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SUBJECT: Habitat Assessment and Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Consistency Analysis for the Proposed Project Located at 21705 Cajalco Road Perris, Riverside County, California.

Introduction

This report contains the findings of ELMT Consulting's (ELMT) habitat assessment and Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) consistency analysis for the proposed project located at 21705 Cajalco Road, Perris, Riverside County, California. The field investigation was conducted by biologist Jacob H. Lloyd Davies on September 11, 2020 to document baseline conditions and assess the potential for special-status¹ plant and wildlife species to occur within the proposed project site that could pose a constraint to implementation of the proposed project. Additionally, this report provides an in-depth assessment of the suitability of the on-site habitat to support burrowing owl (*Athene cunicularia*), as well as several other special-status plant and wildlife species identified by the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB), MSHCP and other electronic databases as potentially occurring in the vicinity of the project site.

The site was also evaluated for its potential to support natural drainage features, ponded areas, and/or water bodies that have the potential to fall under the regulatory authority of the of the United States Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), California Department of Fish and Wildlife (CDFW), or qualify as riparian/riverine habitat under the MSHCP.

The Western Riverside County Regional Conservation Authority (RCA) MSHCP Information Map was queried to determine if the MSHCP identifies any potential survey requirements for the project. The project site was reviewed against the MSHCP to determine if the site is located within any MSHCP areas including Criteria Cells (core habitat and wildlife movement corridors) or areas proposed for conservation. Based on the RCA MSHCP Information Map query and review of the MSHCP, it was determined that the project site is located within the Mead Valley Area Plan of the MSHCP, but is not located within any Criteria Cells or MSHCP Conservation Areas. Further, it was determined that the project site is only located within the designated survey area for burrowing owl.

¹ As used in this report, "special-status" refers to plant and wildlife species that are federally, State, and MSHCP 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.

Project Location

The project site is generally located west of Interstate 215, north of State Route 74, south of State Route 60, and east of Lake Matthews in the Mead Valley Area in unincorporated Riverside County, California. The project site is depicted on the Steele Peak quadrangle of the United States Geological Survey's (USGS) 7.5-minute topographic map within Section 10 of Township 4 South, Range 4 West. Specifically, the approximately 3.2-acre project site is located at 21705 Cajalco Road within Assessor Parcel Number (APN) 318-130-012. Refer to Exhibits 1-3 in Attachment A.

Project Description

The proposed project consists of the grading for, and construction of, a mixed use commercial center with associated parking. The planned commercial center will consist of a 5,162-square foot (sqft) 16 pump general auto fueling station, 932-sqft 4 pump diesel fueling station, 1,489-sqft car wash, 4,011-sqft convenience store, 1,643-sqft fast food restaurant with drive thru, and an additional 8,200 square feet of general retail and restaurant uses. Access to the planned commercial center will be provided by new driveways on Cajalco Road and Carroll Street. Refer to Attachment B, *Proposed Site Plan*.

Methodology

Literature Review

Prior to conducting the field investigation, species and habitat information was gathered from the reports related to the specific project and relevant databases for the Steele Peak USGS quadrangle to determine which species and/or habitats would be expected to occur onsite. These sources include:

- California Native Plant Society Electronic Inventory (CNPSEI) database;
- California Natural Diversity Database (CNDDB) *Rarefind 5*;
- CNDDB Biogeographic Information and Observation System (BIOS);
- Environmental Protection Agency (EPA) Water Program "My Waters" data layers
- Google Earth Pro historic aerial imagery (1994-2020);
- Stephen's Kangaroo Rat Habitat Conservation Plan
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey²;
- United States Fish and Wildlife Service (USFWS) Critical Habitat designations for Threatened and Endangered Species;
- USFWS National Wetlands Inventory (NWI);
- Western Riverside County Regional Conservation Authority (RCA) MSHCP Information Map; and
- 2006 Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area.

The literature review provided a baseline from which to inventory the biological resources potentially

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.

occurring on 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. Additionally, the proposed project was reviewed to determine consistency with the MSHCP. Geographic Information System (GIS) software was utilized to map the project site in relation to MSHCP areas including Criteria Cells (core habitat and wildlife movement corridors) and the Conservation Area, including Public/Quasi-Public lands.

Habitat Assessment/Field Investigation

Following the literature review, biologist Jacob H. Lloyd Davies inventoried and evaluated the condition of the habitat within the project site on September 11, 2020. Plant communities identified on aerial photographs during the literature review were verified by walking meandering transects through the plant communities and along boundaries between plant communities. 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 survey.

All plant and wildlife species observed, as well as dominant plant species within each plant community, were recorded. Plant species observed during the field survey were identified by visual characteristics and morphology in the field. Unusual and less familiar plant species were photographed during the field survey 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 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 survey using the USDA NRCS Soil Survey for Western Riverside Area, 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 delineated on an aerial photograph, classified in accordance with those described in the MSHCP, and then digitized into GIS Arcview. The Arcview application was used to compute the area of each plant community in acres.

Plants

Common plant species observed during the field survey 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 field surveys 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 fairly 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 be considered riparian/riverine habitat and/or fall under the jurisdiction of the Corps, 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

The project site is bordered by residential developments to the west, east and south, and Cajalco Road to the north. Beyond Cajalco Road to the north is a vacant/undeveloped field bordered by residential developments.

Topography and Soils

Elevation on the project site ranges from approximately 1,661 to 1,670 feet above mean sea level, is generally flat with no areas of significant topographic relief, and slopes from the east to west. Based on the NRCS USDA Web Soil Survey, the project site is only underlain by Fallbrook fine sandy loam (2 to 8 percent slopes). Refer to Exhibit 4, *Soils*, in Attachment A. Soils on-site have been mechanically disturbed and heavily compacted from historic land uses (i.e., onsite and surrounding development).

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 consists of both developed and undeveloped, vacant land that has been subject to a variety of anthropogenic disturbances. These disturbances have eliminated the natural plant communities that once occurred on and surrounding the project site. Refer to Attachment C, *Site Photographs*, for representative site photographs. No native plant communities will be impacted from implementation of the proposed project.

The project site supports one (1) vegetation community: non-native grassland. In addition, the site supports two (2) land cover types that would be classified as disturbed and developed (refer to Exhibit 5, *Vegetation* in Attachment A). The non-native grassland vegetation community is consolidated in the southern and eastern portions of the project site and is dominated by non-native grasses including wild oat (*Avena fatua*), cheatgrass (*Bromus tectorum*) and red brome (*Bromus madritensis*). Other plant species observed within the non-native grassland vegetation community include Russian thistle (*Salsola tragus*), prickly lettuce (*Lactuca serriola*), Mexican fan palm (*Washingtonia robusta*), and Mediterranean mustard (*Hirshfeldia*

incana).

The project site supports disturbed land throughout the western and northern portions of the site and along the boundaries of the site. The disturbed areas support minimal ruderal/weedy plant species. Plant species observed within the disturbed areas of the site include Russian thistle, Bermudagrass (*Cynodon dactylon*), prickly lettuce, flax-leaved horseweed (*Erigeron bonariensis*), tropical horseweed (*Erigeron sumatrensis*), Mediterranean mustard, knotweed (*Polygonum* sp.), smallseed sandmat (*Euphorbia polycarpa*), rattlesnake sandmat (*Euphorbia albomarginata*), sunflower (*Helianthus annuus*), paniculate tarplant (*Deinandra paniculata*), stinknet (*Oncosiphon pilulifer*), puncture vine (*Tribulus terrestris*), fiddleneck (*Amsinckia menziesii*), vinegarweed (*Trichostema lanceolatum*), telegraph weed (*Heterotheca grandiflora*), and tree tobacco (*Nicotiana glauca*).

The project site also supports developed land in the form of remnant foundations, fountains, and pavement located in the middle of the site, extending to the northern boundary. These areas are nearly devoid of vegetation with the exception of a few ruderal/weedy species capable of growing in highly disturbed areas and remnant ornamental vegetation.

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 a general reference and is limited by the season, time of day, and weather conditions in which the field survey was conducted. Wildlife detections were based on calls, songs, scat, tracks, burrows, and direct observation.

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.

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.

Reptiles

The project site provides a limited amount of habitat for a few reptile species adapted to a high degree of human disturbance associated with the on-site weed abatement activities and development. No reptile species were observed during the field investigation. Common reptile species adapted to high levels of anthropogenic disturbance that could be expected to occur on-site include common side-blotched lizard (*Uta stansburiana elegans*) and Great Basin fence lizard (*Sceloporus occidentalis longipes*). 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 survey included American kestrel (*Falco sparverius*), European starling (*Sturnus vulgaris*), house sparrow (*Passer domesticus*), rock pigeon (*Columbia liva*), Say's phoebe (*Sayornis saya*), black phoebe (*Sayornis nigricans*), and American crow (*Corvus brachyrhynchos*).

Mammals

No mammalian species were observed project site during the field investigation. Common mammalian species expected to occur include Botta's pocket gopher (*Thomomys bottae*) and coyote (*Canis latrans*). No bat species are expected to occur due to a lack of suitable roosting habitat (i.e., trees, crevices).

Nesting Birds and Raptors

No active nests or birds displaying nesting behavior were observed during the field survey, which was conducted outside of the breeding season. Although heavily disturbed, the project site has the potential to provide minimal foraging and nesting habitat for year-round and seasonal avian residents, raptors, as well as migrating songbirds that could occur in the area that area adapted to urban environments. Additionally, the disturbed habitats have to potential to support ground-nesting birds such as killdeer (*Charadrius vociferus*).

A pre-construction nesting bird clearance survey shall be conducted for active avian nests of species protected by the Migratory Bird Treaty Act and Fish and Game code prior to ground disturbing activities.

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 project site has not been identified as occurring in a wildlife corridor or linkage. The proposed project will be confined to existing areas that have been heavily disturbed or developed, are 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 site to a recognized wildlife corridor or linkage. As such, implementation of the proposed project is not expected to impact wildlife movement opportunities. Therefore, impacts to wildlife corridors or linkages are not expected to occur.

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 field investigation. Further no blueline streams, have been recorded on the project site. Therefore, development of the project will not result in impacts to Corps, Regional Board, or CDFW jurisdiction and regulatory approvals will not be required.

