5.3 BIOLOGICAL RESOURCES

This section of the Draft Environmental Impact Report (DEIR) evaluates the potential impacts of the Laguna Niguel City Center Mixed Use Project (proposed project) to biological resources in the City of Laguna Niguel (City).

The analysis in this section is based in part on the following technical report(s):

- *Biological Survey and Jurisdictional Delineation at the AGORA Arts District Downtown Project Site*, VCS Environmental, March 24, 2016, updated November 30, 2021. ("2016 Biological Report")
- *Biological Survey Memorandum, Town Center Project Site, City of Laguna Niguel, Orange County, California*, VCS Environmental, August 15, 2019, updated November 30, 2021. ("2019 Biological Report")

Complete copies of these studies are included in the technical appendices to this Draft EIR (Appendix D).

5.3.1 Environmental Setting

5.3.1.1 REGULATORY BACKGROUND

Federal Regulations

Endangered Species Act

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

Clean Water Act, Section 404

The United States Army Corps of Engineers (USACE) regulates discharge of dredged or fill material into "waters of the United States."[1] Any filling or dredging within waters of the United States requires a permit, which entails assessment of potential adverse impacts to USACE wetlands and jurisdictional waters and any mitigation measures that the USACE requires. Section 7 consultation with USFWS may be required for impacts to a federally listed species. If cultural resources may be present, Section 106 review may also be required. When a Section 404 permit is required, a Section 401 Water Quality Certification is also required from the Regional Water Quality Control Board (RWQCB).

Clean Water Act, Section 401and 402

Section 401(a)(1) of the CWA specifies that any applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters shall provide the federal permitting agency with a certification, issued by the state in which the discharge originates, that any such discharge will comply with the applicable provisions of the CWA. In California, the applicable RWQCB must certify that the project will comply with water quality standards. Permits requiring Section 401 certification include USACE Section 404 permits and National Pollutant Discharge Elimination System (NPDES) permits issued by the Environmental Protection Agency (EPA) under Section 402 of the CWA. NPDES permits are issued by the applicable RWQCB. The City is in the jurisdiction of the San Diego RWQCB (Region 9).

State Regulations

California Fish and Game Code, Section 1600

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

California Endangered Species Act

The California Endangered Species Act (CESA) generally parallels the main provisions of the FESA and is administered by the CDFW. Its intent is to prohibit take and protect state-listed endangered and threatened species of fish, wildlife, and plants. Unlike its federal counterpart, CESA also applies the take prohibitions to species petitioned for listing (state candidates). Candidate species may be afforded temporary protection as though they were already listed as threatened or endangered at the discretion of the Fish and Game Commission. Unlike the FESA, CESA does not include listing provisions for invertebrate species. Under certain

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

conditions, CESA has provisions for take through a 2081 permit or memorandum of understanding. In addition, some sensitive mammals and birds are protected by the state as "fully protected species." California "species of special concern" are species designated as vulnerable to extinction due to declining population levels, limited ranges, and/or continuing threats. This list is primarily a working document for the CDFW's California Natural Diversity Database (CNDDB), which maintains a record of known and recorded occurrences of sensitive species. Informally listed taxa are not protected per se, but warrant consideration in the preparation of biological resources assessments.

Local Regulations

Orange County Central and Coastal Natural Community Conservation Plan/Habitat Conservation Plan

The study area is within the boundaries of the Orange County Central and Coastal Natural Community Conservation Plan (NCCP)/HCP Subregion; the NCCP/HCP covers 12 natural communities and 39 species. However, the City of Laguna Niguel is not a participant or permittee to this subregional plan. The study area has not been identified as an area proposed for inclusion in the NCCP Reserve System and has not been identified as having high, medium, or low conservation value for the NCCP based on the Final Orange County Central and Coastal NCCP/HCP Subregion Plan, dated July 17, 1996.

Laguna Niguel Municipal Code

Section 9-1-81, Hillside Protection, of the Laguna Niguel Municipal Code protects public health and safety by preserving very steep hillsides in open space and by minimizing geologic hazards, erosion, and other potential dangers associated with hillside areas. Goals of this section are to minimize impacts in hillside areas to protect endangered, threatened, or rare species of flora and fauna, to ensure that any permitted hillside development conforms to the character of the natural topography, and that the visual impacts of grading are softened by requiring designs that incorporate slope undulation, blending, and other features to reflect the natural terrain. The hillside protection regulations in this section shall apply to the development of existing parcels having an average slope gradient of 10 percent or more wherein proposed grading quantities are greater than 5,000 cubic yards, and all tentative tract and tentative parcel maps on parcels with an average slope gradient of 10 percent or more.

