

californica) and California fiddler crabs (*Uca crenulata*). Higher elevation portions were somewhat degraded by the presence of non-native plant species such as wild raddish (*Raphanus sativus*), mustard (*Brassica nigra*) and common orache (*Atriplex patula*) and hence classified as Ruderal, but healthy numbers of native plants were in these areas as well, especially alkali heath (*Frankenia salina*).

The waters of the marsh may be expected to support topsmelt (*Atherinops affinis*) and sculpin (*Scorpaena guttata*) among other species. Foraging least terns were observed in the SAR Marsh during the survey conducted in 2003. Existing literature on the area² describe a rich avifauna – 96 species including waterowl and shorebirds (e.g., mallards, geese and green-backed heron) and raptors (e.g., white-tailed kites, kestrels and red-tailed hawks) (Kelsey and Collins, 1997). Upland areas are habitat for small mammals such as the western harvest mouse (*Reithrodontomys megalotis*) and skunk (*Mephitis mephitis*), and both native and non-native mammalian predators such as raccoon (*Procyon lotor*), red fox (*Vulpes vulpes*) and feral cats.

WETLANDS

Wetlands are ecologically productive habitats that support a rich variety of both plant and animal life. The importance and sensitivity of wetlands has increased as a result of their value as recharge areas and filters for water supplies and widespread filling and destruction to enable urban and agricultural development. In a jurisdictional sense, there are two definitions of a wetland, one definition adopted by federal agencies and a separate definition adopted by the State of California. Both are presented below.

Federal Wetland Definition

Wetlands are a subset of “waters of the United States” and receive protection under Section 404 of the Clean Water Act (CWA). The term “waters of the United States” as defined in Code of Federal Regulations (33 CFR 328.3[a] and [b]; 40 CFR 230.3[s]) includes those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. In extant regulations, these may be defined as sloughs, marshes, wet meadows, or natural ponds.

California Wetland Definition

Unlike the federal government, the CDFG has adopted the *Cowardin, et al.*³ definition of wetlands. Under normal circumstances, the federal definition of wetlands requires three wetland

² See page 3.2-1.

³ Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. US Fish and Wildlife Service, Office of Biological Services, Washington, D.C. Publ. No. FWS/OBS-79/31.

identification parameters to be met, whereas the *Cowardin* definition requires the presence of only one. For this reason, identification of wetlands by CDFG consists of the union of all areas that are periodically inundated or saturated, or in which at least seasonal dominance by hydrophytes may be documented, or in which hydric soils are present. The CDFG does not normally assert jurisdiction over wetlands unless they are subject to Streambed Alteration Agreements (Cal. Fish and Game Code 1600-1607) or they support state-listed endangered species.

Jurisdictional Wetlands at the Project Site

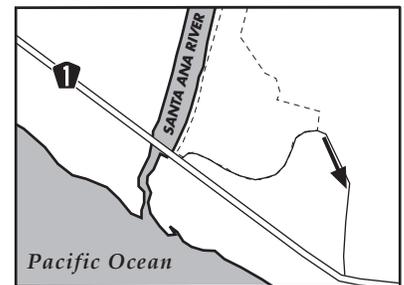
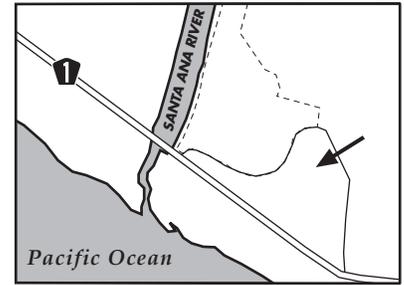
No wetland delineations were conducted for purposes of this EIR since most of the 92-acre SAR Marsh and the Talbert Marsh are assumed to be Jurisdictional Waters of the U.S. (Section 10 and Section 404) in the form of tidal marsh and tidal channel. However, the elevated unpaved utility service road that traverses the SAR Marsh is assumed to be outside of the jurisdictional wetland area. This road encompasses a utility easement in which the existing sewer line (and the preferred Alternative 2C) traverses the SAR Marsh to the SAR. **Figures 3.2-3** through **3.2-5** show segments of the utility road. As shown in the photographs, the road is unpaved, raised five to ten feet above the marsh area and bordered on either side by exotic or marsh vegetation.

SPECIAL STATUS SPECIES AND COMMUNITIES

As discussed below, several species known to occur in the vicinity of the project site are accorded “special status” designation because of their recognized rarity or vulnerability to various causes of habitat loss or population decline. Some of these receive specific protection defined in federal or State endangered species legislation. Others have been designated as “sensitive” on the basis of adopted policies and the expertise of State resource agencies or organizations with acknowledged expertise, or policies adopted by local governmental agencies such as counties, cities, and special districts to meet local conservation objectives. These species are referred to collectively as “special status species” in this EIR following a convention that has developed in practice but has no official sanction exclusive of guidance for CEQA analysis (see below). A full list of special status species considered in this analysis is provided as **Table 3.2-1**.

Special Status Species and Communities at the Project Site

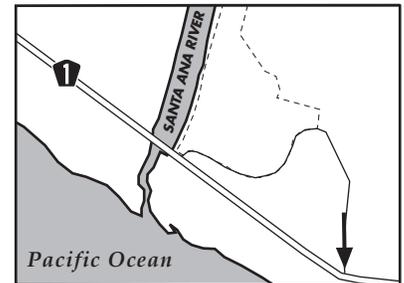
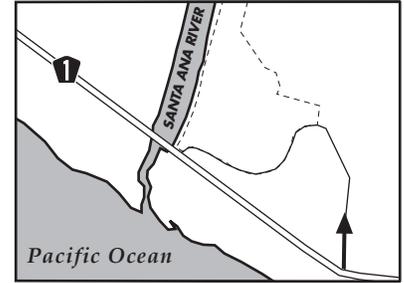
Table 3.2-1 was compiled from: 1) analysis of previous studies conducted within the project site concerning special status plants and animals; 2) consultation with the CNDDDB, the USFWS, and the CDFG; 3) review of pertinent scientific literature about the sensitive species of concern; 4) review of the most recent Notice of Review for federally-listed and candidate taxa; 5) review of the CDFG’s most recent list of special animals and plants, which also includes federally-listed and candidate plants; 6) review of CNPS literature, and 7) recent field studies conducted as a part of this EIR.



