

## 4.3 BIOLOGICAL RESOURCES

This section describes the existing biological resources on and in the vicinity of the project site for the proposed Ganahl Lumber Project (proposed project); the potential impacts of the proposed project on those resources; and measures to avoid, minimize, and/or mitigate those impacts. The discussion and analysis provided in this section are based on the *Aquatic Resources Delineation Report* (February 2019) and the *Biological Technical Report* (December 2019) both prepared by ECORP Consulting Inc., and the *Existing Tree Inventory Report* (March 2018) prepared by Jim Borer, Certified Arborist #496. These technical reports are contained in Appendix C of this Environmental Impact Report (EIR).

### 4.3.1 Scoping Process

The City of San Juan Capistrano (City) received 11 comment letters during the public review period of the Initial Study/Notice of Preparation (IS/NOP). For copies of the IS/NOP comment letters, refer to Appendix A of this EIR.

Two comment letters included comments related to Biological Resources. The two letters from Tom and Jeannie Gronewald received on June 6, 2019, requested that pepper trees be planted at the project site boundary adjacent to the Capistrano Valley Mobile Estates to abate for the loss of ocean breeze that would occur upon construction of the buildings.

### 4.3.2 Methodology

#### 4.3.2.1 Literature Review

A literature review was conducted to determine the potential occurrence of special-status plant species and special-status animal species on or in the immediate vicinity of the project site. Database records for the *Dana Point*, *Laguna Beach*, *San Juan Capistrano*, *Canada Gobernadora*, *San Clemente*, and *San Onofre Bluff* United States Geological Survey (USGS) 7.5-minute quadrangles were examined using the California Natural Diversity Data Base (CNDDDB) and the California Native Plant Society's (CNPS) electronic inventory prior to the completion of the biological surveys. Sensitive species known by ECORP biologists to occur in the general area were also considered.

#### 4.3.2.2 Biological Surveys

Two biological field surveys of the project site were conducted by ECORP Biologist Lauren Simpson on September 12, 2017, and on December 14, 2018, to evaluate the biological resources present or potentially occurring on and in the vicinity of the project site. Both surveys were completed on foot and consisted of recording the landscape conditions as well as the flora and fauna species observed on the project site. During the 2017 survey, the ECORP Biologist also checked for the presence of potential areas subject to United States Army Corps of Engineers (USACE) and California Department of Fish and Wildlife (CDFW) jurisdiction.

**Jurisdictional Delineation Survey.** A field survey of the project site was conducted by ECORP Biologist Scott Taylor on December 18, 2018, to determine the location and extent of the potential Waters of the United States within the project site.

**Tree Survey.** A field survey of the project site was conducted by Jim Borer, a certified arborist, on March 6, 2018, to document the type, size, and condition of the mature specimen trees present on the project site.

### 4.3.3 Existing Environmental Setting

The project site is located within the southwestern portion of the City of San Juan Capistrano (City). The San Juan Creek Channel is located immediately west of the project site. The Los Angeles – San Diego – San Luis Obispo (LOSSAN) rail corridor is located immediately east of the project site. Both the San Juan Creek Channel and LOSSAN rail corridor are designated as General Open Space in the City’s General Plan. No other open space or natural habitat occurs in the general vicinity of the project site. In its existing condition, the approximately 17-acre project site is undeveloped with a portion consisting of crushed-rock gravel used for temporary vehicle storage. The northern portion of the site is undeveloped. The project site is currently surrounded by existing residential, commercial, mobile home park, and industrial uses. The project site is located within an area that is covered by the Orange County Southern Subregion Habitat Conservation Plan (OCSSHCP) but is located in an area identified as “developed” and is outside of the designated habitat reserve.

#### 4.3.3.1 Native and Nonnative Plant Species

The approximately 17-acre project site is currently characterized by an undeveloped gravel parking lot and ruderal vegetation. Primarily nonnative annual plant species are located on the site, which are typical of disturbed urban areas. Two existing red willow trees (*Salix laevigata*) are located on the project site, both of which would be removed as part of project implementation. According to the Existing Tree Inventory Report, the two existing trees would not be suitable for relocation due to their state of decay and structural decline.

#### 4.3.3.2 Native and Nonnative Animal Species

A number of animal species were present on the project site during the 2017 and 2018 biological site surveys. The animal species that were present are typical of those found in developed, suburban areas in the County. Table 4.3.A lists the native and nonnative animal species observed on the project site during the biological site survey.

The animal species listed in Table 4.3.A are adapted well to high levels of disturbance and urban environments. Although some animal species are expected to periodically move about the project site, besides the San Juan Creek Channel and LOSSAN rail corridor designated as open space uses to the west and east of the project site respectively, the site is surrounded by other development and does not function as a wildlife movement corridor or special linkage.

#### 4.3.3.3 Special-Status Plant Species

No special-status plant species were observed on the project site at the time of the biological site survey. However, three special-status plant species, Catalina mariposa lily, cliff malacothrix, and Coulter’s matilija poppy, have a low potential to occur on the project site in the small patches of California sagebrush scrub (*Artemesia Californica Shrubland Alliance*); however, none of these three species have been documented within 5 miles of the project site.

