



4.3 BIOLOGICAL RESOURCES

This section describes the existing biological resources on and in the vicinity of the Cypress City Center project (proposed project) site, the potential impacts of the proposed project on those resources, and measures to mitigate any potentially significant impacts. Information presented in this section is based on Geographic Information System (GIS) data, the California Natural Diversity Database (CNDDDB), and on the City of Cypress' (City) *Inventory of Landmark Trees* (July 1996). The literature review and CNDDDB records search results are provided in Appendix C of this Environmental Impact Report (EIR).

4.3.1 Methodology

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 from the California Department of Fish and Wildlife (CDFW), CNDDDB – Rarefind 5 and the California Native Plant Society (CNPS) Online Inventory of Rare and Endangered Plants of California were utilized to assist in determining the existence or potential occurrence of any special-interest plant and animal species in or immediately adjacent to the project site. Similarly, LSA reviewed records from the United States Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) Online System¹ and the USFWS Critical Habitat Mapper² to determine the likelihood that candidate, threatened, and endangered species; crucial habitat; national wildlife refuges; and/or migratory birds were present on the site. The USFWS National Wetlands Inventory³ was reviewed to determine whether any wetlands or surface waters of the United States had been previously identified on the site. Database records for the Los Alamitos United States Geological Survey (USGS) 7.5-minute quadrangle were examined using the CNDDDB and the CNPS electronic inventory. Sensitive species known by LSA biologists to occur in the general area were also considered.

4.3.2 Existing Environmental Setting

The approximately 13-acre project site is characterized by a paved parking lot, with existing light poles and various electrical utility boxes and lines. The edge condition along Katella Avenue and a portion of Siboney Street has been improved with a public sidewalk, fencing, and ornamental landscaping. The edge condition along Winners Circle has been improved with a public sidewalk and driveway access points, with no landscaping. The interior property is improved with a parking lot and limited ornamental landscaping. The project site is generally flat, and has been fully graded and disturbed. The urban landscaping within Cypress provides habitat for smaller rodents and birds. However, the frequent disruptions caused by urban activities and the frequent cultivation of such plant life make these plant communities less than an ideal habitat for wild animals.

¹ United States Fish and Wildlife Service (USFWS). 2019b. IPaC Information for Planning and Consultation. Website: <https://ecos.fws.gov/ipac/> (accessed November 6, 2019).

² USFWS. 2019c. National Wetlands Inventory. Wetlands Mapper. Website: <https://www.fws.gov/wetlands/data/Mapper.html> (accessed December 2019).

³ USFWS. 2019d. Wetlands. The National Wetlands Inventory. Website: <https://www.fws.gov/wetlands/> (accessed December 2019).



4.3.2.1 Plant Species

As described above, the majority of the project site is graded and unvegetated, with the exception of ornamental landscaping along the southern and western boundaries of the project site. These landscaped areas contain trees; however, none of the trees are designated as Landmark Trees according to the City's *Inventory of Landmark Trees* (July 1996). The results of the literature review and CNDDDB search did not identify any special-status plant species on the project site or in the vicinity of the project site. Appendix C contains the table that identifies those special-status plant species known to occur or that could potentially occur in the vicinity of the project site, and includes each species' probability of occurrence within the proposed construction footprint.

4.3.2.2 Animal Species

Animal populations are not known to occur on the project site. Potential animal species supported by the project site would typically be those found in developed, urban areas in Orange County, such as coyote (*Canis latrans*), desert cottontail (*Sylvilagus audubonii*), and California ground squirrel (*Otospermophilus beecheyi*). The project site lacks suitable habitat to support animal communities. Although some animal species are expected to periodically move about the project site, it is entirely surrounded by other development and does not function as a wildlife movement corridor or special linkage. The results of the literature review and CNDDDB search did not identify any special-status plant species on the project site or in the vicinity of the project site. Appendix C contains the table that identifies those special-status animal species known to occur or that could potentially occur in the vicinity of the project site, and includes each species' probability of occurrence within the proposed construction footprint.

4.3.2.3 On-Site Aquatic Resources

The project site is currently developed with a paved surface parking lot and does not contain any natural lakes, streams, or riparian habitat, nor hydric soils. No potential waters of the United States or CDFW jurisdictional areas are located on the project site. Therefore, it does not meet the minimum criteria for wetlands in accordance with the United States Army Corps of Engineers (USACE) Arid West Supplement Version 2.0¹ and is not a wetland pursuant to Section 404 of the CWA.

The California Fish and Game Code defines a "stream" (including creeks and rivers) as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." The CDFW definition of a "lake" includes "natural lakes or man-made reservoirs." The project site does not contain any body of water that meets the definition of a stream or a lake in the California Fish and Game Code and, as such, would not be subject to regulation under Section 1602 of the Fish and Game Code.

¹ United States Army Corps of Engineers (USACE). 2008. Wetlands Regulatory Assistance Program. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*. ERCD/EL TR-08-28. September.



