

5.3 - BIOLOGICAL RESOURCES

5.3.1 - Introduction

Information in this section is based on the following documents which are:

- BonTerra Consulting, Results of Western Burrowing Owl Survey, August 24, 2005, provided in Appendix B, Biological Resources, of this Draft EIR.
- BonTerra Consulting, Results of Special Status Plant Surveys, September 2005, provided in Appendix B, Biological Resources, of this Draft EIR.
- BonTerra Consulting, Results of San Bernardino Kangaroo Rat, Los Angeles Pocket Mouse, Northwestern San Diego Pocket Mouse and Sand Diego Desert Woodrat Habitat Assessments, October 20, 2005, provided in Appendix B, Biological Resources, of this Draft EIR.
- BonTerra Consulting, Results of Delhi Sands Flower-loving Fly Surveys, November 18, 2005 and October 30, 2006 provided in Appendix B, Biological Resources, of this Draft EIR.
- RBF Consulting, Delineation of Jurisdictional Waters, Rich Haven Specific Plan, January 6, 2006.
- NMC Final EIR, City of Ontario, October 1997.
- NMC General Plan, City of Ontario, January 1998.
- NMC Parks, Recreation, and Biological Resources Implementation Program, Final Hearing Draft, City of Ontario, September 1999.
- Initial Study/Mitigated Negative Declaration, New Model Colony Parks, Recreation and Biological Resources Implementation Program, City of Ontario, August 2002. This report is incorporated by reference.

NMC Final EIR

The NMC Final EIR evaluated potential impacts to vegetation and wildlife and concluded that no significant impacts to native plant communities or species would occur as a result of implementation of the NMC. In addition to evaluating native vegetation, potential impacts to windrows were also evaluated. The NMC Final EIR concluded that elimination of the windrows for roosting by raptors, without direct access to foraging habitat, is a minimal impact. However, the elimination of these windrows when used in combination with agricultural fields for foraging habitat was identified as potentially significant.

The NMC Final EIR evaluated potential impacts to migratory waterfowl that would result from the conversion of open water bodies, some of which are used for stormwater retention on dairies, and concluded that conversion of these would result in potentially significant impacts to waterfowl and migratory bird species.

The NMC Final EIR evaluated the potential impacts to the Delhi Sands flower-loving fly (DSF), classified by the U.S. Fish and Wildlife Service (USFWS) as a Federal Endangered species, and concluded that there would not be any direct impacts to this species resulting from development of the NMC due to the high likelihood that the DSF does not exist in the NMC. However, the NMC Final EIR further concluded that significant indirect impacts could result due to interference with recovery efforts because a large portion of the NMC is located within the Ontario Recovery Unit for the DSF.

The NMC Final EIR evaluated biological resource policies contained in the NMC General Plan to determine if any of these policies could provide mitigation of any of the potentially significant effects resulting from the development of the entire NMC. The NMC Final EIR concluded that, with the implementation of the recommended mitigation measures, impacts to waterfowl habitat, raptor habitat, sensitive species, and the DSF would be reduced below the level of significance.

Initial Study/Mitigated Negative Declaration, NMC Parks, Recreation, and Biological Resources Implementation Program

Subsequent to the preparation of the NMC Final EIR, the City prepared the Sphere of Influence Parks, Recreation, and Biological Resources Implementation Program (Implementation Program) for the NMC in order to identify components and costs of the mitigation infrastructure that are associated with parks, recreation, and biological resources that would be implemented with the development of the NMC. To evaluate the potential impacts of the Implementation Program, the City prepared an Initial Study/Mitigated Negative Declaration (Implementation Program IS/MND). The Implementation Program IS/MND stated that no new environmental effects were identified beyond those identified in the NMC Final EIR. In addition, the Implementation Program reflected information contained in the NMC Final EIR that potential environmental impacts to biological resources would be fully evaluated as individual projects within the NMC are proposed.

Biological Resources Survey Report

Following is a brief overview of the Biological Resources Survey Report prepared for the project site.

Report Methodology

Studies of biological resources associated with the project site began with a thorough review of relevant literature followed by a reconnaissance-level field survey. The reconnaissance-level survey provided documentation of the biological resources existing on the project site.

