

## **4.3 BIOLOGICAL RESOURCES**

### **4.3.1 Introduction**

This section of the EIR describes the type of habitat occurring on-site and evaluates the potential impacts that could occur to biological resources occupying the site proposed for development of the Ontario Gateway Specific Plan. Information used to prepare this section was summarized from the *Biological Technical Report: Bates Specific Plan*, City of Ontario, California, prepared by Scott White Biological Consulting, on September 18, 2006. A copy of the biological report is included as Appendix C.

### **4.3.2 Environmental Setting**

The general area surrounding the project site is characterized by industrial, office, and retail commercial development reflecting the area's close proximity to the LA/Ontario International Airport and regional freeways. There is an industrial building on the site, and much of the site is in industrial use for building materials storage and transfer; truck traffic in and out of the site is heavy. Vacant land on the site has been disturbed by previous agricultural uses and appears to be mown or disced for weed abatement.

Available literature was reviewed to identify special status plants, animals, or plant communities known from the project site and vicinity. Literature reviewed included the California Natural Diversity Data Base (CDFG 2006a; USGS 7½' Guasti, Ontario, and Fontana quadrangles), California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California (Tibor 2001) the CNPS On-line Electronic Inventory (2006, for the same quadrangles), and compendia of special status species published by the US Fish and Wildlife Service (2004) and California Department of Fish and Game (2006b, 2006c). A Delhi Sands flower-loving fly habitat evaluation for the property prepared in 2002 by Scott D. Cameron of Ecological Sciences, Inc. was also reviewed. Many of the special status species identified during this literature review occur only in wetlands or other specialized habitats. These species are not considered further. For detailed information on these species, refer to Appendix C.

### **Field Survey**

Scott White and Justin Wood of Scott White Biological Consulting visited the project area on September 7, 2006. All accessible vacant land on the project site was walked to describe vegetation and habitat, document plants and animals occurring there, and evaluate habitat suitability for special status plants and animals known from the region.

### **Survey Results**

#### Vegetation and Habitat

The site provides no natural habitat. Most of the property is in use for materials storage and heavy truck access. Undeveloped land on the site was formerly in use as a vineyard, evidenced by remnant irrigation structures and one persisting vine. This vacant land shows furrows of

previous discing was disced or mown following the 2006 spring growing season. Ecological Sciences, Inc. (2002) reported similar mowing or discing several years earlier. Apparently, the property is disced annually for weed abatement. Plants growing in parking areas and vacant parts of the site are best characterized as “ruderal” (i.e, weedy plants of disturbed places). These include non-native annual grasses (*Bromus* spp. *Schismus barbatus*), weedy mustards (*Brassica* spp.), and native species adapted to disturbed sites, such as “horseweed” (*Conzya canadensis*). There are Eucalyptus windrows along the northern and eastern materials yard boundaries and a few other ornamental trees near the southern and western site boundaries. A few Eucalyptus trees have naturalized in a minor runoff ditch along the eastern boundary.

### **Special Status Species**

Plants or animals may be considered “sensitive” due to declining populations, vulnerability to habitat change, or restricted distributions. Certain sensitive species have been listed as threatened or endangered under state or federal Endangered Species Acts. Others are included in lists compiled by the California Dept. of Fish and Game, U.S. Fish and Wildlife Service, or private conservation organizations.

### Special Status Plants

Four state or federally listed threatened or endangered plants occur or have occurred in the general region: marsh sandwort, salt marsh bird’s beak, slender-horned spineflower, and Santa Ana River woolly-star. There is no suitable habitat for any threatened, endangered or any other special status plant species on the project site and it was therefore concluded that none of these species would occur there.

Marsh sandwort (*Arenaria paludicola*) occurs in perennial freshwater marshes and swamps below about 1000 feet elevation. It is listed as endangered under the State and federal Endangered Species Acts. Historically, it occurred in widely scattered locations along the Pacific Coast (Mason 1957, Munz 1974), with one occurrence in marshland Colton. The only known extant California occurrences are in Mendocino and San Luis Obispo counties (Tibor 2001). There is no suitable wetland habitat for marsh sandwort on the project site.

Salt marsh bird's beak (*Cordylanthus maritimus* ssp. *maritimus*) is an endangered plant occurring in coastal salt marsh habitats. Historically, it occurred from San Luis Obispo County to northern Baja California and at a few inland valley locations around San Bernardino. There are no known extant interior valley occurrences, and herbarium labels are too vague to be certain where the historic collections were made. It is likely that they came from wetland areas around San Bernardino, which have since been urbanized. There is no suitable saline wetland habitat for salt marsh bird’s beak on the project site.

