4.3 Biological Resources

The analysis contained in this section is based on the *Biological Resources Assessment* prepared by Carlson Strategic Land Solutions (CSLS) dated May 12, 2021. Details on these assessments are provided in the subsections below and in Appendix D.

4.3.1 Setting

The Project site is located off Crown Valley Parkway and Playa Blanca in the City of Laguna Niguel. The Project site is located generally north of Coast Highway and west of Interstate 5 (I-5) and south of the State Route 73 (SR-73), between Club House Drive and Alicia Parkway (Figures 1.A through 1.C).

4.3.2 Existing Conditions

The Project site is heavily vegetated with ornamental species such as acacia (*Acacia sp.*) and scattered laurel sumac (*Malosma laurina*). The Project site contains paved streets and associated infrastructure, as well as concrete terrace drains. The Project site is currently vacant.

Vegetation Communities

Field surveys were conducted in 2019 and 2021 and based on those surveys the Project site is heavily vegetated with acacia (*Acacia sp.*) and scattered laurel sumac (*Malosma laurina*). The acacia is non-native ornamental species often planted for erosion control. The laurel sumac, while a California native species, is not considered sensitive or protected.

Species Observed

Wildlife species observed during the field surveys include: California quail (*Callipepla californica*), turkey vulture (*Cathartes aura*), red tailed Hawk (*Buteo jamaicensis*), American crow (*Corvus brachyrhynchos*), black phoebe (*Sayornis nigricans*), mourning dove (*Zenaida macroura*), northern mockingbird (*Mimus polyglottos*), and song sparrow (*Melospiza melodia*). The wildlife observed is not considered federal or state sensitive or protected.

4.3.3 Related Policies and Regulations

Federal Regulations

Federal Endangered Species Act of 1973

The Federal Endangered Species Act of 1973 (16 U.S.C. §§ 1531, et seq.) and subsequent amendments (FESA), provide for the conservation of endangered and threatened species and the habitats on which they depend. A federally endangered species is one facing extinction throughout all or a significant portion of its geographical 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 a "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.

Federal Clean Water Act (33 USC §§ 1251 through 1376)

The Clean Water Act (CWA) provides guidance for the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters.

Section 401 of the CWA requires that a project proponent obtain a federal permit for activities resulting in a discharge to Waters of the United States (WoUS). The project proponent must obtain a state certification that the discharge complies with other provisions of CWA. The Regional Water Quality Control Board (RWQCB) administers the certification program in California.

Section 402 of the CWA establishes a permitting system for the discharge of any pollutant (except dredge or fill material) into WoUS.

Section 404 of the CWA establishes a permit program administered by US Army Corps of Engineers (USACE) to regulate the discharge of dredged or fill material into WoUS, including wetlands. Implementing regulations by USACE are found at 33 CFR Parts 320–330. Guidelines for implementation are referred to as the Section 404(b)(1) Guidelines and were developed by the Environmental Protection Agency in conjunction with USACE. (40 CFR Part 230). The guidelines allow the discharge of dredged or fill material into the aquatic system only if there is no practicable alternative that would have less adverse impacts.

Wetlands and Other Waters of the United States

Aquatic resources, including riparian areas, wetlands, and certain aquatic vegetation communities, are considered sensitive biological resources and can fall under the jurisdiction of several regulatory agencies.

The USACE exerts jurisdiction over WoUS, including all waters that are subject to the ebb and flow of tide; wetlands and other waters such as lakes, rivers, streams (including intermittent or ephemeral streams), mudflats, sandflats, sloughs, prairie potholes, vernal pools, wet meadows, playa lakes, or natural ponds; and tributaries of the above features. The extent of WoUS is generally defined as that portion that falls within the limits of the ordinary high-water mark. Typically, the ordinary high-water mark corresponds to the 2-year flood event.

Wetlands, including swamps, bogs, seasonal wetlands, seeps, marshes, and similar areas, are defined by USACE as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (33 CFR Part

328.3(b); 40 CFR Part 230.3(t)). Indicators of three wetland parameters (hydric soils, hydrophytic vegetation, and wetlands hydrology) as determined by field investigation must be present for a site to be classified as a wetland by USACE.

