

Appendix D.4

Jurisdictional Delineation Addendum MBI, 2021

Travertine SPA
Draft EIR
SCH# 201811023
Technical Appendices

October 2023

JN 182517

TRG LAND, INC.

Attn: *Mark Rogers*

898 Production Place

Newport Beach, California 92663

SUBJECT: Addendum to the Delineation of State and Federal Jurisdictional Waters dated June 2021 for the Travertine Project – City of La Quinta, Riverside County, California.

Dear Mr. Rogers:

Michael Baker International (Michael Baker) is pleased to submit this addendum to TRG Land, Inc. documenting the recent regulatory changes to which the proposed Travertine Project (project), located in the City of La Quinta, Riverside County, California, is subject. Michael Baker conducted a thorough literature review and a field survey and prepared a Delineation of State and Federal Jurisdictional Waters Report in June 2021 (Delineation Report). Following the completion of this report, the U.S. Environmental Protection Agency (EPA) and the Department of the Army altered the regulatory process (described herein) under which the 2021 Delineation Report had originally been prepared. Therefore, this addendum seeks to 1) outline the recent regulatory changes to Corps jurisdiction, and to 2) update and revise the findings of the Delineation Report in accordance with these changes, where required. Additionally, this addendum also seeks to provide a preliminary assessment of potential jurisdictional resources associated with the offsite parcels proposed for water well locations described in the 2021 Delineation Report.

REGULATORY SUMMARY

Since 1972, the Army Corps of Engineers (Corps) and EPA jointly regulate discharges of dredged or fill material into “waters of the U.S.” (WoUS), including wetland and non-wetland aquatic features, pursuant to Section 404 of the Clean Water Act (CWA). Section 404 is founded on the findings of a significant nexus (or connection) between the aquatic or other hydrological feature in question and interstate commerce via Relatively Permanent Waters (RPW), and ultimately Traditional Navigable Waters (TNW), through direct or indirect connection as defined by Corps regulations. However, the limits to which this is applied have changed over time as discussed below.

SWANCC and Rapanos

In 1984, the Migratory Bird Rule enabled the Corps to expand jurisdiction over isolated waters, and in 1985, the U.S. Supreme Court upheld the inclusion of adjacent wetlands in the regulatory definition of WoUS. However, in 2001, the Corps’ jurisdiction was narrowly limited following the Solid Waste Agency

of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC) in which the U.S. Supreme Court held that the use of “isolated” non-navigable intrastate ponds by migratory birds was not, by itself, sufficient basis for the exercise of Federal regulatory authority under the CWA. In 2006, a majority of the U.S. Supreme Court overturned two Sixth Circuit Court of Appeals decisions in the consolidated cases of Rapanos v. United States and Carabell v. United States (collectively referred to as Rapanos), concluding that wetlands isolated by surface connection are WoUS nonetheless if they significantly affect the chemical, physical, and biological integrity of other covered waters (significant nexus). The Navigable Waters Protection Rule (NWPR) eliminated the case specific application of the significant nexus test articulated in the Rapanos decision.

2015 Clean Water Rule

In 2015, the Corps and EPA published the “Clean Water Rule” clarifying the scope of coverage of the CWA. Upon issuance however, numerous lawsuits were filed and consolidated in the Sixth Circuit, immediately putting a “stay” on its implementation. In January 2018, the U.S. Supreme Court ruled that the Sixth Circuit did not have jurisdiction over the case, and in February 2018, dismissed it and dissolved the stay. In August 2018, a Federal judge found that the suspension failed to give an adequate public notice and therefore violated the Administrative Procedure Act. The 2015 Clean Water Rule remained in effect in 22 states, including California, the District of Columbia, and the U.S. territories until the December 23, 2019.

Repeal of 2015 Clean Water Rule

On October 22, 2019, the EPA and the Corps published a final rule to repeal the 2015 Clean Water Rule and restore the regulatory methodology that existed prior to the 2015 Rule. Under this rule, which became effective on December 23, 2019, jurisdictional WoUS were defined by the 1986/1988 regulatory definition of WoUS under CWA regulations 40 CFR 230.3(s).

Navigable Waters Protection Rule

On January 23, 2020, the EPA and the Corps finalized the NWPR to define WoUS. On April 21, 2020, the EPA and the Corps published the NWPR in the Federal Register. On June 22, 2020, 60 days after publication in the Federal Register, the NWPR became effective across the nation including the state of California. Therefore, jurisdictional features were discussed in the June 2021 Delineation Report based on the methodologies associated with the NWPR.

Remand and Vacatur of the Navigable Waters Protection Rule

On August 30, 2021, the NWPR was remanded and immediately vacated by the United States District Court For The District Of Arizona. In light of this order, the EPA and the Corps halted implementation of the NWPR nationwide and reinstated the pre-2015 definition of WoUS. Under the pre-2015 definition of the WoUS, the Corps and EPA require the case specific application of the significant nexus test, as articulated in the Rapanos decision, to determine WoUS. See below for an analysis of project site conditions using the pre-2015 definitions of WoUS.

PRELIMINARY DETERMINATION AND CONCLUSIONS

The Project's Delineation Report was originally prepared in accordance with the NWPR. Under the NWPR, the on-site aquatic features were considered ephemeral features and therefore did not meet the definition of WoUS. Please refer to the 2021 Delineation Report for additional information regarding methodology under the NWPR.

Corps Determination under the Pre-2015 Definitions of WoUS (Current)

All on-site aquatic features, comprised of Drainage Areas A – E, demonstrate the presence of an OHWM as indicated by the presence of the following indicators: a clear, natural line impressed on the bank; changes in the character of soil; shelving; vegetation matted down, bent, or absent; sediment deposition; presence of wrack line; and scour. However, based on the detailed analysis of on-site hydrologic conditions, it was preliminarily determined that the relevant reaches have an insubstantial or speculative effect on the chemical, physical or biological significant nexus to the downstream RPW (Coachella Valley Stormwater Channel/Whitewater River); and, therefore to the TNW (Salton Sea).

Prior to leaving the site, and after transmission losses, surface flows from the Drainage Areas A – E are directed towards the eastern portion of the project site due to the presence of multiple dikes throughout and around the project site including Guadalupe Dike and Training Dike in the northwest, and Dike No. 4 and a large levee along the project's eastern boundary. A 48-inch culvert and riser are located in the southeastern portion adjoining the project site and the outlet serves as the only flood conveyance facility for flows to continue downstream and off-site. The outlet is sized for the Standard Project Flood; however, it would take nearly a 50-year storm to produce outlet flows. Flows are then conveyed through the Avenue 64 Evacuation Channel into the Coachella Valley Stormwater Channel, which runs along the natural alignment of the Whitewater River and cuts diagonally across the valley until it reaches La Quinta. The riverbed begins to flatten as it reaches the eastern valley, drawing the flows into a man-made storm channel which funnels the flood waters into the Salton Sea. The discharge of the Avenue 64 Channel to the river is insignificant as the peak flows of the channel do not impact the peak flows of the river. Therefore, as none of the on-site drainage areas exhibit any significant connections to a TNW of the U.S., there is no Corps jurisdiction associated with the Project.

As described in the project's Delineation Report, no areas on-site exhibited all three wetland parameters. Therefore, no Corps jurisdictional wetlands are present on the project site.

Conclusions and Recommendations

In June 2021, Michael Baker preliminarily determined that no Corps jurisdiction occurred on the project site under the NWPR. Following the vacatur of the NWPR in August 2021, Michael Baker has re-assessed the project in light of recent regulatory changes, utilizing the pre-2015 definition of WoUS pursuant to the EPA and the Department of the Army. Under the pre-2015 definition of WoUS, Michael Baker has preliminarily determined that no Corps jurisdiction occurs on the project site as no on-site aquatic resources demonstrate a significant nexus to a TNW.

OFFSITE POTENTIAL WATER AND WELL STATION SITES

Michael Baker conducted a preliminary desktop review of 26 parcels (well site parcels) located in the City of La Quinta, Riverside County, California. These 26 parcels are potential candidates for offsite Coachella Valley Water District (CVWD) water well locations. The well site parcels were divided into two sections: the northern portion and the southern portion. The northern portion occurs approximately one mile northeast of the main project site and is bordered by 58th Avenue to the north, agricultural lands and Jackson Street to the east, Avenue 60 to the south, and Monroe Street to the west. The northern portion is comprised of parcel numbers 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16. The southern portion occurs approximately one mile east of the project site and is bordered by 61st Avenue to the north, agricultural lands, and Calhoun Street to the east, 62nd Avenue to the south, and Monroe Street to the west. The southern portion is comprised of parcels 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 31, 34, and 36¹. Refer to Exhibit 1, *Potential Jurisdiction Map*.

Michael Baker assessed the Parcels to document aquatic features that are potentially subject to the jurisdiction of the Corps pursuant to Section 404 of the CWA, the Regional Water Quality Control Board (Regional Board) pursuant to Section 401 of the CWA and/or Section 13263 of the California Porter-Cologne Water Quality Control Act (Porter-Cologne), and the California Department of Fish and Wildlife (CDFW) pursuant to Sections 1600 et seq. of the California Fish and Game Code (CFGF). Desktop-based resources used for this review include the U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (USFWS, 2020), the US Geological Survey National Hydrography Dataset (NHD; USGS, 2019), topographic maps (USGS, 2018), and aerial imagery obtained from Google Earth Pro and Microsoft Bing (Google Earth 2021, Bing Maps 2021).

Two potentially jurisdictional features were detected within the Study Area during the desktop review. A constructed agricultural pond occurs in the northeast corner of Parcel 15. Based on historical aerial imagery, the pond appears to have been constructed sometime between June 2009 and June 2011. Google Earth Aerials prior to 2009 show no water present on-site and the area appeared to be an agricultural field. After 2011, the pond appears in the aerials and it is currently present on-site. This feature has not been mapped by any of the above-referenced resources. This constructed agricultural pond appears to have been wholly constructed in the uplands for active agricultural uses and does not convey flows to a downstream RPW or TNW. Therefore, this feature is not expected to be regulated by the Corps pursuant to Section 404 of the CWA. However, this constructed agricultural pond is considered a potential state jurisdictional feature regulated by the Regional Board and CDFW pursuant to Porter-Cologne and the CFGF, respectively. Refer to Exhibit 1A, – *Potential Jurisdiction Map (North)*.

The second feature consisting of a potential wetland occurs the four contiguous parcels including 22, 23, 26, and 29. This feature has been mapped as PEM1Fx (palustrine, emergent, persistent, semi-permanently flooded, excavated) Freshwater Emergent Wetland by the USFWS NWI Mapper. Recurring ponding/flooding and vegetation are visible within this feature in aerial imagery. This feature does not

¹ There are two parcels in the southern portion of the well site parcels labeled as 23 – the northern parcel (APN 764-300-010) is located at latitude 33.604626°, longitude -116.219173°, and the southern parcel (APN 764-300-017) is located at latitude 33.599128°, longitude -116.219198°.

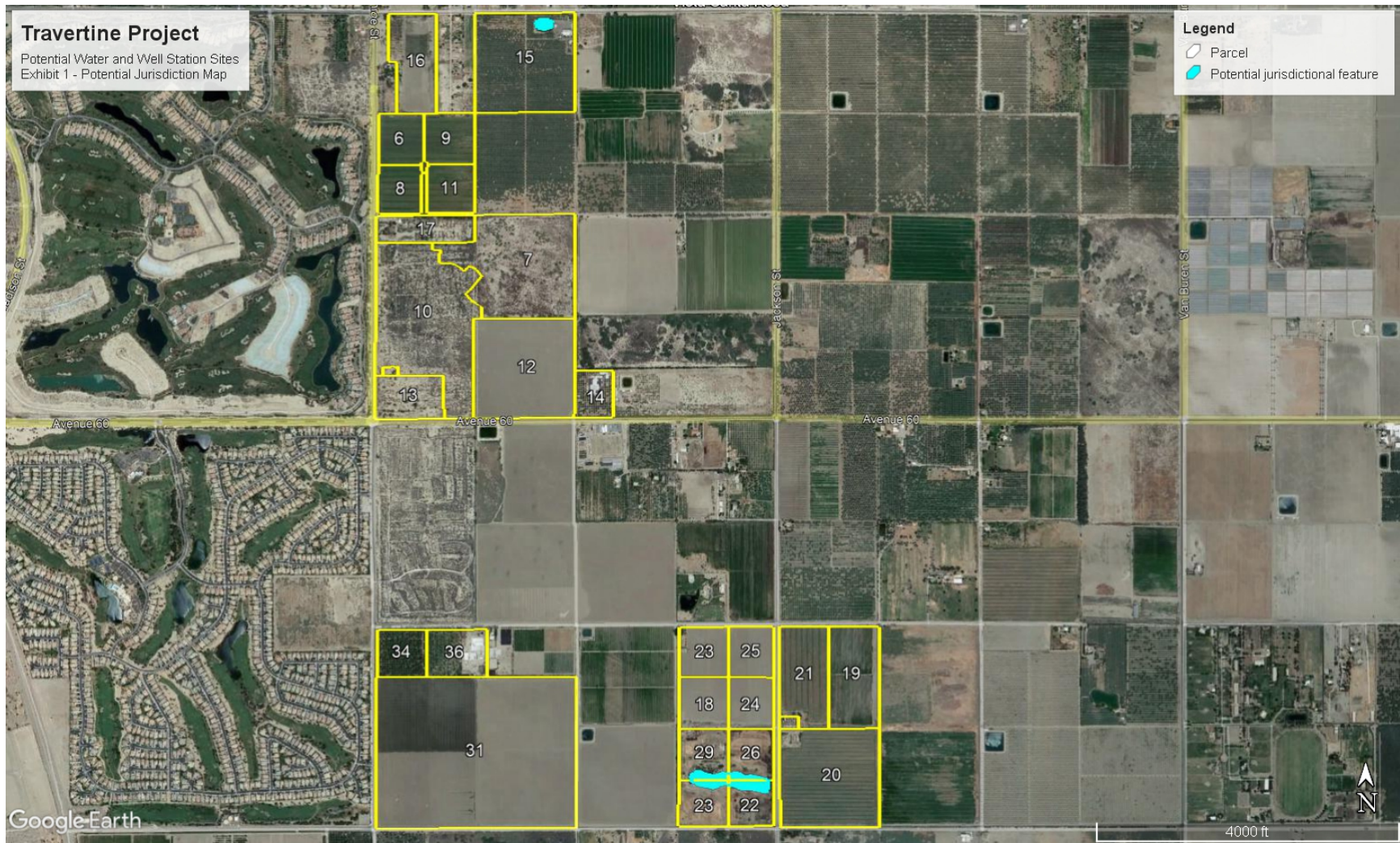
appear to connect to a downstream RPW or TNW and, therefore, this feature is not anticipated to be jurisdictional to the Corps pursuant to Section 404 of the CWA. However, this pond feature may be potentially jurisdictional to the Regional Board and/or CDFW pursuant to Porter-Cologne and the CFGC, respectively. Refer to Exhibit 1B, *Potential Jurisdiction Map (South)*.

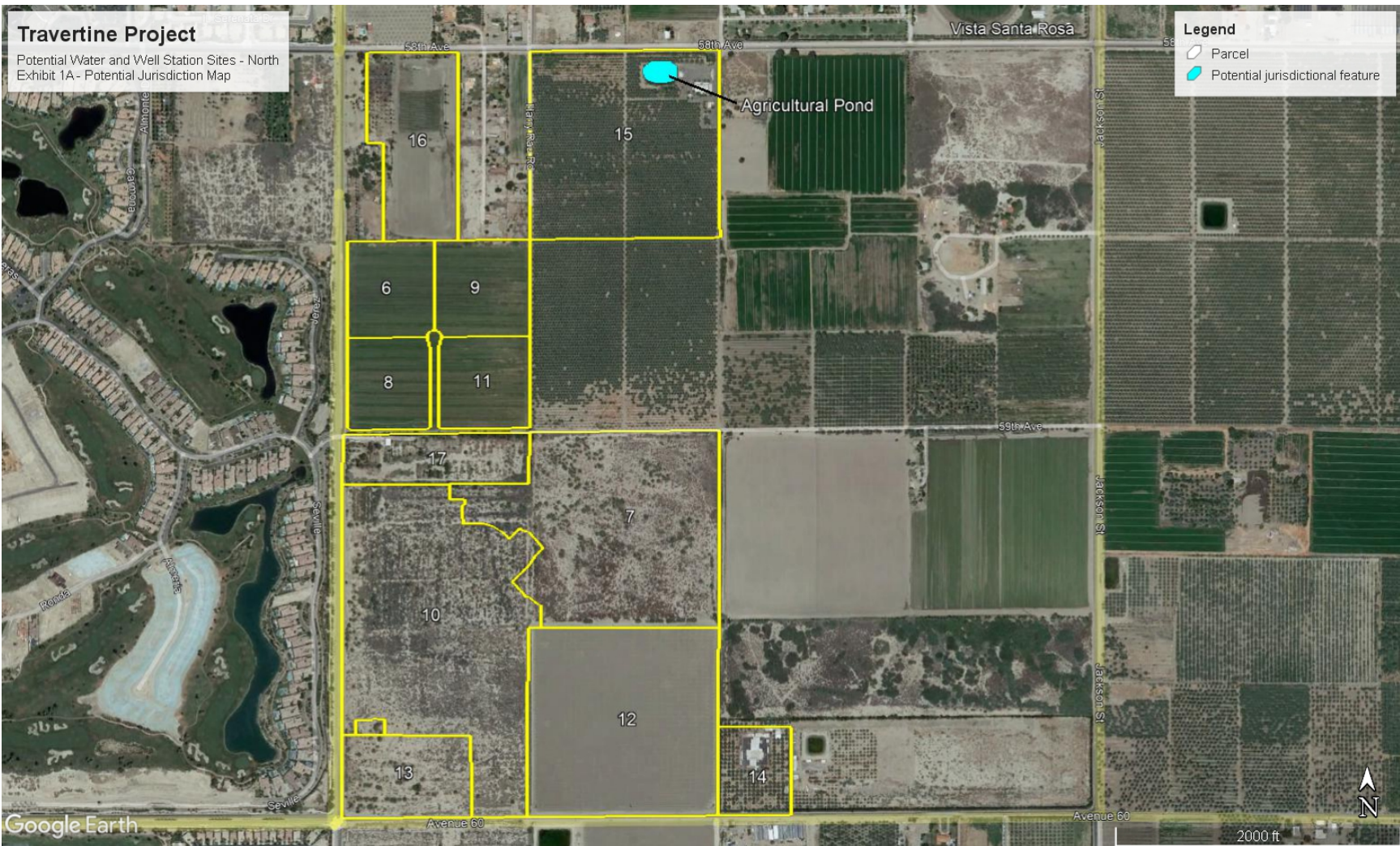
The findings and conclusions within this addendum represent a preliminary analysis only and are governed by the limitations of a desktop-based analysis. Fieldwork would be required to confirm the presence or absence of any identified features, including agricultural and roadside ditches that are not visible via aerial imagery. Additionally, only the regulatory agencies can make a final determination of jurisdictional limits.

Travertine Project
Potential Water and Well Station Sites
Exhibit 1 - Potential Jurisdiction Map

Legend

- Parcel
- Potential jurisdictional feature





Travertine Project

Potential Water and Well Station Sites - South
Exhibit 1B - Potential Jurisdiction Map

Legend

- Parcel
- Potential jurisdictional feature

