GLENN LUKOS ASSOCIATES

Regulatory Services

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Matt Englhard
Proficiency Capital LLC
11777 San Vicente Boulevard, Suite 780
Los Angeles, California 90049

SUBJECT: Jurisdictional Delineation for Rubidoux Commerce Park (TPM No. 37677), a 77-Acre Property Located in Jurupa Valley, Riverside County, California

Dear Mr. Englhard:

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), and California Department of Fish and Wildlife (CDFW) jurisdiction for the above-referenced property and offsite areas where road improvements would impact the West Riverside Canal, which now appears function as a drainage ditch for local runoff.[1]

The Rubidoux Commerce Park (TPM No. 37677) [Exhibit 1], comprises approximately 77 acres and contains one blue-line drainage (as depicted on the U.S. Geological Survey (USGS) topographic map Fontana, California, (1967 and Photo-revised 1980) [Exhibit 2]. On July 30 and August 1, 2020, regulatory specialists of Glenn Lukos Associates, Inc. (GLA) examined the project site to determine the potential limits of (1) Corps jurisdiction pursuant to Section 404 of the Clean Water Act, (2) Regional Board jurisdiction pursuant to Section 401 of the CWA and Section 13260 of the California Water Code (CWC), (3) CDFW jurisdiction pursuant to Division 2, Chapter 6, Section 1600 of the Fish and Game Code and 4) Riparian Riverine areas as defined in accordance with the Western Riverside County Multiple Habitat Conservation Plan (MSHCP). Enclosed are 300-scale maps [Exhibits 3A, 3B, 3C, and 3D] that depict the areas evaluated for Corps, CDFW, Regional Board, and MSHCP Riparian/Riverine jurisdiction. Site Photographs are included as Exhibit 4.

[1] This report presents our best effort at estimating the subject jurisdictional boundaries using the most up-to-date regulations and written policy and guidance from the regulatory agencies. Only the regulatory agencies can make a final determination of jurisdictional boundaries.

There are no areas on the site that contain streams, wetlands or other aquatic features that meet the definition of Waters of the U.S. The West Riverside Canal is an offsite abandoned irrigation ditch, that no long functions, extending to the west parallel with the offsite railroad tracks. Development of the project would require offsite road crossings of West Riverside Canal at 26th and 28th Streets.

Corps Jurisdiction Summary
This feature is depicted as a blue-line drainage on the above-referenced USGS 1967 Fontana Topographic Map as well as on more recent USGS Fontana Topographic Maps from 2012 and 2018. However, as discussed below, this feature does not meet the definition for Waters of the U.S. and would not be subject to jurisdiction under Section 404.

CDFW Jurisdiction Summary
Potential CDFW jurisdiction associated with the road crossings at 26th and 28th Streets, none of which consists of riparian habitat totals 0.024 acre. The proposed road crossings would impact 0.024 acre and 56 linear feet of the canal, none of which consists of riparian habitat. As discussed below, the abandoned West Riverside Canal exhibits no signs of flow and is not an aquatic resource and it is expected that CDFW would not require a Section 1602 Streambed Alteration Agreement for impacts to this feature.

Regional Board Summary
Potential Regional Board jurisdiction associated with the road crossings at 26th and 28th Streets, none of which consists of wetlands totals 0.024 acre. As discussed below, the abandoned West Riverside Canal exhibits no signs of flow and is not an aquatic resource and it is expected that the Regional Board would not require a Waste Discharge authorization for impacts to this feature.

MSHCP Riparian Riverine Summary
Potential MSCHP Riparian Riverine jurisdiction associated with the road crossings at 26th and 28th Streets, none of which consists of riparian habitat totals 0.024 acre. As discussed below, the artificial abandoned West Riverside Canal exhibits no signs of flow and is not an aquatic resource and it is expected that a Riparian/Riverine Determination of Equivalent or Superior Preservation (DBESP) would not be required by the RCA because the feature is artificially created are not included in the MSHCP definitions as Riparian or Riverine.

I. METHODOLOGY

Prior to beginning the field delineation, a color aerial photograph, a topographic base map of the property, the previously cited USGS topographic map, and a soils map were examined to

determine the locations of potential areas of Corps, Regional Board, and CDFW jurisdiction. Suspected jurisdictional areas were field checked for evidence of stream activity and/or wetland vegetation, soils and hydrology. Where applicable, reference was made to the 2008 Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States (OWHM Manual)[2] to identify the width of Corps jurisdiction and suspected wetland habitats on the site were evaluated using the methodology set forth in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual[3] (Wetland Manual) and the 2006 Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Supplement (Arid West Supplement).[4] While in the field the potential limits of jurisdiction were recorded with a sub-meter Trimble GPS device in conjunction with a color aerial photograph using visible landmarks. Other data were recorded onto wetland data sheets.

The National Cooperative Soil Survey (NCSS) has mapped the following soil types as occurring in the general vicinity of the project site:

II. JURISDICTION

A. Army Corps of Engineers

On June 22, 2020, the *Navigable Waters Protection Rule* (NWPR) became effective and superseded the previous definition of waters of the United States in all states except for Colorado. The U.S. District Court for the Northern District of California denied a motion on June 19, 2020 for preliminary injunction. District courts will hear the merits of the challenges over the next few months; however, at the time of the writing of this report, the definition of waters of the United States are as follows:

(a) *Jurisdictional waters.* For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (b) of this section, the term ‘‘waters of the United States’’ means:

> *(1) The territorial seas, and waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide;*

[2] U.S. Army Corps of Engineers. 2008. A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States
[3] Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.
[4] U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

(2) Tributaries;
(3) Lakes and ponds, and impoundments of jurisdictional waters; and
(4) Adjacent wetlands.