Migratory Bird Treaty Act

According to the Migratory Bird Treaty Act (MBTA) administered by the United States Fish and Wildlife Service (USFWS), the removal of active nests, eggs, or nestlings is unlawful. A violation of the MBTA may occur on, but is not limited to, projects that involve clearing or grubbing of migratory bird nest habitat during the nesting season, and demolition or reconstruction where bird nests are present. The nesting season time period is especially important due to the heightened presence of eggs or young that are essential to the survival of the species.

State Regulations

California Endangered Species Act

California Endangered Species Act (CESA) (Fish and Game Code §§2050, et seq.) establishes that it is the policy of the State to conserve, protect, restore, and enhance threatened or endangered species and their habitats. CESA mandates that State agencies should not approve projects that would jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy. CESA requires State lead agencies to consult with the California Department of Fish and Wildlife (CDFW) during the CEQA process to avoid jeopardy to threatened or endangered species. CESA prohibits any person from taking or attempting to take a species listed as endangered or threatened. (Fish and Game Code, § 2080). Section 2080 of the Fish and Game Code provides the permitting structure for CESA. The "take" of a State-listed endangered or threatened species or candidate species will require incidental take permits as authorized by the CDFW.

California Fish and Game Code

Various sections of the California Fish and Game Code provide protection to nesting birds, birds of prey, and species protected under the MBTA. Section 3503 of the Fish and Game Code prohibits the destruction of the nest or eggs of any bird as otherwise provided for in the Fish and Game Code. Fish and Game Code Section 3503.5 specifically extends this protection to the nests or eggs of any bird of prey (species of the Orders *Falconiformes* [falcons, hawks, eagles, ospreys] *or Strigiformes* [owls]). The unlawful take, sale, or purchase (whole or in part) of any aigrette or egret, osprey, bird of paradise, goura, or numidi is prohibited under Fish and Game Code Section 3505. Fish and Game Code Section 3513 prohibits the unlawful to take or possession of any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Local Regulations

Orange County Natural Community Conservation Plan, Central and Coastal Subregion

The Natural Community Conservation Act, codified at Fish and Game Code Sections 2800–2840, authorizes the preparation of National Community Conservation Plans (NCCP) to protect natural communities and species while allowing a reasonable amount of economic development. The NCCP/HCP, which was reviewed and approved by CDFW (at that time, California Department of Fish and Game) and USFWS in 1996, addresses the protection and management of coastal sage scrub habitat and coastal sage scrub-obligate species, as well as other covered habitats and species, and mitigates anticipated impacts on those habitats and species on a programmatic, subregional level rather than on a project-by-project, single-species basis. A habitat reserve in excess of 37,000 acres was established for the protection of coastal sage scrub, other upland habitats, and primarily coastal sage scrub-dependent species identified in the NCCP/HCP. Specifically, through take authorization granted with the adoption of the NCCP/HCP, USFWS and CDFW authorized take of 39 identified species of plants and wildlife (including covered and conditionally covered species; i.e., coastal California gnatcatcher). Furthermore, the NCCP/HCP contains requirements for adaptive management, interim management, and funding management for the reserve as well as procedures and minimization measures related to the take of identified species and habitat. Thus, the NCCP/HCP provides for the protection and management of a broad range of plant and wildlife populations while providing certainty to the public and affected landowners regarding the location of future development and open space in the sub-region. The City is not a participating entity of the NCCP/HCP.

Laguna Niguel General Plan

The Laguna Niguel General Plan (LNGP) contains goals, policies, and plans that are intended to guide land use and development decisions. The Open Space/Parks/Conservation Element was designed to ensure the conservation of important biological resources. Relevant policies are listed below.

Open Space/Parks/Conservation Element

Goal 5. Conservation of Natural resource areas of community and regional significance.

- **Policy 5.1.** Conserve sensitive species and plant communities and wildlife habitats to the maximum extent feasible through open space dedication and easements, creative site design and other workable mitigation actions.
- **Policy 5.3.** Review the Plant Communities Map for all new development proposals.

