



October 15, 2018

JN 18\_1076

**SCHEU MANAGEMENT CORP.**

**C/O REDROCK**

Contact: Michael Morris

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**SUBJECT:     Habitat Assessment for the Approximately 13-Acre Greenfield Property Located on the Northeast Corner of Archibald Avenue and 7<sup>th</sup> Street in the City of Rancho Cucamonga, San Bernardino County, California**

### **Introduction**

This report contains the findings of ELMT Consulting's (ELMT) habitat assessment for the approximately 13-Acre Greenfield Property (project site or site) located in the City of Rancho Cucamonga, San Bernardino County, California. The habitat assessment was conducted by biologist Travis J. McGill on September 26, 2018 to document baseline conditions and assess the potential for special-status<sup>1</sup> plant and wildlife species to occur within the project site that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the project site to support burrowing owl (*Athene cunicularia*) and other special-status plant and wildlife species identified by the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB), and other electronic databases as potentially occurring in the general vicinity of the project site.

### **Project Location**

The project site is generally located north of Interstate 10, west of Interstate 15, south of State Route 210, and east of State Route 83 in the City of Rancho Cucamonga, San Bernardino County, California. The project site is depicted on the Guasti quadrangle of the United States Geological Survey's (USGS) 7.5-minute topographic map series within Section 14 of Township 1 South, Range 7 West. Specifically, the project site is located on the northeast corner of the intersection of Archibald Avenue and 7<sup>th</sup> Street, south of Acacia Street, and approximately 0.25 mile west of Hermosa Avenue. Refer to Exhibits 1 thru 3 in Attachment A.

### **Project Description**

The project consists of the grading, construction, and operation of four (4) buildings (Building 1, 2, 3 and 4) encompassing approximately 13-acres. Building 1 will consist of approximately 17,300 square feet of

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<sup>1</sup> As used in this report, "special-status" refers to plant and wildlife species that are federally and State listed, proposed, or candidates; plant species that have been designated with a California Native Plant Society Rare Plant Rank; wildlife species that are designated by the CDFW as fully protected, species of special concern, or watch list species; and specially protected natural vegetation communities as designated by the CDFW.

building area and will include 25 parking spaces, and Building 2 will consist of approximately 24,750 square feet of building area and 32 parking spaces. Building 3 will consist of approximately 74,660 square feet of building area and 85 parking spaces, and Building 4 will consist of approximately 124,000 square feet of building area and 96 parking spaces. Additionally, the proposed project will consist of approximately 66,373 square feet of landscaped areas.

### **Methodology**

A literature review and records search were conducted to determine which special-status biological resources have the potential to occur on or within the general vicinity of the project site. In addition to the literature review, a general habitat assessment or field investigation of the project site was conducted to document existing conditions and assess the potential for special-status biological resources to occur within the project site.

### **Literature Review**

Prior to conducting the habitat assessment, a literature review and records search was conducted for special-status biological resources potentially occurring on or within the vicinity of the project site. Previously recorded occurrences of special-status plant and wildlife species and their proximity to the project site were determined through a query of the CDFW's QuickView Tool in the Biogeographic Information and Observation System (BIOS), CNDDDB Rarefind 5, the California Native Plant Society's (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California, Calflora Database, compendia of special-status species published by CDFW, and the United States Fish and Wildlife Service (USFWS) species listings.

All available reports, survey results, and literature detailing the biological resources previously observed on or within the vicinity of the project site were reviewed to understand existing site conditions and note the extent of any disturbances that have occurred within the project site that would otherwise limit the distribution of special-status biological resources. Standard field guides and texts were reviewed for specific habitat requirements of special-status and non-special-status biological resources, as well as the following resources:

- Google Earth Pro historic aerial imagery (1994-2018);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey;
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS Endangered Species Profiles.

The literature review provided a baseline from which to inventory the biological resources potentially occurring within the project site. The CNDDDB database was used, in conjunction with ArcGIS software, to locate the nearest recorded occurrences of special-status species and determine the distance from the project site.

### **Habitat Assessment/Field Investigation**

Following the literature review, biologist Travis J. McGill inventoried and evaluated the condition of the

habitat within the project site on September 26, 2018. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking meandering transects throughout the project site. In addition, aerial photography was reviewed prior to the site investigation to locate potential natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

All plant and wildlife species observed, as well as dominant plant species within each plant community, were recorded. Plant species observed during the field investigation were identified by visual characteristics and morphology in the field. Unusual and less familiar plant species were photographed during the field investigation and identified in the laboratory using taxonomical guides. Wildlife detections were made through observation of scat, trails, tracks, burrows, nests, and/or visual and aural observation. In addition, site characteristics such as soil condition, topography, hydrology, anthropogenic disturbances, indicator species, condition of on-site plant communities and land cover types, and presence of potential jurisdictional drainage and/or wetland features were noted.

#### Soil Series Assessment

On-site and adjoining soils were researched prior to the field investigation using the USDA NRCS Soil Survey for San Bernardino County, California. In addition, a review of the local geological conditions and historical aerial photographs was conducted to assess the ecological changes that the project site has undergone.

#### Plant Communities

Plant communities were mapped using 7.5-minute USGS topographic base maps and aerial photography. The plant communities were classified in accordance with Sawyer, Keeler-Wolf and Evens (2009), CDFW (2010) and Holland (1986), delineated on an aerial photograph, and then digitized into GIS Arcview. The Arcview application was used to compute the area of each plant community and/or land cover type in acres.

#### Plants

Common plant species observed during the field investigation were identified by visual characteristics and morphology in the field and recorded in a field notebook. Unusual and less familiar plants were photographed in the field and identified in the laboratory using taxonomic guides. Taxonomic nomenclature used in this study follows the 2012 Jepson Manual (Hickman 2012). In this report, scientific names are provided immediately following common names of plant species (first reference only).

#### Wildlife

Wildlife species detected during the field investigation by sight, calls, tracks, scat, or other sign were recorded during surveys in a field notebook. Field guides were used to assist with identification of wildlife species during the survey included The Sibley Field Guide to the Birds of Western North America (Sibley 2003), A Field Guide to Western Reptiles and Amphibians (Stebbins 2003), and A Field Guide to Mammals of North America (Reid 2006). Although common names of wildlife species are well standardized, scientific names are provided immediately following common names in this report (first reference only).

### Jurisdictional Drainages and Wetlands

Aerial photography was reviewed prior to conducting a field investigation in order to locate and inspect any potential natural drainage features, ponded areas, or water bodies that may fall under the jurisdiction of the United States Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), or CDFW. In general, surface drainage features indicated as blue-line streams on USGS maps that are observed or expected to exhibit evidence of flow are considered potential riparian/riverine habitat and are also subject to state and federal regulatory jurisdiction.

### Existing Site Condition

On-site elevation ranges from approximately 1,086 to 1,098 feet above mean sea level and generally slopes from north to south with no areas of topographic relief. Based on the NRCS USDA Web Soil Survey<sup>2</sup>, the project site is underlain by the following soil units: Hanford sandy loam (0 to 5 percent slopes), and Hanford coarse sandy loam (2 to 9 percent slopes). Refer to Exhibit 4, *Soils*, in Attachment A. Soils on-site have been mechanically disturbed from existing development. Soils on-site have been mechanically disturbed and heavily compacted from historic land uses (i.e., grading activities and surrounding development).

The project site is located within a heavily developed area in the City of Rancho Cucamonga. The project site occurs in an area surrounded by land that has undergone a conversion from natural habitats into residential, commercial and industrial land uses. The project site is bordered by residential and commercial land uses to the north, industrial and commercial land uses to the west, commercial land uses to the south, and industrial land uses to the east.