Sections 9-1-92.3, Nonresidential Landscaping, and 9-1-93.3, Residential Landscaping, require that new projects be designed to preserve existing trees to the greatest extent possible. Landscape, grading, and site plans should incorporate these trees into the overall project design, including measures to protect the existing trees during and after construction. Such measures shall be clearly indicated in both preliminary and final construction drawings.

5.3.1.2 EXISTING CONDITIONS

Plant Communities

Four land cover/vegetation communities were observed within the project site during the March 2016 and August 2019 surveys—two vegetated (nonnative grassland and landscaped and ornamental) and two

unvegetated (developed and disturbed) types. Vegetation mapping is illustrated on Figure 5.3-1, *Land Cover/Vegetation Map*.

Nonnative Grassland (8.76 acres)

The nonnative grassland occurs within the central undeveloped portion of the site. The topography is mostly flat but generally slopes gently toward the south. The nonnative grassland consists primarily of: barley (*Hordeum murinum*), ripgut brome (*Bromus diandrus*), oat (*Avena sp.*), red brome (*Bromus madritensis* ssp. *rubens*), soft chess (*Bromus hordeaceus*), rattail fescue (*Festuca myuros*), red-stem filaree (*Erodium cicutarium*), tocalote (*Centaurea melitensis*), bristly ox tongue (*Helminthotheca echioides*), and black mustard (*Brassica nigra*). Along the toe of the manufactured slope to the west is a moderate density of artichoke thistle (*Cynara cardunculus*) and Italian thistle (*Carduus pycnocephalus* ssp. *pycnocephalus*). Fiddleneck (*Amsinckia menziesii*), a native herbaceous species, was also observed within the nonnative grassland area.

Developed (7.13 acres)

A portion of the site is developed, which includes areas that have been altered due to construction of above-ground facilities such as buildings, paved parking lots and roads, and sidewalks.

Landscaped and Ornamental (7.10 acres)

The landscaping and ornamental vegetation is a human-influenced assemblage of plant species, mostly around the perimeter of the site and along the edges of the roads, parking lots, and buildings in the northern and southern parts of the site, and along the bottom of the manufactured slope adjacent to the residential development on the western edge of the study area. The landscaping is primarily associated with the on-site development. The landscaped and ornamental vegetation contains primarily nonnative trees and shrubs. Many trees are on the site, including species such as eucalyptus (*Eucalyptus* sp.), Brazilian pepper (*Schinus terebinthifolius*), carrotwood (*Cupaniopsis anacardioides*), jacaranda (*Jacaranda mimosifolia*), magnolia (*Magnolia* sp.), Mexican fan palm (*Washingtonia robusta*), and pines (*Pinus* sp.). Ornamental ground cover species, including English ivy (*Hedera helix*), periwinkle (*Vinca major*), freeway iceplant (*Carpobrotus edulis*), and prostrate acacia (*Acacia redolens*) were observed in high density within the landscaped and ornamental portion of the study area.

A few naturally recruited native shrubs found in the landscaped areas include lemonade berry (*Rhus integrifolia*), laurel sumac (*Malosma laurina*), California sagebrush (*Artemisia californica*), and coyote bush (*Baccharis pilularis*).

Disturbed (0.31 acre)

The disturbed portion of the site includes a small dirt road and small adjacent area of bare ground in the northern portion of the site as well as an area of mostly bare ground along the eastern edge of the study area.

Summary

In summary, 15.86 acres of the site are vegetated with nonnative grassland and landscaped and ornamental vegetation, and 7.44 acres (developed and disturbed) are unvegetated.

Figure 5.3-1 - Land Cover/Vegetation Map
5. Environmental Analysis

Project Boundary

Land Cover Type

- Non-Native Grassland (8.76 ac)
- Ornamental (7.10 ac)
- Developed (7.13 ac)
- Disturbed (.31 ac)

0 200
Scale (Feet)

Source: VCS Environmental, 2016

5. Environmental Analysis
BIOLOGICAL RESOURCES

This page intentionally left blank.

Plants

Many of the plant species identified on-site are mentioned in the descriptions of land cover types, above. A full list of plant species identified during the habitat assessment is in Table 1 of the biological survey, "Plant Species Observed in the Study Area" (see Appendix D).

Sensitive Plants

No sensitive special status plants were observed during the field surveys. Because of the developed and generally disturbed nature of the study area, the site has little to no potential to support sensitive plant species.