Literature Review. A compilation of sensitive plant and wildlife species recorded in the vicinity of the project site was derived from a sensitive species and natural community account database, the California Department of Fish and Game (CDFG) California Natural Diversity Database (CNDDDB), and recorded occurrences of plant species found on or near the project site derived from the California Native Plant Society's (CNPS) database. The CNDDDB and CNPS search was based on the United States Geological Survey Guasti 7.5-minute topographic quadrangle. The search included the project site and a reasonable distance surrounding the property (approximately 7 miles). Federal Register listings, protocols, and species data provided by the USFWS and CDFG were reviewed in conjunction with anticipated federal- and state-listed species potentially occurring within the vicinity of the project site. The literature review provided a baseline from which to inventory the biological resources potentially occurring on the project site, as well as the surrounding area.

Reconnaissance-Level Survey. A reconnaissance-level survey was conducted over all portions of the project site by several staff members of Bon Terra Consulting. Consulting Biologists Michael Couffer and Travis Cooper surveyed the site for burrowing owls on several days between June 31 and July 27, 2005. Consulting Biologists Brian Drake and Gilbert Goodlett surveyed the site for Delhi Sands Fly on June 23 and 25, 2006, and again from July 1 to September 20, 2006; Karen Kirtland and Philippe Vergne surveyed the site for small mammals on August 2, 2005; and consulting biologist Scott White surveyed the site for plant species on May 20, 2005. The focus of these surveys was on identification of any potentially sensitive habitats or those areas potentially supporting sensitive flora and fauna species.

The results of this survey are presented in the following section, which includes the broad, program-level evaluation information contained in the NMC Final EIR.

5.3.2 - Existing Conditions

Historically, the region was dominated by coastal sage scrub and riparian vegetation along various streams. Urban development and channelization of the streams have eliminated the majority of this vegetation. Currently, vegetation in the region is generally comprised of urban landscaping, pasturelands, agricultural production, vineyards, nurseries, windrows, and small patches of remnant, native vegetation. The area surrounding the project site is partially developed with agricultural uses and partially developed with residential, a school, the SCE facility, and a warehouse distribution

center. The entire area is undergoing rapid urbanization with several new developments in the planning stages adjacent to all sides of the project site.

The project site is generally level with no significant geologic or topographical features. The site slopes gently to the south and elevations range between 785 feet along Riverside Drive to 725 feet at the south end of the site. According to the preliminary geo-technical report, the soils onsite are underlain with alluvial deposits with a relatively thin layer of artificial fill generally 4 feet thick. The property is disturbed and contains evidence of continual disturbance caused by dairy operations, a hog farm and crop production. Numerous dairy-associated and agricultural structures and several single-family residences are located throughout the site. Stormwater and/or agricultural waste detention ponds are located throughout the project site. Additionally, two SCE high-voltage electrical transmission line right-of-ways (SCE Corridors) cross the project site.

Vegetation Communities

The project site contains dairy farms and agriculture with limited vegetation including eucalyptus windrows, cultivated fields, fallow fields, dairy ponds, dry basins, and ornamental areas.

Ornamental Windrows

Ornamental windrows are human created woodlands using non-native trees and shrubs. The biological assessment for the NMC EIR identified a raptor nest or nest remains on the project site and classified most of the project site as Medium Habitat Value and classified some of the windrows on the site as High Habitat Value as shown in Exhibit 3 of that report. The windrows on the project site are comprised of a species of gum tree (*Eucalyptus* spp.) and ornamental pine trees (*Pinus* spp.). Ornamental woodlands present a challenge for species conservation. On one hand, they are comprised of non-native species that often out-compete native tree species, provide little or no food source for native fauna, and are sometimes even poisonous to wildlife. On the other hand, these woodlands often provide excellent nesting habitat for raptors and other birds. Ornamental windrows are located on several portions of the project site along the roads and along the east boundary with the SCE facility.

Developed/Disturbed Areas

These areas are characterized by a lack of significant vegetative cover, usually the result of previous human disturbance. Although such areas may contain a sparse cover of ruderal vegetation and an occasional scattering of native plant specimens, this type of “habitat” is not a plant community and is considered to be of little or no value to wildlife.

Sensitive Plant Communities

A special status plant survey was conducted in conformance with the California Department of Fish and Game guidelines. Surveys were conducted during the flowering season for the special status plants known from the area. Prior to the field survey, a literature review was conducted. Plant species identified in the field survey were collected and identified, and are listed in the appendix of the technical report which is included in Appendix B, Biological Resources, of this EIR. They consist entirely of common tumbleweed, cocklebur, mustard, thistle, and similar plants. None of the identified plants on the site are included on the list of special status plant species known to occur in the vicinity of the project site.

Sensitive Wildlife Species

Five sensitive wildlife species occur in the vicinity of the project site as identified by the CNDDDB and a literature review. They are: the burrowing owl (*Athene cunicularia hypugaea*), the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*), the Los Angeles little pocket mouse (*Perognathus longimembris brevinasus*), the Northwestern San Diego pocket mouse, the San Bernardino kangaroo rat (*Dipodomys merriami*) and the San Diego desert woodrat (*Neotoma lepida intermedia*). Of these, the burrowing owl has a high potential to occur on the project site and the Delhi Sands flower-loving fly has a moderate potential to occur on the project site; the other three species have a low potential of occurrence on the project site. The burrowing owl and the Delhi Sands flower-loving fly are discussed further below.

Burrowing Owl

The burrowing owl is not federally listed; however, it is a CDFG Species of Special Concern. Formerly common throughout California, this species' decline was noticeable as early as the 1940s. The burrowing owl is a gregarious owl that occupies open habitats such as grasslands, savannas, and sparse brush lands. The burrowing owl lives in the abandoned burrows of ground squirrels and other burrowing animals, modifying the burrows to suit their needs by digging. It is one of the few owl species often seen during the day and early evening hours, perched on fence posts or at the entrance to burrows. Their diet is predominantly large insects and small rodents, but they will also take small birds, reptiles, amphibians, fish, scorpions, and other available prey.

Burrowing owls breed between early March and late August. Pairs may stay together during an entire year. Clutches average about five young but a dozen young are not uncommon. After the breeding season, secondary burrows may be used for cover and roost sites. During winter, attachment to a particular burrow is reduced. Typically, burrowing owls form small colonies, fly low to the ground, and seldom reach heights above 25 feet.

During a survey of the site for the burrowing owl, a male owl was observed guarding a burrow and there was additional strong or conclusive evidence indicating the presence of burrowing owls on the site.

Small Mammals

Four small mammals have the potential to be located on the site: the San Bernardino kangaroo rat, the Los Angeles pocket mouse, the Northwestern San Diego pocket mouse, and the San Diego desert woodrat. The survey of the area uncovered no evidence of kangaroo rat or other mammal signs in the form of burrows and scat. Furthermore, no suitable habitat exists on the site to support these species. The only rodent sign observed was that of the California ground squirrel (*Spermophilus beecheyi*).

Delhi-Sands Flower-loving Fly

The Delhi Sands flower-loving fly (DSF), classified by the USFWS as a Federal Endangered Species, is a large herbaceous fly that occurs only in the Delhi Sands in western San Bernardino County. Dominant native plant species in DSF habitat often include wild buckwheat (*erigonum fasciculatum*), croton (*croton californicus*), and telegraph weed (*heterotheca grandiflora*). However, no data exists that can provide a quantitative definition of DSF habitat except by correlation with Delhi fine sand substrate, less than 50 percent vegetation cover, and the presence of these plant species. Circumstantial evidence suggests that these plant species are DSF “indicators” and important in the biology of the DSF, although specific plant associations that may be required by this species are not known. The DSF does not rely upon any plant species for survival. Rather, evidence only indicates that these plant species are present on sites that are occupied by DSF. All of these plant species are common in Southern California.

Much of the Delhi fine sand on the project site has been commingled with cow manure that has affected its quality. Based on the reconnaissance-level survey conducted by BonTerra in June 2004, approximately 110.9 acres of the project site contain suitable habitat and require focused studies. Focused 11-week surveys conducted on the project site by BonTerra staff between July 1 and September 20, 2005 concluded that DSF was not present on the site. A second survey conducted for 46 days between July 1 and September 20, 2006 also concluded that DSF was not present on the site.

Jurisdictional Drainage Assessment

According to the reconnaissance-level survey conducted on the project site there are no drainage features on the project site.

Wildlife Corridor Connectivity

The project site is surrounded at varying distances by urban development, and does not support regional wildlife movement through the area. Further, it does not link large open space areas together for wildlife movement.

Existing Regulations and Standard Conditions

The following policies related to biological resources identified in Chapter 6 of the NMC General Plan are applicable to the proposed project:

Policy 18.1.3: Development projects should include a Biological Assessment Report that addresses the proposed project's impact on state- and federally-listed and candidate plants and animals; California Department of Fish and Game Special Animals; waterfowl or raptor habitat and any other special interest species or communities identified in the General Plan Analyses of Existing Conditions and Trends Report, or those hereafter named by state or federal trustee agencies.

Policy 18.1.5: Require that subarea specific plans include sufficient technical data to enable an adequate assessment of the potential for impacts on biological resources. Such technical data shall include species lists, habitat use, acreage of habitat, and descriptions of any vegetation.

Policy 18.1.6: Review that specific plans and development projects proposed within the NMC assess their impacts (sic) on local biological resources and recommend appropriate mitigation measures, if necessary to account for specific development characteristics or site conditions that are not adequately addressed by the NMC Final EIR.

Policy 18.1.12: Establish a Waterfowl and Raptor Conservation Area (WRCA) in the NMC adjacent to the Chino Basin Flood Control Ponds located to the south of Chino Avenue, west of Archibald Avenue, north of Schaefer and east of Whispering Lakes Lane consisting of approximately 145 acres adjacent to the 85 acres of existing county owned detention basins.

Two alternatives to establishing the WRCA are presented:

Alternative A. The City shall work with the appropriate landowners(s) in establishing the WRCA as a mitigation bank. In exchange for creating the WRCA on their property, landowners(s) will be able to sell "credits" to developers to pay for the WRCA establishment and maintenance. The credit values shall be based upon a percentage of the NMC to be converted. The cost of the credits will be established in consultation with California Department of Fish and Game, according the State guidelines.

When the final credits are sold, the landowner or mitigation bank operator has the option of selling the WRCA to an appropriate conservation agency, or retaining the land and ensuring its maintenance as a waterfowl and raptor refuge.

Alternative B. The City and CDFG shall work with future developers in the central part of the NMC to ensure that adequate compensation is made for relinquishing development rights for the WRCA. Compensation shall be paid with City General Funds, and any other funding that can be obtained from public and private conservation groups interested in waterfowl conservation.

The City shall be reimbursed for land purchase costs and habitat creation with development fees to be paid by each developer (not current landowners) within the NMC. The fees shall be determined annually, based upon current land values in the NMC.

Policy 18.2.2: The City shall cooperate with the USFWS in the following ways to mitigate potential impact to the DSF by cooperating with the USFWS to ensure, through the specific plan process, that potential recovery areas are appropriately mitigated; by establishing a standard for buffers for protecting DSF restoration areas, in cooperation with USFWS; and working with rights-of-way owners and the USFWS to explore the possibility of creating DSF habitat within these undeveloped strips.

Section 2.4 of the Parks, Recreation, and Biological Resources Implementation Program prepared for the NMC contains the following applicable non-numbered policy related to biological resources:

- An overriding goal of the NMC plan is to provide creative, multi-use facilities incorporating habitat (biological resources) into open space, recreation facilities, and utility corridors. Creative uses of these resources will result in a greater number and wider diversity of recreation opportunities and wildlife in the NMC.

Habitat Mitigation Fee

The City established a Habitat Mitigation Fee (HMF) program that would go toward the development of the Waterfowl and Raptor Conservation Area (WRCA). The HMF of \$4,320 per-acre (net) would be based on the percentage of the land area that a proposed project occupies. The WRCA, which could be developed anywhere within the Prado Dam Basin, is intended to provide permanent habitat for migratory waterfowl and raptors. A portion of the HMF (\$500 per acre) may be stipulated for mitigation of impacts to the DSF.

Ontario Recovery Unit

The DSF was listed as an endangered species by the USFWS on September 23, 1993 (58 Federal Register 49881). However, critical habitat for this species has not been designated. The USFWS considers this species to have a high degree of threat and low potential for recovery. Although the species has a low recovery potential, the USFWS adopted a Final Recovery Plan for the DSF (U.S. Fish and Wildlife Service 1997). This recovery plan attempts to reduce the risk of global extinction of the species by spreading protection across three separate Recovery Units (RUs) that include adequate habitat and area. These are identified as the Colton RU, the Jurupa RU, and the Ontario RU. The project site is located within the boundaries of the Ontario RU.

The majority of DSF habitat within the Ontario RU has been eliminated by longstanding agricultural land uses and urban development. Historical actions that have eliminated the species and its habitat include commercial and residential development, dumping of cow manure, and invasive exotic vegetation. Restorable habitat is located along SCE rights-of-way and a few other locations in the Ontario RU.

Southern California Edison Wildlife Protection Program

SCE has established a Wildlife Protection Program for the protection of endangered species and their habitat in lands owned or managed by SCE. In order to implement this effort, a comprehensive Endangered Species Alert Program manual was created in 1989 and updated in 1999. This manual contains descriptions and pictures of every protected plant or animal in the utility's service territory, its natural history, current status of state and federal endangered species lists, a description of activities that degrade its habitat, and a map showing where the species is found.

5.3.3 - Thresholds of Significance

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if it would:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or the U.S. Fish and Wildlife Service.
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or the U.S. Fish and Wildlife Service.

- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act.
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory corridors, or impede the use of native wildlife nursery sites.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted Natural Community Conservation Plan (NCCP) Habitat Conservation Plan (HCP) or other approved local, regional or State habitat conservation plan.

5.3.4 - Project Impacts

The proposed project could potentially remove the majority of the ornamental windrows and the habitat for the burrowing owl. Following is a discussion of the project impacts that correspond to the thresholds of significance previously identified in Section 5.3.3.

Impacts Related to Habitat Modification

Implementation of the proposed project would impact habitat previously identified in Section 5.3.2. Following is a discussion of each habitat type.

Burrowing Owl Habitat

The project site provides suitable habitat for the burrowing owl due to the presence of flat terrain, low-growing vegetation, and burrows. The focused survey in 2005 (BonTerra) confirmed the presence of burrows and adult and juvenile owls. The majority of the habitat available for use by the burrowing owls would be removed as a result of implementing the proposed project.

This will have significant impacts on the burrowing owl determined to occupy the project site. Mitigation measures will be required to reduce this impact to below a level of significance (see BR-2 through BR-6).

Delhi Sands Flower-loving Fly Habitat

Implementation of the proposed project could remove habitat available for use by the DSF. Because the DSF is a federally-listed species, removal of this habitat could result in a significant impact if the DSF was present on the project site, although the USFWS has not designated critical habitat for the DSF and has not determined specific habitat acreage objectives within the three RUs (see Section

5.3.2 for a discussion of the Ontario RU). The focused DSF surveys conducted by Bon Terra Consulting in 2005 and 2006 of the project site concluded that DSF was absent from the site.

Migratory Bird Habitat

The ornamental windrows could be removed as a result of implementing the proposed project. These windrows, generally comprised of blue gum (*Eucalyptus*) and pine trees, are not considered a sensitive plant community. Windrows are located throughout the project site along several roadways. Generally the windrows exhibit the following characteristics:

- No seasonal nesting is expected.
- Trees are comprised of young, spindly, low height, and sparse in foliage.
- Trunks and branches are thin and grow horizontally and are not considered adequate to support nests.
- Human disturbance is expected to be high.
- Narrow windrow width offers poor cover and/or nesting sites.

These windrows are used occasionally by raptors, which are protected by the Migratory Bird Treaty Act of 1918. This protection is codified in Section 3513 of the California Fish and Game Code. Removal of these trees if occupied by raptors could result in a direct significant impact.

In addition to the removal of this windrows, the conversion of the project site to urban uses would eliminate all of foraging open space except under the SCE easement that could be used for migratory birds. The combination of the removal of the windrow and foraging open space could result in a significant indirect impact to migratory birds.

The location of the existing onsite stormwater detention basins are also identified as High Value Habitat in the NMC EIR. Surface water features, which include agricultural ponds, detention basins, and other miscellaneous ponds, provide “stepping stones” for migratory birds. This surface water feature could be used by migratory waterfowl. However, Section 5.8.1 of the NMC Final EIR indicated that wildlife associated with dairy operations are likely to be non-native species, or more common native species that are tolerant of human activity. Further, the high-level of human and livestock activity would likely disrupt native species wildlife found elsewhere in the NMC. In addition, stormwater retention basins on dairies are considered to be of marginal habitat value due to the high concentrations of various pollutants. The NMC EIR and supporting biological technical studies identify surface water features in several areas of the site. However, according to the NMC

EIR, storm water detention basins could serve as habitat, and removal of this surface water feature could result in a potentially significant impact.

