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Jurisdictional Survey and MSHCP Riparian/Riverine/Vernal Pools Evaluation

±100-acre Site

APNs: 295-310-012, -013, -014, -015

Site Location:
Riverside County
Steele Peak, NE 7.5-minute Quadrangle Map
Township 3 South, Range 4 West, Section 35
Riverside County, California

Prepared for:
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Total Area Surveyed:
±100 acres

Surveys Conducted by:
Scott Cameron

Surveys Conducted On:
November 20, 2019

Report Date:
December 17, 2019

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December 17, 2019

Patrick Russell
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18802 Bardeen Avenue
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SUBJECT: ***Results of Jurisdictional Survey and MSHCP Riparian/Riverine/Vernal Pools Evaluation; ±100-acre Site; APNs: 295-310-012, -013, -014, -015; Riverside County, California***

Dear Patrick:

This letter report presents findings of a survey conducted to evaluate the potential presence of jurisdictional resources on a ±100-acre site pursuant to U.S. Army Corps of Engineers (USACE), California Department of Fish and Wildlife/Game (CDFW/CDFG), Regional Water Quality Control Board (RWQCB), and the Riverside County Multiple Species Habitat Conservation Plan (MSHCP Section 6.1.2). Results of this survey are intended to provide the applicant and reviewing regulatory agencies with jurisdictional information necessary for planning and permitting decisions concerning the proposed project.

Introduction

The project site is located in Riverside County, California (***Plate 1***). Specifically, the site is located north Oleander Avenue, south of Nandina Avenue, east of Day Street, and west of Decker Road. The site occurs on the "Steele Peak NE" USGS 7.5-minute quadrangle map, Township 3 South, Range 4 West, comprising a portion of Section 35 (***Plate 2***).

Regulatory Framework

The following discussion is included to provide background information pertaining to the regulation of natural water features by state and federal agencies. Definitions are excerpted or referenced directly from 33 Code of Federal Regulations 328.3 and CWA memorandums.

U.S. Army Corps of Engineers (USACE)-Pursuant to the Federal Clean Water Act, the USACE regulates discharge of fill into "waters of the U.S." and adjacent "wetlands" under Section 404. Depending upon the amount of acreage subject to being filled, and the presence of threatened or endangered species and cultural resource issues, the USACE can issue an individual permit or consider the project to be covered under one of the existing nationwide permits (NWPs). Delineation of affected waters and wetlands is required to assess impacts and to determine applicable regulatory requirements, including which permitting strategy is appropriate.

Congress enacted the Clean Water Act ("CWA" or "the Act") "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. One of the mechanisms adopted by Congress to achieve that purpose is a prohibition on the discharge of any pollutants, including dredged or fill material, into "navigable waters" except in compliance with other specified sections of the Act. The Act defines the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source" and provides that "the term 'navigable waters' means the waters of the United States, including the territorial seas."

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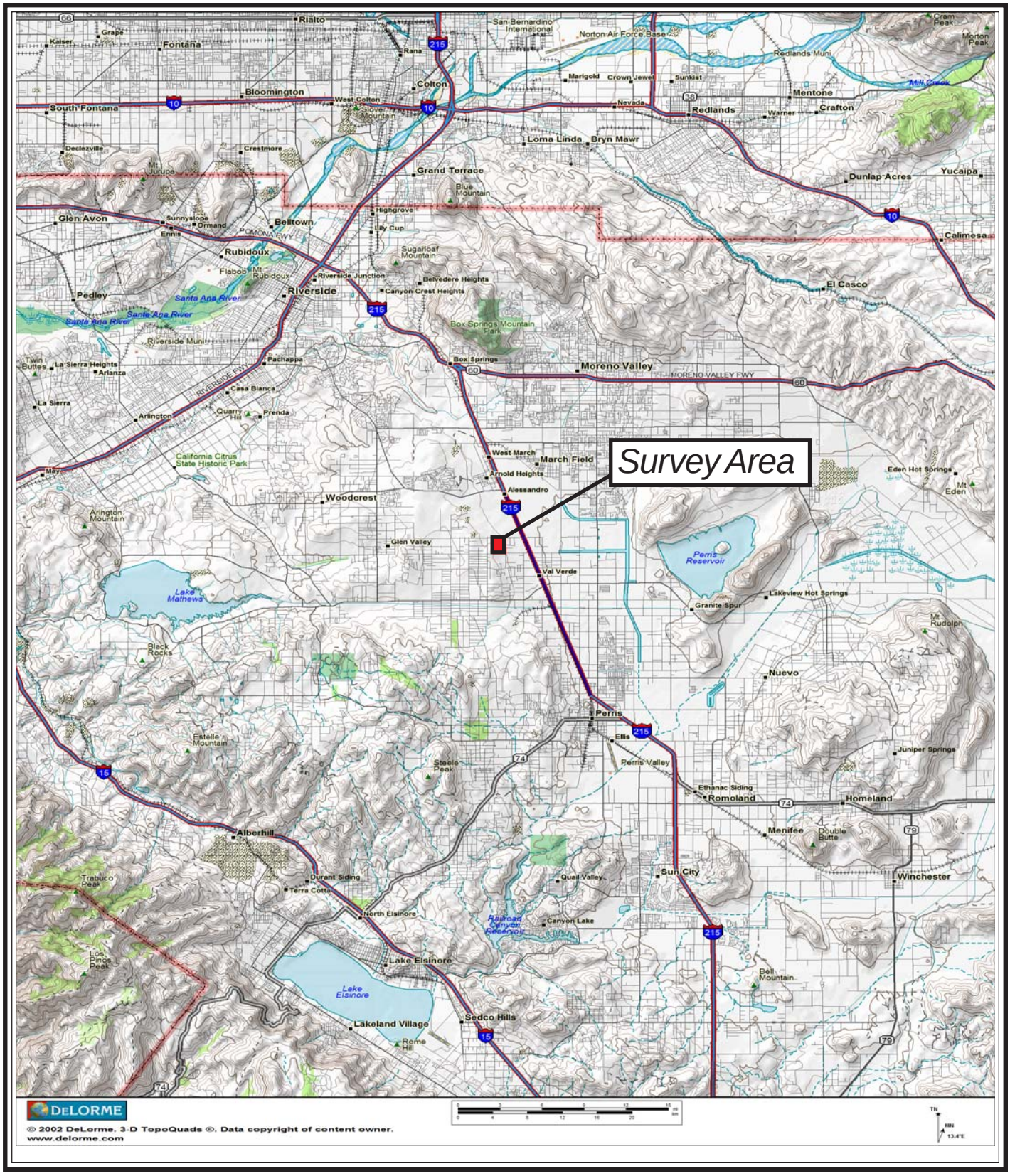

