



## 5.3 BIOLOGICAL RESOURCES

This section describes the existing biological resources on the project site, and the potential adverse impacts associated with implementation of the proposed project. An analysis of compliance with all Federal, State, and local regulations and policies regarding biological resources has also been conducted. This section is primarily based upon the Habitat Assessment of the project site (*Habitat Assessment for the Lido House Hotel*, prepared by RBF Consulting, January 7, 2014). The Habitat Assessment is included in their entirety in Appendix 11.2, *Habitat Assessment*.

### 5.3.1 EXISTING SETTING

#### EXISTING SITE CONDITION

The project site is relatively flat with no areas of significant topographic relief at an approximate elevation of 10 feet above mean sea level. According to the United States Department of Agriculture (USDA) Natural Resources Conservation Service Soil Survey, surface soils on and adjacent to the project site are mapped as beaches. The project site has been developed and no longer supports native soils.

The project site is bordered by retail and restaurants uses to the north; surface parking, office and institutional uses to the east; a mix of commercial uses to the south; and retail and restaurant uses to the west. The project site is currently occupied by the former Newport Beach City Hall Complex which includes the existing Newport Beach Fire Department Fire Station No. 2. The City relocated City Hall staff from the site to the new Civic Center located at Newport Center in April of 2013. The City continues limited use of various buildings at the former City Hall Complex and Fire Station No. 2 remains staffed and in operation.

#### VEGETATION

The project site contains no natural plant communities and is developed or landscaped with non-native/ornamental vegetation. In addition, the project site is subject to continual disturbances associated with transportation, institutional, and recreational land uses. The project site is characterized by buildings comprising the former City Hall Complex and supports only introduced landscaping that complements the existing municipal office development.

On-site and surrounding land uses have completely eliminated the naturally occurring habitats from the project site reducing the suitability of the habitat to support sensitive plant and wildlife species. The proposed project footprint is limited to existing developed areas.

#### WILDLIFE

Wildlife activity was low during the habitat assessment with a limited number of avian species being observed. Avian species observed during the habitat assessment included American crow (*Corvus brachyrhynchos*), lesser goldfinch (*Spinus psaltria*), house finch (*Carpodacus mexicanus*), yellow-rumped warbler (*Setophaga coronata*), black phoebe (*Sayornis nigricans*), Anna's hummingbird (*Calypte anna*), European starling (*Sturnus vulgaris*), and pigeon (*Columba livia*). No reptiles, mammals, fish, or



amphibians were observed during the survey. Existing development on the project site and surrounding area has precluded a robust population of wildlife species from inhabiting the project site.

## NESTING BIRDS

No active nests or birds displaying nesting behaviors were observed during the habitat assessment. However, the ornamental vegetation within the landscaped area has the potential to provide suitable nesting opportunities for avian species.

## MIGRATORY CORRIDORS AND LINKAGES

Existing development has removed natural plant communities that once occurred on the project site and in the general vicinity of the project site, and as a result, the project site does not support any migratory corridors and linkages. The proposed development would be confined to existing developed areas and would not disrupt or have any adverse effects to migratory corridors or linkages that may occur in the general vicinity of the project site.

## JURISDICTIONAL AREAS

After conducting the habitat assessment, no drainages or isolated wetland features were observed within the proposed project footprint that would be considered jurisdictional by the U.S. Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), or California Department of Fish and Wildlife (CDFW). Therefore, the proposed project will not result in any impacts to USACE, RWQCB, or CDFW jurisdictional areas.

## SENSITIVE BIOLOGICAL RESOURCES

The California Natural Diversity Database (CNDDDB) was queried for reported locations of listed and sensitive plant and wildlife species as well as sensitive natural plant communities on the Newport Beach USGS 7.5-minute quadrangle. A search of published records of these species was conducted within this quadrangle using the CNDDDB Rarefind 5 online software. The habitat assessment evaluated the conditions of the habitat(s) within the boundaries of the project site to determine if the existing plant communities at the time of this survey have the potential to provide suitable habitat(s) for sensitive plant and wildlife species.

