers the Federal Endangered Species Act (FESA) of 1973, as amended (16 United States Code [USC] 1531 et seq.). The FESA provides a process for listing species as either threatened or endangered and the designation of critical habitat for listed animal species, as well as methods of protecting listed species. The FESA defines as “endangered” any plant or animal species that is in danger of extinction throughout all or a significant portion of its known geographic range. A “threatened” species is a species that is likely to become endangered. A “proposed” species is one that has been officially proposed by the USFWS for addition to the federal threatened and endangered species list.

FESA regulates the “taking” of any endangered fish or wildlife species, per Section 9 of the FESA. Per FESA Section 9, “take” of threatened or endangered species is prohibited. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct (codified at 16 U.S. Code §1532(19)). “Take” can include disturbance to habitats used by a threatened or endangered species during any portion of its life history. The presence of any federally threatened or endangered species in a project area generally imposes severe constraints on development, particularly if development would result in “take” of the species or its habitat. Under the regulations of the FESA, the USFWS may authorize a “take” when it is incidental to, but not the purpose of, an otherwise lawful act.

As development is proposed, the responsible agency or individual landowner is required to consult with the USFWS to assess potential impacts on listed species (including plants) or the critical habitat of a listed species, pursuant to FESA Sections 7 and 10. The USFWS is required to determine the extent a project would impact a particular listed species in the form of a Biological Opinion. If the USFWS determines that a project is likely to potentially impact a listed species, measures to avoid or reduce such impacts must be identified.

Following consultation and the issuance of a Biological Opinion, the USFWS may issue an incidental take statement that allows for the take of a species if it is incidental to another authorized activity and will not adversely affect the existence of the species. FESA Section 10 allows issuance of incidental take permits to non-federal parties in conjunction with the development of a habitat conservation plan (HCP). FESA

Section 7 allows permitting of projects where interagency cooperation is necessary to ensure that a federal action/decision does not jeopardize the existence of a listed species. The FESA also requires consultation when a federal permit, such as a Clean Water Act Section 404 permit, is required.

#### *Sections 404 and 401 of the Clean Water Act*

The Clean Water Act (CWA) is the primary federal statute regulating the protection of the nation's water. The CWA aims to prevent, reduce, and eliminate pollution in the nation's water in order to "restore and maintain the chemical, physical, and biological integrity of the nation's waters", as described in CWA Section 101(a). A stated CWA goal is to eliminate discharge of pollutants into navigable waters, as defined in CWA Section 502(7) and corresponding case law.

Pursuant to CWA Section 404, the U.S. Army Corps of Engineers (USACE) is authorized to regulate any activity that would result in the discharge of dredged or fill material into "waters of the U.S." (including wetlands), which includes those waters listed in Code of Federal Regulations (CFR) Title 33 Section 328.3, as amended. The USACE, with oversight from the U.S. Environmental Protection Agency (U.S. EPA), has the principal authority to issue CWA Section 404 permits. The USACE would require a Standard Individual Permit for more than minimal impacts to "waters of the U.S." as determined by the USACE. Projects with minimal individual and cumulative adverse effects on the environment may meet the conditions of an existing approved Nationwide Permit.

Under CWA Section 401, an activity requiring an USACE Section 404 permit must obtain a State Water Quality Certification (or waiver thereof) to ensure that the activity will not violate established State water quality standards. The State Water Resources Control Board (SWRCB), in conjunction with the nine California Regional Water Quality Control Boards (RWQCBs), is responsible for administering the CWA Section 401 Water Quality Certification Program. The RWQCB is required to provide "certification that there is reasonable assurance that an activity that may result in the discharge to 'waters of the U.S.' will not violate water quality standards." Water Quality Certification must be based on the finding that a proposed discharge will comply with applicable water quality standards.

Under CWA Section 401, an activity involving discharge into a water body must obtain a federal permit and a State Water Quality Certification to ensure the activity will not violate established water quality standards. The U.S. EPA is the federal regulatory agency responsible for implementing the CWA Section 401 program. However, pursuant to the CWA, the SWRCB, in conjunction with the nine RWQCBs, has been delegated the responsibility to administer the CWA Section 401 Water Quality Certification Program.

The National Pollutant Discharge Elimination System (NPDES) is the permitting program for discharge of pollutants into surface "waters of the U.S." under CWA Section 402.

#### *Federal Migratory Bird Treaty Act (16 USC 703–711)*

The Migratory Bird Treaty Act (MBTA) prohibits the take of any migratory bird or any part, nest, or eggs of any such bird. Under the MBTA, "take" is defined as pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to do so (16 U.S. Code §703 et seq.). The number of bird species covered by the MBTA is extensive and listed in CFR 10.13 Title 50. Additionally, Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds," directs federal agencies that take actions that either directly or indirectly effect on migratory birds to develop a Memorandum of Understanding (MOU), and to work with the USFWS and other federal agencies to promote the conservation of migratory bird populations.

### *Coastal Zone Management Act*

In accordance with the Coastal Zone Management Act of 1972, administered by the National Oceanic and Atmospheric Administration (NOAA), provides for the management of the nation's coastal resources, including the Great Lakes. The goal is to "preserve, protect, develop, and where possible, to restore or enhance the resources of the nation's coastal zone." The Coastal Zone Management Act includes three national programs: the National Coastal Zone Management Program, the National Estuarine Research Reserve System, and the Coastal and Estuarine Land Conservation Program. With the Coastal Zone Act Reauthorization Amendments of 1990, all federal activities must be consistent, to the maximum extent practicable, with the enforceable policies of each affected state's coastal zone management program. Each state's Coastal Zone Management program sets forth objectives, policies, and standards regarding public and private use of land and water resources in the coastal zone.

### **State**

#### *California Endangered Species Act (California Fish and Game Code §§2050 et seq.)*

The California Endangered Species Act (CESA), in combination with the California Native Plant Protection Act of 1977 (CNPPA; California Fish and Game Code §1900 et seq.), regulates the listing and take of plant and animal species designated as endangered, threatened, or rare within the State. California also lists Species of Special Concern based on limited distribution, declining populations, diminishing habitat, or unusual scientific, recreational, or educational value. CESA defines an endangered species as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease." CESA defines a threatened species as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter. Any animal determined by the commission as rare on or before January 1, 1985 is a threatened species." Candidate species are defined as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that the commission has formally noticed as being under review by the department for addition to either the list of endangered species or the list of threatened species, or a species for which the commission has published a notice of proposed regulation to add the species to either list." Candidate species may be afforded temporary protection as though they were already listed as threatened or endangered at the discretion of the California Fish and Wildlife Commission. Unlike the FESA, the CESA does not list invertebrate species.

CESA Sections 2080 through 2085 address the take of threatened, endangered, or candidate species by stating "no person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided." Under CESA, "take" is defined as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Exceptions authorized by the State to allow "take" require permits or memoranda of understanding and can be authorized for endangered species, threatened species, or candidate species for scientific, educational, or management purposes and for take incidental to otherwise lawful activities. CFGC Section 1901 and Section 1913 provide that notification is required prior to disturbance. The California Department of Fish and Wildlife (CDFW) is responsible for assessing development projects for

their potential to impact listed species and their habitats. State-listed special-status species are addressed through the issuance of a 2081 permit (Memorandum of Understanding).

***Nesting Bird Protection (California Fish and Game Code §§3503, 3503.5, and 3513)***

Birds of prey are protected under CFGC Section 3503, which states “It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation adopted pursuant thereto.” CFGC Section 3503.5 states “It is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto”. Construction-related disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered “take” by the CDFW.

***California Coastal Act (§30240)***

The California Coastal Act of 1976 (Coastal Act) and the California Coastal Commission, the State’s coastal protection and planning agency, were established by voter initiative to plan for and regulate new development, and to protect public access to and along the shoreline. The Coastal Act contains policies to guide local and State decision-makers in the management of coastal and marine resources.

Important provisions of the Coastal Act relative to biological resources include the following.

- **Section 30230** – Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.
- **Section 30231** – The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing the alteration of natural streams.
- **Section 30240** – Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Coastal Act Section 30107.5 defines environmentally sensitive areas 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.”



Coastal Act Section 30240 states:

- a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The Coastal Act generally protects environmentally sensitive habitat areas (ESHA) where they exist; it also protects “against any significant disruption of habitat values.” Coastal Act Section 30007.5 recognizes that conflicts may occur between policies and states that such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the legislature declares that broader policies may be more protective than specific wildlife habitat policies. The Coastal Act directs each local government located within the coastal zone to prepare a Local Coastal Program (LCP) in consultation with the CCC and with public participation. A LCP is a planning tool used by local governments to guide development in the coastal zone in partnership with the Coastal Commission. Each LCP includes a land use plan and measures to implement the plan (such as zoning ordinances). Following adoption by a city council or county board of supervisors, an LCP is submitted to the Coastal Commission for review for consistency with Coastal Act requirements.

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

The FESA and CESA protect only those species formally listed as threatened or endangered (or rare in the case of the State list). However, State CEQA Guidelines Section 15380(b) independently defines “endangered” species of plants or animals as those whose survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; and “rare” species as those in such small numbers throughout all or a significant portion of its range such that they could become endangered if their environment worsens. The “rare” species is likely to become endangered within the foreseeable future throughout all or a significant portion of A species of animal or plant shall be presumed to be endangered, rare or threatened, as it is listed in: Section 670.2 or Section 670.5, Title 14, of the CCR; or Title 50, CFR Section 17.11 or 17.12 pursuant to the FESA as rare, threatened, or endangered. A species not included in these noted CCR or CFR can be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in CEQA Guidelines Section 15380(b).

#### *California Fish and Game Code (§§1600-1602)*

Pursuant to Division 2, Chapter 6, Section 1602 of the CFGC, the CDFW regulates activities that would divert or obstruct the natural flow of or substantially change the bed, channel or bank of any river, stream, or lake that supports fish or wildlife. CDFW has jurisdiction over riparian habitats associated with watercourses and wetland habitats supported by a river, lake, or stream. Jurisdictional waters are delineated by the outer edge of riparian vegetation (i.e., drip line) or at the top of the bank of streams or lakes, whichever is wider. CDFW jurisdiction does not extend to tidal areas or isolated resources. A Notification of Lake or Streambed Alteration must be submitted to CDFW for “any activity that may substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake.” CDFW reviews the proposed actions and, if necessary, submits (to the applicant) a

proposal that includes measures to protect affected fish and wildlife resources. The final proposal that is mutually agreed upon by CDFW and the applicant is the Lake or Streambed Alteration Agreement.