### Vegetation

Due to existing land uses, no native plant communities or natural communities of special concern were observed on or adjacent to the project site. The project site primarily consists of vacant, undeveloped land that has been subject to a variety of anthropogenic disturbances that was historically used for agricultural land uses. The project site no longer is used for agricultural activities but has been subject to on-going weed abatement activities and disturbance associated with surrounding development. These disturbances have eliminated and/or greatly disturbed the natural plant communities that once occurred within the boundaries of the project site. It should be noted that dirt stockpiles and debris piles (from illegal dumping) were observed on the southern boundary of the project site, along 7<sup>th</sup> street. Refer to Attachment B, *Site Photographs*, for representative site photographs. No native plant communities will be impacted from implementation of the proposed project.

The project site contains a land cover type that would be classified as developed. Refer to Exhibit 5, *Vegetation* in Attachment A. Early successional and non-native weedy plant species compose a majority of the project site as a result of the on-going disking/weed abatement activities. Plant species observed on-site include Russian thistle (*Salsola tragus*), puncture vine (*Tribulus terrestris*), doveweed (*Croton setigerus*), Spanish lotus (*Acmispon americanus*), wild oat (*Avena sp.*), ragweed (*Ambrosia psilostachya*), prickly lettuce (*Lactuca serriola*), ripgut (*Bromus diandrus*), red brome (*Bromus madritensis ssp. rubens*),

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2 A soil series is defined as a group of soils with similar profiles developed from similar parent materials under comparable climatic and vegetation conditions. These profiles include major horizons with similar thickness, arrangement, and other important characteristics, which may promote favorable conditions for certain biological resources.

jimson weed (*Datura wrightii*), pigweed (*Chenopodium album*), and golden crownbeard (*Verbesina encelioides*).

### **Wildlife**

Plant communities provide foraging habitat, nesting/denning sites, and shelter from adverse weather or predation. This section provides a discussion of those wildlife species that were observed or are expected to occur within the project site. The discussion is to be used as a general reference and is limited by the season, time of day, and weather conditions in which the field investigation was conducted. Wildlife detections were based on calls, songs, scat, tracks, burrows, and direct observation. The project site provides limited habitat for wildlife species except those adapted to a high degree of anthropogenic disturbances and development.

### **Fish**

No fish or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for fish were observed on or within the vicinity of the project site. Therefore, no fish are expected to occur and are presumed absent from the project site.

### **Amphibians**

No amphibians or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for amphibian species were observed on or within the vicinity of the project site. Therefore, no amphibians are expected to occur on the project site and are presumed absent.

### **Reptiles**

During the field investigation Great Basin fence lizard (*Sceloporus occidentalis longipes*) was the only reptilian species observed on-site. Common reptilian species adapted to a high degree of anthropogenic disturbances that have the potential to occur on-site include western side-blotched lizard (*Uta stansburiana elegans*), alligator lizard (*Elgaria multicarinata*), and gopher snake (*Pituophis catenifer annectens*). Due to the high level of anthropogenic disturbances on-site, and surrounding development, no special-status reptilian species are expected to occur within project-site.

### **Birds**

The project site provides minimal foraging habitat for bird species adapted to a high degree of human disturbance. Bird species detected during the field investigation included American kestrel (*Falco sparverius*), lesser goldfinch (*Spinus psaltria*), northern mockingbird (*Mimus polyglottos*), mourning dove (*Zenaidura macroura*), house finch (*Haemorhous mexicanus*), American crow (*Corvus brachyrhynchos*), red-tailed hawk (*Buteo jamaicensis*), Cassin's kingbird (*Tyrannus vociferans*), Anna's hummingbird (*Calypte anna*), and Say's phoebe (*Sayornis saya*).

### **Mammals**

During the field investigation cottontail (*Sylvilagus audubonii*) was the only mammalian species observed on-site. Common mammalian species adapted to a high degree of anthropogenic disturbances that have the potential to occur within the project site include Botta's pocket gopher (*Thomomys bottae*), opossum

(*Didelphis virginiana*), and raccoon (*Procyon lotor*).

### **Nesting Birds**

No active nests or birds displaying nesting behavior were observed during the September 26, 2018 field investigation, which was conducted outside of the avian nesting season. The project site provides limited nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area. Most of the nesting habitat is associated with the eucalyptus trees found along the northeast corner of the project site. The open, disturbed habitat on-site also provides nesting opportunities for ground-nesting species such as killdeer (*Charadrius vociferus*).

### **Migratory Corridors and Linkages**

Habitat linkages provide connections between larger habitat areas that are separated by development. Wildlife corridors are similar to linkages but provide specific opportunities for animals to disperse or migrate between areas. A corridor can be defined as a linear landscape feature of sufficient width to allow animal movement between two comparatively undisturbed habitat fragments. Adequate cover is essential for a corridor to function as a wildlife movement area. It is possible for a habitat corridor to be adequate for one species yet still inadequate for others. Wildlife corridors are features that allow for the dispersal, seasonal migration, breeding, and foraging of a variety of wildlife species. Additionally, open space can provide a buffer against both human disturbance and natural fluctuations in resources.

The proposed project will be confined to existing disturbed areas and is surrounded by development, which has removed natural plant communities from the surrounding area. The project site is isolated from regional wildlife corridors and linkages, and there are no riparian corridors, creeks, or useful patches of stepping stone habitat (natural areas) within or connecting the project site to any identified wildlife corridors or linkages. As a result, implementation of the proposed project will not disrupt or have any adverse effects on any migratory corridors or linkages in the surrounding area.

### **Jurisdictional Areas**

There are three key agencies that regulate activities within inland streams, wetlands, and riparian areas in California. The Corps Regulatory Branch regulates discharge of dredge or fill materials into “waters of the United States” pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Of the State agencies, the CDFW regulates alterations to streambed and bank under Fish and Wildlife Code Sections 1600 et seq., and the Regional Board regulates discharges into surface waters pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act.

No jurisdictional drainage and/or wetland features were observed on the project site during the habitat assessment that would be considered jurisdictional by the Corps, Regional Board, or CDFW. Therefore, regulatory approvals from the Corps, Regional Board, and/or CDFW will not be required for implementation of the project.

### **Special-Status Biological Resources**

The CNDDDB Rarefind 5 and the CNPS Electronic Inventory of Rare and Endangered Vascular Plants of California were queried for reported locations of special-status plant and wildlife species as well as special-



status natural plant communities in the Guasti USGS 7.5-minute quadrangle. Only one quadrangle was required since the project site is already developed, completely surrounded by existing development, and does not connect with any natural areas or native plant communities in the region. The habitat assessment evaluated the conditions of the habitat(s) within the boundaries of the project site to determine if the existing plant communities, at the time of the survey, have the potential to provide suitable habitat(s) for special-status plant and wildlife species.

The literature search identified twelve (12) special-status plant species and thirty-two (32) special-status wildlife species as having potential to occur within the Guasti USGS 7.5-minute quadrangle. No special-status plant communities have been recorded within the Guasti USGS 7.5-minute quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site are presented in *Table C-1: Potentially Occurring Special-Status Biological Resources*, provided in Attachment C.

#### *Special-Status Plants*

According to the CNDDDB and CNPS, twelve (12) special-status plant species have been recorded in the Guasti quadrangle (refer to Attachment C). No special-status plant species were observed on-site during the habitat assessment. The project site primarily consists of vacant, undeveloped land that has been subject to a variety of anthropogenic disturbances including on-going disking/weed abatement activities. These disturbances have eliminated the natural plant communities that once occurred on-site which has removed suitable habitat for special-status plant species known to occur in the general vicinity of the project site. Based on habitat requirements for specific special-status plant species and the availability and quality of habitats needed by each species, it was determined that the project site does not provide suitable habitat for any of the special-status plant species known to occur in the area and are presumed to be absent from the project site. No focused surveys are recommended.