Special-Status Biological Resources

The CNDDDB was queried for reported locations of special-status plant and wildlife species as well as natural communities of special concern in the Steele Peak USGS 7.5-minute quadrangle. A search of published records within these quadrangles was conducted using the CNDDDB Rarefind 5 online software and the CDFW BIOS database and the CNPS Inventory of Rare and Endangered Plants of California that supplied information regarding the distribution and habitats of vascular plants in the vicinity of the project site. 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 fourteen (14) special-status plant species, forty-nine (49) special-status wildlife species, and three (3) special-status habitats as having potential to occur within the Steele Peak 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 are presented in *Table D-1: Potentially Occurring Special-Status Biological Resources*, provided in Attachment D. Refer to Table D-1 for a determination regarding the potential occurrence of special-status plant and wildlife species within the project site.

Special-Status Plants

According to the CNDDDB and CNPS, fourteen (14) special-status plant species have been recorded in the Steele Peak quadrangle (refer to Attachment D). One special-status plant species, paniculate tarplant (*Deinandra paniculata*), was observed on the project site during the field investigation. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that all other special-status plant species are presumed absent from the project site due to the lack of native habitats and routine on-site disturbances.

Paniculate Tarplant

Paniculate tarplant is designated as a CNPS Rare Plant Rank 4.2 (a watch list of plants of limited distribution) that is common in western Riverside County. This species is not regulated under the federal or state Endangered Species Act and is not recognized by the MSHCP as a species with regional significance. In an effort to increase coverage for unlisted but regionally sensitive plants under the

California Environmental Quality Act (CEQA), the California Native Plant Society began publishing sensitivity rankings for special-status plant species. CNPS Rare Plant Rank 4 plant species may be considered rare in California if they occur in less than two California counties or if they are of local concern. Paniculate tarplant is found in at least seven (7) counties throughout southern California and was not recognized as a special-status species of local concern by the MSHCP. This species, therefore, does not rise to the level of a species of concern under CEQA.

The project site supports an isolated/fragmented population of paniculate tarplant that is subject to routine anthropogenic disturbances, historically supported staging and storage activities, and is bordered by development to the west, south, and east. As a result, it was determined that the project site does not provide long-term conservation value for paniculate tarplant and no mitigation obligations specific to this species are expected.

Special-Status Wildlife

According to the CNDDDB, forty-nine (49) special-status wildlife species have been reported in the Steele Peak quadrangle (refer to Attachment D). No special-status wildlife species were observed on-site during the field investigation. 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 low potential to support Cooper's hawk (*Accipiter cooperii*), sharp-shinned hawk (*Accipiter striatus*), and California horned lark (*Eremophila alpestris actia*). All remaining special-status wildlife species were presumed to be absent from the project site.

To ensure no impacts to Coopers' hawk, sharp-shinned hawk, and California horned lark do not occur from implementation of the proposed project, a pre-construction nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of the pre-construction nesting bird clearance survey, impacts to Coopers' hawk, sharp-shinned hawk, and California horned lark will be less than significant and no mitigation will be required.

Special-Status Plant Communities

The CNDDDB lists three (3) special-status habitats as being identified within the Riverside East, Steele Peak, Sunnymead, and Perris quadrangles: Southern Coast Live Oak Riparian Forest, Southern Cottonwood Willow Riparian Forest, and Southern Sycamore Alder Riparian Woodland; which do not occur onsite. No CDFW special-status plant communities occur within the boundaries of 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 closest designated Critical Habitat is located approximately 5.7 miles south of the site for coastal California gnatcatcher (*Poliopitila californica californica*) and 5.9 miles southeast of the site for thread-leaved brodiaea (*Brodiaea filifolia*) and spreading navarretia (*Navarretia fossalis*), along the San Jacinto River. Therefore, the loss or adverse modification of Critical Habitat will not occur as a result of the proposed project and consultation with the USFWS will not be required for implementation of the proposed project.

Western Riverside County MSHCP

The project site is located within the Mead Valley Area Plan Area Plan of the MSHCP, but is not located within any Criteria Cells or MSHCP Conservation Areas (refer to Exhibit 7, *MSHCP Criteria Area*, in Attachment A). Additionally, the project site is only located within the designated survey area for burrowing owl as depicted in Figures 6-4 within Section 6.3.2 of the MSHCP, and as identified by the Riverside Conservation Authority Information Map.

- Amphibian Not in an amphibian survey area
- Burrowing Owls Burrowing Owl Survey Area
- Criteria Area Species Not in a criteria area species survey area
- Mammals Not in a mammal survey area
- Narrow Endemic Plants Not in a narrow endemic plant survey area

Since the County is a permittee under the MSHCP and, while the project is not specifically identified as a Covered Activity under Section 7.1 of the MSHCP, public and private development that are outside of Criteria Areas and Public/Quasi-Public (PQP) Lands are permitted under the MSHCP, subject to consistency with MSHCP policies that apply to area outside of Criteria Areas. As such, to achieve coverage, the project must be consistent with the following policies of the MSHCP:

- The policies for the protection of species associated with Riparian/Riverine areas and vernal pools as set forth in Section 6.1.2 of the MSHCP;
- The policies for the protection of Narrow Endemic Plant Species as set forth in Section 6.1.3 of the MSHCP;
- The requirements for conducting additional surveys as set forth in Section 6.3.2 of the MSHCP;
- Guidelines pertaining to the Urban/Wildlands Interface intended to address indirect effects associated with locating Development in proximity to the MSHCP Conservation Area as detailed in Section 6.1.4 of the MSHCP.

Riparian/Riverine Areas and Vernal Pools

As identified in Section 6.1.2 of the MSHCP, *Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools*, riparian/riverine areas are defined as areas dominated by trees, shrubs, persistent emergent plants, or emergent mosses and lichens which occur close to or are dependent upon nearby freshwater, or areas with freshwater flowing during all or a portion of the year. Conservation of these areas is intended to protect habitat that is essential to a number of listed or special-status water-dependent fish, amphibian, avian, and plant species. If impacts to riparian/riverine habitat cannot be avoided, a Determination of Biologically Equivalent or Superior Preservation (DBESP) must be developed to address the replacement of lost functions of habitats in regards to the listed species. This assessment is independent from considerations given to “waters of the U.S.” and “waters of the State” under the CWA and the California Fish and Game Code.

No jurisdictional drainages, riparian/riverine and/or wetland features were observed within the project site during the field investigation. Therefore, development of the proposed project will not result in impacts to riparian/riverine habitats and a DBESP will not be required for the loss of riparian/riverine habitat from development of the proposed project.

Vernal Pools and Fairy Shrimp Habitat

One of the factors for determining the suitability of the habitat for fairy shrimp would be demonstrable evidence of seasonal ponding in an area of topographic depression that is not subject to flowing waters. These astatic pools are typically characterized as vernal pools. More specifically, vernal pools are seasonal wetlands that occur in depression areas without a continual source of water. They have wetland indicators of all 3 parameters (soils, vegetation, and hydrology) during the wetter portion of the growing season but normally lack wetland indicators of hydrology and/or vegetation during the drier portion of the growing season. Obligate hydrophytes and facultative wetlands plant species are normally dominant during the wetter portion of the growing season. The determination that an area exhibits vernal pool characteristics and the definition of the watershed supporting vernal pool hydrology is made on a case-by-case basis. Such determinations should be considered the length of time the areas exhibits upland and wetland characteristics and the manner in which the area fits into the overall ecological system as a wetland. The seasonal hydrology of vernal pools provides for a unique environment, which supports plants and invertebrates specifically adapted to a regime of winter inundation, followed by an extended period when the pool soils are dry.

Vernal pools are seasonally inundated, ponded areas that only form in regions where specialized soil and climatic conditions exist. During fall and winter rains typical of Mediterranean climates, water collects in shallow depressions where downward percolation of water is prevented by the presence of a hard pan or clay pan layer (duripan) below the soil surface. Later in the spring when rains decrease and the weather warms, the water evaporates and the pools generally disappear by May. The shallow depressions remain relatively dry until late fall and early winter with the advent of greater precipitation and cooler temperatures. Vernal pools provide unusual "flood and drought" habitat conditions to which certain plant and wildlife species have specifically adapted as well as invertebrate species such as fairy shrimp.

The MSHCP lists two general classes of soils known to be associated with listed and special-status plant species; clay soils and Traver-Domino Willow association soils. The specific clay soils known to be

associated with listed and special-status species within the MSHCP plan area include Bosanko, Auld, Altamont, and Porterville series soils, whereas Traver-Domino Willows association includes saline-alkali soils largely located along floodplain areas of the San Jacinto River and Salt Creek. Without the appropriate soils to create the impermeable restrictive layer, none of the special-status plant or wildlife species associated with vernal pools can occur on the project site. None of these soils have been documented within the project site.

A review of recent and historic aerial photographs (1994-2018) of the project site did not provide visual evidence of an astatic or vernal pool conditions within the project site. No ponding was observed, further supporting the fact that the drainage patterns currently occurring on the project site do not follow hydrologic regime needed for vernal pools. From this review of historic aerial photographs and observations during the field investigations, it can be concluded that there is no indication of vernal pools or suitable fairy shrimp habitat occurring within the proposed project site.

Narrow Endemic Plant Species

Section 6.1.3 of the MSHCP, *Protection of Narrow Endemic Plant Species*, states that the MSHCP database does not provide sufficient detail to determine the extent of the presence/distribution of Narrow Endemic Plant Species within the MSHCP Plan Area. Additional surveys may be needed to gather information to determine the presence/absence of these species to ensure that appropriate conservation of these species occurs. Based on the RCA MSHCP Information Map query and review of the MSHCP, it was determined that the project site is not located within the designated survey area for Narrow Endemic Plant Species. Through the field investigation, it was determined that the project site does not provide suitable habitat for any of the Narrow Endemic Plant Species listed under Section 6.1.3 of the MSHCP. Therefore, no additional surveys or analysis is required.

Additional Survey Needs and Procedures

In accordance with Section 6.3.2 of the MSHCP, *Additional Survey Needs and Procedures*, additional surveys may be needed for certain species in order to achieve coverage for these species. The query of the RCA MSHCP Information Map and review of the MSHCP determined that the project site is located within the designated survey area for burrowing owl as depicted in Figure 6-4 within Section 6.3.2 of the MSHCP. No other special-status wildlife species surveys were identified.

