

3.3 Biological Resources

The affected environment and regulatory setting for Biological Resources related to the Project Area are described in this section. In addition, this section describes the potential impacts related to Biological Resources that would result from implementation of the proposed Project. As noted in the analysis below, impacts associated with Biological Resources during construction or operation of the proposed Project would be less than significant and no mitigation measures are required.

The information in this section is based on the *Biological Resources Report* (BRR) (GPA Consulting, 2019), the *Sixth Street Viaduct Replacement Project Supplemental Bat Survey Report* (GPA Consulting, 2015b), and the *Sixth Street Viaduct Replacement Project Bat and Nesting Bird Survey Report* (GPA Consulting, 2015a). Within this section, special-status species, nesting birds, raptor foraging activities, and bats will be discussed. Special-status species include plants and wildlife species that are listed under the California Department of Fish and Wildlife (CDFW) and the Federal Endangered Species Acts (FESA) (California Department of Fish and Wildlife, 2019); plant species designated by the California Native Plant Society (CNPS) with a California Rare Plant Rank (CRPR) or other plants of local concern (California Native Plant Society, 2019); and wildlife that is designated as a California Species of Special Concern, as defined by CDFW (California Department of Fish and Wildlife, 2019). Biological record searches were reconducted in April 2021.

3.3.1 Regulatory Setting

The following discussion provides a summary of state and federal laws and regulations pertaining to the proposed Project, environmental permits that are required for the proposed Project, and study methods that were undertaken as required by resource agencies and environmental laws.

3.3.1.1 Federal

Clean Water Act

The United States Army Corps of Engineers (USACE) regulates the placement of dredged and fill material into waters of the United States (U.S.), including wetlands, under Section 404 of the Clean Water Act (CWA). No discharge of dredged or fill material into jurisdictional features is permitted unless authorized under an USACE Nationwide Permit or Individual Permit. For all work subject to an USACE Section 404 permit, project proponents must obtain a Water Quality Certification from the applicable RWQCB under CWA Section 401 stating that the project would comply with applicable water quality regulations.

Waters of the United States

The USACE Regulatory Program regulates activities within federal wetlands and waters of the U.S. pursuant to Section 404 of the CWA. Waters of the U.S. are divided into several categories as defined by the Code of Federal Regulations (CFR). Under the CFR (33 CFR 328.3), waters of the U.S. include, but are not limited to:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce (including sightseeing or hunting), including all waters subject to the ebb and flow of the tide;

- All interstate waters including interstate wetlands; and
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats; sand flats; wetlands; sloughs; prairie potholes; wet meadows; playa lakes; or natural ponds where the use, degradation, or destruction of which could affect interstate or foreign commerce. This includes any such waters which are or could be used by interstate or foreign travelers for recreational or other purposes, and from which fish or shellfish could be taken and sold in interstate or foreign commerce, or which are used or could be used for industrial purposes in interstate commerce.

In streams and rivers where adjacent wetlands are absent, the USACE jurisdiction extends to the ordinary high-water mark (OHWM). The OHWM is defined as “the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas” (33 CFR 328.3[e]). If the OHWM is not readily distinguishable, the USACE jurisdiction within streams extends to the “bankfull discharge” elevation, which is the level at which water begins to leave the channel and move into the floodplain (Rosgen, 1996). This level is reached at a discharge which generally has a recurrence interval of approximately 1.5 to two years on the annual flood series (Leopold, 1994).

In 2015, the USACE and United States Environmental Protection Agency (U.S. EPA) published the Clean Water Rule, which more clearly defined waters of the U.S. The intent of the rule was to make the definition of waters of the U.S. easier to understand, more predictable, and more consistent with current science, while better protecting waters of the U.S. The rule went into effect on August 28, 2015; however, on October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the Clean Water Rule nationwide pending further action of the court. In response, the USACE and U.S. EPA resumed using the prior regulations defining waters of the U.S. This report uses the current definition of waters of the U.S., provided above. On April 21, 2020, the U.S. EPA and USACE published the Navigable Waters Rule, which re-defined the scope of waters federally regulated under the Clean Water Act (85 FR 22250).

