Jurisdictional Delineation Report

8th Street East Industrial Project
Palmdale, California

Prepared for

T&B Planning, Inc.
3200 El Camino Real, Suite 100
Irvine, California 92602
Contact: Tracy Zinn, AICP

Prepared by

Psomas
225 South Lake Avenue, Suite 1000
Pasadena, California 91101
Contact: David T. Hughes, Senior Project Manager
T: (626) 204-6530

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EXECUTIVE SUMMARY

The purpose of this Jurisdictional Delineation Report is to provide baseline data concerning the type and extent of jurisdictional resources that occur at the 8th Street East Industrial Project Site in the city of Palmdale, Los Angeles County, California. Jurisdictional resources considered for this report include wetlands and non-wetland "waters of the United States" (WOTUS) regulated by the U.S. Army Corps of Engineers (USACE); "waters of the State" regulated by the Regional Water Quality Control Board (RWQCB); and the bed, bank, and channel of all lakes, rivers, and/or streams (and associated riparian vegetation), as regulated by the California Department of Fish and Wildlife (CDFW).

The limits of non-wetland WOTUS and "waters of the State" were identified by the presence of an ordinary high water mark (OHWM) and by determining the potential inundation limits of the reservoir. Wetland features were identified based on the USACE's three-parameter approach in which wetlands are defined by the presence of hydrophytic vegetation, hydric soils, and presence of wetland hydrology indicators.

The jurisdictional delineation work was performed by Psomas Regulatory Specialist David Hughes and Biologist Jack Underwood on March 17, 2022. Based on the results of the jurisdictional delineation field work, it was determined that the total amount of jurisdictional resources on the Project site are as follows:

- **USACE Jurisdictional "waters of the U.S.":**

  Wetlands: 0.00 acre

  Non-wetland waters: 0.00 acre (due to lack to connectivity to Traditional Navigable Waterway)

- **RWQCB Jurisdictional "waters of the State":**

  Wetlands: 0.00 acre

  Non-wetland waters: 0.35 acre

- **CDFW Jurisdictional Streambeds:**

  Streambeds/Riparian Habitat: 0.72 acre

1.0 INTRODUCTION

This Jurisdictional Delineation Report has been prepared to provide baseline data concerning the type and extent of resources under the jurisdiction of the U.S. Army Corps of Engineers (USACE), Los Angeles Regional Water Quality Control Board (RWQCB), and California Department of Fish and Wildlife (CDFW) for the 8th Street East Industrial Project site located in the city of Palmdale, California (hereinafter referred to as the "Project site").

1.1 PROJECT LOCATION

The Project site consists of a vacant parcel located east of Sierra Highway, west of 8th Street East, and approximately 800 feet south of East Avenue P in the city of Palmdale (Exhibit 1). The Project site comprises Assessor Parcel Number 3022-001-027 and measures approximately 18 acres. The Project site is shown on the U.S. Geological Survey's (USGS') Palmdale 7.5-minute topographic quadrangle of the San Bernardino Meridian in Township 6 North, Range 12 West, Section 23 (Exhibit 2).

1.2 EXISTING CONDITIONS

The Project site consists of a generally flat parcel that appears to have experienced past surficial grading so that many areas of the site are largely unvegetated while other areas contain early successional plant species (Exhibit 3). A graded channel runs from west to east along the southern edge of the Project site. The site does not contain any structures or infrastructure such as roads or drainage structures. Elevation on the Project site ranges from approximately 2,610 to 2,620 feet above mean sea level.

1.3 REGULATORY AUTHORITY

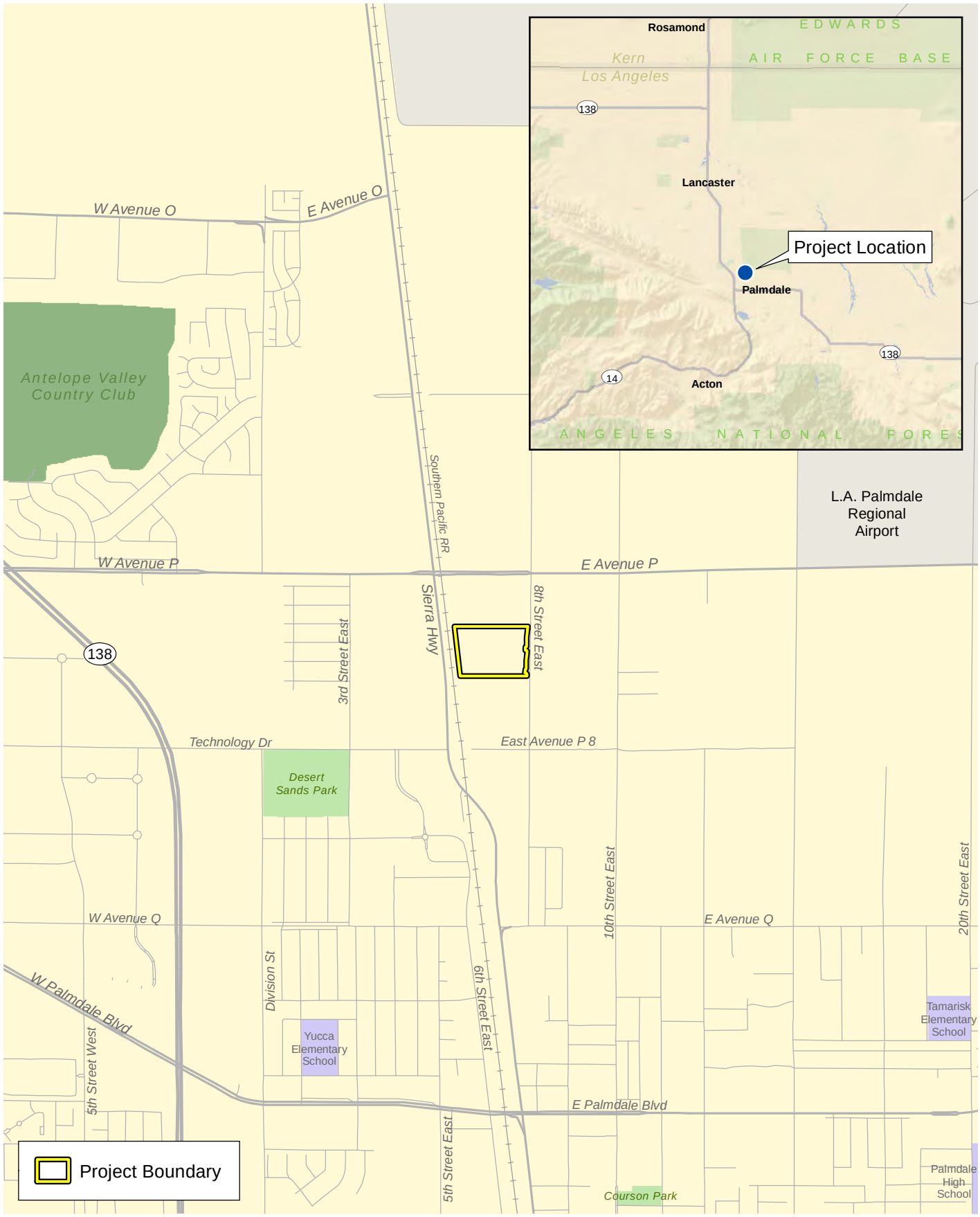
This section summarizes the federal and State agencies' regulatory jurisdiction over activities that have a potential to impact jurisdictional resources. A detailed explanation of each agency's regulatory authority is provided in Attachment A.

1.3.1 U.S. Army Corps of Engineers

The USACE Regulatory Branch regulates activities that discharge dredged or fill materials into "waters of the United States" (WOTUS) under Section 404 of the Federal Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Its authority applies to all WOTUS where the material (1) replaces any portion of a WOTUS with dry land or (2) changes the bottom elevation of any portion of any WOTUS. Activities that result in fill or dredge of WOTUS require a permit from the USACE.

Recently, the definition of WOTUS has been the subject of shifting regulations. In June of 2020, the United States Environmental Protection Agency (USEPA) and the USACE published the Navigable Waters Protection Rule (NWPR) in the *Federal Register* which defined WOTUS as:

1. Territorial seas and TNWs;
2. Tributaries of jurisdictional waters;
3. Lakes, ponds, and impoundments that contribute surface water flow to a jurisdictional water in a typical year; and
4. Wetlands adjacent to non-wetland jurisdictional waters.