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***plate* 1**

Regional Site Location

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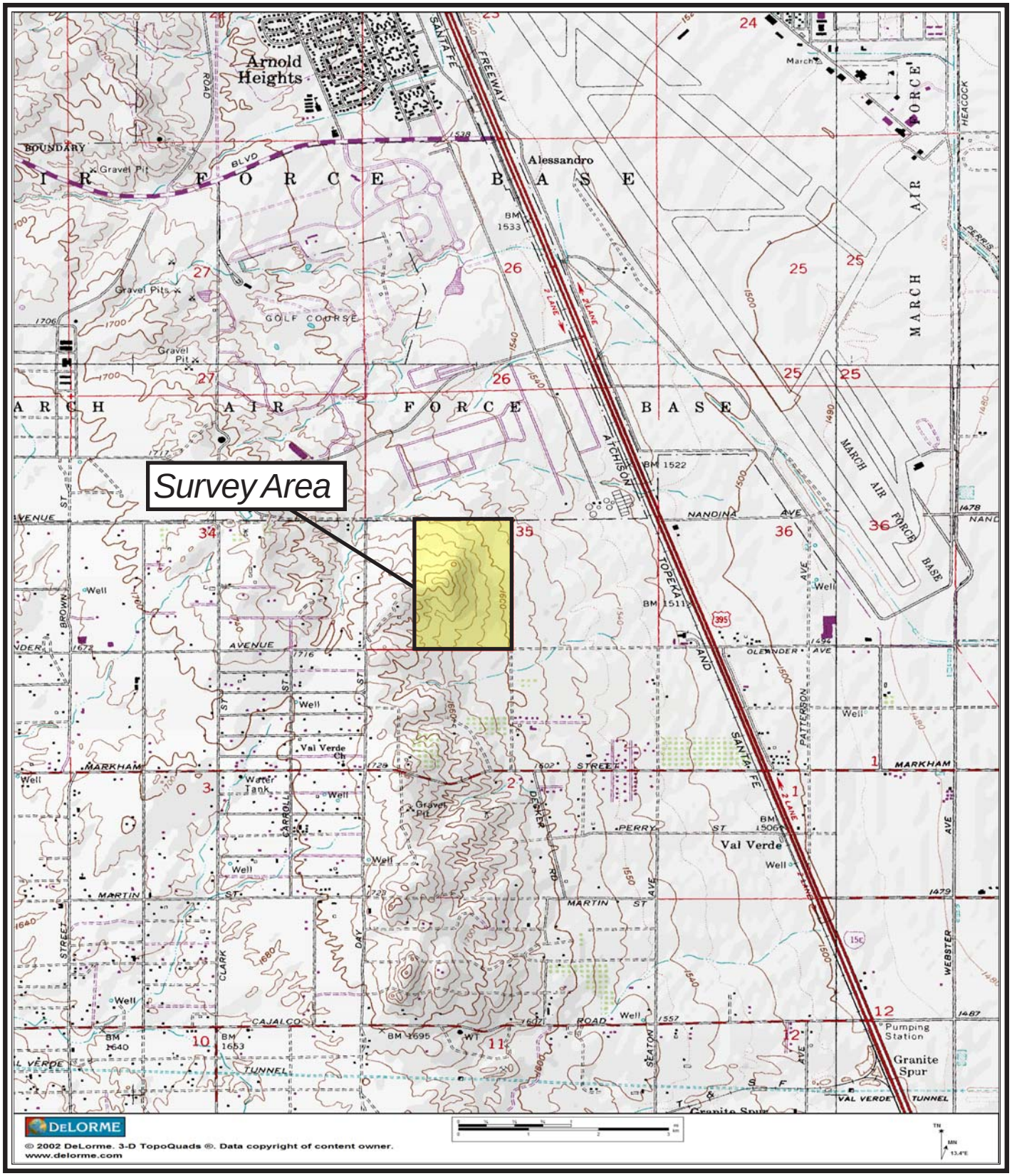

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plate **2**

Site Vicinity

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The USACE normally considers waters of the U.S. to include perennial or intermittent streams often mapped as blue-line streams by the U.S. Geological Survey (USGS) on topographical quadrangle maps; their jurisdiction in non-tidal waters extends to the ordinary high water mark. In intermittent streams, for example, this line can be established by "the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of 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)). Beyond the ordinary high water mark, USACE jurisdiction extends to the limit of adjacent wetlands, if they are present. "Adjacent" is defined to mean, "bordering, contiguous, or neighboring." Wetlands separated from other waters of the U.S. by man-made dikes or barriers and natural river berms are considered "adjacent wetlands" (33 CFR 328.3 (c)).

The term “Waters of the United States” means: (1) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to ebb and flow of the tide; (2) All interstate waters including interstate wetlands; (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce; (4) All impoundments of waters otherwise defined as waters of the US....; (5) Tributaries to waters identified in paragraphs 1, 2, and 4 of this section; (6) The territorial seas; (7) Wetlands adjacent to waters identified above this paragraph.

Number (3) in the above definitions has been somewhat modified by the case of Solid Waste Agency of Northern Cook County v. U. S. Army Corps of Engineers, No. 99-1178 (SWANCC). According to the decision of the court the USACE no longer has jurisdiction of waters that are “non-navigable, isolated, and intrastate” if that jurisdiction is based solely on the use of these waters by migratory birds. This ruling did not strike 33 CFR 328 (a) (3), or paragraph 3 above, but instead stayed focused on the “migratory bird rule”. Therefore the USACE does still have jurisdiction over water bodies adjacent to rivers and streams if their destruction or degradation could affect interstate or foreign commerce (Joint Memorandum EPA and USACE). In addition, the 4th Circuit found in U.S. v. Deaton, 02-1442 that USACE could regulate certain man-made ditches if the water from the ditch eventually flows into navigable waters.