SOURCE: Environmental Science Associates

Newport Force-Main SEIR / 201168 ■

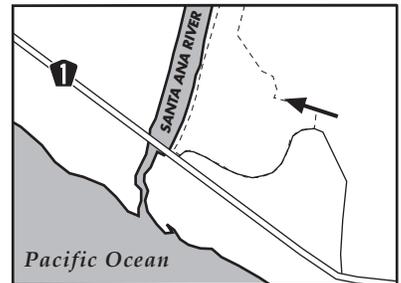
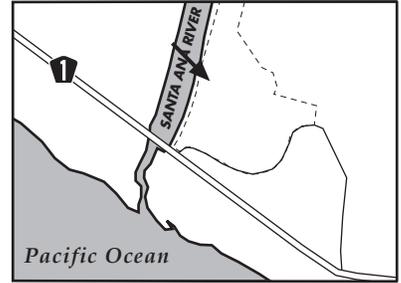
Figure 3.2-3
View of Utility Road Easement and Adjacent Residences
– Alternative 2C



SOURCE: Environmental Science Associates

Newport Force-Main SEIR / 201168 ■

Figure 3.2-4
View of Utility Road Easement near PCH
– Alternative 2C



SOURCE: Environmental Science Associates

Newport Force-Main SEIR / 201168 ■

Figure 3.2-5
View of Utility Road and Easement
– Alternative 2C

TABLE 3.2-1: SPECIAL STATUS SPECIES REPORTED OR POTENTIALLY OCCURRING IN THE PROJECT AREA

SPECIES LISTED OR PROPOSED FOR LISTING				
Common name <i>Scientific name</i>	Listing Status USFWS/ CDFG/CNPS	Habitat Requirements	Period of Identification / Flowering Period	Potential to Occur (see Note below)
<i>Invertebrates</i>				
San Diego fairy shrimp <i>Branchinecta sandiegonensis</i>	FE/--	Endemic to San Diego County mesas	February-March	No habitat
<i>Fish</i>				
Santa Ana sucker <i>Catostomus santaanae</i>	FT/CSC	Los Angeles Basin coastal streams	Year-round	Very rare below Prado Dam in SAR
Tidewater goby <i>Eucyclogobius newberryi</i>	FE/CSC	Brackish water along California coast	Year-round	No habitat
Southern steelhead trout <i>Oncorhynchus mykiss</i>	FE/CSC	Freshwater streams	Year-round	No habitat
<i>Amphibians</i>				
Arroyo toad <i>Bufo microscaphus californicus</i>	FE/CSC	Semi-arid, near washes or intermittent streams, including valley-foothill and desert riparian	March-July	No Habitat
<i>Birds</i>				
Western snowy plover <i>Charadrius alexandrinus nivosus</i>	FT/CSC	Sandy beaches, estuarine shores, salt pond levees and alkali lakes	Year-round	No habitat Reported to forage near Huntington State Beach
Western yellow-billed cuckoo <i>Coccyzus americanus occidentalis</i>	FC/CE	Riparian forests along flood bottoms of large river systems	Spring-Summer	No habitat
California black rail <i>Laterallus jamaicensis coturniculus</i>	FSC/CT	Salt-marshes bordering large bays	Year-round	Not observed
Belding's savannah sparrow <i>Passerculus sandwichensis beldingi</i>	FSC/CE	Coastal salt-marshes	Year-round	Present – Observed on site in 1996
Coastal California gnatcatcher <i>Poliophtila californica californica</i>	FT/CSC	Coastal sage scrub	Year-round	No habitat
Light-footed clapper rail <i>Rallus longirostris levipes</i>	FE/CE	Salt-marshes with cordgrass and pickleweed	Year-round	Not observed Noted using the SAR Marsh in 1980 (USACE, 1987b)
California least tern <i>Sterna antillarum browni</i>	FE/CE	Coastal beaches and sandbars	Spring-Summer	Present – Site used for foraging (ESA July 9, 2003)

TABLE 3.2-1 (CONT.): SPECIAL STATUS SPECIES REPORTED OR POTENTIALLY OCCURRING IN THE PROJECT AREA

SPECIES LISTED OR PROPOSED FOR LISTING (CONT.)				
Common name <i>Scientific name</i>	Listing Status USFWS/ CDFG/CNPS	Habitat Requirements	Period of Identification / Flowering Period	Potential to Occur (see Note below)
Least Bell's vireo <i>Vireo bellii pusillus</i>	FE/CE	Low riparian vegetation near river bottoms	Summer	No habitat Scattered reports from lower SAR (Griffith and Griffith, 2002)
Mammals				
Pacific pocket mouse <i>Perognathus longimembris pacificus</i>	FE/CSC	Narrow coastal plains	Year-round	No habitat
Plants				
Ventura marsh milk-vetch <i>Astragalus pycnostachyus var lanosissimus</i>	FE/CE/ List 1B	Coastal salt-marsh	July-October	Not observed
San Fernando Valley spineflower <i>Chorizanthe parryi var fernandina</i>	FC/CE/ List 1A	Coastal scrub	April-June	No habitat
Salt marsh bird's-beak <i>Cordylanthus maritimus ssp maritimus</i>	FE/CE/ List 1B	Coastal salt-marsh, coastal dunes	May-October	Not observed
Laguna Beach dudleya <i>Dudleya stolonifera</i>	FT/CT/ List 1B	Chaparral, coastal scrub, cismontane woodland, valley and foothill grassland	May-July	No habitat
Santa Ana River woollystar <i>Eriastrum densifolium ssp sanctorum</i>	FE/CE/ List 1B	Coastal sage scrub, chaparral	June-August	No habitat
California Orcutt grass <i>Orcuttia californica</i>	FE/CE/ List 1B	Vernal pools	May-June	No habitat
Lyon's pentachaeta <i>Pentachaeta lyonii</i>	FE/CE/ List 1B	Edges of chaparral, grasslands	March-August	No habitat
Invertebrates				
Tiger beetle <i>Cicindela gabbii</i>	*	Inhabits coastal estuaries and mudflats	January-July	Not observed
Sandy beach tiger beetle <i>Cicindela hirticollis gravida</i>	FSC/--	Areas adjacent to non-brackish water along the coast	January-July	No habitat
Monarch butterfly <i>Danaus plexippus</i>	*	Roosts in wind-protected tree groves of eucalyptus, Monterey pine	Winter	No habitat