(b) Non-jurisdictional waters. The following are not ‘‘waters of the United States’’:
(1) Waters or water features that are not identified in paragraph (a)(1), (2),(3), or (4) of this section;
(2) Groundwater, including groundwater drained through subsurface drainage systems;
(3) Ephemeral features, including ephemeral streams, swales, gullies, rills, and pools;
(4) Diffuse stormwater run-off and directional sheet flow over upland;
(5) Ditches that are not waters identified in paragraph (a)(1) or (2) of this section, and those portions of ditches constructed in waters identified in paragraph (a)(4) of this section that do not satisfy the conditions of paragraph (c)(1) of this section;
(6) Prior converted cropland;
(7) Artificially irrigated areas, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease;
(8) Artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in upland or in non-jurisdictional waters, so long as those artificial lakes and ponds are not impoundments of jurisdictional waters that meet the conditions of paragraph (c)(6) of this section;
(9) Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel;
(10) Stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff;
(11) Groundwater recharge, water reuse, and wastewater recycling structures, including detention, retention, and infiltration basins and ponds, constructed or excavated in upland or in non-jurisdictional waters; and
(12) Waste treatment systems.

Should the *Navigable Waters Protection Rule* be stayed or otherwise blocked due to pending litigation, the definition for Waters of U.S. would likely revert to the prior definition provided in Corps regulations at 33 CFR Part 328.3(a) as:

(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 the 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 foreign commerce including any such waters:*
>
> *(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
>
> *(ii) From which fish or shell fish are or could be taken and sold in interstate or foreign commerce; or*
>
> *(iii) Which are used or could be used for industrial purpose by industries in interstate commerce...*
>
> *(4) All impoundments of waters otherwise defined as waters of the United States under the definition;*
>
> *(5) Tributaries of waters identified in paragraphs (a) (1)-(4) of this section;*
>
> *(6) The territorial seas;*
>
> *(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)-(6) of this section.*
>
> *(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.*
>
> *Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.*

Under either definition, in the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent streams, extend to the OHWM which is defined at 33 CFR 328.3(e) as:

> *...that line on the shore established by the fluctuation 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.*

1. Wetland Definition Pursuant to Section 404 of the Clean Water Act

The term “wetlands” (a subset of “waters of the United States”) is defined at 33 CFR 328.3(b) as "those areas that are inundated or saturated by surface or ground water at a frequency and

duration sufficient to support...a prevalence of vegetation typically adapted for life in saturated soil conditions." In 1987 the Corps published the Wetland Manual to guide its field personnel in determining jurisdictional wetland boundaries. The methodology set forth in the Wetland Manual and the Arid West Supplement generally require that, in order to be considered a wetland, the vegetation, soils, and hydrology of an area exhibit at least minimal hydric characteristics. While the Wetland Manual and Arid West Supplement provide great detail in methodology and allow for varying special conditions, a wetland should normally meet each of the following three criteria:

- More than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the Arid West 2016 Regional Wetland Plant List[5],[6]);

- Soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and

- Whereas the Wetland Manual requires that hydrologic characteristics indicate that the ground is saturated to within 12 inches of the surface for at least five percent of the growing season during a normal rainfall year, the Arid West Supplement does not include a quantitative criteria with the exception for areas with "problematic hydrophytic vegetation", which require a minimum of 14 days of ponding to be considered a wetland.

B. Regional Water Quality Control Board

The State Water Resource Control Board and each of its nine Regional Boards regulate the discharge of waste (dredged or fill material) into waters of the United States[7] and waters of the

[5] Lichvar, R.W., D.L. Banks, W.N. Kirchner, and N.C. Melvin. 2016. Arid West 2016 Regional Wetland Plant List. Phytoneuron 2016-30: 1-17. Published 28 April 2016.

[6] Note the Corps also publishes a National List of Plant Species that Occur in Wetlands (Lichvar, R.W., D.L. Banks, W.N. Kirchner, and N.C. Melvin. 2016. The National Wetland Plant List: 2016 wetland ratings. Phytoneuron 2016-30: 1-17. Published 28 April 2016.); however, the Regional Wetland Plant List should be used for wetland delineations within the Arid West Region.

[7] Therefore, wetlands that meet the current definition, or any historic definition, of waters of the U.S. are waters of the state. In 2000, the State Water Resources Control Board determined that all waters of the U.S. are also waters of the state by regulation, prior to any regulatory or judicial limitations on the federal definition of waters of the U.S. (California Code or Regulations title 23, section 3831(w)). This regulation has remained in effect despite subsequent changes to the federal definition. Therefore, waters of the state includes features that have been determined by the U.S. Environmental Protection Agency (U.S. EPA) or the U.S. Army Corps of Engineers (Corps) to be "waters of the U.S." in an approved jurisdictional determination; "waters of the U.S." identified in an aquatic resource report

state. Waters of the United States are defined above in Section II.A and waters of the state are defined as "any surface water or groundwater, including saline waters, within the boundaries of the state" (California Water Code 13050[e]).

Section 401 of the CWA requires certification for any federal permit or license authorizing impacts to waters of the U.S. (i.e., waters that are within federal jurisdiction), such as Section 404 of the CWA and Section 10 of the Safe Rivers and Harbors Act, to ensure that the impacts do not violate state water quality standards. When a project could impact waters outside of federal jurisdiction, the Regional Board has the authority under the Porter-Cologne Water Quality Control Act to issue Waste Discharge Requirements (WDRs) to ensure that impacts do not violate state water quality standards. Clean Water Act Section 401 Water Quality Certifications, WDRs, and waivers of WDRs are also referred to as orders or permits.

1. State Wetland Definition

The Water Boards define an area as wetland[8] as follows: *An area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area's vegetation is dominated by hydrophytes or the area lacks vegetation.*

The following wetlands are waters of the state:

1. *Natural wetlands;*
2. *Wetlands created by modification of a surface water of the state;*[9] *and*
3. *Artificial wetlands*[10] *that meet any of the following criteria:*
    a. Approved by an agency as compensatory mitigation for impacts to other waters of the state, except where the approving agency explicitly identifies the mitigation as being of limited duration;

verified by the Corps upon which a permitting decision was based; and features that are consistent with any current or historic final judicial interpretation of "waters of the U.S." or any current or historic federal regulation defining "waters of the U.S." under the federal Clean Water Act.

[8] State Water Resources Control Board. 2019. State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. [For Inclusion in the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California].

[9] "Created by modification of a surface water of the state" means that the wetland that is being evaluated was created by modifying an area that was a surface water of the state at the time of such modification. It does not include a wetland that is created in a location where a water of the state had existed historically, but had already been completely eliminated at some time prior to the creation of the wetland. The wetland being evaluated does not become a water of the state due solely to a diversion of water from a different water of the state.