Further, in Rapanos v. United States and Carabell v. United States, 126 S. Ct. 2208 (2006) (jointly referred to as Rapanos), the Supreme Court addressed where the Federal government can apply the CWA, specifically by determining whether a wetland or tributary is a "water of the United States." Key points of Rapanos (June 5, 2007 Clean Water Act Jurisdiction Memorandum) suggest that the agencies will assert jurisdiction over the following waters: (1) Traditional navigable waters, (2) Wetlands adjacent to traditional navigable waters, (3) Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months), (4) Wetlands that directly abut such tributaries.

Agencies will decide jurisdiction over the following waters based on a fact-specific analysis to determine whether they have a significant nexus with a traditional navigable water: (1) Non-navigable tributaries that are not relatively permanent, (2) Wetlands adjacent to non-navigable tributaries that are not relatively permanent, (3) Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary. The agencies generally will not assert jurisdiction over the following features: (1) Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow), (2) Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water. The agencies will apply the significant nexus standard as follows: (1) A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters and (2) Significant nexus includes consideration of hydrologic and ecologic factors (June 5, 2007 Clean Water Act Jurisdiction memorandum).

The USACE defines the term “wetlands” as follows: “Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions.” When wetlands are the only existing waters of the U.S., USACE jurisdiction extends to the limits of the wetland areas. In developing a field method for delineating wetlands, the USACE established a "three parameter test" that considers hydrophytic vegetation, wetland hydrology, and hydric soils. Under the USACE definition, an area is considered a wetland only if all three parameters are present; wetlands are "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (Environmental Laboratory 1987). However, the USACE recognizes that seasonal wetlands including vernal pools, vernal swales, and vernal depressions in the western United States are "problem areas" for wetland delineation because of the unique environmental conditions in which they occur. Indicators for one or more delineation parameters may be lacking, particularly hydrology during the dry season. In such areas, a delineation of wetlands may be based on the positive evidence of one or two parameters. Plant species, which are considered to be wetland indicators, are catalogued in the U.S. Fish and Wildlife Service’s (USFWS) *National List of Plant Species that Occur in Wetlands: Summary of Indicators* (Reed 1988).

Regional Water Quality Control Board (RWQCB)-In addition to the Section 404 Federal regulatory process, the State of California regulates water quality in waters and wetlands, per Section 401(b) of the Clean Water Act, which provides some regulatory authority to state RWQCB. The RWQCB regulates discharge of fill into waters of the U.S. in order to assure that clean water goals are met. Projects qualifying for some NWPs and all individual permits must submit materials for review to the appropriate RWQCB, and request an independent 401(b) certification. The RWQCB jurisdictional limits are the same as the USACE limits.

California Department of Fish and Wildlife (CDFW)- In addition to the federal Section 404 regulatory process, the State of California regulates water resources under Section 1601-1603 of the California Fish and Game Code. These regulations cover "...any project which will divert, obstruct or change the natural flow or bed, channel or bank of any river, stream or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit..." (California Fish and Game Code, Section 1601). The CDFW considers most drainages to be "streambeds" unless it can be demonstrated otherwise. A stream is defined as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes water courses having a surface or subsurface flow that supports or has supported riparian vegetation" (California State Register No. 87, No. 9, Section 1.72). In general, CDFW defines riparian vegetation more broadly than the hydrophytic vegetation criterion in the USACE manual. CDFW jurisdiction extends to the outer limit of the riparian vegetation canopy along a stream if it extends beyond the top of the bank.

Guidance for CDFW in the Wetland’s Policy further states: “When all three wetland indicators (i.e., hydric soils, wetland vegetation, and hydrology) are present, the presumption of wetland existence shall be conclusive. Where less than three indicators are present, policy application shall be supported by the demonstrable use of wetland areas by wetland association fish or wildlife resources, related biological activity, and wetland habitat values.” In practice, the CDFG generally requires only one of the three wetland parameters to be present to define a wetland if other biological resources indicative of wetlands are present. CDFW does not have authority over isolated wetlands; those not associated with lakes, rivers, and streams.

Compliance with MSHCP Section 6.1.2- Pursuant to the MSCHP (2003), projects that affect wetland vegetation communities shall be required to comply with the applicable regulatory standards related to wetlands functions and values. This includes areas subject to CDFW Code Section 1600 et seq. and the federal Clean Water Act (Sections 401, 402, and 404). Such areas will continue to be regulated by state and federal agencies. The USACE shall continue to consult with USFWS pursuant to Section 7 of the ESA on projects that may affect federally listed species with USACE jurisdictional wetlands and waters.

CDFW shall continue to work closely with the USACE, FWS, and local jurisdictions to ensure that the CDFW Code Section 1600 et seq. agreements are consistent with the mitigation required for Covered Species. In addition, other existing regulations related to wetland habitats such as the Porter-Cologne Act shall continue to apply (MSHCP 2003).

The site must be reviewed for constency with MSHCP objectives such as ***Section 6.1.2- Riparian/Riverine Areas and Vernal Pools***, which provides for protection of species associated with riparian-associated habitats. The MSHCP (2003) defines ***(1) Riparian/Riverine Areas*** as lands which contain habitat dominated by trees, shrubs, persistent emergents, or emergent mosses and lichens, which occur close to or which depend upon soil moisture from a nearby fresh water source; or areas with fresh water flow during all or a portion of the year; ***(2) Vernal pools*** are seasonal wetlands that occur in depression areas that have wetlands indicators of all three parameters (soils, vegetation and hydrology) during the wetter portion of the growing season but normally lack wetlands indicators of hydrology and/or vegetation during the drier portion of the growing season. Obligate hydrophytes and facultative wetlands plant species are normally dominant during the wetter portion of the growing season, while upland species (annuals) may be dominant during the drier portion of the growing season. The determination that an area exhibits vernal pool characteristics, and the definition of the watershed supporting vernal pool hydrology, must be made on a case-by-case basis. Such determinations should consider the length of the time the area exhibits upland and wetland characteristics and the manner in which the area fits into the overall ecological system as a wetland. Evidence concerning the persistence of an area's wetness can be obtained from its history, vegetation, soils, and drainage characteristics, uses to which it has been subjected, and weather and hydrologic records; and ***(3) Fairy Shrimp-***for Riverside, vernal pool and Santa Rosa fairy shrimp, mapping of stock ponds, ephemeral pools and other features shall also be undertaken as determined appropriate by a qualified biologist.