Slender-horned spineflower (*Dodecahema leptoceras*) and Santa Ana River woollystar (*Eriastrum densifolium* ssp. *sanctorum*) are listed endangered plants occurring in riverwash, floodplains, and alluvial benches. The Santa Ana River woollystar is locally endemic to the Santa Ana River, and slender-horned spineflower is more widespread in southern California. There is no suitable wash or alluvial bench habitat for either plant on the project site.

### Special Status Wildlife

Four state or federally listed wildlife species are reported from the Ontario area: Delhi sands flower-loving fly, Santa Ana sucker, California gnatcatcher, and San Bernardino kangaroo rat. There is no suitable habitat for any threatened, endangered or any other wildlife species on the project site. It was concluded that none of them would occur there.

No local records of burrowing owls were found in the literature search.. No evidence of burrowing owls was found during the field survey. The site appears to be disced for weed control yearly.

Delhi sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) was addressed by Ecological Sciences, Inc. (2000), who concluded that the site “does not likely contain habitat suitable to support or sustain a viable DSF [Delhi Sand fly] population.” This conclusion was based on a habitat suitability evaluation in 2002 and on focused presence/absence surveys on the site in 1999 and 2000 (negative results both years).

Santa Ana sucker (*Catostomus santaanae*) is a fish endemic to several southern California stream systems. There is no aquatic habitat on the site and it was concluded that Santa Ana sucker does not occur. California gnatcatcher (*Polioptila californica*) is a threatened bird occurring in native shrublands (coastal sage scrub) throughout much of southern California. There is no suitable habitat on the site and it was concluded that California gnatcatcher does not occur on the project site. San Bernardino kangaroo rat (*Dipodomys merriami parvus*) occurs in open riverwash habitats as described for slender-horned spineflower and Santa Ana River woollystar, above. No suitable habitat occurs along the proposed alignment.

No other special status wildlife species would be expected to nest, den, or breed on the site. Several special status raptors might forage over the area, particularly during winter, but would not nest there. These include black-shouldered kite, northern harrier, golden eagle, ferruginous hawk, sharp-shinned hawk, Cooper’s hawk, merlin, and prairie falcon. Several bat species could also forage over the property, but none would nest or roost on the site. None of these species is listed, proposed for listing, or a candidate for listing as threatened or endangered under state or federal Endangered Species Acts, though some are included in the California Department of Fish and Game’s “Special Animals” list.

### **Applicable Policies and Regulations**

This section discusses local, State, and Federal regulations for biological resources.

#### **Federal**

##### Federal Endangered Species Act (FESA)

FESA was promulgated to protect any species of plant or animal that is endangered or threatened with extinction. Section 9 of the FESA prohibits “take” of federally threatened or endangered wildlife. Take, as defined according to the FESA, means to harass, harm, pursue, hunt, wound, kill, trap, capture, collect, or attempt to engage in any such conduct (16 U.S.C. 1532[19]).

Section 9 prohibits the removal and reduction of endangered plants from lands within Federal jurisdiction, and the removal, cutting, digging, damage, or destruction of endangered plants on any other area in “knowing violation of State law or regulation.”

Section 7 of the FESA (16 U.S.C. 1531 et seq.) requires Federal agencies to enter into formal consultation with the USFWS on proposed Federal actions (actions authorized, funded, or carried out by Federal agencies) that may adversely effect currently listed (threatened or endangered) species or destroy or adversely modify designated critical habitat. Because they may become listed during the design or construction phases of a project, the USFWS recommends candidate species also be considered during the consultation process. Section 7 also requires Federal agencies to confer with the USFWS if the agency determines that its action is likely to jeopardize the continued existence of any proposed species or result in the destruction or significant modification of proposed critical habitat.

Even if there is no Federal agency involvement in the proposed activity or project, Section 9 of the FESA (16 U.S.C. 1538) prohibits take of a federally listed endangered species of fish or wildlife except pursuant to a permit and Habitat Conservation Plan (HCP) approved pursuant to Section 10(a) of the FESA (16 U.S.C. 1539).

The FESA prohibitions and requirements are different, however, for endangered species of plants. Section 9 prohibits the take of endangered plants only from areas within Federal jurisdiction, or if such take would violate State law. In the absence of Federal agency involvement, no HCP is required for the take of listed plant species from private land. The proposed project site is located on private land. For listed plants located on private land, formal consultation with the USFWS is required when a project has a Federal “nexus” (i.e., a Federal permit is required or Federal funding is involved). In the absence of a Federal nexus, a project does not require a permit according to the FESA for impacts to listed plants on private lands.