### *Porter-Cologne Water Quality Control Act*

The Porter-Cologne Act provides for statewide coordination of water quality regulations. The SWRCB was established as the statewide authority and the nine separate RWQCBs were developed to oversee water quality on a day-to-day basis. The SWRCB is the primary agency responsible for protecting water quality in California. The RWQCBs regulate discharges to surface waters under the CWA. In addition, the RWQCBs are responsible for administering the Porter-Cologne Act.

Pursuant to the Porter-Cologne Act, California is given authority to regulate “waters of the state”, which are defined as any surface water or groundwater, including saline waters. As such, any person proposing to discharge waste into a water body that could affect its water quality must first file a Report of Waste Discharge if Section 404 of the CWA is not required for the activity. “Waste” is partially defined as any waste substance associated with human habitation, including fill material discharged into water bodies.

### *Regional Habitat Conservation Plan*

In 1991, the California Natural Community Conservation Planning Act (NCCP Act; CFGC §1900 et seq.) was approved and the NCCP Coastal Sage Scrub program was initiated in Southern California. California law (CFGC §2800 et seq.) established the NCCP program “to provide for regional protection and perpetuation of natural wildlife diversity while allowing compatible land use and appropriate development and growth.” The NCCP Act encourages preparation of plans that address habitat conservation and management on an ecosystem basis rather than one species or habitat at a time.

## **Regional and Local**

### *Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP)*

The purpose of the NCCP/HCP is to provide long-term, regional protection of natural vegetation and wildlife diversity, while allowing compatible land uses and appropriate development and growth for those agencies and private organizations that are enrolled in the program. NCCP/HCP participants may enroll their habitat in the program, and, by mutual consent, habitat areas with high conservation value are set aside and may not be developed. Participants also agree to study, monitor, and develop management plans for those habitat areas within the subregional NCCP Reserve System. Parcels with lower conservation values within the enrolled areas, but outside the NCCP Reserve System, are then available for possible development.

In 1991, the State of California passed the NCCP Act, providing for the long-term, regional conservation of natural vegetation and wildlife diversity. The USFWS and CDFW adopted the Orange County Central-Coastal NCCP/HCP in 1996. The Central-Coastal NCCP/HCP area is approximately 208,000 acres of central Orange County. Geographically, the area generally extends along the coast from the mouth of the Santa Ana River in the City of Costa Mesa to the mouth of San Juan Creek in the City of Dana Point. The inland boundaries follow State Route 91 (SR-91) to El Toro Road to the west and Interstate 5 (I-5) to San Juan Creek to the east.

As part of the NCCP/HCP planning process, lands were identified for assembly into the NCCP Reserve System for the conservation of biological resources. The subregional NCCP Reserve System was cooperatively designed by the participating jurisdictions and special districts in partnership with the

wildlife agencies (CDFW and USFWS), property owners, and representatives from private industry and environmental groups. The subregional NCCP Reserve System is 37,378 acres and protects more than 18,500 acres of coastal sage scrub habitat, 6,950 acres of chaparral habitat, 5,700 acres of grassland habitat, 1,750 acres of riparian habitat, and 950 acres of woodland habitat.

The City of Newport Beach enrolled in the NCCP/HCP in 1996 as a "participating landowner." Participating landowners are public and private landowners contributing significant land and/or funding toward implementation of the subregional NCCP Reserve System and adaptive management program. For these landowners, development activities and uses that are addressed by the NCCP/HCP for areas outside the Reserve System, and associated impacts to habitat occupied by listed and other species identified by the NCCP/ HCP, are considered fully mitigated under the NCCP Act, FESA, and CESA. Satisfactory implementation of the NCCP/HCP under the terms of an Implementation Agreement (IA) means that no additional mitigation is required of "participating landowners" for impacts to "identified" species and their habitat, or for species residing in specified non-coastal sage scrub habitats, in areas outside the subregional NCCP Reserve System.

The NCCP/HCP provides regulatory coverage for 39 individual species, including 3 target species and 36 other identified species that are not listed under either the FESA or CESA but are found within the subregional coastal sage scrub habitat mosaic. All target and identified species covered in the NCCP/HCP are treated as if they were listed on either the State or federal lists. Under the NCCP/HCP, regulatory coverage means that future Incidental Take of "target and identified" species would be permitted for new development addressed by the NCCP/HCP in areas outside the subregional Reserve System, and that no additional habitat mitigation for such Incidental Take under the FESA and CESA would be required over and above the mitigation provided for by the NCCP/HCP.

Several areas of the City are within the reserve system of the NCCP/HCP. For the areas outside the reserve system, development restrictions of the NCCP/HCP do not apply. Non-participating landowners are provided with different mitigation options than those provided for participating landowners. Non-participating landowners may satisfy the requirements of the FESA and CESA in relation to the species covered under the NCCP/HCP one of three ways:

- On-site avoidance of take
- Satisfaction of the applicable FESA and CESA regulations through the regular permitting and consultation process (outside the NCCP/HCP)
- Payment of a mitigation fee to the nonprofit management organization established by the NCCP/HCP

As a signatory agency, the City is responsible for enforcing mitigation measures and other policies identified in the NCCP/HCP Implementation Agreement for properties located within the City that are part of the NCCP Subregional Plan.

### *City of Newport Beach General Plan*

The *City of Newport Beach General Plan 2006 Update* (General Plan) includes goals and policies to provide direction regarding the conservation, development, and utilization of natural resources. These resources contribute substantially to the local economy, provide rest and recreational opportunities, and help support public health. In order to continue to benefit from these resources, the City protects and enhances them when possible while still allowing for economic growth. The Natural Resources Element

establishes goals and policies to protect and conserve the City's biological resources, including open space and beaches, and addresses biological diversity. The following General Plan goals and policies that have been adopted by the City for the purpose of avoiding or mitigating an environmental effect are applicable to future development projects associated with the proposed Project.

### Natural Resources Element

The following Natural Resources Element goals and policies are relevant to the proposed Project.

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| <b>Goal NR 10</b>     | <b>Protection of sensitive and rare terrestrial and marine resources from urban development.</b>   |
| <b>Policy NR 10.3</b> | <b>Analysis of Environmental Study Areas.</b> 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.  |
| <b>Policy NR 10.4</b> | <b>New Development Siting and Design.</b> 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.  |
| <b>Policy NR 10.5</b> | <b>Development in Areas Containing Significant or Rare Biological Resources.</b> 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. |
| <b>Policy NR 10.6</b> | <b>Use of Buffers:</b> 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.  |
| <b>Policy NR 10.7</b> | <b>Exterior Lighting.</b> Shield and direct exterior lighting away from significant or rare biological resources to minimize impacts to wildlife.  |
| <b>Policy NR 10.9</b> | <b>Development on Banning Ranch.</b> Protect the sensitive and rare resources that occur on Banning Ranch. If future development is permitted, require that an assessment be prepared by a qualified biologist that delineates sensitive and rare habitat and wildlife corridors. Require that development be concentrated to protect biological resources and coastal bluffs, and structures designed to not be intrusive on the surrounding landscape. Require the restoration or mitigation of any sensitive or rare habitat areas that are affected by future development.   |
| <b>Goal NR 13</b>     | <b>Protection, maintenance, and enhancement of Southern California wetlands.</b>   |
| <b>Policy NR 13.2</b> | <b>Wetland Delineation.</b> 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.

### Safety Element

**Goal S 6**      **Protection of human life and property from the risks of wildfires and urban fires.**

**Policy S 6.3**      **New Development Design.** Site and design new development to avoid the need to extend fuel modification zones into sensitive habitats.

**Policy S 6.4**      **Use of City-Approved Plant List.** Use fire-resistive, native plant species from the City-approved plant list in fuel modification zones abutting sensitive habitats.

**Policy S 6.5**      **Invasive Ornamental Plant Species.** Prohibit invasive ornamental plant species in fuel modification zones abutting sensitive habitats.

### *City of Newport Beach Local Coastal Program<sup>1</sup>*

The California Coastal Act directs each local government located partially or wholly within the coastal zone to prepare a Local Coastal Program (LCP) for its portion of the coastal zone. The City's Local Coastal Program establishes the Coastal Land Use Plan for the City. The Coastal Land Use Plan sets forth goals, objectives, and policies that govern the use of land and water in the coastal zone, with the exception of Newport Coast and Banning Ranch. Newport Coast is governed by the Orange County Local Coastal Program and Banning Ranch is a Deferred Certification Area (DCA) due to unresolved issues relating to land use, public access, and the protection of coastal resources. The California Coastal Act contains coastal resources planning and management policies that address public access, recreation, marine environment, land resources, development, and industrial development. The Coastal Land Use Plan addresses these topics by identifying which California Coastal Act sections are relevant to Newport Beach, followed by a narrative of the local setting and policy direction adopted by the City to address the requirements of the Coastal Act and a listing of specific policies.

The City's Coastal Land Use Plan (CLUP) includes the following policies applicable to biological resources:

**Policy 2.1.7-2**      New development shall provide for the protection of the water quality of the bay and adjacent natural habitats. New development shall be designed and sited to minimize impacts to public views of the water and coastal bluffs.

**Policy 2.2.1-2**      Require new development be located in areas with adequate public services on in areas that are capable of having public services extended or expanded without significant adverse effects on coastal resources.

**Policy 2.8.8-1**      Apply hazard reduction, fuel modification, and other methods to reduce wildfire hazards to existing and new development in urban wildland interface areas.

**Policy 2.8.8-2**      Site and design new development to avoid fire hazards and the need to extend fuel modification zones into sensitive habitats.

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<sup>1</sup> City of Newport Beach (2016). *City of Newport Beach Coastal Land Use Plan – Coastal Resource Protection*. <https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/local-coastal-program/coastal-land-use-plan>. Accessed November 2023.