[10] Artificial wetlands are wetlands that result from human activity.

b. Specifically identified in a water quality control plan as a wetland or other water of the state;
c. Resulted from historic human activity, is not subject to ongoing operation and maintenance, and has become a relatively permanent part of the natural landscape; or
d. Greater than or equal to one acre in size, unless the artificial wetland was constructed, and is currently used and maintained, primarily for one or more of the following purposes (i.e., the following artificial wetlands are not waters of the state unless they also satisfy the criteria set forth in 2, 3a, or 3b):

i. Industrial or municipal wastewater treatment or disposal,
ii. Settling of sediment,
iii. Detention, retention, infiltration, or treatment of stormwater runoff and other pollutants or runoff subject to regulation under a municipal, construction, or industrial stormwater permitting program,
iv. Treatment of surface waters,
v. Agricultural crop irrigation or stock watering,
vi. Fire suppression,
vii. Industrial processing or cooling,
viii. Active surface mining – even if the site is managed for interim wetlands functions and values,
ix. Log storage,
x. Treatment, storage, or distribution of recycled water, or
xi. Maximizing groundwater recharge (this does not include wetlands that have incidental groundwater recharge benefits); or
xii. Fields flooded for rice growing.

All artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in 2, 3.a, 3.b, or 3.c are not waters of the state. If an aquatic feature meets the wetland definition, the burden is on the applicant to demonstrate that the wetland is not a water of the state.

C. California Department of Fish and Wildlife

Pursuant to Division 2, Chapter 6, Sections 1600-1603 of the California Fish and Game Code, the CDFW regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake, which supports fish or wildlife.

CDFW defines a stream (including creeks and rivers) 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 watercourses having surface or subsurface flow that supports or has supported riparian vegetation." CDFW's definition of "lake" includes "natural lakes or man-

made reservoirs." CDFW also defines a stream as “a body of water that flows, or has flowed, over a given course during the historic hydrologic regime, and where the width of its course can reasonably be identified by physical or biological indicators.”

It is important to note that the Fish and Game Code defines fish and wildlife to include: all wild animals, birds, plants, fish, amphibians, invertebrates, reptiles, and related ecological communities including the habitat upon which they depend for continued viability (FGC Division 5, Chapter 1, section 45 and Division 2, Chapter 1 section 711.2(a) respectively). Furthermore, Division 2, Chapter 5, Article 6, Section 1600 et seq. of the California Fish and Game Code does not limit jurisdiction to areas defined by specific flow events, seasonal changes in water flow, or presence/absence of vegetation types or communities.

D. MSHCP Riparian/Riverine Requirements

The MSHCP defines riparian areas as *lands which contain Habitat dominated by trees, shrubs, persistent emergent mosses and lichens, which occur close to or which depend upon soils moisture from a nearby fresh water source*. In the absence of riparian habitat, the MSHCP defines riverine areas as *areas with fresh water flow during all or a portion of the year*.

With the exception of wetlands created for the purpose of providing wetlands habitat or resulting from human actions to create open waters, or from the alteration of natural stream courses, areas demonstrating characteristics as described above and which are artificially created are not included in these definitions.

III. RESULTS

The subject site does not contain streams, wetlands or other aquatic features that meet the definition of Waters of the U.S. or Waters of the State. A feature, which is identified on the on the U.S. Geological Survey (USGS) topographic map Fontana, California as a blue-line drainage named the West Riverside Canal, is located to the south of the site and would be subject to potential impacts for road crossings.

A. West Riverside Canal Description

The West Riverside Canal was constructed as an agricultural ditch, which received water from the Santa Ana River though the Jurupa Ditch Aqueduct, which is depicted on the USGS) topographic map San Bernardino South, California, (1967 and Photo-revised 1980) [Exhibit 5]. The West Riverside Canal extended to the west with irrigation water distributed to Lateral 1 immediately north of Mission Boulevard, and Lateral 2 and Lateral 3, near the intersection of

Jurupa Road and Valley Way (formerly Armstrong). Currently the remnants of the West Riverside Canal terminate just north of State Route 60 and Laterals 1 – 3 are no longer extant.

The segment of the canal that is immediately adjacent to the eastern boundary of the site (extended) remains intact but exhibits no evidence of flow. Beginning at the upstream end of the site, the canal is U-shaped, approximately ten feet wide with the canal bottom supporting non-native grasses and forbs including ripgut (*Bromus diandrus*, UPL), hare barley (*Hordeum murinum leporinum*, FACU), and common sunflower (*Helianthus annuus*, FACU) [Exhibit 4, Photograph 1]. Beginning approximately 1,500 feet from the eastern property boundary (extended), the channels narrows to about six feet and the lower portion of the banks (approximately one to two feet above the channel invert) the banks support a single row of mulefat individuals [Exhibit 4, Photograph 2] The channel bottom supports the upland grasses and forbs noted above. The canal widens as it approaches 26th Street where water is carried beneath the road for approximately 125 feet in a 48-inch concrete culvert, which is nearly buried and unable to accept flow [Exhibit 4, Photograph 3].

West of 26th Street, the canal broadens to widths ranging from 12 to 18 feet [Exhibit 4, Photograph 4] and supports dense non-native grasses including ripgut (*Bromus diandrus*, UPL), hare barley (*Hordeum murinum leporinum*, FACU), soft chess (*Bromus hordeaceus*, FACU), slender wild oats (*Avena barbata*, UPL), and native and non-native forbs tumble mustard (*Sisymbrium irio*, UPL), summer mustard (*Hisrshfeldia incana*, UPL), annual bursage (*Ambrosia acanthicarpa*, UPL), common sunflower (*Helianthus annuus*, FACU), tocalote (*Centaurea melitensis*, UPL), and dove weed (*Croton setiger*, UPL). The banks support the same species. From 26th Street the canal extends approximately 1,540 feet to 28th Street and supports that same suite of species [Exhibit 4, Photographs 5 – 7].

At 28th Street, any water within the channel, which is very limited based on the lack of signs of flow, the water is captured in a 60-inch storm drain inlet [Exhibit 4, Photograph 8] which carries the flow into the storm drain which extends down 28th Street. No flows are carried under 28th Street such that the canal has no flows below 28th Street with the exception of direct rainfall and local runoff.