Burrowing Owl

Burrowing owl is currently designated as a California Species of Special Concern. The burrowing owl 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 level to gently-sloping areas characterized by open vegetation and bare ground. The western burrowing owl (*A.c. hypugaea*), which occurs throughout the western United States including California, rarely digs its own burrows and is instead dependent upon the presence of burrowing mammals (i.e., California ground squirrels, coyotes, and badgers) whose burrows are often used for roosting and nesting. 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. They also require low growth or open vegetation allowing line-of-sight observation of the surrounding habitat to forage and watch for predators. In California, the burrowing owl breeding season extends from the beginning of February through the end of August.

Under the MSHCP burrowing owl is considered an adequately conserved covered species that may still require focused surveys in certain areas as designated in Figure 6-4 of the MSHCP. The survey for burrowing owl requires a systematic survey of all areas that provide suitable habitat plus a 150-meter (approximately 500 feet) zone of influence on all sides of suitable habitat, where applicable. Since the project site is entirely surrounded by development or private property, only the project site was surveyed on foot. Off-site areas with potentially suitable habitat were surveyed with binoculars. Survey transects were orientated north to south and were conducted at a maximum of 30-meter (approximately 100 feet) intervals to ensure 100% visual coverage of all areas in suitable habitat, as applicable based on topography of the site. Areas providing potential habitat for burrowing owls were surveyed for suitable burrows, consisting of natural and non-natural substrates in areas with low, open vegetation. All burrows encountered were examined for shape, scat, pellets, white-wash, feathers, tracks, and prey remains. Suitable burrows/sites, including rock piles and non-natural substrates, were thoroughly examined for signs of presence. The survey included identifying avian species in the area and observing behaviors that suggested nesting activity. Binoculars were used to observe distant birds and their activity around potential nesting habitat.

Despite a systematic search of the project site, no burrowing owls or sign (i.e., pellets, feathers, castings, or whitewash) were observed during the field investigation. Portions of the project site are vegetated with a variety of low-growing plant species that allow for minimal line-of-sight observation favored by burrowing owls. Further, no small mammal burrows that have the potential to provide suitable burrowing owl nesting habitat (>4 inches in diameter) were observed within the boundaries of the site. Additionally, the site is surrounded by tall trees and poles that provide perching opportunities for large raptors (i.e., red-tailed hawk) that can prey on burrowing owls. Based on this information, and as a result of current and historic on-site disturbances, and surrounding development, it was determined that burrowing owls do not have potential to occur on-site and no focused surveys are recommended.

Urban/Wildlands Interface Guidelines

Section 6.1.4 of the MSHCP, *Guidelines Pertaining to Urban/Wildlands Interface*, is intended to address indirect effects associated with development in proximity to MSHCP Conservation Areas. The Urban/Wildlife Interface Guidelines are intended to ensure that indirect project-related impacts to the MSHCP Conservation Area, including drainage, toxics, lighting, noise, invasive plant species, barriers, and grading/land development, are avoided or minimized. The project site is not located within or immediately adjacent to any Criteria Cells, corridors, or linkages. Therefore, the urban/Wildlands Interface Guidelines do not apply to this project

Stephen's Kangaroo Rat Habitat Conservation Plan

Separate from the consistency review against the policies of the MSHCP, Riverside County established a boundary in 1996 for protecting the Stephens' kangaroo rat (*Dipodomys stephensi*), a federally endangered and state threatened species. The Stephens' kangaroo rat is protected under the Stephens' Kangaroo Rat Habitat Conservation Plan (County Ordinance No. 663.10; SKR HCP). As described in the MSHCP

Implementation Agreement, a Section 10(a) Permit, and California Fish and Game Code Section 2081 Management Authorization were issued to the Riverside County Habitat Conservation Agency (RCHCA) for the Long-Term SKR HCP and was approved by the USFWS and CDFW in August 1990 (RCHCA 1996). Relevant terms of the SKR HCP have been incorporated into the MSHCP and its Implementation Agreement. The SKR HCP will continue to be implemented as a separate HCP; however, to provide the greatest conservation for the largest number of Covered Species, the Core Reserves established by the SKR HCP are managed as part of the MSHCP Conservation Area consistent with the SKR HCP. Actions shall not be taken as part of the implementation of the SKR HCP that will significantly affect other Covered Species. Take of Stephens' kangaroo rat outside of the boundaries but within the MSHCP area is authorized under the MSHCP and the associated permits.

The project site is located within the Mitigation Fee Area of the SKR HCP. Therefore, the applicant will be required to pay the SKR HCP Mitigation Fee prior to development of the project site.

Recommendations

The project site has the potential to support suitable habitat for foraging and nesting birds, which are protected by the Migratory Bird Treaty Act (MBTA) and Fish and Game Code. To avoid potential impacts to nesting birds, the following is recommended.

Pre-Construction Nesting Bird Clearance Survey

If construction occurs between February 1st and August 31st, 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 will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, 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.

Pre-Construction Burrowing Owl Clearance Survey

In accordance with the *Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan*, a pre-construction burrowing owl clearance survey shall be conducted within 30 days prior to ground disturbing activities to ensure burrowing owl remain absent from the project.

Conclusion

Based on the literature review and field survey, implementation of the project will have no significant impacts on federally, State, or MSHCP listed species known to occur in the general vicinity of the project site. Additionally, the project will have no effect on designated Critical Habitat because none exists within the area. No jurisdictional drainage and/or wetland features were observed on the project site during the field investigation. Additionally, the project site is not located within or adjacent to any criteria cell, and no riparian/riverine resources or vernal pools were found onsite. Therefore, the proposed project is consistent with Section 6.1.2 of the MSHCP. However, the project site provides suitable habitat for nesting birds and burrowing owl, and mitigation measures to reduce impacts are recommended. With completion of recommendations, and payment of the MSHCP Local Development Mitigation Fee, and Stephen's kangaroo rat mitigation fee, development of the project site is fully consistent with the MSHCP.

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

Sincerely,



Thomas J. McGill, Ph.D.
Managing Director



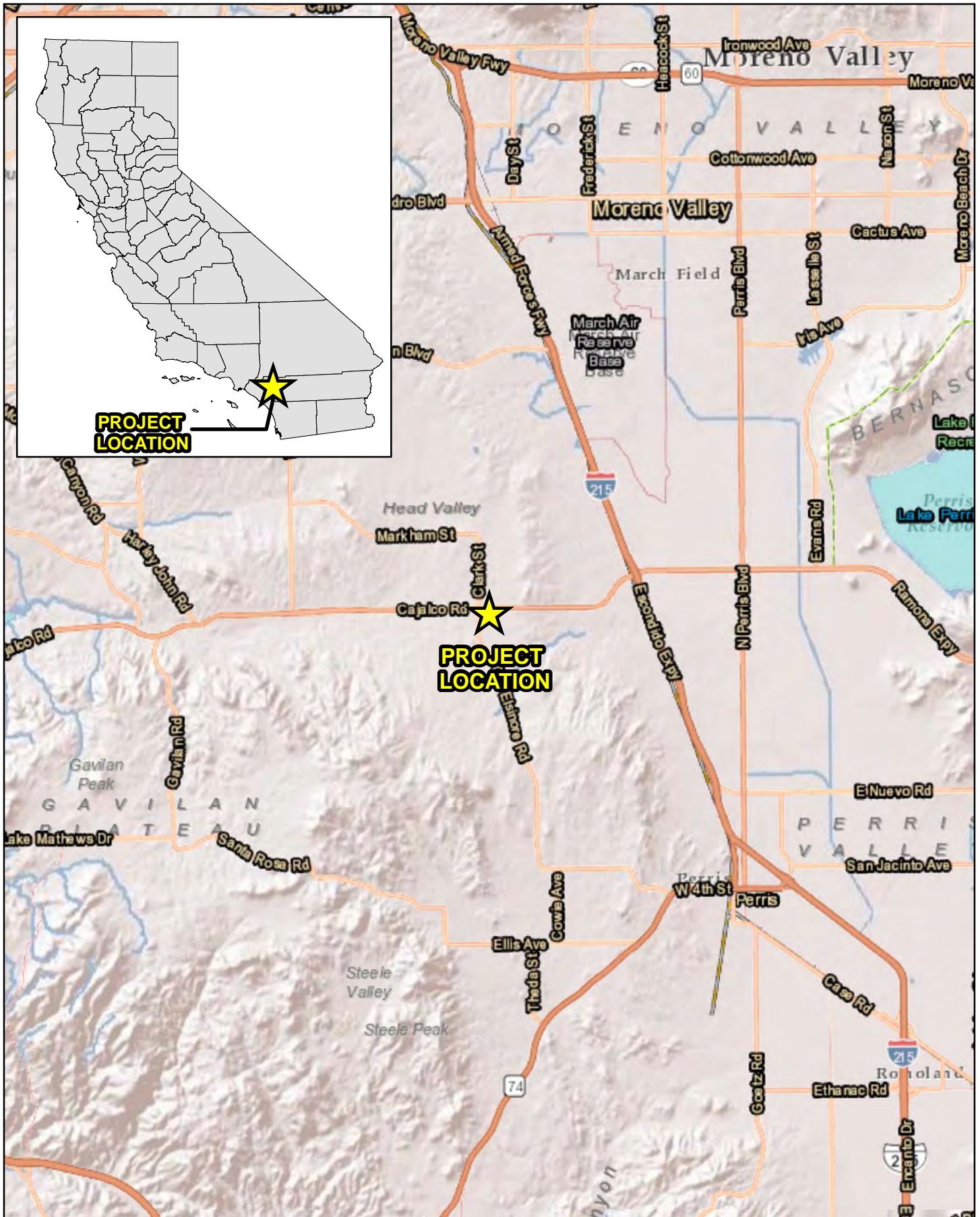
Travis J. McGill
Director

Attachments:

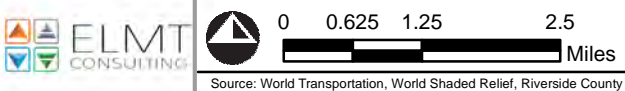
- A. *Project Exhibits*
- B. *Proposed Site Plan*
- C. *Site Photographs*
- D. *Potentially Occurring Special-Status Biological Resources*
- E. *Regulations*