**Table 4.3.A: Animal Species Observed On Site**

Scientific Name	Common Name
<i>Sceloporus occidentalis</i>	western fence lizard
<i>Accipiter cooperii</i>	Cooper’s hawk
+ <i>Buteo jamaicensis</i>	red-tailed hawk
<i>Psaltriparus minimus</i>	bush tit
<i>Anas platyrhynchos</i>	mallard
<i>Aeronautes saxatalis</i>	white-throated swift
<i>Egretta thula</i>	snowy egret
+ <i>Charadrius vociferus</i>	killdeer
+ <i>Corvus brachyrhynchos</i>	American crow
~ <i>Corvus corax</i>	Common Raven
* <i>Columba livia</i>	rock pigeon
+ <i>Zenaidura macroura</i>	mourning dove
+ <i>Melospiza melodia</i>	song sparrow
~ <i>Zonotrichia leucophrys</i>	white-crowned sparrow
+ <i>Haemorhous mexicanus</i>	house finch
<i>Melospiza crissalis</i>	California towhee
<i>Petrochelidon pyrrhonota</i>	cliff swallow
~ <i>Setophaga coronata</i>	yellow-rumped warbler
<i>Picoides nuttallii</i>	Nuttall’s woodpecker
~ <i>Polioptila caerulea</i>	blue-gray gnatcatcher
<i>Sturnus vulgaris</i>	European starling
+ <i>Calypte anna</i>	Anna’s hummingbird
+ <i>Sayornis nigricans</i>	black phoebe
+ <i>Sayornis saya</i>	Say’s phoebe
<i>Thomomys bottae</i>	Botta’s pocket gopher (burrow)
<i>Procyon lotor</i>	North American raccoon (tracks)

Source: Biological Technical Report (ECORP Consulting, Inc., 2019; Appendix C)

- \* = Nonnative animal species
- + = species observed in 2017 and 2018
- ~ = species observed in 2018 only

#### 4.3.3.4 Special-Status Animal Species

No special-status animal species were observed on the project site at the time of the biological site survey. However, six special-status wildlife species, white-tailed kite, burrowing owl, California horned lark, coastal California gnatcatcher, western red bat, and San Diego desert woodrat, were determined to have a low-to-moderate potential to occur on the project site. As such, there is the potential for special-status species to occur on the site.

#### 4.3.3.5 Potential Jurisdictional Waters

According to the *Aquatic Resources Delineation*, no potential waters of the U.S. or CDFW jurisdictional areas are located on the project site. A ditch is located within the southern half of the project site that occasionally collects stormwater flows from the north and east of the site. However, this is not considered to be a water of the U.S. or a CDFW jurisdictional area as there are no indicators of water flow through this area. Although the project site does not contain state or

federally protected wetlands, the channelized San Juan Creek Channel, located immediately west of the project site, contains wetlands classified as Riverine and Freshwater Emergent Wetlands.<sup>1</sup>

#### 4.3.4 Regulatory Setting

##### 4.3.4.1 Federal Regulations

**United States Fish and Wildlife Service.** The United States Fish and Wildlife Service (USFWS), pursuant to the Federal Endangered Species Act (FESA), protects endangered and threatened species. FESA defines an endangered species as a species in danger of extinction throughout all or a significant part of its range and a threatened species as one that is likely to become endangered in the foreseeable future. USFWS also identifies species proposed for listing as endangered or threatened. Other than for federal actions, there is no formal protection for candidate species under FESA. However, consultation with USFWS regarding species proposed for listing can prevent project delays that could occur if a species is listed prior to project completion.

**United States Army Corps of Engineers.** USACE regulates discharges of dredged or fill material into waters of the United States, which are defined as wetlands and nonwetland waters that meet specific criteria. The USACE regulatory jurisdiction, pursuant to Section 404 of the federal CWA, is founded on a connection, or nexus, between a water body and interstate commerce that may be direct (through a tributary system linking a stream channel with traditional navigable waters used in interstate or foreign commerce) or indirect (through a connection identified in the USACE regulations).

**Section 401 of the Clean Water Act.** The California Regional Water Quality Control Board (RWQCB) administers Section 401 of the CWA, which is implemented through the issuance of a Section 401 Certification for Section 404 permits issued by USACE. Areas subject to RWQCB jurisdiction typically coincide with those of USACE (i.e., waters of the United States, including any wetlands). The RWQCB also asserts authority over waters of the State under waste discharge requirements pursuant to the California Porter-Cologne Water Quality Control Act, but this mechanism is typically not invoked in cases where USACE asserts permitting authority pursuant to the CWA.

**Migratory Bird Treaty Act.** The federal Migratory Bird Treaty Act (MBTA) governs take, possession, import, export, transport, selling, purchasing, or bartering of migratory birds and their eggs, parts, and nests, except as authorized under a valid permit. Section 704 of the MBTA states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing take while ensuring that take is compatible with protection of the species. Most bird species are protected under the MBTA.