The West Riverside Canal is a man-made irrigation canal that was constructed in uplands. A review of the USGS Fontana Map shows that the canal closely parallels the 900-foot contour on the map from its point of origin to Lateral 1. It is not crossed by jurisdictional drainages and does not receive discharge from jurisdictional drainages.

The lack of flow within the canal was further confirmed by observations of the canal upstream and downstream of the site. Exhibit 4, Photographs 9 - 10 depict the canal upstream of 20th Street. Photograph 9 depict the canal with trash and debris and mature eucalyptus trees growing

in the bottom of the canal while Photograph 10, immediately downstream of Photograph 9 depicting numerous eucalyptus trees growing in the channel bottom, indicating lack of flow. Photograph 11 is downstream of 20th Street and shows the concrete sides of the canal, which includes trash and debris. Exhibit 4, Photograph 12 depicts the canal approximately 3,800 feet downstream of the site that depicts the concrete sides of the canal and dense vegetation and a complete absence of indictors for signs of storm flow.

1. Corps Jurisdiction

The West Riverside Canal is a man-made irrigation canal that was constructed in uplands as noted above and in now abandoned as an irrigation canal. Pursuant to the NWPR definition of Waters of the U.S. the canal is a man-made ditch and is not subject to Section 404. Specifically, as noted in the definition of Waters of the U.S. above, certain features are excluded:

> ***(b) Non-jurisdictional waters. The following are not ''waters of the United States''*** *(5) Ditches that are not waters identified in paragraph (a)(1) or (2) of this section, and those portions of ditches constructed in waters identified in paragraph (a)(4) of this section that do not satisfy the conditions of paragraph (c)(1) of this section.*

The West Riverside Canal would also be excluded as a Water of the U.S. because it exhibits very limited flows and is an ephemeral drainage in accordance with the definition of Waters of the U.S.:

As noted above, Section 328.3b of the NWPR states:

> ***(b) Non-jurisdictional waters. The following are not ''waters of the United States'':*** *(1) Waters or water features that are not identified in paragraph (a)(1), (2), (3), or (4) of this section; (2) Groundwater, including groundwater drained through subsurface drainage systems; (3)* ***Ephemeral features, including ephemeral streams,*** *swales, gullies, rills, and pools;*

The West Riverside Canal described above meets the definition for ephemeral streams which is defined in the NWPR as:

> *Ephemeral. The term ephemeral means surface water flowing or pooling only in direct response to precipitation (e.g., rain or snow fall).*

Thus, under both subparagraphs (3) and (3) of the NWPR, the feature is not a Water of the U.S. and is not subject to regulation under Section 404 of the Clean Water Act.

2. CDFW Jurisdiction

The West Riverside Canal includes a bed, bank, and channel; however, because the canal was built for purposes of carrying irrigation flows, which have now been eliminated, the feature does not carry more than minimal flows and is not an aquatic feature. The segment of the canal adjacent to the site upstream (east) of 26th Street supports limited areas of mulefat scrub while the areas below 26th Street and extending to 28th Street support only dense areas of non-native grasses and a mix of native and non-native forbs as described above. The area below (west of) 28th Street supports annual bursage (*Ambrosia acanthicarpa*, UPL), common sunflower (*Helianthus annuus*, FACU), Russian thistle (*Salsola tragus*, FACU), and summer mustard (*Hirsdchfeldia incana*, UPL). Based on measured channel widths, the total area of the West Riverside Canal at the 26th and 28th Street road crossings totals 0.024 acre none of which consists of riparian habitat).

3. Regional Board

As noted above, the State Water Board adopted new Procedures that address discharge of fill into wetlands and other waters of the State, which includes certain exclusions for areas that area not regulated under the procedures. The Santa Ana Regional Board would be the agency reviewing potential impacts to the West Riverside Canal. The Procedures exclude the following areas from the Procedures:

> c. The following features used for agricultural purposes:
> i. Ditches with ephemeral flow that are not a relocated water of the state or excavated in a water of the state;
> ii. Ditches with intermittent flow that are not a relocated water of the state or excavated in a water of the state, or that do not drain wetlands other than any wetlands described in sections (iv) or (v)
> iii. Ditches that do not flow, either directly or through another water, into another water of the state;

However, the Procedures go on to state the following:

> The exclusions in section IV.D.2 [which includes the ditches addressed above] do not apply to discharges of dredged or fill material that convert wetland areas to a non-agricultural use.

The West Riverside Ditch is not a wetland; however, it is uncertain whether the Regional Board would assert jurisdiction and require notification under the Procedures. As such, should the Regional Board assert jurisdiction, the total area, based on measured channel widths, Based on measured channel

widths, the total area of the West Riverside Canal at the 26th and 28th Street road crossings totals 0.022 acre and include 56 linear feet, none of which consists of wetlands.

4. MSHCP Riparian Riverine

As described for CDFW above, the West Riverside Canal includes a bed, bank, and channel; however, because the canal was built for purposes of carrying irrigation flows, which have now been eliminated, the feature does not carry more than minimal flows and is not an aquatic feature. Thus, given the following exclusion in the MSHCP Riparian Riverine policies, that "areas demonstrating characteristics as described above and which are artificially created are not included in these definitions" the canal would not be subject to review under the policies.

IV. IMPACTS

Two criteria from Appendix G of the 2019 State CEQA guidelines are relevant to potential impacts to the West Riverside Canal, which are excerpted below and are analyzed to determine whether the project has the potential for significant effects on the environment. The relevant criteria include:

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

A. <u>Potential Impacts</u>

Impacts to the West Riverside Canal are limited to offsite road crossings at 26th Street and 28th Street and are depicted on Exhibit 5A and 5B.

1. Corps Jurisdiction

As set forth above, the West Riverside Canal is does not meet the NWPR definition for Waters of the U.S. Thus, the project would not impact Corps jurisdiction. It is also important to note that the West Riverside Canal does not contain wetlands. Criteria (c) of the CEQA Guidelines Appendix G, specifically addresses State and federal wetlands. The project does not impact wetlands and therefore, there are no significant impacts to federally defined or regulated wetlands.

It is recommended that the applicant submit an "Approved Jurisdictional Determination form to the Corps for verification that the site does not contain Waters of the U.S.