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Local Vicinity

Exhibit 1

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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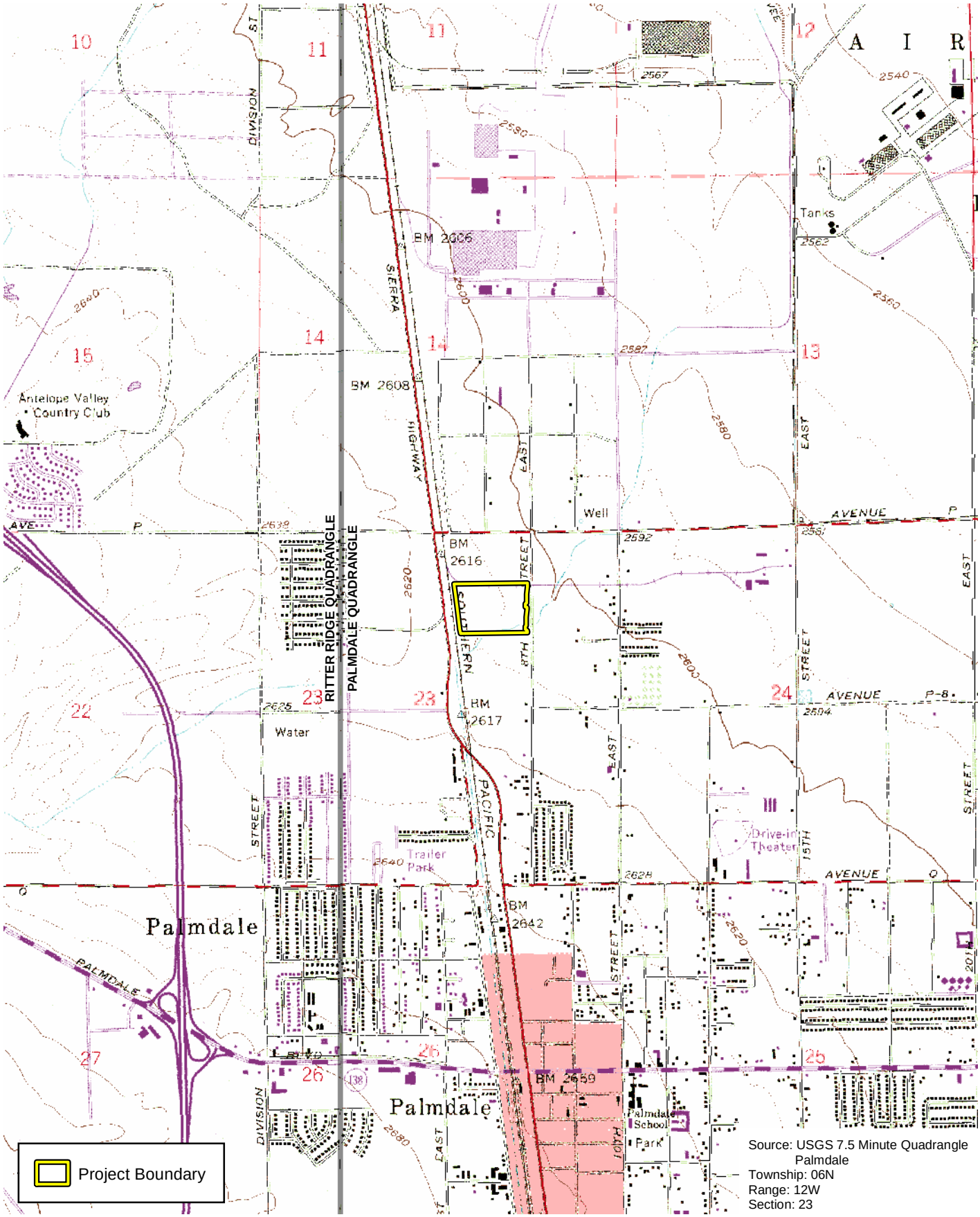

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U.S. Geological Survey 7.5-Minute Quadrangle

Exhibit 2

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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Aerial Source: Esri, Maxar 2021

Project Site

Exhibit 3

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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The NWPR also identified twelve categories of waters that are considered non-jurisdictional by rule. These include:

1. All waters not covered by the four categories of WOTUS discussed above;
2. Groundwater;
3. Ephemeral features;
4. Storm water runoff and overland sheet flow;
5. All ditches not considered tributaries;
6. Prior converted cropland;
7. Artificially irrigated areas;
8. Certain artificial lakes and ponds;
9. Water-filled depressions or pits excavated in connection with mining or construction or to obtain fill, sand, or gravel;
10. Certain storm water control features;
11. Groundwater recharge, water reuse, and wastewater recycling structures; and
12. Wastewater treatment systems.

On August 30, 2021, the U.S. District Court for the District of Arizona vacated the NWPR, which led regulatory agencies to define WOTUS according to the pre-2015 regulatory regime. Subsequently, on April 6. 2022, the U.S. Supreme Court halted the District Court decision which effectively reinstates the NWPR's definition of WOTUS described above. The USACE will utilize the NWPR definition of WOTUS until the USEPA issues a new final rule which is expected to be released in the spring of 2023.

Attachment A provides additional information on the current status of this regulatory definition.

1.3.2 Regional Water Quality Control Board

The State Water Resources Control Board (SWRCB), in conjunction with the nine RWQCBs, is the primary agency responsible for protecting water quality in California through the regulation of discharges to surface waters under the CWA and the California Porter-Cologne Water Quality Control Act (Porter-Cologne Act). The SWRCB's and RWQCBs' jurisdictions extend to all "waters of the State" and to all WOTUS, including wetlands (isolated and non-isolated).

The Porter-Cologne Act broadly defines "waters of the State" as any surface water or groundwater, including saline waters, within the boundaries of the State." On August 28, 2019, the Office of Administrative Law approved the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to "waters of the State", which went into effect on May 28, 2020. Under these new regulations, the SWRCB and its nine RWQCBs will assert jurisdiction over all existing WOTUS, and all waters that have been considered WOTUS under any historical definition.

Impacts to WOTUS are authorized by the RWQCBs through a Water Quality Certification per Section 401 of the CWA. Impacts to "waters of the State" that are not considered WOTUS would be authorized by Waste Discharge Requirements issued by the RWQCB.

On April 6, 2022, the U.S. Supreme Court issued a stay of the October 2021 order by the U.S. District Court for the Northern District of California that vacated EPA's 2020 Clean Water Act Section 401 Certification Rule (2020). The stay of the vacatur applies nationwide. Therefore, the CWA section 401 certification process is once again governed by the CWA section 401 certification regulations promulgated by EPA in 2020 (codified in the Code of Federal Regulations [CFR], Title 40 Section 121). This 2020 rule requires all project proponents to request a pre-filing meeting with the RWQCB at least 30 days prior to filing a 401 "Certification Request". The filing

procedure has been simplified to require the filing of a "Certification Request", rather than the acceptance of a "complete application".

There is a mandatory 30 day wait period between a pre-filing meeting request and the filing of a Certification Request. A Certification Request must be filed with the RWQCB and the USACE concurrently. The Certification Request must address nine components specified in 40 CFR § 121.5 which are provided in Attachment A. The USACE has 15 days to review the Certification Request and then notifies the RWQCB that request is complete and of the reasonable time period to act on the Certification Request. The reasonable time period is not to exceed 1 year. Within 15 days of receipt of the Certification Request the RWQCB must provide the applicant with the following: (1) date of receipt; (2) applicable reasonable period of time to act on the Certification Request; and (3) date upon which waiver will occur if the certifying authority fails or refuses to act on the Certification Request.

Once the RWQCB issues the 401 Certification, the USACE has 5 days to notify the USEPA that the 401 Certification has been issued. The USEPA then has 30 days to notify neighboring jurisdictions of the 401 Certification. Neighboring jurisdictions have 60 days to respond. If there are no objections to the 401 Certification, then the USACE issues the 404 permit.

1.3.3 California Department of Fish and Wildlife

The CDFW regulates activities that may affect rivers, streams, and lakes pursuant to the *California Fish and Game Code* (§§1600–1616). According to Section 1602 of the *California Fish and Game Code,* the CDFW has jurisdictional authority over any work that will (1) substantially divert or obstruct the natural flow of any river, stream, or lake; (2) substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or (3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

2.0 METHODS

2.1 LITERATURE REVIEW

Prior to conducting the delineation and during the course of report preparation, Psomas reviewed the following documents to identify areas that may fall under agency jurisdiction: the USGS' Palmdale 7.5-minute topographic quadrangle map; color aerial photography provided by Google Earth; soil data provided by the U.S. Department of Agriculture's Natural Resources Conservation Service (USDA NRCS 2022a); the National Hydric Soils List (USDA NRCS 2022b); the National Wetlands Inventory's Wetland Mapper (USFWS 2022); and the Water Quality Control Plan for the Lahontan Region (Lahontan RWQCB 1995).

2.2 FIELD SURVEY

The analysis contained in this report uses the results of a field survey conducted by Psomas Regulatory Specialist David Hughes and Biologist Jack Underwood on March 17, 2022. Jurisdictional features were delineated using a 1 inch equals 100 feet (1″ = 100′) scale aerial photograph. Jurisdictional drainage features were mapped as a line and the width of the agency jurisdiction was noted; other waterbodies (basins) were mapped as polygons.

Photographs that show conditions in the survey area are provided in Attachment B.

2.3 JURISDICTIONAL DELINEATION

2.3.1 Non-Wetlands

Non-wetland WOTUS are delineated based on the limits of the Ordinary High Water Mark (OHWM), which can be determined by a number of factors, including the presence of a clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; and the presence of litter and debris. The OHWM limits (i.e., active floodplain) occurring on the Project site as based on methods contained in *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States*, *A Delineation Manual* (Lichvar and McColley 2008) and the *Updated Datasheet for the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States* (Curtis and Lichvar 2010).

It should be noted that the RWQCB shares USACE jurisdiction unless isolated conditions are present. If isolated waters are present, the RWQCB takes jurisdiction using the USACE's definition of the OHWM and/or the three-parameter wetlands method pursuant to the 1987 Wetlands Manual. The CDFW's jurisdiction is defined as the top of the bank on either side of a stream, channel, or basin or to the outer limit of riparian vegetation located within or immediately adjacent to the river, stream, creek, pond, lake, or other impoundment.