The literature search identified seventeen (17) sensitive plant species, twenty-six (26) sensitive wildlife species, and four (4) sensitive plant communities as having the potential to occur within the Newport Beach USGS 7.5-minute quadrangle. The CNDDDB identified sensitive plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability/quality of suitable habitat, and known distributions. Species determined to have the potential to occur on-site are presented in Attachment C, *Sensitive Habitats and Potentially Occurring Sensitive Plant and Wildlife Species*, of [Appendix 11.2](#). Attachment C provides details of the analysis and field surveys regarding the potential occurrence of listed and sensitive plant and wildlife species within the project site.



## Sensitive Plants

Seventeen (17) sensitive plant species are known to occur in the Newport Beach quadrangle. As the project site and surrounding properties are developed, they no longer support native soils or naturally occurring habitats. The project site does not provide suitable habitat for any of the identified sensitive plant species. Based on habitat requirements for specific species, availability and quality of habitats needed by each sensitive plant species, it was determined that the project site does not provide suitable habitat that would support any of these special status plant species.

## Special Trees

As documented in the November 2012 Initial Study/Negative Declaration (IS/ND) for the City of Newport Beach City Hall Reuse Project, six “special trees” were identified on the City Hall Complex. The six “special trees” include: two (2) *Ficus microcarpa* (Chinese Banyan) trees located between Newport Boulevard and City Hall buildings, also known as “Landmark Trees”; one (1) *Ficus benjamina* (weeping fig) tree that was dedicated to William Lawrence Covert<sup>1</sup> in 1964; two (2) *Pinus halepensis* (Aleppo pine) trees that were dedicated for Walter Knott<sup>2</sup> and for the California Bicentennial; and one (1) *Harpephyllum caffrum* (wild plum) that was dedicated for the United States Bicentennial in 1976 and it is named “The Freedom Tree.”

These six “special trees” are not native and do not have any formal protection under the federal or state endangered species acts. However, these trees have the potential to provide suitable nesting opportunities for avian species and are protected under local ordinances.

## Sensitive Wildlife

Twenty-six (26) sensitive wildlife species are known to occur in Newport Beach quadrangle. As the project site and surrounding properties are developed, they no longer support naturally occurring habitats. The project site does not provide suitable habitat for any of the identified sensitive plant species. Based on habitat requirements for specific species, availability and quality of habitats needed by each sensitive wildlife species, it was determined that the project site does not provide suitable habitat that would support any of these special status wildlife species.

## Sensitive Plant Communities

The CNDDDB lists four (4) sensitive plant communities (Southern Coastal Salt Marsh, Southern Cottonwood Willow Riparian Forest, Southern Dune Scrub, and Southern Foredunes) as having the potential to occur within the Newport Beach quadrangle. None of these plant communities were observed on the project site during the habitat assessment, and have been precluded from the general area by existing development.

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<sup>1</sup> William Covert was a long-time City employee who served as the City’s tree superintendent and General Services Director in the 1950s and 1960s.

<sup>2</sup> Walter Knott is the co-founder of Knott’s Berry Farm.



## HABITAT ASSESSMENT METHODOLOGY

A literature review and records search was conducted to determine which sensitive biological resources have the potential to occur on the project site or within the general vicinity. In addition to the literature review, a general habitat assessment of the project site was conducted. The field survey provided information of the existing conditions on the site and potential for sensitive biological resources to occur.

### Literature Review

Prior to conducting a field visit, a literature review and records search was conducted for sensitive biological resources potentially occurring on or within the vicinity of the project site. Previously recorded occurrences of special status plant and wildlife species and their proximity to the project site were determined through a query of the CNDDB Rarefind 5 software, the California Native Plant Society's (CNPS) Electronic Inventory of Rare, Threatened, and Endangered Plants of California, Calflora Database, compendia of special-status species published by the CDFW, and United States Fish and Wildlife Service (USFWS) species listings.

### Habitat Assessment and Field Investigation

The entire project site was surveyed on foot to document the extent of each plant community, and to assess the presence of suitable habitat for sensitive species. Plant communities were identified on aerial photographs and were ground-truthed by walking meandering transects through the plant communities and along the boundaries between plant communities. All plant and wildlife species were observed, as well as dominant plant species within each plant community, were recorded in a standardized field notebook. Notes were taken during the survey of all plant and wildlife species observed and jurisdictional features were identified, if present. Observations of wildlife species included scat, trails, tracks, burrows, nests, and visual observation. In addition, site characteristics such as soil condition, topography, presence of indicator species, slope, condition of the plant communities, hydrology, and evidence of human use of the site were noted.