Mitigation would reduce this impact to below a level of significance (see BR-7).

Impacts Related to Riparian Habitat or Other Sensitive Natural Communities

The surveys referenced at the beginning of this section did not identify any riparian or other sensitive natural communities existing on the project site. Therefore, implementation of the proposed project would not result in any impacts related to either riparian vegetation or sensitive natural communities.

Impacts Related to Jurisdictional Areas

No jurisdictional drainage features are known to exist on the project site. The reconnaissance-level survey conducted in May 2004 did not identify any drainage features or any other conditions that would qualify as jurisdictional waters by either the U.S. Army Corps of Engineers or the CDFG. Therefore, no impacts to jurisdictional waters would result from project implementation.

Impacts Related to Wildlife Movement

The reconnaissance-level survey did not observe any large mammals on the project site such as coyote, deer, or bobcats, or other mammals that could use the project site as a migratory corridor. In addition, the survey did not observe any evidence of such mammals. The project site does not link to any major open space areas, and the surrounding area is either developed or soon to be developed. Therefore, the project site is not considered a wildlife corridor, and implementation of the proposed project would not result in any impacts related to wildlife movement.

Impacts Related to Conflicts with Policies or Ordinances Related to Biological Resources

The City does not have any specific municipal ordinances related to biological resources. However, the NMC General Plan contains policies related to biological resources as outlined above in Section 5.3.2. These policies require the development of various reports and collection of data. These policies were considered in the preparation of the Biological Resources Survey Report prepared for this project and the analysis contained in this section of the Draft EIR satisfies the requirement of Policies 18.1.3 and 18.1.6. Policy 18.1.5 is satisfied because the specific plan prepared for this project contains extensive technical information that enabled a thorough evaluation of potentially significant impacts to biological resources. The portion of Policy 18.2.2 that requires potential recovery areas to be mitigated is satisfied because mitigation measures have been proposed as part of this analysis and contained in this section of the Draft EIR. Therefore, implementation of the

proposed project would not conflict with or create any impacts related to these policies, including the applicable portion of Policy 18.2.2, along with the non-numbered policy contained in the Implementation Program. The remaining applicable portion of Policy 18.2.2 that requires the exploration of developing DSF habitat within undeveloped rights-of-way, could result in a significant impact regarding implementation of this policy if the portion of SCE corridor not proposed for development cannot be retained as open space and available for the DSF.

Impacts Related to an Adopted NCCP or HCP

The project site is not located within the boundaries of an adopted habitat conservation plan or natural community conservation plan. However, as previously identified in Section 5.3.2, the project site is located within the boundaries of the Ontario RU for the DSF. Because the proposed project is consistent with General Plan Policy 18.2.2, as previously discussed, and includes availability of open space available for the DSF (see PDF 12 in Section 3.3.7 of this document), the proposed project is not in conflict with the recovery provisions of the Ontario RU.

Impacts Related to Edge Conditions

The Center for Biological Diversity submitted comments in response to the Notice of Preparation (NOP) requesting “that all species found at the edge of their ranges or that occur as disjunct (sic) locations be evaluated.” The area surrounding the project site is either urbanized or soon to be developed. Undeveloped land is similar to the project site. The project site is not located at the edge of any habitat areas. Impacts are therefore less than significant.

5.3.5 - Cumulative Impacts

Implementation of the Rich Haven Project in combination with the other related projects would result in the conversion of agricultural land uses to urban uses and elimination of the majority of windrows that, when used together, provide foraging habitat for migratory birds. Therefore, the elimination of windrows, foraging habitat, and surface water features would be cumulatively considerable. Mitigation for this impact is presented below in MM BR-7.

The NMC Final EIR concluded that no sensitive plant communities or plant species occur within the NMC. Further, the project reconnaissance-level survey concluded that no sensitive plant communities are located on the project site and that sensitive plant species have a low potential to occur on the project site. Therefore, no cumulative impacts to sensitive plants would result from implementation of the proposed project along with the related projects.

5.3.6 - Mitigation Measures

The Biological Resources Section of the NMC Final EIR identified three mitigation measures (mitigation measures BR-1 through BR-3). Mitigation measure BR-1 related to waterfowl habitat and recommended creation of new habitat in an area that does not currently have waterfowl habitat, mitigation ratios for replacement habitat, and the dedication of non-public lands for a permanent WRCA. Mitigation measure BR-2, also related to waterfowl habitat, outlined two alternatives for the creation of a WRCA. Alternative A suggests a WRCA could be established as a mitigation bank and Alternative B suggests that landowners could be compensated for relinquishing development rights for a WRCA. Both alternatives suggest the southeastern portion of the NMC as the location for a WRCA. Mitigation measure BR-3 outlined methods on how the City should cooperate with the U.S. Fish and Wildlife Service in the protection of the Delhi Sands flower-loving Fly.

Implementation of the NMC Final EIR mitigation measures and the following recommended mitigation measures would reduce potentially significant impacts to a less than significant level.

- BR-1** Not less than two weeks and not more than four weeks prior to the commencement of any ground-disturbing activities, a survey for burrowing owls will be conducted by a qualified biologist to document their presence or absence. If burrowing owls are documented to be present on the project site, they will be physically relocated to an established preserve relocation site.
- BR-2** A focused survey by a qualified biologist for burrowing owl shall be conducted each year that the property remains in an undeveloped state to confirm the current number of owls occupying the site. Focused surveys would follow accepted burrowing owl protocol, which includes a nesting season survey. During the nesting season survey, four site visits are conducted between March 1 and August 31. Surveys should be conducted from two hours before sunset to one hour after, or from one hour before to two hours after sunrise.
- BR-3** Burrowing owl inside the project site will be passively relocated prior to construction activity in order to avoid direct impacts of burrow destruction. Once all burrows on the project site are confirmed to be absent of owls, they will be systematically collapsed. Where possible, burrows will be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe or burlap bags will be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow.
- BR-4** No construction-related disturbance should occur within 50 meters (m), approximately 160 feet. (ft), of occupied burrows during the non-breeding season of September 1 through January 31 or within 75 m., approximately 250 ft, during the breeding season of February 1 through August 31.

- BR-5** Prior to issuance of permits, the Applicant and the City of Ontario shall hire a qualified biologist to develop a mitigation plan to compensate for the loss of burrowing owl occupied habitat to the satisfaction of the CDFG.
- BR-6** Removal of windrows shall be accomplished in a manner that avoids impacts to active nests during the breeding season. If a windrow is removed entirely between September 1 and January 14, no surveys or monitoring will be required. If removal of this windrow must be performed between January 15 and August 31, a nesting bird survey must be conducted one week prior to commencing tree removal. If any active nests are detected within the windrow, a 100-foot wide buffer area around the nest(s) will be flagged, and will be avoided until the nesting cycle is complete or it is determined that the nest(s) has failed. In addition, a qualified biological monitor will be present on the site to monitor tree removal or other construction activity in the vicinity of nest sites to assure that active nests are not disturbed.
- BR-7** Require the developer of the Rich Haven Project to pay a Habitat Mitigation Fee of \$4,320 per net acre to the City of Ontario toward the development of the Waterfowl and Raptor Conservation Area, which would be based on the percentage of land area of the NMC that is occupied by the project site, as approved by the City of Ontario.

5.3.7 - Level of Significance After Mitigation

Mitigation measures BR-1 through BR-5 require implementation prior to permit issuance or construction activities. This eliminates the potential for construction-related activities to commence without the benefit of the recommended mitigation measures that would eliminate the potential to significantly affect burrowing owls, if present on the project site.

Mitigation measure BR-6 would eliminate the potential to affect nesting raptors, if present in the windrows, and BR-7 would offset some of the loss of habitat.

Additionally, as a result of challenges by the Endangered Habitats League and others regarding the NMC General Plan Amendment and EIR, a Settlement Agreement established a wildlife conservation area within the NMC as well as payment of habitat mitigation fees to acquire new conservation lands outside the NMC elsewhere in the Prado Basin. Adherence to this agreement will further mitigate the biological impacts associated with the proposed project.

With the implementation of the agreement and the recommended mitigation measures, significant and unavoidable cumulative impacts would remain after project implementation. All other impacts to biological resources are reduced to less than significant levels.