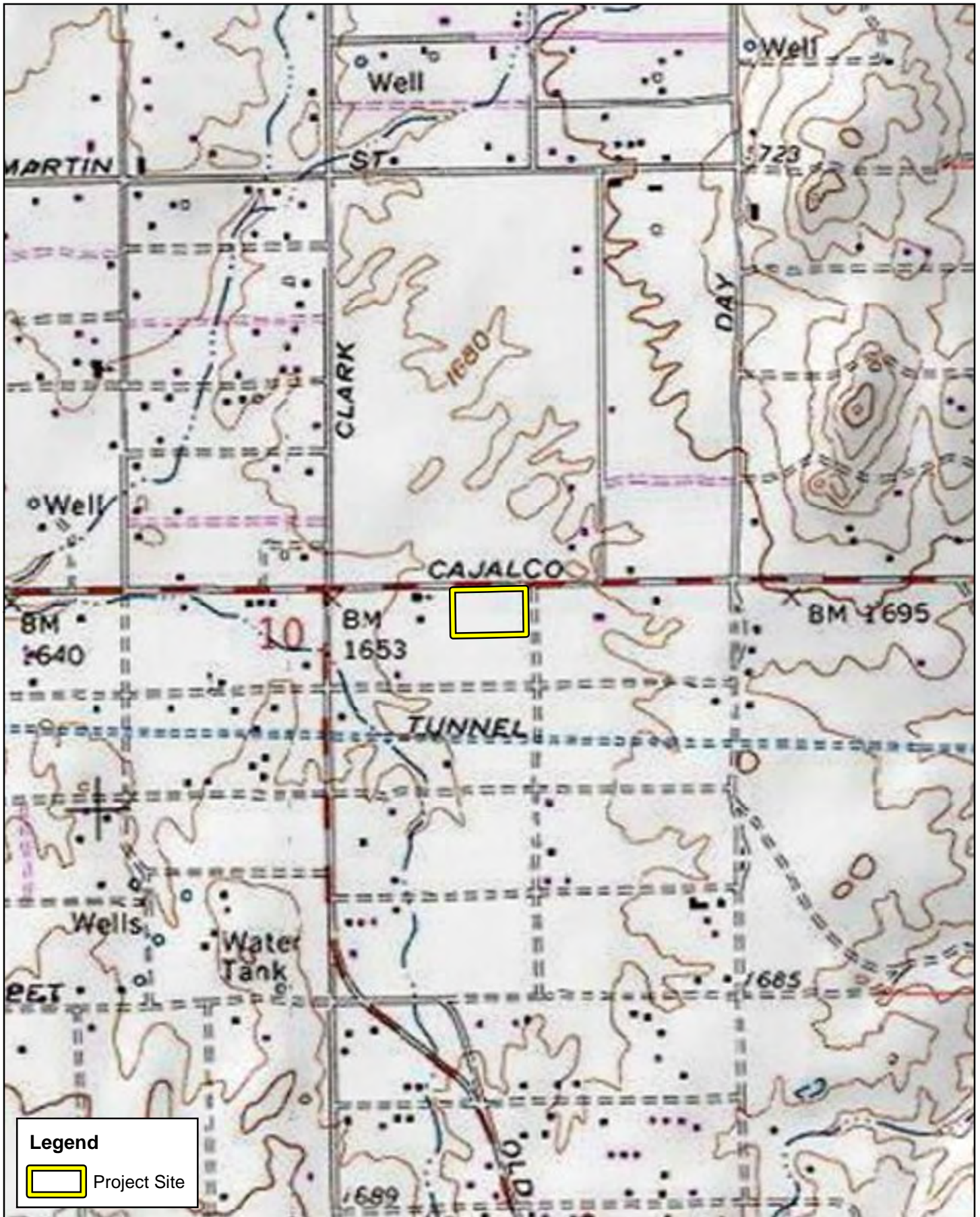
Attachment A

Project Exhibits

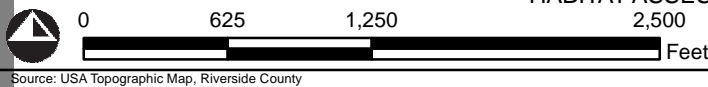


21705 CAJALCO ROAD
 HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS
Regional Vicinity

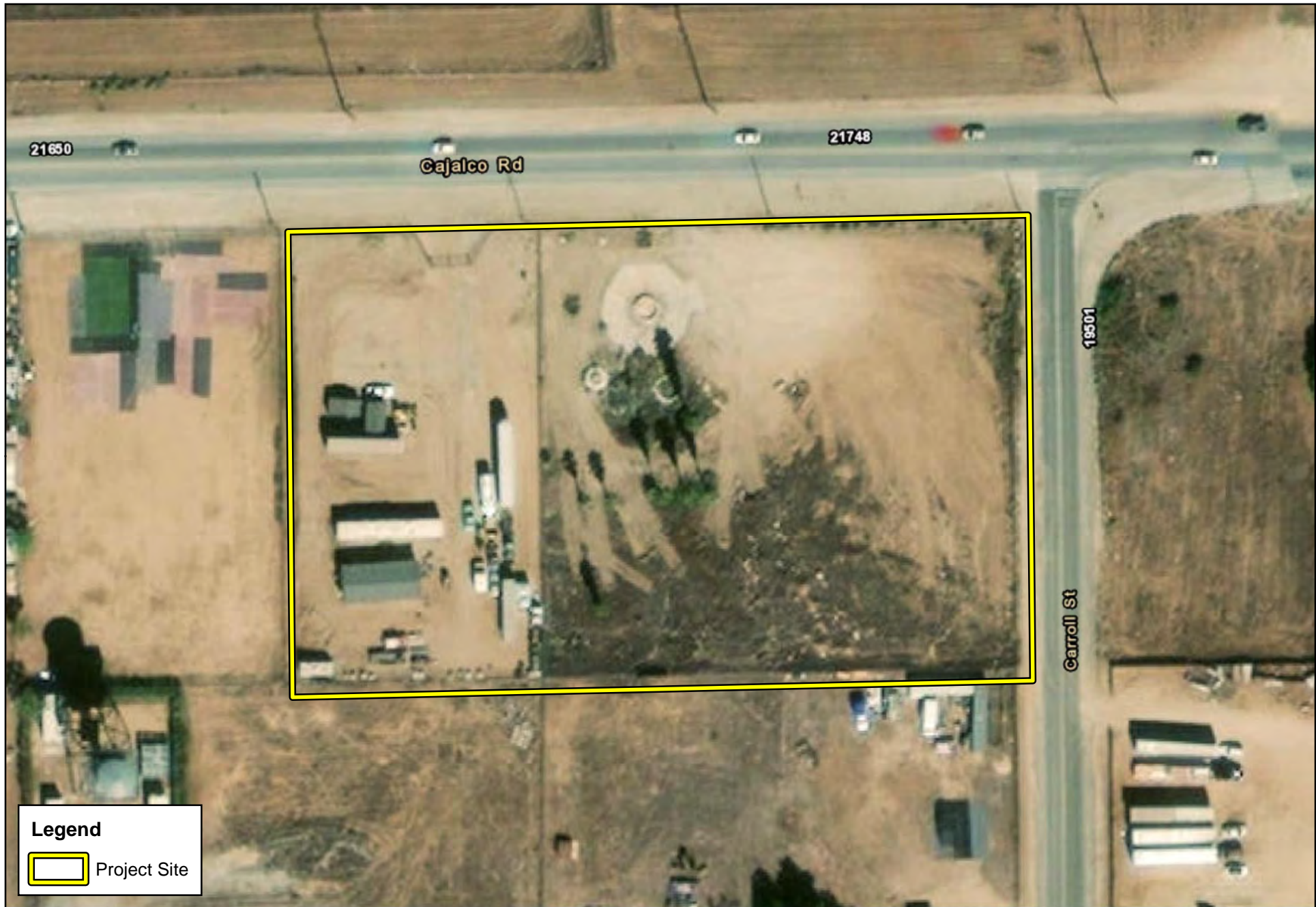





21705 CAJALCO ROAD
 HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS
 Site Vicinity

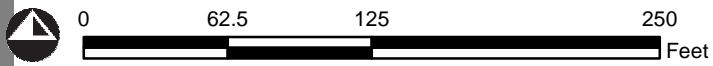


Source: USA Topographic Map, Riverside County



Legend

 Project Site



Source: ESRI Aerial Imagery, World Transportation, Riverside County

21705 CAJALCO ROAD
HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS

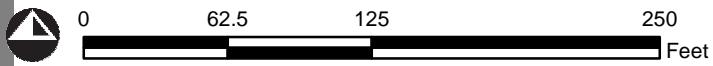
Project Site



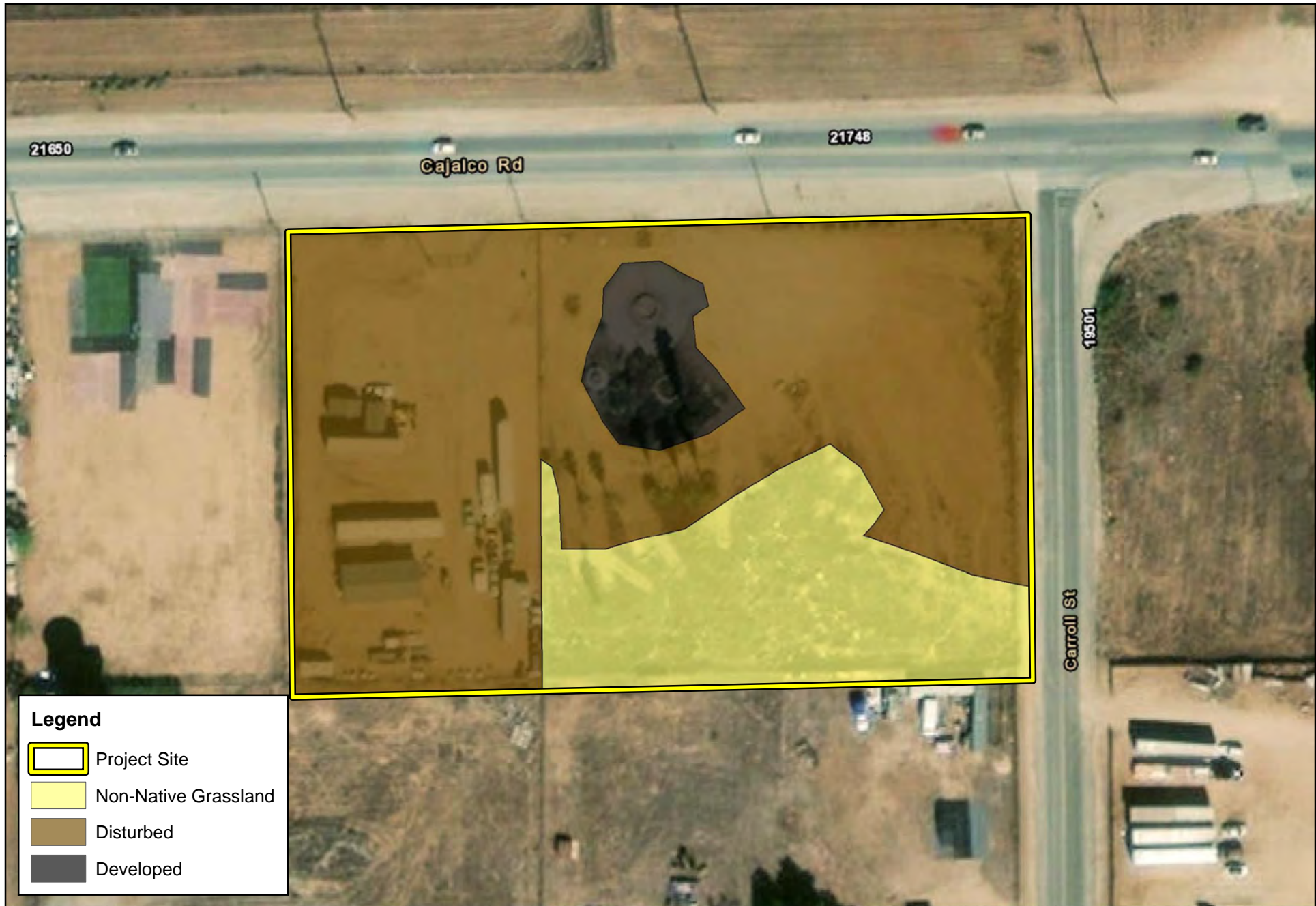
21705 CAJALCO ROAD
HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS

Soils

Exhibit 4

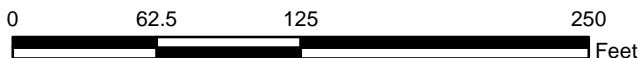


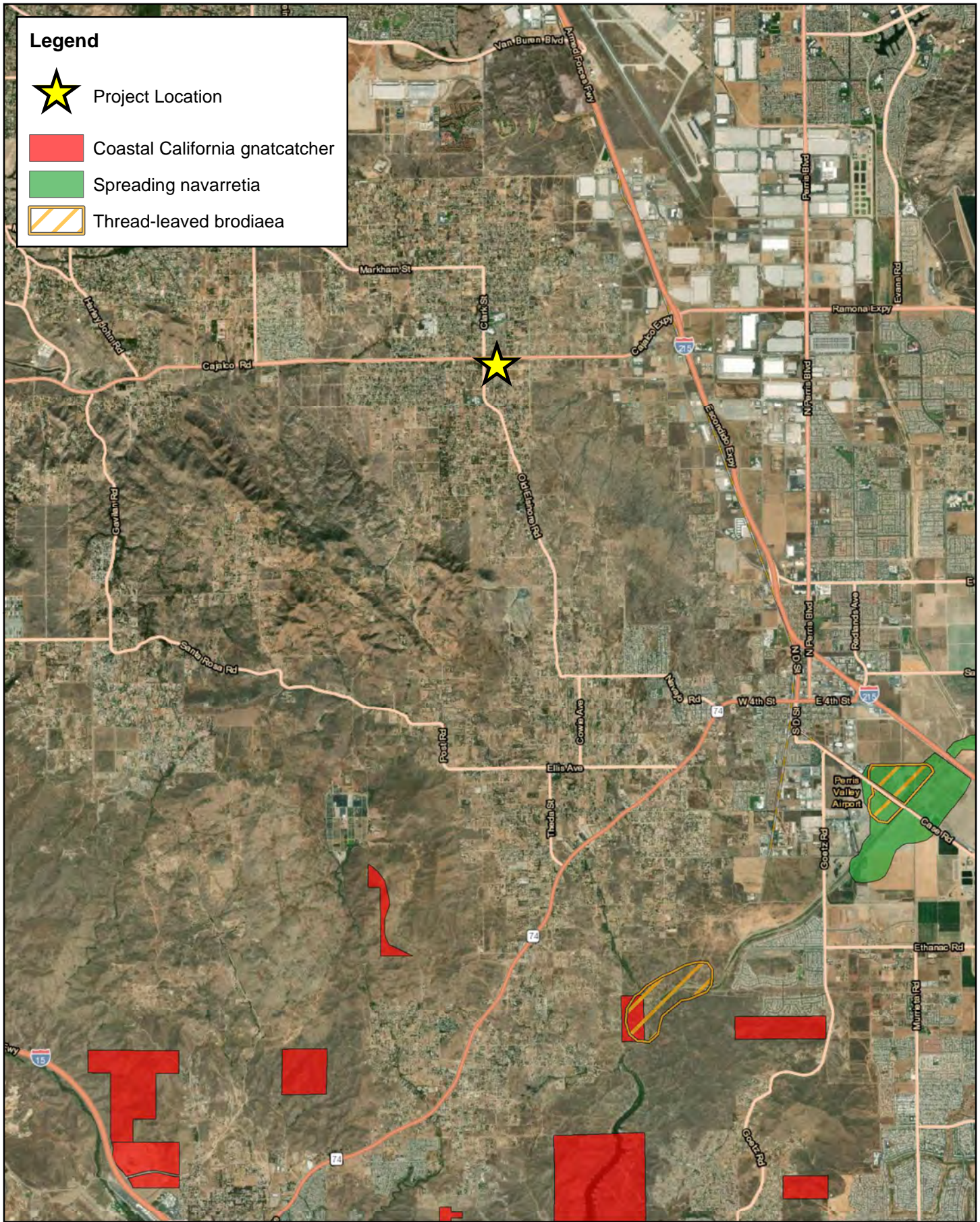
Source: ESRI Aerial Imagery, Soil Survey Geographic Database, World Transportation, Riverside County