#### *Special-Status Wildlife*

According to the CNDDDB, thirty-two (32) special-status wildlife species have been reported in the Guasti quadrangle (refer to Attachment C). No special-status wildlife species were observed on-site during the habitat assessment. The project site primarily consists of vacant, undeveloped land that has been subject to a variety of anthropogenic disturbances including on-going disking/weed abatement activities. These disturbances have eliminated the natural plant communities that once occurred on-site which has greatly reduced potential foraging opportunities for wildlife species. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that the project site has a moderate potential to support Cooper's hawk (*Accipiter cooperii*), burrowing owl, and horned lark (*Eremophila alpestris actia*). Further it was determined that the project site does not provide suitable habitat for any of the other special-status wildlife species known to occur in the area since the project site has been heavily disturbed from on-site disturbances and existing development.

In order to ensure impacts to the aforementioned species do not occur from implementation of the proposed project, a pre-construction burrowing owl and nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of mitigation through the pre-construction clearance survey,

impacts to the aforementioned species will be less than significant.

Based on regional significance, the potential occurrence of burrowing owl within the project site is described in further detail below.

### Burrowing Owl

The burrowing owl is currently listed as a California Species of Special Concern. It is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with well-drained, level to gently-sloping areas characterized by sparse vegetation and bare ground (Haug and Didiuk 1993; Dechant et al. 1999). Burrowing owls are dependent upon the presence of burrowing mammals (such as ground squirrels) whose burrows are used for roosting and nesting (Haug and Didiuk 1993). The presence or absence of colonial mammal burrows is often a major factor that limits the presence or absence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drain pipes, stand-pipes, and dry culverts. Burrowing mammals may burrow beneath rocks and debris or large, heavy objects such as abandoned cars, concrete blocks, or concrete pads. They also require open vegetation allowing line-of-sight observation of the surrounding habitat to forage as well as watch for predators.

No burrowing owls or recent sign (i.e., pellets, feathers, castings, or white wash) was observed during the field investigation. The project site is unvegetated and/or vegetated with a variety of low-growing plant species that allow for line-of-sight observation favored by burrowing owls. However, the project site lacks suitable burrows (>4 inches in diameter) capable of providing roosting and nesting opportunities. Further, several power poles, overhead power lines, ornamental trees, and tall office buildings surround the project site which decrease the likelihood that burrowing owls would occur on the project site as these features provide perching opportunities for larger raptor species (i.e., red-tailed hawk [*Buteo jamaicensis*]) that prey on burrowing owls.

Based on the results of the field investigation, it was determined that the project site has a moderate to low potential to support burrowing owls and focused surveys are not recommended. However, a pre-construction burrowing owl clearance survey shall be conducted prior to development to ensure burrowing owl remain absent from the project site.

### **Critical Habitat**

Under the federal Endangered Species Act, "Critical Habitat" is designated at the time of listing of a species or within one year of listing. Critical Habitat refers to specific areas within the geographical range of a species at the time it is listed that include the physical or biological features that are essential to the survival and eventual recovery of that species. Maintenance of these physical and biological features requires special management considerations or protection, regardless of whether individuals or the species are present or not. All federal agencies are required to consult with the United States Fish and Wildlife Service (USFWS) regarding activities they authorize, fund, or permit which may affect a federally listed species or its designated Critical Habitat. The purpose of the consultation is to ensure that projects will not jeopardize the continued existence of the listed species or adversely modify or destroy its designated Critical Habitat. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing



is on federal lands, uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highways Administration or a CWA Permit from the Corps). If there is a federal nexus, then the federal agency that is responsible for providing the funding or permit would consult with the USFWS.

The project site is not located with federally designated Critical Habitat. Refer to Exhibit 6, *Critical Habitat* in Attachment A. The nearest designated Critical Habitat is located approximately 4.2 miles northeast of the project site for San Bernardino kangaroo rat (*Dipodomys merriami parvus*). Therefore, the loss or adverse modification of Critical Habitat from site development will not occur and consultation with the USFWS for impacts to Critical Habitat will not be required for implementation of the proposed project.

## **Recommendations**

### **Migratory Bird Treaty Act and Fish and Game Code**

Nesting birds are protected pursuant to the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (Sections 3503, 3503.5, 3511, and 3513 of the California Fish and Game Code prohibit the take, possession, or destruction of birds, their nests or eggs). In order to protect migratory bird species, a nesting bird clearance survey shall be conducted prior to any ground disturbance or vegetation removal activities that may disrupt the birds during the nesting season.

If construction occurs between February 1<sup>st</sup> and August 31<sup>st</sup>, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer (generally 300 feet for migratory and non-migratory song birds and 500 feet raptors and special-status species) will be determined by the wildlife biologist, in coordination with the CDFW, and will depend on the level of noise and/or surrounding disturbances, line of sight between the nest and the construction activity, ambient noise, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

As part of the nesting bird clearance, it is recommended that a burrowing owl pre-construction clearance survey be conducted prior to any ground disturbance or vegetation removal activities to ensure that burrowing owls remain absent from the project site. In accordance with the CDFW's *Staff Report on Burrowing Owl Mitigation* (CDFW 2012), two (2) pre-construction clearance surveys shall be conducted 14 – 30 days and 24 hours prior to any ground disturbance or vegetation removal activities.

## **Conclusion**

The project site consists of vacant, undeveloped land that has been subject to a variety of anthropogenic

disturbances (i.e. weed abatement, surrounding development). The project site consists of disturbed land with heavily mixed and compacted soils, that historically supported agricultural land uses.

Based on the proposed project footprint and existing site conditions discussed in this report, none of the special-status plant or wildlife species known to occur in the general vicinity of the project site are expected to be directly or indirectly impacted from implementation of the proposed project. With completion of the recommendations provided above, no impacts to year-round and seasonal avian residents will occur from implementation of the proposed project. Therefore, it was determined that implementation of the project will have “no effect” on federally or State listed species known to occur in the general vicinity of the project site. Additionally, the project will not impact designated Critical Habitats or regional wildlife movement corridors/linkages.

Please do not hesitate to contact Tom McGill at (951) 285-6014 or [tmcgill@elmtconsulting.com](mailto:tmcgill@elmtconsulting.com) or Travis McGill at (909) 816-1646 or [travismcgill@elmtconsulting.com](mailto:travismcgill@elmtconsulting.com) should you have any questions regarding this proposal.