2.3.2 Wetlands

Technical methods and guidelines to determine the presence and extent of wetlands is described by the USACE in the *Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory 1987) and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (USACE 2008). The presence of wetlands is determined by a three-parameter approach requiring evidence of (1) wetland hydrology, (2) hydrophytic vegetation, and (3) hydric soils.

Wetland hydrology is determined by the presence of indicators such as observed surface water; presence of past surface flow; and the depth to saturated soils or free water in soil test pits.

Procedures for determining whether the hydrophytic vegetation criterion is met is based three potential indicators as described in *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (USACE 2008). These include the "Dominance Test", using the "50/20 Rule"; the "Prevalence Index"; or the presence of "Morphological Adaptation" of vegetation that is present. These indicators are based on determining the presence and relative abundance of plant species that are categorized as Obligate Wetland (typically associated with wetland conditions); Facultative Wetland (predominantly present in wetland conditions); Facultative (equally likely to occur in wetland or non-wetland areas); Facultative Upland (predominantly found in non-wetland areas); or Upland (typically found in mesic to xeric non-wetland habitats). Plant species are categorized in the National Wetland Plant List, created by the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture.

Soils are determined to be hydric when they form under conditions of saturation, flooding, or ponding that occurs long enough during the growing season to develop anaerobic conditions (or conditions of limited oxygen) at or near the soil surface and that favor the establishment of hydrophytic vegetation (USDA NRCS 2022c). The presence of hydric soil conditions is determined where various indicators are observed by digging soil test pits to a depth of approximately 20 inches. Common hydric soil indicators include presence of redoximorphic features (i.e., areas where iron is reduced under anaerobic conditions and oxidized following a return to aerobic conditions); buried organic matter; organic streaking; reduced soil conditions; or sulfuric odor.

One wetland sampling point was located within the on-site channel to determine the presence of wetland conditions.

3.0 LITERATURE REVIEW

This section provides a summary of literature review results that were reviewed prior to the field survey and during report preparation that have helped inform the analysis provided in this report.

3.1 USGS TOPOGRAPHIC QUADRANGLE

The USGS topographic quadrangle maps show geological formations and their characteristics; they describe the physical settings of an area through topographic contour lines and other major surface features. These features include lakes, streams, rivers, buildings, roadways, landmarks, and other features that may fall under the jurisdiction of one or more regulatory agencies. In addition, the USGS maps provide topographic information that is useful in determining elevations, latitude and longitude, and Universal Transverse Mercator (UTM) Grid coordinates.

The Project site occurs on the USGS' Palmdale 7.5-minute topographic quadrangle map. The quadrangle map shows an unnamed blueline stream that generally flows from southwest to northeast and passes along the southern edge of the Project site.

3.2 SOIL SURVEY

The presence of hydric soils is one of the chief indicators of jurisdictional wetlands. Psomas reviewed the USDA's soil data for the survey area (Exhibit 4). The survey area contains the following soil types: Hesperia fine sandy loam, 0 to 2 percent slopes, and Rosamond loam.

The National Hydric Soils List (NHSL) identifies a soil map unit as "hydric" if it contains either a major or minor component that is at least in part hydric (USDA NRCS 2022c). The survey area occurs in the Antelope Valley Soil Survey Area in Los Angeles County. Both on-site soil types are listed as potentially hydric on the NHSL. A brief description of these soils is provided in Attachment C of this report.

3.3 NATIONAL WETLANDS INVENTORY

The U.S. Fish and Wildlife Service's Wetland Mapper (USFWS 2022) shows wetland resources available from the Wetlands Spatial Data Layer of the National Spatial Data Infrastructure. This resource provides the classification of known wetlands following the Classification of Wetlands and Deepwater Habitats of the United States (FGDC 2013). This classification system is arranged in a hierarchy of (1) Systems that share the influence of similar hydrologic, geomorphologic, chemical, or biological factors (i.e., Marine Estuarine, Riverine, Lacustrine, and Palustrine); (2) Subsystems (i.e., Subtidal and Intertidal; Tidal, Lower Perennial, Upper Perennial, and Intermittent; or Littoral and Limnetic); (3) Classes, which are based on substrate material and flooding regime or on vegetative life forms; (4) Subclasses; and (5) Dominance Types, which are named for the dominant plant or wildlife forms. In addition, there are modifying terms applied to Classes or Subclasses.

The channel that passes along the southern edge of the Project site occurs on the National Wetland Inventory and is listed as R4SBJ (Riverine, Intermittent Streambed, Intermittently Flooded) (Exhibit 5). The description for this code is as follows:

- **R: System RIVERINE.** The Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 parts per trillion (ppt) or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water.

Data Source: U.S. Department of Agriculture; Natural Resources Conservation Service
Aerial Source: Esri, Maxar 2021

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Soils Map

Exhibit 4

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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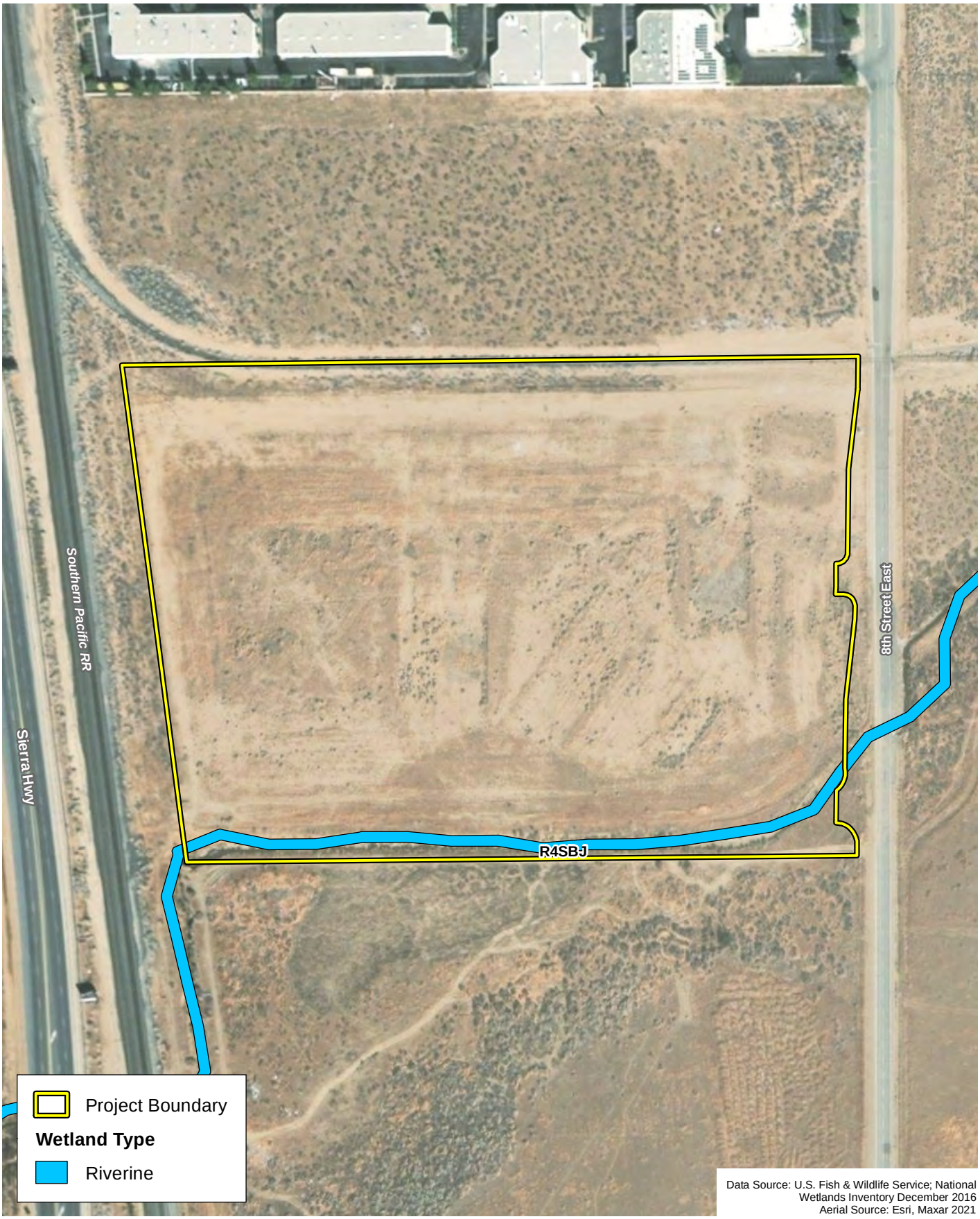

Data Source: U.S. Fish & Wildlife Service; National Wetlands Inventory December 2016
Aerial Source: Esri, Maxar 2021

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National Wetland Inventory

Exhibit 5

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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- **4: Subsystem INTERMITTENT.** This Subsystem includes channels that contain flowing water only part of the year. When the water is not flowing, it may remain in isolated pools or surface water may be absent.
  - **SB: Class STREAMBED.** Includes all wetlands contained within the Intermittent Subsystem of the Riverine System and all channels of the Estuarine System or of the Tidal Subsystem of the Riverine System that are completely dewatered at low tide.
    - **A: Water Regime INTERMITTENTLY FLOODED.** The substrate is usually exposed, but surface water is present for variable periods without detectable seasonal periodicity. Weeks, months, or even years may intervene between periods of inundation. The dominant plant communities under this Water Regime may change as soil moisture conditions change. Some areas exhibiting this Water Regime do not fall within our definition of wetland because they do not have hydric soils or support hydrophytes. This Water Regime is generally limited to the arid West.