Federal wetlands are transitional areas between well-drained upland habitats and permanently flooded (deepwater) aquatic habitats and are defined differently by different resource agencies. The USACE and the EPA define adjacent wetlands as those areas that either abut a jurisdictional water; are inundated by flooding from a jurisdictional water; are physically separated from a jurisdictional water by a natural berm, bank, dune, or similar natural feature; or are physically separated from a jurisdictional water by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and jurisdiction water in a typical year (33 CFR 328.3[b]).

Federal Endangered Species Act

The Federal Endangered Species Act (FESA) was established in 1973 to provide a framework to conserve and protect endangered and threatened species and their habitat. Section 10 of the FESA allows for the “incidental take” of endangered and threatened wildlife species by non-federal entities. Incidental take is defined by the FESA as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Section 10(a)(1)(B) of the FESA authorizes the taking of federally listed wildlife or fish through an incidental take permit. Section 10(a)(2)(A) of the FESA

requires an applicant for an incidental take permit to submit a conservation plan that specifies, among other things, the impacts likely to result from the taking of the species, and the measures the permit applicant will take to minimize and mitigate impacts on the species. Under FESA designated critical habitat is identified as specific areas containing physical or biological features essential to the existence of endangered or threatened species.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) (50 CFR Part 10 and Part 21) protects migratory birds, their occupied nests, and their eggs from disturbance and/or destruction. “Migratory birds” under the MBTA include all bird species listed in 50 CFR Part 10.13, as updated in December 2013 (U.S. Fish and Wildlife Service, 2013). In accordance with the Migratory Bird Treaty Reform Act of 2004, the United States Fish and Wildlife Service (USFWS) included all species native to the United States (or United States territories) that are known to be present as a result of natural biological or ecological processes. In addition, the USFWS provided clarification that the MBTA does not apply to any nonnative species whose presence in the United States is solely the result of intentional or unintentional human-assisted introduction (U.S. Fish and Wildlife Service, 2018). Nonnative bird species not protected by the MBTA include, but are not limited to, the house sparrow (*Passer domesticus*), European starling (*Sturnus vulgaris*), and rock pigeon (*Columba livia*).

3.3.1.2 State

Porter-Cologne Act

The RWQCB also asserts authority over waters of the state under the Porter-Cologne Act, which establishes a regulatory program to protect water quality and to protect beneficial uses of state waters. The Porter-Cologne Act empowers the RWQCB to formulate and adopt a Water Quality Control Plan that designates beneficial uses and establishes water quality objectives that in its judgment would ensure reasonable protection of beneficial uses. Each RWQCB establishes water quality objectives that will ensure the reasonable protection of beneficial uses and the prevention of water quality degradation. Dredge or fill activities with the potential to affect water quality in these waters must comply with Waste Discharge Requirements (WDR) issued by the RWQCB. Waters of the state are defined by the Porter-Cologne Act as any surface or subsurface water or groundwater, including saline waters, within the boundaries of the state.

California Water Code

The term “waters of the state,” under jurisdiction of the RWQCB, is defined by California Water Code as “any surface water or groundwater, including saline waters, within the boundaries of the state” (California Water Code Section 13050(e)).

Currently, the RWQCB relies upon the definition used in the CWA to define wetlands. However, the State Water Resources Control Board (SWRCB) recently redefined wetlands as part of their *Procedures for Discharges of Dredged or Fill Material to Waters of the State* (State Water Resources Control Board, 2019). The new definition, which was adopted April 2, 2019, is “an area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause

anaerobic conditions in the upper substrate; and (3) the area's vegetation is dominated by hydrophytes or the area lacks vegetation." This report uses the current definition of wetlands.

California Fish and Game Code

Section 1602 of the California Fish and Game Code governs construction activities that substantially divert or obstruct natural stream flow or substantially change the bed, channel, or bank of any river, stream, or lake under the jurisdiction of CDFW. Under the California Fish and Game Code, the limits of CDFW's jurisdiction within streams and other drainages extends from the top of the stream bank to the top of the opposite bank, to the outer drip line in areas containing riparian vegetation, and/or within the 100-year floodplain of a stream or river system containing fish or wildlife resources. Streams are defined in the California Code of Regulations (CCR) (14 CCR Section 1.72) as "a body of water that follows at least periodically or intermittently through a bed or channel having banks and that support fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." Under Section 1602, a Streambed Alteration Agreement must be issued by the CDFW prior to the initiation of construction activities that may substantially divert or obstruct the natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel, or bank, of any river, stream, or lake; or deposit debris, waste, or other materials that could pass into any river, stream, or lake under CDFW's jurisdiction.