Sincerely,



Thomas J. McGill, Ph.D.  
Managing Director



Travis J. McGill  
Director

Attachments:

- A. *Project Exhibits*
- B. *Site Photographs*
- C. *Potentially Occurring Special-Status Biological Resources*
- D. *Regulations*

## **Attachment A**

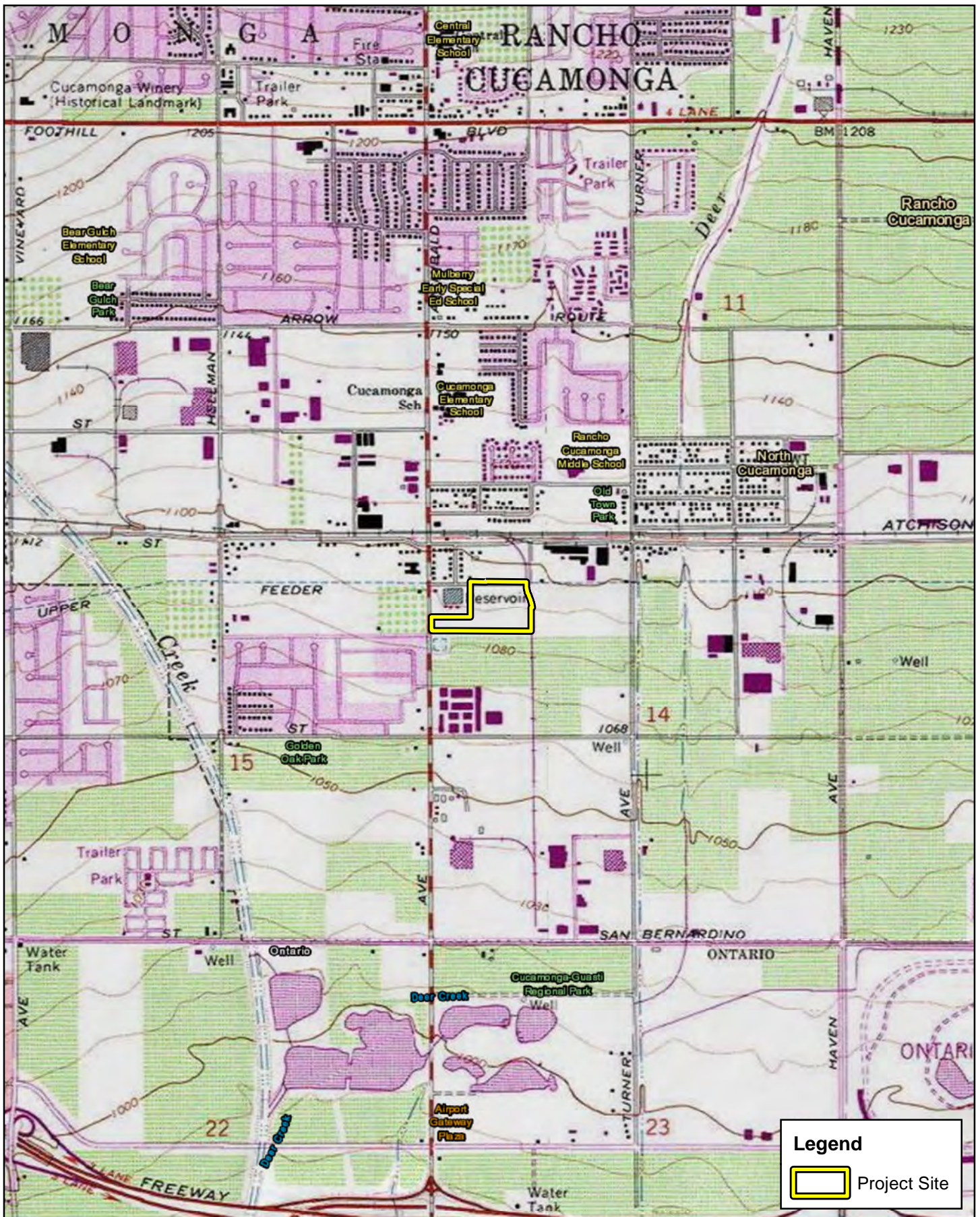
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Project Exhibits










APPROXIMATELY 13-ACRE GREENFIELD PROPERTY  
HABITAT ASSESSMENT  
**Site Vicinity**



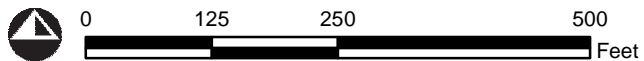


**Legend**

 Project Site

APPROXIMATELY 13-ACRE GREENFIELD PROPERTY  
HABITAT ASSESSMENT

**Project Site**



Source: ESRI Aerial Imagery, San Bernardino County





APPROXIMATELY 13-ACRE GREENFIELD PROPERTY  
HABITAT ASSESSMENT

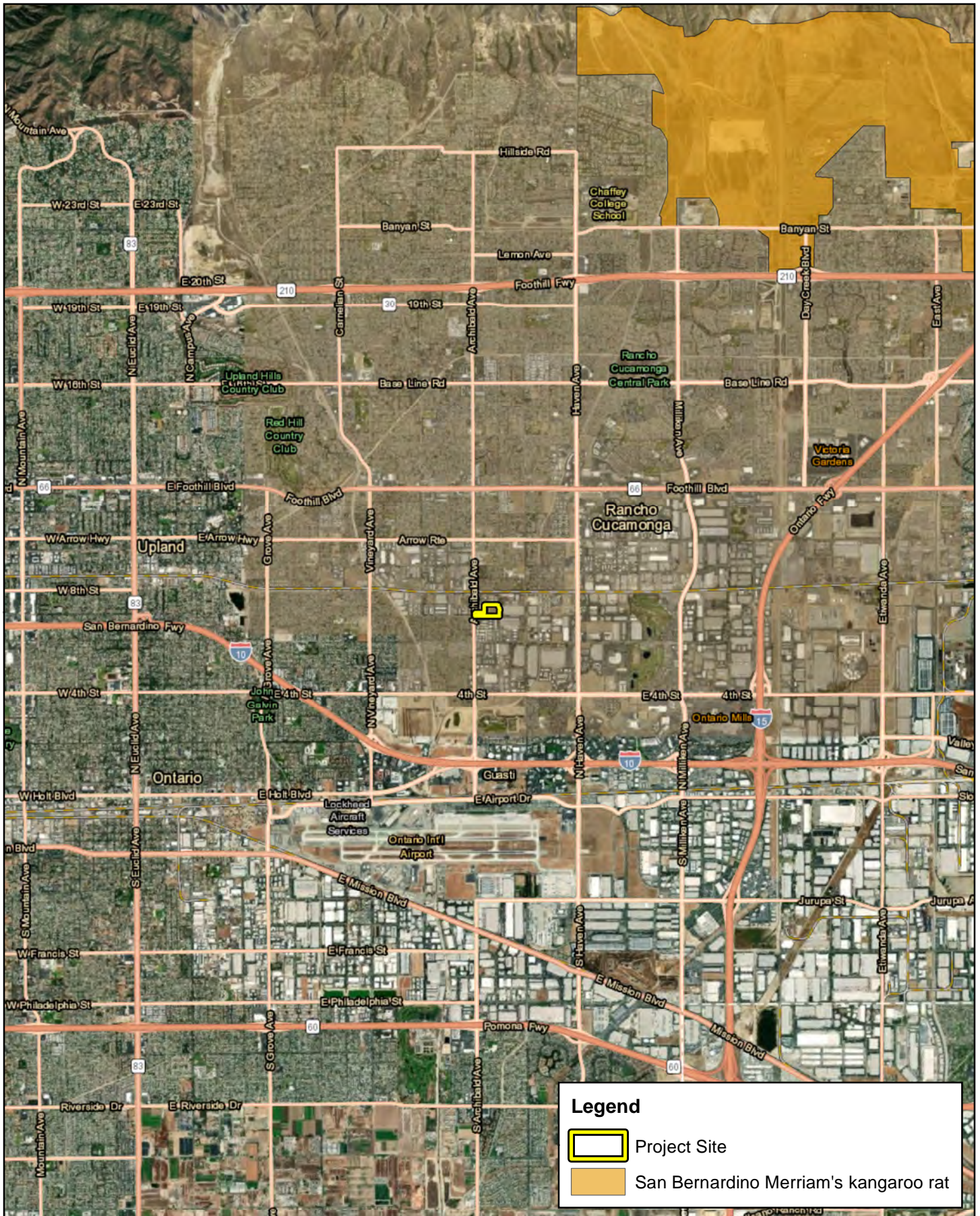




APPROXIMATELY 13-ACRE GREENFIELD PROPERTY  
HABITAT ASSESSMENT

**Vegetation**





APPROXIMATELY 13-ACRE GREENFIELD PROPERTY  
HABITAT ASSESSMENT

**Critical Habitat**

Exhibit 6

## **Attachment B**

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Site Photographs





**Photograph 1:** From the southeast corner of the project site looking west along the southern boundary of the site.



**Photograph 2:** From the southeast corner of the project site looking north along the eastern boundary of the site.





**Photograph 3:** From the middle of the eastern boundary of the project site looking west across the site.



**Photograph 4:** From the northeast corner of the project site looking west along the northern boundary of the site. Eucalyptus trees can be observed on the northeast corner.