- Policy 2.8.8-3** Use fire-resistive, native plant species from the City-approved plant list in fuel modification zones abutting sensitive habitats.
- Policy 2.8.8-4** Prohibit invasive ornamental plant species in fuel modification zones abutting sensitive habitats.
- Policy 4.1.1-2** Require a site-specific survey and analysis prepared by a qualified biologist as a filing requirement for coastal development permit applications where development would occur within or adjacent to areas identified as a potential ESHA. Identify ESHA as habitats or natural communities listed in Section 4.1.1 that possess any of the attributes listed in Policy 4.1.1-1. The ESA's depicted on Map 4-1 shall represent a preliminary mapping of areas containing potential ESHA.
- Policy 4.1.1-3** Prohibit new development that would necessitate fuel modification in ESHA.
- Policy 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.
- Policy 4.1.1-13** Shield and direct exterior lighting away from ESHAs to minimize impacts to wildlife.
- Policy 4.1.1-17** In conjunction with new development, require that all preserved ESHA, buffers, and all mitigation areas, onsite and offsite, be conserved/dedicated (e.g. open space direct dedication, offer to dedicate (OTD), conservation easement, deed restriction) in such a manner as to ensure that the land is conserved in perpetuity. A management plan and funding shall be required to ensure appropriate management of the habitat area in perpetuity.
- Policy 4.3-8** Coordinate with the CDFG, USFWS, National Marine Fisheries Service, and other resource management agencies, as applicable, in the review of development applications in order to ensure that impacts to ESHA and marine resources, including rare, threatened, or endangered species, are avoided or minimized such that ESHA is not significantly degraded, habitat values are not significantly disrupted, and the biological productivity and quality of coastal waters is preserved.

### *Newport Beach Municipal Code*

**Chapter 7.26: Protection Of Natural Habitat For Migratory And Other Waterfowl.** Municipal Code Chapter 7.26 recognizes and strives to maintain the value of natural habitat for migratory waterfowl and other birds such as ducks, gulls, terns, and pelicans.

**Chapter 13.08: Planting.** Municipal Code Chapter 13.08 strives to control the planting, maintenance, and removal of trees, shrubs, and plants in all public areas under the City's control. Trees may not be trimmed, cut down, damaged, removed, or destroyed from any public right-of-way, without prior written authorization from the City Manager.

**Chapter 21.30: Property Development Standards.** Municipal Code Chapter 21.30 ensures that development is consistent with the Coastal Land Use Plan and provides general standards for siting and planning development in the coastal zone, as well as more specific standards applicable to development along the waterfront and on bluffs and canyons.

**Chapter 21.30B: Habitat Protection.** Municipal Code Chapter 21.30B aims to protect environmentally sensitive habitat areas; maintain and restore the biological productivity and quality of coastal bodies of water; and protect wetlands for their commercial, recreational, water quality, and habitat value. Any development on environmentally sensitive habitats would be subject to the relevant habitat protection measures, such as an Initial Site Resource Survey and the implementation of mitigation and monitoring programs.

**Chapter 21.52: Coastal Development Review Procedures.** Municipal Code Chapter 21.52 provides procedures to ensure that all public and private development in the coastal zone is consistent with the California Coastal Act, the City's Local Coastal Land Use Plan, and the City's Local Coastal Program. Furthermore, the provisions of this chapter determine whether or not a proposal in the City's permitting jurisdiction constitutes development and whether or not that development requires a coastal development permit or is exempt.

### 4.3.3 Existing Conditions

The housing sites are evaluated in this Program EIR at a programmatic level. As a result, no site-specific surveys were conducted for this Program EIR analysis.

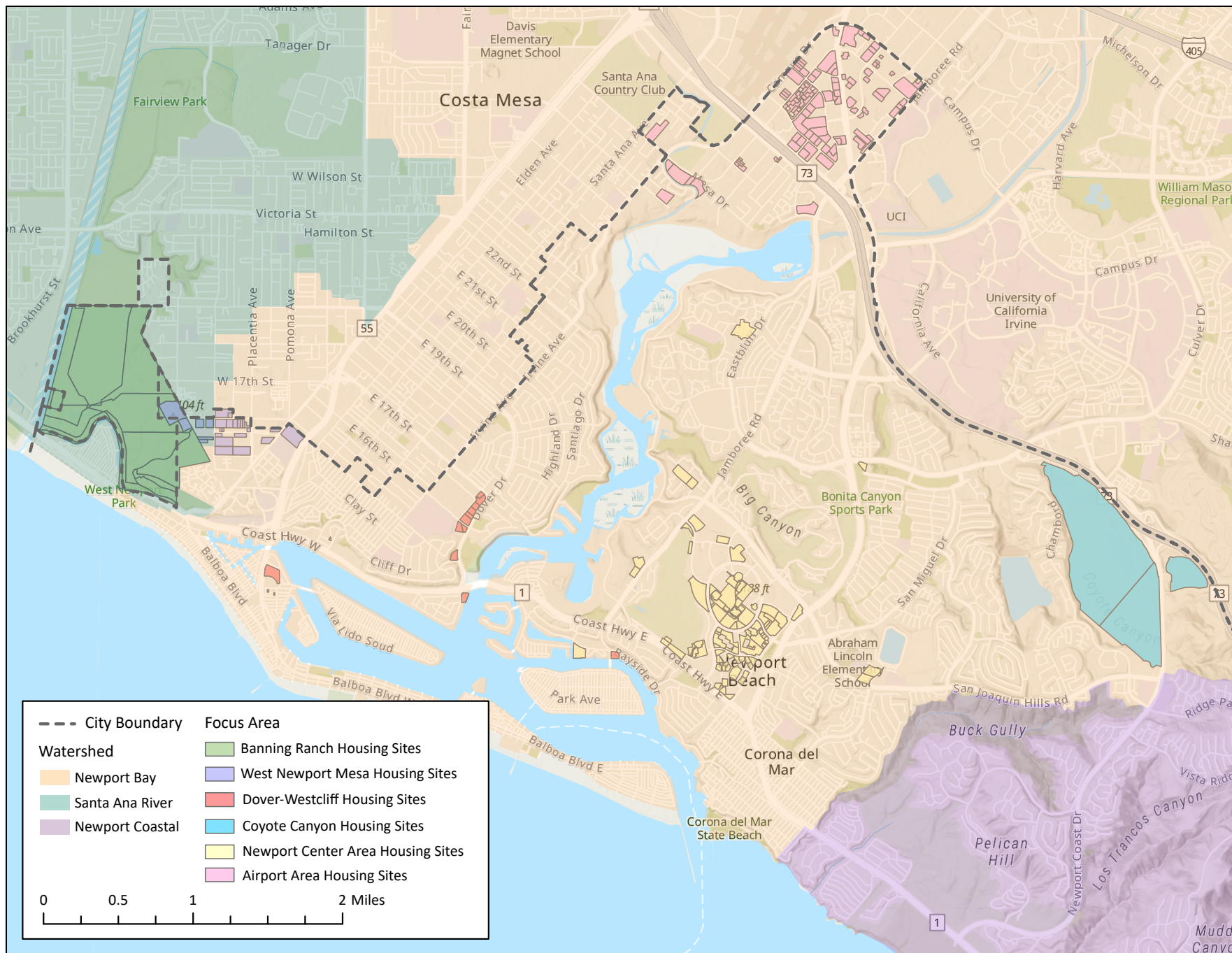
#### Watersheds

The City is located within the boundaries of four watersheds – Newport Bay, Newport Coast, Talbert, and San Diego Creek Watersheds – each of which contain an interconnected system of surface water resources that feed into the underlying groundwater aquifer or drain into the ocean. The Newport Bay and Newport Coast Watersheds cover most of the City with the remaining smaller portions covered by the Talbert and San Diego Creek Watersheds. As shown in **Figure 4.3-1: Watershed Map**, the housing sites are within the Newport Bay and Santa Ana Watersheds. The watersheds are further described in **Section 4.9: Hydrology and Water Quality**.

#### Topography

The City's topography ranges from gently sloping areas in the City's northwest portion to steeper topography in the eastern and southern areas. Over 50 percent of the City have a slope gradient that range up to approximately 10 degrees. Slopes increase with proximity to the Newport Mesa and San Joaquin Hills, and areas with more severe slopes are generally concentrated in the southern and eastern parts of the City. The bluffs that border the water bodies in the City, including Newport Bay and streams, have a slope gradient ranging from 10 to 40 degrees. Similarly, most of the San Joaquin Hills have a slope gradient of 10 to 40 degrees. Parts of the San Joaquin Hills located near the southern border of the City have a slope gradient of 40 degrees and greater.





**Figure 4.3-1: Watershed Map**  
City of Newport Beach General Plan Housing Implementation  
Program Environmental Impact Report



Not to Scale



## Habitat Types

### *Terrestrial Resources<sup>2</sup>*

Many plant habitats can be found in Newport Beach including scrub, chaparral, grassland, and riparian habitats. Additionally, the City contains vernal pools, seeps, and wet meadows. Other plant habitats present in the City include annual grasslands, ruderal areas that are generally a result of disturbances caused by humans, and ornamental landscaping that consist of introduced trees, shrubs, flowers, and turf grass.

### *Sensitive Terrestrial Species<sup>3</sup>*

The CDFW CNDDDB and the California Native Plant Society's Electronic Inventory of Rare and Endangered Vascular Plants of California identifies occurrences of federal or State listed or proposed endangered or threatened species, federal Species of Concern, species categorized as federal Species of Concern, California Species of Concern, or otherwise sensitive species or habitat that may occur within or in the City's immediate vicinity. These species are protected under State and federal regulations. These databases indicate that there are three listed plant species that occur or have the potential to occur within the City: San Fernando Valley spineflower, salt marsh bird's beak, and Crownbeard.

Eleven listed wildlife species occur or have the potential to occur within the City: San Diego fairy shrimp, Tidewater goby, California black rail, light-footed clapper rail, western snowy plover, California least tern, southwestern willow flycatcher, coastal California gnatcatcher, least Bell's vireo, Belding's savannah sparrow, and pacific pocket mouse. In addition, other sensitive species include 27 sensitive wildlife species and 24 sensitive plant species that occur or potentially occur within the Newport Beach area.