The CDFW has jurisdictional authority over waters of the State, including wetlands. In practice, CDFW follows the USFWS' definition of wetlands in Cowardin's *Classification of Wetlands and Deepwater Habitats of the United States*: "Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following three attributes: 1) at least periodically, the land supports hydrophytes; 2) the substrate is predominantly undrained hydric soil; and 3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year" (Cowardin, Carter, Golet, & LaRoe, 1979).

Section 2126 of the California Fish and Game Code states that it is unlawful for any person to take any mammal that is identified in Section 2118, including all species of bats.

Sections 3503, 3513, and 3800 of the California Fish and Game Code prohibits the take of birds protected under the MBTA and protects their occupied nests. In addition, Section 3503.5 of the California Fish and Game Code prohibits the take of any birds in the order Falconiformes or Strigiformes (birds-of-prey) and protects their occupied nests. Pursuant to Section 3801 and 3800, the only species authorized for take without prior authorization from the CDFW is the house sparrow and European starling.

State-listed species and those petitioned for listing by the CDFW are fully protected under the California Endangered Species Act (CESA). Under Section 2081, if a project would result in take of a species that is state-only listed as threatened or endangered, then an incidental take permit from the CDFW is required. However, under Section 2080.1 of the California Fish and Game Code, if a project would result in take of a species that is both federally and state listed, a consistency determination with the findings of the FESA determination may be completed in lieu of undergoing separate consultation.

Sections 3511, 4700, 5050, and 5515 of the California Fish and Game Code prohibit the take or possession of 37 fully protected bird, mammal, reptile, amphibian, and fish species. Each of the statutes states that

no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to “take” the species, and states that no previously issued permit or licenses for take of the species “shall have any force or effect” for authorizing take or possession. The CDFW will not authorize incidental take of fully protected species when activities are proposed in areas inhabited by those species.

3.3.1.3 Local

City of Los Angeles

Every county and city is required by California State Law to adopt a General Plan. The City of Los Angeles General Plan (General Plan) is a document that has several elements which consist of the plans for the City’s 35 Community Plan Areas. The General Plan was approved by the City Planning Commission in July 1995 and adopted by the City Council in December 1996 (City of Los Angeles, 2019).

Conservation Element

The Conservation Element of the General Plan addresses conservation, protection, development, utilization, and reclamation of natural resources (City of Los Angeles, 2001). The Conservation Element includes the following goals, objectives, and policies that are relevant to the proposed Project:

Goals

- A city that preserves, protects, and enhances its existing natural and related resources.

Objectives

- Protect and promote restoration, to the greatest extent practical, of sensitive plant and animal species and their habitats; and
- Preserve, protect, restore and enhance natural plant and wildlife diversity, habitats, corridors and linkages so as to enable the healthy propagation and survival of native species, especially those species that are endangered, sensitive, threatened or species of special concern.

Policies

- Continue to require evaluation, avoidance, and minimization of potential significant impacts, as well as mitigation of unavoidable significant impacts on sensitive animal and plant species and their habitats and habitat corridors relative to land development activities;
- Continue to administer city-owned and managed properties so as to protect and/or enhance the survival of sensitive plant and animal species to the greatest practical extent;
- Continue to support legislation that encourages and facilitates protection of endangered, threatened, sensitive and rare species and their habitats and habitats and habitat corridors;
- Continue to identify significant habitat areas, corridors and buffer and to take measures to protect, enhance and/or restore them;
- Continue to protect, restore and/or enhance habitat areas, linkages and corridor segments, to the greatest extent practical, within city owned or managed sites;
- Continue to work cooperatively with other agencies and entities in protecting local habitats and endangered, threatened, sensitive and rare species; and,

- Continue to support legislation that encourages and facilitates protection of local native plant and animal habitats.

3.3.2 Environmental Setting

This section describes the environmental setting or conditions related to Biological Resources and jurisdictional areas within the Project Area. This information is intended to assist in the evaluation and conclusions of the impact analysis provided below and in the formation of BMPs.

