

5. Environmental Analysis

5.3 BIOLOGICAL RESOURCES

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

- Biological Resources Technical Memorandum, River Street Marketplace, City of San Juan Capistrano, Cadre Environmental, November 10, 2018.

A complete copy of this study is included in Appendix D of this DEIR.

5.3.1 Environmental Setting

5.3.1.1 REGULATORY BACKGROUND

Federal and State

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) affirms and implements the United States’ commitment to four international conventions—with Canada, Japan, Mexico, and Russia—to protect shared migratory bird resources. The 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.

California Fish and Game Code

The California Fish and Game Code contains several provisions relevant to the Project area. Special status plants and animals are found in the Project area and therefore are regulated by the Fish and Game Code.

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Section 1600 requires that a project proponent notify the California Department of Fish and Wildlife (CDFW) of any proposed alteration of streambeds, rivers, and lakes. The intent is to protect habitats that are important to fish and wildlife. CDFW may review a project and place conditions on the project as part of a Streambed Alteration Agreement. The conditions are intended to address potentially significant adverse impacts within CDFW's jurisdictional limits. Specific provisions of the Fish and Game Code that are relevant to this Project include:

- California Endangered Species Act (CESA), Sections 2050 et seq.
- Lake and Streambed Alteration Program, Sections 1600 to 1616
- Fully Protected Species, Sections 3511, 4700, 5050, and 5515
- Birds, Birds of Prey and their Eggs, Section 3503
- Migratory Birds, Section 3513
- Nongame Birds, Section 3800(a)
- Native Plant Protection Act (NPPA), Sections 1900 to 1913

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 (MOU). 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 (CNDDB), 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.

City of San Juan Capistrano

Tree Removal Ordinance

Section 9-2.349 of the City's Municipal Code is the City's tree removal ordinance. Among other objectives, the section ensures that “heritage trees” (as defined) are identified and preserved, and that a “functional and manageable process for permitting tree removal is provided for properties where such removal is necessary or will not adversely impact adjacent properties or community character.” The section outlines tree removal permit procedures that are applicable to every tree that is to be removed from a site. Appendix A, *Definitions*, of the municipal code defines heritage trees as follows:

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- **Heritage Tree:** A tree that merits special protection measures due to its size and type. A tree shall be deemed a heritage tree and shall be protected from removal when such tree has a trunk diameter at breast height (dbh) of 36 (thirty-six) inches or greater, and is a specimen of the following species: *Schinus molle* (California pepper); *Quercus* spp. (oak); *Cedar* spp. (cedar); *Eucalyptus globulus* (blue gum eucalyptus); *Juglans* spp. (walnut); *Olea europaea* (olive); *Platanus* spp. (sycamore); *Populus* spp. (cottonwood); or as otherwise designated by the Planning Commission based on the tree's unique and intrinsic value to the community because of its size, age, historic association or ecological value.

Existing Conservation Plans and Areas

Orange County Central-Coastal Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP), which encompasses 208,000 acres of central and south-central Orange County. The NCCP/HCP covers 39 species and 12 natural communities and has established over 37,000 acres of habitat reserves. The nearest reserve to the project site established under the NCCP/HCP is a habitat linkage about 0.8 mile to the northwest (NROC 2005). There is a 1,110-acre City of San Juan Capistrano open space area about 0.6 mile south of the project site and east of the I-5 (Greeninfo 2018).

5.3.1.2 PLANT COMMUNITIES/HABITAT

Plant communities consist of the existing active nursery and planted “in-ground” plants and trees. The nursery sells container plants exclusively; it does not contain any “in-ground” trees or plants and is not an agriculture or farming facility. Nursery trees consist of escaped nursery stock and/or introduced species and are not California native species (SWA 2017).

Trees planted onsite are identified below. Other vegetation onsite consists of grasses and scattered shrubs. There is no native habitat onsite.

Trees and Other Plants Identified in the Tree Survey

A tree survey of the site completed in November 2017 identified 41 tree species onsite (see Table 5.3-1 below). There are no trees onsite meeting the definition of heritage tree; the Coast live oaks (*Quercus Agrifolia*) present onsite are 32 inches in diameter or less, which do not meet the heritage tree definition of a 36 inch trunk diameter or greater. Nine of the plants are native (five California sycamore trees [*Platanus racemosa*], three coast live oak trees [*Quercus agrifolia*], and one Mexican elderberry shrub [*Sambucus mexicana*]). Approximately half the plants are next to the sidewalk on the west site boundary or the off-site parking lot on the south site boundary. Ten of the plants were noted to be dead or in poor condition. Most of the plants are in straight rows—mostly along the property lines—or in small clusters, suggesting that the plants were planted. No trees are visible in those locations in a 1938 aerial photograph (NETR 2018), suggesting that most of the trees identified onsite by the tree survey were planted by the nursery operation.

