

4.13 BIOLOGICAL RESOURCES

This section addresses common and sensitive biological resources that could be affected by implementation of the Resources Building Replacement Project (project). This evaluation is based on data collected during a reconnaissance-level survey of the P Street Block conducted on January 25, 2017; surveys of the exterior and interior of the Heilbron House on March 1 and March 17, 2017, respectively; review of aerial photographs of the project vicinity; a review of the *City of Sacramento 2035 General Plan Update and Master EIR*; and a search of the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDDB) (2017).

4.13.1 Regulatory Background

FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS

Federal Endangered Species Act

Pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. Section 1531 et seq.), the U.S. Fish and Wildlife Service (USFWS) regulates the taking of species listed in the ESA as threatened or endangered. In general, persons subject to ESA (including private parties) are prohibited from "taking" endangered or threatened fish and wildlife species on private property, and from "taking" endangered or threatened plants in areas under federal jurisdiction or in violation of state law. Under Section 9 of the ESA, the definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." USFWS has also interpreted the definition of "harm" to include significant habitat modification that could result in take.

Section 10 of the ESA applies if a non-federal agency is the lead agency for an action that results in take and no other federal agencies are involved in permitting the action. Section 7 of the ESA applies if a federal discretionary action is required (e.g., a federal agency must issue a permit), in which case the involved federal agency consults with USFWS.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA), first enacted in 1918, provides for protection of international migratory birds and authorizes the Secretary of the Interior to regulate the taking of migratory birds. The MBTA provides that it will be unlawful, except as permitted by regulations, to pursue, take, or kill any migratory bird, or any part, nest, or egg of any such bird. Under the MBTA, "take" is defined as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or any attempt to carry out these activities." Take does not include habitat destruction or alteration, as long as there is not a direct taking of birds, nests, eggs, or parts thereof. The current list of species protected by the MBTA can be found in Title 50 of the Code of Federal Regulations (CFR), Section 10.13 (50 CFR 10.13). The list includes nearly all birds native to the United States.

STATE PLANS, POLICIES, REGULATIONS, AND LAWS

California Endangered Species Act

Pursuant to the California Endangered Species Act (CESA), a permit from CDFW is required for projects that could result in the "take" of a plant or animal species that is listed by the state as threatened or endangered. Under CESA, "take" is defined as an activity that would directly or indirectly kill an individual of a species, but does not include "harm" or "harass," as does the federal definition. As a result, the threshold for take is higher under CESA than under the federal ESA. Authorization for take of state-listed species can be obtained through a California Fish and Game Code Section 2081 incidental take permit.

California Fish and Game Code Sections 3503 and 3503.5—Protection of Bird Nests and Raptors

Section 3503 of the Fish and Game Code states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird. Section 3503.5 of the California Fish and Game Code states that it is unlawful to take, possess, or destroy any raptors (i.e., species in the orders *Falconiformes* and *Strigiformes*), including their nests or eggs. Typical violations include destruction of active nests as a result of tree removal or disturbance caused by project construction or other activities that cause the adults to abandon the nest, resulting in loss of eggs and/or young.

Fully Protected Species under the California Fish and Game Code

Protection of fully protected species is described in Sections 3511, 4700, 5050, and 5515 of the California Fish and Game Code. These statutes prohibit take or possession of fully protected species and do not provide for authorization of incidental take.

LOCAL PLANS, POLICIES, REGULATIONS, AND LAWS

The project is located on State-owned property, has been authorized and funded by the State of California through the State Projects Infrastructure Fund (SPIF), and would be implemented by the Department of General Services (DGS). As explained in Section 4.2 “Land Use” of this DEIR (see “Local Plans, Policies, Regulations, and Laws” in Section 4.2.1), State agencies are not subject to local plans, policies, and zoning regulations. Nevertheless, in the exercise of its discretion, DGS does reference, describe, and address local plans, policies, and regulations that are applicable to the project. This evaluation is also intended to be used by local agencies for determining, as part of their permit processes, the project’s consistency with local plans, policies, and regulations.