As noted in the BRR, two bat surveys were completed in 2015 for the Sixth Street Viaduct Replacement Project (Viaduct Replacement Project), and a site visit was completed for the proposed Project on November 7, 2017, to assess current conditions.

3.3.2.1 Vegetation/Land Use Types

The Project Area is located under and adjacent to the Viaduct Replacement Project area. The Project Area is surrounded by industrial and commercial land uses. The vegetation surrounding the Project Area is mostly comprised of ornamental and weedy plant species.

3.3.2.2 Plants

During the site visit, non-native weedy species were observed in and around the Project Area in disturbed areas, including tree tobacco (*Nicotiana glauca*), Mexican fan palm (*Washingtonia robusta*), crimson fountain grass (*Pennisetum setaceum*), and other herbaceous plants and grasses. There are no natural vegetation communities in the Project Area.

3.3.2.3 Wildlife

Several wildlife species were observed within the Project Area in the 2015 pre-construction surveys for the Viaduct Replacement Project and subsequent construction monitoring surveys, including two bat species and eighteen bird species. The bat species recorded were Yuma myotis (*Myotis yumanensis*) and Mexican free-tailed bat (*Tadarida brasiliensis*). The bird species observed were barn swallow (*Hirundo rustica*), cliff swallow (*Petrochelidon pyrrhonota*), American crow (*Corvus brachyrhynchos*), common raven (*Corvus corax*), red-tailed hawk (*Buteo jamaicensis*), osprey (*Pandion haliaetus*), northern rough-winged swallow (*Stelgidopteryx serripennis*), black necked stilt (*Himantopus mexicanus*), least sandpiper (*Calidris minutilla*), Canada goose (*Branta canadensis*), mallard duck (*Anas platyrhynchos*), great egret (*Ardea alba*), snowy egret (*Egretta thula*), black phoebe (*Sayornis nigricans*), killdeer (*Charadrius vociferous*), great blue heron (*Ardea herodias*), California gull (*Larus californicus*), and rock pigeon. However, due to the level of disturbance and extremely limited amount of vegetated areas, the biological diversity of animals within the Project Area and surrounding areas is low.

3.3.2.4 Federal and State Jurisdictional Aquatic Resources

The Los Angeles River (LA River) is under jurisdiction of the USACE and RWQCB and is designated as waters of the United States and the State. The LA River is also under CDFW jurisdiction. The jurisdiction of the CDFW includes the LA River from the top of the east bank to the top of the west bank. There is no riparian corridor associated with the LA River in the Project Area and there are no existing wetlands in the Project Area.

3.3.2.5 Special-Status Species

Special-status species are plants and animals that are legally protected under the FESA, the CESA, or other regulations, as well as species considered sufficiently rare by the scientific community to qualify for such listing. A list of special-status species, their critical habitats, and sensitive vegetation communities with the potential to be in the Project Area based on geographical location was obtained using the California Natural Diversity Database (CNDDDB). A list of special-status plants was obtained from the California Native Plant Society (CNPS) Inventory of Rare and Endangered Vascular Plants of California, which was developed and is maintained by the CNPS Rare Plant Program. A list of special-status species with potential to be in the Project Area based on geographical location was obtained using the USFWS Information for Planning and Conservation (IPaC) System (U.S. Fish and Wildlife Service, 2019). A list of special-status fish species with the potential to be in the Project Area based on geographical location was obtained using the National Marine Fisheries Service (NMFS) California Species List Tool (National Marine Fisheries Service, 2019). The CNDDDB, CNPS, USFWS IPaC, and NMFS species lists are included in the BRR prepared for the proposed Project (GPA Consulting, 2019). Biological record searches were reconducted in April 2021.

Special-Status Plants and Sensitive Vegetation Communities

A total of 33 special-status plant species were evaluated for their potential to be within the Project Area, eight of which are identified as federally and/or state threatened and endangered plant species. Survey results, range, and habitat information was used to determine the likelihood for these species to be within the Project Area. Special-status plant species were not observed; therefore, special-status plant species are not anticipated to be in the Project Area.

According to the USFWS, there are no USFWS-designated critical habitats found within the Project Area.

According to the CNDDDB search, three sensitive vegetation communities have the potential to be within the Project Area. These sensitive vegetation communities include California Walnut Woodland, Southern Sycamore Alder Riparian Woodlands, and Walnut Forest. None of the sensitive communities were observed, or have the potential to be, within the Project Area.