In addition, under the California Fish and Game Code, it is unlawful to take, possess, or needlessly destroy any bird or the nests or eggs of any bird species except as otherwise provided in the California Fish and Game Code and its regulations. This code also specifically protects raptors, including owls. The CDFW considers a disturbance that results in nest abandonment or loss of

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<sup>1</sup> United States Fish and Wildlife Service (USFWS). National Wetland Inventory. Website: <https://www.fws.gov/wetlands/Data/Mapper.html> (accessed June 27, 2019).

reproductive effort as take. Disturbances of active nesting territories should be avoided during the nesting season.

#### 4.3.4.2 State Regulations

**California Environmental Quality Act.** The California Environmental Quality Act (CEQA) is intended to ensure that the potential effects of proposed projects are identified and disclosed prior to project approval. If a project has the potential to result in one or more significant impacts, mitigation to lessen or avoid the identified impacts is required. Section 15382 of the *State CEQA Guidelines* defines a significant effect on the environment as "...a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."

Section 15380 of the *State CEQA Guidelines* defines a rare or endangered species for the purposes of CEQA as a species or subspecies of animal or plant or a variety of plant "...already listed by a government agency (CDFW and/or USFWS) as being rare, threatened, or endangered..." A plant or animal may also be treated as rare or endangered for the purposes of CEQA even if it has not been listed by a government agency, if it can be shown that the species meets the criteria for such listing.

**California Endangered Species Act.** The CDFW, through provisions of the California Administrative Code and policies formulated by the California Fish and Game Commission (Commission), regulates plant and animal species in danger of, or threatened with, extinction based on the list of endangered, threatened, and candidate species developed by the Commission. Endangered species are native species or subspecies of plants and animals that are in serious danger of becoming extinct throughout all or a significant part of their range. Threatened species are those species that, although not presently threatened with extinction, are likely to become endangered in the foreseeable future without special protection and management. Candidate species are species the Commission has formally noticed as being under review for addition to the list of endangered or threatened species or as a species proposed for listing.

**Streambed Alteration Regulations.** The CDFW, through provisions of the California Administrative Code, is empowered to issue agreements for any alteration of a river, stream, or lake where fish or wildlife resources may be adversely affected by a proposed project. Streams and rivers are defined by the presence of a channel bed and banks and at least a periodic flow of water. The CDFW regulates wetland areas only to the extent that those wetlands are part of a river, stream, or lake as defined by the CDFW. The CDFW also includes nonwetland riparian communities associated with rivers and streams as part of jurisdictional waters of the State. These areas may extend beyond jurisdictional waters of the United States.

**California Natural Diversity Database.** The CDFW administers the CNDDDB, which comprises lists of special-status plants, animals, and natural communities, including species listed under the California Endangered Species Act (CESA) and FESA, California Species of Special Concern, and USFWS Birds of Conservation Concern. Additional species, natural communities, and habitat types are designated as being of special interest because of their rarity (e.g., very localized distribution, few scattered occurrences) and/or threats to their existence, although there is no specific regulatory protection afforded to those species by listing in the CNDDDB.

**California Native Plant Society.** The CNPS is a nonprofit organization that promotes the preservation of native California plants. The CNPS created and maintains an Online Inventory of Rare and Endangered Plants of California, which identifies four specific designations, or Lists, of special-interest plant species.

#### 4.3.4.3 Regional Regulations

**Orange County Southern Subregion Habitat Conservation Plan (OCSSHCP).** In an effort to respond to growing concern over the conservation of coastal sage scrub and other biological communities, federal, state, and local agencies have developed a multispecies approach to habitat conservation planning known as the Natural Communities Conservation Plan (NCCP) process. The goal of this NCCP program is to identify significant coastal sage scrub habitat and to develop ways and means to preserve and/or restore the ecological value of this and associated plant communities and their attendant sensitive species in a rapidly urbanizing setting. This was made possible by legislation (Assembly Bill [AB] 2172) that authorized CDFW to enter into agreements for the preparation and implementation of NCCPs. USFWS joined in this effort, utilizing both the Section 4(d) Special Rule and the habitat conservation plan (HCP) processes.

In Orange County, the development of two subregional NCCP/HCPs for coastal sage scrub and other covered habitats was undertaken jointly by the County, the Transportation Corridor Agencies (TCA), USFWS, and CDFW in cooperation with several large private landowners, including the Irvine Company, with the County as the Lead Agency and other cities as participating agencies. The NCCP/HCP for the Orange County Southern Subregion Habitat Conservation Plan (OCSSHCP) was approved by the participating agencies in 2007, and it addresses a range of species issues on a subregional level. The OCSSHCP provides regulatory coverage and long-term protection for species and communities within the 33,000 acres of designated Habitat Reserve.

The project site is located within the jurisdiction of the OCSSHCP. Specifically, the project site is located within an area identified as “developed” and is located well outside the habitat reserve.

#### 4.3.4.4 Local Regulations

**San Juan Capistrano Municipal Code.** The City’s Municipal Code (Section 9-2.349(c)(1)) Tree Removal Permit) allows tree removals associated with a development project that is subject to other discretionary land use approvals, to be permitted in conjunction with the other discretionary approvals by the reviewing authority for those approvals. Tree removals are subject to the reviewing authority making the required findings in Section 9-2.349(e) and adding conditions of approval for replacement trees and landscaping in accordance with the intent of Section 9-2.349(c)(1) and as deemed appropriate by the reviewing authority.