TABLE 3.2-1 (CONT.): SPECIAL STATUS SPECIES REPORTED OR POTENTIALLY OCCURRING IN THE PROJECT AREA

FEDERAL OR STATE SPECIES OF SPECIAL CONCERN				
Common name <i>Scientific name</i>	Listing Status USFWS/ CDFG/CNPS	Habitat Requirements	Period of Identification / Flowering Period	Potential to Occur (see Note below)
Wandering skipper <i>Panoquina errans</i>	FSC/--	Coastal salt-marsh	February- October	Not observed
Mimic tryonia <i>Tryonia imitator</i>	FSC/--	Coastal lagoons, estuaries and salt-marshes	Year-round	Not observed
Reptiles				
Southwestern pond turtle <i>Clemmys marmorata pallida</i>	FSC/CSC	Permanent freshwater ponds and slow streams edged with sandy soils for laying eggs	Year-round	No habitat
Orange-throated whiptail <i>Cnemidophorus hyperythrus beldingi</i>	FSC/CSC	Coastal scrub, chaparral, and valley-foothill hardwood habitats	Year-round	No habitat
San Diego horned lizard <i>Phrynosoma coronatum blainvillei</i>	FSC/CSC	Coastal sage scrub, arid chaparral	Year-round	No habitat
Birds				
Burrowing owl <i>Athene cunicularia (burrow sites)</i>	FSC/CSC	Nests in mammal burrows in open, sloping grasslands	February-June	No habitat
Cooper's hawk <i>Accipiter cooperi</i>	--/CSC	Nests in riparian growths of deciduous trees and live oaks	March-July	No habitat
Tricolored blackbird <i>Agelaius tricolor</i>	FSC/CSC	Riparian thickets and emergent vegetation	Spring	No habitat
Coastal cactus wren <i>Campylorhynchus brunneicapillus couesi</i>	--/CSC	Coastal sage scrub	Year-round	No habitat
Yellow-breasted chat <i>Icteria virens (nesting)</i>	--/CSC	Riparian corridors with willows or other dense foliage	March- September	No habitat
Black skimmer <i>Rynchops niger</i>	--/CSC	Nests along gravel bars, low islets and sandy beaches along Salton Sea and southern San Diego Bay	June-October	Present or observed – Site used seasonally
Plants				
Chaparral sand-verbena <i>Abronia villosa var. aurita</i>	--/--/List 1B	Sandy areas in coastal scrub and chaparral habitat	June-August	Observed at Talbert Nature Preserve
Aphanisma <i>Aphanisma blitoides</i>	FSC/--/List 1B	Coastal bluff scrub, coastal dunes	April-May	No habitat
Coulter's saltbush <i>Atriplex coulteri</i>	--/--/List 1B	Coastal bluff scrub, coastal dunes, coastal scrub and grassland	March-October	No habitat

TABLE 3.2-1 (CONT.): SPECIAL STATUS SPECIES REPORTED OR POTENTIALLY OCCURRING IN THE PROJECT AREA

FEDERAL OR STATE SPECIES OF SPECIAL CONCERN (CONT.)				
Common name <i>Scientific name</i>	Listing Status USFWS/ CDFG/CNPS	Habitat Requirements	Period of Identification / Flowering Period	Potential to Occur (see Note below)
South Coast saltscale <i>Atriplex pacifica</i>	FSC/--/List 1B	Coastal bluff scrub, coastal dunes, playas, chenopod scrub	March-October	No habitat
Parish's brittlescale <i>Atriplex parishii</i>	FSC/--/List 1B	Alkali meadows, vernal pools, chenopod scrub, playas	June-October	No habitat
Davidson's saltscale <i>Atriplex serenana</i> var <i>dauidsonii</i>	--/--/List 1B	Coastal bluff scrub, coastal scrub	April-September	No habitat
Santa Barbara morning-glory <i>Calystegia sepium</i> ssp <i>binghamiae</i>	--/--/List 1A	Coastal marshes	June-August	Not observed
Southern tarplant <i>Centromadia parryi</i> ssp. <i>australis</i>	--/--/List 1B	Marshes and swamps, grassland, vernal pools	May-November	No habitat
Many-stemmed dudleya <i>Dudleya multicaulis</i>	FSC/--/List 1B	Chaparral, coastal scrub, valley and foothill grassland	May-June	No habitat
Cliff spurge <i>Euphorbia misera</i>	--/--/List 2	Coastal bluff scrub	January-August	No habitat
Los Angeles sunflower <i>Helianthus nuttallii</i> ssp <i>parishii</i>	FSC/--/List 1A	Coastal salt and freshwater marshes and swamps	August-October	Not observed
Coulter's goldfields <i>Lasthenia glabrata</i> ssp <i>coulteri</i>	FSC/--/List 1B	Coastal salt-marsh, playas, valley and foothill grassland, vernal pools	March-May	Not observed
Robinson's pepper-grass <i>Lepidium virginicum</i> var <i>robinsonii</i>	--/--/List 1B	Chaparral, coastal scrub	January-April	No habitat
Mud Nama <i>Nama stenocarpum</i>	--/--/List 2	Marshes and swamps	March-May	No habitat
Prostrate navarretia <i>Navarretia prostrata</i>	FSC/--/List 1B	Coastal scrub, grassland, vernal pools	April-July	No habitat
Coast woolly-heads <i>Nemacaulis denudata</i> var <i>denudate</i>	--/--/List 2	Coastal dunes	April-September	No habitat
Sanford's arrowhead <i>Sagittaria sanfordii</i>	FSC/--/List 1B	Marshes and swamps	May-August	No habitat
Salt spring checkerbloom <i>Sidalcea neomexicana</i>	--/--/List 2	Alkali playas, brackish marshes, chaparral, coastal scrub, lower montane conifer forest, desert scrub	April-June	No habitat
Estuary seablite <i>Suaeda esteroa</i>	--/--/List 1B	Marshes and swamps	July-October	Not observed