4.3.3 Regulatory Setting

4.3.3.1 Federal Regulations

United States Endangered Species Act. The 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.

Migratory Bird Treaty Act. The federal Migratory Bird Treaty Act (MBTA) governs the take, possession, import, export, transport, selling, purchasing, or bartering of migratory birds and their eggs, parts, and nests. 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.

4.3.3.2 State Regulations

California Fish and Game Code. 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 reproductive effort as take. Disturbances of active nesting territories should be avoided during the nesting season.

California Endangered Species Act. The CDFW, through provisions of the California Administrative Code and policies formulated by the California Fish and Game 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 Fish and Game 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 that the Fish and Game 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.

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.



4.3.3.3 Regional Regulations

There are no regional regulations applicable to the proposed project.

4.3.3.4 Local Regulations

Landmark Tree Ordinance. The City has identified a number of Landmark Trees within its jurisdiction. The City's Landmark Tree Ordinance, as codified in Sections 17-17 through 17-27 of the City Municipal Code, requires a permit for the cutting, modification, destruction, or removal of Landmark Trees. Additionally, the Ordinance maintains that no structures can be constructed within 30 feet of a Landmark Tree without a permit from the Cypress City Council.

4.3.4 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 *Initial Study/Environmental Checklist*. 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 the 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 the 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?



4.3.5 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 the U.S. Fish and Wildlife Service?

No Impact. The project site is currently characterized by a paved asphalt surface parking lot. In its existing condition, the project site contains only a small amount of ornamental vegetation along Katella Avenue and a portion of Siboney Street. The disturbed condition of the project site is generally not suitable to support special-status plant or animal species.

Special-Status Habitat/Vegetation. The USFWS Critical Habitat for Threatened & Endangered Species map does not identify any locations of critical habitat within the project site. The closest known critical habitat is the Bolsa Chica Ecological Reserve, approximately 6.5 miles south of the project site.¹ According to the CNDDDB, no sensitive plant species have been documented on the project site or in the project vicinity.

The project site is located within the Orange County Transportation Authority Natural Communities Conservation Plan/Habitat Conservation Plan (OCTA NCCP/HCP) that covers the entirety of Orange County. Only some portions of the Plan Area fall within a designated Permit Area, or the area in which OCTA would request authorization from CDFW and USFWS to issue permits due to potential project-related impacts to certain identified species. Because the project site does not fall within the Permit Area, the proposed project would not conflict with any local, regional, or State HCP. No special-status species are anticipated to be directly affected by the project due to the lack of suitable habitat on the project site. Therefore, no impacts to sensitive or special-status species would result from implementation of the proposed project, and no mitigation is required.

Threshold 4.3.2: Would the project 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 the U.S. Fish and Wildlife Service?

No Impact. The project site is highly disturbed and developed with an asphalt-paved parking lot and does not support any special-status or sensitive riparian habitat as identified in regional plans, policies, or regulations, or by the CDFW or USFWS. Therefore, no impacts related to riparian habitat or other sensitive natural communities identified in a local or regional plan would result from project implementation, and no mitigation is required.

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?

¹ USFWS. 2019a. Critical Habitat for Threatened & Endangered Species. Website: http://www.arcgis.com/home/webmap/viewer.html?url=https://services.arcgis.com/QVENGdaPbd4LUkLV/ArcGIS/rest/services/USFWS_Critical_Habitat/FeatureServer&source=sd (accessed December 6, 2019).



No Impact. According to the National Wetlands Inventory managed by USFWS, the project site does not contain federally protected wetlands. The project site is located entirely outside of streambeds, banks, and riparian habitat. No potential waters of the United States or CDFW jurisdictional areas are located on the project site.

Although construction activities have the potential to result in temporary indirect effects to water quality including a potential increase in erosion and sediment transport into downstream aquatic areas and the contamination of waters from construction equipment, these potential indirect effects to hydrology and water quality would be avoided or substantially minimized through the implementation of Best Management Practices (BMPs) and a Water Quality Management Plan as discussed in Section 4.8, Hydrology and Water Quality. Specifically, adherence to Regulatory Compliance Measure HYD-1, provided in Section 4.9, Hydrology and Water Quality, during construction would address erosion-related impacts during construction through implementation of construction site BMPs to avoid erosion and sedimentation impacts to downstream aquatic areas and water quality. As such, there would be no impacts on State or federally protected wetlands.

Threshold 4.3.4: Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Less Than Significant Impact. Due to the lack of sensitive or special-status species or their habitats on the project site, the project would not result in impacts on candidate, sensitive, or special-status animal species. The proposed project would avoid impacts on nesting resident and/or migratory birds either by avoiding vegetation removal during the avian nesting season (February 1 through August 31) or by implementing Regulatory Compliance Measure BIO-1. The proposed project has the potential to impact active migratory bird nests if and to the extent that those trees are removed during the avian nesting season and they contain nests. Regulatory Compliance Measure BIO-1, below, would address any impacts to nesting resident and/or migratory birds should it be necessary to conduct vegetation removal during the nesting season and nests are present. With implementation of Regulatory Compliance Measure BIO-1, the proposed project's potential impacts on nesting migratory birds would be less than significant.