2. CDFW Jurisdiction

As set forth above, the West Riverside Canal does not carry waters as it is an abandoned canal that does not receive tributary flows. The project would impact 0.024 acre for the 26th and 28th Street road crossings and 56 linear feet combined. In accordance with Criteria (b) the areas impacted do not support "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." As noted above the project does not impact wetlands and therefore, there are no significant impacts to State defined wetlands. Pursuant to the CEQA Guidelines, there would be no significant impacts and no mitigation required.

It is recommended that the applicant submit Notification to CDFW in accordance with the Section 1602 Notification Requirements so that CDFW can make the final determination as to whether a Section 1602 Streambed Alteration Agreement is required for the project.

3. Regional Board

As set forth above, the West Riverside Canal does not carry waters as it is an abandoned canal that does not receive tributary flows. The project would impact 0.024 acre for the 26th and 28th Street road crossings and 56 linear feet combined. In accordance with Criteria (c) the project does not impact wetlands and therefore and there are no significant impacts to State defined wetlands. Pursuant to the CEQA Guidelines, there would be no significant impacts and no mitigation required.

It is recommended that the applicant submit Notification to the Regional Board in accordance with the Waste Discharge Requirements of the Porter Cologne Act so the Regional Board can make a final determination as to whether Waste Discharge Permit is required for the project.

In accordance with the State Water Resources Control Board. 2019. State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, which became effective on May 28, 2020, the proposed impacts are below the "Tier 1" threshold of 0.1 acre and 100 linear feet and the project would not require an "Alternatives Analysis should the Regional Board assert jurisdiction over the feature.

4. MSHCP Riparian Riverine

The West Riverside Canal does not meet the definition for areas subject to review under the MSHCP Riparian Riverine policies and there would be no significant impacts to Riparian Riverine areas associated with the project.

If you have any questions about this letter report, please contact Tony Bomkamp at my direct line (949) 340-7333 or by cell (949) 929-1651.

Sincerely,

GLENN LUKOS ASSOCIATES, INC.

Tony Bomkamp
Regulatory Specialist

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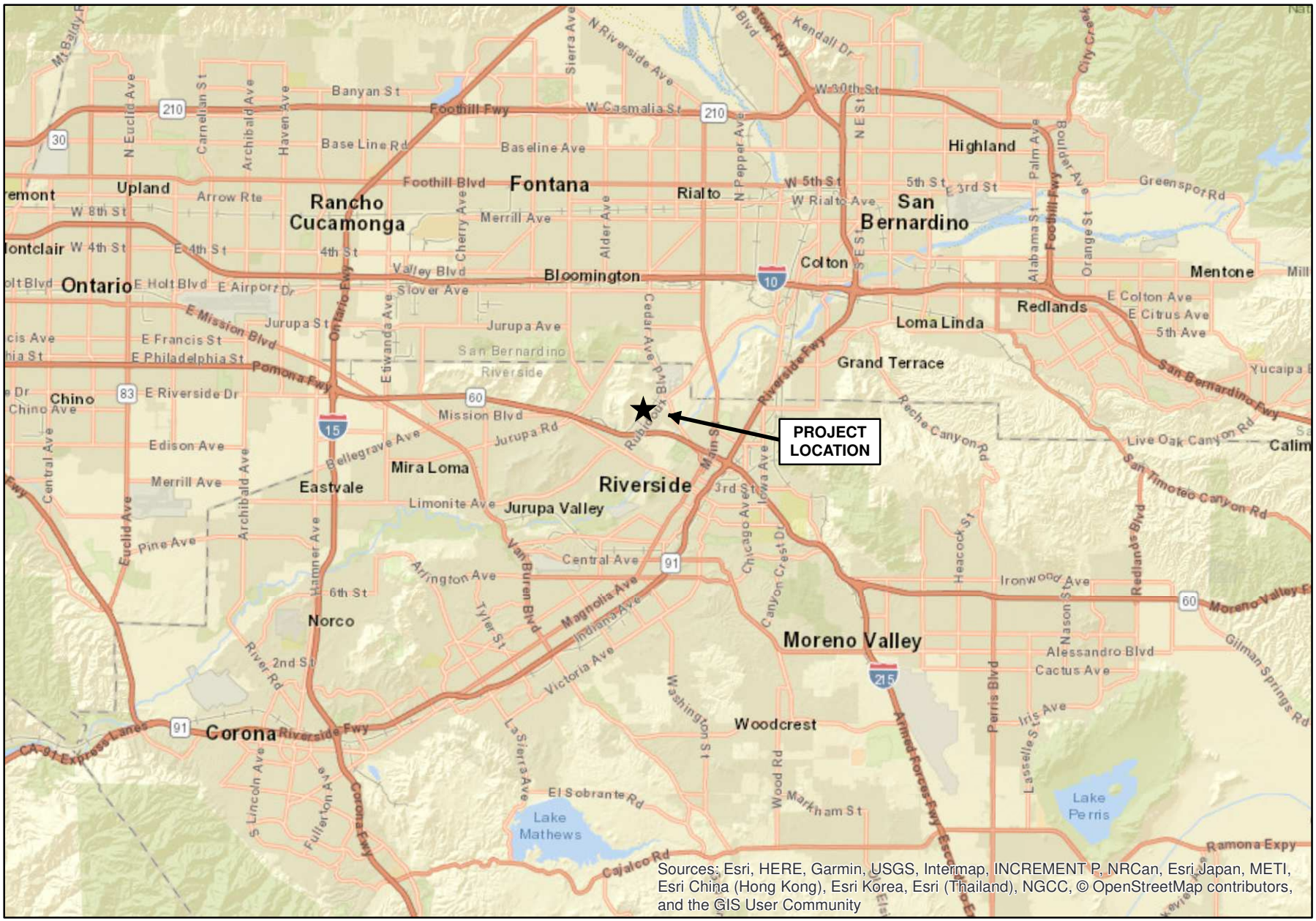