TABLE 3.2-1 (CONT.): SPECIAL STATUS SPECIES REPORTED OR POTENTIALLY OCCURRING IN THE PROJECT AREA

FEDERAL OR STATE SPECIES OF SPECIAL CONCERN (CONT.)				
Common name <i>Scientific name</i>	Listing Status USFWS/ CDFG/CNPS	Habitat Requirements	Period of Identification / Flowering Period	Potential to Occur (see Note below)
<i>CDFG-sensitive plant communities</i>				
California walnut woodland is not present.				
Southern coast live oak riparian forest is not present				
Southern coastal salt marsh is present				
Southern cottonwood willow riparian forest is not present				
Southern dune scrub is not present				
Southern foredunes is not present				
Southern sycamore alder riparian woodland is not present				

Note: “No Habitat” indicates that the habitat is not present within the project impact area as confirmed by the July 8 and 9, 2003 reconnaissance survey conducted by ESA. Therefore, species are not assumed present in the area or affected by the project. “Not observed” indicates that the species may be present but was not observed during the reconnaissance survey of the project impact area conducted by ESA on July 8 and 9, 2003. “Observed” indicates that the species is known to utilize the habitat within the project area.

STATUS CODES:

Federal Categories (USFWS)

FE = Listed as Endangered by the Federal Government
 FE = Listed as Endangered by the Federal Government
 FT = Listed as Threatened by the Federal Government
 FPE = Proposed for Listing as Endangered
 FPT = Proposed for Listing as Threatened
 FC = Candidate for Federal Listing
 FSC = Federal Species of Concern

California Native Plant Society

List 1A = Plants presumed extinct in California
 List 1B = Plants rare, threatened, or endangered in California and elsewhere
 List 2 = Plants rare, threatened, or endangered in California but more common
 List 3 = Plants about which more information is needed
 List 4 = Plants of limited distribution

State Categories (CDFG)

CE = Listed as Endangered by the State of California
 CT = Listed as Threatened by the State of California
 CR = Listed as Rare by the State of California
 CSC = California Species of Special Concern

Source: California Natural Diversity Database.

Plants

Based on the existing literature and the reconnaissance survey, no special-status plants were observed or are likely to occur on the SAR Marsh site (Alternatives 2A, 2B and 2C). One List 1B species, the chaparral sand-verbena, has been observed in the Talbert Marsh area. Alternative 1C could encounter this species. There would be no natural plant habitat impacted for the other Alternative 1 alignments.

Wildlife

Based on the literature survey and reconnaissance field survey, two listed wildlife species are known or likely to occur on the SAR Marsh site (Beldings savannah sparrow and least tern). The Talbert Marsh traversed by Alternative 1C supports similar wildlife. Alternatives 1A, 1B, and 1C would require constructing a jacking pit within 250 feet of the least tern nesting area at Huntington State Beach. The two listed species are described below.

Belding's savannah sparrow (Passerculus sandwichensis beldingi)

The Belding's savannah sparrow is listed as endangered in California and a candidate species for federal protection. It is a non-migratory subspecies that occurs in coastal salt marshes between Goleta Slough, Santa Barbara County, and Bahia de San Quintin in Mexico. These sparrows nest from April through July, with a peak in May and June, in hollows near the ground in and under a canopy of pickleweed. Savannah sparrows feed on grass and other seeds, snail, spiders and other invertebrates. Recently (deRivera, 2000), the species was observed eating eggs from live fiddler crabs. The same salt-marsh habitat losses that have affected least terns (see below) are responsible for population declines, and it may be necessary to consider complex factors in restoring or replacing nest substrate (Keer and Zedler, 2002).

California least tern (Sterna antillarum browni)

The California least tern is endangered at both state and federal levels. It is one of the smallest members of its family, averaging only 23 cm (9 in.) in length. Typically, these terns nest on the ground (unvegetated sites near water) in loose colonies and forage in shallow estuaries and lagoons, diving head first into the water after a wide variety of small fish. Formerly California least terns regularly nested on sandy beaches and mudflats near the ocean. The construction of PCH in the early 20th century had a significant impact on California least terns, as well as other shorebirds, by directly destroying nesting beaches as well as making these areas more accessible to human encroachment (Pacific Biodiversity Institute, 2003; Zeiner et al, 1990). Most California least terns nest at only a few select sites. In 1994, 76% of the population nested at nine sites, all in southernmost coastal California. Four of the nine sites (in Los Angeles, Orange, and San Diego counties) supported 48% of the breeding pairs (USGS Information at <http://biology.usgs.gov/s+t/SNT/index.htm>).

Two California "species of special concern" have been observed within the SAR marsh: black skimmer and white-tailed kite. Other raptors such as kestrels and hawks have also been observed at SAR Marsh and are protected by Fish and Game Code Section 3503.

APPLICABLE REGULATIONS

Regulation of Activities in Wetlands

The regulations and policies of various federal agencies (e.g., USACE, U.S. EPA and USFWS) mandate that the filling of wetlands be avoided unless it can be demonstrated that no practicable alternatives (to filling wetlands) exist. The USACE has primary federal responsibility for administering regulations that concern waters and wetlands on the project site. In this regard, the USACE acts under two statutory authorities, the Rivers and Harbors Act (Sections 9 and 10), which governs specified activities in “navigable waters,” and the CWA (Section 404), which governs specified activities in “waters of the United States,” including wetlands and special aquatic sites. The USACE requires that a permit be obtained if a project proposes placing structures within navigable waters. The U.S. EPA, USFWS, National Oceanic and Atmospheric Administration (NOAA) Fisheries, and several other agencies provide comment on USACE permit applications. The U.S. EPA has provided the primary criteria for evaluating the biological impacts of USACE permit actions in wetlands and other special aquatic sites.