City of Sacramento 2035 General Plan

The following policies of the *City of Sacramento 2035 General Plan* (City of Sacramento 2015) are applicable to the project:

- ▲ **Policy ER 2.1.1** Resource Preservation. The City shall encourage new development to preserve on-site natural elements that contribute to the community’s native plant and wildlife species value and to its aesthetic character.
- ▲ **Policy ER 3.1.2** Manage and Enhance the City’s Tree Canopy. The City shall continue to plant new trees, ensure new developments have sufficient right-of-way width for tree plantings, manage and care for all publicly owned trees, and work to retain healthy trees. The City shall monitor, evaluate and report, by community plan area and city wide, on the entire tree canopy in order to maintain and enhance trees throughout the City and to identify opportunities for new plantings.
- ▲ **Policy ER 3.1.3** Trees of Significance. The City shall require the retention of City trees and Heritage Trees by promoting stewardship of such trees and ensuring that the design of development projects provides for the retention of these trees wherever possible. Where tree removal cannot be avoided, the City shall require tree replacement or appropriate remediation.
- ▲ **Policy ER 3.1.4** Visibility of Commercial Corridors. The City shall balance the tree canopy of the urban forest with the need for visibility along commercial corridors, including the selection of tree species with elevated canopies.
- ▲ **Policy ER 3.1.6** Urban Heat Island Effects. The City shall continue to promote planting shade trees with substantial canopies, and require, where feasible, site design that uses trees to shade rooftops, parking facilities, streets, and other facilities to minimize heat island effects.
- ▲ **Policy ER 3.1.7** Shade Tree Planting Program. The City shall continue to provide shade trees along street frontages within the city.

City of Sacramento Tree Preservation Ordinance

The City of Sacramento has adopted an ordinance to protect trees as a significant resource to the community (City Code Title 12, Chapter 12.56, Ordinance 2016-0026 Section 4). It is the City's policy to retain all trees when possible regardless of their size. When circumstances will not allow for retention, permits are required to remove trees that are within City jurisdiction. Trees that occur in the median between the curb and sidewalk are within City jurisdiction; trees that occur on State-owned property are not within City jurisdiction and are not subject to the City's Tree Preservation Ordinance. Removal of, or construction around, trees that are protected by the tree ordinance are subject to permission and inspection by City arborists. The City's Tree Services Division reviews project plans and works with the City Public Works Department during the construction process to minimize impacts on street trees in Sacramento.

4.13.2 Existing Conditions

VEGETATION

The project site consists of urban uses, including a surface parking lot and the historic Heilbron House on the P Street Block, and the Subterranean Building, which provides a developed courtyard and some landscaped vegetation on the rooftop. The project site and vicinity are characterized by urban development with landscaping in the form of trees, shrubs, and ground cover primarily maintained for aesthetic purposes. Trees range from relatively small ornamentals to large, mature trees. Shrubs and trees of various sizes and species are located within the parking area, surrounding the Heilbron House, and between the sidewalks and streets on the perimeter of the site. Tree species observed during the site visit include Canary Island pine (*Pinus canariensis*), London planetree (*Platanus x hispanica*), southern magnolia (*Magnolia grandiflora*), olive (*Olea* sp.), sweet orange (*Citrus x sinensis*), flowering plum (*Prunus* sp.), privet (*Ligustrum ovalifolium*), sweet gum (*Liquidambar styraciflua*), and elm (*Ulmus* sp.). Vegetation on the site does not include any native plant communities or natural habitats and provides only marginal habitat quality.