3.4 REGIONAL WATER QUALITY CONTROL PLAN

There are nine Regional Water Quality Control Boards in California. The Project site is located within Regional Water Quality Control Board Region 6, the Lahontan Region. The SWRCB and the Lahontan RWQCB have adopted a Water Quality Control Plan (or "Basin Plan") for the Lahontan Region. The Basin Plan contains goals and policies, descriptions of conditions, and proposed solutions to surface and groundwater issues. The Basin Plan also establishes water quality standards for surface and groundwater resources and includes beneficial uses and levels of water quality that must be met and maintained to protect these uses. These water quality standards are implemented through various regulatory permits pursuant to CWA Section 401 for Water Quality Certifications and Section 402 for Report of Waste Discharge permits.

The Project site is located within the Lancaster Hydrologic Area (626.50) of the Antelope Hydrologic Unit. The channel that occurs on the Project site is categorized in the Basin Plan as Minor Surface Waters within the Lancaster Hydrologic Area. Beneficial Uses associated with Minor Surface Waters in this hydrologic area include: Municipal Water Supply (MUN); Agricultural Water Supply (AGR); Ground Water Recharge (GWR); Limited Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Commercial and Sportfishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); and Wildlife Habitat (WILD) (Lahontan RWQCB 1995).

Descriptions of the various Beneficial Uses are provided in Attachment C.

4.0 JURISDICTIONAL ANALYSIS

The Project site contains an unnamed graded channel that flows from west to east. Water conveyed through this channel appears to originate from urban runoff and passes under Sierra Highway and the adjacent railroad before reaching the Project site. Historic aerial photos of the area show that the natural path of the stream was diverted slightly northward around an agricultural field sometime prior to 1948. The current pathway for this channel was established in approximately 2005 and appears to be regularly maintained to allow water to pass westward.

Currently, the channel bed is mostly unvegetated with sparse native desert scrub species growing along the channel banks. Vegetation along the channel consists of Great Basin sagebrush (*Artemisia tridentata*), four-wing saltbush (*Atriplex canescens*), creosote (*Larrea tridentata*), and rubber rabbitbrush scrub (*Ericameria nauseosa*).

A summary of information related to this channel is provided in Table 1 and photographs are provided in Attachment B that illustrate the general conditions on the Project site.

TABLE 1
SUMMARY OF JURISDICTIONAL RESOURCES ON THE PROJECT SITE

Feature	Latitude/Longitude (decimal degrees)		Feature Length (linear feet)	OHWM Width Range (feet)	Area of RWQCB Jurisdiction (acres)		CDFW Jurisdiction Width Range (feet)	Area of CDFW Jurisdiction (acres)
	Upstream End	Downstream End			Wetland	Non-wetland		
Unnamed Channel	34.597591°, -118.119875°	34.598033°, -118.116617°	1,050	13–17	0.00	0.35	27–33	0.72
Total					**0.00**	**0.35**		**0.72**

OHWM: Ordinary High Water Mark; USACE: RWQCB: Regional Water Quality Control Board; CDFW: California Department of Fish and Wildlife

4.1 "WATERS OF THE UNITED STATES" DETERMINATION

Connectivity to a Traditional Navigable Water

Water that passes through the unnamed channel on the Project site flows under 8th Street East and continues in a northeasterly direction. Water flows through a drainage feature that proceeds northerly along 10th Street East and later 15th Street East before reaching Palmdale Regional Airport. The drainage is directed underground in a concrete culvert before resurfacing along 15th Street East on the northern side of the Palmdale Regional Airport runway. The drainage contains two grade control structures before reaching Columbia Way and turning directly eastward. The drainage transitions to a series of interconnected basins that allow water to percolate into the soil with no connection to downstream waters. Based on a review of aerial photographs, the drainage originally flowed northeasterly from the Project site and flows eventually dissipated in upland areas that are in the approximate location of Palmdale Regional Airport. Therefore, the on-site drainage feature has no connection to downstream waters and would therefore not be considered WOTUS.

Wetlands Determination

A wetland sampling point was located in the bottom of the on-site drainage feature to determine if wetland conditions are present on the Project site. This sampling point was chosen due to the presence of potential wetland hydrology, though no hydrophytic vegetation was observed on the

Project site. A wetland data form that documents conditions at this location is provided in Attachment D and the information collected is summarized below in Table 2.

Vegetation in the vicinity of the each of the locations consisted of Great Basin sagebrush, four-wing saltbush, and rubber rabbitbrush, all of which are upland (UPL) plant species. No hydric soil indicators were observed, while secondary indicators of wetland hydrology were noted (e.g., presence of sediment deposits and drainage patterns). Due to the lack of hydrophytic vegetation and hydric soils, wetland conditions do not exist on the Project site.

TABLE 2
SUMMARY OF WETLAND SAMPLING POINT DATA

Sampling Point	Vegetated	Dominance Test Result[a]	Prevalence Index Result	Hydrophytic Vegetation Present	Hydric Soil Indicators	Wetland Hydrology Indicators	Wetland?
1	Yes	0%	5.0	No	None	B2, B10	No

[a] Percent of dominant species that are OBL, FACW, or FAC.

Hydric Soil Indicators
B2 Sediment Deposits
B10 Drainage Patterns

4.2 REGIONAL WATER QUALITY CONTROL BOARD JURISDICTION

Though the channel is not considered to be WOTUS, the RWQCB has broad latitude to regulate waters via the Porter-Cologne Act. The limits of non-wetland "waters of the State" were defined by the well-established bed and bank with evidence of scour along the banks and sediment deposition.

Based on this boundary, the project site contains 0.35 acre of non-wetland "waters of the State" (Table 1; Exhibit 6).

4.3 CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE JURISDICTION

The limits of CDFW jurisdiction on the Project site were mapped to the top of the bank on each site of the unnamed channel. There is no adjacent riparian habitat present along the channel so that CDFW's jurisdiction is limited to the top of the channel's banks. Therefore, the total amount of CDFW's jurisdictional area is 0.72 acre (Table 1; Exhibit 6).

Aerial Source: Esri, Maxar 2021

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Jurisdictional Resources

Exhibit 6

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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5.0 REGULATORY APPROVAL PROCESS

This section summarizes the various permits, agreements, and certifications that may be required prior to initiation of the proposed Project activities that involve impacts to jurisdictional waters, including:

- USACE Section 404 Permit
- RWQCB Section 401 Water Quality Certification
- CDFW Section 1602 Notification of Lake or Streambed Alteration

It should be noted that all regulatory permit applications can be processed concurrently.

5.1 U.S. ARMY CORPS OF ENGINEERS

As described above, the on-site drainage channel is not considered WOTUS due to the lack of connectivity to a downstream TNW. Because there are no WOTUS on the Project site, a Section 404 permit would not be required.

It is recommended that the USACE is consulted to confirm that they would not assert jurisdiction over the on-site channel. If a formal concurrence of this finding is desired, an Approved Jurisdictional Determination (AJD) can be requested that would document the USACE's determination.

5.2 REGIONAL WATER QUALITY CONTROL BOARD

Assuming the USACE concurs that there are no WOTUS on the Project site, the RWQCB would authorize impacts to jurisdictional features via a Waste Discharge Requirements (WDR) permit rather than a Section 401 Water Quality Certification. Applying for a WDR permit would require urban storm water runoff to be addressed during and after construction in the form of Best Management Practices (BMPs). These BMPs are intended to address the treatment of pollutants carried by storm water runoff. Please note that WDR permit holders are required to pay an annual fee until the RWQCB is notified that the authorized project has been completed. The RWQCB will not deem the application to be complete until the application fees have been paid and the agency is provided with a certified CEQA document and a signed copy of the receipt of County Clerk filing fees for the Notice of Determination (NOD).

5.3 CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Prior to construction, Notification of a Lake or Streambed Alteration (LSA) must be submitted to the CDFW that describes any proposed streambed alteration contemplated by the proposed project. If an LSA Agreement is required, the CDFW may want to conduct an on-site inspection.

In addition to the formal application materials and the fee, a copy of the appropriate environmental document (e.g., Mitigated Negative Declaration) should be included in the submittal, consistent with CEQA requirements. The CDFW will not deem the application to be complete until the application fees have been paid and the agency is provided with a certified CEQA document and a signed copy of the receipt of County Clerk filing fees for the NOD.

5.4 RECOMMENDATIONS

Based on the conclusions of this Jurisdictional Delineation Report, the following recommendations are identified:

1. The USACE should be consulted to confirm that on-site features are not considered WOTUS so that no permitting pursuant to Section 404 of the Clean Water Act is required.
2. Staff from the RWQCB and CDFW should be contacted to discuss the proposed Project activities and determine the appropriate permitting strategy.
3. Upon determining the appropriate permitting strategy, the following should be prepared and processed: a RWQCB Report of Waste Discharge and a CDFW Notification of Lake or Streambed Alteration.