The plant communities were evaluated for their potential to provide suitable habitat for sensitive plant and wildlife species as well as the identification of corridors and linkages that may support the movement of wildlife through the area. Special attention was paid to sensitive habitats and/or undeveloped, natural areas having a higher potential to support sensitive plant and wildlife species.

### 5.3.2 REGULATORY SETTING

Threatened and endangered species are listed by the USFWS and CDFW. In California, three agencies generally regulate activities within inland streams, wetlands, and riparian areas: USACE; the CDFW; and the RWQCB. The USACE Regulatory Branch regulates activities pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. The CDFW regulates activities under CDFW Code Sections 1600-1607. The RWQCB regulates activities pursuant to Section 401 of the CWA and the California Porter-Cologne Act.



## FEDERAL

### Federal Endangered Species Act

The Federal Endangered Species Act (FESA) of 1973 (50 CFR 17) is intended to protect plants and animals that have been identified as being at risk of extinction and classified as either threatened or endangered. FESA also regulates the “taking” of any endangered fish or wildlife species, per Section 9 of the Act. A responsible agency or individual landowners are required to submit to a formal consultation with the USFWS to assess potential impacts to listed species as the result of a development project, pursuant to FESA Sections 7 and 10. The USFWS is required to make a determination as to the extent of impact to a particular species a project would have. If it is determined that potential impacts to a species would likely occur, measures to avoid or reduce such impacts must be identified.

### Federal Clean Water Act

#### Section 404

The USACE maintains regulatory authority over the discharge of dredged or fill material into the waters of the United States, pursuant to Section 404 of the CWA. The USACE and U.S. Environmental Protection Agency (EPA) define “fill material” as any “material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of the waters of the United States.” Fill material may include sand, rock, clay, construction debris, wood chips, or other similar “materials used to create any structure or infrastructure in the waters of the United States.” The term “waters of the United States” includes the following:

- All waters that have, are, or may be used in interstate or foreign commerce (including sightseeing or hunting), including all waters subject to the ebb and flow of the tide;
- Wetlands;
- All waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds; the use, degradation or destruction of which could affect interstate or foreign commerce;
- All impoundments of water mentioned above;
- All tributaries of waters mentioned above;
- Territorial seas; and
- All wetlands adjacent to the waters mentioned above.

In the absence of wetlands, the USACE’s jurisdiction in non-tidal waters extends to the Ordinary High Water Mark (OHWM), which is defined as “...*that line on the shore established by the fluctuations 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 area* (33 CFR 328.3(e)).”

Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands are jointly defined by the USACE and EPA as “*those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions* (33 CFR 328.3(b)).”



## **Section 401**

The RWQCB is the primary agency responsible for protecting water quality in California. The RWQCB regulates discharges to surface waters under the Federal CWA and the California Porter-Cologne Water Quality Control Act. The RWQCB's jurisdiction extends to all waters of the State and to all waters of the United States, including wetlands (isolated and non-isolated conditions). Through 401 Certification, Section 401 of the CWA allows the RWQCB to regulate any proposed Federally-permitted activity that may affect water quality. Such activities include the discharge of dredged or fill material, as permitted by the USACE, pursuant to Section 404 of the CWA. The RWQCB is required to provide "certification that there is reasonable assurance that an activity which may result in the discharge to waters of the United States will not violate water quality standards," pursuant to Section 401. Water Quality Certification must be based on the finding that proposed discharge will comply with applicable water quality standards, which are given as objectives in each of the RWQCB's Basin Plans.

In addition, pursuant to the Porter-Cologne Water Quality Control Act, the State is given authority to regulate waters of the State, which are defined as any surface water or groundwater, including saline waters. As such, any person proposing to discharge waste into a water body that could affect its water quality must first file a Report of Waste Discharge if a Section 404 does not apply. "Waste" is partially defined as any waste substance associated with human habitation, including fill material discharged into water bodies.

