

5. Environmental Analysis

5.3 BIOLOGICAL RESOURCES

The analysis in this section is based in part on the following technical reports:

- *Biological Resources Technical Report*, Cadre Environmental, January 2019 (Appendix D)
- *Specimen Tree Report for the 6501-6513 Serrano Avenue Project, Anaheim, California*, Dudek, November 2, 2018. (Appendix E)

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

5.3.1 Environmental Setting

5.3.1.1 REGULATORY BACKGROUND

Federal and State Regulations

Endangered Species Act

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

Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (MBTA) governs the take, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. It prohibits the take, possession, import, export, transport, sale, purchase, barter, or offering of these items, except under a valid permit or as permitted in the implementing regulations. USFWS administers permits to take migratory birds in accordance with the MBTA.

In December 2017, the Department of the Interior issued a memorandum concluding that “consistent with the text, history, and purpose of the MBTA, [the statute’s prohibitions on take apply] *only to affirmative actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs*” (emphasis added) (DOI 2017). Therefore, take of a migratory bird or its active nest (i.e., with eggs or young) that is incidental to, and not the

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purpose of, a lawful activity does not violate the MBTA. To provide guidance in implementing and enforcing this new direction, the USFWS issued a memorandum in April 2018 to clarify what does and does not constitute prohibited take (FWS 2018).

State

California Endangered Species Act

The California Endangered Species Act (CESA) generally parallels the main provisions of the FESA and is administered by the California Department of Fish and Wildlife (CDFW). Its intent is to prohibit take and protect state-listed endangered and threatened species of fish, wildlife, and plants. Unlike its federal counterpart, CESA also applies the take prohibitions to species petitioned for listing (state candidates). Candidate species may be afforded temporary protection as though they were already listed as threatened or endangered at the discretion of the Fish and Game Commission. Unlike the FESA, CESA does not include listing provisions for invertebrate species. Under certain conditions, CESA has provisions for take through a 2081 permit or memorandum of understanding. In addition, some sensitive mammals and birds are protected by the state as “fully protected species.” California “species of special concern” are species designated as vulnerable to extinction due to declining population levels, limited ranges, and/or continuing threats. This list is primarily a working document for the CDFW’s California Natural Diversity Database, which maintains a record of known and recorded occurrences of sensitive species. Informally listed taxa are not protected per se, but warrant consideration in the preparation of biological resources assessments.

Nesting Bird Protection, California Fish and Game Code

California Fish and Game Code Section 3503 provides that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.

California Fish and Game Code Section 3503.5 provides that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.

California Department of Fish and Game Code Section 3800 indicates that all birds occurring naturally in California that are not resident game birds, migratory game birds, or fully protected birds are nongame birds. And it is unlawful to take any nongame bird except as provided in the California Fish and Game Code or in accordance with regulations of the commission or, when relating to mining operations, a mitigation plan approved by the department.

City of Anaheim

Chapter 18.18 (Scenic Corridor (SC) Overlay Zone) of the Anaheim Municipal Code contains regulations that apply to the (SC) Overlay Zone, and Section 18.18.040 (Tree Preservation) of the chapter provides that the preservation of specified trees in the (SC) Overlay Zone is necessary to preserve the natural beauty of the Santa Ana Canyon environment, increase the visual identity and quality of the area, and protect the remaining natural amenities from premature removal or destruction.

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Specimen tree removal within the SC Overlay Zone must include location of specimen trees to be removed, reason for removal and the replacement trees.

5.3.1.2 EXISTING CONDITIONS

The Project Site is flat, with elevations ranging from 854 feet above mean sea level (amsl) and 870 feet amsl. The Project Site is currently developed and operating as the Serrano Center, a small neighborhood commercial center with seven 1-story buildings that the property owner has leased out for various commercial and neighborhood businesses.