Source: ESRI World Street Map

N

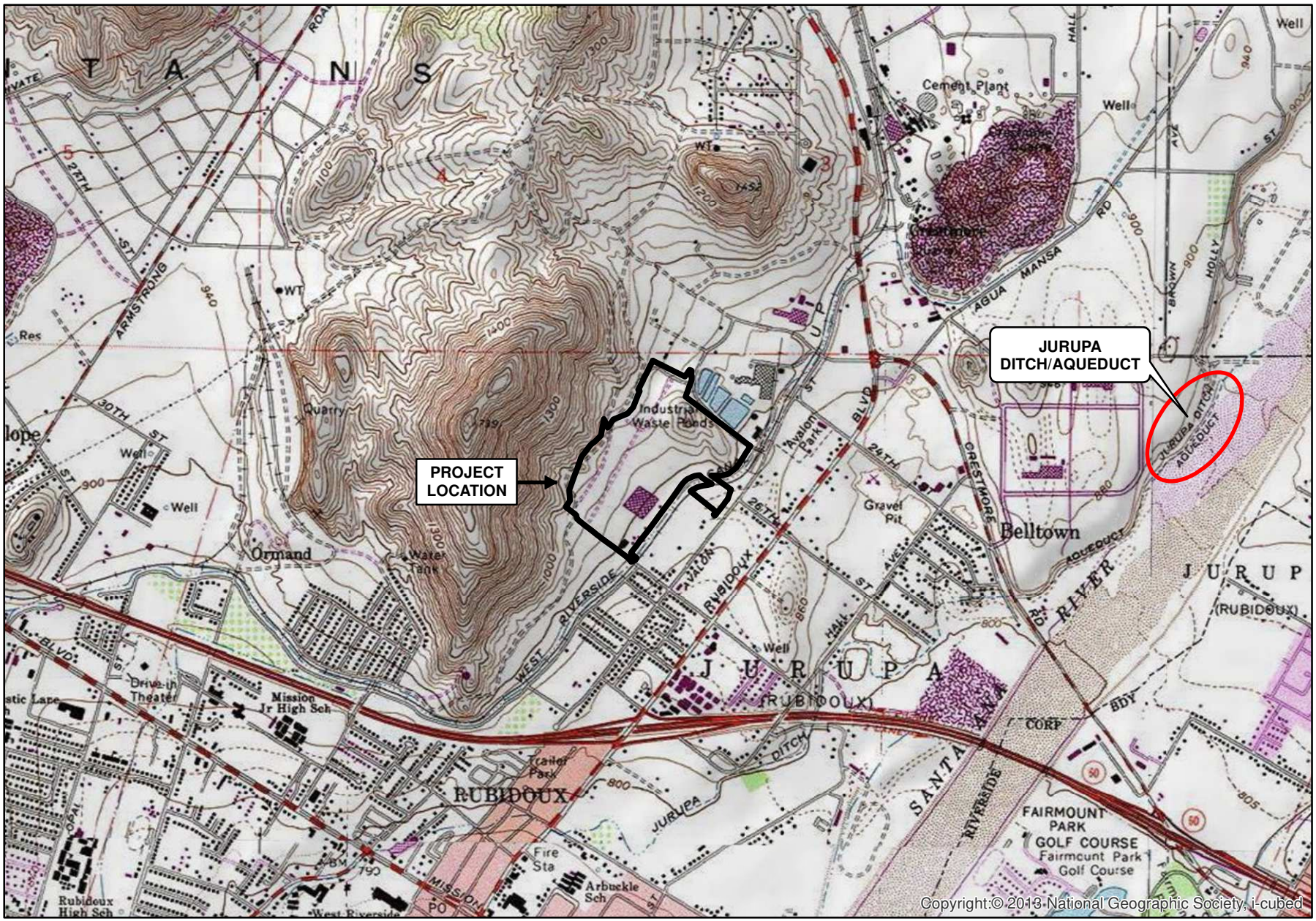
0 2 4 8 Miles

RUBIDOUX COMMERCE PARK

Regional Map

GLENN LUKOS ASSOCIATES

Exhibit 1



Adapted from USGS Fontana, CA quadrangle

N

0 1,000 2,000 4,000 Feet

RUBIDOUX COMMERCE PARK

Vicinity Map

GLENN LUKOS ASSOCIATES

Exhibit 2

Project Site

Non-Jurisdictional Canal

N

0 150 300 600

Feet

1 inch = 300 feet

Coordinate System: State Plane 6 NAD 83
Projection: Lambert Conformal Conic
Datum: NAD83
Map Prepared by: B. Gale, GLA
Date Prepared: August 4, 2020

RUBIDOUX COMMERCE PARK

Corps Jurisdictional Determination Map

GLENN LUKOS ASSOCIATES

Exhibit 3A

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Project Site

Riparian

Non-Riparian Canal

12 Width of Canal in Feet

N

0 150 300 600

Feet

1 inch = 300 feet

Coordinate System: State Plane 6 NAD 83
Projection: Lambert Conformal Conic
Datum: NAD83
Map Prepared by: B. Gale, GLA
Date Prepared: August 4, 2020

RUBIDOUX COMMERCE PARK

CDFW Jurisdictional Delineation Map

GLENN LUKOS ASSOCIATES

Exhibit 3B

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Project Site

Non-Wetland Canal

12 Width of Canal in Feet

N

0 150 300 600

Feet

1 inch = 300 feet

Coordinate System: State Plane 6 NAD 83
Projection: Lambert Conformal Conic
Datum: NAD83
Map Prepared by: B. Gale, GLA
Date Prepared: August 4, 2020

RUBIDOUX COMMERCE PARK

RWQCB Jurisdictional Delineation Map

GLENN LUKOS ASSOCIATES

Exhibit 3C

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Project Site

Non-Jurisdictional Canal

N

0 150 300 600

Feet

1 inch = 300 feet

Coordinate System: State Plane 6 NAD 83
Projection: Lambert Conformal Conic
Datum: NAD83
Map Prepared by: B. Gale, GLA
Date Prepared: August 4, 2020

RUBIDOUX COMMERCE PARK

MSHCP Riparian/Riverine Determination Map

GLENN LUKOS ASSOCIATES

Exhibit 3D

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Photograph 1: Downstream view of West Riverside Canal from eastern project boundary extended. Note dense upland vegetation within abandoned canal.

Photograph 2: Downstream view of West Riverside Canal from just east of 26th Street. Note dense upland vegetation within abandoned canal with sparse mulefat on bank.