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5.3.1.3 SENSITIVE RESOURCES

Special status species include: those listed as endangered or threatened under the FESA or CESA; species otherwise given certain designations by the CDFW; and plant species listed as rare by the California Native Plant Society.

Sensitive natural communities are natural communities that are considered rare in the region by regulatory agencies; that are known to provide habitat for sensitive animal or plant species; or are known to be important wildlife corridors.

Table 5.3-1 Existing Trees and Plants on the Project Site

No.	Species Scientific Name Common Name	Native Species?¹	Trunk Diameter (inches)	Remarks
1	Unknown	Unknown	10	Dead
2	Unknown	Unknown	12	Dead
3	<i>Prunus persica</i> Peach	No	8	Old, past production
4	<i>Citrus spp.</i> Citrus	No	10	
5	<i>Opuntia ficus-indica</i> Prickly Pear	No	8	Large succulent (cactus), not a tree
6	<i>Opuntia ficus-indica</i> Prickly Pear	No	8	
7	<i>Opuntia ficus-indica</i> Prickly Pear	No	8	
8	<i>Opuntia ficus-indica</i> Prickly Pear	No	8	
9	<i>Schinus molle</i> California Pepper	No	8	healthy, no prominent leader
10	<i>Persea Americana</i> Avocado	No	12	
11	Unknown	Unknown	12	Dead
12	Unknown	Unknown	12	Dead
13	<i>Persea americana</i> Avocado	No	10	Healthy, productive
14	<i>Citrus spp.</i> Citrus	No	7	Healthy
15	<i>Echinopsis peruviana</i> Peruvian torch cactus	No	Cluster	Cactus cluster, not a tree
16	<i>Persea americana</i> Avocado	No	8	Healthy, productive
17	<i>Jacarando mimosifolia</i> Jacaranda	No	12	Healthy, on property line

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Table 5.3-1 Existing Trees and Plants on the Project Site

No.	Species Scientific Name Common Name	Native Species? ¹	Trunk Diameter (inches)	Remarks
18	<i>Jacarando mimosifolia</i> Jacaranda	No	12	
19	<i>Jacarando mimosifolia</i> Jacaranda	No	12	
20	<i>Jacarando mimosifolia</i> Jacaranda	No	12	
21	<i>Jacarando mimosifolia</i> Jacaranda	No	15	
22	<i>Schinus molle</i> California pepper	No	30	Escaped nursery stock, poor structure, cannot hold itself upright without bracing, hazard
23	<i>Quercus agrifolia</i> Coast Live Oak	Yes	30	Volunteer, heavily stunted and lopsided growth, cannot hold itself upright, hazard
24	<i>Ailanthus altissima</i> Tree Of Heaven	No	6	Invasive weed
25	<i>Schinus molle</i> California pepper	No	34	Escaped nursery stock, poor structure, cannot hold itself upright without bracing, hazard
26	<i>Jacarando mimosifolia</i> Jacaranda	No	14	Healthy, on property line
27	<i>Jacarando mimosifolia</i> Jacaranda	No	16	
28	<i>Jacarando mimosifolia</i> Jacaranda	No	18	
29	<i>Prunus spp.</i> Prunus	No ²	8	Sucker growth from old stump
30	<i>Pinus halepensis</i> Aleppo pine	No	2	Very small
31	<i>Pinus halepensis</i> Aleppo pine	No	2	
32	<i>Quercus agrifolia</i> Coast Live Oak	Yes	32	Healthy, specimen quality
33	<i>Platanus racemosa</i> California Sycamore	Yes	10	Healthy, upright, single trunk
34	<i>Platanus racemosa</i> California Sycamore	Yes	15	
35	<i>Platanus racemosa</i> California Sycamore	Yes	18	
36	<i>Platanus racemosa</i> California Sycamore	Yes	14	
37	<i>Platanus racemosa</i> California Sycamore	Yes	18	
38	<i>Quercus agrifolia</i> Coast Live Oak	Yes	12	Healthy, upright
39	<i>Schinus molle</i> California pepper	No	6	Poor health, volunteer

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Table 5.3-1 Existing Trees and Plants on the Project Site

No.	Species Scientific Name Common Name	Native Species? ¹	Trunk Diameter (inches)	Remarks
40	<i>Sambucus mexicana</i> Mexican elderberry	Yes	6	Shrub; volunteer, nearly dead
41	<i>Eucalyptus</i> spp. Eucalyptus	No	4	Volunteer

Source: SWA 2017

¹ Species origin was checked on Calflora, an internet database of wild California plants maintained by a nonprofit organization of the same name.