As detailed in Table 5.3-1, the CNDDB identified nine sensitive plant species that are within two miles of the project site. Habitat on-site was evaluated for suitability for each species identified. The potential for each species to occur on-site was identified as very low due to the absence of suitable habitat.

Table 5.3-1 Special Status Plant Species with Potential to Occur On-Site

Scientific Name	Common Name	Status	General Habitat Description	Potential to Occur On-Site
Comarostaphylis diversifolia ssp. diversifolia	Summer holly	CNPS 1B.2, BLMS	Chaparral, cismontane woodland. Often in mixed chaparral in California, sometimes post-burn. 30–945 m elev.	Very low; no suitable habitat present.
Dudleya multicaulis	Many-stemmed dudleya	CNPS 1B.2, BLMS	Chaparral, coastal scrub, valley and foothill grassland. In heavy, often clayey soils or grassy slopes. 15–790 m el.	Very low; no suitable habitat present (grassland present is dominated by nonnative species).
Dudleya stolonifera	Laguna Beach dudleya	FT, ST CNPS 1B.1	Chaparral, cismontane woodland, coastal scrub, valley and foothill grassland. In thin soil on north-facing sandstone cliffs. 5–185 m el.	Very low; no suitable habitat present (grassland present is dominated by nonnative species).
Euphorbia misera	Cliff spurge	CNPS 2B.2	Coastal bluff scrub, coastal scrub, Mojavean desert scrub. Rocky sites. 10–430 m el.	Very low; no suitable habitat present.
Pentachaeta aurea ssp.allenii	Allen's pentachaeta	CNPS 1B.1	Valley and foothill grasslands, coastal scrub. Openings in scrub or grassland. 75–520 m el.	Very low; no suitable habitat present (grassland present is dominated by nonnative species).
Quercus dumosa	Nuttall's scrub oak	CNPS 1B.1, FSS	Closed-cone coniferous forest, chaparral, coastal scrub. Generally on sandy soils near the coast; sometimes on clay loam. 15–400 m el.	Very low; no suitable habitat present.
Verbesina dissita	Big-leaved crownbeard	FT, ST CNPS 1B.1	Chaparral, coastal scrub. Steep, rocky, primarily N-facing slopes within 1.5 miles of the ocean, in gravelly soils. 45–205 m el.	Very low; no suitable habitat present.
Brodiaea filifolia	Thread-leaved brodiaea	FT, SE CNPS 1B.1	Chaparral (openings), cismontane woodland, coastal scrub, playas, valley and foothill grassland, vernal pools. Usually associated with annual grassland and vernal pools; often surrounded by shrubland habitats. Occurs in openings on clay soils. 15–1020 m el.	Very low; no suitable habitat present (grassland present is dominated by nonnative species).

Table 5.3-1 Special Status Plant Species with Potential to Occur On-Site

Scientific Name	Common Name	Status	General Habitat Description	Potential to Occur On-Site
Calochortus weedii var.intermedius	Intermediate mariposa-lily	CNPS 1B.2, FSS	Coastal scrub, chaparral, valley and foothill grassland. Dry, rocky open slopes and rock outcrops. 105–855 m el.	Very low; no suitable habitat present (grassland present is dominated by nonnative species).

Source: VCS Environmental 2016, 2021.

Legend:

Federal Endangered Species Act (ESA) Listing Codes: Federal listing is pursuant to the Federal Endangered Species Act of 1973, as amended (ESA).

FE = federally listed as endangered: any species, subspecies, or variety of plant or animal that is in danger of extinction throughout all or a significant portion of their range.

FT = federally listed as threatened: any species, subspecies, or variety of plant or animal that is considered likely to become endangered throughout all or a significant portion of its range within the foreseeable future.

California Endangered Species Act (CESA) Listing Codes: State listing is pursuant to § 1904 (Native Plant Protection Act of 1977) and §2074.2 and §2075.5 (California Endangered Species Act of 1984) of the Fish and Game Code, relating to listing of Endangered, Threatened and Rare species of plants and animals.

SE = state listed as endangered: any species, subspecies, or variety of plant or animal that are in serious danger of becoming extinct throughout all, or a significant portion, of their range.

ST = state listed as threatened: any species, subspecies, or variety of plant or animal that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future.

United States Forest Service (USFS):

FSS = Forest Service sensitive: those plant and animal species identified by a Regional Forester that are not listed or proposed for listing under the ESA and for which population viability is a concern, as evidenced by: (a) significant current or predicted downward trends in population numbers or density or (b) significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution."

