BIOLOGICAL ENVIRONMENT

2.13 Animal Species

2.13.1 Regulatory Setting

Many State and federal laws regulate impacts to wildlife. The U.S. Fish and Wildlife Service (USFWS), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries Service), and the California Department of Fish and Wildlife (CDFW) are responsible for implementing these laws. This section discusses potential impacts and permit requirements associated with animals not listed or proposed for listing under the federal or state Endangered Species Act. Species listed or proposed for listing as threatened or endangered are discussed in the Threatened and Endangered Species Section at the beginning of Chapter 2. All other special-status animal species are discussed here, including CDFW fully protected species and species of special concern, and USFWS or NOAA Fisheries Service candidate species.

Federal laws and regulations relevant to wildlife include the following:

- National Environmental Policy Act
- Migratory Bird Treaty Act (MBTA)
- Fish and Wildlife Coordination Act

State laws and regulations relevant to wildlife include the following:

- California Environmental Quality Act (CEQA)
- California Endangered Species Act (CESA)
- Sections 1600 – 1603 of the California Fish and Game Code
- Sections 4150 and 4152 of the California Fish and Game Code

2.13.2 Affected Environment

The information in this section is based on the Natural Environment Study (Minimal Impacts) (October 2018) prepared for the proposed project.

2.13.2.1 Literature Review, Records Search, and Field Visits

Prior to the initial field survey, literature and natural resource databases were reviewed to gather historical records and present data regarding flora, fauna, habitat types, waters, and wetlands that have potential of occurring within the Biological Study Area (BSA). The BSA is defined as the 500-foot buffer area of analysis for direct, indirect, and cumulative effects around the project limits. A USFWS official species list was obtained using the Initial Planning and Conservation (IPaC) database on August 10, 2018. IPaC is used to determine the potential presence of federally listed species including birds, fish, mammals, reptiles, amphibians, and plants. It also identifies if designated critical habitat for listed animal species exists within the project limits. A California Natural Diversity Database (CNDDB) Rarefind 5 (Version 5.2.14, 2018) was obtained using the United States Geological Survey

7.5-minute *San Juan Capistrano* quadrangle. Rarefind 5 is a database application administered by the CDFW that allows for querying and reporting of CNDDB data.

Field surveys and reviews were performed to assess the physical and biological setting of the project limits and adjacent areas within a 500-foot buffer. Surveys were performed by walking the BSA with an approximate 500-foot buffer around the project limits. Binoculars were used to identify species and to survey areas with limited or hazardous access. The literature review and habitat assessment provided a biological baseline for special-status animal species that have the potential to occur within the BSA. Review of historical reports from the CNDDB also gave the timing and approximate location of any special-status animal species. This information allowed for a better context of species potential to occur within or adjacent to the project limits.

Existing Conditions

The BSA is within a highly developed urban area consisting of Interstate 5 and associated infrastructure, businesses, associated parking lots, residential homes, local streets, storm drain channels, Aliso Creek Bike Path, the Laguna Hills Mall, and the Laguna Woods Village retirement community. The only natural habitat in the BSA is Aliso Creek in the southern limits of the BSA. Although there would be no impacts to Aliso Creek and the adjacent riparian vegetation associated with the Build Alternatives (including Design Option B), surveys were performed adjacent to Aliso Creek during the initial habitat assessment in the BSA. Common species that were observed or have the potential to occur within the project limits include, but are not limited to, common raven (*Corvus corax*), American crow (*Corvus brachyrhynchos*), great-tailed grackle (*Quiscalus mexicanus*), Anna's hummingbird (*Calypte anna*), European starling (*Sturnus vulgaris*), house finch (*Haemorhous mexicanus*), house sparrow (*Passer domesticus*), mourning dove (*Zenaida macroura*), rock pigeon (*Columba livia*), coyote (*Canis latrans*), northern raccoon (*Procyon lotor*), and Virginia opossum *(Didelphis virginiana*). No special-status animal species were observed during the habitat assessments. However, two identified special-status species as having a potential to occur within the project limits including Cooper's hawk (*Accipiter cooperii*) and white-tailed kite (*Elanus leucurus*) discussed below. All other special-status species are not expected to occur within the project limits due to the lack of suitable habitat within the highly developed and urbanized area.