The State’s authority in regulating activities in wetlands and waters at the site resides primarily with the CDFG and the State Water Resources Control Board (SWRCB). The CDFG provides comment on USACE permit actions under the Fish and Wildlife Coordination Act. CDFG is also authorized under the State Fish and Game Code Sections 1600-1607 to develop mitigation measures and enter into a Stream Alteration Agreement (SAA) with applicants that propose a project that would obstruct the flow or alter the bed, channel, or bank of a river, stream or lake in which there is a fish or wildlife resource.

The SWRCB, acting through the nine RWQCB, must certify that a USACE permit action meets State water quality objectives (Section 401, CWA).

Within the coastal zone,⁴ applicants for Section 404 permits must include a certification of consistency with the California Coastal Zone Management Program.⁵ The entire project site is located within the coastal zone, and thus it is subject to the California Coastal Act and the Orange County Local Coastal Program. The CCC jurisdictional or review area not only includes the wetlands (Cowardin wetlands), but an additional 100-foot-wide buffer, measured from the upland edge of the wetland (14 California Code of Regulations [CCR] 12577).

⁴ The coastal zone is defined as areas 1,000 yards inland from the mean high tide except in significant coastal estuarine, habitat, and recreational areas, where it extends inland to the first major ridge line paralleling the sea or five miles from the mean high tide line, whichever is less (California Coastal Act 1976).

⁵ Under the federal Coastal Zone Management Act of 1972 (16 USC 1451), federal permit applicants must obtain a certification that activities proposed within the coastal zone are consistent with the state Coastal Zone Management Program.

Special Status Species Regulations

Federal Endangered Species Act

Under the Federal Endangered Species Act (FESA), the Secretary of the Interior and the Secretary of Commerce jointly have the authority to list a species as threatened or endangered (16 USC 1533(c)).

Pursuant to the requirements of FESA, an agency reviewing a proposed project within its jurisdiction must determine whether any federally listed or proposed species may be present in the project region and determine whether the proposed project would have a potentially significant impact on such species. In addition, the agency is required to determine whether the project is likely to jeopardize the continued existence of any species proposed to be listed under FESA or result in the destruction or adverse modification of critical habitat proposed to be designated for such species (16 USC 1536(3),(4)). Therefore, project-related impacts to these species or their habitats would be considered “significant” in this EIR. The “take”⁶ prohibition of the FESA prohibits any action that adversely affects a single member of an endangered or threatened species.

California Endangered Species Act

Under the CESA, the CDFG has the responsibility for maintaining a list of threatened and endangered species (California Fish and Game Code 2070). The CDFG also maintains a list of “candidate species,” which are species formally noticed as being under review for addition to either the list of endangered species or the list of threatened species. The CDFG also maintains lists of “species of special concern,” which serve as “watch lists.” Pursuant to the requirements of CESA, an agency reviewing a proposed project within its jurisdiction must determine whether any state listed endangered or threatened species could be present on the project region and determine whether the proposed project would have a potentially significant impact on such species. In addition, the CDFG encourages informal consultation on any proposed project that may impact a candidate species.

CEQA Guidelines Section 15380

Although threatened and endangered species are protected by specific federal and state statutes, *CEQA Guidelines* Section 15380(b) provides that a species not listed on the federal or State list of protected species may be considered rare or endangered if the species can be shown to meet

⁶ “Take,” as defined in Section 9 of the FESA, is broadly defined to include intentional or accidental “harassment” or “harm” to wildlife. “Harass” is further defined by the USFWS as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, and sheltering. “Harm” is defined as an act which actually kills or injures wildlife. This may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

certain specified criteria. These criteria have been modeled after the definition in FESA and the section of the California Fish and Game Code dealing with rare or endangered plants or animals. This section was included in the *CEQA Guidelines* primarily for situations in which a public agency is reviewing a project that may have a significant effect on, for example, a “candidate species” that has not yet been listed by either the USFWS or CDFG. Thus, CEQA provides an agency with the ability to protect a species from a project’s potential impacts until the respective government agencies have an opportunity to designate the species as protected, if warranted.

Other Statutes, Codes and Policies Affording Limited Species Protection

The federal Migratory Bird Treaty Act (16 U.S.C., Sec. 703, Supp. I 1989) prohibits killing, possessing, or trading in migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. Birds of prey are protected in California under the State Fish and Game Code, Section 3503.5 (1992). Section 3503.5 states that it is “unlawful to take, possess, or destroy any birds in the order 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.” It is generally recognized that construction disturbances during the breeding season can result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbances that cause nest abandonment and/or loss of reproductive effort are considered a “take” by CDFG. Any loss of fertile eggs, nesting raptors, or any activities resulting in nest abandonment would constitute a significant impact. This approach would apply to red-tailed hawks, American kestrels, barn owls, and other birds of prey. Project impacts to these species would not be considered “significant” in this EIR unless they are known to be present or have a high potential to nest on the site or rely on it for primary foraging.

Vascular plants listed as rare or endangered by the CNPS (Skinner and Pavlik, 1994), but which have no designated status or protection under federal or state endangered species legislation, are defined as follows:

List 1A: Plants believed extinct

List 1B: Plants Rare, Threatened or Endangered in California and Elsewhere

List 2: Plants Rare, Threatened or Endangered in California, but More Numerous Elsewhere

List 3: Plants about which we need more information – a review list

List 4: Plants of limited distribution – a watch list

In general, plants appearing on CNPS List 1 or 2 are considered to meet CEQA’s Section 15380 criteria and effects to these species would be considered “significant” in this EIR.

Local Plans and Policies

The SAR Marsh is owned by the USACE and is managed for its conservation value. The marsh was created as compensation for habitat destroyed during flood control improvements conducted in the 1990s by the USACE on the mainstem of the SAR.