United States Bureau of Land Management (BLM):

BLMS = BLM sensitive: those plant and animal species on BLM administered lands and that are (1) under status review by the USFWS/NMFS; or (2) whose numbers are declining so rapidly that federal listing my become necessary, or (3) with typically small and widely dispersed populations; or (4) those inhabiting ecological refugia or other specialized or unique habitats. BLM policy is to provide the same level of protection as USFWS candidate species.

California Native Plant Society (CNPS) Threat Ranks: The CNPS Threat Rank is an extension added onto the California Rare Plant Rank (CRPR) and designates the level of endangerment by a 1 to 3 ranking with 1 being the most endangered and 3 being the least endangered. A Threat Rank is present for all California Rare Plant Rank 1B's, 2's, 4's, and the majority of California Rare Plant Rank 3's. California Rare Plant Rank 4 plants are seldom assigned a Threat Rank of 0.1, as they generally have large enough populations to not have significant threats to their continued existence in California; however, certain conditions exist to make the plant a species of concern and hence be assigned a California Rare Plant Rank. In addition, all California Rare Plant Rank 1A (presumed extinct in California), and some California Rare Plant Rank 3 (need more information) plants, which lack threat information, do not have a Threat Rank extension.

0.1 = seriously endangered in California (over 80% of occurrences threatened / high degree and immediacy of threat)
0.2 = fairly endangered in California (20-80% occurrences threatened / moderate degree and immediacy of threat)

Sensitive Communities

No sensitive natural communities were identified on-site.

Wildlife

Wildlife observed on-site consisted of 2 mammal species—California ground squirrel (*Otospermophilus beecheyi)* and pocket gopher (*Thomomys sp.*)—and 13 bird species. A full list of wildlife species observed on-site is included in Table 2 of the biological survey (see Appendix D).

Sensitive Wildlife

No sensitive animal species were observed during the March 2016 survey. A single sensitive animal species, Cooper's hawk (*Accipiter cooperii*), a CDFW Watch List species when nesting, was observed during the August 2019 survey.

As detailed in Table 5.3-2, the CNDDB identified eight sensitive animal species within two miles of the project site. Habitat on-site was evaluated for suitability for each species. One of the species, western mastiff bat, was evaluated as having low potential to occur on-site. Western mastiff bat roosts in crevices in cliff faces, high buildings, trees, and tunnels. Tall trees and buildings are present on-site, but the surrounding area is developed. Additionally, the buildings appear to be maintained and closed off. The remaining seven species were assessed as having very low potential to occur on-site due to the lack of suitable habitat.

Table 5.3-2 Special Status Wildlife Species with Potential to Occur On-Site

Scientific Name	Common Name	Status	General Habitat Description	Potential to Occur On-Site
Eucyclogobius newberryi	Tidewater goby	FE, SSC	Brackish water habitats along the California coast from Agua Hedionda Lagoon, San Diego Co. to the mouth of the Smith River. Found in shallow lagoons and lower stream reaches, they need fairly still but not stagnant water and high oxygen levels.	Very low; no suitable habitat.
Aspidoscelis hyperythra	Orangethroat whiptail	SSC, FSS	Inhabits low-elevation coastal scrub, chaparral, and valley-foothill hardwood habitats. Prefers washes and other sandy areas with patches of brush and rocks. Perennial plants necessary for its major food-termites.	Very low; no suitable habitat.
Emys marmorata	Western pond turtle	BLMS, SSC, FSS	A thoroughly aquatic turtle of ponds, marshes, rivers, streams & irrigation ditches, usually with aquatic vegetation, below 6000 feet elevation. Need basking sites and suitable (sandy banks or grassy open fields) upland habitat up to 0.5 km from water for egg-laying.	Very low; no suitable habitat.
Phrynosoma blainvillii	Coast horned lizard	BLMS, SSC	Frequents a wide variety of habitats, most common in lowlands along sandy washes with scattered low bushes. Open areas for sunning, bushes for cover, patches of loose soil for burial & abundant supply of ants and other insects.	Very low; typical suitable habitat not present.
Aimophila ruficeps canescens	Southern California rufous-crowned sparrow	WL	Resident in Southern California coastal sage scrub and sparse mixed chaparral. Frequents relatively steep, often rocky hillsides with grass and forb patches.	Very low; no suitable habitat.
Polioptila californica californica	Coastal California gnatcatcher	FT, SSC	Obligate, permanent resident of coastal sage scrub below 2500 feet in Southern California. Low, coastal sage scrub in arid washes, on mesas and slopes. Not all areas classified as coastal sage scrub are occupied.	Very low; no suitable habitat.