COMMON WILDLIFE SPECIES

The project site supports a low diversity of wildlife because it is developed with the Subterranean Building, a surface parking lot, and the Heilbron House, is in a heavily urbanized area with no native vegetation communities, and is subjected to frequent human activity. Most of the wildlife species expected to occur in the project vicinity are adapted to urban environments, and several are nonnative. Common bird species expected to occur in the project vicinity include house finch (*Carpodacus mexicanus*), Brewer's blackbird (*Euphagus cyanocephalus*), house sparrow (*Passer domesticus*), American robin (*Turdus migratorius*), rock pigeon (*Columba livia*), and American crow (*Corvus brachyrhynchos*). Common mammals expected to occur in the project vicinity include opossum (*Didelphis virginiana*) and nonnative eastern fox squirrel (*Sciurus niger*).

SENSITIVE BIOLOGICAL RESOURCES

Special-Status Species

Special-status species are defined as species that are legally protected or that are otherwise considered sensitive by federal, state, or local resource agencies. Special-status species are species, subspecies, or varieties that fall into one or more of the following categories, regardless of their legal or protection status:

- ▲ officially listed by California or the federal government as endangered, threatened, or rare;
- ▲ a candidate for state or federal listing as endangered, threatened, or rare;

- ▲ taxa (i.e., taxonomic category or group) that meet the criteria for listing, even if not currently included on any list, as described in California Code of Regulations (CCR) Section 15380 of the State CEQA Guidelines;
- ▲ species identified by CDFW as Species of Special Concern;
- ▲ species listed as Fully Protected under the California Fish and Game Code;
- ▲ species afforded protection under local planning documents; and
- ▲ taxa considered by the CDFW to be “rare, threatened, or endangered in California” and assigned a California Rare Plant Rank (CRPR). The CDFW system includes five rarity and endangerment ranks for categorizing plant species of concern, summarized as follows:
 - CRPR 1A - Plants presumed to be extinct in California;
 - CRPR 1B - Plants that are rare, threatened, or endangered in California and elsewhere;
 - CRPR 2 - Plants that are rare, threatened, or endangered in California but more common elsewhere;
 - CRPR 3 - Plants about which more information is needed (a review list); and
 - CRPR 4 - Plants of limited distribution (a watch list).

The term “California species of special concern” is applied by CDFW to animals not listed under ESA or CESA, but that are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. CDFW’s fully protected status was California’s first attempt to identify and protect animals that were rare or facing extinction. Most species listed as fully protected were eventually listed as threatened or endangered under CESA; however, some species remain listed as fully protected but do not have simultaneous listing under CESA. Fully protected species may not be taken or possessed at any time and no take permits can be issued for these species except for scientific research purposes or for relocation to protect livestock.

Appendix K provides a list of special-status species potentially occurring in the general project vicinity. The list was developed through a review of biological studies previously conducted in the area and observations made during the January and March 2017 site surveys. CDFW’s CNDDDB (CDFW 2017), a statewide inventory of the locations and conditions of the State’s rarest plant and animal taxa and vegetation types, was also reviewed for specific information on documented observations of special-status species previously recorded in the project vicinity. A 1-mile search radius around the project site was used to identify potential special-status species issues because it encompasses a sufficient distance to accommodate for local habitat diversity. The CNDDDB is based on actual recorded occurrences and does not constitute an exhaustive inventory of every resource.

The species list in Appendix K includes special-status wildlife species with both scientific and common names, legal status, description of habitat preference, and the potential to occur within the project site. No special-status plant species are included because no on-site vegetation has the potential to be a special-status species, no sensitive communities are present on-site, and no special-status plant species were identified in the CNDDDB record search. Most of the special-status species identified in Appendix K do not occur on the project site or have a low potential for occurrence because the habitat elements they require either were never present or are no longer found on the highly-urbanized site in downtown Sacramento. Special-status wildlife species that could occur on or adjacent to the project site are evaluated in this DEIR and are discussed in further detail below.

Raptors

Two special-status raptors, Swainson’s hawk (*Buteo swainsoni*) and white-tailed kite (*Elanus leucurus*), have low potential to occur at the project site. All raptors are protected under Section 3503.5 of the California Fish and Game Code, which prohibits take or destruction of raptors, including their nests and eggs. Raptors are not expected to nest on the project site because of the highly-urbanized environment. Although some raptor species are known to nest within Sacramento city limits, these nest sites are usually associated with

residential or suburban areas with dense tree canopy cover and proximity to suitable foraging areas, such as open grasslands and agricultural fields. Raptors are not likely to nest on-site because the trees lack dense canopy cover, the area is highly urbanized, there are extensive disturbances from traffic and other human activities, and there is very limited suitable foraging habitat in the immediate vicinity.