The Banning Ranch (which generally includes the SAR Marsh) and Huntington Beach Wetlands have been identified as high priorities for wetlands restoration in the Southern California Wetlands Recovery Project (WRP) Regional Strategy. The WRP is a partnership of 17 state and federal agencies working in concert with local governments—including the County of Orange and the Cities of Huntington Beach and Newport Beach—to preserve and restore wetlands in Southern California.⁷

The Santa Ana Watershed Project Authority (SAWPA) was formed in 1971 to develop a long-term plan to manage the SAR watershed. In 1994 SAWPA broadened its focus and participation to include issues of flood control, wildlife resources and interaction with other water agencies.

The project area is within the Coastal Subarea of the Coastal Central Subregion of the Natural Community Conservation Plan (NCCP)/Habitat Conservation Plan for Orange County. However, the NCCP is specifically intended to address taking of habitat associated with the California gnatcatcher (i.e., coastal sage scrub), with other species identified as Plan “targets,” none of which are present within the SAR Marsh or within any of the alternative alignments.⁸

3.2.2 IMPACTS AND MITIGATION

CRITERIA FOR DETERMINING SIGNIFICANCE

To determine the level of significance of an identified impact, the criteria outlined in the CEQA *Guidelines* were used. The following is a discussion of the criteria used to determine the significance of impacts to biological resources.

CEQA Guidelines Section 15065 directs lead agencies to find that a project may have a significant effect on the environment if it has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

CEQA Guidelines Section 15206 further specifies that a project shall be deemed to be of statewide, regional, or area-wide significance if it would substantially affect sensitive wildlife

⁷ Coastal Conservancy, NOP comment letter, 2003.

⁸ County of Orange, 1995

habitats including, but not limited to, riparian lands, wetlands, bays, estuaries, marshes, and habitats for rare and endangered species as defined by Fish and Game Code Section 903.

Appendix G of the CEQA *Guidelines* indicates that a project would have a significant effect on the environment if it would:

- interfere substantially with the movement of any resident or migratory fish or wildlife species;
- substantially diminish habitat for fish, wildlife or plants; or
- substantially affect a rare or endangered species of animal or plant or the habitat of the species.

CEQA Guidelines Section 15380 further provides that a plant or animal species, even if not on one of the official lists, may be treated as “rare or endangered” if, for example, it is likely to become endangered in the foreseeable future.

Pursuant to the FESA (Sections 7(a)(3) and (4)), every federal agency is required to confer with the Secretary of the Interior on any action likely to jeopardize the continued existence of a listed or proposed species or adversely affect the critical habitat of those species.

Based on guidelines established by the USFWS and the CDFG, a project is considered to have a significant adverse impact on biological resources if it would result in substantial disruption to, or destruction of, any special status species, their habitat, or breeding grounds. A project is also considered to have a significant impact if it would result in a substantial loss of important plant or animal species; cause a change in species composition, abundance or diversity beyond that of normal variability; result in the direct or indirect measurable degradation of sensitive habitats (e.g., wetlands, riparian corridors, vernal pools, oak woodlands); or result in loss of a significant plant community.

Local Plans and Policies. Appendix G of the *CEQA Guidelines* specifies that a project would normally have a significant impact on the environment if it would physically impact communities or species protected by adopted environmental plans and goals of the communities where it is located.

Less than Significant Impacts. Impacts are generally considered less than significant if the habitats and species affected are common and widespread in the region and the state.

Beneficial Impacts. Impacts are considered beneficial if the action causes no detrimental impacts and results in an increase of habitat quantity and quality.

For the purposes of this EIR, three principal components of the Guidelines outlined above were considered:

- Magnitude of the impact (e.g., substantial/not substantial),
- Uniqueness of the affected resource (rarity), and
- Susceptibility of the affected resource to perturbation (sensitivity).

The evaluation of significance must consider the interrelationship of these three components. For example, a relatively small magnitude impact to a state or federal listed species would be considered significant because the species is rare and is believed to be susceptible to disturbance. Conversely, a plant community such as California annual grassland is not necessarily rare or sensitive to disturbance. Therefore, a much larger magnitude of impact would be required to result in a significant impact.

Impact 3.2-1: Construction of the Alternative 2 alignments could result in the temporary filling of jurisdictional wetland within the SAR Marsh. Similarly, Alternative 1C could result in temporary filling of jurisdictional wetland within the Talbert Marsh.

The general alignment for Alternative 2 crosses the restored marsh area established by the USACE as mitigation for flood control work done on the SAR as part of USACE SAR Mainstem Project. Each of the proposed project alignments would have different levels of potential impact to the marsh. For purposes of this analysis, the construction segments are divided between the portion from the Bitter Point Pump Station to the boundary of the SAR Marsh and the portion from the edge of the SAR Marsh to the SAR. Within the first portion, each alignment of Alternative 2 follows the existing easement from the Bitter Point Pump Station to the SAR Marsh property as shown on Figure 3.2-1. The easement follows an established, unpaved service road. No marsh habitat was observed within the service road from Bitter Point Pump Station to the border of the SAR Marsh when surveyed by ESA on July 8, 2003. The road in this area is bordered primarily by non-native plants growing at the edge of the SAR Marsh Channel. Figure 3.2-3 shows a view of this road and vegetation. Close to the Bitter Point Pump Station the road widens, as shown in Figure 3.2-4. Work conducted within the service road easement in this area would easily be contained within disturbed road areas and would not significantly affect biological resources on the road's borders. Mitigation measures to avoid vegetation removal outside of the service road easement and to prevent placing fill material or to allow southing of soils into vegetated areas would ensure that no impact would occur during construction in the southern-most segment of the utility road. (See mitigation measures M-3-2.1a and M-3-2.1b.)

Alignment 2A

Alignment 2A would follow the existing service road easement, extending northeast into the West Newport Oilfield as shown in Figure 2-5. Access into the West Newport Oilfield was denied for purposes of this analysis. Views from the paved service road into the oilfield suggest that some

low-quality marsh habitat may exist within the alignment as elevation increases in the well field area. Once within the well field area, the alignment would traverse an area that appears to be disturbed by oil production activities. A service road would be constructed within the acquired utility easement. Some native and some non-native plant species may exist within the oilfield. However, since access was denied, the extent of impact to sensitive biological resources within the oilfield is unknown. Any impacts to wetland areas including destruction of habitat would be considered a significant impact of the project, requiring implementation of mitigation measure M-3-2.1d.

The jack and bore pit for Alignment 2A would be located on the oilfield property. Although access was denied, aerial photographs indicate that the area appears to be well outside of the marsh area. The Alignment 2A would involve drilling under the SAR marsh and the SAR itself as shown on Figure 3.2-1 from the jack and bore pit. Since the pipeline would be drilled under the marsh and river, no impacts to biological resources within the wetland areas would result from the jack and boring operations. A Section 404 permit would not be needed for the drilling operations occurring under the marsh and river since no wetland habitat would be affected.

Alignment 2B

Alignment 2B would follow the service road alignment approximately 1,000 – 1,500 feet into the SAR Marsh. A jack and bore pit would be constructed on the service road. Drilling would occur beneath the wetland area for approximately 1,500 feet north. At this point, a new jack and bore pit would be created to tunnel under the SAR. The northern jack and bore pit would be located on the outer border of the marsh and could result in removal of several hundred square feet of wetland habitat. A service road to the jack and bore pit within the SAR Marsh would be constructed through the oil field. This alignment would have the greatest potential for affecting marsh habitat when constructing the access road and 400-square foot jack and bore pit within the SAR Marsh. Destruction of marsh habitat would be considered a significant impact, requiring implementation of mitigation measure M-3-2.1d. As with Alignment 2A, boring beneath the marsh and the river would not affect biological resources and would not require a Section 404 permit from the USACE since the wetland would not be affected.

Alignment 2C

The preferred project (Alternative 2C) would follow the service road easement from Bitter Point Pump Station all the way to the SAR. This utility road is raised above the surrounding wetland area and does not support vegetation or jurisdictional wetlands. As such, open trenching within the disturbed roadway would not destroy biological resources or require a Section 404 permit from the USACE or a Section 7 consultation with USFWS. Figure 3.2-5 shows the road at the utility road closer to the SAR along the Alternative 2C alignment. The utility easement follows the road from Bitter Point Pump Station to the SAR. The District met with the USACE in August 2003 to discuss the Alternative 2 alignment. During the meeting the USACE acknowledged that although

they would prefer Alternative 1 outside of the SAR marsh altogether, Alternative 2C would be favorable over 2A and 2B since it would follow the pre-disturbed utility easement.

A jack and bore pit would be constructed within the 30-foot service road easement at its terminus with the SAR adjacent to the bike path. This area is within the City of Newport Beach jurisdiction. From this jacking pit, the sewer would be installed beneath the river. Drilling under the river would not require a Section 404 permit from the USACE since no wetland habitat would be affected. Alternative 2C would minimize impacts to the marsh area by restricting construction activities to within the already disturbed utility easement dirt road.

Alternative 1

Alignment 1C would traverse under PCH and cross the Talbert Marsh. Open trenching activities would be routed around the Talbert Marsh (see Figure 2-2), but could result in filling portions of habitat area around the edges. Filling portions of the Talbert Marsh would require implementation of mitigation measure M-3-2.1d, including obtaining a Section 404 permit from the USACE.

Alignments 1A and 1B would not affect any wetland areas since they would generally follow the PCH easement. Drilling under the SAR would not require a Section 404 permit from the USACE.

Mitigation Measures

Alignment 1C, 2A, 2B and 2C

M-3.2-1a: Prior to construction, a qualified biologist will mark the allowed construction area within the service road easement. The allowed construction area will exclude areas with existing marsh vegetation. The markers will be located within visible distance of each other, no more than 100 feet apart on either side of the 30-foot easement. No vegetation shall be removed during construction work within the marked area of the service road alignment. No construction debris, supplies or soils will be placed outside of the marked area.

M-3.2-1b: A qualified biologist will be present during construction activities within the SAR Marsh or Talbert Marsh sufficient to ensure that no construction activities occur outside of the marked construction area.

M-3.2-1c: Trenches and jack and bore pits shall be located on the previously disturbed easement areas with no marsh habitat value. Trenching and construction of the pits shall not destroy vegetation or place any fill onto wetland areas. If this is not possible, then Mitigation Measure M-3.2-1d would apply.

M-3.2-1d: If construction activities remove jurisdictional wetlands, they shall be replaced by permanent wetlands under permit conditions established by the USACE, CDFG, and USFWS.

Description of permit conditions required in Mitigation Measure M-3.2-1d: If the project disturbs a jurisdiction wetland, impacts to the wetland would be subject to CWA Section 404 permitting requirements, CWA Section 401 certification, and Streambed Alteration Agreement under Section 1602 of the California Water Code. Moreover, the SAR Marsh wetland was created as mitigation for flood control improvements on the mainstem of the SAR. Placing fill material within the marsh or disturbance of marsh vegetation would require a series of permits from resource agencies. The primary permitting vehicle would be a Nationwide Permit (NWP) 12 (Utility Lines) issued by the USACE that allows any amount of temporary impact, but only 0.5 acre of permanent impact. Section 401 of the CWA requires that states certify the adequacy of Section 404 permits issued by the USACE. This certification would be conducted by the Santa Ana RWQCB. A Streambed Alteration Agreement would also be necessary to comply with Section 1602 of the California Water Code.

If sensitive habitat is removed, requiring a Section 404 permit, a Biological Assessment pursuant to Section 7 of the federal Endangered Species Act would be prepared to evaluate potential impacts to listed species. The application for and issuance of a Section 404 permit from the USACE for the project would require a formal consultation between the USACE and the USFWS under Section 7 of the Endangered Species Act (for the least tern), and a similar consultation between OCSD and CDFG to resolve issues for the Belding's savannah sparrow, a state-listed species. The state process requires that there be no harm or harassment of species listed under CESA. The process for such a consultation involves the preparation of a Biological Assessment which would determine whether take could occur and if so, whether it would result in an adverse effect on the species chances for survival.