Table 5.3-2 Special Status Wildlife Species with Potential to Occur On-Site

Scientific Name	Common Name	Status	General Habitat Description	Potential to Occur On-Site
Vireo bellii pusillus	Least Bell's vireo	FE, SE	Summer resident of Southern California in low riparian in vicinity of water or in dry river bottoms; below 2000 feet. Nests placed along margins of bushes or on twigs projecting into pathways, usually willow, Baccharis, mesquite.	Very low; no suitable habitat.
Eumops perotis californicus	Western mastiff bat	BLMS, SSC	Many open, semi-arid to arid habitats, including conifer and deciduous woodlands, coastal scrub, grasslands, chaparral, etc. Roosts in crevices in cliff faces, high buildings, trees and tunnels.	Low; tall trees and buildings are present on-site but the surrounding area is developed. Also, the buildings appear to be maintained and closed off.

Source: VCS Environmental 2016, 2021.

Legend:

Federal Endangered Species Act (ESA) Listing Codes: Federal listing is pursuant to the Federal Endangered Species Act of 1973, as amended (ESA).

FE = federally listed as endangered: any species, subspecies, or variety of plant or animal that is in danger of extinction throughout all or a significant portion of their range.

FT = federally listed as threatened: any species, subspecies, or variety of plant or animal that is considered likely to become endangered throughout all or a significant portion of its range within the foreseeable future.

California Endangered Species Act (CESA) Listing Codes: State listing is pursuant to § 1904 (Native Plant Protection Act of 1977) and §2074.2 and §2075.5 (California Endangered Species Act of 1984) of the Fish and Game Code, relating to listing of Endangered, Threatened and Rare species of plants and animals.

SE = state listed as endangered: any species, subspecies, or variety of plant or animal that are in serious danger of becoming extinct throughout all, or a significant portion, of their range.

ST = state listed as threatened: any species, subspecies, or variety of plant or animal that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future.

California Department of Fish and Wildlife (CDFW):

SSC = species of special concern: status applies to animals which 1) are declining at a rate that could result in listing, or 2) historically occurred in low numbers and known threats to their persistence currently exist. The CDFW has designated certain vertebrate species as "species of special concern" because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction.

Fully protected: animal species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock.

WL = watch list: these birds have been designated as "Taxa to Watch" in the California Bird Species of Special Concern report. The report defines "Taxa to Watch" as those that are not on the current special concern list that (1) formerly were on the 1978 (Remsen 1978) or 1992 (CDFG 1992) special concern lists and are not currently listed as state threatened and endangered; (2) have been removed (delisted) from either the state or federal threatened and endangered lists (and remain on neither), or (3) are currently designated as "fully protected" in California.

United States Forest Service (USFS):

FSS = Forest Service sensitive: those plant and animal species identified by a Regional Forester that are not listed or proposed for listing under the ESA and for which population viability is a concern, as evidenced by: (a) significant current or predicted downward trends in population numbers or density or (b) significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution."

United States Bureau of Land Management (BLM):

BLMS = BLM sensitive: those plant and animal species on BLM administered lands and that are (1) under status review by the USFWS/NMFS; or (2) whose numbers are declining so rapidly that federal listing my become necessary, or (3) with typically small and widely dispersed populations; or (4) those inhabiting ecological refugia or other specialized or unique habitats. BLM policy is to provide the same level of protection as USFWS candidate species.

Wildlife Movement Corridors

The study area is not within any contiguous native habitat corridors and is unlikely to function as a wildlife corridor or wildlife movement area due to the proximity of major roads and residential development. The site is bordered to the north by Pacific Island Drive, to the east by Alicia Parkway, to the south by Crown Valley Parkway, and to the west by residences.

Jurisdictional Waters and Wetlands

The project site is not considered to contain jurisdictional waters of the United States, as defined by the USACE pursuant to Section 404 of the Clean Water Act, or jurisdictional waters of the State as defined by the CDFW pursuant to Sections 1600 to 1603 of the California Fish and Game Code. There are a number of features on-site that appear to be designed for the management of storm flows but are not considered jurisdictional:

- Portions of concrete drainage ditches along the bottom of the manufactured slope along the western and northwestern edge of the project site that drain to the toe of the slope onto the nonnative grassland.
- Concrete drainage ditches and storm drains within the developed portion of the site to transmit runoff to the storm drain system.
- Individual storm-drain openings south of the county maintenance facility in the northern portion of the site.
- A swale at the southern edge of the nonnative grassland with no evidence of defined hydrology (stream bed/banks or ordinary high water mark) that appears to be designed to collect sheet flows from on-site runoff and prevent storm flows from washing into the adjacent parking lot and County Library. The swale slopes to the west. There is corrugated metal standpipe at the west end of the swale, which appears to transmit water directly to the storm drain system.
- A concrete inlet at the southern end of the toe of the manufactured slope on the west side of the project site, which appears to be designed to gather storm flows draining off the manufactured slope and transmit flows directly to the storm drain system.