21705 CAJALCO ROAD
 HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS

Vegetation





Legend



Project Location



Coastal California gnatcatcher



Spreading navarretia

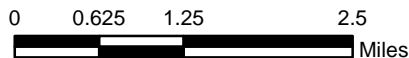


Thread-leaved brodiaea

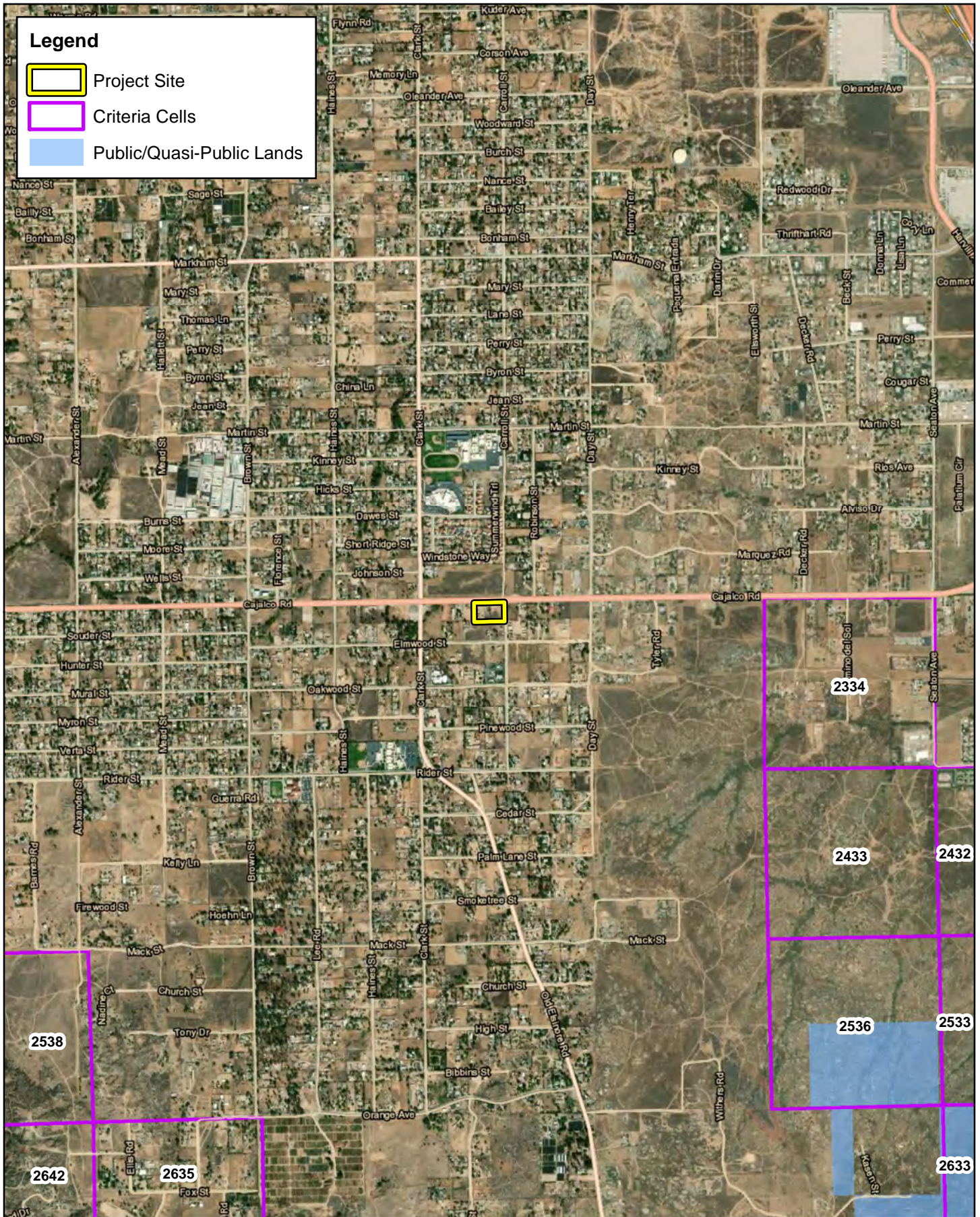
21705 CAJALCO ROAD

HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS

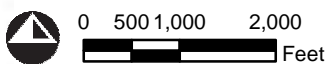
Critical Habitat



Source: ESRI Aerial Imagery, USFWS Critical Habitat, Riverside County



21705 CAJALCO ROAD
 HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS
MSHCP Criteria Area



Source: ESRI Aerial Imagery, Western Riverside County MSHCP, Riverside County

Attachment B

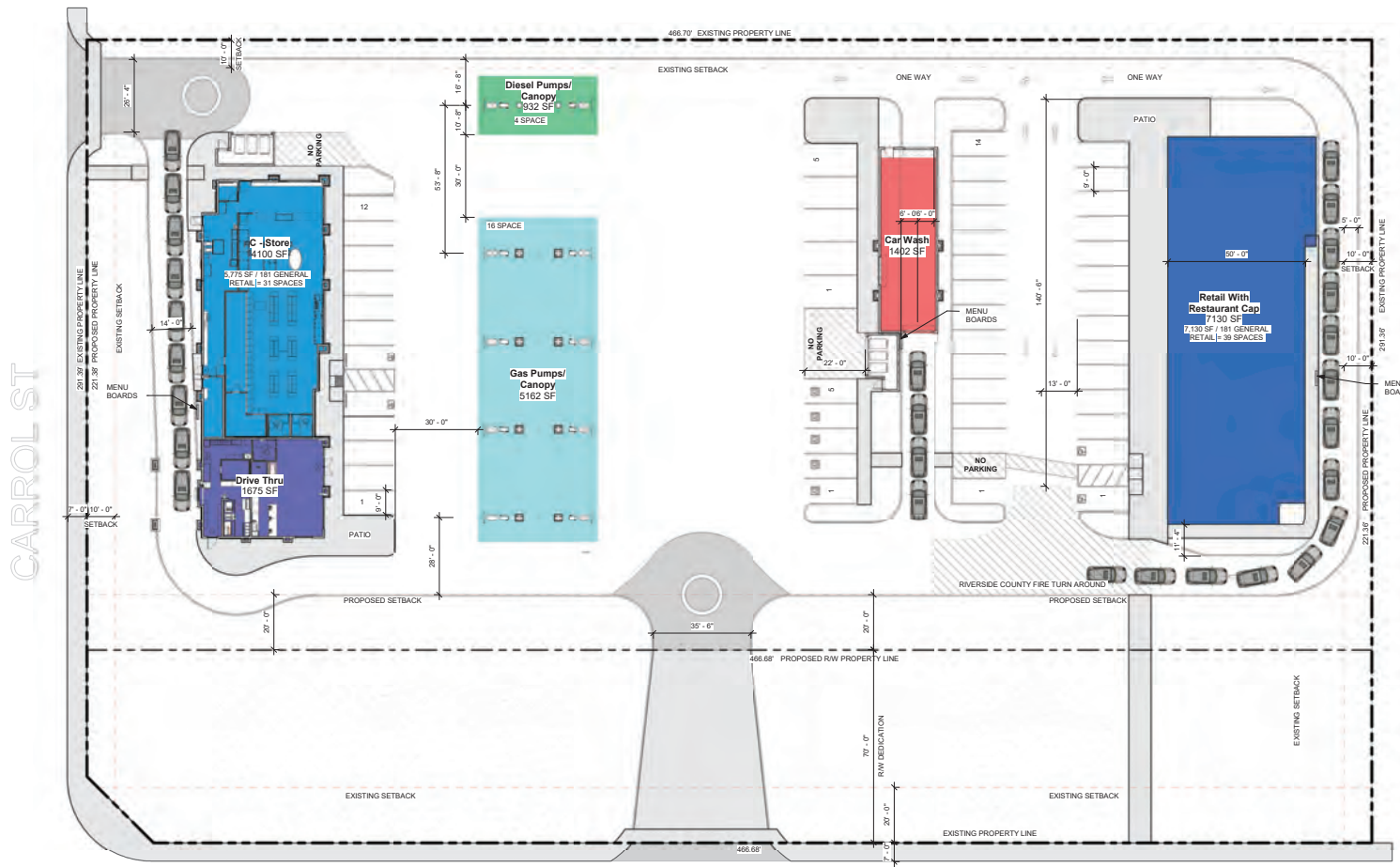
Site Plan

Conceptual Site Plan for:

Deemarco

21705 Cajalco Rd,
 Perris, CA 92570

Number	Revision Description	Date



Area Legend

- C - Store
- Car Wash
- Diesel Pumps/ Canopy
- Drive Thru
- Gas Pumps/ Canopy
- Retail With Restaurant Cap

Conceptual Site Plan for:

Deemarco

19-1101

9-8-2020

21705 Cajalco Rd,
 Perris, CA 92570

AS-101

SITE PLAN

1 Site Plan
 1" = 20'-0"

CAJALCO RD

TANKER TRUCK WB-67D



Attachment C

Site Photographs



Photograph 1: From the northwest corner of the project site looking east along the northern boundary.



Photograph 2: From the northwest corner of the project site looking south along the western boundary.



Photograph 3: From the southwest corner of the project site looking north along the western boundary.



Photograph 4: From the southwest corner of the project site looking east along the southern boundary.



Photograph 5: From the southeast corner of the project site looking west along the southern boundary.



Photograph 6: From the southeast corner of the project site looking north along the eastern boundary.



Photograph 7: From the northeast corner of the project site looking south along the eastern boundary.



Photograph 8: From the northeast corner of the project site looking west along the northern boundary.