In essence, the Biological Assessment contains two parts, one showing that the project commits to all practicable measures to reduce the potential for take, the second to propose and commit the project sponsor to actions which would offset the effect of take which may be unavoidable.

As mitigation, replacement of the biological function of the permanent or temporarily disturbed wetlands must generally follow Regulatory Guidance Letter No. 02-2 (USACE, 2002). Terms and conditions of the permit including the ratio of compensation lands would be finalized during consultation between the USFWS, CDFG, and the USACE. The implementation of the on-site mitigation would be documented in an agency-approved Wetlands Replacement, Enhancement, and Monitoring Plan which would contain, at a minimum, the following sections:

- Site selection and preparation;
- Exotic plant removal;
- Hydrological functioning;
- Planting materials and plant installation;
- Maintenance;
- Long-term monitoring and success criteria; and
- Long-term funding for wetland monitoring.

Significance after Mitigation

Less than significant.

Impact 3.2-2: Project construction could affect the habitat, or result in incidental take of, the Belding savannah sparrow (nesting and foraging) and California least tern (foraging). This would be a less than significant impact under Alternatives 1A, 1B, 1C, and 1D, and a significant impact for Alternatives 2A, 2B and 2C.

Alternatives 1A, 1B, and 1D would tunnel underneath the Talbert Marsh Outlet channel. The jacking pit would be located within the state beach parking lot approximately 200 feet from the edge of the least tern nesting area. The ambient level of disturbance caused by beach users and PCH traffic is already quite high in this area. The major construction activities would include excavating the jacking pit, installing the drilling rig, staging equipment and materials, and loading haul trucks with excavated soil. Mitigation M-3.2-2a would restrict major construction activities during nesting season near the least tern nesting area.

Alternatives 1A, 1B, and 1C would require placing a jacking pit at the edge of the least tern nesting area. Excavation and staging of materials could affect the least terns during nesting season. Mitigation M-3.2-2b would restrict major construction activities during nesting season.

Foraging tern using the channel areas of SAR Marsh, and foraging and nesting Belding's savannah sparrow could be harassed by construction activities under Alternatives 2A, 2B and 2C. The harassment could result from noise, proximity of human activity, and vibration. Such disturbance could lower foraging effectiveness of terns, which forage close to nests before chicks have fledged, and might result in loss of nests or young of the savannah sparrow. Implementation of mitigation measure M-3.2-1b would ensure that harassment to these species would not occur.

If marsh habitat is removed, listed bird species could be affected either through direct mortality or through destruction of nests and harassment during foraging. This would be considered a significant impact of the project. Implementation of mitigation measure M-3.2-1d requiring preparation of a Biological Assessment pursuant to Section 7 of the federal Endangered Species Act would ensure that impacts to listed species were minimized to less than significant levels prior to construction.

Mitigation Measures

Alignment 1A, 1B, 1C, 1D, 2A, 2B, 2C

M-3.2-2a: The District shall retain a qualified biologist to provide an educational session to all contractors and construction workers on the least tern and Belding savannah sparrow.

M-3.2-2b: Limit construction near the least tern nesting area and within the SAR Marsh to non-nesting periods for the Belding's savannah sparrow and the least tern.

Description of Mitigation Measure M-3.2-2b: The Belding's savannah sparrow nests from April through July (Zeiner et al., 1990); least terns feed their young from April through August. Therefore, any construction activity within the SAR Salt Marsh would be limited to the period September 1 through March 31.

Significance After Mitigation

Less than significant.

Impact 3.2-3: Construction activities associated with Alternatives 1C, 2A, 2B, and 2C could adversely affect non-listed nesting birds protected by the federal Migratory Bird Treaty Act.

Potential foraging habitat for white-tailed kites is present at SAR Marsh, but this species is not expected to nest in the impacted areas. Other bird species potentially breeding on the project site include grassland and shrub-nesting species (e.g., song sparrow, house finch). As a result of construction activities, impacts to these and other birds protected by the MBTA include the potential for destruction of individual birds, if present, and the loss of active nests. The following mitigation measure would reduce the potential effects of the project to non-listed nesting birds to less than significant levels. If construction activities occur only during the non-breeding season between September 1 and March 31 (as per Mitigation Measure M-3.2-2b), there will be a less-than-significant impact to migratory birds.

Mitigation Measures

Alignment 1C, 2A, 2B and 2C

See Mitigation Measure **M-3.2-2b**.

Significance after Mitigation

Less than significant.

Impact 3.2-4: Routine maintenance and access requirements for Alternatives 2A, 2B, and 2C would potentially affect sensitive habitat and wildlife within the SAR Marsh.

Operation of Alternatives 2A, 2B, or 2C would require routine access to District facilities located within the SAR Marsh. Maintenance activities would be limited to the utility easements. Access would not be allowed outside of the utility easement. Service vehicles may use the service road from the Bitter Point Pump Station one to two times per day to access Bitter Point Pump Station. However, the service road through the SAR Marsh would be accessed for maintenance approximately once per month for each Alternative. Access to the junction box for Alternatives 2A and 2B would require accessing the northern SAR Marsh area. These routine maintenance vehicles could create enough activity and noise in the area to disturb wildlife. Implementation of the following mitigation measure will assist in minimizing the long-term effects of routine access into the conservation area.

Mitigation Measures

Alignment 2A, 2B, 2C

M-3.2-4: The District shall prepare a maintenance procedures manual for activities within the SAR Marsh. The manual will include the following restrictions at a minimum:

- District personnel shall not enter or place materials outside of the utility easement.
- No vegetation clearing outside of the easement is allowed.
- The speed limit on the SAR Marsh service road is limited to 15 miles per hour.
- Public access onto the easement from the SAR levee shall be restricted.