No water was present during the site visits, and there is no evidence of defined hydrology (stream bed/banks, ordinary high water mark, etc.) in the project site. There were a couple of mulefat (*Baccharis salicifolia*) plants and a small patch of Pennsylvania bittercress (*Oligosperma pensylvanica*) observed during the March 2016 survey near the standpipe at the west end of the swale; however, due to the very localized occurrence of these plants and lack of any other hydrologic indication, this is not considered jurisdictional waters. No other characteristic wetland or riparian vegetation was found on-site.

5.3.2 Thresholds of Significance

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

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

B-2 Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

B-3 Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

B-4 Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites.

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

B-6 Conflict with the provisions of an adopted habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

5.3.3 Plans, Programs, and Policies

PPP BIO-1 **Special-Status Species.** The FESA, administered by the USFWS, prohibits unlawful "take" of any listed species (16 U.S. Code Sections 1531–1544). The CESA, administered by CDFW, prohibits "take" of any listed species (California Fish and Game Code, Section 86).

PPP BIO-2 The proposed project will implement the requirements of Sections 9-1-81, 9-1-92.3, and 9-1-93.3 of the Laguna Niguel Municipal Code.

5.3.4 Environmental Impacts

5.3.4.1 METHODOLOGY

VCS Environmental conducted a biological survey and prepared a corresponding report in March 2016. On August 13, 2019, VCS Environmental conducted a subsequent biological survey at the project site to document whether field conditions are consistent or have changed since the March 2016 biological survey. The biological surveys included vegetation/land cover mapping, jurisdictional delineation review, and observations of plants and wildlife species. The project site was surveyed on March 4, 2016, from 8:50 am to 11:30 am and on August 13, 2019, between 8:15 am and 10:15 am.

Habitat and Wildlife Assessment

Prior to the field survey, available literature and databases were reviewed regarding sensitive habitats and special status plant and wildlife species. Reviewed and consulted literature and databases focused on Orange County, California, and included the CNDDB, a CDFW species database that inventories status and locations of rare plants and wildlife in California. The CNDDB was used to identify any sensitive plant communities and special status plants and wildlife that may exist within the project site and surrounding area.

The biological survey was conducted on foot by methodically walking the property in all accessible areas. The existing habitat, land uses, and vegetation on-site were assessed to identify areas exhibiting potentially suitable habitat to support sensitive plants, sensitive wildlife, and breeding birds.

The habitats within the project site were characterized, and the potential to support sensitive species was evaluated. Plant field guides were used to assist with identification of plant species during the field survey. Plant species encountered during the field survey were identified and recorded in field notes, except for some of the ornamental plant species in the landscaping.

The methods used to detect and identify wildlife included sight and vocalizations. Binoculars and wildlife field guides were used to aid in the identification of observed wildlife. All wildlife species or their sign encountered during the field survey were identified and recorded in field notes.

The site was surveyed again on August 13, 2019, from 8:15 am to 10:15 am to document whether field conditions are consistent with or have changed from the biological assessment in March 2016. This biological survey included vegetation/land cover mapping and observations of plants and wildlife species.

Jurisdictional Waters Assessment

The project site was assessed for jurisdictional wetland waters of the United States on March 4, 2016, and August 13, 2019. To determine the presence of a wetland, three indicators are required: (1) hydrophytic vegetation, (2) hydric soils, and (3) wetland hydrology. The methodology published in the USACE's 1987 Wetland Delineation Manual and the Arid West Supplement sets the standards for meeting each of the three indicators, which normally require that 50 percent or more dominant plant species typical of a wetland, soils exhibiting characteristics of saturation, and hydrological indicators. Projects with impacts to waters of the U.S. are regulated under Sections 401 and 404 of the Clean Water Act.

Additionally, the project site was assessed for jurisdictional nonwetland waters of the U.S., which are typically determined through the observation of an ordinary high water mark and are defined as the

> ... line on the shore established by the fluctuation of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. (33 Code of Federal Regs. Section 329.11)

Furthermore, the project site was assessed for jurisdictional waters of the State, which are defined as the

> ... body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation. (14 Cal. Code of Regs. Section 1.72)

Waters of the State are regulated by CDFW through Section 1600 et seq. of the California Fish and Game Code.