Protected MSHCP species associated with 6.1.2 habitats include special-status plants, invertebrates, amphibians, birds, and fish. Plant species include Brand's phacelia (*Phacelia stellaris*), California Orcutt grass (*Orcuttia californica*), California black walnut (*Juglans californica*), Coulter's matilija poppy (*Romneya coulteri*), Engelman oak (*Quercus engelmannii*), Fish's milkwort (*Polygala cornuta* spp. *fishiae*), graceful tarplant (*Holocarpha virgata* ssp. *elongata*), lemon lily (*Lilium parryi*), Mojave tarplant (*Hemizonia mohavensis*), mud nama (*Nama stenocarpum*), ocellated Humboldt lily (*Lilium humboldtii* ssp. *ocellatum*), Orcutt's brodiaea (*Brodiaea orcuttii*), Parish's meadowfoam (*Limnanthes gracilis* ssp. *parishii*), prostrate navarretia (*Navarretia prostrata*), San Diego button celery (*Eryngium aristulatum* var. *parishii*), San Jacinto Valley crownscale (*Atriplex coronata* var*. notatior*), San Miguel savory (*Satureja chandleri*), Santa Ana River woolly-star (*Eriastrum densifolium* ssp. *sanctorum*), slender-horned spineflower (*Dodecahema leptoceras*), smooth tarplant (*Centromadia pungens* ssp. *laevis*), spreading navarretia (*Navarretia fossalis*), thread-leaved brodiaea (*Brodiaea filifolia*), and vernal barley (*Hordeum intercedans*). Invertebrate species include Riverside fairy shrimp (*Streptocephalus wootoni*) and vernal pool fairy shrimp (*Branchinecta lynchi*). Fish species include Santa Ana sucker (*Catostomus santaanae*). Amphibian species include arroyo toad (*Bufo californicus*), mountain yellow-legged frog (*Rana muscosa*), and California red-legged frog (*Rana aurora draytonii*). Bird species include bald eagle (*Haliaeetus leucocephalus*), least Bell's vireo (*Vireo bellii pusillus*), peregrine falcon (*Falco peregrinus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and yellow-billed cuckoo (*Coccyzus americanus*). All of these species are not necessarily specific to the subject study area.

Investigative Methods

Ecological Sciences biologists conducted a field survey on November 20, 2019 for potential ***wetlands and streambeds per USACE, CDFW, RWQCB, and Riparian/Riverine/Vernal Pools*** pursuant to Section 6.1.2 of the MSHCP. The project site was investigated to evaluate the presence of wetlands, riparian habitat, and other biological resources. The delineation work was conducted according to the USACE 1987 Wetlands Delineation Manual. This method distinguishes among (delineates) uplands, wetlands, and waters of the U.S. under USACE jurisdiction. The 1987 USACE Wetlands Delineation Manual in general conjunction with the Interim Regional Supplement to the Corps of Engineers Wetland Delineation

Manual: Arid West Region (December 2006) was used to guide the delineation and evaluate on-site soils. Routine determination methods entail the investigation of the presence of normal conditions, hydrophytic vegetation, hydric soils, and wetland hydrology. RWQCB and CDFG jurisdictions are determined from the information obtained during the routine determination and general on-site investigations. Aerial photographs and soils maps were reviewed during report preparation. Vegetation and soils were identified using appropriate technical sources (e.g., Hickman, 1993; Soil Conservation Service, 1971; MSHCP 2003).

In the presence of normal conditions, wetlands may be delineated within waters of the U.S. below the ordinary high water mark by three criteria as follows:

(1) Hydrophytic vegetation is present when more than half of the dominant plant species present are typically adapted for life in saturated soil conditions. Those species have an obligate wetland or facultative wetland designation (Resources Management Group, Inc., 1993).

- ***Obligate Wetland (OBL):*** Occurs with an estimated 99 percent probability in wetlands.

- ***Facultative Wetland (FACW):*** Estimated 67 percent to 99 percent probability of occurrence in wetlands.
- ***Facultative (FAC):*** Equally likely to occur in wetlands and non-wetlands (34 percent to 66 percent).

- ***Facultative Upland (FACU):*** Only 1 percent to 33 percent probability of occurrence in wetlands.

(2) The ***hydric soil*** criterion is met (1987 manual) when indicators are present that demonstrate the soil is saturated or flooded for long duration during the growing season in which anaerobic conditions are generated. Hydric soils are assumed present when obligate wetland plant species are dominant and the wetland edge is abrupt. Otherwise, indicators of anaerobic conditions (e.g., soil mottles) must be present. Hydric soils are indicated by the presence of one of the various indicators below the A horizon or 10 inches: a soil chroma of 2 or less in mottled soils, or 1 or less in unmottled soils (Munsell Color 1990); the presence of sulfidic material or odors; and the presence of organic material.

Soil Descriptions

Wetland soils determination was conducted using the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region, published December 2006.

All Soils Types
Dominant chroma of 2 or less or the layers with dominant chroma more than 2 must be less than 6 inches thick. Concretions not redox unless otherwise noted.

Indicator F6 Redox Dark Surface
A layer that is at least 4 inches thick entirely within the upper 12 inches of soil and has: a) a matrix value of 3 or less and chroma 1 or less and 2 percent distinct and prominent redox concentrations; or b), a matrix value of 3 or less and chroma of 2 or less and 5 percent or more redox concentrations.

Indicator F8 Redox Depressions
In closed depressions subject to ponding, 5 percent or more distinct or prominent redox concentrations occurring as soft masses or pore linings in a layer 2 inches or more thick within the upper 6 inches of soil. Closed depressions can occur within flats or floodplain landscapes. No color requirement for the soil matrix.

Indicator TF2 Red Parent Material
In parent material with a hue of 7.5YR or redder, a layer at least 4 inches thick with a matrix value

and chroma of 4 or less and 2 percent or more redox depletions and/or redox concentrations occurring as soft masses and/or pore linings. The layer is entirely within 12 inches of the soil surface. The minimum thickness requirement is 2 inches if the layer is the mineral surface layer.

(3) The ***wetland hydrology*** criterion is similar to the soils criterion in that proof of long duration saturation that influences vegetation growth is required. In seasonally or temporarily inundated areas the wetland hydrology criterion is difficult to prove because duration of saturation is inconclusive from most indicators. These indicators include high water marks, drift lines, sediments, and drainage patterns. Wetland hydrology typically is indicated when soils are inundated or saturated within 12 inches of the surface for at least 18 days during the growing season. Other wetland hydrology indicators include physical evidence of such conditions, indicated by the presence of water lines impressed on the bank, shelving, water marks or stains, drift lines (destruction or flattening of vegetation, litter and debris deposition), sediment deposits such as algal mats, and mudcracks.