4.3.4 Thresholds of Significance

Criteria for determining the significance of impacts related to biological resources are based on criteria contained in Appendix G of the State CEQA Guidelines and the City's CEQA Manual. The proposed Project could have a significant impact on the environment if it would result in any of the following.

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

Threshold BIO-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?*

Threshold BIO-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?*

Threshold BIO-4 *Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?*

Threshold BIO-5 *Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?*

Threshold BIO-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?*

Methodology

Biological Survey

Prior to the field survey, available literature, historical aerials, and databases were reviewed regarding sensitive habitats, special status plants, and wildlife species within the vicinity. CSLS reviewed and consulted literature and databases focused on Orange County, California, including the California Natural Diversity Database (CNDDB) and the USFWS Critical Habitat database. The CNDDB is a CDFW species account 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 have potential to occur within the Project site.

The USFWS's online service for information regarding Final Critical Habitat designation within California was reviewed to determine if the Study Area is within any species designated Critical Habitat. The USFWS regulatory mapping process for the designation of critical habitat is an imprecise, broad-based, mapping exercise of areas that may or may not include constituent elements of the critical habitat designation. Due to this approach in mapping, large areas are designated as critical habitat regardless of the existing habitat, and as a result may include developed areas, such as buildings, roads, hardscape, and other such facilities, as well as natural habitats.

Jurisdictional Waters

The Project site was assessed for jurisdictional Waters of the United States and Waters of the State. 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 *U.S. Army Corps of Engineers 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 be present.

Additionally, jurisdiction over non-wetland Waters of the U.S. is typically determined through the observation of an Ordinary High Water Mark (OHWM), which is 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." Projects with impacts to Waters of the U.S. are regulated under Sections 401 and 404 of the Clean Water Act.

Waters of the State are regulated by CDFW through Section 1600, et seq., of the California Fish and Game Code. The limits of Waters of the State 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." Therefore, the limits extend from the channel bed to the top of the bank, with the addition of the canopy of any riparian habitat associated with the watercourse.

4.3.5 Project Design Features and Standard Conditions of Approval

PDF BIO-1 The Project is to be subdivided into two lots, Lot 1 and Lot A. Lot 1 includes the 2-acre residential area and Lot A includes the 2.2-acre area of open space which

consists of the previous remediated landslide and includes the 30-foot earthen "buttress" (a design feature approved for geotechnical assurance of future landslide), planted erosion control, and installed storm drain system. Since Lot A is a lettered lot on the tentative tract map and no residential development is allowed on lettered lots, no residential development would occur on the remediated hillside.

4.3.6 Environmental Impact Evaluation

Threshold BIO-1 *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?*

No Impact. General biological surveys within the Project site and surrounding 300-foot buffer were conducted on July 18, 2019, and then again on May 12, 2021. The Project site is currently characterized by a vacant lot that consists of a graded non-native vegetation slope cover, concrete terrace drains, and paved streets with associated infrastructure. Specifically, the vegetation includes scattered laurel sumac and mature non-native acacia species planted for erosion control.

Special Status Plant and Wildlife Species

The Project site was assessed for sensitive habitats, special status plants and special status wildlife species. Assessment of the Project site began with a review of relevant literature on the biological resources of the site and the surrounding vicinities. The CNDDB, USFWS critical habitat maps, federal register listings, and species data provided by the USFWS, CDFW, and the California Native Plant Society (CNPS) was reviewed for all pertinent information regarding the localities of known observations of sensitive species and habitats in the vicinity of the site.

Based on the two surveys and available literature, the Project site does not contain any suitable habitat for special status plants or wildlife. The Project site is not located within mapped USFWS Critical Habitat. The closest mapped USFWS Critical Habitat is for the coastal California gnatcatcher (*Polioptila californica californica)* located 0.3 miles to the south of the Project site. The Project site consists of non-native vegetation cover and does not contain any suitable habitat for the species. Furthermore, no listed plants or wildlife species occur within the Project boundary based on the CNDDB occurrences as shown on Figure 4.3.A CNDDB Occurrences and Critical Habitat Map.

No special-status species, plant or wildlife, are anticipated to be directly affected by the Project due to the lack of suitable habitat and known occurrences on the Project site. Therefore, no impacts to sensitive or special-status plant or wildlife species would result from the proposed Project, and no mitigation is required.