5.3.4.2 IMPACT ANALYSIS

The following impact analysis addresses thresholds of significance. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.3-1: Development of the proposed project could impact the Cooper's hawk, a California Department of Fish and Wildlife Watch List species when nesting, and white-tailed kite, a Sensitive Species. [Threshold B-1]

No sensitive plant species or sensitive habitat were documented on site during the 2016 and 2019 field surveys. Additionally, the project site is not within USFWS critical habitat for federally threatened and endangered species.

One sensitive wildlife species was observed during the August 2019 field survey, the Cooper's hawk (*Accipiter cooperii*), a CDFW Watch List species when nesting. Additionally, there is foraging and nesting potential on-site for other avian species, including sensitive species such as the white-tailed kite (*Elanus leucurus*), which is California Fully Protected. The eucalyptus trees and other ornamental trees provide habitat for nesting, and the open space areas provide habitat for foraging. Construction of the project could disturb raptor or songbird nests on the project site, and such an impact would be considered potentially significant. Potential impacts to nesting birds, including sensitive raptor species such as Cooper's hawk and white-tailed kite, would be mitigated to less than significant through the implementation of Mitigation Measure BIO-1.

Level of Significance Before Mitigation: Potentially Significant.

Impact 5.3-2: 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 California Department of Fish and Game or U.S. Fish and Wildlife Service. [Threshold B-2]

No sensitive natural communities or riparian habitat were identified on-site. Additionally, no jurisdictional waters were present on-site during the site surveys.

Level of Significance Before Mitigation: No Impact.

Impact 5.3-3: The project would not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. [Threshold B-3]

No jurisdictional waters were present on-site during the site surveys. Therefore, regulatory permits—including a Section 1600 Streambed Alteration Agreement from the CDFW, Section 401 Water Quality Certification from the Regional Water Quality Control Board, and Section 404 Nationwide Permit from the USACE—are not considered necessary for any impacts to those resources.

Level of Significance Before Mitigation: No Impact.

Impact 5.3-4: The proposed project would not interfere with wildlife movement or a wildlife corridor; however, the proposed project could interfere with a native wildlife nursery site. [Threshold B-4]

The site is not in any contiguous native habitat corridors and is unlikely to provide any significant function as a wildlife corridor or wildlife movement area due to the proximity of major roads and residential development. The site is bordered to the north by Pacific Island Drive, to the east by Alicia Parkway, to the south by Crown Valley Parkway, and to the west by residential housing. Therefore, development of the proposed project would not interfere with an established wildlife corridor.

The 2016 field survey determined that the project site contains suitable breeding, nesting, and/or roosting habitat for breeding bird species. The 2019 field survey observed one sensitive animal species, the Cooper's hawk (a CDFW Watch List species when nesting). Therefore, development of the proposed project would result in a potentially significant impact with regard to impeding the use of native wildlife nursery sites. Potential impacts to nesting birds, including sensitive raptor species such as Cooper's hawk and white-tailed kite, would be mitigated to less than significant through the implementation of Mitigation Measure BIO-1.

Level of Significance Before Mitigation: Potentially Significant.

Impact 5.3-5: The proposed project would not conflict with any policies or ordinance protecting biological resources or conflict with an adopted Habitat Conservation Plan, National Community Conservation Plan, or other approved local, regional, or state habitat conservation plan [Thresholds B-5 and B-6]

The project site is within the boundaries of the Orange County Central and Coastal NCCP/HCP. However, the City is not a participant or permittee to this NCCP/HCP, and development within the City is not subject to the requirements of the NCCP/HCP. Thus, the proposed project would not conflict with any provisions related to such plans, and impacts would be less than significant.

Section 9-1-81 (Hillside Protection) of the Laguna Niguel Municipal Code applies to development of existing parcels having an average slope gradient of 10 percent or more, which are parcels in the steep hillside areas of the City. The project site is not subject to the Hillside Protection Ordinance. While the project site does have grade change, the project site is not considered a hillside and does not have an average gradient of 10 percent or more. Therefore, this code section does not apply.