## **Coastal Zone Jurisdictional Areas**

A comprehensive classification system of wetlands and deepwater habitats (also referred to as the "Cowardin Wetland Classification System") was developed for the USFWS in order to create the National Inventory of Wetlands. Under this hierarchical system, classification is based on hydrologic regime, vegetative community, and to a lesser extent on water chemistry and soils. The classification includes both wetlands and deepwater habitats. The Cowardin system includes several layers of detail for wetland classification. Overall, the Cowardin system and the USACE Section 404 regulations define wetlands differently. The most significant difference is that the Cowardin system defines wetlands to include mudflats and other wet areas that lack vegetation. According to the classification, the USFWS' definition of wetlands varies from the Coastal Act. The Coastal Act defines "wetlands" as "lands within the Coastal Zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens." In addition, the Coastal Act defines environmentally sensitive areas in a manner that would include rivers, streams or other aquatic habitat.

## **STATE**

### **California Endangered Species Act**

The CESA of 1984, in combination with the California Native Plant Protection Act of 1977, regulates the listing and take of plant and animal species designated as endangered, threatened, or rare within the State. The State of California also lists Species of Special Concern based on limited distribution, declining populations, diminishing habitat, or unusual scientific, recreational, or



educational value. The CDFW is given the responsibility by the State to assess development projects for their potential to impact listed species and their habitats. State listed special-status species are also addressed through the issuance of a 2081 permit (Memorandum of Understanding).

### **California Fish and Wildlife Code**

Within the State of California, fish, wildlife, and native plant resources are protected and managed by the CDFW. The Fish and Game Commission and/or the CDFW are responsible for issuing permits for the take or possession of protected species. The following sections of the Fish and Wildlife Code address the protected species: Section 3511 (birds); Section 4700 (mammals); Section 5050 (reptiles and amphibians); and, Section 5515 (fish).

### **California Department of Fish and Wildlife Lake and Streambed Alteration Agreements**

Historically, the State of California regulated activities in rivers, streams, and lakes pursuant to *California Fish and Wildlife Code* Sections 1600-1607; however, on January 1, 2004, legislation went into effect that repealed Fish and Wildlife Code Sections 1600-1607 and instead, added *Fish and Wildlife Code* Sections 1600-1616. This action eliminated the separation between private/public notifications (previously 1601/1603). Section 1602 of the *Fish and Wildlife Code* requires any person, state, or local governmental agency, or public utility to notify the CDFW before commencing any activity that would result in one or more of the following:

- Substantially obstruct or divert the natural flow of a river, stream, or lake;
- Substantially change or use any material from the bed, channel, or bank of a river, stream, or lake; or
- Deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake.

*Fish and Wildlife Code* Section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes within the State of California. While the jurisdictional limits are similar to the limits defined by USACE regulations, CDFW jurisdiction includes riparian habitat supported by a river, stream, or lake with or without the presence or absence of saturated soil conditions or hydric soils. CDFW jurisdiction generally includes to the top of bank of the stream, or to the outer limit of the adjacent riparian vegetation (outer drip line), whichever is greater. Any project that occurs within or in the vicinity of a river, stream, lake, or their tributaries typically requires notification of the CDFW, including rivers or streams that flow at least periodically or permanently through a bed or channel with banks that support fish or other aquatic life, and watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.

### **Migratory Bird Treaty Act of 1918**

The Federal Migratory Bird Treaty Act (MBTA) was originally drafted to end the commercial trade in bird feathers popular in the latter part of the 1800s. The MBTA makes it illegal to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 C.F.R. Part 10, including feathers, nests, eggs, or other avian products. The USFWS is responsible for enforcing the MBTA.



## California Environmental Quality Act

In addition to specific Federal and State statutes for the protection of threatened and endangered species, *California Environmental Quality Act (CEQA) Guidelines* Section 15380(b) provides that a species not listed on the Federal or State list of protected species may be considered rare or endangered if it can be shown that the species meets certain specified criteria. Modeled after definitions in the FESA and the section of the *California Fish and Wildlife Code* dealing with rare or endangered plants and animals, these criteria are given in *CEQA Guidelines* Section 15380(b). The effect of Section 15380(b) is to require public agencies to undertake reviews to determine if projects would result in significant effects on species not listed by either the USFWS or CDFW (i.e., candidate species). Through this process, agencies are provided with the authority to protect additional species from the potential impacts of a project until the appropriate government agencies have an opportunity to designate the species as protected, if deemed appropriate.

## NATURAL COMMUNITY CONSERVATION PLAN

The Natural Community Conservation Act (the Act), codified at *Fish and Wildlife Code* Sections 2800-2840, authorizes the preparation of Natural Community Conservation Plans (NCCPs) to protect natural communities and species, while allowing a reasonable amount of economic development.

The Central and Coastal Orange County NCCP and Habitat Conservation Plan (HCP) is a comprehensive, multi-jurisdictional habitat conservation plan focusing on conservation of species and their associated habitats in Orange County, primarily protecting coastal sage scrub habitat and the species that utilize this habitat. The NCCP/HCP and its Implementation Agreement cover thirteen (13) cities, including Newport Beach.

## CRITICAL HABITAT

Critical Habitat refers to the specific areas within the geographical area of a species, at the time it is listed which include those physical or biological features that are essential to the survival and eventual recovery of a species. Maintenance of these physical and biological features requires special management considerations or protection, regardless of whether individuals or the species are present or not. The project site is not located within federally designated Critical Habitat.

### 5.3.3 IMPACT THRESHOLDS AND SIGNIFICANCE CRITERIA

The issues presented in the Initial Study Environmental Checklist (Appendix G of the *CEQA Guidelines*) have been utilized as thresholds of significance in this Section. Accordingly, biological resources impacts resulting from the implementation of the proposed project may be considered significant if they would result 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 Wildlife or U.S. Fish and Wildlife Services (refer to Impact Statement BIO-1);





- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Services (refer to Impact Statement BIO-2);
- 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 (refer to Impact Statement BIO-3);
- 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 (refer to Impact Statement BIO-4);
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance (refer to Impact Statement BIO-5); and
- Conflict with provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan (refer to refer to Impact Statement BIO-6).

*CEQA Guidelines* Section 15065(a), *Mandatory Findings of Significance*, states that a project may have a significant effect on the environment if it would have “... 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 substantially 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, although they would result in an adverse alteration of existing conditions, they would not substantially diminish or result in the permanent loss of an important resource on a population- or region-wide basis.

*CEQA Guidelines* Section 15380, *Endangered, Rare or Threatened Species*, states that a lead agency can consider a non-listed species to be Rare, Threatened, or Endangered for the purposes of CEQA if the species can be shown to meet the criteria in the definition of Rare, Threatened, or Endangered. For the purposes of this discussion, the current scientific knowledge on the population size and distribution for each special status species was considered according to the definitions for Rare, Threatened, and Endangered listed in CEQA Guidelines Section 15380.

Based on these standards, the effects of the proposed project have been categorized as either a “less than significant impact” or a “potentially significant impact.” Mitigation measures are recommended for potentially significant impacts. If a potentially significant impact cannot be reduced to a less than significant level through the application of mitigation, it is categorized as a significant unavoidable impact.



## 5.3.4 IMPACTS AND MITIGATION MEASURES

### SPECIAL STATUS PLANT AND WILDLIFE SPECIES

#### **BIO-1 PROJECT IMPLEMENTATION WOULD NOT HAVE AN ADVERSE EFFECT, EITHER DIRECTLY OR THROUGH HABITAT MODIFICATIONS, ON SPECIES IDENTIFIED AS A CANDIDATE, SENSITIVE, OR SPECIAL STATUS.**

*Impact Analysis:* Based on the Habitat Assessment prepared for the project, sensitive plant or wildlife species were not observed on the project site, and the plant communities on-site do not have the potential to provide suitable habitat for any of the sensitive plant and wildlife species known to occur in the general area.

The majority of the project site and immediate surrounding areas have converted natural habitats into transportation, institutional, commercial, residential, and recreational land uses. The project site contains no natural plant communities, and has been developed and landscaped with non-native/ornamental vegetation. Based on habitat requirements for specific species, availability and quality of habitats needed by sensitive plant species, the habitat assessment determined that the project site does not provide suitable habitat for sensitive plant and/or wildlife species known to occur within the general area. No special-status plant or wildlife species were observed on the project site and none were determined to have a potential to occur. Additionally, no CDFW sensitive plant communities occur on the project site.