**Photograph 5:** From northeast corner of the project site looking southwest across the site at the disturbed/ruderal vegetation.



**Photograph 6:** From the northwest corner of the project site looking east along the northern boundary of the site.





**Photograph 7:** From the northwest corner of the project site looking south along the western boundary south of the terminus of Acacia Street.



**Photograph 8:** From the western boundary of the project site looking east across the site.





**Photograph 9:** Looking west at the western most reach of the project site.



**Photograph 10:** From the northeast corner of Archibald Avenue and 7<sup>th</sup> Street looking east along the southern boundary of the site.





**Photograph 11:** Looking at the heavily disturbed road shoulder of 7<sup>th</sup> Street on the southern boundary of the project site.



**Photograph 12:** View of the dirt and debris piles on the southern boundary of the project site along 7<sup>th</sup> Street.

## **Attachment C**

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Potentially Occurring Special-Status Biological Resources

Table C-1: Potentially Occurring Special-Status Biological Resources

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<b>SPECIAL-STATUS WILDLIFE SPECIES</b>				
<i>Accipiter cooperii</i> Cooper's hawk	Fed: None CA: WL	Common yearlong resident of California. Typically forages in broken woodland and habitat edges with dense stands of coast live oak ( <i>Quercus agrifolia</i> ), riparian deciduous, or other forest habitat near water. Usually nests in dense riparian areas, usually near streams.	No	<b>Moderate</b> There is limited foraging habitat on-site and no suitable nesting habitat on-site.
<i>Agelaius tricolor</i> tricolored blackbird	Fed: None CA: CEND/ SSC	Highly colonial yearlong resident of California that frequents emergent wetlands, croplands, grassy fields, flooded land and along edges of ponds. Usually nests near fresh water, preferably in emergent wetland with tall, dense cattails ( <i>Typha sp.</i> ) or tules ( <i>Schoenoplectus sp.</i> ), but also in thickets of willow ( <i>Salix sp.</i> ), blackberry ( <i>Rubus sp.</i> ), and tall herbs.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Aimophila ruficeps canescens</i> southern California rufous-crowned sparrow	Fed: None CA: WL	Typically found between 3,000 and 6,000 feet in elevation. Breed in sparsely vegetated scrubland on hillsides and canyons. Prefers coastal sage scrub dominated by California sagebrush ( <i>Artemisia californica</i> ), but they can also be found breeding in coastal bluff scrub, low-growing serpentine chaparral, and along the edges of tall chaparral habitats.	No	<b>Presumed Absent:</b> No suitable habitat is present within the project site.
<i>Anniella stebbinsi</i> southern California legless lizard	Fed: None CA: SSC	Occurs in sparsely vegetated habitat types including coastal sand dunes, chaparral, pine-oak woodland, desert scrub, open grassland, and riparian areas. Requires sandy or loose loamy substrates conducive to burrowing.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Ardea alba</i> great egret	Fed: None CA: None	Yearlong resident throughout California, except for the high mountains and deserts. Feeds and rests in fresh, and saline emergent wetlands, along the margins of estuaries, lakes, and slow-moving streams, on mudflats and salt ponds, and in irrigated croplands and pastures.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Ardea herodias</i> great blue heron	Fed: None CA: None	Fairly common all year throughout most of California, in shallow estuaries and fresh and saline emergent wetlands. Less common along riverine and rocky marine shores, in croplands, pastures, and in mountains about foothills.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Arizona elegans occidentalis</i> California glossy snake	Fed: None CA: SSC	Occurs in a wide variety of habitat types including open desert, grasslands, shrublands, chaparral, and woodlands. Prefers areas where the soil is loose and sandy which allows for burrowing.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Aspidoscelis tigris stejnegeri</i> coastal whiptail	Fed: None CA: SSC	Found in a variety of ecosystems, primarily hot and dry open areas with sparse foliage - chaparral, woodland, and riparian areas.	No	<b>Presumed Absent:</b> No suitable habitat is present within the project site.
<i>Athene cunicularia</i> burrowing owl	Fed: None CA: SSC	Common yearlong resident of southern California. Prefers open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. Requires fossorial burrows for roosting and nesting surrounded by relatively short vegetation and open habitat for foraging and watching for predators. Also known to occupy man-made structures including drain pipes, debris piles, and development pads.	No	<b>Moderate</b> There is limited foraging habitat on-site and no suitable nesting habitat on-site.



Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Calypte costae</i> Costa's hummingbird	Fed: None CA: None	Desert and semi-desert, arid brushy foothills and chaparral. A desert hummingbird that breeds in the Sonoran and Mojave Deserts. Departs desert heat moving into chaparral, scrub, and woodland habitats.	No	<b>Presumed absent</b> No suitable habitat is present within the pipeline alignment.
<i>Chaetodipus fallax fallax</i> northwestern San Diego pocket mouse	Fed: None CA: SSC	Occurs in desert and coastal habitats in southern California, Mexico, and northern Baja California, from sea level to at least 1,400 meters above msl. Found in a variety of temperate habitats ranging from chaparral and grasslands to scrub forests and deserts. Requires low growing vegetation or rocky outcroppings, as well as sandy soils for burrowing.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Circus cyaneus</i> northern harrier	Fed: None CA: SSC	Frequents meadows, grasslands, open rangelands, desert sinks, fresh and saltwater emergent wetlands; seldom found in wooded areas. Mostly found in flat, or hummocky, open areas of tall, dense grasses moist or dry shrubs, and edges for nesting, cover, and feeding.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Dipodomys merriami parvus</i> San Bernardino kangaroo rat	Fed: END CA: SSC	Primarily found in Riversidean alluvial fan sage scrub (RAFSS) and sandy loam soils, alluvial fans and flood plains, and along washes with nearby sage scrub. May also occur at lower densities in Riversidean upland sage scrub, chaparral and grassland in uplands and tributaries in proximity to RAFSS habitat. Tends to avoid rocky substrates.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Dipodomys simulans</i> Dulzura kangaroo rat	Fed: None CA: None	Relatively common in chaparral, coastal sage scrub, Riversidean alluvial fan sage scrub, and peninsular juniper woodland habitats.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Dipodomys stephensi</i> Stephens' kangaroo rat	Fed: END CA: THR	Occur in arid and semi-arid habitats with some grass or brush. Prefer open habitats with less than 50% protective cover. Require soft, well-drained substrate for building burrows and are typically found in areas with sandy soil.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Egretta thula</i> snowy egret	Fed: None CA: None	Widespread in California along shores of coastal estuaries, fresh and saline emergent wetlands, ponds, slow-moving rivers, irrigation ditches, and wet fields. In southern California, common yearlong in the Imperial Valley and along the Colorado River.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Elanus leucurus</i> white-tailed kite	Fed: None CA: FP	Occurs in low elevation, open grasslands, savannah-like habitats, agricultural areas, wetlands, and oak woodlands. Uses trees with dense canopies for cover. Important prey item is the California vole.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Eremophila alpestris actia</i> California horned lark	Fed: None CA: WL	Occurs in meadows, grasslands, open fields, prairie, and alkali flats. This subspecies is typically found in coastal regions.	No	<b>Moderate</b> There is limited foraging habitat on-site and no suitable nesting habitat on-site.
<i>Eumops perotis californicus</i> western mastiff bat	Fed: None CA: SSC	Primarily a cliff-dwelling species, roost generally under exfoliating rock slabs. Roosts are generally high above the ground, usually allowing a clear vertical drop of at least 3 meters below the entrance for flight. In California, it is most frequently encountered in broad open areas including dry desert washes, flood plains, chaparral, oak woodland, open ponderosa pine forest, grassland, and agricultural areas.	No	<b>Presumed Absent</b> There is no suitable roosting habitat within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Lanius ludovicianus</i> loggerhead shrike	Fed: None CA: SSC	Common yearlong resident of California. Prefers open habitats with bare ground, scattered shrubs, and areas with low or sparse herbaceous cover. Requires suitable perches including trees, posts, fences, utility lines, or other perches.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Larus californicus</i> California gull	Fed: None CA: WL	Require isolated islands in rivers, reservoirs and natural lakes for nesting, where predations pressures from terrestrial mammals are diminished. Uses both fresh and saline aquatic habitats at variable elevations and degrees of aridity for nesting and for opportunistic foraging.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Lasiurus xanthinus</i> western yellow bat	Fed: None CA: SSC	Occurs in valley/foothill riparian, desert riparian, desert wash, and palm oasis habitats. Roosts under palm trees and feeds in, and near, palm oases and riparian habitats.	No	<b>Presumed Absent</b> There is no suitable roosting habitat within or adjacent to the project site.
<i>Laterallus jamaicensis coturniculus</i> California black rail	Fed: None CA: THR/FP	Suitable habitat includes salt marshes, freshwater marshes, and wet meadows. In tidal areas they require dense cover of upland vegetation for protection from predators.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Lepus californicus bennettii</i> San Diego black-tailed jackrabbit	Fed: None CA: SSC	Occupies many diverse habitats, but primarily is found in arid regions supporting short-grass habitats, agricultural fields, or sparse coastal scrub.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Neotoma lepida intermedia</i> San Diego desert woodrat	Fed: None CA: SSC	Occurs in coastal scrub communities between San Luis Obispo and San Diego Counties. Prefers moderate to dense canopies, and especially rocky outcrops.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Nycticorax nycticorax</i> black-crowned night heron	Fed: None CA: None	Common in wetlands across North America, including saltmarshes, freshwater marshes, swamps, streams, rivers, lakes, ponds, lagoons, tidal mudflats, and wet agricultural fields. They require aquatic habitat for foraging and terrestrial vegetation for cover.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Perognathus longimembris brevinasus</i> Los Angeles pocket mouse	Fed: None CA: SSC	Occurs in lower elevation grasslands and coastal sage scrub communities in and around the Los Angeles Basin. Prefers open ground with fine sandy soils. May not dig extensive burrows, but instead will seek refuge under weeds and dead leaves instead.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Perognathus longimembris pacificus</i> Pacific pocket mouse	Fed: END CA: SSC	Associated with fine grain, sandy substrates in coastal strand, coastal dunes, river alluvium and coastal sage scrub habitats.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Phrynosoma blainvillii</i> coast horned lizard	Fed: None CA: SSC	Found in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. The key elements of such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense shrubs for refuge.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Poliophtila californica californica</i> coastal California gnatcatcher	Fed: THR CA: SSC	Common yearlong resident of southern California in sage scrub habitats that are dominated by California sagebrush ( <i>Artemisia californica</i> ). Prefers scrub habitat with more low-growing vegetation. Species generally occurs below 750 feet above mean sea level (msl) along the coast and below 1,500 feet above msl within inland regions.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Rhaphiomidas terminatus abdominalis</i> Delhi Sands flower-loving fly	Fed: <b>END</b> CA: None	DSF habitat is limited to areas that include Delhi fine sand, an aeolian (wind-deposited) soil type. The highest density of DSF have been found in habitat that includes a variety of plants including California buckwheat, California croton, deerweed, and telegraph weed.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Spizella breweri</i> Brewer's sparrow	Fed: None CA: None	Habitats include sagebrush and brushy plains.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<b>SPECIAL-STATUS PLANT SPECIES</b>				
<i>Calochortus catalinae</i> Catalina mariposa-lily	Fed: None CA: None CNPS: 4.2	Grows in chaparral, cismontane woodland, coastal scrub, and valley and foothill grassland habitats. Found at elevations ranging from 49 to 2,297 feet. Blooming period is from March to June.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Calochortus plummerae</i> Plummer's mariposa-lily	Fed: None CA: None CNPS: 4.2	Prefers openings in chaparral, foothill woodland, coastal sage scrub, valley and foothill grasslands, cismontane woodland, lower montane coniferous forest and yellow pine forest. Often found on dry, rocky slopes and soils and brushy areas. Can be very common after a fire. From 328 to 5,577 feet in elevation. Blooming period is from May to July.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Chorizanthe parryi</i> var. <i>parryi</i> Parry's spineflower	Fed: None CA: None CNPS: 1B.1	Occurs on sandy and/or rocky soils in chaparral, coastal sage scrub, and sandy openings within alluvial washes and margins. Found at elevations ranging from 951 to 3,773 feet. Blooming period is from April to June.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Cladium californicum</i> California saw-grass	Fed: None CA: None CNPS: 2B.2	Found in meadows and seeps, marshes and alkaline swamps or freshwater habitats. Found at elevations ranging from 197 to 5,249 feet. Blooming period is from June to September.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Deinandra paniculata</i> paniculate tarplant	Fed: None CA: None CNPS: 4.2	Occurs in coastal scrub, vernal pools, valley and foothill grassland habitats. Found at elevations ranging from 82 to 3,084 feet. Blooming period is from April to November.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Horkelia cuneata</i> var. <i>puberula</i> mesa horkelia	Fed: None CA: None CNPS: 1B.1	Occurs on sandy or gravelly soils in chaparral, woodlands, and coastal scrub plant communities. Found at elevations ranging from 230 to 2,657 feet. Blooming period is from February to September.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Juglas californica</i> southern California black walnut	Fed: None CA: None CNPS: 4.2	Found in chaparral, cismontane woodland, coastal scrub, and riparian woodland habitats. Found at elevations ranging from 164 to 2,953 feet. Blooming period is from March to August.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Muhlenbergia californica</i> California muhly	Fed: None CA: None CNPS: 4.3	Found in mesic, seeps, and streambanks within chaparral, coastal scrub, lower montane coniferous forest, and meadows and seeps. Found at elevations ranging from 328 to 6,562 feet. Blooming period is from June to September.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Navarretia prostrata</i> prostrate vernal pool navarretia	Fed: None CA: None CNPS: 1B.1	Coastal scrub, valley and foothill grasslands, and vernal pools. Grows in elevation from 49 to 2,297 feet in elevation. Blooming period ranges from April to July.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Phacelia stellaris</i> Brand's star phacelia	Fed: None CA: None CNPS: 1B.1	Occurs in coastal dunes and coastal sage scrub habitats. Grows in elevations ranging from 3 to 1,312 feet. Blooming period is from March to June.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.