Existing Site Conditions

The survey area (site) is generally characterized by highly disturbed parcels that have been routinely and entirely disced resulting in an overall sparse coverage of vegetation. Most vegetation was limited to peripheral areas and around granite rock outcrops not exposed to recent discing activities. Vegetation present in the rocky outcrop areas consisted of remnant Riversidean sage scrub, while the lower lying areas consisted primarily of remnant non-native grassland. Scattered surface debris from illegal dumping was evident throughout portions of the site. Multiple dirt roads and ORV trails bisect the site. The site is bordered to the north, south, east, and west by undeveloped lands similar in composition to the subject site followed by various forms of development (rural residential, commercial, golf course). ***Plates 3a-3e*** illustrate site conditions.

Vegetation

Those areas of the site containing rocky outcrops supported plant species associated with remnant Riversidean sage scrub. Dominants included white sage (*Salvia apiana*), California sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), California matchweed (*Gutierrezia californica*), grassland goldenbush (*Ericameria palmeri* var. *pachylepis*), narrow-leaved filago (*Filago gallica*), and bush monkey flower (*Mimulus aurantiacus*). Lower elevational areas not containing extensive granite outcrops supported a sparse mix (due to recent discing) of native and ruderal introduced plant species consisting of ripgut grass (*Bromus diandrus*), foxtail chess (*Bromus madritensis* ssp. *rubens*), Mediterranean grass (*Schismus barbatus*), summer mustard (*Brassica geniculata*), and short-pod mustard (*Hirschfeldia incana*), Australian rocket (*Sisymbrium erysimoides*), horehound (*Marubium vulgare*), Russian thistle (*Salsola tragus*), pigweed (*Amaranthus* sp.), tocalote (*Centaurea melitensis*), spotted spurge (*Euphorbia maculata*), red-stemmed filaree (*Erodium cicutarium*), annual sunflower (*Helianthus annuus*), doveweed (*Eremocarpus setigerus*), cheeseweed (*Malva parviflora*), common fiddleneck (*Amsinckia menziesii* var. *intermedia*), and tarplant (*Deinandra* sp.).

Soils

Soils Analysis / Soil Conservation Map Review

Based on a review of the Soil Survey, Western Riverside Area, California (USDA, Soil Conservation Service 1971), portions of the subject survey area are mapped as containing Cieneba rocky sandy loam (CkD2), Cieneba sandy loam (CkF2), Fallbrook sandy loam (FaD2), Fallbrook rocky sandy loam (FcD2), Fallbrook fine sandy loam (FfC2), Fallbrook fine sandy loam, shallow (FkD2), Monserate sandy loam, shallow (MnD2), Rock land with loamy sand to sandy loam (RtF), and Vista coarse sandy loam (VsC). None of these soil types are considered as hydric per the Hydric Soils List and no hydric indicators were recorded on site. ***Plate 4*** illustrates project area soils.

View to southeast

View to west of on-site erosional feature

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plate **3a**

Site Photographs

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View southwest of upper Feature 1

View east of lower Feature 1

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plate **3b**

Site Photographs

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View west of upper Feature 2

View east of lower Feature 2

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plate 3c

Site Photographs

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View northwest of Feature 3

View north of Feature 4

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plate **3d**

Site Photographs

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View north of Feature 5

View east (off site-near eastern property boundary)

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plate **3e**

Site Photographs

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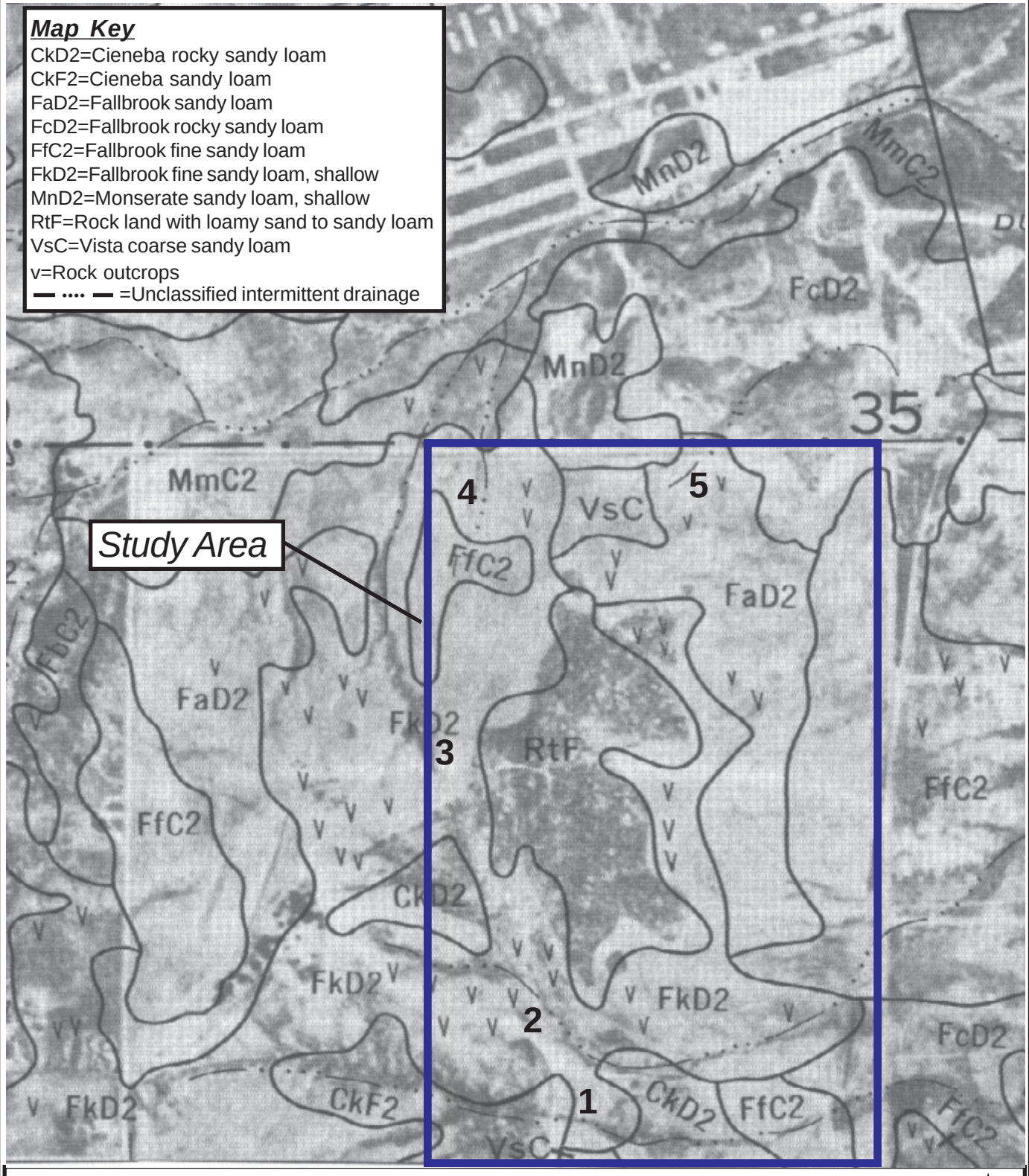