² Commonly cultivated trees of the genus *Prunus* are non-native.

Sensitive Species

Sensitive Plant Species

The site is not suitable habitat for sensitive plant species due to the long-standing nursery use. None of the plant species onsite described in the tree survey are identified as sensitive species on the California Natural Diversity Database (CNDDDB) maintained by CDFW.

Sensitive Animal Species

Use of the ground, grasses, and shrubs onsite by sensitive animal species—other than for incidental foraging—is precluded by the long-standing nursery use.

A CNDDDB search of the San Juan Capistrano and Dana Point quadrangles conducted on March 7, 2018 yielded documented occurrences of 25 sensitive animal species in the region. Low-quality and marginally suitable habitat is present onsite for one sensitive bird species listed in the CNDDDB search results.

- **Cooper's hawk (*Accipiter cooperi*):** Cooper's hawk habitat preference is woodland, chiefly of open, interrupted or marginal type. Nest sites are mainly in riparian growths of deciduous trees, as in canyon bottoms on river flood-plains, and live oaks (CDFW 2018). Coast live oak trees onsite may be suitable nesting habitat. Cooper's hawk has been observed nesting in urban environments and is tolerant of some levels of human presence and habitat alteration (Chiang et al. 2012). Cooper's hawk is on CDFW's Watch List, which is the lowest level of protection.

The other 24 sensitive animal species with documented occurrences in the two quadrangles consist of eight bird species, six reptile species, six mammal species, one amphibian, two fishes, and one insect. Each of the remaining 24 sensitive animal species are not expected to occur onsite for one or more of the following reasons:

- They are ground-dwelling or water-dwelling species that would be precluded from inhabiting the site due to the current nursery use and the lack of water.

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- They are birds and bats preferring habitat absent from the site (for instance, riparian habitat or coastal sage scrub).
- They are birds and bats sensitive to urbanization and human disturbances.

5.3.1.4 WILDLIFE MOVEMENT CORRIDORS

The project site is an operating nursery surrounded on all sides by urban uses; the site is not available for overland wildlife movement. Trees and shrubs onsite could be used for nesting by birds protected under the federal MBTA.

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.
- B-3 Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- 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.

No impacts relating to thresholds B-2 and B-6 were identified, as substantiated in Chapter 8, *Impacts Found Not to Be Significant*, of this DEIR. These impacts will not be addressed in the following analysis.

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5.3.3 Environmental Impacts

5.3.3.1 METHODOLOGY

The biological resources analysis was based on a literature view of the California Natural Diversity Database (CNDDDB) maintained by CDFW, a biological resources technical memorandum (Appendix C2) and a tree survey conducted by SWA (Appendix C1).

5.3.3.2 IMPACT ANALYSIS

The following impact analysis addresses thresholds of significance for which there are potentially significant or less than significant impacts. Effects of the project determined to have no impact are identified and described in Chapter 8 of this DEIR. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.3-1: Tree removal during construction of the proposed project could cause loss of active bird nests. [Thresholds B-1 and B-4]

Impact Analysis: The project site is developed, surrounded by urbanized uses, and isolated from areas supporting suitable habitat for wildlife species. Therefore, the project site is not available for overland wildlife movement or migration. However, the project site contains numerous mature trees that could be used for nesting by migratory birds and sensitive bird species. A CNDDDB search documented the potential for one sensitive bird species to nest on the project site, Cooper's hawk (*Accipiter cooperi*). The species is on CDFW's Watch List, which is the lowest level of protection. Cooper's hawk prefers closed canopies of riparian areas, however, they have become relatively common in suburban settings, tolerant of human presence, and may find Coast live oak trees (*Quercus agrifolia*) suitable nesting habitat.