### *Diegan Coastal Sage Scrub<sup>4</sup>*

The Diegan Coastal Sage Scrub community is comprised of low, drought-deciduous, and evergreen shrubs that occur generally below 3,000 feet in elevation on steep to moderate, south-facing, exposed slopes of the western mountains. Shrubs are more widely spaced than those typical of chaparral and do not have the characteristic rigidity or thick drought-resistant leaves. Coastal scrub communities are characterized by low shrubs and an absence of trees. Types of shrubs include either pure stands or mixtures of low, thicketed evergreens and coarse, deciduous species that drop their leaves in response to periodic drought conditions. Dominant species include California sagebrush, California buckwheat, coastal goldenbush, island mallow, deerweed, mesa bushmallow, laurel sumac, lemonadeberry, white sage, and small-flowered needle grass. Diegan coastal sage scrub integrates with chaparral communities at higher elevations and Riversidian sage scrub in drier inland areas. Coastal sage scrub is considered a sensitive habitat because it supports a diverse fauna and has potential to support numerous threatened, endangered, or rare species, and has been acknowledged as such by its inclusion in the NCCP/HCP. Among these are the coastal cactus wren, San Diego horned lizard, orange-throated whiptail, coastal western whiptail, Bell's sage sparrow, coastal California gnatcatcher, and the southern California rufous-crowned sparrow. Scrub habitats are also important to larger species such as mule deer and mountain lions.

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<sup>2</sup> City of Newport Beach. (2006). General Plan Natural Resources Element.  
[https://www.newportbeachca.gov/PLN/General\\_Plan/11\\_Ch10\\_NaturalResources\\_web.pdf](https://www.newportbeachca.gov/PLN/General_Plan/11_Ch10_NaturalResources_web.pdf). Accessed March 2023.

<sup>3</sup> Ibid. Accessed March 2023.

<sup>4</sup> City of Newport Beach. (2006). General Plan Update EIR, Biological Resources, Page 4.3-3.  
[https://newportbeachca.gov/PLN/General\\_Plan/GP\\_EIR/Volume\\_1/08\\_Sec4.3\\_Biological\\_Resources.pdf](https://newportbeachca.gov/PLN/General_Plan/GP_EIR/Volume_1/08_Sec4.3_Biological_Resources.pdf). Accessed March 2023.

### *Chaparral Habitats*<sup>5</sup>

The presence of chaparral shrub species over 50 percent or more of an area indicates the presence of a chaparral vegetative community. Chaparral vegetation is typically thick, 4- to 12-foot tall evergreen woody shrubs and/or dwarf trees. The community is composed mainly of species that are adapted to seasonal and periodic drought by having hardened leaves that resist water loss at high temperatures and/or low moisture. The Southern Mixed Chaparral community, which may contain coastal sage shrub species as its understory, is comprised primarily of toyon, laurel sumac, and lemonade berry in dense stands on moderately-wet north-facing slopes. In addition, holly-leaved redberry, fuchsia-flowered gooseberry, and scrub oak are typical of this community.

### Marine Resources<sup>6</sup>

The City's marine resources and surrounding ocean waters include plants and animals of marshes and wetlands living in Upper Newport Bay, the developed channels, beaches, and hardscape of Lower Newport Bay (Newport Harbor), and the intertidal and subtidal landforms (e.g., sandy beaches, rocky intertidal, sandy subtidal, and subtidal reefs) along the coast of Newport Beach between the Santa Ana River and the boundary between the City and Laguna Beach. Many of these areas are considered wetland habitat by the State of California and federal wetland definitions are protected by a no-net loss wetlands policy.

### Environmental Study Areas<sup>7</sup>

Undeveloped areas supporting natural habitats that may be capable of supporting sensitive biological resources within the City are also referred to as Environmental Study Areas (ESAs). An ESA may support species and habitats that are sensitive and rare within the region or may function as a migration corridor for wildlife. The portions of the ESAs within the Coastal Zone that contain sensitive or rare species are referred to as Environmentally Sensitive Habitat Areas (ESHAs), as defined by the California Coastal Act. ESHAs are areas in which "plant or animal life or their habitats are either rare or are especially valuable because of their special nature or role in an ecosystem that could easily be disturbed or degraded by human activities and developments." The California Coastal Act requires that ESHAs be protected against any significant disruption of habitat values. Only uses dependent on those resources are allowed within ESHAs and adjacent development must be sited and designed to prevent impacts that would significantly degrade the ESHA and must be compatible with the continuance of the ESHA. Housing sites within an ESA are shown in **Figure 4.3-2: Housing Sites Within Environmental Study Areas** and listed below in **Table 4.3-1: Housing Sites Within Environmental Study Areas**.

<sup>5</sup> [Ibid](#), Page 4.3-4. Accessed March 2023.

<sup>6</sup> City of Newport Beach. (2006). *General Plan Natural Resources Element*. [https://www.newportbeachca.gov/PLN/General\\_Plan/11\\_Ch10\\_NaturalResources\\_web.pdf](https://www.newportbeachca.gov/PLN/General_Plan/11_Ch10_NaturalResources_web.pdf). Accessed March 2023.

<sup>7</sup> [Ibid](#).

**Table 4.3-1: Housing Sites Within Environmental Study Areas**

Housing Site	Parcel Number	Focus Area
24	119 310 04	Airport Area
25	119 300 15	Airport Area
215	114 170 51	West Newport Mesa Area
222	114 170 82	West Newport Mesa Area
368	442 014 22	Newport Center
336	478 031 56	Coyote Canyon
131	120 571 12	Coyote Canyon
110	114 170 72	Banning Ranch
111	114 170 52	Banning Ranch
112	114 170 50	Banning Ranch
113	114 170 52	Banning Ranch
114	114 170 83	Banning Ranch
115	114 170 71	Banning Ranch
116	114 170 76	Banning Ranch
117	NA	Banning Ranch
118	114 170 74	Banning Ranch
120	114 170 78	Banning Ranch
121	114 041 04	Banning Ranch
122	114 170 43	Banning Ranch
123	114 170 65	Banning Ranch
124	114 170 80	Banning Ranch
126	114 170 24	Banning Ranch
127	114 170 81	Banning Ranch
128	114 170 75	Banning Ranch
129	114 170 49	Banning Ranch
130	114 170 66	Banning Ranch

Source: SanGIS mapping modified by Kimley-Horn, 2023.



#### 4.3.4 Thresholds of Significance

The City uses the thresholds of significance specified in *State CEQA Guidelines, Appendix G*. Impacts related to biological resources would be significant if the Project would:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS.
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFW or USFWS.
- 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 wetlands, etc.), through direct removal, filling, hydrological interruption, or other means.
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

#### 4.3.5 Methodology

This analysis considers the *State CEQA Guidelines, Appendix G* thresholds, as described above, in determining whether Project implementation would result in a substantial impact to biological resources (i.e., environmental study areas, protected wetlands, marine resources). The evaluation was based on a review of regulations and determining their applicability to the Project. The determination that the Project would or would not result in “substantial” temporary or permanent impact to biological resources considers the relevant policies and regulations established by local and regional agencies and the Project’s compliance with these policies.

#### 4.3.6 Project Impacts and Mitigation

**Threshold 4.3-1: Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?**

The Project does not propose immediate construction of new housing sites. Future housing development facilitated by the proposed Project would be subject to City development review and would occur as market conditions allow and at the discretion of the individual property owners.

While the Project does not propose grading or construction, it can be assumed that any future housing development facilitated by the Project could directly or indirectly impact sensitive wildlife or plant species through such activities. This EIR analysis identifies housing sites where the potential to impact special

status wildlife and plants exists. Given the City's existing developed nature, the housing sites mainly include properties that are developed or located adjacent to existing development. Except for the 21 vacant housing sites (Sites 110-118, 120-124, 126-131, and 215), all other housing sites are developed/occupied by structures and do not contain any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS.

Special status wildlife and plants within the housing sites include California least tern, coastal California gnatcatcher, least Bell's vireo, light-footed Ridgeway's rail, Pacific pocket mouse, San Diego fairy shrimp, Southern California steelhead, and western snowy plover. The precise locations of sensitive plant and wildlife species would be identified through site-specific, on-site reconnaissance and project-level analysis in conjunction with future development permit applications.

The CDFW CNDDDB and the CNPS identifies occurrences of federal or State listed or proposed endangered or threatened species, federal Species of Concern, species categorized as federal Species of Concern, California Species of Concern, or otherwise sensitive species or habitat that may occur within or in the City's immediate vicinity. These species are protected under federal and State regulations. **Table 4.3-2: Special-Status Species with the Potential to Occur on Housing Sites** identifies special-status species identified by the CDFW CNDDDB and CNPS. The General Plan Natural Resources Element also identifies 27 sensitive wildlife species and 24 sensitive plant species that occur or potentially occur within the City.

<b>Table 4.3-2: Special-Status Species with the Potential to Occur on Housing Sites</b>			
<b>Scientific Name</b>	<b>Name</b>	<b>Group</b>	<b>Status</b>
<b>Wildlife Species</b>			
<i>Perognathus longimembris pacificus</i>	Pacific pocket mouse	Mammals	Fed: END CA: SSC
<i>Sorex ornatus salicornicus</i>	southern California saltmarsh shrew	Mammals	Fed: None CA: SSC
<i>Eumops perotis californicus</i>	western mastiff bat	Mammals	Fed: None CA: SSC
<i>Coturnicops noveboracensis</i>	yellow rail	Birds	Fed: None CA: SSC
<i>Charadrius nivosus nivosus</i>	western snowy plover	Birds	Fed: THR CA: SSC
<i>Riparia riparia</i>	bank swallow	Birds	Fed: None CA: THR
<i>Polioptila californica californica</i>	coastal California gnatcatcher	Birds	Fed: THR CA: SSC
<i>Rallus obsoletus levipes</i>	light-footed Ridgway's rail	Birds	Fed: END CA: END, FP
<i>Vireo bellii pusillus</i>	least Bell's vireo	Birds	Fed: END CA: END
<i>Passerculus sandwichensis beldingi</i>	Belding's savannah sparrow	Birds	Fed: None CA: END
<i>Athene cunicularia</i>	burrowing owl	Birds	Fed: None CA: SSC
<i>Aspidoscelis hyperythra</i>	orange-throated whiptail	Reptiles	Fed: None CA: WL