A reconnaissance survey of the Project Site was conducted by Ruben Ramirez of Cadre Environmental (USFWS Permit 780566-14, CDFW Permit 02243) on January 4, 2019, in order to characterize and identify potential sensitive plant and wildlife habitats, and to establish the accuracy of the data in the literature search. Geologic and soil maps were examined to identify local soil types that may support sensitive taxa. Aerial photograph, topographic maps, and vegetation and rare plant maps prepared for previous studies in the region were used to determine community types and other physical features that may support sensitive plants/wildlife, uncommon taxa, or rare communities that occur within or adjacent to the Project Site. Habitat assessments were conducted for, but not limited to, the following target species/groups.

- Coastal California gnatcatcher – FT/SSC
- Least Bell’s vireo – FE/SE.
- Southwestern willow flycatcher – FE/SE
- Sensitive plants
- Protected trees (City of Anaheim Municipal Code, Chapter 13.12, Street Trees and Chapter 18.18.040, Tree Preservation)

Vegetation Communities

Developed/Ornamental

The Project Site is completely developed with associated ornamental shrub and tree landscaping. No native vegetation is located within the Project Site. The Project Site is described as “DEV: Developed/Ornamental Landscaping” in Figure 6, *Vegetation Communities Impact Map*, of the Biological Resources Technical Report, included as Appendix D of the DEIR. Ornamental vegetation documented onsite includes but is not limited to spotted gum (*Corymbia maculata*), Indian laurel fig (*Ficus microcarpa*), shamel ash (*Fraxinus uhdei*), southern magnolia (*Magnolia grandiflora*), pygmy date palm (*Phoenix roebelenii*), Bradford pear (*Pyrus calleryana*), and Brazilian pepper-tree (*Schinus terebinthifolia*). Figure 5.3-1, *Ornamental Vegetation Location*, shows ornamental tree locations.

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General Plant and Wildlife Species

General wildlife species documented onsite or within the vicinity during the site assessment include but are not limited to mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), black phoebe (*Sayornis nigricans*), American crow (*Corvus brachyrhynchos*), northern mockingbird (*Mimus polyglottos*), and house finch (*Haemorhous mexicanus*).

Jurisdictional Wetland Resources

No wetlands or jurisdictional resources regulated by the US Army Corps of Engineers, CDFW, or Regional Water Quality Control Board were documented within or immediately adjacent to the Project Site.

Sensitive Resources

Sensitive Habitats

No sensitive or undisturbed native habitats were documented within the Project Site. The Project Site is characterized as developed/ornamental.

Sensitive Plants

The Project Site was assessed to determine the potential for 23 sensitive plant species known to occur within the region, to occur onsite, as presented in Table 3, *Sensitive Plant Species Assessment*, of the Biological Resources Technical Report, included as Appendix D of the DEIR. No suitable habitat for sensitive plant species, including those listed as federal or state threatened/endangered, was documented within the Project Site. No sensitive plant species or undisturbed native habitats were documented within the Project Site.

Sensitive Wildlife

The Project Site does not occur within or adjacent to a USFWS-designated critical habitat for any federally listed threatened or endangered species. As summarized in Table 4, *Sensitive Animal Species Potentially Present in Highland and Vicinity*, of the Biological Resources Technical Report, included as Appendix D of the DEIR, no sensitive animal species are expected to occur on site based on the lack of suitable habitat.

5.3.2 Thresholds of Significance

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

- B-1 Have a substantial effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.
- B-2 Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

Figure 5.3-1 - Ornamental Vegetation Location
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0 100
Scale (Feet)



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- B-3 Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- B-4 Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites.
- B-5 Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- B-6 Conflict with the provisions of an adopted habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

The Initial Study, included as Appendix A, substantiates that impacts associated with the following thresholds would be less than significant:

- Threshold B-2
- Threshold B-3
- Threshold B-4
- Threshold B-6

These impacts will not be addressed in the following analysis.

5.3.3 Plans, Programs, and Policies

Regulatory Requirements

- RR BIO-1 In compliance with California Fish and Game Code Sections 3503, 3503.5, 3513, and 3800, the Proposed Project shall avoid the incidental loss of fertile eggs or nestlings or other activities otherwise lead to nest abandonment. Therefore, the Project Applicant is required conduct pre-construction survey prior to removal of nesting habitat if construction-related vegetation removal occurs during nesting season (typically between February 1 and September 1).
- RR BIO-2 (same as RR AE-2) The Project Applicant shall comply with the Tree Preservation Ordinance (Municipal Code Section 18.18.040) and plant nine replacement specimen trees (minimum 24-inch box size) for the removed three Brazilian pepper trees (*Schinus terebinthifolia*) on the Project Site.