Special-Status Wildlife

A total of 22 special-status wildlife species were evaluated for their potential to be within the Project Area. Six of which are identified as federally and/or state threatened and endangered wildlife species. Survey results, range, and habitat information was used to determine the likelihood for these species to be within the Project Area. Because the entire Project Area lacks suitable habitat, is disturbed, and is surrounded by industrial and commercial land uses, most of these wildlife species are not anticipated to be in the Project Area. However, the Yuma myotis, a state Species of Special Concern, was recorded in the Project Area during the 2015 Viaduct Replacement Project survey and has a potential to roost or forage in the project area. Bridges and other structures within the project area would provide roosting and nesting habitat for special-status birds and bats. The LA River and other open areas provide foraging habitat for special-status osprey, great egret, and snowy egret. Special-status wildlife such as Yuma myotis, osprey, great egret, and snowy egret have the potential to be within the vicinity of the Project Area.

No USFWS-designated critical habitat for federally threatened and/or endangered wildlife species is designated in the Project Area, and there is no essential fish habitat known to be in the Project Area.

3.3.2.6 Bats

The Fourth Street Bridge and the Seventh Street Bridge contain suitable habitat for bat roosting. As a component of The Sixth Street Viaduct Replacement Project, permanent bat design features will be constructed on the new Sixth Street Viaduct with over the LA River. These habitat features may be occupied by bats prior to the implementation of this proposed Project. Therefore, this EIR also evaluates the potential for bats to be in the newly placed permanent bat design features and any new buildings that provide roosting habitat.

Two bat species, Yuma myotis and the Mexican free-tailed bat, were detected in the Project Area during the bat surveys conducted for the Viaduct Replacement Project in May of 2015, and bats have been detected during subsequent monitoring of the Fourth Street Viaduct. Other special-status bats also have potential to be in the Project Area.

3.3.2.7 Birds

Nesting Birds

The Project Area contains limited suitable nesting habitat for nesting birds, since the entire Project Area is disturbed and is surrounded by industrial and commercial land uses. There is suitable nesting habitat in the Project Area for bird species that frequently nest in and on structures, trees, or other vegetation in developed areas, and are tolerant of disturbance. Several bird species including barn swallows, cliff swallows, American crows, common ravens, and rock pigeons were observed nesting on the Sixth Street Viaduct during a May 2015 survey (GPA Consulting, 2015a).

Raptor Foraging Activities

The Project Area was evaluated for its potential to support raptor foraging activities. Raptors could nest within the Project Area; however, there is limited open area and the foraging habitat is low quality. The Project Area provides limited foraging opportunities for raptor species that are habituated to developed areas.

3.3.2.8 Wildlife Corridors

According to the CDFW Biogeographic Information and Observation System (BIOS), there are no essential wildlife connectivity areas found within the Project Area (California Department of Fish and Wildlife, 2018). The Project Area is within a developed area with minimal habitat for wildlife and is not likely used as a wildlife corridor. However, the Project Area may be used for local foraging and movement by local wildlife species from the surrounding areas.

3.3.3 Environmental Impact Analysis

3.3.3.1 Methodology

Potential significant impacts associated with the proposed Project were gathered from the BRR (October 2019). This report presented findings, conclusions, and recommendations concerning the proposed

Project. The results were based on an analysis of the existing biological resources and jurisdictional areas contained within the Project Area which could be affected by the proposed Project during construction and operation.

Direct impacts result when sensitive biological resources are altered by project implementation, such as through vegetation removal, habitat modifications, and injury or death of wildlife species. Indirect impacts may result from elevated levels of noise or lighting, changes in surface water hydrology, or increased erosion or sedimentation. These types of indirect impacts can affect vegetation communities or their potential use by sensitive wildlife species.

The discussion below identifies potential impacts resulting from the proposed Project, and the BMPs that would be required to reduce impact levels to less than significant.

3.3.3.2 Screening Analysis

Several impacts and corresponding thresholds of significance in the following section were eliminated from further analysis in this EIR. Topics were eliminated if the Initial Study for the proposed Project concluded there would be “No Impact,” or if impacts were identified to be “Less Than Significant... and will not be discussed further in the EIR.” Therefore, only the topics described in the section below were determined to require further analysis in this EIR. A copy of the Initial Study, which contains the eliminated topics, is provided in **Appendix A**.