**San Juan Capistrano General Plan.** The following goal and policy of the Conservation & Open Space Element (2002) is applicable to the proposed project:

**Goal 2:** Protect and preserve important ecological and biological resources.

**Policy 2.1:** Use proper land use planning to reduce the impact of urban development on important ecological and biological resources.

#### 4.3.5 Thresholds of Significance

The thresholds for biological resources impacts used in this analysis are consistent with Appendix G of the *State CEQA Guidelines* and the *City's Local Guidelines for Implementing CEQA* (2019). The proposed project may be deemed to have a significant impact with respect to biological resources if it would:

- Threshold 4.3.1:** 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 4.3.2:** 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 Service?
- Threshold 4.3.3:** 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 4.3.4:** 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 4.3.5:** Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
- Threshold 4.3.6:** Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

The Initial Study, included as Appendix A, substantiates that there would be less than significant impacts associated with Thresholds 4.3.2 and 4.3.4, respectively, because no riparian habitat or other sensitive vegetation communities were observed on the project site, and because no migratory wildlife corridors or native wildlife nursery sites were identified on the project site. The Initial Study also substantiates that there would be a less than significant impact associated with Threshold 4.3.5 as the project Applicant would comply with local policies and ordinances protecting biological resources, including the City's tree preservation policy, specified in the City's Municipal Code (Section 9-2.349(c)(1), New Development Projects). In addition, the Initial Study substantiates that there would be a less than significant impact associated with Threshold 4.3.6, as the proposed project would not conflict with the provisions outlined in the OCSSHCP, nor would it conflict with another approved local, regional, or state habitat conservation plan. Therefore, these thresholds will not be addressed in the following analysis.

#### 4.3.6 Project Impacts

**Threshold 4.3.1:** Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

**Less than Significant Impact with Mitigation Incorporated.** The approximately 17-acre undeveloped project site is currently characterized by an undeveloped gravel parking lot and ruderal vegetation. The project site is located within an area that is covered by the OCSSHCP, but is located in an area identified as “developed” and is outside of the designated habitat reserve. Because the project site is located outside the boundaries of the designated habitat reserve, OCSSHCP regulatory coverage is not provided for activities associated with the proposed project. Furthermore, any project activities that may result in the “take” of sensitive species and their habitats would be subject to FESA Section 4(d) or Section 10 permits, Section 7 consultation, a CDFW Section 1600 Streambed Alteration Agreement, and/or a Section 2081 CESA permit. The disturbed condition of the project site is generally not suitable to support special-status species, and no known candidate, sensitive, or special-status species were observed inhabiting the project site during the 2017 or 2018 field surveys. However, three special-status plant species and six special-status animal species have low to moderate potential to occur on the project site, as further discussed below.

**Special-Status Plant Species.** The proposed project would involve the grading of the entire project site and removal of all existing vegetation. The *Biological Technical Report* determined that three special-status plant species (Catalina mariposa lily, cliff malacothrix, and Coulter’s matilija poppy) have a low potential to occur on the southeastern portion of the project site in the small patches of California sagebrush scrub (*Artemesia Californica Shrubland Alliance*). However, none of these three species have been documented within 5 miles of the project site. Furthermore, the project site provides low-quality potential habitat for the three special-status species. Therefore, the removal of the potential habitat is not expected to contribute substantially to the overall decline of these species. Additionally, no special-status plant species have a moderate to high potential to occur on the site. Therefore, the project impacts to special-status plant species would be less than significant.

**Special-Status Animal Species.** Of the various special-status wildlife species identified in the literature searches undertaken in support of the *Biological Technical Report*, six were determined to have a low-to-moderate potential to occur on the project site. Two of these species (burrowing owl and California horned lark) were identified to have a low to moderate potential to occur during the 2017 field survey, but were presumed absent during the 2018 field survey due to a change in habitat on the project site. Because these two species would no longer have a potential to occur on the project site, only four special-status wildlife species (white-tailed kite, coastal California gnatcatcher, western red bat, and San Diego desert woodrat) have a low-to-moderate potential to occur on the site.

- **White-Tailed Kite:** White-tailed kite is a CDFW Fully Protected species, and is a covered species under the OCSSHCP. This species was determined to have a low potential to occur



on the project site, and may nest in the large eucalyptus trees located within 500 feet of the eastern border of the project site on the other side of the LOSSAN rail corridor. Although white-tailed kite is not expected to nest on the project site itself, indirect impacts may occur from construction noise and vibration if the species nest in trees within 500 feet of the project site. As specified in Mitigation Measure BIO-1, if construction activities with the potential to disrupt white-tailed kite are scheduled to occur during breeding season, a pre-construction nesting bird survey shall be conducted by a qualified biologist. With implementation of Mitigation Measure BIO-1, impacts to white-tailed kite would be less than significant.