<i>Scientific Name</i> Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Pseudognaphalium leucocephalum</i> white rabbit-tobacco	Fed: None CA: None CNPS: 2B.2	Chaparral, cismontane woodland, coastal scrub, riparian woodlands in sandy gravelly soils. Grows in elevation from 3 to 6,890 feet in elevation. Blooming period ranges from July to December.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Symphotrichum defoliatum</i> San Bernardino aster	Fed: None CA: None CNPS: 1B.2	Grows in cismontane woodland, coastal scrub, montane/coniferous forest, meadows, seeps, marshes, swamps, and valley/foothill grassland (vernally mesic). Can be found growing near ditches, streams, and springs within these habitats. Found at elevations ranging from 7 to 6,693 feet. Blooming period is from July to November.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.

**U.S. Fish and Wildlife Service (USFWS) - Federal**

END - Federally Endangered  
THR - Federally Threatened

**California Department of Fish and Wildlife (CDFW) - California**

END - State Endangered  
CEND - State Candidate Endangered  
SSC - Species of Special Concern  
WL - Watch List  
FP - Fully Protected

**California Native Plant Society (CNPS)****California Rare Plant Rank**

1A Plants Presumed Extirpated in California and Either Rare or Extinct Elsewhere  
1B Plants Rare, Threatened, or Endangered in California and Elsewhere  
2B Plants Rare, Threatened, or Endangered in California, but More Common Elsewhere  
4 Plants of Limited Distribution – A Watch List

**Threat Ranks**

0.1 - Seriously threatened in California  
0.2 - Moderately threatened in California  
0.3 - Not very threatened in California

## **Attachment D**

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Regulations

*Special status species are native species that have been afforded special legal or management protection because of concern for their continued existence. There are several categories of protection at both federal and state levels, depending on the magnitude of threat to continued existence and existing knowledge of population levels.*

## **Federal Regulations**

### ***Endangered Species Act of 1973***

As defined within the Federal Endangered Species Act (FESA) of 1973, an endangered species is any animal or plant listed by regulation as being in danger of extinction throughout all or a significant portion of its geographical range. A threatened species is any animal or plant that is likely to become endangered within the foreseeable future throughout all or a significant portion of its geographical range. Without a special permit, federal law prohibits the “take” of any individuals or habitat of federally listed species. Under Section 9 of the FESA, take is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” The term “harm” has been clarified to include “any act which actually kills or injures fish or wildlife, and emphasizes that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.” The presence of any federally threatened or endangered species within a project area generally imposes severe constraints on development, particularly if development would result in “take” of the species or its habitat. Under the regulations of the FESA, the United States Fish and Wildlife Service (USFWS) may authorize “take” when it is incidental to, but not the purpose of, an otherwise lawful act.

Critical Habitat is designated for the survival and recovery of species listed as threatened or endangered under the ESA. Critical Habitat includes those areas occupied by the species, in which are found physical and biological features that are essential to the conservation of an FESA listed species and which may require special management considerations or protection. Critical Habitat may also include unoccupied habitat if it is determined that the unoccupied habitat is essential for the conservation of the species.

Whenever federal agencies authorize, fund, or carry out actions that may adversely modify or destroy Critical Habitat, they must consult with USFWS under Section 7 of the ESA. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highway Administration or a permit from the U.S. Army Corps of Engineers (Corps)).

If the USFWS determines that Critical Habitat will be adversely modified or destroyed from a proposed action, the USFWS will develop reasonable and prudent alternatives in cooperation with the federal institution to ensure the purpose of the proposed action can be achieved without loss of Critical Habitat. If the action is not likely to adversely modify or destroy Critical Habitat, USFWS will include a statement in its biological opinion concerning any incidental take that may be authorized and specify terms and conditions to ensure the agency is in compliance with the opinion.



### ***Migratory Bird Treaty Act***

Pursuant to the Migratory Bird Treaty Act (MBTA) (16 U.S. Government Code [USC] 703) of 1918, as amended in 1972, federal law prohibits the taking of migratory birds or their nests or eggs (16 USC 703; 50 CFR 10, 21). The statute states:

*Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill...any migratory bird, any part, nest, or egg of any such bird...included in the terms of the [Migratory Bird] conventions...*

The MBTA covers the taking of any nests or eggs of migratory birds, except as allowed by permit pursuant to 50 CFR, Part 21. Disturbances causing nest abandonment and/or loss of reproductive effort (i.e., killing or abandonment of eggs or young) may also be considered “take.” This regulation seeks to protect migratory birds and active nests.

In 1972, the MBTA was amended to include protection for migratory birds of prey (e.g., raptors). Six families of raptors occurring in North America were included in the amendment: Accipitridae (kites, hawks, and eagles); Cathartidae (New World vultures); Falconidae (falcons and caracaras); Pandionidae (ospreys); Strigidae (typical owls); and Tytonidae (barn owls). The provisions of the 1972 amendment to the MBTA protects all species and subspecies of the families listed above. The MBTA protects over 800 species including geese, ducks, shorebirds, raptors, songbirds and many relatively common species.

### **State Regulations**

#### ***California Environmental Quality Act (CEQA)***

The California Environmental Quality Act (CEQA) provides for the protection of the environment within the State of California by establishing State policy to prevent significant, avoidable damage to the environment through the use of alternatives or mitigation measures for projects. It applies to actions directly undertaken, financed, or permitted by State lead agencies. If a project is determined to be subject to CEQA, the lead agency will be required to conduct an Initial Study (IS); if the IS determines that the project may have significant impacts on the environment, the lead agency will subsequently be required to write an Environmental Impact Report (EIR). A finding of non-significant effects will require either a Negative Declaration or a Mitigated Negative Declaration instead of an EIR. Section 15380 of the CEQA Guidelines independently defines “endangered” and “rare” species separately from the definitions of the California Endangered Species Act (CESA). Under CEQA, “endangered” species of plants or animals are defined as those whose survival and reproduction in the wild are in immediate jeopardy, while “rare” species are defined as those who are in such low numbers that they could become endangered if their environment worsens.

#### ***California Endangered Species Act (CESA)***

In addition to federal laws, the state of California implements the CESA which is enforced by CDFW. The CESA program maintains a separate listing of species beyond the FESA, although the provisions of each act are similar.

State-listed threatened and endangered species are protected under provisions of the CESA. Activities that may result in “take” of individuals (defined in CESA as; “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) are regulated by CDFW. Habitat degradation or modification is not included in the definition of “take” under CESA. Nonetheless, CDFW has interpreted “take” to include the destruction of nesting, denning, or foraging habitat necessary to maintain a viable breeding population of protected species.

The State of California considers an endangered species as one whose prospects of survival and reproduction are in immediate jeopardy. A threatened species is considered as one present in such small numbers throughout its range that it is likely to become an endangered species in the near future in the absence of special protection or management. A rare species is one that is considered present in such small numbers throughout its range that it may become endangered if its present environment worsens. State threatened and endangered species are fully protected against take, as defined above.

CDFW has also produced a species of special concern list to serve as a species watch list. Species on this list are either of limited distribution or their habitats have been reduced substantially, such that a threat to their populations may be imminent. Species of special concern may receive special attention during environmental review, but they do not have formal statutory protection. At the federal level, USFWS also uses the label species of concern, as an informal term that refers to species which might be in need of concentrated conservation actions. As the Species of Concern designated by USFWS do not receive formal legal protection, the use of the term does not necessarily ensure that the species will be proposed for listing as a threatened or endangered species.