Furthermore, while the City does not participate in the NCCP/HCP, the Project site is not located within a proposed reserve area and does not contain any sensitive habitat or sensitive plant or wildlife species. The Project site consists of non-native vegetation cover. The closest NCCP/HCP Reserve mapped area is within the Aliso and Wood Canyon Wilderness Park located approximate 0.44 miles to the west of the Project site.

Threshold BIO-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?*

No Impact. Based on the site visits, database review, and review of historical aerials, the Project site does not contain any waters that meet the definition of WoUS or Waters of the State. Therefore, no impacts would occur on state or federally protected wetlands or waters as a result of the proposed Project, and no mitigation is required.

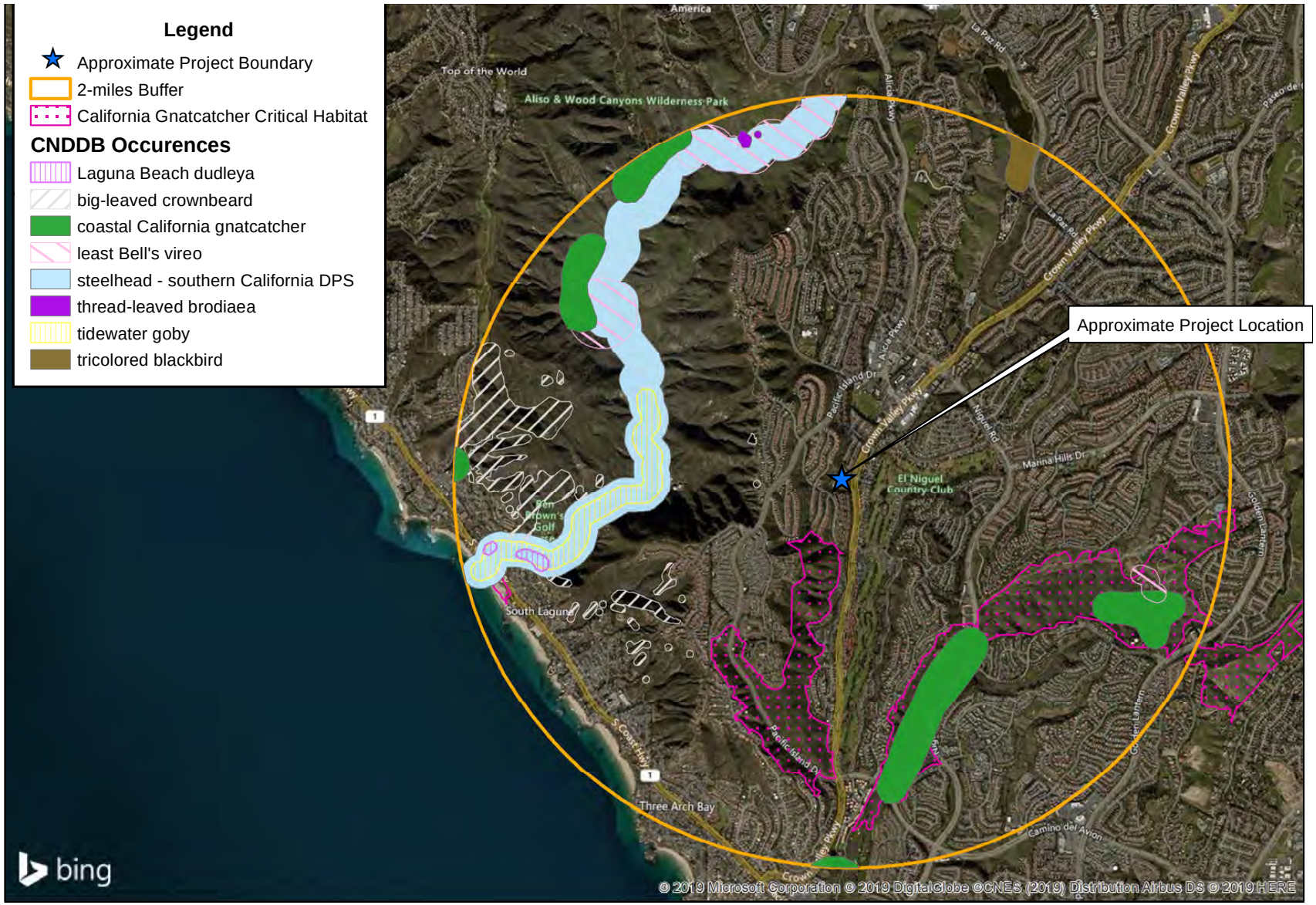
Threshold BIO-3 *Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?*

No Impact. Based on the site visits, database review, and review of historical aerials, no jurisdictional wetlands meeting the definition of a WoUS or Water of the State were observed within or near the Project site. Therefore, no impacts on state or federally protected wetlands or waters would occur as a result of the proposed Project, and no mitigation is required.

Threshold BIO-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?*

Less than Significant Impact with Mitigation. The Project site contains suitable habitat for nesting and foraging bird species and with the implementation of Project Design Feature **PDF BIO-1**, Lot A would maintain 2.2 acres of suitable nesting and foraging habitat as Lot A is a lettered lot on the tentative tract map and residential home construction is not allowed on lettered lots. Development of approximately 2 acres of the Project site would impact the suitable nesting and foraging habitat.

The Project site is surrounded by residential homes to the north, west, and south, and Crown Valley Parkway to the east. The Project does not function or provide opportunity for a wildlife corridor. Furthermore, the Project site does not provide opportunity or impede the use of native wildlife nursery sites. No impacts would occur to wildlife corridors and not mitigation is required.



Source: Carlson Strategic Land Solutions (05/2021).

Figure 4.3.A CNDDB Occurrences and Critical Habitat Map

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Nesting Bird Species

Direct impacts associated with vegetation removal may occur to all avian species covered under the Migratory Bird Treaty Act (MBTA) with the removal of potential nesting and foraging habitat causing a potential significant impact. The MBTA protects nesting activities of both native and non-native bird species. Under the MBTA it is unlawful to harm, harass, or take a nest. If Project construction is scheduled to occur during the typical breeding bird season (January 15 through August 31 for raptors and February 15 through August 31 for all other avian species), direct removal of vegetation and indirect short-term noise effects to birds that may forage or nest on-site or within the buffer area may occur. In order to reduce direct and indirect impacts on nesting birds, if vegetation removal and/or construction activities were to occur during nesting bird season, a pre-construction nesting bird survey would be required.

The Project site contains suitable habitat for nesting and foraging bird species, therefore in accordance with the MBTA, if work is to be done during the typical avian breeding season (February 15 to August 31 for songbirds; January 15 to August 31 for raptors), a qualified biologist shall conduct a nesting bird survey within all suitable habitat, on-site and within 300-feet surrounding the site (as feasible), to identify any potential nesting activity within 3 days before start of construction as outlined within **Mitigation Measure MM BIO-1**.

If active nests are identified, the biologist would establish buffers around the vegetation (500 feet for raptors and sensitive species, 200 feet for non-raptors/non-sensitive species). All work within these buffers would be halted until the nesting effort is finished (i.e. the juveniles are surviving independent from the nest). The on-site biologist would review and verify compliance with these nesting boundaries and would verify the nesting effort has finished. Work can resume within these areas when no other active nests are found. Alternatively, a qualified biologist may determine that construction can be permitted within the buffer areas and would develop a monitoring plan to prevent any impacts while the nest continues to be active (eggs, chicks, etc.). Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.

Pre-construction nesting bird surveys as outlined within **Mitigation Measure MM BIO – 1** would ensure protection against direct impacts associated with vegetation removal or indirect impacts associated with construction related noise impacts for avian species covered under the MBTA during the typical nesting bird season.

Implementation of **MM BIO-1** would ensure compliance with the MBTA and California Fish and Game Code and reduce potential impacts to a less than significant level.

Threshold BIO-5 *Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?*

No Impact. Section 9-1-93.3(d) of the City's Zoning Code provides 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. Additionally, if the decision-making authority determines that significant existing trees cannot be saved, they may require 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.

The Project site consists primarily of non-native acacia species, scattered laurel sumac, and a mix of nonnative trees along the right of way of Crown Valley Parkway and the northeast corner of the site. Based on the conditions of the Project site, the existing trees species are nonnative, numerous in the City, and are not considered significant; therefore, the tree species do not create a substantial aesthetic for the City per Section 9-1-93.3(d). The proposed Project includes a detailed landscape plan, including the placement of several specimen trees throughout the site. In addition, existing trees and landscaping along Crown Valley Parkway are to remain in place as they are within the right of way. As a result, the Project is consistent with the City's Tree Preservation Code. Therefore, no impacts would occur, and no mitigation is required.

Furthermore, the proposed Project is subject to fuel modification requirements to reduce the potential threat of wildland fire. All required fuel modification located on the Project site is accounted for in the assessment of impacts to existing vegetation. The fuel modification plan has been approved by the Orange County Fire Authority. Therefore, no impacts would occur, and no mitigation is required.

Threshold BIO-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?*

No Impact. The Project site is within the NCCP/HCP, County of Orange Central and Coastal Subregion. However, the site is not within or adjacent to lands designated as "reserve" within the NCCP/HCP. The nearest designated NCCP/HCP reserve lands are approximately 0.44 miles west of the site at the Aliso and Wood Canyon Wilderness Park. The site is mapped as grassland within the NCCP/HCP. Furthermore, based on the field survey, the Project site consists primarily of non-native acacia species, scattered laurel sumac, and developed roads. Moreover, the City is not a participating entity and is therefore not subject to the established policies of the NCCP/HCP. Therefore, implementation of the proposed Project would not have an impact on an adopted HCP, NCCP, or other approved local, regional, or State habitat conservation plan and no mitigation is required.

4.3.7 Cumulative Impacts

Less than Significant Impact with Mitigation. Cumulative impacts are the incremental effects of an individual project when viewed in connection with the effects of past, current, and probable future projects within the cumulative impact area for biological resources, which is considered the City boundaries. The Project site consists primarily of non-native acacia species, scattered laurel sumac, and developed roads. The Project site does not contain any sensitive plants or wildlife, and none were observed during the field surveys. Based on the survey results, the proposed Project would not result in impacts on nesting birds and mitigation measure **MM BIO-1** is designed to ensure that no nesting birds are occupying the site during construction. The Project site does not contain any jurisdictional features as defined by Waters of the United States and Waters of the State. Therefore, the proposed Project would not contribute to the loss of natural habitat in the City and would not contribute to the cumulative loss of biological resources within the City. Impacts to biological resources would be less than cumulatively significant. No mitigation is required.

4.3.8 Summary of Mitigation Measures

The following mitigation measure has been developed to reduce potentially significant construction impacts related to on-site nesting birds.

MM BIO-1 If construction is started during the typical avian breeding season ((February 15 to August 31 for songbirds; January 15 to August 31 for raptors), a qualified biologist shall conduct a nesting bird survey within all suitable habitat, on-site and within 300-feet surrounding the site (as feasible), to identify any potential nesting activity within 3 days before start of construction.

If active nests are identified, the biologist would establish buffers around the vegetation (500 feet for raptors and sensitive species, 200 feet for non-raptors/non-sensitive species). All work within these buffers would be halted until the nesting effort is finished (i.e. the juveniles are surviving independent from the nest). The on-site biologist would review and verify compliance with these nesting boundaries and would verify the nesting effort has finished. Work can resume within these areas when no other active nests are found. Alternatively, a qualified biologist may determine that construction can be permitted within the buffer areas and would develop a monitoring plan to prevent any impacts while the nest continues to be active (eggs, chicks, etc.). Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.

4.3.9 Significant Environmental Impacts

Impacts to biological resources can be mitigated to less than significant levels by incorporating **Mitigation Measure MM BIO-1** as described in Section 4.3.5. With implementation of **MM BIO-1**, impacts would be reduced to less than significant and no further mitigation is required.

4.3.10 References

14 CCR 15000–15387 and Appendix A–L. Guidelines for Implementation of the California Environmental Quality Act, as amended.

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