Bats

Some species of bats may use buildings for day, maternity, or wintering roosts. Bats may roost in abandoned or little-used structures in wall sections, behind fascia, in spaces between vaulted interior ceiling and roofing materials, and in similar enclosed spaces which provide thermal protection. Species of bats known to roost in buildings in the downtown area include Mexican free-tailed bat (*Tadarida brasiliensis*) and California myotis (*Myotis californicus*). The only building on the P Street Block is the Heilbron House, which is currently being used as office space. A survey of the exterior of the Heilbron House was conducted on March 1, 2017, and a survey of the attic was conducted on March 17, 2017. Although the Heilbron House has exterior overhangs and eaves, these features do not provide the suitable microclimate to support bat roosts. The warped wooden shingles along the roof may provide suitable day roosts, and two overhangs with missing fascia molding could allow bats to access to the eaves. However, no signs of bats were observed during either survey including signs of bat urine under ultraviolet light, or audible squeaking, clicking, or other bat chatter. In addition, no sunlight was visible in the attic that would indicate there are holes or cracks in the walls or roof that would provide access for bats to enter the attic.

Sensitive Natural Communities

Sensitive natural communities include those that are of special concern to resource agencies or are afforded specific consideration through CEQA or other federal or State laws. Sensitive natural communities may be of special concern to regulatory agencies and conservation organizations for a variety of reasons, including their locally or regionally declining status, or because they provide important habitat to common and special-status species. Many of these communities are tracked in CDFW's CNDDDB. There are no sensitive natural communities within or adjacent to the project site.

4.13.3 Environmental Impacts and Mitigation Measures

ANALYSIS METHODOLOGY

This impact evaluation is based on data collected during a reconnaissance-level survey of the P Street Block conducted in January 2017, surveys of the Heilbron House conducted in March 2017, review of aerial photographs, and information from several previously completed documents that address biological resources in the project vicinity.

The analysis below does not address the proposed child care facility, consisting of portable buildings placed on the roof of the Subterranean Building, located immediately north of the P Street Block (see Chapter 3, "Project Description"). This child care facility would not affect biological resources as it would be placed on the roof plaza of an existing building where no sensitive biological resources are present.

THRESHOLDS OF SIGNIFICANCE

An impact on biological resources is considered significant if implementation of the Resources Building Replacement Project would do any of the following:

- ▲ 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 CDFW or USFWS;
- ▲ have a substantial adverse impact on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by CDFW or USFWS;

- ▲ have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the CWA through direct removal, filling, hydrological interruption, or other means;
- ▲ interfere substantially with the movement of any resident or migratory fish or wildlife species or with established resident or migratory wildlife corridors, or impede the use of wildlife nursery sites;
- ▲ conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance;
- ▲ conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan;
- ▲ substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife species to drop below self-sustaining levels; threaten to eliminate a plant or animal community; or
- ▲ substantially reduce the number or restrict the range of an endangered, rare, or threatened species.

ISSUES OR POTENTIAL IMPACTS NOT DISCUSSED FURTHER

As described above, the project site does not include any potential habitat for special-status plant species. The only potential special-status wildlife species with potential to occur in the project vicinity are Swainson's hawk and white-tailed kite, and the project site does not provide suitable habitat for either of these species. Therefore, no impact on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS would occur during construction or operation of the proposed project and this issue is not discussed further in this section.

The project site does not contain riparian habitats or other sensitive natural communities. The project site is in a developed urban environment. There are no riparian habitats or other sensitive habitats on or adjacent to the project site that would be affected by project construction or operation. Therefore, no impact on riparian habitat or other sensitive natural communities would occur during construction or operation of the proposed project and this issue is not discussed further in this section.