Sections 9-1-92.3(h) and 9-1-93.3(d) provide local regulations for tree preservation, requiring that the construction and design of new projects incorporate preservation measures to protect existing trees in place to the greatest extent possible. According to these sections, if the decision-making authority determines that significant existing trees cannot be saved, it may require their replacement with new specimen-size trees having a cumulative trunk diameter of up to two times the cumulative trunk diameter of the trees to be removed. Based on the existing conditions of the project site, City staff has determined the existing trees on the project site are not considered significant. The trees are common nonnative species and do not create a substantial aesthetic or habitat value for the City. The proposed project includes a detailed landscape plan, including the placement of several specimen trees at highly visible locations within the proposed development area. The

landscape plan also proposes enhanced landscaping along the project perimeter. For these reasons staff has determined the existing trees are not significant and not subject to the strict replacement requirements. The analysis of these code sections will be presented to the decision-makers for a final decision in accordance with the code section. Since the project would comply with these code sections and no physical impacts to the environment would occur, impacts would be less than significant.

Level of Significance Before Mitigation: With the implementation of PPP BIO-2, Impact 5.3-5 would be Less Than Significant.

5.3.5 Cumulative Impacts

The area considered for cumulative impacts to biological resources is the Orange County Central-Coastal NCCP/ HCP Subregion. The project site has not been identified as an area proposed for inclusion in the NCCP Reserve System and has not been identified as having high, medium, or low conservation value for the NCCP. No sensitive plants, riparian habitat, or other sensitive natural communities occur on-site. No jurisdictional waters of the State or US are found on-site either. Given the built-out nature of the project area and the site's proximity to major roads and residential development, the project site also does not provide any significant function as a wildlife corridor or wildlife movement area. However, development of the proposed project could impact the Cooper's hawk, a CDFW Watch List species when nesting. Similar to the proposed project, each cumulative project would be reviewed on a case-by-case basis for its impact on biological resources and would be expected to comply with existing regulations and local and regional plans, ordinances, and policies protecting biological resources, such as those listed in PPP BIO-1 and PPP BIO-2. Additionally, similar to the proposed project, each related project would be expected to implement mitigation measures, which would reduce each project's impact. Thus, the proposed project would not make a cumulatively considerable contribution to a potentially significant cumulative biological resources impact.

5.3.6 Level of Significance Before Mitigation

Upon implementation of regulatory requirements and standard conditions of approval, some impacts would be less than significant: 5.3-2, 5.3-3, and 5.3-5.

Without mitigation, these impacts would be **potentially significant**:

- **Impact 5.3-1** Development **of** the proposed project could impact the Cooper's hawk, a California Department of Fish and Wildlife Watch List species when nesting, and white-tailed kite, a Sensitive Species.

- **Impact 5.3-4** Development of the proposed project could disturb breeding grounds for bird species.

5.3.7 Mitigation Measures

Impact 5.3-1 and Impact 5.3-4

BIO-1 Prior to removal of potentially suitable nesting habitat for raptors or songbirds, the project applicant shall demonstrate to the satisfaction of the City of Laguna Niguel that the following has been or will be accomplished:

The project applicant and construction contractor shall schedule all vegetation removal activities outside the nesting season to avoid potential impacts to nesting birds, including sensitive raptor species such as Cooper's hawk and white-tailed kite. The nesting season is February 15 to September 15 for songbirds and January 15 to September 15 for raptors.

If vegetation removal cannot be avoided during the nesting season—January 15 through September 15—the project applicant shall have a qualified biologist survey all potential nesting vegetation within the property for nesting birds prior to commencing vegetation removal. If no nesting activities are observed, work activities may begin. If an active bird nest is located, the nest site should be avoided, and a buffer should be marked/flagged at an appropriate distance in all directions. The buffer distance is dependent on the nesting bird species, typically 500 feet for endangered, threatened, and candidate species and all raptors, and 100 to 300 feet for other species, as determined appropriate by the qualified biologist. No work shall occur within the buffer area until after the nest becomes inactive, or unless a qualified biologist monitors the nest during construction activities within the buffer and does not observe any signs of stress or erratic behavior that indicate a negative effect on nesting. The biologist shall inform construction personnel of the location of active nest(s) and required avoidance measures. The survey results shall be submitted to the City of Laguna Niguel Planning Division for review and approval.

5.3.8 Level of Significance After Mitigation

Impacts 5.3-2, 5.3-3, and 5.3-5 were less than significant prior to mitigation. With the incorporation of Mitigation Measure BIO-1 and adherence to regulatory compliance measures, Impact 5.3-1 and Impact 5.3-4 would be reduced to a less than significant level.

5.3.9 References

VCS Environmental. 2016, March (updated November 30, 2021). Biological Survey and Jurisdictional Delineation at the AGORA Arts District Downtown Project Site.

———. 2019, August (updated November 30, 2021). Town Center Project Site, City of Laguna Niguel, Orange County, California. Biological survey memorandum.

5. Environmental Analysis
BIOLOGICAL RESOURCES

This page intentionally left blank.