Attachment D

Potentially Occurring Special-Status Plant Species

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

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
WILDLIFE SPECIES				
<i>Accipiter cooperii</i> Cooper's hawk	Fed: None CA: WL	Generally found in forested areas up to 3,000 feet in elevation, especially near edges and rivers. Prefers hardwood stands and mature forests, but can be found in urban and suburban areas where there are tall trees for nesting. Common in open areas during nesting season.	No	Low. There is minimal foraging habitat on-site. This species is adapted to urban environments and occurs commonly. No suitable nesting opportunities occur on-site.
<i>Accipiter striatus</i> sharp-shinned hawk	Fed: None CA: WL	Found in pine, fir and aspen forests. They can be found hunting in forest interior and edges from sea level to near alpine areas. Can also be found in rural, suburban and agricultural areas, where they often hunt at bird feeders. Typically found in southern California in the winter months.	No	Low. There is minimal foraging habitat on-site. This species is adapted to urban environments and occurs commonly. No suitable nesting opportunities occur on-site.
<i>Agelaius tricolor</i> tricolored blackbird	Fed: None CA: THR ; SSC	Range is limited to the coastal areas of the Pacific coast of North America, from Northern California to upper Baja California. Can be found in a wide variety of habitat including annual grasslands, wet and dry vernal pools and other seasonal wetlands, agricultural fields, cattle feedlots, and dairies. Occasionally forage in riparian scrub habitats along marsh borders. Basic habitat requirements for breeding include open accessible water, protected nesting substrate (freshwater marsh dominated by cattails, willows, and bulrushes [<i>Schoenoplectus</i> sp.]), and either flooded or thorny or spiny vegetation and suitable foraging space providing adequate insect prey.	No	Presumed absent. No suitable habitat is present on-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	Presumed absent. No suitable habitat is present on-site.
<i>Anniella pulchra</i> Northern California legless lizard	Fed: None CA: SSC	Occurs primarily in areas with sandy or loose loamy soils under sparse vegetation of beaches, chaparral, or pine-oak woodland; or near sycamores, oaks, or cottonwoods that grow on stream terraces. Often found under or in the close vicinity of logs, rocks, old boards, and the compacted debris of woodrat nests.	No	Presumed absent. No suitable habitat is present.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Anniella stebbinsi</i> Southern California legless lizard	Fed: None CA: SSC	Occurs in a variety of habitats, primarily in coastal sand dunes and a variety of interior habitats, including sandy washes and alluvial fans. They live mostly underground, burrowing in the loose, sandy soil.	No	Presumed absent. No suitable habitat is present on-site.
<i>Aquila chrysaetos</i> golden eagle	Fed: None CA: FP; WL	Occupies nearly all terrestrial habitats of the western states except densely forested areas. Favors secluded cliffs with overhanging ledges and large trees for nesting and cover. Hilly or mountainous country where takeoff and soaring are supported by updrafts is generally preferred to flat habitats. Deeply cut canyons rising to open mountain slopes and crags are ideal habitat.	No	Presumed absent. No suitable habitat is present on-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	Presumed absent. No suitable habitat is present on-site.
<i>Arizona elegans occidentalis</i> California glossy snake	Fed: None CA: SSC	Inhabits arid scrub, rocky washes, grasslands, and chaparral habitats.	No	Presumed absent. No suitable habitat is present on-site.
<i>Artemisospiza belli belli</i> Bell's sparrow	Fed: None CA: WL	Generally prefers semi-open habitats with evenly spaced shrubs 1 – 2 meters in height. Dry chaparral and coastal sage scrub. Less common in tall dense, old chaparral.	No	Presumed absent. No suitable habitat is present on-site.
<i>Asio otus</i> long-eared owl	Fed: None CA: SSC	Hunts mostly at night over grasslands and other open habitats. Nesting occurs in dense trees such as oaks and willows where it occupies stick nests of other species, particularly raptors or corvids.	No	Presumed absent. No suitable habitat is present on-site.
<i>Aspidoscelis hyperythra</i> orangethroat whiptail	Fed: None CA: WL	Semi-arid brushy areas typically with loose soil and rocks, including washes, streamsides, rocky hillsides, and coastal chaparral.	No	Presumed absent. No suitable habitat is present on-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	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Athene cunicularia</i> burrowing owl	Fed: None CA: SSC	Occurs in open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. Dependent upon fossorial mammals for burrows, most notably ground squirrels.	No	Presumed absent. Although heavily disturbed, the site provides line-of-site opportunities favored by burrowing owls; however, no suitable burrows (>4 inches in diameter) were observed on-site. Burrowing owls are known to occur on the March Air Reserve Base approximately 2.6 miles northeast of the site, but no sign was observed on-site.
<i>Bombus crotchii</i> Crotch bumble bee	Fed: None CA: CE	Exclusive to coastal California east towards the Sierra-Cascade Crest; less common in western Nevada.	No	Presumed absent. No suitable habitat is present on-site.
<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	Presumed absent. No suitable habitat is present on-site.
<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. 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	Presumed absent. No suitable habitat is present on-site.
<i>Chaetura vauxi</i> Vaux's swift	Fed:CA: None SSC	Prefers redwood and Douglas-fir habitats with nest-sites in large hollow trees and snags, especially tall, burned-out snags. Fairly common migrant throughout most of the state in April and May, and August and September.	No	Presumed absent. No suitable habitat is present on-site.
<i>Circus hudsonius</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	Presumed absent. No suitable habitat is present on-site.
<i>Coleonyx variegatus abbotti</i> San Diego banded gecko	Fed: None CA: SSC	Occurs in coastal and cismontane southern California from interior Ventura County south, although it is absent from the extreme outer coast. It is uncommon in coastal scrub and chaparral, most often occurring in granite or rocky outcrops in these habitats.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Crotalus ruber</i> red-diamond rattlesnake	Fed: None CA: SSC	It can be found from the desert, through dense chaparral in the foothills (it avoids the mountains above around 4,000 feet), to warm inland mesas and valleys, all the way to the cool ocean shore. It is most commonly associated with heavy brush with large rocks or boulders. Dense chaparral in the foothills, cactus or boulder associated coastal sage scrub, oak and pine woodlands, and desert slope scrub associations are known to carry populations of the northern red-diamond rattlesnake; however, chamise and red shank associations may offer better structural habitat for refuges and food resources for this species than other habitats.	No	Presumed absent. No suitable habitat is present on-site.
<i>Diadophis punctatus modestus</i> San Bernardino ringneck snake	Fed: None CA: None	Common in open, relatively rocky areas within valley-foothill, mixed chaparral, and annual grass habitats.	No	Presumed absent. No suitable habitat is present on-site.
<i>Dipodomys merriami parvus</i> San Bernardino kangaroo rat	Fed: END CA: CE; SSC	Primarily found in Riversidian alluvial fan sage scrub and sandy loam soils, alluvial fans and flood plains, and along washes with nearby sage scrub. May occur at lower densities in Riversidian upland sage scrub, chaparral and grassland in uplands and tributaries in proximity to Riversidian alluvial fan sage scrub habitats. Tend to avoid rocky substrates and prefer sandy loam substrates for digging of shallow burrows.	No	Presumed absent. No suitable habitat is present on-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	Presumed absent. No suitable habitat is present on-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	Presumed absent. No suitable habitat is present on-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.	No	Presumed absent. No suitable habitat is present on-site.
<i>Empidonax traillii extimus</i> southwestern willow flycatcher	Fed: END CA: END	Occurs in riparian woodlands in southern California. Typically requires large areas of willow thickets in broad valleys, canyon bottoms, or around ponds and lakes. These areas typically have standing or running water, or are at least moist.	No	Presumed absent. No suitable habitat is present on-site.
<i>Eremophila alpestris actia</i> California horned lark	Fed: None CA: WL	Generally found in shortgrass prairies, grasslands, disturbed fields, or similar habitat types along the coast or in deserts. Trees and shrubs are usually scarce or absent. Generally rare in montane, coniferous, or chaparral habitats. Forms large flocks outside of the breeding season.	No	Low. The project site provides marginal foraging habitat.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Euphydryas editha quino</i> Quino checkerspot butterfly	Fed: END CA: None	Range is now limited to a few populations in Riverside and San Diego counties. Common in meadows and upland sage scrub/chapparral habitat.	No	Presumed absent. No suitable habitat is present on-site.
<i>Falco columbarius</i> merlin	Fed: None CA: WL	Nest in forested openings, edges, and along rivers across northern North America. Found in open forests, grasslands, and especially coastal areas with flocks of small songbirds or shorebirds.	No	Presumed absent. No suitable habitat is present on-site.
<i>Falco mexicanus</i> prairie falcon	Fed: None CA: WL	Commonly occur in arid and semiarid shrubland and grassland community types. Also occasionally found in open parklands within coniferous forests. During the breeding season, they are found commonly in foothills and mountains which provide cliffs and escarpments suitable for nest sites.	No	Presumed absent. No suitable habitat is present on-site.
<i>Haliaeetus leucocephalus</i> bald eagle	Fed: Delisted CA: END ; FP	Occur primarily at or near seacoasts, rivers, swamps, and large lakes. Need ample foraging opportunities, typically near a large water source.	No	Presumed absent. No suitable habitat is present on-site.
<i>Icteria virens</i> yellow-breasted chat	Fed: None CA: SSC	Primarily found in tall, dense, relatively wide riparian woodlands and thickets of willows, vine tangles, and dense brush with well-developed understories. Nesting areas are associated with streams, swampy ground, and the borders of small ponds. Breeding habitat must be dense to provide shade and concealment. It winters south the Central America.	No	Presumed absent. No suitable habitat is present on-site.
<i>Lanius ludovicianus</i> loggerhead shrike	Fed: None CA: SSC	Often found in broken woodlands, shrublands, and other habitats. Prefers open country with scattered perches for hunting and fairly dense brush for nesting.	No	Presumed absent. No suitable habitat is present on-site.