<b>Table 4.3-2: Special-Status Species with the Potential to Occur on Housing Sites</b>			
<b>Scientific Name</b>	<b>Name</b>	<b>Group</b>	<b>Status</b>
<i>Crotalus ruber</i>	red-diamond rattlesnake	Reptiles	Fed: None CA: SSC
<i>Oncorhynchus mykiss irideus pop. 10</i>	steelhead - southern California DPS	Fish	Fed: END CA: CEND
<i>Branchinecta sandiegonensis</i>	San Diego fairy shrimp	Crustaceans	Fed: END CA: None
<i>Bombus crotchii</i>	Crotch bumble bee	Insects	Fed: None CA: CEND
<b>Plant Species</b>			
<i>Calochortus weedii</i> var. <i>intermedius</i>	intermediate mariposa-lily	Monocots	Fed: None CA: None CNPS: 1B.2
<i>Isocoma menziesii</i> var. <i>decumbens</i>	decumbent goldenbush	Dicots	Fed: None CA: None CNPS: 1B.2
<i>Lasthenia glabrata</i> ssp. <i>coulteri</i>	Coulter's goldfields	Dicots	Fed: None CA: None CNPS: 1B.1
<i>Aphanisma blitoides</i>	aphanisma	Dicots	Fed: None CA: None CNPS: 1B.2
<i>Atriplex serenana</i> var. <i> davidsonii</i>	Davidson's saltscale	Dicots	Fed: None CA: None CNPS: 1B.2
<i>Dudleya multicaulis</i>	many-stemmed dudleya	Dicots	Fed: None CA: None CNPS: 1B.2
<i>Symphyotrichum defoliatum</i>	San Bernardino aster	Dicots	Fed: None CA: None CNPS: 1B.2
<i>Helianthus nuttallii</i> ssp. <i>parishii</i>	Los Angeles sunflower	Dicots	Fed: None CA: None CNPS: 1A
<i>Suaeda esteroa</i>	estuary seablite	Dicots	Fed: None CA: None CNPS: 1B.2
<i>Centromadia parryi</i> ssp. <i>australis</i>	southern tarplant	Dicots	Fed: None CA: None CNPS: 1B.1
<i>Nemacaulis denudate</i> var. <i>denudate</i>	coast woolly-heads	Dicots	Fed: None CA: None CNPA: 1B.2

**Table 4.3-2: Special-Status Species with the Potential to Occur on Housing Sites**

<p><b>U.S. Fish and Wildlife Service (Fed) - Federal</b>  END- Federal Endangered  THR- Federal Threatened</p> <p><b>California Department of Fish and Wildlife (CA) - California</b>  END- California Endangered  THR- California Threatened Candidate- Candidate for listing under the California Endangered Species Act  CEND- Candidate Endangered  FP- California Fully Protected  SSC- Species of Special Concern  WL- Watch List - Taxa that were previously designated as "Species of Special Concern" but no longer merit that status, or which do not yet meet SSC criteria, but for which there is concern and a need for additional information to clarify status.</p> <p><b>California Native Plant Society (CNPS) California Rare Plant Rank</b>  1A Plants presumed extinct in California and rare/extinct elsewhere  1B Plants Rare, Threatened, or Endangered in California and Elsewhere  2B Plants Rare, Threatened, or Endangered in California, but more common elsewhere  3 Plants about which more information is needed (Review List)  4 Plants of Limited distribution (Watch List)</p> <p><b>CNPS Threat Ranks</b>  0.1 -Seriously threatened in California  0.2 -Moderately threatened in California  Not very threatened in California</p>
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Direct impacts to special status wildlife and plant species could result from removal of occupied habitat on undeveloped housing sites through grading and other land development activities. Additionally, indirect impacts to special status wildlife and plant species could result from excess noise, lighting, or runoff generated during housing site construction. Future development on housing sites would be required to meet mandatory federal, State, and local biological resources requirements in effect at the time of development aimed at protecting biological resources, including the City's General Plan and Local Coastal Program.

This means that future housing development in accordance with the Project would be required to incorporate measures for protecting biological resources from construction-related activities such as vegetation removal and degradation to plant and wildlife habitat. Such measures may be compliance with standard conditions or mitigation. Adherence to these measures would help minimize impacts to biological resources.

Sites 110-118, 120-124, 126-131, and 215 are vacant, and, therefore, could potentially support special status wildlife and plants. All vacant sites, except for Site 131, are within the Banning Ranch Focus Area, which, pursuant to General Plan Natural Resources Element Policy 10.9, requires any future development within Banning Ranch to conduct an assessment prepared by a qualified biologist that delineates sensitive and rare habitat and wildlife corridors; development to be concentrated to protect biological resources and coastal bluffs; and requires the restoration or mitigation on any sensitive or rare habitat areas that are affected by future development. As noted in **Section 3.0: Project Description**, the Banning Ranch Focus Area is included in the 2021–2029 Housing Element's sites inventory but is not assumed in order to accommodate the City's 2021–2029 RHNA growth need. Banning Ranch is considered as additional dwelling unit opportunity in addition to those that accommodate the RHNA. Any site disturbance at Banning Ranch would require compliance with Policy NR-10.9 to ensure that any future development would delineate and protect any biological resources on the site.

Sites with sensitive biological resources require discretionary review and may require permits (e.g., Coastal Development Permits, Conditional Use Permits, and/or permits by regulatory agencies including the CDFW and USFWS. Any future housing development would be required to comply with the permit



processing procedures and development regulations required by the Municipal Code. Any future development facilitated by the Project on housing sites would require biological studies and mitigation as identified in **MM BIO-1**, if applicable based on site-specific review of future development applications. However, all housing sites would be required to comply with applicable federal, State, and local programs and requirements with respect to potential impacts to biological resources, including concerning sensitive and protected plant and wildlife species and jurisdictional waters.

General Plan Goal Natural Resources Element NR-10 and Policies NR-10.1 through 10.9, discussed above, identify actions that may be necessary during project-specific analysis and development to protect sensitive and rare terrestrial and marine resources from urban development. Further, General Plan Policies S-6.3 through 6.5 protect sensitive habitats from fuel modification zone impacts. Compliance with Policies NR 10.1 through 10.9 and S-6.3 through 6.5 would ensure that sensitive and rare biological species are protected from impact that may occur from future development facilitated by the Project. The General Plan policies further restrict development within wetland areas and ESAs. As discussed above, 23 sites are within an ESA. New development proposed on these sites would be subject to compliance with General Plan Policy NR 10.3, which requires 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. Compliance with Policy NR-10.3 would ensure that any future development within an ESA would identify any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS. Further, the future housing development facilitated by the Project would comply with **SC BIO-1**, which requires a pre-construction bird survey to identify any active nests in and adjacent to a project site. The General Plan Program EIR determined that compliance with these policies and federal, State, and local laws would mitigate potential impacts to a less than significant level.

Compliance with the existing regulatory framework discussed above and **MM BIO-1** would reduce potential impacts on sensitive plant and wildlife species and ensure proper assessment of potential impacts to candidate, sensitive, and special status species be made on a project-by-project basis. Therefore, the Project's potential impacts to any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS would be less than significant with mitigation incorporated.

**Impact Summary:**      **Less Than Significant Impact With Mitigation.** Following compliance with the existing regulatory framework and **MM BIO-1**, the Project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS.

**Threshold 4.3-2: 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 California Department of Fish and Wildlife Service or U.S. Fish and Wildlife Service?**

The proposed Project would not directly construct new housing but would facilitate the development of residential units by adopting implementing actions associated with the 2021-2029 Housing Element. However, it is possible that potential future housing projects facilitated by the Project could directly impact sensitive vegetation communities through such activities. Sensitive vegetation communities which exist or have the potential to exist on undeveloped housing sites include coastal sage scrub, southern maritime chaparral, grasslands and wetlands/riparian. These communities are considered sensitive due to their limited occurrence and ability to support other diverse and sensitive species. Therefore, disturbance or removal of these vegetation communities if associated with future development on a site containing these resources could result in a significant impact.

Vegetation communities exist on and near some of the housing sites, as shown in **Table 4.3-3: Housing Sites within Vegetation Communities**.

<b>Table 4.3-3: Housing Sites within Vegetation Communities</b>			
<b>ID</b>	<b>Parcel Number</b>	<b>Focus Area</b>	<b>Vegetation Community Name</b>
24	119 310 04	Airport Area	Streambed
87	439 401 01	Airport Area	Urban/Disturbed
357	442 282 02	Airport Area	Urban/Disturbed
215	114 170 51	West Newport Mesa	Urban/Disturbed
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
222	114 170 82	West Newport Mesa	Urban/Disturbed
			<i>Artemisia californica</i> - <i>Eriogonum fasciculatum</i> Alliance
223	424 401 12	West Newport Mesa	Urban/Disturbed
236	424 401 06	West Newport Mesa	Urban/Disturbed
238	424 401 08	West Newport Mesa	Urban/Disturbed
154	440 132 40	Newport Center	Urban/Disturbed
184	440 132 48	Newport Center	Urban/Disturbed
339	442 011 37	Newport Center	Urban/Disturbed
362	442 261 07	Newport Center	Urban/Disturbed
C	440 132 52, 440 251 05	Newport Center	Urban/Disturbed
131	120 571 12	Coyote Canyon	Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Artemisia californica</i> - <i>Eriogonum fasciculatum</i> Alliance
			<i>Baccharis salicifolia</i> Alliance
			Anthropogenic - Areas of Little or No Vegetation
			<i>Salix lasiolepis</i> Alliance
			Acacia (cyclops) Semi-natural Stands

**Table 4.3-3: Housing Sites within Vegetation Communities**

ID	Parcel Number	Focus Area	Vegetation Community Name
			Vegetation Restoration Areas
			<i>Rhus integrifolia</i> Alliance
			Urban/Disturbed
			<i>Artemisia californica</i> Alliance
			Introduced Trees, Shrubs (not in hierarchy)
336	478 031 56	Coyote Canyon	Urban/Disturbed
			<i>Artemisia californica</i> - <i>Eriogonum fasciculatum</i> Alliance
110	114 170 72	Banning Ranch	<i>Baccharis salicifolia</i> Alliance
			<i>Salix lasiolepis</i> Alliance
			Central and South Coastal Californian Coastal Sage Scrub group
			<i>Encelia californica</i> Alliance
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Cortaderia (jubata, selloana)</i> Semi-natural Herbaceous Stands
			Arid West Freshwater Emergent Marsh group
			<i>Lepidium latifolium</i> Semi-natural Herbaceous Stands
			Temperate Pacific Tidal Salt and Brackish Marsh group
			<i>Spartina foliosa</i> Alliance
			Urban/Disturbed
			Anthropogenic -Areas of Little or No Vegetation
			Salt panne
			Water Body
111	114 170 52	Banning Ranch	<i>Baccharis salicifolia</i> Alliance
			<i>Salix lasiolepis</i> Alliance
			Central and South Coastal Californian coastal sage scrub group
			<i>Encelia californica</i> Alliance
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Cortaderia (jubata, selloana)</i> Semi-natural Herbaceous Stands
			Urban/Disturbed
			Anthropogenic -Areas of Little or No Vegetation
112	114 170 50	Banning Ranch	<i>Salix lasiolepis</i> Alliance
			Central and South Coastal Californian coastal sage scrub group
			<i>Artemisia californica</i> Alliance
			<i>Artemisia californica</i> - <i>Eriogonum fasciculatum</i> Alliance
			<i>Encelia californica</i> Alliance
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Carpobrotus edulis</i> or other Ice Plants Semi-natural Stands
			Temperate Pacific Tidal Salt and Brackish Marsh group
			Urban/Disturbed