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ATTACHMENT A

SUMMARY OF REGULATORY AUTHORITY

REGULATORY AUTHORITY

This attachment summarizes the regulatory authority of the U.S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board (RWQCB), and the California Department of Fish and Wildlife (CDFW) over activities that have potential to impact jurisdictional resources.

U.S. Army Corps of Engineers

The USACE Regulatory Branch regulates activities that discharge dredged or fill materials into "waters of the United States" (WOTUS) under Section 404 of the Federal Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. This permitting authority applies to all WOTUS where the material (1) replaces any portion of WOTUS with dry land or (2) changes the bottom elevation of any portion of any WOTUS. These fill materials would include sand, rock, clay, construction debris, wood chips, and materials used to create any structure or infrastructure in these waters.

Waters of the United States

On April 21, 2020, the United States Environmental Protection Agency (USEPA) and the USACE published in the *Federal Register* the Navigable Waters Protection Rule (NWPR) which revised the definition of WOTUS. The NWPR subsequently became effective on June 22, 2020.

The NWPR narrows the definition of WOTUS that are subject to USACE jurisdiction through two rules: the Step One rule, issued on October 22, 2019, which reestablished USACE regulations that were in place prior to the 2015 Waters of the United States Rule, and the Step Two rule, published on April 21, 2020, which narrows federal jurisdiction so that WOTUS must demonstrate a direct connection to a Traditional Navigable Waterway (TNW). On August 30, 2021, the U.S. District Court for the District of Arizona vacated and remanded the NWPR for reconsideration to the USEPA and the USACE.[1] Subsequently, on April 6. 2022, the U.S. Supreme Court halted the District Court decision which effectively reinstates the NWPR's definition of WOTUS described above. The USACE will utilize the NWPR definition of WOTUS until the USEPA issues a new final rule which is expected to be released in the spring of 2023.

Under the NWPR's Step Two Rule, four categories of waters are considered WOTUS:

1. Territorial seas and TNWs;
2. Tributaries of jurisdictional waters;
3. Lakes, ponds, and impoundments that contribute surface water flow to a jurisdictional water in a typical year; and
4. Wetlands adjacent to non-wetland jurisdictional waters.

Under the rule, a wetland is considered "adjacent" if it:

1. Abuts (i.e., touches a side or corner of) another non-wetland jurisdictional water;
2. Is inundated by flooding from another non-wetland jurisdictional water at least once in a typical year;
3. Is physically separated from a non-wetland jurisdictional water by a natural berm, bank, dune, or similar natural feature without regard to whether there is a specific hydrological surface connection in a typical year; or
4. Is physically separated from a non-wetland jurisdictional water by an artificial structure like a road, dike, or barrier as long as the structure allows for a direct hydrologic surface connection between the wetland and the other jurisdictional water at least once in a

[1] *Pasqua Yaqui Tribe, et al. v. U.S. Environmental Protection Agency, et al*.

typical year. This connection can be through a gate or culvert or even by water overtopping a road.

The Step Two Rule also identifies waters specifically excluded from consideration as WOTUS. The twelve categories of non-jurisdictional waters in the Step Two Rule include:

1. All waters not covered by the four categories of WOTUS discussed above;
2. Groundwater;
3. Ephemeral features;
4. Storm water runoff and overland sheet flow;
5. All ditches not considered tributaries;
6. Prior converted cropland;
7. Artificially irrigated areas;
8. Certain artificial lakes and ponds;
9. Water-filled depressions or pits excavated in connection with mining or construction or to obtain fill, sand, or gravel;
10. Certain storm water control features;
11. Groundwater recharge, water reuse, and wastewater recycling structures; and
12. Wastewater treatment systems.

The NWPR was drafted to incorporate direction that the U.S. Supreme Court provided via three decisions that provided context and guidance in determining the appropriate scope of WOTUS. In *United States v. Riverside Bayview Homes* (1985), the Court upheld the inclusion of adjacent wetlands in the regulatory definition of WOTUS. In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* ("SWANCC", issued in 2001), the Court held that the use of "isolated" non-navigable intrastate ponds by migratory birds was not, by itself, sufficient basis for the exercise of federal regulatory authority under the CWA. In *Rapanos v. United States* ("Rapanos", 2006)[2], a majority of the U.S. Supreme Court overturned two Sixth Circuit Court of Appeals decisions, finding that certain wetlands constituted WOTUS under the CWA. In his plurality opinion, Justice Scalia argued that WOTUS should not include channels through which water flows intermittently or ephemerally or channels that periodically provide drainage for rainfall. He also stated that a wetland may not be considered "adjacent to" remote WOTUS based on a mere hydrologic connection. Justice Kennedy authored a separate concurring opinion concluding that wetlands are WOTUS if they, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as "navigable". Lacking a majority opinion, regulatory jurisdiction under the CWA existed over a water body if either the plurality's or Justice Kennedy's "significant nexus" standard was satisfied.

Ordinary High Water Mark

The landward limit of tidal "waters of the U.S." is the high-tide line. In non-tidal waters where adjacent wetlands are absent, the lateral limits of USACE jurisdiction extend to the ordinary high water mark (OHWM).[3] The OHWM is defined as "that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the

[2] Consolidated cases: *Rapanos v. United States* and *Carabell v. United States* refer to the U.S. Supreme Court's decision concerning USACE jurisdiction over "waters of the U.S." under the CWA.

[3] U.S. Army Corps of Engineers (USACE). 2005 (December 7). Regulatory Guidance Letter. Ordinary High Water Mark Identification. Washington, D.C.: USACE.

characteristics of the surrounding areas".[4] When wetlands are present, the lateral limits of USACE jurisdiction extend beyond the OHWM to the limits of the adjacent wetlands.[5]

Wetlands

A wetland is a subset of jurisdictional waters and is defined by the USACE and the USEPA as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions".[6] Wetlands generally include swamps, marshes, bogs, and areas containing similar features.

The definition and methods for identifying wetland resources can be found in the USACE's *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region*,[7] a supplement to the 1987 *Corps of Engineers Wetlands Delineation Manual*.[8] Both the 1987 Wetlands Manual and the 2008 Arid West Supplement to the manual provide technical methods and guidelines for determining the presence of wetland "waters of the U.S.". Pursuant to these manuals, a three-parameter approach is used to identify wetlands and requires evidence of wetland hydrology, hydrophytic vegetation, and hydric soils. In order to be considered a wetland, an area must exhibit one or more indicators of all three of these parameters. However, problem areas may periodically or permanently lack certain indicators for reasons such as seasonal or annual variability of rainfall, vegetation, and other factors. Atypical wetlands lack certain indicators due to recent human activities or natural events. Guidance for determining the presence of wetlands in these situations is presented in the regional supplement.

Section 404 Permit

Except as specified in Section 323.4 of the CFR, impacts to "waters of the U.S." require a Section 404 Permit. Permit authorization may be in the form of (1) a "general permit" authorizing a category of activities in a specific geographical region or nationwide or (2) an "individual permit" (IP) following a review of an individual application form (to be obtained from the district office having jurisdiction over the waters in which the activity is proposed to be located).

Regulatory authorization in the form of a Nationwide Permit (NWP) is provided for certain categories of activities such as repair, rehabilitation, or replacement of a structure or fill which was previously authorized; utility line placement; or bank stabilization. NWPs authorize only those activities with minimal adverse effects on the aquatic environment and are valid only if the conditions applicable to the permits are met or waivers to these conditions are provided in writing from the USACE. Please note that waivers may require consultation with affected federal and State agencies, which can be a lengthy process with no mandated processing time frames. Certain activities do not require submission of an application form but may require a separate notification. If the NWP conditions cannot be met, an IP will be required. "Waters of the U.S." temporarily filled, flooded, excavated, or drained but restored to pre-construction contours and elevations after construction are not included in the measurement of loss of "waters of the U.S.". The appropriate permit authorization will be based on the amount of impacts to "waters of the U.S.", as determined by the USACE. There is no filing fee for the Section 404 Permit.

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4 *Code of Federal Regulations* (CFR), Title 33, §328.3(e)

5 USACE 2005

6 33 CFR §328.3(b)

7 USACE. 2008a. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*. (J.S. Wakeley, R.W. Lichvar, and C.V. Noble, Eds.). Vicksburg, MS: U.S. Army Engineer Research and Development Center.

8 Environmental Laboratory. 1987. Cor*ps of Engineers Wetlands Delineation Manual (Technical Report Y-87-1)*. Vicksburg, MS: U.S. Army Engineer Waterways Experiment Station.

Approximately three or four months are typically required to process a routine permit application; large or complex activities may take longer to process. When a permit application is received, it will be assigned an identification number and reviewed for completeness by the District Engineer. If an application is incomplete, additional information will be requested within 15 days of receipt of the application. If an application is complete, the District Engineer will issue a public notice within 15 days unless specifically exempted by provisions of the CFR. Public comments will be accepted no more than 30 days but not less than 15 days from the date of public notice; these will become part of the administrative record of the application. Generally, the District Engineer will decide on the application no later than 60 days after receipt of the completed application. Additional permit situations may increase the permit processing time (e.g., projects involving a Section 401 Water Quality Certification, a coastal zone management consistency analysis, historic properties, a federal agency, and/or Endangered species). The Project Applicant will be given time, not to exceed 30 days, to respond to requests of the District Engineer.