The proposed project would avoid impacts on the nests of raptors (which are migratory birds) if the existing trees in the ornamental vegetation area are removed outside the raptor nesting season (February 1 through June 30) and they contain raptor nests. The proposed project has the potential to impact active raptor nests if and to the extent that (1) those ornamental trees are removed during the raptor nesting season, and (2) special-status or common species of raptors establish nests in the future in any of those ornamental trees prior to their removal. Regulatory Compliance Measure BIO-1, below, would also address any impact to nesting raptors should it be necessary to conduct vegetation removal during the nesting season and raptors are present. With implementation of Regulatory Compliance Measure BIO-1, the proposed project exhibits no potential to disrupt a wildlife corridor or in any way disrupt movement of native wildlife.

Threshold 4.3.5: Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?



Less Than Significant Impact. The Landmark Tree Ordinance in the City's Municipal Code protects designated landmark trees, which are specifically identified in the City's *Inventory of Landmark Trees* (July 1996). As shown in this inventory, there are no landmark trees on the project site. The removal of any on-site trees or vegetation would not conflict with the City's Landmark Tree Ordinance.

Per Article IV of the Municipal Code, Street Trees, any tree within the public right-of-way belongs to the City of Cypress. Any work to street trees conducted as part of the proposed project would be done in accordance with the City Council's adopted Parkway Tree Policy.

Therefore, through compliance with the local policies and ordinances relating to tree protection, any impacts to local street trees would be considered less than significant.

Threshold 4.3.6: Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

No Impact. The OCTA's NCCP/HCP includes a Plan Area that covers the entirety of Orange County, including the City of Cypress. Only some portions of the Plan Area fall within a designated Permit Area, or the area in which OCTA would request authorization from CDFW and USFWS to issue permits due to potential project-related impacts to certain identified species. Because the project site does not fall within the Permit Area, the proposed project would not conflict with any local, regional, or State HCP. Therefore, the proposed project would result in no impacts related to conflict with an HCP, and no mitigation is required.

4.3.6 Level of Significance Prior to Mitigation

The proposed project would result in no impacts related to candidate, sensitive, or special-status wildlife species, riparian habitat and sensitive natural communities, wetlands, policies or ordinances protecting biological resources, and conflicts with an adopted HCP. Potential impacts to migratory birds and raptors and street trees would be considered less than significant. No mitigation is required.

4.3.7 Regulatory Compliance Measures and Mitigation Measures

4.3.7.1 Regulatory Compliance Measures

Regulatory Compliance Measure BIO-1 Nesting Bird Survey and Avoidance. If vegetation removal, construction, or grading activities are planned to occur within the active nesting bird season (February 1 through August 31), the City of Cypress, or designee, shall confirm that the Applicant/Developer has retained a qualified biologist who shall conduct a preconstruction nesting bird survey no more than 3 days prior to the start of such activities. The nesting bird survey shall include the work area and areas adjacent to the site (within 500 feet, as feasible) that could potentially be affected by project-related activities such as noise, vibration, increased



human activity, and dust, etc. For any active nest(s) identified, the qualified biologist shall establish an appropriate buffer zone around the active nest(s). The appropriate buffer shall be determined by the qualified biologist based on species, location, and the nature of the proposed activities. Project activities shall be avoided within the buffer zone until the nest is deemed no longer active, as determined by the qualified biologist.

4.3.7.2 Mitigation Measures

No mitigation measures are applicable the proposed project.

4.3.8 Level of Significance after Mitigation

Potential impacts to biological resources from the proposed project would be addressed through compliance with Regulatory Compliance Measure BIO-1 and would be considered less than significant. The proposed project would have no significant and unavoidable adverse impacts related to biological resources.

4.3.9 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 heavily disturbed, with existing paving and light poles. Because the project site is located within the City of Cypress, the cumulative area for biological impacts is the City. As described above, the proposed project would have no impacts to federal and State listed species and waters of the United States or wetlands and would have less than significant effects on migratory birds and local tree policies. As the proposed project's impacts to biological resources would be limited, its contribution to cumulative biological impacts in consideration of the City of Cypress projects identified in Table 4.A, in Chapter 4.0, Existing Setting, Environmental Analysis, Impacts, and Mitigation Measures, would be considered less than significant.

As discussed earlier, the project site is located within the OCTA NCCP/HCP that covers the entirety of Orange County, including the City of Cypress. Only some portions of the Plan Area fall within a designated Permit Area, or the area in which OCTA would request authorization from CDFW and USFWS to issue permits due to potential project-related impacts to certain identified species. Additionally, the project site is not located within a designated habitat reserve and, therefore, the proposed project would not contribute to the loss of natural habitat in the City. The development of the proposed project would not result in the removal of any sensitive habitat species identified in the OCTA NCCP/HCP. 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.