**Table 4.3-3: Housing Sites within Vegetation Communities**

ID	Parcel Number	Focus Area	Vegetation Community Name
113	114 170 52	Banning Ranch	Anthropogenic -Areas of Little or No Vegetation
			Water body
			<i>Salix lasiolepis</i> Alliance
			<i>Artemisia californica</i> -Eriogonum fasciculatum Alliance
			<i>Encelia californica</i> Alliance
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Lepidium latifolium</i> Semi-natural Herbaceous Stands
			Introduced Trees, Shrubs (not in hierarchy)
			Urban/Disturbed
114	114 170 83	Banning Ranch	Anthropogenic -Areas of Little or No Vegetation
			<i>Encelia californica</i> Alliance
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Carpobrotus edulis</i> or other Ice Plants Semi-natural Stands
			Coastal Baja California Norte Maritime Succulent Scrub group
			Introduced Trees, Shrubs (not in hierarchy)
			Urban/Disturbed
115	114 170 71	Banning Ranch	Central and South Coastal Californian coastal sage scrub group
			<i>Lepidium latifolium</i> Semi-natural Herbaceous Stands
			Temperate Pacific Tidal Salt and Brackish Marsh group
			<i>Spartina foliosa</i> Alliance
			<i>Atriplex lentiformis</i> Alliance
			Anthropogenic -Areas of Little or No Vegetation
			Salt panne
			Water Body
116	114 170 76	Banning Ranch	Central and South Coastal Californian coastal sage scrub group
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			Temperate Pacific Tidal Salt and Brackish Marsh group
			<i>Sarcocornia pacifica</i> ( <i>Salicornia depressa</i> ) Alliance
			<i>Spartina foliosa</i> Alliance
			Introduced Trees, Shrubs (not in hierarchy)
			Urban/Disturbed
			Anthropogenic -Areas of Little or No Vegetation
			Salt panne
			Water Body
117	NO AP #	Banning Ranch	<i>Artemisia californica</i> -Eriogonum fasciculatum Alliance
			<i>Encelia californica</i> Alliance
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Cortaderia (jubata, selloana)</i> Semi-natural Herbaceous Stands

**Table 4.3-3: Housing Sites within Vegetation Communities**

ID	Parcel Number	Focus Area	Vegetation Community Name
			<i>Carpobrotus edulis</i> or other Ice Plants Semi-natural Stands
			Temperate Pacific Tidal Salt and Brackish Marsh group
			Introduced Trees, Shrubs (not in hierarchy)
			Urban/Disturbed
			Anthropogenic -Areas of Little or No Vegetation
			Water Body
118	114 170 74	Banning Ranch	Central and South Coastal Californian coastal sage scrub group
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			Temperate Pacific Tidal Salt and Brackish Marsh group
			<i>Sarcocornia pacifica</i> ( <i>Salicornia depressa</i> ) Alliance
			<i>Spartina foliosa</i> Alliance
			Anthropogenic -Areas of Little or No Vegetation
			Salt panne
			Water Body
120	114 170 78	Banning Ranch	Central and South Coastal Californian coastal sage scrub group
			Temperate Pacific Tidal Salt and Brackish Marsh group
			<i>Sarcocornia pacifica</i> ( <i>Salicornia depressa</i> ) Alliance
			<i>Spartina foliosa</i> Alliance
			Introduced Trees, Shrubs (not in hierarchy)
			Urban/Disturbed
			Anthropogenic -Areas of Little or No Vegetation
			Salt panne
121	424 041 04	Banning Ranch	<i>Artemisia californica</i> - <i>Eriogonum fasciculatum</i> Alliance
			<i>Encelia californica</i> Alliance
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Carpobrotus edulis</i> or other Ice Plants Semi-natural Stands
			Coastal Baja California Norte Maritime Succulent Scrub group
			Introduced Trees, Shrubs (not in hierarchy)
			Urban/Disturbed
			Anthropogenic -Areas of Little or No Vegetation
122	114 170 43	Banning Ranch	<i>Artemisia californica</i> - <i>Eriogonum fasciculatum</i> Alliance
			<i>Encelia californica</i> Alliance
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			<i>Carpobrotus edulis</i> or other Ice Plants Semi-natural Stands
			Coastal Baja California Norte Maritime Succulent Scrub group
			Introduced Trees, Shrubs (not in hierarchy)
			Urban/Disturbed
			Anthropogenic -Areas of Little or No Vegetation

**Table 4.3-3: Housing Sites within Vegetation Communities**

ID	Parcel Number	Focus Area	Vegetation Community Name
123	114 170 65	Banning Ranch	Central and South Coastal Californian coastal sage scrub group
			Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
			Temperate Pacific Tidal Salt and Brackish Marsh group
			<i>Atriplex lentiformis</i> Alliance
			Anthropogenic -Areas of Little or No Vegetation
			Salt panne
			Water Body
124	114 170 80	Banning Ranch	Temperate Pacific Tidal Salt and Brackish Marsh group
			Urban/Disturbed
			Salt panne
			Water Body
126	114 170 24	Banning Ranch	Temperate Pacific Tidal Salt and Brackish Marsh group
			Anthropogenic -Areas of Little or No Vegetation
			Water Body
127	114 170 81	Banning Ranch	Temperate Pacific Tidal Salt and Brackish Marsh group
			<i>Spartina foliosa</i> Alliance
			Urban/Disturbed
			Water Body
128	114 170 75	Banning Ranch	Temperate Pacific Tidal Salt and Brackish Marsh group
			Anthropogenic -Areas of Little or No Vegetation
			Water Body
129	114 170 49	Banning Ranch	Mediterranean CA Naturalized Annual and Perennial Grassland group (weedy)
130	114 170 66	Banning Ranch	Central and South Coastal Californian coastal sage scrub group
			<i>Atriplex lentiformis</i> Alliance
			Anthropogenic -Areas of Little or No Vegetation
			Water Body
Source: The Nature Reserve of Orange County (NROC), 2015. <i>Orange County Vegetation Mapping Update</i> .			

As previously discussed, since site-specific field surveys were not conducted for the Project, this analysis identifies housing sites with the potential to support sensitive vegetation communities based on programmatic sources such as the City's GIS and State/federal data. Where sensitive vegetation communities are assumed to be present, site-specific surveys would be required prior to approval of future development projects to verify and confirm the presence of sensitive vegetation communities occurring on individual housing sites and determine the extent of any potential impacts. Potential future housing development projects facilitated by the Project would be required to adhere to all federal, State, and local requirements, including **MM BIO-1** for avoiding and minimizing construction and operations impacts to sensitive vegetation communities. Considering the requirements set forth in **MM BIO-1**, the Project would not result in substantial adverse effect, either directly or indirectly, on any sensitive vegetation communities. Therefore, impacts would be mitigated to a less than significant level.

Riparian habitats are known to exist throughout the City. Riparian areas are ecosystems bordering a river or stream, where soil moisture is more or less permanently available. Riparian areas are highly productive transitional areas between streams and terrestrial uplands, and support a diverse community of plants and animals. Riparian zones maintain the health and productivity of the stream environment. They reduce the transport of sediment and nitrates from the terrestrial to the aquatic environment, sustain microclimates, and provide large woody debris (which is a source of food and habitat structure). The CDFW regulates impacts to lakes, streams, and associated riparian (streamside or lakeside) vegetation through the issuance of a Lake or Streambed Alteration Agreement (SAA). The CDFW considers most drainages to be “streambeds” unless it can be demonstrated otherwise. A stream is defined as a body of water that flows at least periodically or intermittently through a bed or channel with banks and supports fish or other aquatic life. This includes watercourses having a surface or sub-surface flow that supports, or has supported, riparian vegetation. CDFW jurisdiction typically extends from the stream bed to the edge of the riparian canopy, and any modification to the stream or its banks that would impact it or riparian vegetation would require a SAA. As many riparian communities (e.g., southern riparian scrub, southern willow scrub, and southern cottonwood) are listed as “rare” by the CDFW and CNPS, additional protection is extended to some riparian communities by the CDFW under State CEQA Guidelines Section 15380. These guidelines independently define “endangered” species of plants or animals as those whose survival and reproduction in the wild are in immediate jeopardy and “rare” species as those who are in such low numbers that they could become endangered if their environment worsens. Therefore, a project normally will have a potentially significant effect on the environment if it will substantially affect a rare or endangered species of animal or plant or the habitat of the species. The significance of impacts to a species under State CEQA Guidelines must be based on analyzing actual rarity and threat of extinction despite legal status or lack thereof.

While there are no federal regulations that specifically mandate the protection of riparian vegetation, federal regulations set forth in CWA Section 404 address areas that potentially contain riparian type vegetation, such as wetlands. However, Section 404 jurisdiction is generally less than that of the Section 1600 SAA, covering only riparian vegetation that is within the active channel itself.

In addition to the applicable federal and State regulations discussed above, the General Plan has identified as goals: (1) the protection of sensitive and rare terrestrial and marine resources from urban development, and; (2) the protection, maintenance, and enhancement of southern California wetlands. Implementation of General Plan Policies NR 10.1 through NR 10.7 would reduce or avoid impacts to riparian areas by ensuring cooperation with resource protection agencies, organizations, and conservation plans, and limiting or placing constraints on future development within identified ESAs or areas containing significant or rare biological resources. In addition, Policies NR 13.1 and NR 13.2 would protect wetlands and their riparian habitat, and require a survey and analysis of future development within a delineated wetland area under the Project.

An indirect impact to riparian habitat could result from the future development of existing vacant sites. The placement of development next to riparian habitats would disturb wildlife that rely on these areas for shelter and food and could also result in the degradation of these areas through the introduction of feral animals and contaminants that are typical of urban uses. Because federal regulations do not specifically address protection of riparian vegetation under the Section 404 permitting process, and the fact that the CDFG Section 1600 SAA is a negotiated agreement, some unmitigated loss of riparian resources may occur. Therefore these regulations would not serve to fully protect and manage riparian

habitat under future development. However, the aforementioned General Plan policies and **MM BIO-1** would serve to regulate indirect impacts future development could have on riparian habitats. Therefore, the Project impacts associated with riparian habitats would be less than significant with mitigation.

**Impact Summary:** **Less Than Significant Impact With Mitigation.** Following compliance with the existing regulatory framework and MM BIO-1, the Project would not 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 CDFW or USFWS.

**Threshold 4.3-3: Would the Project have a substantial adverse effect on State or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?**

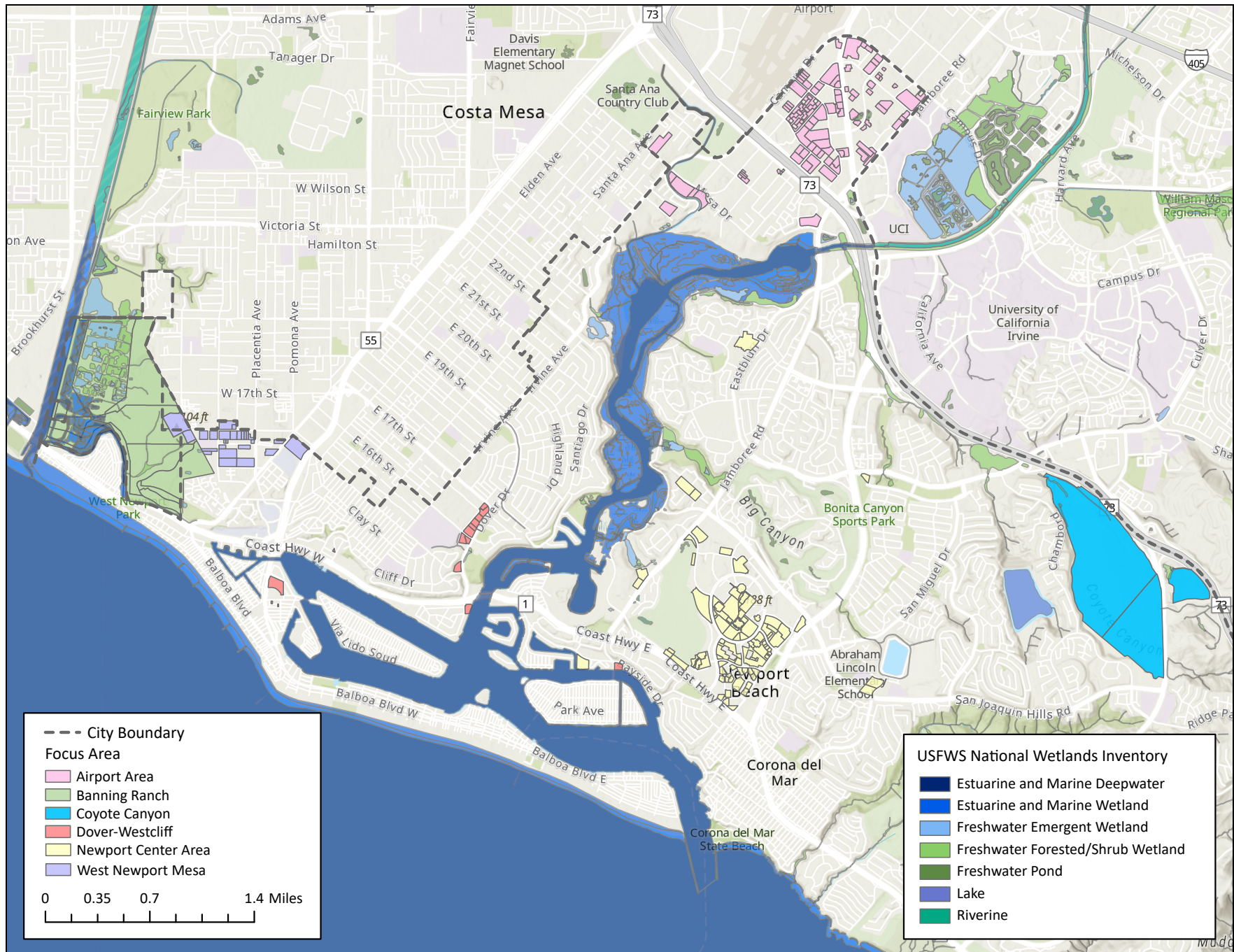
Wetlands are areas that are periodically or permanently inundated or saturated with water and support a prevalence of vegetation typically adapted for life in saturated soils. The General Plan Program EIR identifies several wetland habitats including Upper Newport Bay, the developed channels, beaches, and hardscape of Lower Newport Bay (Newport Harbor), and the intertidal and subtidal landforms (sandy beaches, rocky intertidal, sandy subtidal, and subtidal reefs) along the coast of Newport Beach between the Santa Ana River and the boundary between the City and unincorporated Orange County.

While the Project does not propose alteration of a State or federally protected wetland on any housing sites, it is possible that potential future development facilitated by the Project could directly or indirectly impact wetlands through activities such as vegetation removal and grading activities. Generally, development facilitated by the Project would be confined to previously developed urban areas and would not be located in the vicinity of wetland areas. However, as shown in **Figure 4.3-3: Housing Sites Within Wetlands** and identified in **Table 4.3-4: Housing Sites Containing Wetlands**, several housing sites include wetlands.

<b>Table 4.3-4: Housing Sites Containing Wetlands</b>			
<b>ID</b>	<b>Parcel Number</b>	<b>Focus Area</b>	<b>Wetland Type</b>
34	445 133 06	Airport Area	Freshwater Pond
58	445 122 17	Airport Area	Freshwater Pond
110	114 170 72	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
			Freshwater Emergent Wetland
			Freshwater Forested/Shrub Wetland
			Freshwater Pond
			Riverine
111	114 170 52	Banning Ranch	Freshwater Emergent Wetland
			Freshwater Forested/Shrub Wetland
			Freshwater Pond
			Riverine
112	114 170 50	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland



Table 4.3-4: Housing Sites Containing Wetlands			
ID	Parcel Number	Focus Area	Wetland Type
			Freshwater Forested/Shrub Wetland
			Riverine
113	114 170 52	Banning Ranch	Freshwater Forested/Shrub Wetland
			Riverine
114	114 170 83	Banning Ranch	Freshwater Emergent Wetland
115	114 170 71	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
116	114 170 76	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
117	No APN	Banning Ranch	Riverine
118	114 170 74	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
120	114 170 78	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
123	114 170 65	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
124	114 170 80	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
126	114 170 24	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
127	114 170 81	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
128	114 170 75	Banning Ranch	Estuarine and Marine Deepwater
			Estuarine and Marine Wetland
131	120 571 12	Coyote Canyon	Freshwater Forested/Shrub Wetland
			Freshwater Pond
			Riverine
336	478 031 56	Coyote Canyon	Freshwater Forested/Shrub Wetland
			Riverine
Source: USFWS, 2023. <i>National Wetlands Inventory</i> .			



**Figure 4.3-3: Housing Sites Within Wetlands**  
City of Newport Beach General Plan Housing Implementation  
Program Environmental Impact Report



Not to Scale

Developments proposed on or adjacent to wetland areas are required to comply with federal and State laws and regulations that protect wetland resources. For example, as discussed above, pursuant to CWA Section 404, the USACE is authorized to regulate any activity that would result in the discharge of dredged or fill material into “waters of the U.S.” (including wetlands), which includes those waters listed in CFR)Title 33 Section 328.3, as amended. The USACE, with oversight from the U.S. EPA, has the principal authority to issue CWA Section 404 permits. The USACE would require a Standard Individual Permit for more than minimal impacts to “waters of the U.S.” as determined by the USACE. Projects with minimal individual and cumulative adverse effects on the environment may meet the conditions of an existing approved Nationwide Permit. Further, under CWA Section 401, an activity requiring an USACE Section 404 permit must obtain a State Water Quality Certification (or waiver thereof) to ensure that the activity will not violate established State water quality standards. The SWRCB, in conjunction with the nine California RWQCBs, is responsible for administering the CWA Section 401 Water Quality Certification Program. The RWQCB is required to provide “certification that there is reasonable assurance that an activity that may result in the discharge to ‘waters of the U.S.’ will not violate water quality standards.” Water Quality Certification must be based on the finding that a proposed discharge will comply with applicable water quality standards.

Any future development facilitated by the Project on or adjacent to wetland areas would be required to adhere to CWA Section 404. In addition to the existing federal and State regulatory framework, the General Plan Natural Resources and Land Use Elements contain policies that provide additional protection to the City’s wetlands. General Plan Policies NR 13.1 and NR 13.2 protect, maintain, and enhance the City’s wetlands by recognizing and protecting wetlands and requiring wetland delineations in accordance with the CDFW and USFWS. Policies NR 14.4 and NR 14.5 maintain and enhance deep water channels and ensure they remain navigable by boats through capacity management and new structure design by requiring projects to maintain the capacity of wetlands and new structures to be sited and designed to be consistent with the natural appearance of the surrounding area. These policies will ensure that any future development facilitated by the Project protect and maintain the City’s wetlands. Further, Policy LU 6.5.4 requires development to be located and designed to preserve and/or mitigate for the loss of wetlands and drainage course habitat. Adherence to the above identified federal and State laws and regulations and General Plan policies ensures that any future development facilitated by the Project would result in less than significant impacts on State or federally protected wetlands.

**Impact Summary:**      **Less Than Significant Impact.** The Project would not have a substantial adverse effect on State or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means through compliance with regulatory requirements.

**Threshold 4.3-4:      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?**

Future housing development facilitated by the Project has the potential to impact nesting birds which have acclimated to urban life and nest and forage in the local trees and shrubs. These bird species are protected under the MBTA. Although the MBTA is no longer interpreted to protect migratory birds and raptors from incidental take (U.S. Department of Interior, 2017), the State Fish and Wildlife Commission

Sections 3503 and 3503.5 still provide these protections. If vegetation clearing would occur during the bird breeding season (February 1 to July 15 for raptors and January 15 to August 31 for other birds), direct impacts to nesting birds could occur.

Most of the housing sites are of limited value for wildlife movement and corridors due to existing residential and commercial development and public infrastructure. Housing sites 110-118, 120-124, 126-131, and 215 are vacant, which could potentially support nesting birds. Although the remaining sites are developed, ornamental landscaping associated with the existing developed sites can provide habitat for native birds. The loss of any active nests of a native bird during construction would be considered a significant impact.

All future development facilitated by the Project would be subject to the City's development review process and required to comply with relevant federal, State, and local regulations for avoiding and minimizing interference with the movement of any native resident or migratory fish and wildlife species, migratory wildlife species, or migratory wildlife corridors. As part of the development review process, future development would be required to comply with Municipal Code Chapters 21.30, 21.30B, and 21.53, which outlines additional requirements for new development to ensure the protection of environmentally sensitive habitat areas and coastal zones.

Further, future housing development facilitated by the Project would be subject to several relevant General Plan Policies. General Plan Policies NR 10.3 and NR 10.4, protect and prohibit development in nature preserves, conservation areas, and designated open space areas, and would require a site-specific study be prepared where development would occur within or contiguous to such areas. Additionally, General Plan Policies NR 10.5, NR 10.7, and NR 10.8 prevent disruption, and ensure protection of sensitive habitat through siting and design requirements, along with sufficient buffer sizes and shielding from direct exterior lighting. Policies NR 12.1 through NR 12.3 would serve to protect coastal dune habitats, which serve as movement corridor for coastal wildlife species. Policies NR 13.1 and NR 13.2 would protect, maintain, and enhance the City's wetlands, another movement corridor for a variety of aquatic, terrestrial, and avian species. With implementation of the policies, new urban uses within the developed areas of the City would not have a substantial effect on the movement of native resident or migratory wildlife species or corridors. Future housing development where the City has determined a potential for impacts to a wildlife corridor, would be required to prepare a site-specific general biological resources survey on sites that contain the presence of any sensitive biological resources.

Following compliance with the established regulatory framework future housing development impacts concerning interference 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 would be less than significant and no mitigation is required.

**Impact Summary:**      **Less Than Significant Impact.** The Project would not 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 4.3-5: Would the Project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?**

The Project does not directly propose any site development on the housing sites evaluated in the Program EIR. Rather, it provides a series of actions that support implementation of the 2021-2029 Housing Element. Future development would occur on these sites in incremental phases over time depending upon numerous factors such as market conditions, and economic and planning considerations, and at the individual property owners' discretion. All future development facilitated by the Project would be subject to the City's development review process and required to comply with relevant federal, State, and local regulations protecting biological resources.

As part of the development review process, future development facilitated by the Project would be required to comply with City Council Policy G-1 which establishes and maintains appropriate diversity in tree species and age classes to provide a stable and sustainable urban forest with an inventory that the City can reasonably maintain in a healthy and non-hazardous condition. Municipal Code Chapter 7.26 strives to maintain the value of natural habitat for migratory waterfowl and other birds such as ducks, gulls, terns, and pelicans, and Municipal Code Chapter 13.08 strives to control the planting, maintenance, and removal of trees in all public areas under the City's control. In addition, General Plan Policy NR 10.1 states that future development shall cooperate with federal and State agencies, and private organizations in the protection of the City's biological resources, and Policy NR 10.3 is intended to protect, and prohibit development in, nature preserves, conservation areas, and designated open space areas in order to minimize urban impacts upon resources in identified ESAs. These General Plan policies and City Council Policy G-1 would ensure that future development within the City would not conflict with any local policies or ordinances protecting biological resources, and therefore no impact would occur.

**Impact Summary:**      **No Impact.** The Project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

**Threshold 4.3-6: 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?**

The Project does not propose any site development on the housing sites. Rather, it provides capacity for future development consistent with State law. Future development would occur on these sites in incremental phases over time depending upon numerous factors such as market conditions, and economic and planning considerations, and at the individual property owners' discretion. All future development facilitated by the Project would be subject to the City's development review process and required to comply with the provisions of the Central-Coastal NCCP/HCP. The Central-Coastal NCCP/HCP is included as part of the General Plan policies. Policy NR 10.2 states that future development must comply with the policies of the Central-Coastal NCCP/HCP. In addition, Policy NR 10.1 states that future development shall cooperate with State and federal agencies, and private organizations, in the protection of the City's biological resources. This includes local, regional, or State habitat conservation plans. The General Plan policies ensure that future development facilitated by the Project would not conflict with the provisions of the Central-Coastal NCCP/HCP, and therefore no impact would occur.

**Impact Summary:**      **No Impact.** The Project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

#### 4.3.7 Cumulative Impacts

Future housing development facilitated by the proposed Project, in conjunction with cumulative development in the City, would increase housing development and could result in impacts to biological resources. The housing sites provide limited value for biological resources and as wildlife corridors because most of the sites are currently developed and are proximate to existing developments. Undeveloped sites on vacant land that contains known sensitive biological resources, such as Banning Ranch and Coyote Canyon, could be impacted by future development. Therefore, potential biological impacts would require evaluation on a case-by-case basis at the project level when future development is proposed. Each cumulative project containing known biological resources subject to site-specific reviews, which would address potential biological resource impacts and identify necessary measures, where appropriate. Consequently, the Project would not result in significant impacts to candidate, sensitive, or special status species, riparian habitat or other sensitive natural community, State or federally protected wetlands, the movement of any native resident or migratory fish or wildlife species, nor would it conflict with any local policies or ordinances protecting biological resources, or adopted habitat conservation plan. Therefore, with the implementation of mitigation and compliance with regulatory requirements, the Project's contribution to cumulatively considerable impacts on biological resources would be less than significant.

#### 4.3.8 Mitigation Program

All future housing development facilitated by the Project would be subject to the City's development review process, which may include review pursuant to CEQA, and would be assessed on a project-specific basis for potential effects concerning biological resources. Future housing development would be subject to compliance with relevant federal, State, and local requirements including requirements set forth in the Newport Beach General Plan and Newport Beach Municipal Code.

#### General Plan Policies

See **Section 4.3.2: Regulatory Setting** for complete policy text.

- Policy NR 10.1
- Policy NR 10.2
- Policy NR 10.3
- Policy NR 10.4
- Policy NR 10.5
- Policy NR 10.6
- Policy NR 10.7
- Policy NR 10.8
- Policy NR 10.9
- Policy NR 13.1
- Policy NR 13.2
- Policy LU 6.5.4
- Policy S 6.3
- Policy S 6.4
- Policy S 6.5

## Coastal Land Use Plan Policies

- Policy 2.1.7-2
- Policy 2.2.1-2
- Policy 2.8.8-1
- Policy 2.8.8-2
- Policy 2.8.8-4
- Policy 4.1.1-2
- Policy 4.1.1-3
- Policy 4.1.1-6
- Policy 4.1.1-13
- Policy 4.1.14-17
- Policy 4.3-8

## Standard Conditions of Approval

The following standard conditions and mitigation measures are required.

**SC BIO-1** Prior to the commencement of any proposed actions (e.g., site clearing, demolition, grading) during the breeding/nesting season (September 1 through February 15), a qualified biologist shall conduct a preconstruction survey(s) to identify any active nests in and adjacent to the project site no more than three days prior to initiation of the action. Costs associated with the biologist shall be the responsibility of the project applicant. If the biologist does not find any active nests that would be potentially impacted, the proposed action may proceed. However, if the biologist finds an active nest within or directly adjacent to the action area (within 100 feet) and determines that the nest may be impacted, the biologist shall delineate an appropriate buffer zone around the nest using temporary plastic fencing or other suitable materials, such as barricade tape and traffic cones. The buffer zone shall be determined by the biologist in consultation with applicable resource agencies and in consideration of species sensitivity and existing nest site conditions, and in coordination with the construction contractor. The qualified biologist shall serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. Only specified construction activities (if any) approved by the qualified biologist shall take place within the buffer zone until the nest is vacated. At the discretion of the qualified biologist, activities that may be prohibited within the buffer zone include but not be limited to grading and tree clearing. Once the nest is no longer active and upon final determination by the biologist, the proposed action may proceed within the buffer zone.

The qualified biologist shall prepare a survey report/memorandum summarizing his/her findings and recommendations of the preconstruction survey. Any active nests observed during the survey shall be mapped on a current aerial photograph, including documentation of GPS coordinates, and included in the survey report/memorandum. The completed survey report/memorandum shall be submitted to the City of Newport Beach Community Development Department prior to construction-related activities that have the potential to disturb any active nests during the nesting season.



## Mitigation Measures

**MM BIO-1** Applications for future housing development facilitated by the Project, where the City has determined a potential for impacts to special-status wildlife and plants species, shall be required to comply with the following mitigation framework:

Prior to the issuance of any permit for future development consistent with the Project, a site-specific general biological resources survey shall be conducted to identify the presence of any sensitive biological resources, including any sensitive plant or wildlife species. A biological resources report shall be submitted to the City to document the results of the biological resources survey. The report shall include (1) the methods used to determine the presence of sensitive biological resources; (2) vegetation mapping of all vegetation communities and/or land cover types; (3) the locations of any sensitive plant or wildlife species; (4) an evaluation of the potential for occurrence of any listed, rare, and narrow endemic species; and (5) an evaluation of the significance of any potential direct or indirect impacts from the proposed project. If potentially significant impacts to sensitive biological resources are identified, future project site grading and site plans shall incorporate project design features required by the applicant to minimize direct impacts on sensitive biological resources to the extent feasible, and the report shall also recommend appropriate mitigation to be implemented by the applicant to reduce the impacts to below a level of significance. The project design features shall be submitted to the Community Development Director or their designee for review and approval.

### 4.3.9 Level of Significance After Mitigation

With implementation of the mitigation program identified above, the proposed Project would not result in significant biological resources impacts on a project-specific or cumulative basis.

### 4.3.10 References

City of Newport Beach. (2006). *General Plan Natural Resources Element*.

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