5.3.4 Environmental Impacts

The following impact analysis addresses thresholds of significance for which the Initial Study disclosed potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

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Impact 5.4-1: The Proposed Project would not 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 CDFW or USFWS. [Threshold B-1]

As described in Tables 5.3-2 and 5.3-3, no native undisturbed suitable habitat or sensitive plant/wildlife species observations were documented within the Project Site. The Project Site is characterized as developed/ornamental. No wetlands or jurisdictional resources regulated by the US Army Corps of Engineers, CDFW, or Regional Water Quality Control Board were documented within or immediately adjacent to the Project Site. No impact is anticipated.

Level of Significance Before Mitigation: No Impact.

Impact 5.4-2: Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. [Threshold B-5]

A specimen tree preservation analysis was conducted throughout the Project Site by Dudek, certified arborist (Dudek 2018). A total of 65 trees were documented onsite, 3 of which were classified as specimen trees, as defined by the City of Anaheim's tree preservation ordinance. In total, 9 replacement trees (minimum 24-inch box size) are required for the removal of the 3 specimen trees. It should be noted that at the time of Specimen Tree Report preparation in November 2, 2018, the City included Eucalyptus trees as specimen trees, therefore, the Specimen Tree Report indicated 4 Spotted gum trees (*Corymbia maculate*), a type of Eucalyptus variety, were identified as specimen trees that need to be replaced with 16 trees as mitigation. However, on November 20, 2018, the City Council adopted an ordinance indicating that the City no longer classifies Eucalyptus trees as specimen trees. Therefore, there are only 3 specimen trees onsite that need to be replaced. Prior to any specimen tree removal, a Specimen Tree Removal Permit is required pursuant to Municipal Code Title 18, Section 18.18.040 (Tree Preservation) (RR BIO-2). Compliance with the existing regulations will ensure compliance with the ordinance and reduce impacts to less than significant (RR BIO-1 and RRBIO2).

Level of Significance Before Mitigation: Less than significant.

5.3.5 Cumulative Impacts

The temporary direct and/or indirect impacts of the Proposed Project would not result in significant cumulative impacts to environmental resources within the City. Cumulative impacts refer to incremental effects of an individual project when assessed with the effects of past, current, and proposed projects. The Proposed Project represents the redevelopment of previously developed land, and the Proposed Project would not contribute substantially to loss of protected natural habitats or other biological resources. The Proposed Project would result in less than significant individually impact, and would not incrementally result in significant biological resources impacts. Therefore, no adverse cumulative impact would occur.

Level of Significance before Mitigation: Less than significant.

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5.3.6 Level of Significance Before Mitigation

Upon implementation of regulatory requirements and standard conditions of approval, the following impacts would be less than significant: 5.3-1 and 5.3-2.

5.3.7 Mitigation Measures

No mitigation measures are required.

5.3.8 Level of Significance After Mitigation

No significant unavoidable adverse impacts to biological resources have been identified and no mitigation measures are required.

5.3.9 References

Cadre Environmental (Cadre). 2019, January. Biological Resources Technical Report.

Dudek. 2018, November 2. Specimen Tree Report for the 6501-6513 Serrano Avenue Project, Anaheim, California.

US Department of the Interior (DOI), Office of the Solicitor. 2017, December. M-37050, Memorandum to Secretary, Deputy Secretary, Assistant for Land and Minerals Management, Assistant Secretary for Fish and Wildlife and Parks. The Migratory Bird Treaty Act Does not Prohibit Incidental Take. <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>

Fish and Wildlife Service (FWS). 2018, April. Memorandum to Service Directorate. Guidance on the recent M-Opinion affecting the Migratory Bird Treaty Act. <https://www.akingump.com/images/content/7/0/v2/70445/m-opinion-memo-signed-4.11.18.pdf>

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