Project construction would involve removal of 34 of the 41 trees mapped onsite, including, 2 Coast Live Oak trees (*Quercus agrifolia*), 5 California Sycamores (*Platanus Racemosa*), and 1 Mexican Elderberry (*Sambucus Mexicana*), all of which are considered California natives. However, the proposed project would preserve seven trees onsite, including one Coast Live Oak tree (*Quercus agrifolia*), five Jacaranda (*Jacaranda mimosifolia*) trees, and a cluster of Peruvian Torch Cactus (*Echinopsis Peruviana*). Tree locations are shown on the tree mitigation plan in Appendix C of this DEIR. Three Coast live oak trees were identified onsite. One at the southwest corner of the site, one in the south-central part of the site, and one in the east-central part of the site. The coast live oak tree in the southwest corner of the site is one of the seven trees that would be preserved. Additionally, the proposed project would plant 158 new trees, including 39 specimen trees¹ (minimum 72-inch box), 83 olive trees (48-inch box minimum), 20 site trees (36-inch box minimum), and 16 citrus trees (24-inch box). Plantings include two species of oaks: Coast live oak and Pasadena oak (*Quercus Englemanni*). The additional new trees to be planted onsite could be used for nesting migratory birds and the Cooper's hawk. Long-term impacts would be less than significant after planting of replacement trees. Implementation of the project would result in more trees being located on site as compared to the pre-development status of the site.

¹ Specimen trees are trees notable by virtue of their size and quality selected as a focal point.

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Future development would also be required to comply with the Migratory Bird Treaty Act (MBTA) (US Code, Title 16, §§ 703–712) and state law (California Fish and Game Code, §§ 3503 et seq.). The MBTA implements the United States’ commitment to four treaties with Canada, Japan, Mexico, and Russia for the protection of shared migratory bird resources. It governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. The USFWS administers permits to take migratory birds in accordance with the MBTA.

Loss of an active nest during construction would result in a significant impact. A nesting bird survey prior to construction would be required to ensure that no migratory or sensitive bird nests were disturbed during construction activities. Based on the species found during the survey (if any), species-specific measures would be prepared by a qualified biologist and implemented to prevent abandonment of the active nest (see Section 5.3.8, *Level of Significance After Mitigation*, below).

Level of Significance Before Mitigation: Impact 5.3-1 would be potentially significant during construction activities.

Impact 5.3-2: The proposed project would not adversely affect a federally protected wetland. [Threshold B-3]

Impact Analysis: No wetlands regulated by the United States Army Corps of Engineers, CDFW, or the Regional Water Quality Control Board were documented within or adjacent to the project site. The proposed project would not result in direct impacts to federally protected wetlands through removal, filling, or hydrological interruption. No improvements or relocation of the existing storm drain outlet structure (inlet) located within the Trabuco Canyon flood-prone area would occur as a result of projection initiation or construction.

The proposed project would comply with all applicable water quality regulations, including obtaining and complying with conditions established in the City of San Juan Capistrano MSR and National Pollution Discharge Elimination System (NPDES) Stormwater program permits. Both of these permits include the treatment of all surface runoff from paved and developed areas, the implementation of applicable best management practices (BMPs) during construction activities, and the installation and proper maintenance of structural BMPs to ensure adequate long-term treatment of water before entering into any stream course.

Level of Significance Before Mitigation: Impact 5.3-2 would be less than significant.

Impact 5.3-3: The proposed project is consistent with the City of San Juan Capistrano’s tree removal ordinance. [Threshold B-5]

Impact Analysis: As described in Chapter 3, *Project Description*, the project’s landscape scheme would feature a California native plant palette. A comprehensive landscape plan for the proposed project would include a variety of new trees, shrubs, and groundcover along the building perimeters, within the parking and common areas, and along the project perimeter. Proposed tree types would include but not be limited to oak, sycamore, olive, and citrus trees. Project development would preserve 2 specimen trees—one Peruvian Torch Cactus and

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one Coast Live Oak—and a row of 5 Jacaranda on the south boundary of the site. The project would plant 158 new trees, including 39 specimen trees (minimum 72-inch box), 83 olive trees (48-inch box minimum), 20 site trees (36-inch box minimum), and 16 citrus trees (24-inch box).

Tree removals associated with new development and discretionary land uses approvals are subject to the City's tree removal ordinance. (San Juan Capistrano Municipal Code [SJC MC], Section 9-2.349), which requires specified findings for removal of trees with a trunk diameter six inches or greater measured three feet above grade. Tree removal is permitted where the tree is nonnative or invasive species, is a safety hazard, replacements trees are more appropriate to the site and planting area, or other findings made pursuant to SJC MC, Section 9-2.349(e). There are no heritage trees present on the project site, since none of the existing trees onsite have a 36 inch or greater trunk diameter at breast height.