### ***Fish and Game Code***

Fish and Game Code Sections 3503, 3503.5, 3511, and 3513 are applicable to natural resource management. For example, Section 3503 of the Code makes it unlawful to destroy any birds’ nest or any birds’ eggs that are protected under the MBTA. Further, any birds in the orders Falconiformes or Strigiformes (Birds of Prey, such as hawks, eagles, and owls) are protected under Section 3503.5 of the Fish and Game Code which makes it unlawful to take, possess, or destroy their nest or eggs. A consultation with CDFW may be required prior to the removal of any bird of prey nest that may occur on a project site. Section 3511 of the Fish and Game Code lists fully protected bird species, where the CDFW is unable to authorize the issuance of permits or licenses to take these species. Pertinent species that are State fully protected by the State include golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*). Section 3513 of the Fish and Game Code makes it unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

### ***Native Plant Protection Act***

Sections 1900–1913 of the Fish and Game Code were developed to preserve, protect, and enhance Rare and Endangered plants in the state of California. The act requires all state agencies to use their authority to carry out programs to conserve Endangered and Rare native plants. Provisions of the Native Plant Protection Act prohibit the taking of listed plants from the wild and require notification of the CDFW at

least ten days in advance of any change in land use which would adversely impact listed plants. This allows the CDFW to salvage listed plant species that would otherwise be destroyed.

***California Native Plant Society Rare and Endangered Plant Species***

Vascular plants listed as rare or endangered by the CNPS, but which have no designated status under FESA or CESA are defined as follows:

**California Rare Plant Rank**

- 1A- Plants Presumed Extirpated in California and either Rare or Extinct Elsewhere
- 1B- Plants Rare, Threatened, or Endangered in California and Elsewhere
- 2A- Plants Presumed Extirpated in California, But More Common Elsewhere
- 2B- Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere
- 3- Plants about Which More Information is Needed - A Review List
- 4- Plants of Limited Distribution - A Watch List

**Threat Ranks**

- .1- Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)
- .2- Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)
- .3- Not very threatened in California (<20% of occurrences threatened / low degree and immediacy of threat or no current threats known).

*There are three key agencies that regulate activities within inland streams, wetlands, and riparian areas in California. The Corps Regulatory Branch regulates activities pursuant to Section 404 of the Federal Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Of the State agencies, the CDFG regulates activities under the Fish and Game Code Section 1600-1616, and the Regional Board regulates activities pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act.*

## **Federal Regulations**

### ***Section 404 of the Clean Water Act***

Since 1972, the Corps and U.S. Environmental Protection Agency (EPA) have jointly regulated the filling of “waters of the U.S.,” including wetlands, pursuant to Section 404 of the Clean Water Act (CWA). The Corps has regulatory authority over the discharge of dredged or fill material into the waters of the United States under Section 404 of the CWA. The Corps and EPA define “fill material” to include any “material placed in waters of the United States where the material has the effect of: (i) replacing any portion of a water of the United States with dry land; or (ii) changing the bottom elevation of any portion of the waters of the United States.” Examples include, but are not limited to, sand, rock, clay, construction debris, wood chips, and “materials used to create any structure or infrastructure in the waters of the United States.” In order to further define the scope of waters protected under the CWA, the Corps and EPA published the Clean Water Rule on June 29, 2015. Pursuant to the Clean Water Rule, the term “waters of the United States” is defined as follows:

- (i) 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 the ebb and flow of the tide.
- (ii) All interstate waters, including interstate wetlands<sup>1</sup>.
- (iii) The territorial seas.
- (iv) All impoundments of waters otherwise defined as waters of the United States under the definition.
- (v) All tributaries<sup>2</sup> of waters identified in paragraphs (i) through (iii) mentioned above.
- (vi) All waters adjacent<sup>3</sup> to a water identified in paragraphs (i) through (v) mentioned above, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

<sup>1</sup> The term *wetlands* means 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 for life in saturated soil conditions.

<sup>2</sup> The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (iv) mentioned above), to a water identified in paragraphs (i) through (iii) mentioned above, that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark.

<sup>3</sup> The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (i) through (v) mentioned above, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like.



- (vii) All prairie potholes, Carolina bays and Delmarva bays, Pocosins, western vernal pools, Texas coastal prairie wetlands, where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (i) through (iii) mentioned above.
- (viii) All waters located within the 100-year floodplain of a water identified in paragraphs (i) through (iii) mentioned above and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (i) through (v) mentioned above, where they are determined on a case-specific basis to have a significant nexus to a waters identified in paragraphs (i) through (iii) mentioned above.

The following features are not defined as “waters of the United States” even when they meet the terms of paragraphs (iv) through (viii) mentioned above:

- (i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act.
- (ii) Prior converted cropland.
- (iii) The following ditches:
  - (A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
  - (B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
  - (C) Ditches that do not flow, either directly or through another water, into a water of the United States as identified in paragraphs (i) through (iii) of the previous section.
- (iv) The following features:
  - (A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;
  - (B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;
  - (C) Artificial reflecting pools or swimming pools created in dry land;
  - (D) Small ornamental waters created in dry land;
  - (E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;
  - (F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of a tributary, non-wetland swales, and lawfully constructed grassed waterways; and
  - (G) Puddles.
- (v) Groundwater, including groundwater drained through subsurface drainage systems.
- (vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

- (vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

### ***Section 401 of the Clean Water Act***

Pursuant to Section 401 of the CWA, any applicant for a federal license or permit to conduct any activity which may result in any discharge to waters of the United States must provide certification from the State or Indian tribe in which the discharge originates. This certification provides for the protection of the physical, chemical, and biological integrity of waters, addresses impacts to water quality that may result from issuance of federal permits, and helps insure that federal actions will not violate water quality standards of the State or Indian tribe. In California, there are nine Regional Water Quality Control Boards (Regional Board) that issue or deny certification for discharges to waters of the United States and waters of the State, including wetlands, within their geographical jurisdiction. The State Water Resources Control Board assumed this responsibility when a project has the potential to result in the discharge to waters within multiple Regional Boards.

### **State Regulations**

#### ***Fish and Game Code***

Fish and Game Code Sections 1600 et. seq. establishes a fee-based process to ensure that projects conducted in and around lakes, rivers, or streams do not adversely impact fish and wildlife resources, or, when adverse impacts cannot be avoided, ensures that adequate mitigation and/or compensation is provided.

Fish and Game Code Section 1602 requires any person, state, or local governmental agency or public utility to notify the CDFW before beginning any activity that will do one or more of the following:

- (1) substantially obstruct or divert the natural flow of a river, stream, or lake;
- (2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake;
- or
- (3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake.

Fish and Game Code Section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the State. CDFW's regulatory authority extends to include riparian habitat (including wetlands) supported by a river, stream, or lake regardless of the presence or absence of hydric soils and saturated soil conditions. Generally, the CDFW takes jurisdiction to the top of bank of the stream or to the outer limit of the adjacent riparian vegetation (outer drip line), whichever is greater. Notification is generally required for any project that will take place in or in the vicinity of a river, stream, lake, or their tributaries. This includes rivers or streams that flow at least periodically or permanently through a bed or channel with banks that support fish or other aquatic life and watercourses having a surface or subsurface flow that support or have supported riparian vegetation. A Section 1602 Streambed Alteration Agreement would be required if impacts to identified CDFW jurisdictional areas occur.

### ***Porter Cologne Act***

The California *Porter-Cologne Water Quality Control Act* gives the State very broad authority to regulate waters of the State, which are defined as any surface water or groundwater, including saline waters. The Porter-Cologne Act has become an important tool in the post SWANCC and Rapanos regulatory environment, with respect to the state’s authority over isolated and insignificant waters. Generally, any person proposing to discharge waste into a water body that could affect its water quality must file a Report of Waste Discharge in the event that there is no Section 404/401 nexus. Although “waste” is partially defined as any waste substance associated with human habitation, the Regional Board also interprets this to include fill discharged into water bodies.