3.3.3.3 Thresholds of Significance

According to Appendix G of the CEQA Guidelines and the *L.A. CEQA Thresholds Guide*, the proposed Project would have a significant impact on Biological Resources if it would:

IV(a) 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 CDFW or USFWS.

IV(c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marshes, vernal pools, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

3.3.3.4 Construction Impacts

IV(a): Would the project 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 CDFW or USFWS?

The analysis below addresses potential impacts on biological resources including FESA and CESA species, related to the temporary and short-term, direct and indirect impacts on sensitive biological resources anticipated during construction of the proposed Project. As noted below, the proposed Project would result in less than significant impacts on vegetation, wildlife, and special-status plants or wildlife; therefore, no mitigation is required.

Special-Status Plants

Special-status plants species are not expected to be in the Project Area; therefore, mitigation measures are not required.

Special-Status Wildlife

Bats and birds are known to use the bridges over the LA River for roosting and nesting, and raptors could forage in the area. Removal of habitat and increased noise, vibration, night lighting, carbon dioxide, and human activity could impact special-status wildlife, including but not limited to, Yuma myotis, osprey, great egret, and snowy egret. Special-status wildlife could be nesting or roosting with in the Project Area. However, the following BMPs would be implemented to reduce construction-related impacts on wildlife (see Section 3.3.4 and 3.3.5 for additional information):

- Pre-construction wildlife surveys would be completed by a qualified biologist.
- All trash and construction debris would be removed from the LA River on a daily basis.
- No work for the proposed Project would be conducted on or under the Fourth Street Bridge or Seventh Street Bridge structures.
- The LA River Access Tunnel would be surveyed by a qualified biologist to assess the presence of bats or potential bat-roosting habitat. If bats or bat-roosting in the tunnel are identified, then during the non-breeding and active season (typically October), bats would be safely evicted, to the extent feasible, under the direction of a qualified biologist. Once it has been determined that all roosting bats have been safely evicted from roosting cavities, exclusionary devices would be installed and maintained where appropriate to prevent bats from roosting in these cavities prior to construction.
- In the event that a maternal colony of bats is found, no work would be conducted within 100 feet of the maternal roosting site until the maternal season is over or the bats have left the site, or as otherwise directed by a qualified biologist. The site would be designated as a sensitive area and protected as such until the bats have left the site. No activities would be authorized adjacent to the roosting site. Combustion equipment, such as generators, pumps, and vehicles, would not to be parked nor operated under or adjacent to the roosting site. Construction personnel would not be authorized to enter areas beneath the colony, especially during the evening exodus.
- Work on existing structures for the proposed Project (e.g. the LA River Access Tunnel), or within 100 feet of the Sixth Street Viaduct, would be conducted outside of the bat maternity season (typically April-September), if feasible.
- In the event that all bats are not able to be excluded from affected roosting habitat, a qualified biologist would monitor LA River Access Tunnel alterations and tree removals. If bats are disturbed, work would be safely suspended until all bats leave the vicinity on their own, or alternative measures can be identified under the direction of a qualified biologist. Work would resume only once the bats have left the site and/or approval to resume work is given by a qualified biologist.
- If vegetation trimming or clearing is conducted during the nesting season (typically February 15 through September 15), a qualified biologist would conduct a nesting bird survey.

- For construction required during the bird nesting season, for birds protected under the MBTA and California Fish and Game Code Sections, nesting bird surveys would be completed no more than 48 hours prior to construction activities to determine if nesting birds/raptors or active nests are within 300 feet (500 feet for potential raptor nests) of the project area. Surveys would be repeated if construction activities are suspended for five days or more.

With implementation of these BMPs, impacts on wildlife would be less than significant, and mitigation is not required.