- **Coastal California Gnatcatcher:** Coastal California gnatcatcher is a threatened species under the FESA, a CDFW Species of Special Concern, and is a covered species under the OCSHCP. Coastal California gnatcatcher was determined to have a moderate potential to occur on the project site, and may use the project site for foraging in the existing 0.3 acre of California sagebrush scrub. However, the California sagebrush scrub would be removed during grading of the project site, as would all other existing vegetation. Additionally, construction noise and vibration from grading and vegetation removal may effect individual coastal California gnatcatchers. As specified in Mitigation Measure BIO-2, pre-construction surveys would be conducted for coastal California gnatcatcher within all areas of potential permanent and temporary disturbance. If coastal California gnatcatcher are observed foraging during pre-construction surveys, consultation between the City and project Applicant and the appropriate agency would be required. As specified in Mitigation Measure BIO-3, biological monitoring during vegetation clearing and construction activities would ensure that individual gnatcatchers are not present during vegetation removal. Once the vegetation removal has taken place, no additional impacts to coastal California gnatcatcher are anticipated to occur, and no further mitigation would be required. Furthermore, the removal of California sagebrush scrub is not expected to contribute to the decline of the coastal California gnatcatcher as designated critical habitat for the species exists within 0.25 mile of the project site. With implementation of Mitigation Measures BIO-2 and BIO-3, impacts to coastal California gnatcatcher would be less than significant.
- **Western Red Bat:** The Western red bat is a CDFW Species of Special Concern, and was determined to have a low potential to occur on the project site. Currently, two existing red willow trees (*Salix laevigata*) are located on the project site, which provide suitable year-round roosting habitat for western red bats. The two red willow trees would be removed during project construction, which may result in direct impacts to the western red bat, should they be using the trees for roosting. However, no record of the western red bat has been documented within 5 miles of the project site. Additionally, the removal of the trees would not substantially contribute to the overall decline of the species. As specified in Mitigation Measure BIO-2, pre-construction surveys would be conducted for sensitive wildlife species, including the western red bat, within all areas of potential permanent and temporary disturbance, including the two existing red willow trees. If western red bats are observed during pre-construction surveys, biological monitoring would be required, as specified in Mitigation Measure BIO-3. Therefore, with the implementation of Mitigation Measure BIO-2 and BIO-3, impacts to the western red bat would be less than significant.

- **San Diego Desert Woodrat:** The San Diego desert woodrat is a CDFW Species of Special Concern, and was determined to have a moderate potential to occur on the project site. Although the 0.3 acre of California sagebrush scrub on the project site provides potential habitat for the San Diego desert woodrat, the quality of the habitat is low. Therefore, removal of the California sagebrush scrub would not contribute to the substantial decline of the species, and impacts to the San Diego desert woodrat would be less than significant.

**Threshold 4.3.3: Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?**

**Less than Significant Impact.** As stated previously, the approximately 17-acre project site is currently characterized by an undeveloped gravel parking lot and ruderal vegetation. According to the *Aquatic Resources Delineation*, no potential waters of the U.S. or CDFW jurisdictional areas are located on the project site. A ditch located within the southern half of the project site occasionally collects stormwater flows from the north and east of the site. However, this is not considered to be a water of the U.S. or a CDFW jurisdictional area as there are no indicators of water flow through this area. Furthermore, according to the National Wetlands Inventory managed by the USFWS, the project site does not contain federally protected wetlands; however, the San Juan Creek Channel, located immediately west of the project site, contains wetlands classified as Riverine and Freshwater Emergent Wetlands.<sup>1</sup> Due to the proximity of the San Juan Creek Channel, project construction and operation could have potentially significant impacts on federally protected wetlands and waters of the United States as defined by Section 404 of the Clean Water Act (CWA). Therefore, the improvements associated with the project could potentially affect off site wetlands.

**Construction.** As discussed in Response 4.9 (a), pollutants of concern during construction and soil erosion may have a detrimental effect on water quality. During construction activities, excavated soil would be exposed, and there would be an increased potential for soil erosion and sedimentation compared to existing conditions. In addition, chemicals, liquid products, petroleum products (e.g., paints, solvents, and fuels), and concrete-related waste may be spilled or leaked and have the potential to be transported via storm water runoff into San Juan Creek. However, compliance with the requirements of the Construction General Permit and incorporation of construction BMPs to target pollutants of concern would ensure construction impacts related to the Riverine and Freshwater Emergent Wetlands within San Juan Creek would be reduced. Compliance with the Construction General Permit is specified in Regulatory Compliance Measure WQ-1. With implementation of Regulatory Compliance Measure WQ-1, construction impacts to the Riverine and Freshwater Emergent Wetlands contained within San Juan Creek Channel would be less than significant, and no mitigation is required.