The proposed construction activities would be limited to the existing developed/disturbed areas. As the subject property is devoid of any native habitat in its developed condition, implementation of the proposed project would not impact any species identified as a candidate, sensitive, or special status. Therefore, project implementation would have a less than significant impact involving special status wildlife species.

*Mitigation Measures:* No mitigation measures are required.

*Level of Significance:* Less Than Significant Impact

### SENSITIVE NATURAL COMMUNITIES

#### **BIO-2 PROJECT IMPLEMENTATION WOULD NOT HAVE AN ADVERSE EFFECT ON RIPARIAN HABITAT OR OTHER SENSITIVE NATURAL COMMUNITY.**

*Impact Analysis:* As concluded in the Habitat Assessment, there is no riparian habitat, or other sensitive natural community present on the project site. Additionally, there is no designated or proposed critical habitat within the project boundaries. Therefore, implementation of the proposed project would result in no impact in this regard.

*Mitigation Measures:* No mitigation measures are required.



*Level of Significance:* Less Than Significant Impact.

## JURISDICTIONAL WATERS AND WETLANDS

### **BIO-3 PROJECT IMPLEMENTATION WOULD NOT HAVE A SUBSTANTIAL ADVERSE EFFECT ON JURISDICTIONAL WATERS OR WETLANDS.**

*Impact Analysis:* The project Habitat Assessment did not identify any drainages or isolated wetland features within the project footprint that would be considered jurisdictional by the USACE, RWQCB, or CDFW. Additionally, no regulatory approvals from the USACE, RWQCB, or CDFW would be required. Therefore, the proposed project would not result in any impacts to USACE, RWQCB, or CDFW jurisdictional waters or wetlands. It should be noted that no California Coastal Commission (CCC) waters/wetlands are located within the project site; however, the proposed project would require a Coastal Development Permit; refer to Section 5.1, *Land Use and Relevant Planning*.

*Mitigation Measures:* No mitigation measures are required.

*Level of Significance:* Less Than Significant Impact.

## MIGRATORY BIRDS

### **BIO-4 IMPLEMENTATION OF THE PROPOSED PROJECT COULD INTERFERE WITH THE MOVEMENT OF A NATIVE RESIDENT OR MIGRATORY SPECIES.**

*Impact Analysis:* The project site is developed and does not currently provide a corridor for wildlife movement in the area. The proposed project would be subject to compliance with General Plan Policies NR 10.1 and NR 10.3, which would serve to ensure that all future development cooperates with the regulatory framework and complies with applicable policies and programs, as well as all policies specified in the General Plan EIR Section 4.3, *Biological Resources*, which are intended to protect biological resources. Removal of mature trees or vegetation that has the potential to provide suitable nesting opportunities for avian species would be subject to the conditions prescribed of the MBTA that ensure the protection of avian species during the nesting species.

The ornamental vegetation within the landscaped areas has the potential to provide suitable nesting opportunities for avian species. Disturbing or destroying active nests is a violation of the MBTA. Nesting activity typically occurs from mid-February to mid-August. The removal of vegetation during the breeding season is considered a potentially significant impact. Therefore, the project would be required to comply with Mitigation Measure BIO-1, which would be accomplished in one of two ways. First, efforts would be made to schedule all vegetation removal activities outside of the nesting season (typically February 15 to August 15) to avoid potential impacts to nesting birds. This would ensure that no active nests would be disturbed and that habitat removal could proceed rapidly. Second, if initial vegetation removal occurs during the nesting season, all suitable habitat would be thoroughly surveyed for the presence of nesting birds by a qualified biologist before commencement of clearing. If any active nests are detected, a buffer of at least 300 feet would be



delineated, flagged, and avoided until the nesting cycle is complete, as determined by the biological monitor, to minimize impacts. Therefore, with implementation of Mitigation Measure BIO-1, impacts to migratory birds would be reduced to less than significant levels.

***Mitigation Measures:***

BIO-1 To the extent feasible, all vegetation removal activities shall be scheduled outside of the nesting season (typically February 15 to August 15) to avoid potential impacts to nesting birds. However, if initial vegetation removal occurs during the nesting season, all suitable habitat shall be thoroughly surveyed for the presence of nesting birds by a qualified biologist prior to commencement of clearing. If any active nests are detected, a buffer of at least 300 feet for raptors shall be delineated, flagged, and avoided until the nesting cycle is complete as determined by the City.