Photograph 3: Downstream view of West Riverside Canal at mostly buried culvert at 26th Street. Note dense upland vegetation within abandoned canal.

Photograph 4: Upstream view of West Riverside Canal at 26th Street. Note dense upland vegetation within abandoned canal.

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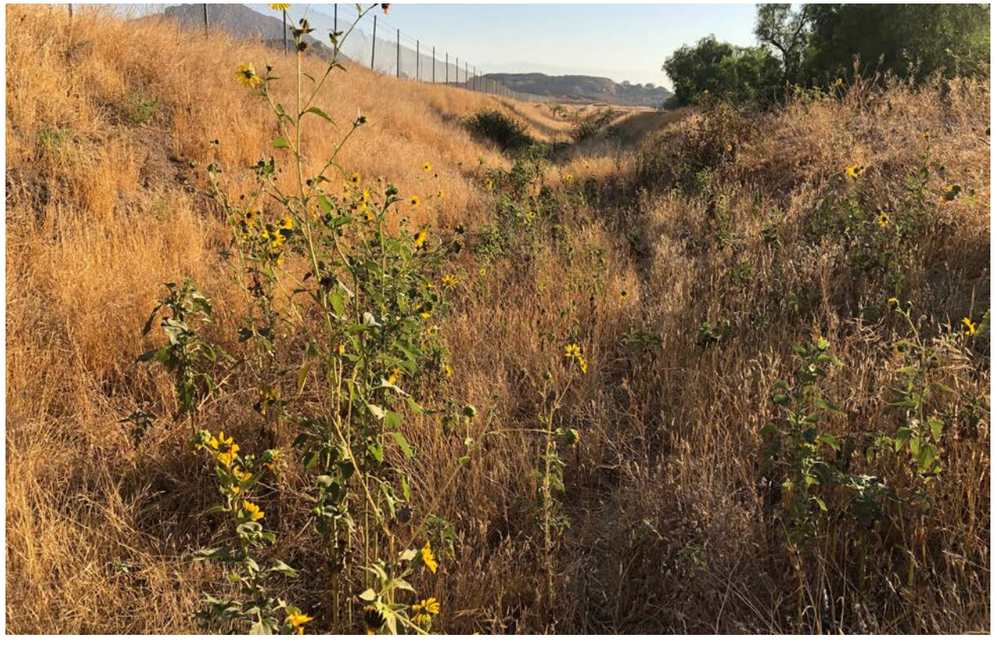
Exhibit 4 – Page 1

RUBIDOUX COMMERECE PARK

Site Photographs

Photograph 5: Upstream view of West Riverside Canal Between 28th and 26th Streets. Note dense upland vegetation within abandoned canal.



Photograph 6: Upstream view of West Riverside Canal Between 28th and 26th Streets. Note dense upland vegetation within abandoned canal.

Photograph 7: Upstream view of West Riverside Canal Between 28th and 26th Streets. Note dense upland vegetation within abandoned canal.

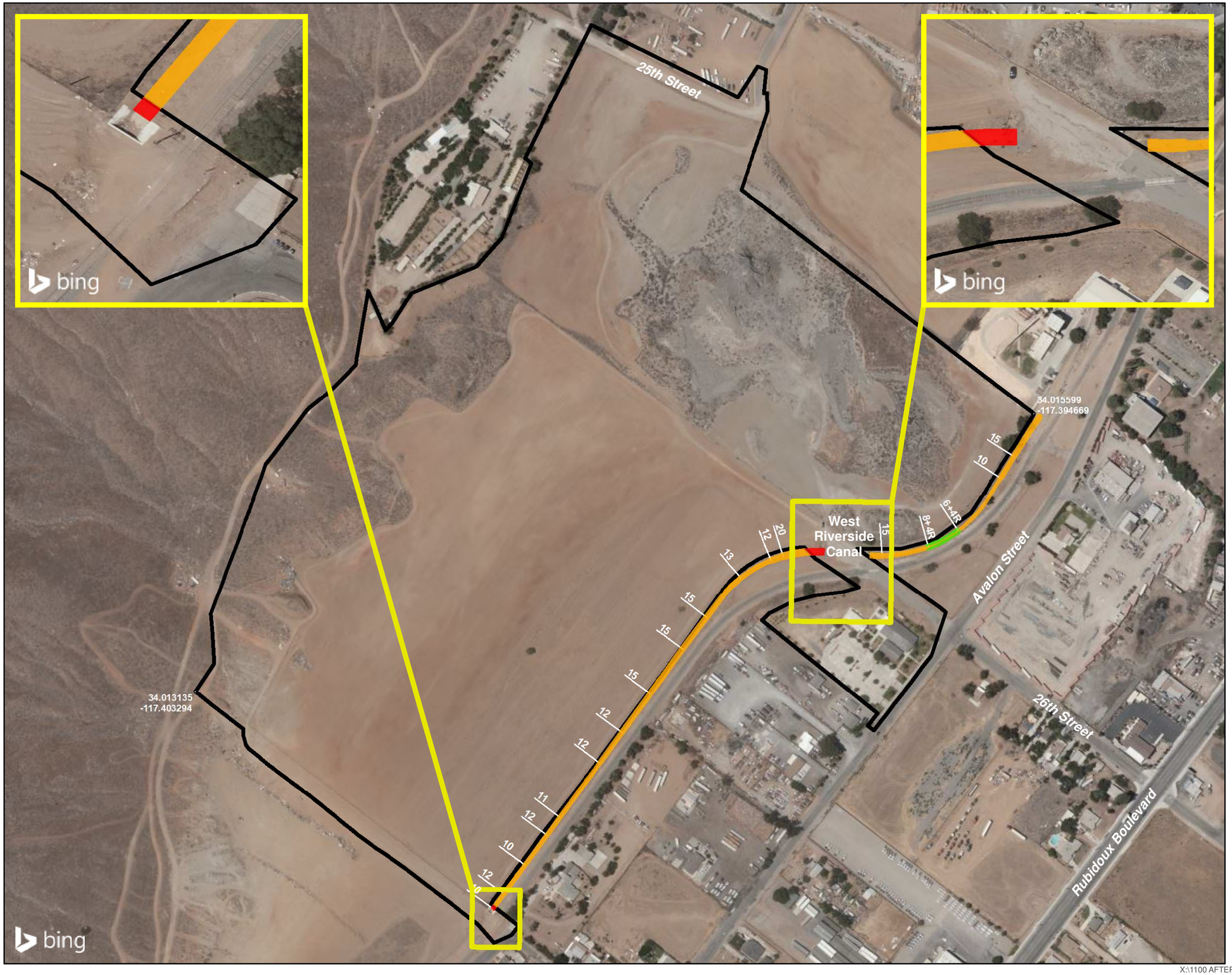
Photograph 8:Downstream view of West Riverside Canal at 28th Street. Culvert discharges to storm drain and does not flow through to downstream segment of canal.