**Operation.** As discussed in Response 4.9 (a), pollutants of concern during operation may have a detrimental effect on water quality. Based on the existing impairments and water quality condition of the receiving waters for runoff from the project site (San Juan Creek and the Pacific Ocean), the primary pollutants of concern from long-term operation of commercial and

<sup>1</sup> United States Fish and Wildlife Service (USFWS). National Wetland Inventory. Website: <https://www.fws.gov/wetlands/Data/Mapper.html> (accessed June 27, 2019).

restaurant developments include nutrients, bacteria/viruses/pathogens, pesticides, and dry weather runoff; other pollutants of concern include suspended solids, oil and grease, and trash and debris. Required compliance with the City Municipal Code and South Orange County MS4 Permit requirements, including preparation of a Final WQMP and incorporation of post-construction BMPs to target pollutants of concern, would reduce operation impacts on the identified wetlands within San Juan Creek. Compliance with the South Orange County MS4 Permit requirements and the development of a Final WQMP is specified in Regulatory Compliance Measure WQ-4. With implementation of Regulatory Compliance Measure WQ-4, operational impacts to the Riverine and Freshwater Emergent Wetlands contained within San Juan Creek Channel would be less than significant. No mitigation would be required.

#### 4.3.7 Level of Significance Prior to Mitigation

Potential adverse impacts to white-tailed kite, coastal California gnatcatcher, western red bat, and the San Juan Creek Channel would be significant and mitigation is required.

#### 4.3.8 Regulatory Compliance Measures and Mitigation Measures

##### 4.3.8.1 Regulatory Compliance Measures (RCMs)

The proposed project would comply with the following regulatory standards.

**RCM WQ-1 Construction General Permit.** Prior to commencement of construction activities, the project Applicant shall obtain coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit)*, NPDES No. CAS000002, Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ and Order No. 2012-0006-DWQ, or any other subsequent permit. This shall include submission of Permit Registration Documents (PRDs), including permit application fees, a Notice of Intent (NOI), a risk assessment, a site plan, a Stormwater Pollution Prevention Plan (SWPPP), a signed certification statement, and any other compliance-related documents required by the permit, to the State Water Resources Control Board via the Stormwater Multiple Application and Report Tracking System (SMARTS). As required by Section 8-14.107 of the City of San Juan Capistrano's (City) Municipal Code, construction activities shall not commence until a Waste Discharge Identification Number (WDID) is obtained for the project from the SMARTS and provided to the City of San Juan Capistrano Building Official, or designee, to demonstrate that coverage under the Construction General Permit has been obtained. Project construction shall comply with all applicable requirements specified in the Construction General Permit, including but not limited to, preparation of a SWPPP and implementation of construction site Best Management Practices (BMPs) to address all construction-related activities, equipment, and materials that have the potential to impact water quality for the appropriate risk level identified for the project. The SWPPP shall identify the sources of pollutants that may affect the quality of stormwater and shall include BMPs (e.g., Sediment Control, Erosion Control, and Good Housekeeping BMPs) to control the pollutants in stormwater runoff. Construction Site BMPs shall also conform to the requirements

specified in the latest edition of the Orange County Stormwater Program *Construction Runoff Guidance Manual for Contractors, Project Owners, and Developers* to control and minimize the impacts of construction and construction-related activities, materials, and pollutants on the watershed. Upon completion of construction activities and stabilization of the project site, a Notice of Termination shall be submitted via SMARTS.

- RCM WQ-4** **Water Quality Management Plan.** Prior to issuance of building permits, the project Applicant shall submit a Final Water Quality Management Plan (WQMP) to the City of San Juan Capistrano Building Official, or designee, for review and approval in compliance with Section 8-14.105 of the City Municipal Code and the *National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4) Draining the Watersheds within the San Diego Region* (South Orange County MS4 Permit), Order R9-2013-0001, NPDES No. CAS6010266, as amended by Order No. R9-2015-0001, or any other subsequent permit. The Final WQMP shall be prepared consistent with the requirements of the *Model Water Quality Management Plan (Model WQMP) for South Orange County* (County of Orange 2018) and the *Technical Guidance Document for the Preparation of Conceptual/ Preliminary and/or Project Water Quality Management Plans (WQMPs)* (County of Orange 2018), or subsequent guidance manuals. The Final WQMP shall specify the BMPs to be incorporated into the project design to target pollutants of concern in runoff from the project site. The City of San Juan Capistrano Building Official, or designee, shall ensure that the BMPs specified in the Final WQMP are incorporated into the final project design.

#### 4.3.8.2 Mitigation Measures (MMs)

The proposed project would comply with the following mitigation measures.

- MM BIO-1** **Pre-Construction Surveys for Nesting Birds.** Any development activities within the project site shall be conducted during the non-breeding season for birds (approximately September 1 through February 15). This will avoid violations of the Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code Sections 3503, 3503.5 and 3513. If activities with the potential to disrupt nesting birds, including the white-tailed kite, are scheduled to occur during the bird breeding season (February through August for raptors and March through August for songbirds), a pre-construction nesting bird survey shall be conducted by a qualified biologist. The project Applicant shall hire a qualified biologist to conduct a pre-construction presence/absence survey for nesting birds no more than 14 days prior to site disturbance and submit the survey results to the Director of the City of San Juan Capistrano (City) Development Services Department, or designee. If nesting birds are not detected, no further action is necessary.