On January 31, 2007, the USACE published a memorandum clarifying the Interim Guidance for Amendments to the National Historic Preservation Act and the Advisory Council on Historic Preservation (ACHP) implementing regulations.[9] The Interim Guidance applies to all Department of the Army requests for authorization/verification, including Individual Permits (IPs, i.e., standard permits and letters of permission) and all Regional General Permits (RGPs) and Nationwide Permits (NWPs). The State or Tribal Historic Preservation Officer (SHPO/THPO) has 30 days to respond to a determination that a proposed activity, which otherwise qualifies for an NWP or an RGP, has no effect or no adverse effect on a historic property. If the SHPO/THPO does not respond within 30 days of notification, the Los Angeles District may proceed with verification. If the SHPO/THPO disagrees with the District's determination, the District may work with the SHPO/THPO to resolve the disagreement or request an opinion from the ACHP. The USACE will submit the Draft Jurisdictional Delineation Report to the SHPO/THPO for review prior to initiating the actual regulatory process.

Please note that, if the USACE determines that the drainages/waterbodies are jurisdictional and would be impacted by project implementation, the Applicant will be required to obtain a CWA Section 401 Water Quality Certification from the RWQCB before the USACE will issue the Section 404 Permit. If the USACE determines that the impacted drainage/waterbody is not jurisdictional, the Applicant will be required to obtain RWQCB authorization under the provisions of a Report of Waste Discharge (ROWD).

Jurisdictional Determinations

Pursuant to USACE Regulatory Guidance Letter (RGL) 08-02 (dated June 26, 2008), the USACE can issue two types of jurisdictional determinations to implement Section 404 of the CWA: Approved Jurisdictional Determinations and Preliminary Jurisdictional Determinations.[10] An Approved Jurisdictional Determination is an official USACE determination that jurisdictional "waters of the U.S.", "Navigable Waters of the U.S.", or both are either present or absent on a site. An Approved Jurisdictional Determination also identifies the precise limits of jurisdictional waters on a project site.

The USACE will provide an Approved Jurisdictional Determination when (1) an Applicant requests an official jurisdictional determination; (2) an Applicant contests jurisdiction over a particular water body or wetland; or (3) when the USACE determines that jurisdiction does not exist over a particular water body or wetland. The Approved Jurisdictional Determination then becomes the

9 USACE. 2007 (January 31). Memorandum: Interim Guidance for Amendments to the National Historic Preservation Act and the Advisory Council on Historic Preservation (ACHP) Implementing Regulations. Washington, D.C.: USACE.

10 USACE. 2008b (June 26). Regulatory Guidance Letter. Jurisdictional Determinations. Washington, D.C.: USACE.

USACE's official determination that can then be relied upon over a five-year period to request regulatory authorization as part of the permit application.

In addition, an Applicant may decline to request an Approved Jurisdictional Determination and instead obtain a USACE IP or General Permit Authorization based on a Preliminary Jurisdictional Determination or, in certain circumstances (e.g., authorizations by non-reporting nationwide general permits), with no Jurisdictional Determination.

Preliminary Jurisdictional Determinations are non-binding, advisory in nature, and may not be appealed. They indicate that there may be "waters of the U.S." on a project site. An Applicant may elect to use a Preliminary Jurisdictional Determination to voluntarily waive or set aside questions regarding CWA jurisdiction over a site, usually in the interest of expediting the permitting process. The USACE will determine what form of Jurisdictional Determination is appropriate for a particular project site.

The USACE Regulatory Branch Offices will coordinate with the USEPA Regional Office and USACE Headquarters (HQ), as outlined in its January 28, 2008, memorandum entitled "Process for Coordinating Jurisdictional Determinations Conducted Pursuant to Section 404 of the Clean Water Act in Light of the *Rapanos* and *SWANCC* Supreme Court Decisions".[11] The guidance provided in this memorandum is quoted as follows:

1. Effective immediately, unless and until paragraph 5(b) of the June 5, 2007, Rapanos guidance coordination memorandum is modified by a joint memorandum from Army and EPA, we will follow these procedures:
    a. For jurisdictional determinations involving significant nexus determinations, USACE districts will send copies of draft jurisdictional delineations via e-mail to appropriate EPA regional offices. The EPA regional office will have 15 calendar days to decide whether to take the draft jurisdictional delineation as a special case under the January 19, 1989, "Memorandum of Agreement Between the Department of the Army and the USEPA Concerning the Determination of the Section 404 Program and the Application of the Exceptions under Section 404(f) of the Clean Water Act." If the EPA regional office does not respond to the district within 15 days, the district will finalize the jurisdictional determination.
    b. For jurisdictional determinations involving isolated waters determinations, the agencies will continue to follow the procedure in paragraph 5(b) of June 5, 2007, coordination memorandum, until a new coordination memorandum is signed by USACE and EPA. (In accordance with paragraph 6 of the June 5, 2007, coordination memorandum, this is a 21-day timeline that can only be changed through a joint memorandum between agencies).
2. Approved JDs are not required for non-reporting NWPs, unless the project proponent specifically requests an approved JD. For proposed activities that may qualify for authorization under a State Programmatic General Permit (SPGP) or RGP, an approved JD is not required unless requested by the project proponent.

[11] USACE. 2008c (January 28). *Memorandum for Commander, Major Subordinate Commands and District Commands. Process for Coordinating Jurisdictional Determinations Conducted Pursuant to Section 404 of the Clean Water Act in Light of the Rapanos and SWANCC Supreme Court Decisions.* Washington, D.C.: USACE.

3. The USACE will continue to work with EPA to resolve the JDs involving significant nexus and isolated waters determinations that are currently in the elevation process.
4. USACE districts will continue posting completed Approved JD Forms on their web pages.

Regional Water Quality Control Board

The RWQCB is the primary agency responsible for protecting water quality in California through the regulation of discharges to surface waters under the CWA and the California Porter-Cologne Water Quality Control Act (Porter-Cologne Act). The RWQCB's jurisdiction extends to all "waters of the State" and to all "waters of the U.S.", including wetlands (isolated and non-isolated).

Section 401 of the CWA provides the RWQCB with the authority to regulate, through a Water Quality Certification, any proposed, federally permitted activity that may affect water quality. Among such activities are discharges of dredged or fill material permitted by the USACE pursuant to Section 404 of the CWA. Section 401 requires the RWQCB to provide certification that there is reasonable assurance that an activity which may result in discharge to navigable waters will not violate water quality standards. Water Quality Certification must be based on a finding that the proposed discharge will comply with water quality standards, which contain numeric and narrative objectives that can be found in each of the nine RWQCBs' Basin Plans.

The Porter-Cologne Act provides the State with 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 (Solid Waste Agency of Northern Cook Counties vs. Unites States Army Corps of Engineers) and Rapanos era with respect to the State's authority over isolated waters. Generally, any person proposing to discharge waste into a water body that could affect its water quality must file an ROWD when there is no federal nexus, such as under Section 404(b)(1) of the CWA. Although "waste" is partially defined as any waste substance associated with human habitation, the RWQCB interprets this to include fill discharge into water bodies.

Section 401 Water Quality Certification

Issuance of the USACE Section 404 Permit would be contingent upon the approval of a Section 401 Water Quality Certification from the RWQCB. Also, the RWQCB requires certification of the project's California Environmental Quality Act (CEQA) documentation before it will approve the Section 401 Water Quality Certification or ROWD. The RWQCB, as a responsible agency, will use the project's CEQA document to satisfy its own CEQA-compliance requirements.

On June 1, 2020, the USEPA finalized the "Clean Water Act Section 401 Certification Rule" to implement the water quality certification process consistent with the text and structure of the Clean Water Act (CWA). The final rule establishes procedures that promote consistent implementation of CWA section 401 and regulatory certainty in the federal licensing and permitting process. The new regulation includes reviews and approvals by the USACE prior to the RWQCB issuing a 401 Certification and reviews and approvals by the EPA prior to the USACE issuing a 404. The new 401 rule went into effect on September 11, 2020.

The new certification rule defines a discharge subject to 401 Certification as a discharge from a point source into a water of the United States. The new rule also states that States with additional water quality regulations cannot use these to expand the certification request.

The new rule requires all project proponents to request a pre-filing meeting with the RWQCB at least 30 days prior to filing a 401 "Certification Request". The filing procedure has been simplified

to require the filing of a "Certification Request", rather than the acceptance of a "complete application". The certification request has nine mandatory components:

1. identify the project proponent(s) and a point of contact;
2. identify the proposed project;
3. identify the applicable federal license or permit;
4. identify the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
5. include a description of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge;
6. include a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received;
7. include documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
8. contain the following statement: 'The project proponent hereby certifies that all information contained herein is true, accurate, and complete, to the best of my knowledge and belief; and
9. contain the following statement: 'The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.'

There is a mandatory 30 day wait period between a pre-filing meeting request and the filing of a Certification Request. A Certification Request must be filed with the RWQCB and the USACE concurrently. USACE reviews the Certification Request for the nine required components. The USACE has 15 days to review the Certification Request. The USACE then notifies the RWQCB that request is complete. And concurrently notifies the RWQCB of the reasonable time period to act on the Certification Request. The reasonable time period is not to exceed 1 year. Within 15 days of receipt of the Certification Request, the RWQCB must provide the applicant with the following: 1) date of receipt; 2) applicable reasonable period of time to act on the Certification Request; and 3) date upon which waiver will occur if the certifying authority fails or refuses to act on the Certification Request.