IV(c): Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

The proposed Project would include changes to the LA River concrete lining and banks outside of the OHWM, which would include terracing and concrete planters. The LA River is under jurisdiction of the Regional Water Quality Control Board as waters of the State. The LA River is also under jurisdiction of the California Department of Fish and Wildlife (CDFW). A WDR from the RWQCB, and California Fish and Game Code Section 1602 Streambed Alteration Agreement would be required for temporary activities and fill. In addition, the following BMPs would be implemented to avoid impacts by staying out of the OHWM. (see Section 3.3.4 for additional information):

- All trash and construction debris would be removed from the LA River construction areas on a daily basis;
- Appropriate hazardous material BMPs would be implemented to reduce the potential for chemical spills or contaminant releases into the LA River, including any non-stormwater discharge; and
- All equipment refueling and maintenance would be conducted in the staging area, which would be confined to the proposed Project Site in areas outside of the LA River.

With implementation of these BMPs, impacts on aquatic resources would be less than significant, and no mitigation is required.

3.3.3.5 Operational Impacts

IV(a): Would the project 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 CDFW, USFWS, or NOAA Fisheries?

The analysis below addresses potential impacts on biological resources including CESA and FESA species, related to the permanent and long-term, direct, and indirect impacts on sensitive biological resources anticipated during operation of the proposed Project. As noted below, no impacts on vegetation, wildlife, and special-status plants or wildlife would occur; therefore, no mitigation is required. In addition, the proposed Project would result in less than significant impacts on bats, nesting birds, and raptor foraging habitat, and no mitigation is required.

Special-Status Plants

Special-status plants species are not expected to be in the Project Area; therefore, there would be no impact on special-status plant species and mitigation is not required.

Special-Status Wildlife

Increased lighting, noise, human activity, and regular maintenance of vegetated areas to the Project Area could result in minor impacts on special-status wildlife, including bats, birds, and raptors; however, because there is already a high level of human activity, night lighting, and noise in the Project Area, the proposed Project would not be expected to deter wildlife from using existing habitat. In addition, the terracing within the LA Riverbank with vegetated planters, buildings, meadow, and a nature walk path are anticipated to include trees, and other natural and artificial substrates that would potentially create additional nesting and roosting habitat for special-status birds and bats. Therefore, impacts on special-status wildlife would be less than significant, and mitigation is not required.

IV(c): Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

There are no wetlands in the Project Area; therefore, there would be no operational impacts on wetlands. The proposed Project would include permanent changes to the LA River concrete lining and banks, which may include terracing and concrete planters. The LA River is currently concrete lined, and the addition of these features would not result in a substantial change to the ecological function of the LA River. Therefore, impacts on jurisdictional resources would be less than significant, and mitigation is not required. A WDR from the RWQCB and California Fish and Game Code Section 1602 Streambed Alteration Agreement would be required for permanent fill in the LA River.

3.3.4 Best Management Practices

Impacts on Biological Resources would be avoided or minimized by implementing the following BMPs, which are subject to applicable regulatory agency approval:

BMP-BIO-1: Pre-Construction Wildlife Surveys

Pre-construction wildlife surveys shall be completed by a qualified biologist no more than 48 hours prior to clearing, grubbing, or other construction activities to determine the presence/absence of wildlife species, including special-status species, within 100 feet of the construction area. Special attention will be focused on any existing burrowing, roosting, and nesting habitat within the Project Area. Surveys shall be repeated if construction activities are suspended for five days or more. If any wildlife species are identified, appropriate BMPs shall be developed and implemented to reduce potential impacts on these species, in consultation with regulatory agencies where appropriate.

BMP-BIO-2: Trash and Construction Debris Removal

All trash and construction debris shall be removed from the LA River construction areas on a daily basis. All water quality BMP materials shall be properly maintained during project construction and removed upon completion of construction activities. After completion of proposed construction activities, all construction equipment and materials shall be removed from the Project Area, and the Project Area shall be returned to pre-project conditions.

BMP-BIO-3: Work Area Limitations

No work for the proposed Project shall be conducted on the Fourth Street Bridge or Seventh Street Bridge structures.

BMP-BIO-4: Nesting Bird Survey

If vegetation trimming or clearing is conducted during the nesting season (typically February 15 through September 15), nesting bird surveys shall be completed by a qualified biologist within 300 feet of potential bird-nesting areas and 500 feet of potential raptor-nesting areas no more than 48 hours prior to trimming/removal activities to determine if nesting birds are within the affected vegetation. Surveys shall be repeated if trimming or removal activities are suspended for five days or more.