The nest surveys shall include the project site and adjacent areas where project activities have the potential to cause nest failure. If no nesting birds are observed

during the survey, site preparation and construction activities may begin. If nesting birds (including nesting raptors) are found to be present, then avoidance or minimization measures shall be undertaken in consultation with the California Department of Fish and Wildlife (CDFW) and prior to issuance of any grading or construction permits. Measures shall include establishment of an avoidance buffer until nesting has been completed. The width of the buffer will be determined by the project biologist. Typically this is a minimum of 300 feet from the nest site in all directions (500 feet is typically recommended by CDFW for raptors), until the juveniles have fledged and there has been no evidence of a second attempt at nesting. The monitoring biologist will monitor the nest(s) during construction and document any findings to be confirmed by the Director of the City of San Juan Capistrano Development Services Department, or designee.

**MM BIO-2 Pre-Construction Sensitive Wildlife Surveys.** The project Applicant shall hire a qualified biologist to conduct pre-construction surveys for sensitive wildlife species within all areas of potential permanent and temporary disturbance. Pre-construction surveys shall take place a maximum of 14 days prior to the start of ground-disturbing activities. The pre-construction surveys shall take place regardless of breeding season timing and shall focus on identifying the presence of coastal California gnatcatcher and other special-status wildlife species potential to occur within the project site. The project biologist shall submit the survey results to the Director of the City of San Juan Capistrano Development Services Department, or designee. Should special-status species be identified during pre-construction surveys, the monitoring biologist shall develop suitable avoidance and minimization measures with the appropriate agency (i.e., USFWS, CDFW) for implementation prior to and/or during construction. If coastal California gnatcatcher is observed during pre-construction surveys, consultation between the City and project Applicant and the United States Fish and Wildlife Service (USFWS) is required. The consultation process shall identify mitigation measures to be implemented prior to and/or during construction activities for any coastal California gnatcatchers or other sensitive wildlife present. These measures include, but are not limited to, the following:

- If vegetation removal or other ground-disturbing activities are scheduled to occur during the coastal California gnatcatcher breeding season (February 15 through August 30), then all areas containing coastal sage scrub located outside of the project impact area shall be identified with temporary fencing or other markers clearly visible to construction personnel. No project-related activities shall occur in the coastal sage scrub outside of the project impact area.
- A monitoring biologist that has been approved by USFWS, shall be on site during ground-disturbing activities, including the clearing of coastal sage scrub, within the project impact area. The monitoring biologist shall perform a clearance sweep of the coastal sage scrub immediately prior to ground-disturbing activities to determine if coastal California gnatcatcher is occupying the coastal

sage scrub within the project impact area. If the species is present, then ground-disturbing activities shall not commence until the individual has left the project impact area, as determined by the monitoring biologist. If California gnatcatcher is not observed during the clearance sweep, then ground-disturbing activities may commence. Once the vegetation removal has taken place, no additional impacts to coastal California gnatcatcher or other sensitive wildlife species are anticipated and no further measures would be required.

**MM BIO-3 Biological Monitoring.** The project Applicant shall hire a qualified biologist to monitor all vegetation clearing activities both during and outside of the breeding season. A biological monitor shall perform biological clearance surveys at the start of each work day that vegetation clearing takes place to minimize impacts on sensitive wildlife species. The monitor will be responsible for ensuring that impacts to sensitive species will be avoided to the fullest extent possible. The biological monitor shall be present during the initiation of vegetation clearing activities and their presence should continue as necessary to maintain protective measures and to monitor for species in harm's way. These protection measures may include redirecting wildlife or capturing and relocating wildlife to areas outside the work area. Any captured species shall be relocated out of harm's way to adjacent appropriate habitat that is outside of project impact areas. Biological monitoring shall take place until the project site has been completely cleared of any vegetation. The monitoring biologist will document any findings to be confirmed by the Director of the City of San Juan Capistrano Development Services Department, or designee.

#### 4.3.9 Level of Significance after Mitigation

Potential impacts to biological resources from the proposed project would be mitigated to a less than significant level with implementation of Mitigation Measures BIO-1, BIO-2, and BIO-3. Therefore, the project would have no significant and unavoidable adverse impacts related to biological resources.

#### 4.3.10 Cumulative Impacts

As defined in the *State CEQA Guidelines*, 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. The project site is undeveloped and is located in the City of San Juan Capistrano; therefore, the cumulative area for biological impacts is the City. The project site is located within Subarea 4 of the Orange County Southern Subregion Habitat Conservation Plan (OCSSHCP), which consists of 33,550 acres in the cities of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano, and San Clemente. Approximately 106 acres within Subarea 4 remain undeveloped. The project site is located in an area of the OCSSHCP that is identified as "developed" and is outside of the designated habitat reserve. Therefore, the proposed project would not contribute to the loss of natural habitat in the City. Furthermore, as the project site is located outside the boundaries of the designated habitat reserve, OCSSHCP regulatory coverage is not provided for activities associated with the proposed project. The development of the proposed project would not result in the removal of any sensitive habitat species identified in the

OCSHCP and would not conflict with the provisions outlined in the OCSHCP. Therefore, the proposed project would not contribute to the cumulative loss of biological resources and impacts on biological resources would be less than cumulatively significant.