The project site does not contain federally protected wetlands or other features regulated under Section 404 of the Clean Water Act. The project site does not support any wetlands or waters regulated by other agencies. Therefore, no impact on wetlands would occur during construction or operation of the proposed project and this issue is not discussed further in this section.

There is no adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan that applies to the project site. The South Sacramento Habitat Conservation Plan, which is currently in preparation, does not encompass the project area. The project would not conflict with any habitat conservation plans, and this impact is not discussed further in this section.

The project site does not contain any aquatic habitats, including any waterways supporting fish populations. In addition, runoff from the project site will either drain into the City's combined stormwater/sewer system and be treated prior to discharge, or drain into the dedicated stormwater system and be treated on the project site prior to entering the system (see Section 4.5, "Utilities and Infrastructure"). Therefore, the project would not have a direct or indirect effect on fisheries habitat or cause fish species to drop below self-sustaining levels. Impacts related to fishery resources are not discussed further in this section.

The project site and surrounding downtown Sacramento area is characterized by urban development with limited vegetation, which consists primarily of ornamental trees and shrubs. There are no areas of native habitats or vegetation in the project vicinity. The project site neither connects nor separates any significant wildlife habitat areas. Furthermore, construction of the project is not expected to have any indirect effects to wildlife in Capitol Park because the level of disturbance from project construction would not be substantially greater than existing disturbances (e.g., traffic, construction, deliveries) in the area. Therefore,

redevelopment of the site would not substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife species to drop below self-sustaining levels; threaten to eliminate a plant or animal community; interfere substantially with the movement of any resident or migratory fish or wildlife species or with established resident or migratory wildlife corridors; or impede the use of wildlife nursery sites. Impacts related to these significance criteria are not discussed further in this section.

ENVIRONMENTAL IMPACTS

Impact 4.13-1: Conflict with any local applicable policies protecting biological resources

Implementation of the project could result in the direct loss or temporary disturbance of trees protected under the City of Sacramento Tree Preservation Ordinance. This impact would be **potentially significant**.

Up to approximately 15 trees located within the interior of the P Street Block and up to approximately 30 trees around the perimeter of the block could be removed or damaged during demolition of the existing surface parking lot and construction of the new office building. No trees on or surrounding the Subterranean Building would be removed due to the modular child care facilities on the roof plaza. Trees on State-owned land are generally not subject to the City of Sacramento Tree Preservation Ordinance. However, trees along the perimeter of the P Street Block located between the sidewalk and adjacent streets may qualify as “City street trees” (see the discussion of the City of Sacramento Tree Preservation Ordinance in Section 4.13.1, “Regulatory Background”). One or more City street trees may need to be pruned, removed, or have the roots cut during excavations.

Although trees at the project site do not provide important wildlife habitat, loss or disturbance of City street trees would conflict with tree protection requirements in the City of Sacramento Tree Preservation Ordinance. This impact is considered **potentially significant**.

Mitigation Measures

Mitigation Measure 4.13-1: Remove and replace trees consistent with the City of Sacramento Tree Preservation Ordinance

Prior to construction, DGS will complete a survey of trees at the project site and prepare and submit a detailed tree removal, protection, replanting, and replacement plan to the City arborist. The tree removal plan will be developed by a certified arborist. The plan shall include the following elements:

- ▲ The number, location, species, health, and sizes of all trees to be removed, relocated, and/or replaced. This information will also be provided on a map/design drawing to be included in the in the project plans.
- ▲ Planting techniques, necessary maintenance regime, success criteria, and a monitoring program for all trees planted on, or retained on the project site.

DGS will ensure implementation of the tree relocation/removal/replacement plan during project construction and operation.

Significance after Mitigation

Implementation of this mitigation measure would reduce potentially significant impacts associated with tree removal to a **less-than-significant** level by providing replacement trees and complying with the City’s Tree Preservation Ordinance.

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