<i>Lepus californicus bennettii</i> San Diego black-tailed jackrabbit	Fed: None CA: SSC	Occurs in diverse habitats, but primarily is found in arid regions supporting shortgrass habitats. Openness of open scrub habitat is preferred over dense chaparral.	No	Presumed absent. No suitable habitat is present on-site.
<i>Lynx rufus pallascens</i> pallid bobcat	Fed: None CA: None	Found on the western edge of the great basin habitat in extreme northeast California. Live in a variety of habitats including forests, deserts, mountains, swamps and farmland.	No	Presumed absent. No suitable habitat is present on-site.
<i>Neolarra alba</i> white cuckoo bee	Fed: None CA: None	Found in dry, sandy areas (particularly deserts) in the American southwest near the host plants for <i>Perdita</i> bee species, of which it is a nest parasite.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<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	Presumed absent. No suitable habitat is present on-site.
<i>Nycticorax nycticorax</i> black-crowned night heron	Fed: None CA: None	Fairly common, yearlong resident in lowlands and foothills throughout most of California, including the Salton Sea and Colorado River areas, and very common locally in large nesting colonies. Feeds along the margins of lacustrine, large riverine, and fresh and saline emergent habitats and rarely, on kelp beds in marine sub tidal habitats. Nests and roosts in dense-foliaged trees and dense emergent wetlands.	No	Presumed absent. No suitable habitat is present on-site.
<i>Nyctinomops femorosaccus</i> pocketed free-tailed bat	Fed: None CA: SSC	Often found in pinyon-juniper woodlands, desert scrub, desert succulent shrub, desert riparian, desert wash, alkali desert scrub, Joshua tree, and palm oasis.	No	Presumed absent. No suitable habitat is present.
<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	Presumed absent. No suitable habitat is present on-site.
<i>Phrynosoma blainvillii</i> coast horned lizard	Fed: None CA: SSC	Occurs in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. In inland areas, this species is restricted to areas with pockets of open microhabitat, created by disturbance (i.e. fire, floods, roads, grazing, fire breaks). 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	Presumed absent. No suitable habitat is present on-site.
<i>Polioptila californica californica</i> coastal California gnatcatcher	Fed: THR CA: SSC	Obligate resident of sage scrub habitats that are dominated by California sagebrush (<i>Artemisia californica</i>). This species generally occurs below 750 feet elevation in coastal regions and below 1,500 feet inland. Ranges from the Ventura County, south to San Diego County and northern Baja California and it is less common in sage scrub with a high percentage of tall shrubs. Prefers habitat with more low-growing vegetation.	No	Presumed absent. No suitable habitat is present on-site.
<i>Polioptila melanura</i> black-tailed gnatcatcher	Fed: None CA: WL	In Mojave, Great Basin, Colorado and Sonoran Desert communities, prefers nesting and foraging in densely lined arroyos and washes dominated by creosote bush and salt bush with scattered bursage, burrowed, ocotillo, saguaro, barrel cactus, nipple cactus, and prickly pear and cholla.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Salvadora hexalepis virgulata</i> coast patch-nosed snake	Fed: None CA: SSC	Found in brushy or shrubby vegetation along the coast and requires small mammal burrows for refuge and overwintering.	No	Presumed absent. No suitable habitat is present on-site.
<i>Setophaga petechia</i> yellow warbler	Fed: None CA: SSC	Nests over all of California except the Central Valley, the Mojave Desert region, and high altitudes and the eastern side of the Sierra Nevada. Winters along the Colorado River and in parts of Imperial and Riverside Counties. Nests in riparian areas dominated by willows, cottonwoods, sycamores, or alders or in mature chaparral. May also use oaks, conifers, and urban areas near stream courses.	No	Presumed absent. No suitable habitat is present on-site.
<i>Spea hammondi</i> western spadefoot	Fed: None CA: SSC	Prefers open areas with sandy or gravelly soils, in a variety of habitats including mixed woodlands, grasslands, coastal sage scrub, chaparral, sandy washed, lowlands, river floodplains, alluvial fans, playas, alkali flats, foothills, and mountains. Rainpools which do not contain bullfrogs, fish, or crayfish are necessary for breeding.	No	Presumed absent. No suitable habitat is present on-site.
<i>Spinus lawrencei</i> Lawrence's goldfinch	Fed: None CA: None	Open woodlands, chaparral, and weedy fields. Closely associated with oaks. Nests in open oak or other arid woodland and chaparral near water.	No	Presumed absent. No suitable habitat is present on-site.
<i>Vireo bellii pusillus</i> least Bell's vireo	Fed: END CA: END	Primarily occupy Riverine riparian habitat that typically feature dense cover within 1 -2 meters of the ground and a dense, stratified canopy. Typically it is associated with southern willow scrub, cottonwood-willow forest, mule fat scrub, sycamore alluvial woodlands, coast live oak riparian forest, arroyo willow riparian forest, or mesquite in desert localities. It uses habitat which is limited to the immediate vicinity of water courses, 2,000 feet elevation in the interior.	No	Presumed absent. No suitable habitat is present on-site.
PLANT SPECIES				
<i>Allium munzii</i> Munz's onion	Fed: END CA: THR CNPS: 1B.1	Found in chaparral, cismontane woodland, coastal scrub, pinyon and juniper woodland, valley and foothill grassland. Found at elevations ranging from 974 to 3,510 feet. Blooming period is from March to May.	No	Presumed absent. No suitable habitat is present.
<i>Caulanthus simulans</i> Payson's jewelflower	Fed: None CA: None CNPS: 1B.1	Occurs on granitic sandy soils in chaparral and coastal scrub habitats. Found at elevations ranging from 295 to 7,218 feet. Blooming period is from February to June.	No	Presumed absent. No suitable habitat is present.
<i>Centromadia pungens</i> <i>ssp. laevis</i> smooth tarplant	Fed: END CA: END CNPS: 1B.2	Found in alkaline soils within chenopod scrub, meadows and seeps, playas, riparian woodland, valley and foothill grassland habitats. Found at elevations ranging from 0 to 2,100 feet. Blooming period is from April to September.	No	Presumed absent. No suitable habitat is present.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Chorizanthe leptotheca</i> Peninsular spineflower	Fed: None CA: None CNPS: 1B.1	Found in granitic soils within chaparral, coast scrub, and lower montane coniferous forest habitats. Found at elevations ranging from 984 to 6,234 feet. Blooming period is from May to August.	No	Presumed absent. No suitable habitat is present.
<i>Chorizanthe parryi</i> <i>var. parryi</i> Parry's spineflower	Fed: None CA: None CNPS: 1B.2	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	Presumed absent. No suitable habitat is present.
<i>Chorizanthe polygonoides</i> <i>var. longispina</i> long-spined spineflower	Fed: None CA: None CNPS: 1B.2	Typically found on clay lenses which are largely devoid of shrubs. Can be found on the periphery of vernal pool habitat and even on the periphery of montane meadows near vernal seeps. Found at elevations ranging from 98 to 5,020 feet. Blooming period is from April to July.	No	Presumed absent. No suitable habitat is present.
<i>Convolvulus simulans</i> small-flowered morning-glory	Fed: None CA: None CNPS: 1B.1	Grows in clay soils within serpentinite seeps, chaparral, coastal scrub, valley and foothill grassland habitats. Found at elevations ranging from 98 to 2,297 feet. Blooming period is from March to July.	No	Presumed absent. No suitable habitat is present.
<i>Deinandra paniculata</i> paniculate tarplant	Fed: None CA: None CNPS: 4.2	Typically found in vernal mesic, sometimes sandy soils in coastal scrub, valley and foothill grasslands, and vernal pools. Found at elevations ranging from 82 to 3,084 feet. Blooming period is from April to November.	Yes	Present. An isolated/fragmented population was observed onsite within the non-native grassland.
<i>Harpagonella palmeri</i> Palmer's grapplinghook	Fed: None CA: None CNPS: 3.2	Occurs on clay soils in chaparral, coastal scrub, and valley and foothill grasslands. Found at elevations ranging from 66 to 3,133 feet. Blooming period is from March to May.	No	Presumed absent. No suitable habitat is present.
<i>Hordeum intercedens</i> vernal barley	Fed: None CA: None CNPS: 4.2	Found in coastal dunes, coastal scrub, vernal pools, and valley and foothill grassland habitats. Found at elevations ranging from 16 to 3,281 feet. Blooming period is from March to June.	No	Presumed absent. No suitable habitat is present.
<i>Lepidium virginicum</i> <i>var. robinsonii</i> Robinson's pepper-grass	Fed: None CA: None CNPS: 3.1	Dry soils on chaparral and coastal sage scrub. Found at elevations ranging from 3 to 2,904 feet. Blooming period is from January to July.	No	Presumed absent. No suitable habitat is present.
<i>Myosurus minimus</i> <i>ssp. apus</i> little mousetail	Fed: THR CA: None CNPS: 1B.1	Occurs in alkaline soils in valley and foothill grassland and vernal pools. Found at elevations ranging from 66 to 2,100 feet. Blooming period is from March to June.	No	Presumed absent. No suitable habitat is present.
<i>Romneya coulteri</i> Coulter's matilija poppy	Fed: None CA: None CNPS: 2B.2	Found in recently burned areas within chaparral and coastal scrub habitats. Found at elevations ranging from 66 to 3,937 feet. Blooming period is from March to July.	No	Presumed absent. No suitable habitat is present.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Texosporium sancti-jacobi</i> woven-spored lichen	Fed: None CA: None CNPS: 1B.2	Found on soil, small mammal pellets, dead twigs, and on <i>Selaginella</i> sp. within openings in chaparral habitat. Found at elevations ranging from 951 to 2,165 feet.	No	Presumed absent. No suitable habitat is present.
CDFW SENSITIVE HABITATS				
Southern Coast Live Oak Riparian Forest	CDFW Sensitive Habitat	Open to locally dense evergreen riparian woodlands dominated by <i>Quercus agrifolia</i> . This type appears to be richer in herbs and poorer in understory shrubs than other riparian communities. Bottomlands and outer floodplains along larger streams, on fine-grained, rich alluvium. Canyons and valleys of coastal southern California.	No	Absent
Southern Cottonwood Willow Riparian Forest	CDFW Sensitive Habitat	Dominated by cottonwood (<i>Populus</i> spp.) and willow (<i>Salix</i> spp.) trees and shrubs. Considered to be an early successional stage as both species are known to germinate almost exclusively on recently deposited or exposed alluvial soils.	No	Absent
Southern Sycamore Alder Riparian Woodland	CDFW Sensitive Habitat	Occurs below 2,000 meters in elevation, sycamore and alder often occur along seasonally-flooded banks; cottonwoods and willows are also often present. Poison oak, mugwort, elderberry and wild raspberry may be present in understory.	No	Absent