Once the RWQCB issues the 401 Certification, the USACE has 5 days to notify the USEPA that the 401 Certification has been issued. The USEPA then has 30 days to notify neighboring jurisdictions of the 401 Certification. Neighboring jurisdictions have 60 days to respond. If there are no objections to the 401 Certification, then the USACE would issue the 404 permit.

On June 2, 2021, the USEPA published a notice of intention to reconsider and revise the Clean Water Act Section 401 Certification Rule. At this time, they are currently accepting public comment. Until a new rule goes into effect, the current 401 Certification Rule stands.

The RWQCB is required under the *California Code of Regulations* (CCR) to have a "minimum 21-day public comment period" before any action can be taken on the Section 401 application.[12] This period closes when the RWQCB acts on the application. Since projects often change or are revised during the Section 401 permit process, the comment period can remain open. The public comment period starts as soon as an application has been received. Generally, the RWQCB

[12] 23 CCR §3858(a)

Section 401, USACE Section 404, and CDFW Section 1602 permit applications are submitted at the same time.

The RWQCB requires the Applicant to address urban storm water runoff during and after construction in the form of Best Management Practices (BMPs). These BMPs are intended to address the treatment of pollutants carried by storm water runoff and are required in all complete applications. The notification/application for a CWA Section 401 Water Quality Certification must also address compliance with the Basin Plan. Please note that filing an application would also require the payment of an application fee which would be based on project impacts. The fee schedule calculator is available at https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm.

California Department of Fish and Wildlife

The CDFW has jurisdictional authority over wetland resources associated with rivers, streams, and lakes pursuant to the *California Fish and Game Code*.[13] Activities of State and local agencies as well as public utilities that are project proponents are regulated by the CDFW under Section 1602 of the *California Fish and Game Code.* This section regulates any work that will (1) substantially divert or obstruct the natural flow of any river, stream, or lake; (2) substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or (3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Section 1602 of the *California Fish and Game Code* applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the State.

The CDFW jurisdictional limits are not as clearly defined by regulation as those of the USACE. While they closely resemble the limits described by USACE regulations, they include riparian habitat supported by a river, stream, or lake regardless of the presence or absence of hydric and saturated soils conditions. In general, the CDFW takes jurisdiction from the top of a stream bank or to the outer limits of the adjacent riparian vegetation (outer drip line), whichever is greater. Notification is generally required for any project that will take place within or in the vicinity of a river, stream, lake or within or in the vicinity of tributaries to a river, stream, or lake. This includes rivers or streams that flow at least periodically or permanently through a bed or channel with banks that support fish and other aquatic plant and/or wildlife species. It also includes watercourses that have a surface or subsurface flow that support or have supported riparian vegetation.

Section 1602 Lake or Streambed Alteration Agreement

The CDFW enters into a Lake or Streambed Alteration (LSA) Agreement with a project proponent to ensure protection of wildlife and habitat values and acreages.

Prior to construction, a Notification of an LSA must be submitted to the CDFW that describes any proposed lake or streambed alteration that would occur with implementation of a project. The Notification of an LSA must address the initial construction and long-term operation and maintenance of any structures (such as a culvert or a desilting basin) included in the project design that are located within any river, stream, or lake and that may require periodic maintenance. In addition to the formal application materials and the fee, a copy of the appropriate environmental document (e.g., a Mitigated Negative Declaration) should be included in the submittal, consistent with CEQA requirements. The complete notification package must be completed on CDFW's Environmental Permit Information Management System (EPIMS). This notification will serve as the basis for the CDFW's issuance of a Section 1602 LSA Agreement.

[13] See §§1600–1616.

Note that notification is not required before beginning emergency work, but the CDFW must be notified in writing within 14 days after beginning the work.

After receiving Notification of an LSA Agreement, the CDFW will determine whether an LSA Agreement will be required for the proposed activity. An LSA Agreement will be required if the activity could substantially adversely affect an existing fish and wildlife resource. If an LSA Agreement is required, the CDFW may want to conduct an on-site inspection.

If the CDFW does not respond in writing concerning the completeness of the Notification within 30 days of its submittal, the Notification automatically becomes complete. If the CDFW does not submit a draft LSA Agreement to the Applicant within 60 days of the determination of a completed Notification package, the CDFW will issue a letter that either (1) identifies the final date to transmit a draft LSA Agreement or (2) indicates that an LSA Agreement was not required. The CDFW will also indicate that it was unable to meet this mandated compliance date and that, by law, the Applicant is authorized to complete the project without an LSA Agreement as long as the Applicant constructs the project as proposed and complies with all avoidance, minimization, and mitigation measures described in the submitted Notification package. Please note that, if the project requires revisions to the design or project construction, the CDFW may require submittal of a new Notification/application with an additional 90-day permit process.

If determined to be necessary, the CDFW will prepare a draft LSA Agreement, which will include standard measures to protect fish and wildlife resources during project construction and during ongoing operation and maintenance of any project element that occurs within a CDFW jurisdictional area. The draft Agreement must be transmitted to the Applicant within 60 calendar days of the CDFW's determination that the notification is complete. It should be noted that the 60-day timeframe might not apply to long-range agreements.

Following receipt of a draft LSA Agreement from the CDFW, the Applicant has 30 calendar days to notify the CDFW concerning the acceptability of the proposed terms, conditions, and measures. If the Applicant agrees with these terms, conditions and measures, the Agreement must be signed and returned to the CDFW. The Agreement becomes final once the CDFW executes it and an LSA Agreement is issued. Please note that all application fees must be paid and the final certified CEQA documentation must be provided prior to the CDFW's execution of the Agreement.

ATTACHMENT B

SITE PHOTOGRAPHS

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Photo Locations

Exhibit B-1

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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Photo Location 1, facing upstream. March 17, 2022. View of general conditions in stream channel along southern edge of project site.

Photo Location 2, facing downstream. March 17, 2022. View of general conditions in stream channel.

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Site Photos

Exhibit B-2

Jurisdictional Delineation Report for the 8th Street East Industrial Project

PSOMAS

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Photo Location 3, facing downstream. March 17, 2022. View of general conditions in stream channel.

Photo Location 4, facing downstream. March 17, 2022. View of general conditions in stream channel.

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Site Photos

Exhibit B-3

Jurisdictional Delineation Report for the 8th Street East Industrial Project

PSOMAS

(04/04/2022 MMD) R:\Projects\TBP\3TBP010300\Graphics\JD\ex_Photos.pdf

Photo Location 5, facing downstream. March 17, 2022. View of general conditions in stream channel.

Photo Location 6, facing downstream. March 17, 2022. View of conditions where stream channel flows toward 8th Street along eastern site boundary. Note that road shoulder is graded to allow water to flow off road into channel. Small culvert is evident that allows water to drain eastward under 8th Street.

Photo Location 7, facing northwest. March 17, 2022. General overview of project site conditions.

Photo Location 8, facing northeast. March 17, 2022. General overview of project site conditions.

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Site Photos

Exhibit B-5

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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Photo Location 9, facing southeast. March 17, 2022. General overview of project site conditions.

Photo Location 10, facing southwest. March 17, 2022. General overview of project site conditions.

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Site Photos

Exhibit B-6

Jurisdictional Delineation Report for the 8th Street East Industrial Project

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ATTACHMENT C

LITERATURE REVIEW DETAILS

DESCRIPTIONS OF SOILS IN SURVEY AREA

ANTELOPE VALLEY AREA, CALIFORNIA

Hesperia fine sandy loam, 0 to 2 percent slopes

Map Unit Setting

- National map unit symbol: hcfd
- Elevation: 200 to 4,000 feet
- Mean annual precipitation: 6 to 9 inches
- Mean annual air temperature: 61 to 70 degrees F
- Frost-free period: 225 to 310 days
- Farmland classification: Prime farmland if irrigated

Map Unit Composition

- Hesperia and similar soils: 85 percent
- Minor components: 15 percent
- Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Hesperia

Setting

- Landform: Alluvial fans
- Landform position (two-dimensional): Backslope
- Landform position (three-dimensional): Tread
- Down-slope shape: Linear
- Across-slope shape: Linear
- Parent material: Alluvium derived from granite

Typical profile

- H1 - 0 to 4 inches: fine sandy loam
- H2 - 4 to 54 inches: fine sandy loam
- H3 - 54 to 77 inches: sandy loam

Properties and qualities

- Slope: 0 to 2 percent
- Depth to restrictive feature: More than 80 inches
- Drainage class: Well drained
- Runoff class: Very low
- Capacity of the most limiting layer to transmit water (Ksat): High (1.98 to 5.95 in/hr)
- Depth to water table: More than 80 inches
- Frequency of flooding: None
- Frequency of ponding: None
- Calcium carbonate, maximum content: 10 percent
- Maximum salinity: Nonsaline to very slightly saline (0.0 to 2.0 mmhos/cm)
- Available water supply, 0 to 60 inches: Moderate (about 8.0 inches)

Interpretive groups

- Land capability classification (irrigated): 2e
- Land capability classification (nonirrigated): 7e
- Hydrologic Soil Group: A
- Ecological site: R030XG021CA - LOAMY 4-9"
- Hydric soil rating: No