As shown on the Tree Mitigation Plan (Appendix C), the vast majority of trees to be removed are (i) not native, (ii) invasive, (iii) dead, and/or (iv) are a safety hazard. For example, the pepper tree to be removed cannot hold itself upright and is therefore a safety hazard. Additionally, removal of 34 trees onsite would be replaced with 158 new trees. The project would add approximately 124 more trees than currently exist, as well as a greater number of shrubs and groundcover, which is consistent with the requirements of the City's tree removal ordinance.

Level of Significance Before Mitigation: Impact 5.3-3 is less than significant.

5.3.4 Cumulative Impacts

Construction activities associated with implementation of the proposed project could result in the removal and/or replacement of trees onsite. In addition, other projects in the City would remove or disturb trees that could be used for nesting by migratory or sensitive birds protected under federal and state laws. However, construction of the proposed project and other cumulative projects would adhere to regulations implementing the federal MBTA, which would mitigate impacts to less than significant. Compliance with the MBTA (see Mitigation Measure BIO-1) would ensure that the project's contribution to disturbance of sensitive birds would be less than significant and would not be cumulatively considerable.

Level of Significance Before Mitigation: Cumulative biological resources impacts would be less than significant.

5.3.5 Existing Regulations and Standard Conditions

This analysis assumes compliance with all applicable laws. The following codes, rules, and regulations pertain to biological resources and were described in detail in Section 5.3.1.1 of this DEIR and are listed below.

Federal

- United States Code, Title 16, Sections 1531 et seq.: Endangered Species Act
- United States Code, Title 16, Sections 703-712: Migratory Bird Treaty Act
- United States Code, Title 33, Sections 1251 et seq.: Clean Water Act

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State

- California Fish and Game Code, Section 2080: Endangered Species Act
- California Fish and Game Code Sections 2800 et seq.: Natural Community Conservation Planning Act
- California Fish and Game Code, Sections 3503 et seq.: Protections for birds\

City of San Juan Capistrano

- Municipal Code Section 9-2.349: Tree Removal Permit

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: 5.3-2 and 5.3-3.

However, without mitigation, the following impacts would be **potentially significant**:

- **Impact 5.3-1:** Tree removal during construction of the proposed project could cause loss of active bird nests.

5.3.7 Mitigation Measures

Impact 5.3-1

BIO-1 Prior to issuance of permits for any construction activity, the project applicant shall demonstrate compliance with the federal MBTA and submit required nesting bird surveys to the City of San Juan Capistrano. If construction is proposed between January 15th to September 1st, a qualified biologist must conduct a nesting bird survey(s) no more than three days prior to initiation of construction activities to document the presence or absence of nesting birds in or adjacent to the project site. The preconstruction survey(s) will focus on identifying any raptors and/or passerines nests that may be directly or indirectly affected by construction activities. Construction outside the nesting season (between September 1st and January 14th) does not require pre-removal nesting bird surveys. Any nest permanently vacated for the season are not protected by the Migratory Bird Treaty Act. If active nests are documented, the following measures are required:

- Species-specific measures, based upon the species found during the survey, shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. At a minimum, grading in the vicinity of a nest shall be postponed until the young birds have fledged. A minimum exclusion buffer of 100 feet shall be maintained during construction, depending on the species and location. The perimeter of the nest setback zone shall be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities are restricted from the area.

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- A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, shall be submitted to the City of San Juan Capistrano prior to initiation of grading in the nest-setback zone. The qualified biologist shall serve as a biological monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests, or any birds dwelling in such nests, shall occur.
- A final report of the findings, prepared by a qualified biologist, shall be submitted to the City of San Juan Capistrano prior to construction-related activities that have the potential to disturb any active nests during the nesting season.

5.3.8 Level of Significance After Mitigation

Mitigation Measure BIO-1 would require that the project applicant demonstrate compliance with the MBTA and submit nesting bird surveys to the City. If active bird nests were found during these surveys, species-specific measures would be identified by a qualified biologist and implemented to prevent abandonment of the active nests. Setback buffers from nesting sites would be maintained so that grading activities avoid bird nesting until young birds have fledged. Implementation of Mitigation Measure BIO-1 would ensure compliance with the MBTA and reduce potential impacts to nesting birds to less than significant.

5.3.9 References

- Cadre Environmental. 2018, November 10. Biological Resources Technical Memorandum, River Street Marketplace, City of San Juan Capistrano.
- California Department of Fish and Wildlife (CDFW). 2018, April. Special Animals List.
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