U.S. Fish and Wildlife Service (Fed) - Federal

END- Federal Endangered
THR- Federal Threatened

California Department of Fish and Wildlife (CA) - California

END- California Endangered
THR- California Threatened
Candidate- Candidate for listing under the California Endangered Species Act
FP- California Fully Protected
SSC- Species of Special Concern
WL- Watch List

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

1B Plants Rare, Threatened, or Endangered in California and 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

CNPS Threat Ranks

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

Attachment E

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

Federally listed threatened and endangered species and their habitats are protected under provisions of the Federal Endangered Species Act (ESA). Section 9 of the ESA prohibits “take” of threatened or endangered species. “Take” under the ESA is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any of the specifically enumerated conduct.” The presence of any federally threatened or endangered species that are in 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 ESA, 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 ESA 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 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

The Migratory Bird Treaty Act (MBTA) (16 U.S. Government Code [USC] 703) makes it unlawful to pursue, capture, kill, possess, or attempt to do the same to any migratory bird or part, nest, or egg of any such bird listed in wildlife protection treaties between the United States, Great Britain, Mexico, Japan, and the countries of the former Soviet Union, and authorizes the U.S. Secretary of the Interior to protect and regulate the taking of migratory birds. It establishes seasons and bag limits for hunted species and protects migratory birds, their occupied nests, and their eggs (16 USC 703; 50 CFR 10, 21).

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.

The 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).

Local Policies

Western Riverside County MSHCP

The MSHCP is a comprehensive, multi-jurisdictional HCP focusing on conservation of species and their associated habitats in western Riverside County. The goal of the MSHCP is to maintain biological and ecological diversity within a rapidly urbanizing region.

The approval of the MSHCP and execution of the Implementing Agreement (IA) by the wildlife agencies allows signatories of the IA to issue “take” authorizations for all species covered by the MSHCP, including state- and federal-listed species as well as other identified sensitive species and/or their habitats. Each city or local jurisdiction will impose a Development Mitigation Fee for projects within their jurisdiction. With payment of the mitigation fee to the County and compliance with the survey requirements of the MSHCP where required, full mitigation in compliance with the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), CESA, and FESA will be granted. The Development Mitigation Fee varies according to project size and project description. The fee for industrial development is \$7,382 per acre (County Ordinance 810.2). Payment of the mitigation fee and compliance with the requirements of Section 6.0 of the MSHCP are intended to provide full mitigation under CEQA, NEPA, CESA, and FESA for impacts to the species and habitats covered by the MSHCP pursuant to agreements with the USFWS, the CDFW, and/or any other appropriate participating regulatory agencies and as set forth in the IA for the MSHCP.

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 EPA have jointly regulated the filling of waters of the United States, including wetlands, pursuant to Section 404 of the 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, the placement of sand, rock, clay, construction debris, wood chips, and “materials used to create any structure or infrastructure in the waters of the United States.”

In April of 2020, the Corps and the EPA provided a new definition for *waters of the United States* [Federal Register, Vol. 85, No. 77 (April 21, 2020)] which encompass:

- The territorial seas and traditional navigable waters;
- Perennial and intermittent tributaries that contribute surface water flow to such waters;
- Certain lakes, ponds, and impoundments of jurisdictional waters; and
- Wetlands adjacent to other jurisdictional waters.

Additionally, the new definition identifies 12 categories of those waters and features that are excluded from the definition of “waters of the United State, such as features that only contain water in direct response to rainfall (e.g., ephemeral features), groundwater, many ditches, prior converted cropland, and waste treatment systems. The final rule excludes from the definition of “waters of the United States” all waters or features not mentioned above. In addition to this general exclusion, the final rule specifically clarifies that waters of the United States do not include the following:

- Groundwater, including groundwater drained through subsurface drainage systems;
- Ephemeral features that flow only indirect response to precipitation, including ephemeral streams, swales, gullies, rills, and pools;
- Diffuse stormwater runoff and directional sheet flow over upland;
- Ditches that are not traditional navigable waters, tributaries, or that are not constructed in adjacent wetlands, subject to certain limitations;
- Prior converted cropland;
- Artificially irrigated areas that would revert to upland if artificial irrigation ceases;
- Artificial lakes and ponds that are not jurisdictional impoundments and that are constructed or excavated in upland or non-jurisdictional waters;

- 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;
- Stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff;
- Groundwater recharge, water reuse, and wastewater recycling structures constructed or excavated in upland or in non-jurisdictional waters; and
- Waste treatment systems.

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.