BMP-BIO-5: Nesting Bird Buffer

If nesting birds protected under the MBTA and California Fish and Game Code Sections are found in the Project Area, appropriate buffer consisting of orange flagging/fencing or similar (typically up to 300 feet for songbirds and 500 feet for raptors shall be installed and maintained until nesting activity has ended, as determined in coordination with the project biologist and regulatory agencies, as appropriate, to ensure that nesting birds and active nests are not harmed.

BMP-BIO-6: Hazardous Material BMPs

Appropriate hazardous material BMPs shall be implemented to reduce the potential for chemical spills or contaminant releases into the LA River, including any non-stormwater discharge.

BMP-BIO-7: Equipment Maintenance

All equipment refueling and maintenance shall be conducted in the staging area. In addition, vehicles and equipment shall be checked daily for fluid and fuel leaks, and drip pans shall be placed under all equipment that is parked and not in operation.

BMP-BIO-8: Regulatory Permits

The City shall consult with the appropriate responsible resource agency (e.g., CDFW and RWQCB) to determine permanent and temporary impact areas. Prior to undertaking ground-disturbing activities within or immediately adjacent to any aquatic resource areas, the City and/or their consultant shall obtain a CWA Section 401 Water Quality Certification, and California Fish and Game Code Section 1602 Streambed Alteration Agreement.

BMP-BIO-9: Pre-Construction Bat Surveys

At least 30 days prior to construction, alterations to the LA River Access Tunnel shall be surveyed by a qualified biologist to assess the presence of bats or potential bat-roosting cavities. If bats or bat-roosting cavities are identified, then during the non-breeding and active season (typically October), bats shall be safely evicted, to the extent feasible, under the direction of a qualified biologist. Once it has been determined that all roosting bats have been safely evicted from roosting cavities, exclusionary devices shall be installed and maintained where appropriate to prevent bats from roosting in these cavities prior to construction.

BMP-BIO-10: Monitoring During LA River Access Tunnel Alteration

In the event that all bats are not able to be excluded from affected roosting habitat, a qualified biologist shall monitor LA River Access Tunnel alterations. If bats are disturbed, work shall be safely suspended until all bats leave the vicinity on their own, or alternative measures can be identified under the direction of a qualified biologist. Work shall resume only once the bats have left the site and/or approval to resume work is given by a qualified biologist.

BMP-BIO-11: Bat Monitoring

In the event that all bats are not able to be excluded from affected roosting habitat, a qualified biologist shall monitor structure alteration activities. If bats are disturbed, work shall be safely suspended until all bats leave the vicinity of the LA River Access Tunnel on their own, or alternative measures shall be identified under the direction of a qualified biologist. Work shall resume only once the bats have left the site and/or approval to resume work is given by a qualified biologist.

Surveys and exclusion measures are expected to prevent maternal colonies from becoming established in structures to be removed or altered. In the event that a maternal colony of bats is found, no work shall be conducted within 100 feet of the maternal roosting site until the maternal season is over or the bats have left the site, or as otherwise directed by a qualified biologist. The site shall be designated as a sensitive area and protected as such until the bats have left the site. No activities shall be authorized adjacent to the roosting site. Combustion equipment, such as generators, pumps, and vehicles, shall not be parked or operated under or adjacent to the roosting site. Construction personnel shall not be authorized to enter areas beneath the colony, especially during the evening exodus.

3.3.5 Mitigation Measures

Impacts on Biological Resources would be less than significant; therefore, mitigation measures are not required.

3.3.6 Significant Unavoidable Adverse Impacts

There are no significant unavoidable adverse impacts on Biological Resources resulting from construction and operation of the proposed Project.

3.3.7 Cumulative Impacts

Biological Resources in the Project Area have been removed or extrapolated due to urbanization and the Project Area is located under and adjacent to the Viaduct Replacement Project area, which is currently an active construction site. Project level impacts on Biological Resources are not likely to result in or have significant cumulative impacts on Biological Resources in relation to other projects in the vicinity of the proposed Project. With implementation of the BMPs described in Section 3.3.4, the proposed Project is not expected to result in significant impacts on Biological Resources. In addition, other projects in the vicinity of the proposed Project (see **Table 1-1**) would be required to comply with all federal and state regulations and be consistent with local policies related to Biological Resources, and to develop BMPs and mitigation measures. Therefore, the proposed Project would not result in cumulatively considerable impacts related to Biological Resources.