## **State**

### California Endangered Species Act

The California Endangered Species Act (CESA) declares that deserving plant or animal species will be given protection by the state because they are of ecological, educational, historical, recreational, aesthetic, economic, and scientific value to the people of the state. CESA establishes that it is state policy to conserve, protect, restore, and enhance endangered species and their habitats. Under state law, plant and animal species may be formally designated as rare, threatened, or endangered through official listing by the California Fish and Game Commission. Listed species are given greater attention during the land use planning process by local governments, public agencies, and landowners than are species that have not been listed.

On private property, endangered plants may also be protected by the Native Plant Protection Act (NPPA) of 1977. Threatened plants are protected by CESA, and rare plants are protected by the NPPA. However, CESA authorizes that "Private entities may take plant species listed as endangered or threatened under the FESA and CESA through a federal incidental take permit issued pursuant to Section 10 of the FESA, if the CDFG certifies that the incidental take

statement or incidental take permit is consistent with CESA." In addition, the California Environmental Quality Act (CEQA) requires disclosure of any potential impacts on listed species and alternatives or mitigation that would reduce those impacts.

#### Migratory Bird Treaty Act and California Fish and Game Code, Section 3503

Section 3503 of the California Fish and Game Code, or Migratory Bird Treaty Act (MBTA) prohibits the destruction of bird nests except as otherwise provided for in the code. The MBTA similarly protects the nests of migratory birds. These regulations apply to the individual nests of these species, but do not regulate impacts to the species' habitats.

### **Local**

#### City of Ontario General Plan

The City of Ontario General Plan does not contain a discussion or an Element devoted to biological resources.

### **4.3.3 Impacts and Mitigation Measures**

#### **Thresholds of Significance**

The project would have a significant effect on biological resources if it would:

- 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 Game or U.S. Fish and Wildlife Service;
- 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;
- 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;
- 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;
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan;

**Impacts Determined to Have No Impact**

**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?**

No known wetlands exist on the project site and no impacts are anticipated.

**Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?**

The City of Ontario has not adopted any tree preservation policy or other local ordinance/policy that protects biological resources found on the site. Therefore, the proposed project would not conflict with any local policies or ordinances. No impact is anticipated.

**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 Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan has been adopted for the project area. No impact is anticipated.

**Impacts Determined to be Potentially Significant**

**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 Game or U.S. Fish and Wildlife Service.**

**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.**

**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.**

**Impact BIO-1**

**The northern portion of the project site is vacant and could be a potential habitat for sensitive or endangered species. Development of the proposed project could potentially impact the undeveloped portion.**

No special status plant or wildlife was found both during the field surveys and literature review. The proposed project would not affect any listed species or other special status plants or wildlife.

There is a minimal likelihood of affecting any other species, and any such effects would not be significant in terms of CEQA.

No other special status wildlife species would be expected to nest, den, or breed on the site. Several special status raptors might forage over the area, particularly during winter, but would not nest there. These include black-shouldered kite, northern harrier, golden eagle, ferruginous hawk, sharp-shinned hawk, Cooper's hawk, merlin, and prairie falcon. Several bat species could also forage over the property, but none would nest or roost on the site. No impact would occur and no mitigation is required.

No local records of burrowing owls were found in the literature search.. No evidence of burrowing owls was found during the field survey. The site appears to be disced for weed control yearly, so that any burrows would probably have relocated Thus no impact will occur and no mitigation is required.

### **Impact BIO-2**

**The project would result in the reduction of vegetation on-site that may be used as nesting sites. This is a potentially significant impact.**

Many species of birds and their active nests are protected under the Migratory Bird Treaty Act. Eucalyptus trees and other ornamental trees provide nesting sites for birds. If possible, construction activities should occur outside the nesting season (spring) for birds.

### **Mitigation Measure BIO-1**

*To avoid incidental killing of birds protected under the Migratory Bird Treaty Act and the California Fish and Game Code, scheduling initial grading and brush removal of any previously undisturbed habitat shall occur outside the breeding season. No vegetation removal should occur between early spring (February 1) and mid summer (August 30). If construction activities occur during the nesting season, a survey shall be conducted by a qualified biologist within one week prior to removal of the trees. If active bird nests are found, impacts shall be avoided unless proper permits are obtained.*

### **Level of Significance After Mitigation**

Implementation of Mitigation Measure BIO-1 would reduce potentially significant impacts to a less than significant level.

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