Photograph 9: Offsite downstream view of West Riverside Canal east of 20th Street. Note trash, debris and upland vegetation within abandoned canal.

Photograph 10: : Offsite upstream view of West Riverside Canal east of 20th Street. Note dense eucalyptus trees within abandoned canal.

Photograph 11: Offsite upstream view of West Riverside Canal west of 20th Street. Note trash, debris within abandoned canal and concrete sides of canal.

Photograph 12: Offsite downstream view of West Riverside Canal east of Muriel Drive. Note dense upland vegetation within abandoned canal with concrete sides.



Project Site

Avoided Riparian

Avoided Non-Riparian Canal

Impacted Non-Riparian Canal

12 Width of Canal in Feet

N

0 150 300 600

Feet

1 inch = 300 feet

Coordinate System: State Plane 6 NAD 83
Projection: Lambert Conformal Conic
Datum: NAD83
Map Prepared by: B. Gale, GLA
Date Prepared: August 4, 2020

RUBIDOUX COMMERCE PARK

CDFW Jurisdictional Delineation Impact Map

GLENN LUKOS ASSOCIATES

Exhibit 5A

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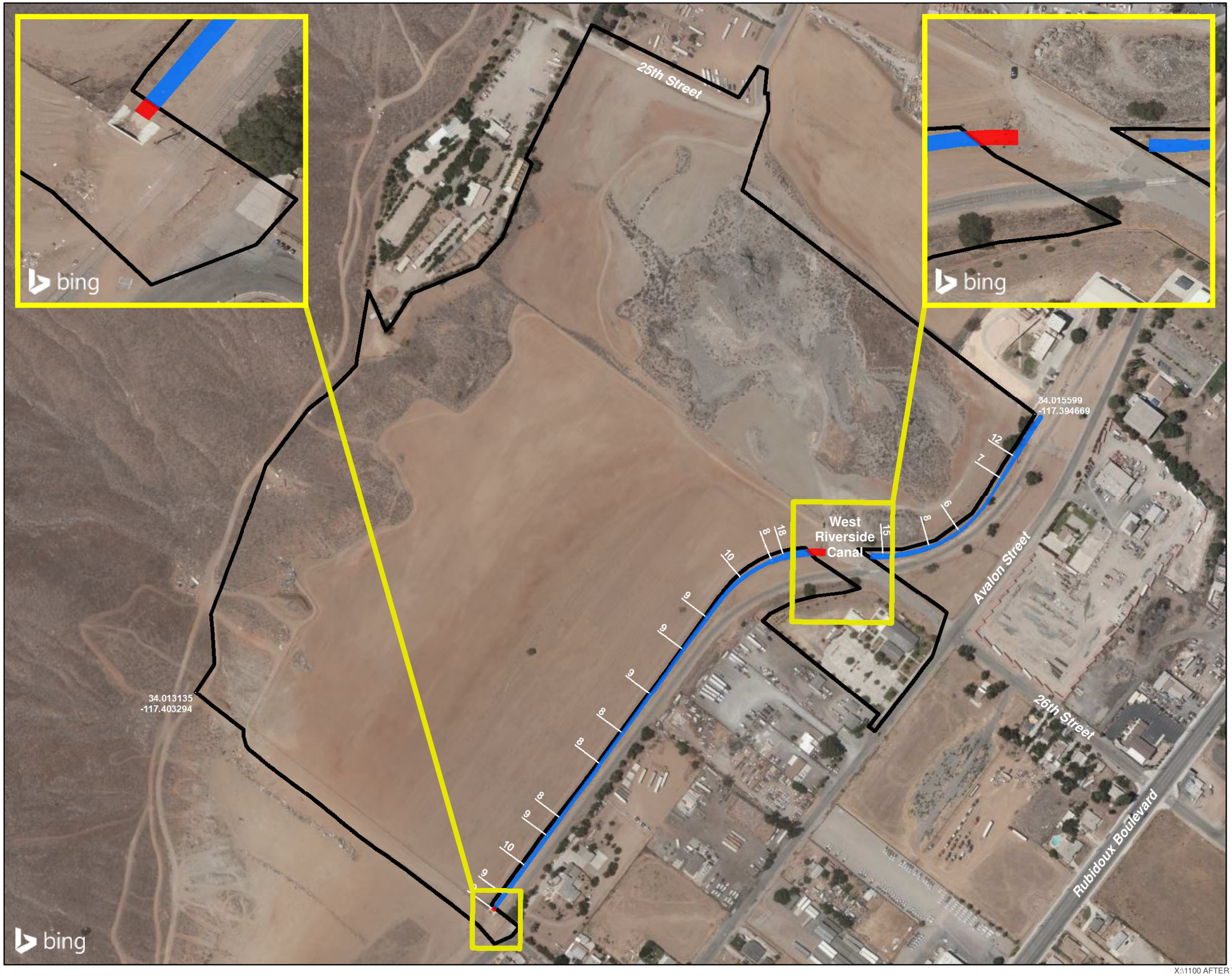

Project Site

Avoided Non-Wetland Canal

Impacted Non-Wetland Canal

12 Width of Canal in Feet

N

0 150 300 600

Feet

1 inch = 300 feet

Coordinate System: State Plane 6 NAD 83
Projection: Lambert Conformal Conic
Datum: NAD83
Map Prepared by: B. Gale, GLA
Date Prepared: August 4, 2020

RUBIDOUX COMMERCE PARK

RWQCB Jurisdictional Delineation Impact Map

GLENN LUKOS ASSOCIATES

Exhibit 5B

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