Minor Components

Cajon

- Percent of map unit: 5 percent
- Hydric soil rating: No

Rosamond

- Percent of map unit: 5 percent
- Hydric soil rating: No

Tray

- Percent of map unit: 3 percent
- Hydric soil rating: No

Unnamed

- Percent of map unit: 2 percent
- Landform: Playas
- Hydric soil rating: Yes

Rosamond loam

Map Unit Setting

- National map unit symbol: hcgz
- Elevation: 1,900 to 2,900 feet
- Mean annual precipitation: 3 to 8 inches
- Mean annual air temperature: 61 to 64 degrees F
- Frost-free period: 240 to 260 days
- Farmland classification: Prime farmland if irrigated

Map Unit Composition

- Rosamond and similar soils: 85 percent
- Minor components: 15 percent
- Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Rosamond

Setting

- Landform: Alluvial fans
- Landform position (two-dimensional): Backslope
- Landform position (three-dimensional): Tread
- Down-slope shape: Linear
- Across-slope shape: Linear
- Parent material: Alluvium derived from granite

Typical profile

- H1 - 0 to 8 inches: loam
- H2 - 8 to 60 inches: stratified loam to silty clay loam

Properties and qualities

- Slope: 0 to 2 percent
- Depth to restrictive feature: More than 80 inches
- Drainage class: Well drained
- Runoff class: Low
- Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
- Depth to water table: More than 80 inches
- Frequency of flooding: Rare
- Frequency of ponding: None
- Calcium carbonate, maximum content: 10 percent
- Maximum salinity: Nonsaline to slightly saline (0.0 to 4.0 mmhos/cm)
- Available water supply, 0 to 60 inches: High (about 10.0 inches)

Interpretive groups

- Land capability classification (irrigated): 1
- Land capability classification (nonirrigated): 7c
- Hydrologic Soil Group: B
- Ecological site: R030XG021CA - LOAMY 4-9"
- Hydric soil rating: No

Minor Components

Cajon

- Percent of map unit: 5 percent
- Hydric soil rating: No

Hesperia

- Percent of map unit: 5 percent
- Hydric soil rating: No

Unnamed

- Percent of map unit: 4 percent
- Hydric soil rating: No

Unnamed

- Percent of map unit: 1 percent
- Landform: Playas
- Hydric soil rating: Yes

BASIN PLAN BENEFICIAL USES

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) identifies a number of beneficial uses, some or all of which may apply to a specific hydrologic area (HA), including: Municipal and Domestic Water Supply (MUN) waters; Agricultural Supply (AGR) waters; Industrial Process Supply (PROC) waters; Industrial Service Supply waters (IND); Groundwater Recharge (GWR) waters; Freshwater Replenishment (FRSH); Navigation (NAV) waters; Hydropower Generation (POW) waters; Water Contact Recreation (REC1) waters; Non-Contact Water Recreation (REC2) waters; Commercial and Sport Fishing (COMM) waters; Aquaculture (AQUA) waters; Warm Fresh Water Habitat (WARM) waters; Cold Fresh Water Habitat (COLD) waters; Inland Saline Water Habitat (SAL) waters; Estuarine Habitat (EST) waters; Wetland Habitat (WET) waters; Marine Habitat (MAR) waters; Wildlife Habitat (WILD) waters; Preservation of Biological Habitats of Special Significance (BIOL) waters; Rare, Threatened or Endangered Species (RARE) waters; Migration of Aquatic Organisms (MIGR) waters; Spawning, Reproduction and Development (SPWN) waters; and Shellfish Harvesting (SHELL) waters.

Present and/or potential Beneficial Uses associated with the unnamed channel on the Project site are described below; Beneficial Uses not described below do not apply to these areas.

- MUN waters support community, military, or individual water supply systems including, but not limited to, drinking water supply.
- AGR waters are used for farming, horticulture, or ranching, including, but not limited to, irrigation, stock watering, and support of vegetation for range grazing.
- GWR waters are used for natural or artificial recharge of groundwater for purposes that may include, but are not limited to, future extraction, maintaining water quality, or halting saltwater intrusion into freshwater aquifers.
- COMM waters are used for commercial or recreational collection of fish or other organisms including, but not limited to, uses involving organisms intended for human consumption.
- WARM waters support warm water ecosystems that may include, but are not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, and wildlife (including invertebrates).
- COLD waters support cold water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
- WILD waters support wildlife habitats including, but not limited to, the preservation and enhancement of vegetation and prey species used by wildlife, such as waterfowl. \
- REC-1 waters are used for recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing, skin and scuba diving, surfing, white water activities, fishing, or use of natural hot springs.
- REC-2 waters are used for recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities

ATTACHMENT D

WETLAND DATA FORM

WETLAND DETERMINATION DATA FORM – Arid West Region

Project/Site: 8th Street Industrial City/County: Palmdale / Los Angeles Sampling Date: 3/17/2022

Applicant/Owner: Covington Development State: CA Sampling Point: 1

Investigator(s): David Hughes, Jack Underwood Section, Township, Range: Section 23, Township 6N, Range 12W

Landform (hillslope, terrace, etc.): channel Local relief (concave, convex, none): concave Slope (%): 5

Subregion (LRR): Mediterranean California (LRR C) Lat: 34.597621° Long: -118.119284° Datum: WGS 84

Soil Map Unit Name: Rosamond Loam NWI classification:

Are climatic / hydrologic conditions on the site typical for this time of year? Yes ✓ No _____ (If no, explain in Remarks.)

Are Vegetation _____, Soil _____, or Hydrology _____ significantly disturbed? Are "Normal Circumstances" present? Yes ✓ No _____

Are Vegetation _____, Soil _____, or Hydrology _____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes _____	No ✓	**Is the Sampled Area within a Wetland?** Yes _____ No ✓
Hydric Soil Present?	Yes _____	No ✓	
Wetland Hydrology Present?	Yes ✓	No _____	

Remarks:

Sampling point is within a channel that has been graded.

VEGETATION – Use scientific names of plants.

Tree Stratum (Plot size: 15')	Absolute % Cover	Dominant Species?	Indicator Status
1.			
2.			
3.			
4.			
	0 = Total Cover		
Sapling/Shrub Stratum (Plot size: 5')			
1. Atriplex canescens	20	Y	UPL
2. Artemisia tridentata	20	Y	UPL
3. Ericameria nauseosa	10	Y	UPL
4.			
5.			
	50 = Total Cover		
Herb Stratum (Plot size: 5')			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
	0 = Total Cover		
Woody Vine Stratum (Plot size: 15')			
1.			
2.			
	0 = Total Cover		

% Bare Ground in Herb Stratum 100 % Cover of Biotic Crust 0

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 0 (A)

Total Number of Dominant Species Across All Strata: 0 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 0% (A/B)

Prevalence Index worksheet:

Total % Cover of:	Multiply by:
OBL species _____	x 1 = _____
FACW species _____	x 2 = _____
FAC species _____	x 3 = _____
FACU species _____	x 4 = _____
UPL species 50	x 5 = 250
Column Totals: 50 (A)	250 (B)

Prevalence Index = B/A = 5.0

Hydrophytic Vegetation Indicators:

___ Dominance Test is >50%

___ Prevalence Index is ≤3.0[1]

___ Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)

___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Hydrophytic Vegetation Present? Yes _____ No ✓

Remarks:

SOIL

Sampling Point: 1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	%	Redox Features Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-24	10YR 4/2	100					sand	

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5) (**LRR C**)
- ___ 1 cm Muck (A9) (**LRR D**)
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Loamy Mucky Mineral (F1)
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Vernal Pools (F9)

Indicators for Problematic Hydric Soils[3]:

- ___ 1 cm Muck (A9) (**LRR C**)
- ___ 2 cm Muck (A10) (**LRR B**)
- ___ Reduced Vertic (F18)
- ___ Red Parent Material (TF2)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if present):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes _____ **No** ✓

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one required; check all that apply)

- ___ Surface Water (A1)
- ___ High Water Table (A2)
- ___ Saturation (A3)
- ___ Water Marks (B1) (**Nonriverine**)
- ___ Sediment Deposits (B2) (**Nonriverine**)
- ___ Drift Deposits (B3) (**Nonriverine**)
- ___ Surface Soil Cracks (B6)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Salt Crust (B11)
- ___ Biotic Crust (B12)
- ___ Aquatic Invertebrates (B13)
- ___ Hydrogen Sulfide Odor (C1)
- ___ Oxidized Rhizospheres along Living Roots (C3)
- ___ Presence of Reduced Iron (C4)
- ___ Recent Iron Reduction in Tilled Soils (C6)
- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (2 or more required)

- ___ Water Marks (B1) (**Riverine**)
- ✓ Sediment Deposits (B2) (**Riverine**)
- ___ Drift Deposits (B3) (**Riverine**)
- ✓ Drainage Patterns (B10)
- ___ Dry-Season Water Table (C2)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Shallow Aquitard (D3)
- ___ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present? Yes _____ No ✓ Depth (inches): _____

Water Table Present? Yes _____ No ✓ Depth (inches): _____

Saturation Present? (includes capillary fringe) Yes _____ No ✓ Depth (inches): _____

Wetland Hydrology Present? Yes ✓ **No** _____

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks: