
4.3 BIOLOGICAL RESOURCES

This section describes existing vegetation, landscaping, and biological resources within the Transit Zoning Code (SD 84A and SD 84B) area, and evaluates potential impacts to those resources. Although impacts to Biological Resources were scoped out in the Initial Study/Notice of Preparation (IS/NOP), due to public concern this section of the EIR has been included. Analyses in this EIR include the assessment of potential impacts to: sensitive species (as defined by Appendix G of 2007 CEQA Guidelines), including migratory bird species; sensitive natural communities; and federally protected wetlands. This section relies upon information published in federal, state, and local documents.

Four comment letters were received in response to the IS/NOP circulated for the project related to biological resources. Full bibliographic entries for all reference material are provided in Section 4.3.5 (References) of this section.

4.3.1 Environmental Setting

■ Regional Setting

The project is located in the central urban core of Santa Ana and comprises over 100 blocks and 450 acres, approximately 10 miles from the Pacific Ocean. The Transit Zoning Code (SD 84A and SD 84B) area is generally bounded by First Street, Flower Street, Civic Center Drive, Grand Avenue and Interstate 5 (I-5). More specifically, the Transit Zoning Code (SD 84A and SD 84B) area is located in the area west of I-5, north of First Street, and between Grand Avenue and Flower Street in the City of Santa Ana in Orange County.

■ Existing On-Site Conditions

The Transit Zoning Code (SD 84A and SD 84B) area is currently developed with a variety of land uses including residential, commercial, retail, office, civic, and industrial.

■ Biological Resources

Literature Survey

Information on occurrences of special-status species in the vicinity of the Transit Zoning Code (SD 84A and SD 84B) area was obtained from searching databases and lists of California Department of Fish and Game's (CDFG) Natural Diversity Data Base (CNDDDB, January 2010) and California Native Plant Society's (CNPS) Electronic Inventory (January 2010) for the U.S. Geological Survey's (USGS) 7.5-minute Orange, Anaheim, Tustin, and Newport Beach quadrangles. Information on the status of special-status plant and animal species potentially occurring within the Transit Zoning Code (SD 84A and SD 84B) area was also obtained from the CDFG's Special Vascular Plants, Bryophytes, and Lichens List (January 2010) and CDFG's List of State and Federally Listed Endangered and Threatened Animals of California (January 2010). This search range encompasses a sufficient distance to accommodate for

regional habitat diversity and to overcome the limitations of the CNDDDB. The CNDDDB is based on reports of actual occurrences and does not constitute an exhaustive inventory of every resource.

Additionally, background information on biological resources was derived from the Preliminary Descriptions of the Terrestrial Natural Communities of California (Holland 1986), the List of California Terrestrial Natural Communities Recognized by the Natural Diversity Data Base (CDFG 2002), and The Jepson Manual of Higher Plants of California (Hickman 1993). Based upon the results of the literature review and record searches, a list of special-status plant and animal species and habitats with the potential to occur within the Transit Zoning Code (SD 84A and SD 84B) area was developed for verification in the field. A copy of that list is available as Appendix C.

Field Survey

PBS&J performed a general field assessment in July 2007 and an update on January 11, 2010, to assess the biological resources within the Transit Zoning Code (SD 84A and SD 84B) area. The survey was conducted by driving and walking all accessible areas of the project area.

Plants

Plant species were identified in the field using The Jepson Manual (Hickman 1993) and Illustrated Flora of the Pacific States (Abrams 1923). Because the Transit Zoning Code (SD 84A and SD 84B) area has been fully developed, paved, or landscaped, and is also surrounded by development, it does not support any native plant communities or sensitive (including threatened and endangered) plant species. The vegetation within the Transit Zoning Code (SD 84A and SD 84B) area is characterized as urban ornamental. Plant species present include lawn grass and common street trees and ornamental species that are typically present in developed areas. The most dominant of these species were noted as: magnolia (*Magnolia* sp.), sycamore (*Platanus* sp.), maple (*Acer* sp.), pine (*Pinus* sp.), rhododendron (*Rhododendron* sp.), prickly sow thistle (*Sonchus asper*), eucalyptus (*Eucalyptus* sp.), and various palm species.

Wildlife

Because the Transit Zoning Code (SD 84A and SD 84B) area has been fully developed, paved, or landscaped, and is also surrounded by development, and is absent of native plant communities, it does not support the establishment of sensitive wildlife species. Only common species that are typically present in developed areas were observed during the reconnaissance survey or are anticipated to occur. Birds were identified by standard visual and auditory recognition, and the presence of nests or other evidence of breeding activity was noted. Due to the nature of the Transit Zoning Code (SD 84A and SD 84B) area, mostly birds that are typically present in developed areas were observed, including: mourning dove (*Zenaidura macroura*), common raven (*Corvus corvax*), American crow (*Corvus brachyrhynchos*), house finch (*Carpodacus mexicanus*), house sparrow (*Passer domesticus*), and house wren (*Troglodytes aedon*). Also observed in the Transit Zoning Code (SD 84A and SD 84B) area: domestic cat (*Felis catus*) and western fence lizard (*Sceloporus occidentales*).

Vegetation Communities

The Transit Zoning Code (SD 84A and SD 84B) area has been entirely developed, paved, landscaped, and/or graded, and supports largely non-native plant species. No defined, native vegetative communities are found within the Transit Zoning Code (SD 84A and SD 84B) area.

Wildlife Resources

Since the Transit Zoning Code (SD 84A and SD 84B) area has been developed, paved, landscaped, and/or graded, suitable habitat for sensitive mammal, reptile, amphibian, or fish species does not exist within the project area or adjacent areas.

Wildlife Movement

Wildlife corridors link together areas of suitable wildlife habitat that are otherwise separated by rugged terrain, changes in vegetation, or human disturbance. The fragmentation of open space areas by urbanization creates isolated “islands” of wildlife habitat. In the absence of habitat linkages that allow movement to adjoining open space areas, various studies have concluded that some wildlife species, especially the larger and more mobile mammals, would not likely persist over time in fragmented or isolated habitat areas because they prohibit the infusion of new individuals and genetic information (MacArthur and Wilson 1967; Soule 1987; Harris and Gallagher 1989; Bennett 1990). Corridors mitigate the effects of this fragmentation by (1) allowing animals to move between remaining habitats, thereby permitting depleted populations to be replenished and promoting genetic exchange; (2) providing escape routes from fire, predators, and human disturbances, thus reducing the risk of catastrophic events (such as fire or disease) on population or local species extinction; and (3) serving as travel routes for individual animals as they move within their home ranges in search of food, water, mates, and other needs (Noss 1983; Simberloff and Cox 1987; Harris and Gallagher 1989).

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

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

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

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

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

The Transit Zoning Code (SD 84A and SD 84B) area does not function as an important regional wildlife corridor because it has been developed, paved, landscaped, and/or graded. The areas immediately surrounding the Transit Zoning Code (SD 84A and SD 84B) area are also highly urbanized, including major highways. As such, with the possible exception of migratory birds, wildlife does not use the Transit Zoning Code (SD 84A and SD 84B) area to travel from one habitat or resources area to the next.

■ Sensitive Biological Resources

The following section addresses special-status biological resources observed, reported, or having the potential to occur in the project area. These resources include plant and wildlife species that have been afforded special status and/or recognition by federal and State resource agencies, as well as private conservation organizations and special interest groups, such as the CNPS (List 1A, 1B, and 2). In general, the principal reason an individual taxon (species, subspecies, or variety) is given such recognition is the documented or perceived decline or limitation of its population size or geographical extent and/or distribution, resulting in most cases from habitat loss. The discussion below lists special status plants and animals known to occur within the region of the project, along with their federal and State listing and potential for occurrence within the Transit Zoning Code (SD 84A and SD 84B) area. In addition, special-status biological resources include vegetation types and habitats that are unique, of relatively limited distribution in the region, or of particularly high wildlife value. These resources have been defined as sensitive by federal, State, and local government conservation programs.

In addition to the other sources listed in this section, the following sources were used to determine the special status of biological resources:

Plants

- CNPS 2010. Electronic Inventory of Rare and Endangered Vascular Plants of California. California Native Plant Society, Sacramento, California
- California Natural Diversity Data Base (CNDDDB), January 2010
- Various Federal Register notices from the USFWS regarding listing status of plant species

Wildlife

- California Natural Diversity Data Base (CNDDDB), January 2010
- Various Federal Register notices from the USFWS regarding listing status of wildlife species

Habitats

- California Natural Diversity Data Base (CNDDDB), January 2010

For plants or wildlife, the “potential for occurrence” ranking listed in Appendix C is based on the following criteria:

- **Nor Likely to Occur:** No present or historical records cite the species’ occurrence in or near the Transit Zoning Code (SD 84A and SD 84B) area, and the species is restricted to habitats that do not occur within the Transit Zoning Code (SD 84A and SD 84B) area.
- **Low Potential for Occurrence:** No present or historical records cite the species’ occurrence in or near the Transit Zoning Code (SD 84A and SD 84B) area, and the on-site habitat(s) needed to support the species are of poor quality.
- **Moderate Potential for Occurrence:** Either a historical record exists within the immediate vicinity of the Transit Zoning Code (SD 84A and SD 84B) area (approximately 5 miles) or the habitat requirements associated with the species occur within the Transit Zoning Code (SD 84A and SD 84B) area and are of sufficient size and quality as to support the species.
- **High Potential for Occurrence:** A historical record cites the species in or near the Transit Zoning Code (SD 84A and SD 84B) area, and the habitats strongly associated with that species occur within the Transit Zoning Code (SD 84A and SD 84B) area or in its immediate vicinity.
- **Species Present:** The species was observed within the Transit Zoning Code (SD 84A and SD 84B) area at the time of the survey.

Definitions of Special Status Biological Resources

Federal

A federally endangered species is a species facing extinction throughout all or a significant portion of its geographic range. A federally threatened species is one likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The presence of any federally threatened or endangered species on a site generally imposes severe constraints on development; particularly if development would result in “take” of the species or its habitat. The term “take” means to

harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in such conduct. Harm in this sense can include any disturbance to habitats used by the species during any portion of its life history.

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

Federal Species of Concern have an informal designation by the USFWS for some declining species that are not federal candidates for listing at this time. This designation does not provide legal protection but signifies that these species are recognized as special status by the USFWS and thus under CEQA Guidelines (Section 15380) potential impacts to these species need to be assessed.

State

California considers an endangered species as one whose prospects of survival and reproduction are in immediate jeopardy, a threatened species as one present in such small numbers throughout its range that it is likely to become an endangered species in the near future in the absence of special protection or management, and a rare species as one present in such small numbers throughout its range that it may become endangered if its present environment worsens. Rare species applies to California native plants. State threatened and endangered species are fully protected against take.

California Species of Special Concern is an informal designation used by the CDFG for some declining wildlife species that are not state candidates. This designation does not provide legal protection but signifies that these species are recognized as special status by the CDFG and thus under CEQA Guidelines (Section 15380) potential impacts to these species need to be assessed.

Species that are California fully protected include those protected by special legislation for various reasons, such as the mountain lion and white-tailed kite.

Local

Special status habitats are vegetation communities, associations, or sub-associations designated by the CDFG and/or CNPS that support concentrations of special status plant or wildlife species, are of relatively limited distribution, or are of particular value to wildlife (CDFG 2007). Although special status habitats are not afforded legal protection unless they support protected species, potential impacts on them may increase concerns and mitigation suggestions by resources agencies.

The CNPS is a local resource conservation organization that has developed an inventory of California's special status plant species (CNPS 2007). This inventory provides the summary of information on the distribution, rarity, and endangerment of California's vascular plants. This rare plant inventory is comprised of four lists. CNPS presumes that List 1A plant species are extinct in California because they have not been seen in the wild for many years. CNPS considers List 1B plants as rare, threatened, or endangered throughout their range. List 2 plant species are considered rare, threatened, or endangered in California but more common in other states. Plant species for which CNPS needs additional information

are included on List 3. List 4 plant species are those of limited distribution in California whose susceptibility to threat appears low at this time. For the purpose of this EIR, only species with CNPS ratings of 1A, 1B, or 2 will be assessed, as these species would meet the definition of rare under 2009 CEQA Guidelines.

Threatened or Endangered Species

No State or federally listed threatened or endangered species were observed within the Transit Zoning Code (SD 84A and SD 84B) area during PBS&J's July 2007 or during the updated January 2010 survey; however, this survey was not intended to determine the presence/absence of threatened or endangered species, only assess the potential for them to occur based on habitat suitability. Focused surveys to determine presence/absence have not been performed and would be at the discretion of the appropriate State or federal resource agencies.

The Transit Zoning Code (SD 84A and SD 84B) area sits near where the corners of the Orange, Anaheim, Tustin, and Newport Beach USGS 7.5-minute quadrangles meet. Due to the limited habitat of the Transit Zoning Code area and its surroundings, and lack of wildlife corridors, all species potentially occurring within the Transit Zoning Code (SD 84A and SD 84B) area would be listed within the Orange, Anaheim, Tustin, and Newport Beach quadrangles. Ten wildlife and three plant Federal/State listed threatened or endangered species were identified as potentially occurring within the Transit Zoning Code (SD 84A and SD 84B) area or reported within the USGS's 7.5-minute Orange, Anaheim, Tustin, and Newport Beach quadrangles (Appendix C). Of these, 13 species, all were determined to have little to no potential for occurrence due to lack of suitable habitat.

Santa Ana River Woollystar (*Eriastrum densifolium* ssp. *sanctorum*): is listed as a State and federally endangered species by the CDFG and USFWS. The Santa Ana River woollystar is a perennial herb. It occurs in coastal scrub and chaparral on sandy soils, usually on river floodplains or terraced fluvial deposits in the Santa Ana River area as well as San Bernardino & Riverside Counties. Due to a lack of known occurrences within proximity to the Transit Zoning Code (SD 84A and SD 84B) area and lack of habitat, the Santa Ana River woollystar is not expected to occur within the project area.

Salt Marsh Bird's-Beak (*Cordylanthus maritimus* ssp. *maritimus*): is listed as a State and federally endangered species by the CDFG and USFWS. This species occurs in coastal dunes and coastal salt marshes and swamps along coastal California south to Baja. It flowers from May to October and can be found at elevations up to 100 feet. Due to lack of suitable habitat, the salt marsh bird's-beak is not expected to occur in the Transit Zoning Code (SD 84A and SD 84B) area.

San Fernando Valley Spineflower (*Chorizanthe parryi* var. *Fernandina*): is listed as a State endangered species by the CDFG. The San Fernando Valley spineflower is a member of the buckwheat family, has delicate tiny white flowers, and grows in sandy or gravelly soils along dry washes. It is a member of the coastal sage and alluvial fan scrub communities, and is threatened by loss of this kind of habitat, and competition with exotic invasive plants. It formerly occurred where appropriate habitat existed in San Bernardino, Riverside, Orange, Ventura, and Los Angeles Counties, but is now known from only a few locations where streams have not been channelized. Due to lack of suitable habitat, Transit Zoning Code

(SD 84A and SD 84B) area, the San Fernando Valley spineflower is not expected to occur within the project area.

Pacific Pocket Mouse (*Perognathus longimembris pacificus*): is listed as a federally endangered species by the USFWS. The Pacific pocket mouse is a small brownish rodent endemic to coastal southwestern California. Historically, the Pacific pocket mouse range once extended from Los Angeles County south to the Mexican border. Pocket mice are only found within 4 kilometers (km) off the coast on fine-grained sandy substrates in coastal sage scrub, coastal strand, and river alluvium. The species remains one of the most endangered animals in the United States. Due to lack of suitable habitat and its isolation to within 4 km of the coast, the Pacific pocket mouse is not expected to occur in the Transit Zoning Code (SD 84A and SD 84B) area.

California Least Tern (*Sterna antillarum browni*): is listed as a State and federally endangered species by the CDFG and USFWS. The California least tern is one of the smallest members of its family, averaging only 23 centimeters (9 inches) in length. Typically, these terns forage in shallow estuaries and lagoons, diving head first into the water after a wide variety of small fish. Due to lack of suitable habitat, the California least tern is not expected to occur in the Transit Zoning Code (SD 84A and SD 84B) area.

Least Bell's Vireo (*Vireo bellii pusillus*): is listed as a State and federally endangered species by the CDFG and USFWS. The Least Bell's Vireo occurs in moist thickets and riparian areas that are predominantly composed of willow and mule fat. Due to a lack known occurrences within proximity to the Transit Zoning Code (SD 84A and SD 84B) area and lack of habitat, the Least Bell's vireo is not expected to occur within the project area.

Light-Footed Clapper Rail (*Rallus longirostris levipes*): is listed as a State and federally endangered species by the CDFG and USFWS. The light-footed clapper rail is a year-round resident (non-migratory). It inhabits coastal salt and freshwater marshes containing cordgrass, cattails or tules, and rushes. Its population declines were due to habitat loss of floodplain river areas and tidal estuaries. Due to lack of suitable habitat, the light-footed clapper rail is not expected to occur in the Transit Zoning Code (SD 84A and SD 84B) area.

Coastal California Gnatcatcher (*Poliophtila californica californica*): is listed as a federally threatened species by the USFWS. The coastal California gnatcatcher is an obligate resident of southern California coastal sage scrub communities near arid hillsides, mesas, and washes. Due to a lack known occurrences within proximity to the Transit Zoning Code (SD 84A and SD 84B) area and lack of habitat, the coastal California gnatcatcher is no expected to occur within the project area.

Belding's Savannah Sparrow (*Passerculus sandwichensis beldingi*): is listed as a State endangered species by the CDFG. The Belding's Savannah Sparrow is a year-round resident (non-migratory) subspecies that occurs in coastal salt marshes between Goleta Slough, Santa Barbara County, and Bahia de San Quintin in Mexico. Due to lack of suitable habitat, the Belding's savannah sparrow is not expected to occur in the Transit Zoning Code (SD 84A and SD 84B) area.

California Black Rail (*Laterallus jamaicensis coturniculus*): is listed by as a State threatened species by the CDFG. The California Black Rail is a year-round resident (non-migratory). Its habitat consists of shallow

margins of salt, brackish, or freshwater marshes. Due to lack of suitable habitat, the California black rail is not expected to occur in the Transit Zoning Code (SD 84A and SD 84B) area.

Western Snowy Plover (*Charadrius alexandrinus nivosus*): is listed as a federally threatened species by the USFWS. The Western Snowy Plover is a sparrow-sized shorebird that breeds and winters on sandy beaches from Washington to Baja California, Mexico. The vast majority of its population is in California, with large numbers nesting on the Channel Islands and little-visited beaches along the Central Coast. Due to lack of suitable habitat, the western snowy plover is not expected to occur in the Transit Zoning Code (SD 84A and SD 84B) area.

San Diego Fairy Shrimp (*Branchinecta sandiegonensis*): is listed as a federally endangered species by the USFWS. The San Diego fairy shrimp breeds in vernal pools. It takes only two weeks to go from egg to reproductive adult. They are among the most characteristic of the vernal pool invertebrates. Due to lack of suitable habitat, the San Diego fairy shrimp is not expected to occur in the Transit Zoning Code area.

Santa Ana Sucker (*Catostomus santaanae*): the Santa Ana Sucker is endemic to the Los Angeles basin and southern coastal streams. This species is usually found in fresh water with sand-rubble or boulder bottoms. Due to lack of suitable habitat, the Santa Ana sucker is not expected to occur in the Transit Zoning Code (SD 84A and SD 84B) area.

4.3.2 Regulatory Framework

■ Federal

Section 404 of the Clean Water Act

Section 404 of the *Clean Water Act* (CWA) requires that a permit be obtained from the U.S. Army Corps of Engineers (USACE) prior to the discharge of dredged or fill materials into any “waters of the United States or wetlands.” Waters of the United States are broadly defined in the USACE’s regulations (33 CFR 328) to include navigable waterways, their tributaries, lakes, ponds, and wetlands. Wetlands are defined as: “Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that normally do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas” (Federal Register 1982). Wetlands that are not specifically exempt from Section 404 regulations (such as drainage channels excavated on dry land) are considered to be “jurisdictional wetlands.” In a recent Supreme Court Case, the Court acted to limit the regulatory jurisdiction of the USACE under Section 404 of the CWA as it applies to adjacent waters (USSC 2001). Specifically, the Court ruled that waters that are nonnavigable, isolated, and intrastate are not subject to the USACE jurisdiction (Guzy and Anderson 2001). The USACE is required to consult with the U.S. Fish and Wildlife Service, Environmental Protection Agency, and State Regional Water Quality Control Board (among other agencies) in carrying out its discretionary authority under Section 404.

The USACE grants two types of permits, individual and nationwide. Project-specific individual permits are required for certain activities that may have a potential for more than a minimal impact and

necessitate a detailed application. The most common type of permit is a nationwide permit. Nationwide permits authorize activities on a nationwide basis unless specifically limited, and are designed to regulate with little delay or paperwork certain activities having minimal impacts. Nationwide permits typically take two to three months to obtain whereas individual permits can take a year or more. To qualify for a nationwide permit, strict conditions must be met. If conditions are met, permittees may proceed with certain activities without notifying the USACE. Some nationwide permits require a 30-day pre-construction notification period before activities can begin. Fill of certain isolated waters or wetlands that affect less than 0.5 acre of impact per project may be permitted with a pre-construction notification.

Migratory Bird Treaty Act of 1918

The *Migratory Bird Treaty Act* (MBTA) makes it unlawful to “take” (kill, harm, harass, etc.) any migratory bird listed in 50 CFR 10, including their nests, eggs, or products. The MBTA provides protection to over 800 species of birds. This list includes some very common species such as the American robin (*Turdus migratorius*), house finch, American crow (*Corvus brachyrhynchos*), and western meadowlark (*Sturnella neglecta*).

Federal Endangered Species Act of 1973

Section 3 of the *Federal Endangered Species Act* (FESA) defines an endangered species as any species or subspecies of fish, wildlife, or plants “in danger of extinction throughout all or a significant portion of its range.” A threatened species is defined as any species or subspecies “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Designated endangered and threatened species, as listed through publication of a final rule in the Federal Register, are fully protected from a “take” without an incidental take permit administered by the U. S. Fish and Wildlife Service (USFWS) under Section 10 of the FESA. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (50 CFR 17.3). The term “harm” in the definition of “take” in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering (50 CFR 17.3). The term “harass” in the definition of “take” means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Proposed endangered or threatened species are those for which a proposed regulation, but not a final rule, has been published in the Federal Register.

Section 7 of the FESA requires that Federal agencies ensure that their actions are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. This obligation requires Federal agencies to consult with the USFWS on any actions (issuing permits including Section 404 permits issuing licenses, providing Federal funding) that may affect listed species to ensure that reasonable and prudent measures will be undertaken to mitigate impacts on listed species. Consultation with USFWS can be either formal or informal depending on the likelihood of the action to adversely affect listed species or critical habitat. Once a formal consultation is initiated, USFWS will issue a Biological Opinion (either a “jeopardy” or a “no jeopardy” opinion) indicating whether the proposed agency action will or will not jeopardize the continued existence of a listed species or result in the

destruction or modification of its critical habitat. A permit cannot be issued for a project with a “jeopardy” opinion unless the project is redesigned to lessen impacts.

In the absence of any federal involvement, as in a privately-funded project on private land with no Federal permit, only Section 10(a) of the FESA can empower the USFWS to authorize incidental take of a listed species provided a habitat conservation plan (HCP) is developed. To qualify for a formal Section 10(a) permit, strict conditions must be met including a lengthy procedure involving discussions with USFWS and local agencies, preparation of a HCP, and a detailed Section 10(a) permit application.

■ State

California Endangered Species Act

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

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

CEQA—Treatment of Listed Plant and Animal Species

Both the federal and state Endangered Species Acts protect only those species formally listed as threatened or endangered (or rare in the case of the State list). Section 15380 of CEQA Guidelines, however, independently defines “endangered” species of plants, fish or wildlife 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 will normally have a significant effect on the environment if it will substantially affect a rare or endangered species or the habitat of the species. The significance of impacts to a species under CEQA must be based on analyzing actual rarity and threat of extinction despite legal status or lack thereof.

State of California—Sections 1600 of the Fish and Game Code

CDFG has direct jurisdiction under Fish and Game Code Section 1600 in regard to any proposed activities that would divert or obstruct the natural flow or change the bed, channel, or bank of any lake or stream. For activities that could affect a lake or streambed, it is necessary to enter into a Streambed Alteration Agreement with CDFG.

State of California—Sections 3503, 3503.5, 3800 of the Fish and Game Code

These sections of the Fish and Game Code prohibit the “take, possession, or destruction of birds, their nests, or eggs.” Disturbance that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a “take.”

Porter-Cologne Water Quality Control Act

The *Porter-Cologne Water Quality Control Act* charges the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (RWQCB) statewide with protecting water quality throughout California. Typically, the SWRCB and RWQCB act in concert with the USACE under Section 401 of the CWA in relation to permitting fill of federally jurisdictional waters. As discussed above, the Supreme Court Case recently acted to limit the regulatory jurisdiction of the USACE under Section 404 of the CWA (USSC 2001). This action did not limit the state’s regulatory jurisdiction over Waters of the State (Guzy and Anderson 2001). Waters of the State are defined in Section 13050(e) of the *Porter-Cologne Water Quality Control Act* as “... any surface water or groundwater, including saline waters, within the boundaries of the state.” Currently, an applicant would delineated the wetlands on their property utilizing methodology presented in the *1987 Corps of Engineers Wetland Delineation Manual* (Environmental Laboratory 1987) and the delineation would be verified by the USACE. In cases where an area meets the criteria to be considered a wetland, but the USACE does not have jurisdiction, the applicant is referred to the appropriate RWQCB. In these cases, the project must receive a permit for Waste Discharge Requirements or a Waiver of Waste Discharge Requirements from the RWQCB. Projects that affect Waters of State are required by the RWQCB to incorporate mitigation. Mitigation ratios are determined on a project specific basis during the permitting process and are based on the quality of the wetlands impacted by the project.

■ Regional

Natural Community Conservation Plan and Habitat Conservation Plan, County of Orange, Central and Coastal Subregion

The preparation of a comprehensive natural resources management conservation plan for Central and Coastal Orange County was completed in 1996. The Central and Coastal Orange County Natural Community Conservation Plan and Habitat Conservation Plan (NCCP/HCP) and the associated Implementation Agreement cover thirteen cities, including Santa Ana. The purpose of the NCCP/HCP is to create a multi-species multi-habitat reserve system and implementation of a long-term management program that will protect primarily coastal sage scrub and the species that utilize this habitat. At the same time that it protects this habitat and species the NCCP/HCP is also intended to allow for economical use of the lands that meet the people’s needs.

The NCCP/HCP is intended to focus on multiple species and habitats and address conservation of these species on a regional context. The three main target species are the coastal California gnatcatcher, cactus wren, and orange-throated whiptail. There are twenty-six other species that are also identified and afforded management protection under the NCCP/HCP. An additional ten species of plants and animals

that are either federally listed or treated as if they were listed according to FESA Section 10(a) are addressed within the NCCP/HCP.

As the City participated in the funding or development of the NCCP/HCP, the City-owned parcels would fall under the participating landowner system of the NCCP/HCP. However, individual landowners within the City would be considered nonparticipating landowners. The NCCP/HCP provides nonparticipating landowners with different mitigation options than those provided for participating landowners. Nonparticipating 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

■ Local

Municipal Code

Article VII (Regulation of the Planting, Maintenance, and Removal of Trees), establishes policies, regulations and standards necessary to ensure that the city will continue to realize the benefits provided by its urban forest.

City of Santa Ana General Plan—Conservation Element

- Goal 2** Preserve, maintain, and properly use natural and cultural resources.
- Goal 3** Preserve and enhance the aesthetic and environmental quality of the community for the enjoyment of all residents.

Consistency Analysis

As shown above, the General Plan states that natural resources should be preserved and new development should maintain existing resources. As an amendment to the General Plan, the proposed project would be designed to be consistent with policies contained in the General Plan, including those related to biological resources. As the Transit Zoning Code (SD 84A and SD 84B) area is entirely developed/disturbed, the level of biological resources within the project area is low and limited to landscaping. The proposed project would increase the level of landscaping and open space within the Transit Zoning Code (SD 84A and SD 84B) area and thereby incrementally increase the level of natural resources. Therefore, implementation of the Transit Zoning Code (SD 84A and SD 84B) is consistent with the General Plan as it relates to biological resources.

4.3.3 Project Impacts and Mitigation

■ Analytic Method

The analysis of significant impacts is based on the literature and field surveys as outlined in Section 4.3.1 (Environmental Setting) of this chapter.

■ Thresholds of Significance

The criteria for determining significant impacts on biological resources were developed in accordance with the 2009 CEQA Guidelines. Section 15065(a) of the CEQA Guidelines states that a project may have a significant effect on the environment if “the project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare, or threatened species.” An evaluation of whether an impact on biological resources would be substantial must consider both the resource itself and how that resource fits into a regional or local context. Substantial impacts would be those that would diminish, or result in the loss of, an important biological resource or those that would obviously conflict with local, state, or federal resource conservation plans, goals, or regulations. Impacts are sometimes locally adverse, but not significant, because they would result in an adverse alteration of existing conditions, but they would not substantially diminish or result in the permanent loss of an important resource on a population- or region-wide basis.

Based on the Environmental Checklist Form from Appendix G of the CEQA Guidelines, and the assessment in the Initial Study, implementation of the proposed project would have a significant effect on biological resources if it results in the following:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service
- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan

■ Effects Found to Have No Impact

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

As mentioned in Section 4.3.1 and substantiated by the Species Table above, , no endangered, rare, threatened, or special status plant species (or associated habitats) or wildlife species designated by the USFWS, CDFG, or CNPS are known to occur or expected to occur within the Transit Zoning Code (SD 84A and SD 84B) area. Therefore, there are **no impacts** to special-status species associated with implementation of the proposed project, either directly or indirectly, and no further analysis is required in this EIR.

Threshold	Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?
-----------	--

The Transit Zoning Code (SD 84A and SD 84B) area and surrounding areas are completely developed and/or disturbed. No riparian habitat or other sensitive natural communities are located in these areas. Therefore, **no impacts** to riparian habitat or other sensitive natural communities would occur.

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

The Transit Zoning Code (SD 84A and SD 84B) area is not in proximity to, nor does it contain, wetland habitat or a blueline stream. Therefore, development within the Transit Zoning Code (SD 84A and SD 84B) area would have **no impact** on federally protected wetlands, as defined by Section 404 of the Clean Water Act.

Threshold	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?
-----------	---

Development within the Transit Zoning Code (SD 84A and SD 84B) area would not substantially interfere 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. The project area and surrounding areas are completely developed and/or disturbed. The Transit Zoning Code (SD 84A and SD 84B) is surrounded by urban uses on all four sides, including two highways, and, therefore, does not function as a wildlife movement corridor. There is **no impact**.

Threshold	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
-----------	--

The City of Santa Ana recognizes that it is located in an urban setting, and has tailored the goals of its conservation element accordingly. To obtain its goals, the City has established objectives that focus on the preservation of open space and cultural resources, and protecting the public’s health and welfare. In addition, future development under the Transit Zoning Code (SD 84A and SD 84B) would be required to adhere to the City’s existing tree ordinance (Chapter 33, Article VII). Implementation of the proposed project would not conflict with any local policies or ordinances protecting biological resources. The City’s conservation element encourages establishment of mixed-use areas and the overall visual enhancement of the City, both of which will occur within the Transit Zoning Code (SD 84A and SD 84B) area. There is ***no impact***.

Threshold	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 Orange County NCCP/HCP, mentioned above in Section 4.3.2 (Regulatory Framework), can be met through observing previously established laws and regulations (FESA and CESA). If a take is unavoidable, then the payment of mitigation fees will be made to the proper non-profit organization. As such, no conflict with an adopted habitat conservation plan, NCCP, or other local, regional, or state habitat conservation plan would occur, and there would be ***no impact***.

■ Effects Found to Be Less Than Significant

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

Impact 4.3-1 Long-term cumulative development occurring pursuant to the Transit Zoning Code would not result in a potential reduction in nesting opportunities for resident and migratory avian species of special concern. With implementation of mitigation measure MM4.3-1, this is considered a *less-than-significant* impact.

As discussed in Section 4.3.2 (Regulatory Framework), migratory avian species that may use portions of the Transit Zoning Code (SD 84A and SD 84B) area for nesting during the breeding season are protected under the MBTA. Construction-related activities that may include, but are not necessarily limited to, building demolition and/or relocation, grading, materials laydown, access and infrastructure improvements, and building construction, could result in the disturbance of nesting migratory species covered under the MBTA. The most identifiable potential direct impact to migratory species would involve the removal of vegetation (esp. trees) within the Transit Zoning Code (SD 84A and SD 84B) area. Although no identifiable habitats exist within the Transit Zoning Code (SD 84A and SD 84B) area,

this does not preclude the presence of migratory species nesting among the existing landscape vegetation. At this time, the precise number of trees that would be removed or the number of trees that could be indirectly impacted by construction activities, are not known. However, as mentioned above, the MBTA provides for the protection of migratory birds, including the non-permitted take of migratory birds. Implementation of mitigation measure MM4.3-1 would reduce this potentially significant impact to a less than significant level by ensuring that surveys for MBTA species are performed during the appropriate time of year and, if necessary, construction buffer zones are established to protect nesting MBTA species. As such, the following mitigation measure shall be implemented prior to the construction of any project-level development:

MM4.3-1 To ensure that avian species of concern, protected migratory species (e.g., MBTA), or raptors species are not injured or disturbed by construction in the vicinity of nesting habitat, the project applicant shall implement the following measures:

- 1. Tree removal shall be restricted to the period between August 30 and February 15, to the extent feasible, to avoid the breeding season of any migratory species that could be using the area, and to discourage nesting in the vicinity of an upcoming construction area. If it is not feasible to remove trees outside this window then, prior to the beginning of mass grading, including grading for major infrastructure improvements, during the period between February 15 and August 30, all trees within 250 feet of any grading or earthmoving activity shall be surveyed for active nests by a qualified biologist no more than 30 days prior to disturbance. If active nests are found, and the site is within 250 feet of potential construction activity, a temporary fence shall be erected, where appropriate, around the tree(s) at a distance of up to 250 feet, depending on the species, from the edge of the canopy to prevent construction disturbance and intrusions on the nest area. The appropriate buffer shall be determined in consultation with the City of Santa Ana Park Naturalist or a designee.*
- 2. No construction vehicles shall be permitted within restricted areas (i.e., protection zones), unless directly related to the management or protection of the legally protected species.*
- 3. If a legally protected species nest is located in a tree designated for removal, the removal shall be deferred until after August 30, or until the adults and young of the year are no longer dependent on the nest site as determined by a qualified biologist.*

Implementation of mitigation measure MM4.3-1 would reduce the effects to migratory avian species to a ***less than significant*** level by identifying occupied nests, delaying construction if necessary, and providing a buffer zone around occupied nests to ensure that no take or destruction of nests or eggs occurs.

4.3.4 Cumulative Impacts

A cumulative impact analysis is only provided for those thresholds that result in a less than significant, potentially significant, or significant and unavoidable impact. A cumulative impact analysis is not provided for Effects Found Not to Be Significant, which result in no project-related impacts.

The cumulative effects of the Transit Zoning Code (SD 84A and SD 84B) are extremely limited due to its current state. The Transit Zoning Code (SD 84A and SD 84B) area has been developed, paved,

landscaped and/or graded, and supports largely non-native plant species. The only cumulative impacts that implementation of the Transit Zoning Code (SD 84A and SD 84B) could have would be on migratory birds that are currently protected under the MBTA. Removal of vegetation within the Transit Zoning Code (SD 84A and SD 84B) area could result in the loss of nesting or roosting habitat. Implementation of mitigation measure MM4.3-1 would ensure that no significant impacts occur. Further, since implementation of the Transit Zoning Code (SD 84A and SD 84B) would involve an increase in open space and landscaping, the Transit Zoning Code (SD 84A and SD 84B) would not be cumulatively considerable, and cumulative impacts would be *less than significant*.

4.3.5 References

- Abrams, L. 1923. *Illustrated Flora of the Pacific States*, Volumes. I, II, and III. Stanford, CA: Stanford University Press.
- . 1960. *Illustrated Flora of the Pacific States*. Volume IV. Stanford, CA: Stanford University Press.
- California. 1998. *Porter-Cologne Water Quality Control Act*.
- . 2005. *California Environmental Quality Act, Statutes and Guidelines*. Sacramento, CA: Governor's Office of Planning and Research.
- California Department of Fish and Game (CDFG). 2005. *Fish and Game Code of California*.
- . 2010. List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database. California Department of Fish and Game, Natural Diversity Data Base. Sacramento, California, January.
- . 2010. Special Vascular Plants, Bryophytes, and Lichens List. California Department of Fish and Game, Natural Diversity Data Base. Sacramento, California, January.
- . 2010. State and Federally Listed Endangered, Threatened, and Rare Plants of California. California Department of Fish and Game, Natural Diversity Data Base. Sacramento, California, January.
- . 2010. State and Federally Listed Endangered, Threatened, Animals of California. California Department of Fish and Game, Natural Diversity Data Base. Sacramento, California, January.
- California Native Plant Society (CNPS). 2010. Inventory of Rare and Endangered Plants (version 7-09c; 7-14-09). Data provided by the participants of CNPS. <http://cnps.web.aplus.net/cgi-bin/inv/inventory.cgi>. Accessed on: January 8, 2010.
- California Wilderness Coalition. 2000. *Missing Linkages: Restoring Connectivity to the California Landscape*, November.
- Garrett, K., and J. Dunn. 1981. *Birds of Southern California: Status and Distribution*. Los Angeles: Los Angeles Audubon Society.
- Hickman, James C. (ed.). 1993. *The Jepson Manual*. Berkeley, CA: University of California Press.
- Holland, V. L., and David J. Keil, 1989, *California Vegetation*, California Polytechnic State University, San Luis Obispo. San Luis Obispo, CA: El Corral Publications.
- MacArthur, R. H., and E. O. Wilson. 1967. *The Theory of Island Biogeography*. Princeton, NJ: Princeton University Press.

- Munz, P.A. 1974. *A Flora of Southern California*. Berkeley, CA: University of California Press.
- Sawyer, J. O. and T. Keeler-Wolf. 1995. *A Manual of California Vegetation*. Sacramento, CA: California Native Plant Society.
- Stebbins, R. C. 1985. *A Field Guide to Western Reptiles and Amphibians*. 2nd ed. Boston, MA: Houghton-Mifflin Company.
- U.S. Army Corps of Engineers (USACE) and California Department of Fish & Game (CDFG). 1998. Section 404 Permit and Section 1603 Streambed Alteration Agreement for Portions of the Santa Clara River and its Tributaries, Los Angeles County, Final Environmental Impact Statement/Environmental Impact Report.