***Level of Significance:*** Less Than Significant With Mitigation Incorporated.

## TREE PRESERVATION ORDINANCE

### BIO-5 CONFLICT WITH ANY LOCAL POLICIES OR ORDINANCES PROTECTING BIOLOGICAL RESOURCES, SUCH AS A TREE PRESERVATION POLICY OR ORDINANCE.

***Impact Analysis:*** As designated by the City of Newport Beach, six “special trees” are located on-site. The “special trees” include:

- *Ficus microcarpa* (two trees located between Newport Boulevard and the City Hall buildings);
- *Pinus halepensis* (dedicated to Walter Knott);
- *Pinus halepensis* (dedicated for the California Bicentennial);
- *Harpephyllum kaffrum* (dedicated for the United States Bicentennial in 1976 [the Freedom Tree]; and
- *Ficus benjamina* (dedicated to William Lawrence Covert).

The two existing ficus trees (*Ficus microcarpa*) are in good condition. The *Pinus halepensis* tree (dedicated to Walter Knott) is not in pristine growing condition due to age, past pruning, and the proximity the adjacent pine tree. The City Arborist has indicated that because the species is not a good candidate for relocation, it would likely not survive. The *Pinus halepensis* tree that was dedicated for the California Bicentennial is also not a good candidate for relocation as the tree would likely not survive. The *Harpephyllum kaffrum* tree that was dedicated for the United States Bicentennial in 1976 (the Freedom Tree) is in a good growing condition; however, the species is not a good candidate for relocation as it would also not likely survive transplantation. The *Ficus benjamina* tree that was dedicated to William Lawrence Covert is a reasonable candidate for relocation.

Based on the project plans, the following two existing “special trees” would be retained: the two *Ficus microcarpa* trees located between Newport Boulevard and the City Hall buildings. The *Ficus benjamina* (dedicated to William Covert), the *Pinus halepensis* tree (dedicated to Walter Knott), the *Pinus halepensis* tree (dedicated for the California Bicentennial), and the *Harpephyllum kaffrum* (the



Freedom Tree) would be removed. Local Council Policy G-1 (Retention or Removal of City Trees) protects these designated trees. However, Council Policy G-1 also designates *Ficus microcarpa* and the *Ficus benjamina* as “problem trees” because of excessive hardscape or utility damage due to its excessive root system. In addition to Council Policy G-1, Chapter 7.26 (Protection of Natural Habitat for Migratory and Other Waterfowl) of the Municipal Code also provides guidance for tree maintenance and preservation. Mitigation Measure BIO-2 through BIO-4 provide guidance for relocating and rededicating the special trees that cannot be retained. Implementation of Mitigation Measures BIO-2 through BIO-4 would reduce impacts to special trees to a less than significant level.

***Mitigation Measures:***

BIO-2 The City shall locate an existing *Ficus benjamina* tree or other suitable tree into a City park and dedicate the tree in the name of William Lawrence “Billy” Covert. Should an appropriate tree not be found, the City shall attempt to transplant the existing tree or plant a new tree of the same variety at an appropriate location. The re-dedicated tree shall have a permanent marker or plaque. Every effort shall be made to involve the Covert family in this process.

BIO-3 Because the Freedom Tree also cannot be effectively transplanted, the City shall locate an existing tree in a very prominent location within a City park or at the new Civic Center and dedicate it as The Freedom Tree. An appropriate permanent marker or plaque shall be provided and the dedication should be accomplished with community and veterans groups’ participation.

BIO-4 Because the Walter Knott Tree and the California Bicentennial Tree cannot be effectively transplanted, the City shall locate an existing tree within a City park and dedicate it in the name of Walter and Cordelia Knott. The City shall also locate an existing tree in a prominent location within a City park or at the new Civic Center and dedicate it in honor of the State of California. The re-dedicated trees shall have permanent markers and every effort shall be made to involve the Knott family and the community in the process.