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plate 4

Project Area Soils

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Hydrology

The site generally drains to the east, except for the northwestern portion of the site which appears to drain to the north. The watershed area would be considered relatively small. The growing season in the project area is 365 days a year according to the Natural Resources Conservation Service. Therefore soils would need to be saturated within 12 inches of the surface for a minimum of five percent of the growing season (or 18 days) in order to satisfy wetland hydrology criteria. While flow events occur periodically within the swales and erosional features, prolonged saturation does not occur and wetland hydrology is not present on site. It appears that some surface drainage may sheet flow off the site. This sheet flow appears to be conveyed off site, which ultimately leads to broad swales located east of the site. The project area is generally not conducive to the development of wetland resources because of intensive agricultural uses and/or routine discing activities.

Results of On-Site Jurisdictional Survey

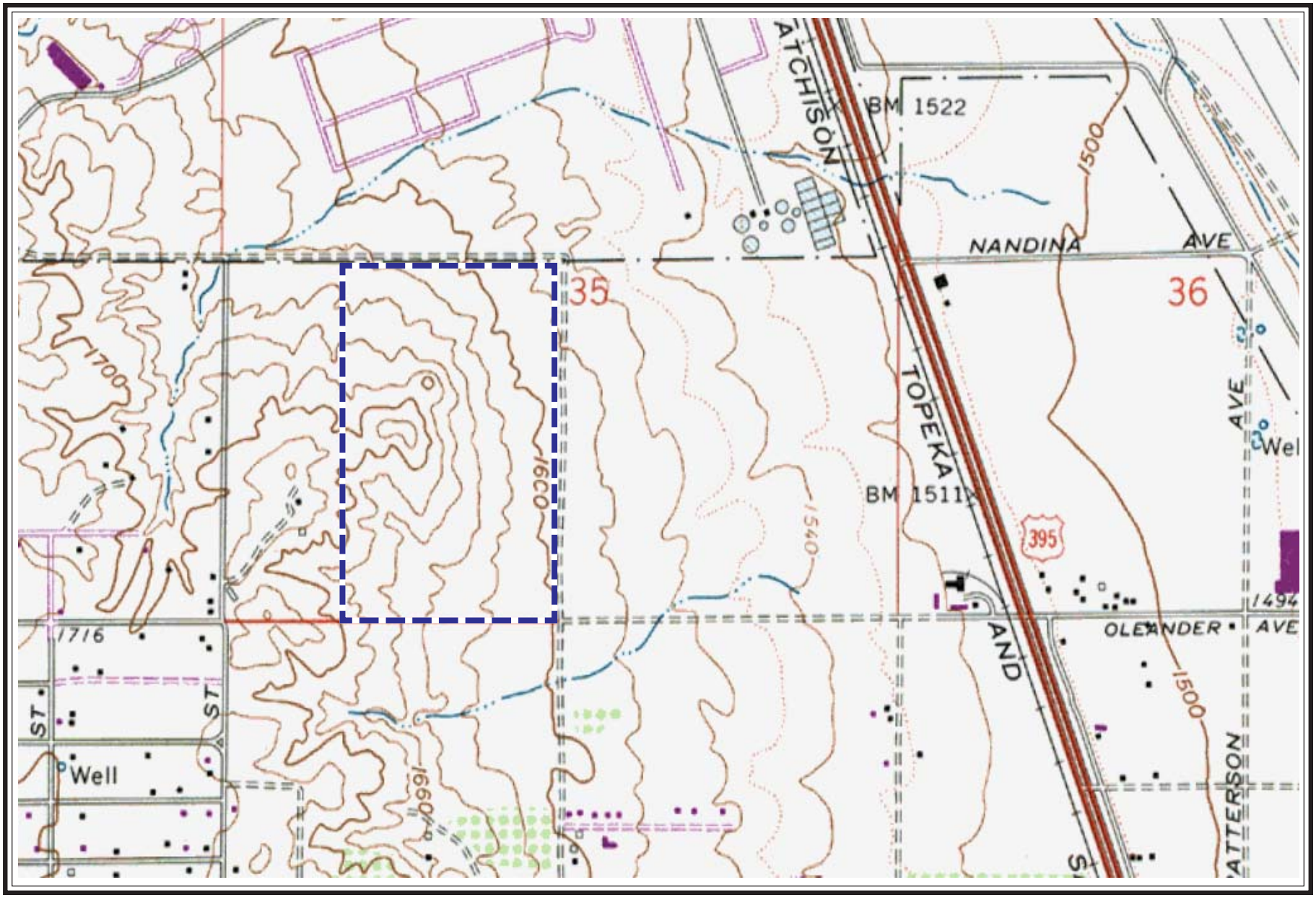
Based on the field investigations conducted by Ecological Sciences, USACE "waters of the United States" per Sections 401-404 of the Federal Clean Water Act and "streambeds" per Section 1600-1603 of the California Fish and Game Code were not observed on the property. No blue-line drainages occur directly on site based on review of the Steele Peak NE USGS quadrangle map. Five separate features were investigated on the subject site initially based on topography of the site (***Plate 5***).

Results from investigating the three-parameter test (vegetation, hydrology, and soils) are described as follows: All samples illustrated upland characteristics. No mottles or other redoxymorphic features were present on site. Soil samples were dry and uniformly light brown in the upper 4 inches (i.e., 10YR4/3) as well as deeper, near 12 inches (i.e., 10YR4/4). The soils were sandy and loamy. All samples lacked hydric soils indicators throughout the soil strata. Vegetation was dominated by non-native grassland with no hydrophytes present anywhere on site. As such, the hydrophytic vegetation criterion was not met. No wetland hydrology was evident. Therefore, no on-site samples met the three-parameter test for wetlands per USACE.