Cooper's Hawk (USFWS/Federal Status: None; CDFW/California Status: Watch List)

Cooper's hawk was not observed within the BSA during the habitat assessment; however, it has the potential to nest and forage within the project limits. This species is widespread throughout Southern California and tends to nest in dense woodlands and large trees. The CDFW classifies the Cooper's hawk as "Watch List", which means the species was once a Species of Special Concern (SSC), but kept on a watch list because there is a need for the population to be monitored throughout the State to make sure it does not merit a SSC classification again. Cooper's hawks also have protection under the MBTA and California Fish and Game Code Sections 3503 and 3503.5.

White-Tailed Kite (USFWS/Federal Status: None; CDFW/California Status: Fully Protected)

White-tailed kite was not observed within the BSA during the habitat assessment; however, it has the potential to nest and forage within the project limits. This species is uncommon in Southern California due to habitat loss and fragmentation. This species typically nests on the edges of open fields in large trees. The CDFW classifies the white-tailed kite as "Fully Protected", which is the State's primary effort to recognize species as being rare or uncommon and implementing protection to prevent extinction. White tailed-kites also have protection under the MBTA and California Fish and Game Code Sections 3503 and 3503.5.

2.13.3 Environmental Consequences

2.13.3.1 Temporary Impacts

Temporary impacts related to animal species during construction could occur within the BSA for all the Build Alternatives (including Design Option B), as described in the following sections.

Build Alternatives (Alternatives 2 and 4 [including Design Option B])

Each Build Alternative (including Design Option B) would require tree and/or vegetation removal within the project limits, which could impact nesting and foraging habitat for Cooper's hawk and white-tailed kite. Construction activities that generate louder-than-normal noises or vibrations may disrupt breeding and/or foraging behaviors. However, with implementation of the measures in Section 2.13.3 below, impacts to Cooper's hawk or white-tailed kite would be minimized.

No Build Alternative

The No Build Alternative would not include construction of any of the Build Alternatives (including Design Option B) and thus would not result in the removal of any structures, trees/vegetation, or result in the generation of any dust, noise, vibration, or erosion. Therefore, the No Build Alternative would not result in temporary impacts to special-status animal species in the BSA.

2.13.3.2 Permanent Impacts

Build Alternatives (Alternatives 2 and 4 [including Design Option B])

Permanent direct and indirect impacts would not have a substantial effect on animal species and are not anticipated to occur with implementation of measures BIO-1, BIO-2, and BIO-3.

No Build Alternative

The No Build Alternative proposes no construction or other disturbance in the BSA. Therefore, the No Build Alternative would not affect animal species.

2.13.4 Avoidance, Minimization, and/or Mitigation Measures

BIO-1 **Onsite Training.** An employee education program will be developed. Each employee (including temporary, contractors, and subcontractors) will receive a training/awareness program prior to working on the proposed project. They will be advised of the potential

impact to protected species and the potential penalties for taking such species. At a minimum, the program will include the following topics: occurrence of the listed and sensitive species in the area (including photographs), their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and project features designed to reduce the impacts to these species and promote continued successful occupation of the project limits.

BIO-2 **Nesting Bird Avoidance.** The California Department of Transportation anticipates the potential for nesting birds to occur February 1 to September 30 (Nesting Bird Season). In order to avoid impacts to nesting birds, vegetation removal and/or ground disturbance shall occur outside of the nesting bird season to avoid construction delays. If this is not feasible, a qualified biologist will survey the work area no more than 3 days prior to construction activities. If an active nest (i.e., with eggs or young) is found a no-work buffer will be established by the qualified biologist (100 feet for passerines and up to 500 feet for special-status bird species and/or raptors). No-work limits will be determined by the biologist and will depend on the sensitivity of the species, location of the nest, and existing site conditions (e.g., existing high levels of human activity and/or noise in the vicinity of the nest).

BIO-3 **Biological Monitoring.** A biologist will monitor all vegetation clearing and any other construction activities (at the discretion of a qualified biologist) for the duration of the project in areas adjacent to ESAs to flush any wildlife species present prior to construction to avoid direct mortality to wildlife and to ensure compliance with and proper implementation of vegetation removal, Best Management Practices (BMPs), and ESAs, and to ensure that all biological resource-related avoidance and minimization measures are properly adhered to.

BIO-4 **Trash Control.** The project site will be kept as clean of debris as possible. All food-related trash items will be enclosed in sealed containers and regularly removed from the site (consistent with NCCP/HCP Section 5.6.1 Avoidance and Minimization of Sensitive Biological Resources).

Permittee shall initiate a trash abatement program before starting construction and shall continue the program for the duration of the project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.