***Level of Significance:*** Less Than Significant Impact.

**CONFLICT WITH HABITAT CONSERVATION PLAN**

**BIO-6 CONFLICT WITH PROVISIONS OF AN ADOPTED HABITAT CONSERVATION PLAN, NATURAL COMMUNITY CONSERVATION PLAN, OR OTHER APPROVED LOCAL, REGIONAL, OR STATE HABITAT CONSERVATION PLAN.**

***Impact Analysis:*** As described above, the project site has been developed and no longer supports native habitats. As such, the proposed project site does not support any sensitive plant or wildlife species, or sensitive plant communities subject to the provisions of the NCCP/HCP. All of the vegetation on the project site are introduced landscape varieties and none are considered to be biologically significant. Implementation of the proposed project would not result in any impacts to or conflicts with the NCCP/HCP.



**Mitigation Measures:** No mitigation measures are required.

**Level of Significance:** Less Than Significant Impact.

### 5.3.5 CUMULATIVE IMPACTS

- **PROJECT IMPLEMENTATION WOULD NOT HAVE AN ADVERSE EFFECT, EITHER DIRECTLY OR THROUGH HABITAT MODIFICATIONS, ON SPECIES IDENTIFIED AS A CANDIDATE, SENSITIVE, OR SPECIAL STATUS.**
- **PROJECT IMPLEMENTATION WOULD NOT HAVE AN ADVERSE EFFECT ON RIPARIAN HABITAT OR OTHER SENSITIVE NATURAL COMMUNITY.**
- **PROJECT IMPLEMENTATION WOULD NOT HAVE A SUBSTANTIAL ADVERSE EFFECT ON JURISDICTIONAL WATERS OR WETLANDS.**
- **IMPLEMENTATION OF THE PROPOSED PROJECT COULD INTERFERE WITH THE MOVEMENT OF A NATIVE RESIDENT OR MIGRATORY SPECIES.**
- **CONFLICT WITH ANY LOCAL POLICIES OR ORDINANCES PROTECTING BIOLOGICAL RESOURCES, SUCH AS A TREE PRESERVATION POLICY OR ORDINANCE.**
- **CONFLICT WITH PROVISIONS OF AN ADOPTED HABITAT CONSERVATION PLAN, NATURAL COMMUNITY CONSERVATION PLAN, OR OTHER APPROVED LOCAL, REGIONAL, OR STATE HABITAT CONSERVATION PLAN.**

**Impact Analysis:** As concluded above, the project site is currently developed and no special-status plant or wildlife species were observed on the project site and none were determined to have a potential to occur. The project would also result in a less than significant impact to the movement of a native resident or migratory species with implementation of the Mitigation Measure BIO-1. The development sites of the proposed cumulative projects are fully improved and located in urbanized areas. Therefore, project implementation would not result in cumulatively considerable impacts to biological resources. Notwithstanding, as with the proposed project, all future cumulative development would undergo environmental review on a project-by-project basis, in order to evaluate potential impacts to biological resources and ensure compliance with the established regulatory framework. Cumulative impacts to biological resources within the City of Newport Beach would be mitigated on a project-by-project basis.

Project implementation would have no impact upon riparian habitat or other sensitive natural community. Therefore, project implementation would not result in cumulatively considerable impacts to riparian habitats or other sensitive natural communities.

Project implementation would have no impact upon jurisdictional waters or wetlands. Therefore, project implementation would not result in cumulatively considerable impacts to jurisdictional waters or wetlands.



With implementation of Mitigation Measures BIO-2 through BIO-4, implementation of the project would have a less than significant impact on the City designated “special trees” located on-site. Therefore, project implementation would not result in cumulatively considerable impacts to trees and would not conflict with the City’s tree preservation ordinance.

Project implementation would not conflict with the NCCP/HCP. All of the vegetation on the project site are introduced landscape varieties and none are considered to be biologically significant.

***Mitigation Measures:*** Refer to Mitigation Measures BIO-1 through BIO-4.

***Level of Significance:*** Less Than Significant With Mitigation Incorporated.

### **5.3.6 SIGNIFICANT UNAVOIDABLE IMPACTS**

Biological impacts associated with project implementation would be less than significant with incorporation of the recommended mitigation measures. No significant unavoidable impacts to biological resources would occur.



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