Features 1 and 2 (***Plate 6***) bisect the southern portion of the site. These features begin as incised drainages varying from 3-10 feet in width and 1-3 feet in depth and topographically flow from the western property boundary to the east. An earthen berm has been constructed along the eastern property boundary (below Feature 1). We suspect this was historically constructed as a flood control feature to reduce road erosion along the eastern property boundary. Both drainages lose definition to the east where any flow likely dissipates into sheetflow prior to exiting the site, as no other on-site drainage features were apparent. As a result of recurring discing activities, any definable bed and bank has been eliminated within the eastern portions of the drainages, and the drainages are now isolated from conveying significant downstream flows. Because the features lose definition, which apparently results in sheet flow over land without a bed, bank, and ordinary high water mark, these features are not likely considered jurisdictional by USACOE and CDFG.

USACE jurisdiction over isolated jurisdictional waters has been challenged (*Solid Waste Agency of Northern Cook v. USACE-SWANCC*). According to the SWANCC decision by the U.S. Supreme Court, the drainages would likely meet the "non-navigable, isolated, and intrastate" waters definition, and they have no significant nexus to navigable waters. Accordingly, the drainages would no longer appear to be considered "waters of the United States", based on the SWANCC ruling, and would therefore not likely be regulated by USACE jurisdiction (Section 404 of the Clean Water Act).

In addition, these two drainages are considered "unclassified" per the 1971 Western Riverside Area Soil Survey (i.e., not considered perennial or intermittent). Historically, the drainages are mapped off site as either "alluvial fan" or "drainage end" per the Soil Survey map.



Study Area Boundary

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plate **5**

Topographic Map of Project Vicinity

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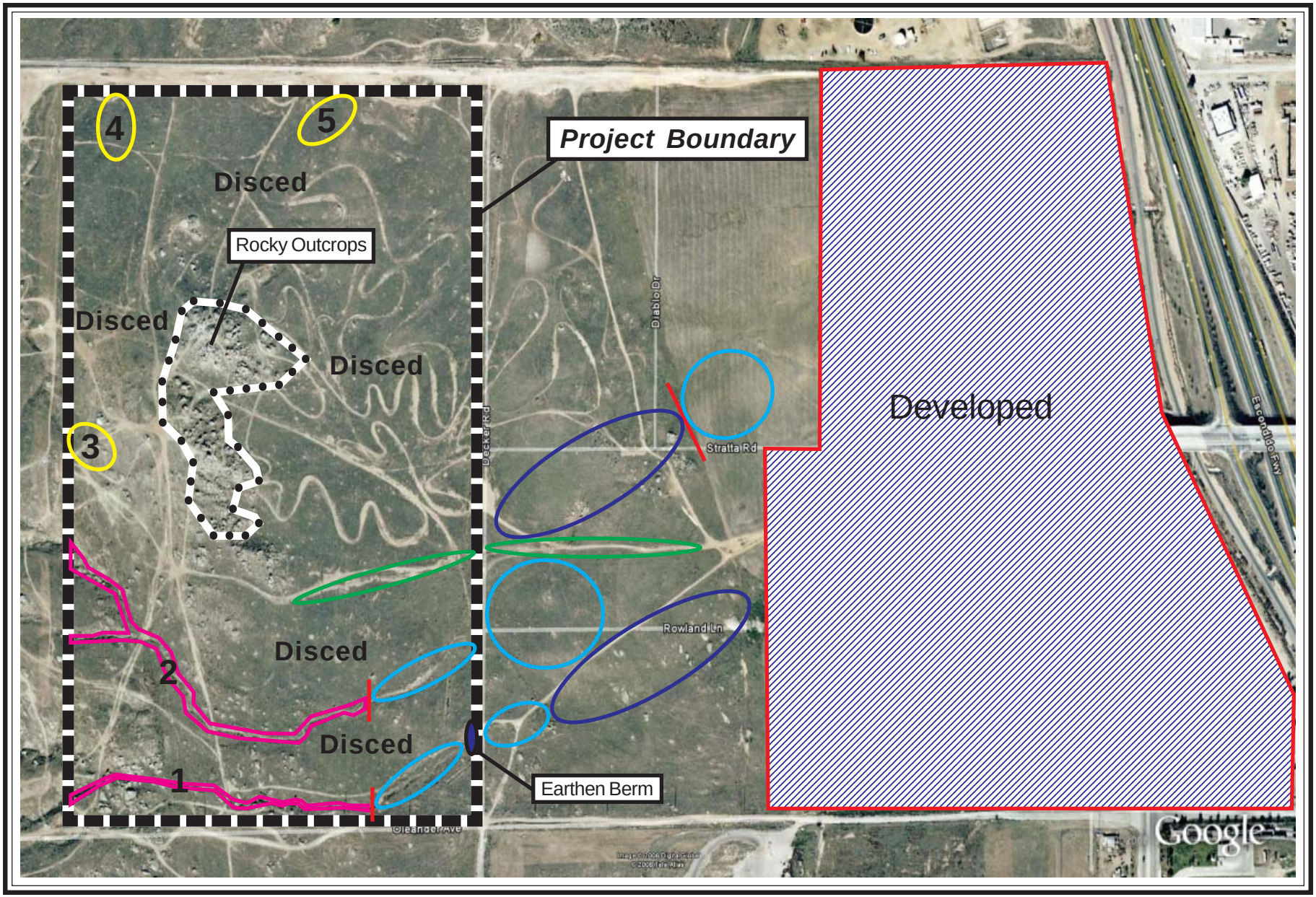

= Isolated Streambed (defineable bed/bank)
= Feature Definition Lost
= No Streambed Definition (possible sheet flow)
= Non-Jurisdictional Erosional Feature
= Broad off-site Swale
= Non-Jurisdictional Swale

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plate **6**

Project Area Features Schematic

SARES-REGIS Group Site

As stated, no indication of hydrology was recorded. No subsurface or surface flow was detected during the 2019 survey, and any ephemeral surface flow does not support riparian vegetation. As such, habitat for sensitive riparian-associated biological resources is not present on site due to the absence of riparian vegetation, lack of species and structural diversity, and prevalence of non-native vegetation. The drainages do not support fish and/or aquatic life.

Features 3-5 (Plate 6) are characterized as three small swales located in the center-west (Feature 3), the northwest (Feature 4), and the north-central (Feature 5) sections of the site. These features generally flow to the north. Features 3-5 may have historically comprised natural mesic swales with a low flow channels. However, due to long-standing anthropogenic disturbances, the swales lose definition and are obscured, and are essentially cut off from conveying any extensive flows. Accordingly, these features do not appear to have a significant nexus to navigable waters.

Moreover, according to *Rapanos v. United States and Carabell v. United States, 126 S. Ct. 2208* (2006-jointly referred to as Rapanos), swales and erosional features (e.g., gullies, small washes characterized by low volume, infrequent, and short duration flow) are generally not considered waters of the United States because they are not tributaries or they do not have a significant nexus to downstream traditional navigable waters. Likewise, ditches excavated wholly in and draining only uplands that do not carry a relatively permanent flow of water, and uplands transporting over land flow generated from precipitation (i.e., rain events) are generally not waters of the U.S., because they are not tributaries or they do not have a significant nexus to downstream traditional navigable waters. CWA jurisdiction over an ephemeral water body will be assessed using the significant nexus standard.

Additional MSHCP objectives reviewed for consistency during the survey included ***Riparian/Riverine Areas and Vernal Pools*** (Section 6.1.2). No evidence of any natural stream courses, riparian areas, or vernal pools was recorded on site. As indicated above, several isolated and highly disturbed drainages/swales are present on site. Although it is evident that water may flow into these areas at times of high rainfall because the site is topographically elevated on the western portion of the site, no indicators of recent water flow or ponding were observed. Water does not appear to remain long enough to develop and support wetland hydrology and/or hydrophytic vegetation characteristics. On site drainage features do not function as streams and no longer conveys significant runoff. Rather, water likely sheet flows across portions of the site. Habitat value is low due to the absence of riparian vegetation, lack of species and structural diversity, and prevalence of non-native vegetation due to various anthropogenic disturbances (e.g., discing). The drainages/swales do not support habitat suitable for those species associated with 6.1.2 habitat types.

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I hereby certify that the statements furnished above and in the attached exhibits/appendices present the data and information required for this biological survey, and that the facts, statements, and information presented herein are true and correct to the best of my knowledge and belief.

Sincerely,

Ecological Sciences, Inc.

Scott D. Cameron
Principal Biologist

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Appendix A
Riverside County Biological Reporting Forms

BIOLOGICAL REPORT SUMMARY SHEET

(Submit two copies to the County)

Applicant Name: SARES-REGIS Group

Assessor's Parcel Number (APN): 295-310-012, -013, -014, -015

APN cont. :

Site Location: Section: 35 **Township:** 3 South **Range:** 4 West

Site Address:

Related Case Number(s): **PDB Number:**

CHECK SPECIES SURVEYED FOR	SPECIES or ENVIRONMENTAL ISSUE OF CONCERN	(Circle Yes, No or N/A regarding species findings on the referenced site)		
	Arroyo Southwestern Toad	Yes	No	(N/A)
X	Blueline Stream(s)	Yes	(No)	N/A
	Coachella Valley Fringed-Toed Lizard	Yes	No	(N/A)
	Coastal California Gnatcatcher	Yes	No	(N/A)
	Coastal Safe Scrub	Yes	No	(N/A)
	Delhi Sands Flower-Loving Fly	Yes	No	(N/A)
	Desert Pupfish	Yes	No	(N/A)
	Desert Slender Salamander	Yes	No	(N/A)
	Desert Tortoise	Yes	No	(N/A)
	Flat-Tailed Horned Lizard	Yes	No	(N/A)
	Least Bell's Vireo	Yes	No	(N/A)
	Oak Woodlands	Yes	No	(N/A)
	Quino Checkerspot Butterfly	Yes	No	(N/A)
	Riverside Fairy Shrimp	Yes	No	(N/A)
	Santa Ana River Woolystar	Yes	No	(N/A)
	San Bernardino Kangaroo Rat	Yes	No	(N/A)
	Slender Horned Spineflower	Yes	No	(N/A)
	Stephen's Kangaroo Rat	Yes	No	(N/A)
X	Vernal Pools	Yes	(No)	N/A
X	Wetlands	Yes	(No)	N/A

CHECK SPECIES SURVEYED FOR	SPECIES or ENVIRONMENTAL ISSUE OF CONCERN	(Circle Yes, No or N/A regarding species findings on the referenced site)		
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A
	Other	Yes	No	N/A

Species of concern shall be any unique, rare, endangered, or threatened species. It shall include species used to delineate wetlands and riparian corridors. It shall also include any hosts, perching, or food plants used by any animals listed as rare, endangered, threatened or candidate species by either State, or Federal regulations, or for Riverside County as listed by the California Department of Fish and Game Natural Diversity Data Base (NDDB).

I declare under penalty of perjury that the information provided on this summary sheet is in accordance with the information provided in the biological report.

Ecological Sciences, Inc. **December 17, 2019**

Signature and Company Name — Report Date

10(a) Permit Number (if applicable) — Permit Expiration Date

County Use Only

Received by: _____ **Date:** _____

PD-B# _____

LEVEL OF SIGNIFICANCE CHECKLIST
For Biological Resources
(Submit Two Copies)

Case Number: _____ **Lot/Parcel No.** _____ **EA Number**_____

Wildlife & Vegetation

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact

(Check the level of impact the applies to the following questions)

a) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state conservation plan?
Participation in MSHCP required

b) Have a substantial adverse effect, either directly or through habitat modifications, on any endangered, or threatened species, as listed in Title 14 of the California Code of Regulations (Sections 670.2 or 670.5) or in Title 50, Code of Federal Regulations (Sections 17.11 or 17.12)?
Outside Scope of Work

c) 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 U. S. Wildlife Service?
Outside Scope of Work

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident migratory wildlife corridors, or impede the use of native wildlife nursery sites? **Outside Scope of Work**

e) 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 U. S. Fish and Wildlife Service?

f) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

g) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? **Outside Scope of Work**

Source: CGP Fig. VI.36-VI.40

Findings of Fact: >No 6.1.2 habitat recorded on site. No USACE or CDFW jurisdictional resources recorded on site in 2019. Pending agency concurrence.

Proposed Mitigation: >Standard BMP's during construction

Monitoring Recommended: >None related to jurisdictional resources