### 4.3.11 Project Alternatives

#### 4.3.11.1 Alternative 1 – No Restaurant Uses

Alternative 1 would allow for the future construction of a 161,385-square-foot (sf) Ganahl Lumber hardware store and lumber yard and a 399-space vehicle storage facility but no drive-through restaurant uses would be developed. The reduction of drive-through restaurant use square footage on Area A would allow for Area A to accommodate additional parking as compared to the proposed project. Area A would provide approximately 150 parking spaces, whereas the proposed project would provide 62 parking spaces on Area A. Components of the proposed project, such as outdoor lighting, circulation and access, signage, utilities and drainage, sustainability features, landscaping, and construction phasing and grading would not change under the implementation of Alternative 1. Components specific to Area A, such as the location of walkways, retaining walls, fences, and gates would not vary between the proposed project and Alternative 1. Unlike the proposed project, Alternative 1 would involve the grading and paving of Area A for surface parking but no building pads for drive-through restaurant uses would be constructed.

Similar to the proposed project, Alternative 1 would remove all existing vegetation on the project site. Although Alternative 1 would not involve the construction of a building pad or drive-through restaurant on Area A, the project site would be cleared, excavated, graded, and paved, as under the proposed project. The area of disturbance would be the same under the proposed project and Alternative 1. Therefore, Mitigation Measures BIO-1, BIO-2, and BIO-3 would still be applicable under Alternative 1 to ensure that potential impacts to biological resources are reduced to a less than significant level. Therefore, biological impacts associated with Alternative 1 are considered to be less than significant with mitigation and similar to those of the proposed project.

Because impacts related to biological resources for Alternative 1 would be less than those associated with the proposed project, cumulative impacts would also be less than cumulatively significant, and no mitigation would be required.

#### 4.3.11.2 Alternative 2 – 2,000 SF of Restaurant Uses

Alternative 2 would allow for the future construction of a 161,385 sf Ganahl Lumber hardware store and lumber yard, a 399-space vehicle storage facility, and 2,000 sf of drive-through restaurant uses, which represents a reduction of 4,000 sf of drive-through restaurant uses as compared to the proposed project. The reduction in drive-through square footage on Area A as compared to the proposed project would allow for additional parking spaces. Under Alternative 2, Area A would provide approximately 80 parking spaces, whereas the proposed project would provide 62 parking spaces. Components of the proposed project, such as outdoor lighting, circulation and access, signage, utilities and drainage, sustainability features, landscaping, and construction phasing and grading would not change under the implementation of Alternative 2. Components specific to Area A, such as the location of walkways, retaining walls fences, and gates, would not vary between the proposed project and Alternative 2. Alternative 2 would involve the grading and paving of Area A for

one building pad for drive-through restaurant use rather than two building pads for two drive-through restaurants.

Similar to the proposed project, Alternative 2 would remove all existing vegetation on the project site. The project site, including Area A would be cleared, excavated, graded, and paved as under the proposed project. The area of disturbance would be the same under the proposed project and Alternative 2. Therefore, Mitigation Measures BIO-1, BIO-2, and BIO-3 would still be applicable under Alternative 2 to ensure that potential impacts to biological resources are reduced to a less than significant level. Therefore, biological impacts associated with Alternative 2 are considered to be less than significant with mitigation and similar to those of the proposed project.

Because impacts related to biological resources for Alternative 2 would be less than those associated with the proposed project, cumulative impacts would also be less than cumulatively significant, and no mitigation would be required.

#### 4.3.11.3 Alternative 3 – 4,000 SF of Restaurant Uses

Alternative 3 would allow for the future construction of a 161,385 sf Ganahl Lumber hardware store and lumber yard, a 399-space vehicle storage facility, and 4,000 sf of drive-through restaurant uses, which represents a reduction of 2,000 sf of drive-through restaurant use as compared to the proposed project. Alternative 3 includes the development of one structure on Area A. The reduction in drive-through square footage on Area A as compared to the proposed project would allow for additional parking spaces. Under Alternative 3, Area A would provide approximately 101 parking spaces, whereas the proposed project would provide 62 parking spaces. Components of the proposed project, such as outdoor lighting, circulation and access, signage, utilities and drainage, sustainability features, landscaping, construction phasing, and grading would not change under the implementation of Alternative 3. Components specific to Area A, such as the location of walkways, retaining walls fences, and gates, would not vary between the proposed project and Alternative 3. Alternative 3 would involve the grading and paving of Area A for one building pad for drive-through restaurant use rather than two building pads for two drive-through restaurants.

Similar to the proposed project, Alternative 3 would remove all existing vegetation on the project site. The project site, including Area A would be cleared, excavated, graded, and paved as under the proposed project. The area of disturbance would be the same under the proposed project and Alternative 3. Therefore, Mitigation Measures BIO-1, BIO-2, and BIO-3 would still be applicable under Alternative 3 to ensure that potential impacts to biological resources are reduced to a less than significant level. Therefore, biological impacts associated with Alternative 3 are considered to be less than significant with mitigation and similar to those of the proposed project.

Because impacts related to biological resources for Alternative 3 would be less than those associated with the proposed project, cumulative impacts would also be less than cumulatively significant, and no mitigation would be required.