

# STODDARD WELLS AT ABBEY LANE INDUSTRIAL PROJECT

CITY OF VICTORVILLE, SAN BERNARDINO COUNTY, CALIFORNIA

## Biological Resources Assessment

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Prepared For:

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July 2022

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The undersigned certify that the statements furnished in this report and exhibits present data and information required for this biological evaluation, and the facts, statements, and information presented is a complete and accurate account of the findings and conclusions to the best of our knowledge and beliefs.



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Travis J. McGill  
Director/Biologist



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Thomas J. McGill, Ph.D.  
Managing Director

July 2022

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# Section 1 Introduction

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This report contains the findings of ELMT Consulting’s (ELMT) habitat and jurisdictional assessment for the Stoddard Wells at Abbey Lane Industrial Project (Project) located in the City of Victorville, San Bernardino County, California. ELMT biologists Travis J. McGill and Jacob H. Lloyd Davies conducted a field survey and evaluated the condition of the habitat within the project site on November 24, 2021 and April 12, 2022.

The habitat assessment was conducted to characterize existing site conditions and to assess the probability of occurrence of special-status<sup>1</sup> plant and wildlife species that could pose a constraint to project implementation. This report provides an assessment of the suitability of the onsite habitats to support special-status plant and wildlife species identified by the California Natural Diversity Data Base (CNDDB) 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), or California Department of Fish and Wildlife (CDFW) pursuant to Sections 401 and 404 of the Federal Clean Water Act (CWA), the California Porter-Cologne Water Quality Control Act, and Section 1600 *et seq.* of the Fish and Game Code.

## 1.1 PROJECT DESCRIPTION

Suraj Victorville, LLC (Applicant) proposes to develop a 827,160 square foot (SF) industrial building within 40.81 gross acres of vacant lands along Stoddard Wells Road, south of Abbey Lane, designed to house one or more tenants, which have not been designated at this time, and will include an include an 28,620 SF mezzanine, a 781,940 SF warehouse, a 45,240 SF office, 92 total truck dock positions, four grade door, 219 trailer stalls, 389 auto parking stalls, and related site landscaping, drainage, and includes 1 acre of street dedication (Proposed Project). The Proposed Project is situated on the west side of Stoddard Wells Road, south of the Abbey Lane, east of the Mojave River, and approximately 0.24-mile northwest of Interstate 15 (I-15) within the Desert Gateway Specific Plan area with a LI (Light Industrial) zoning, and specifically within Assessor’s Parcel Numbers (APNs): 0472-181-11, 0472-181-12, 0472-181-13, 0472-181-43, 0472-181-44, 0472-181-47, 0472-181-72. The Project Site can be accessed by I-15, Stoddard Wells Road exit, located approximately 0.3 mile to the south of the Project Site.

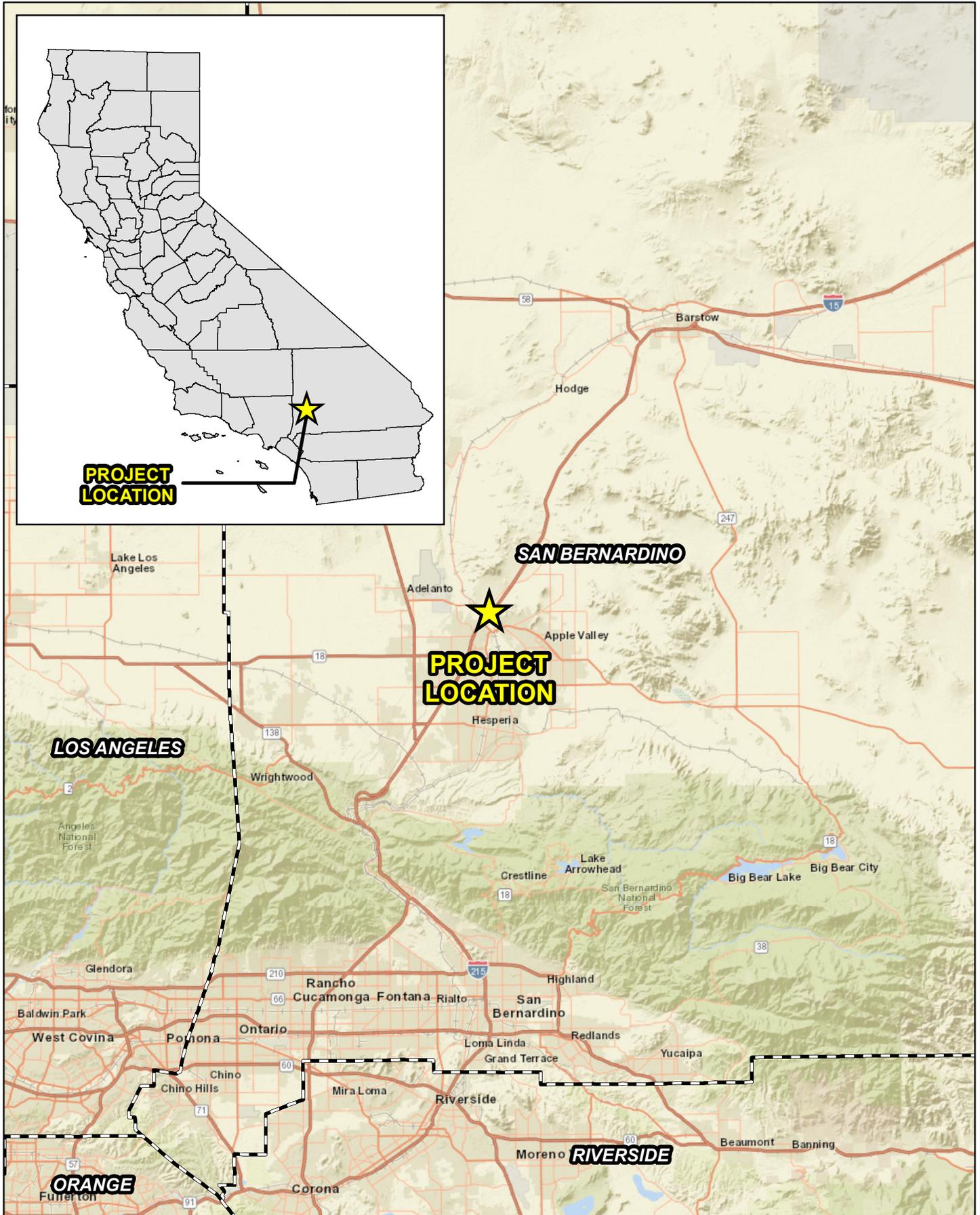
## 1.2 PROJECT LOCATION

The project site is generally located northwest of Interstate 15, east of U.S. Route 395, north of State Route 18, and south of State Route 58 in the City of Victorville, San Bernardino County, California (refer to

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<sup>1</sup> As used in this report, “special-status” refers to plant and wildlife species that are federally or State listed, proposed, or candidates; plant species that have been designated a California Native Plant Society (CNPS) Rare Plant Rank; and wildlife species that are designated by the California Department of Fish and Wildlife (CDFW) as fully protected, species of special concern, or watch list species.

Exhibit 1, *Regional Vicinity*). The project site is depicted on the Victorville quadrangle of the United States Geological Survey's (USGS) 7.5-minute topographic map series in Section 34 of Township 6 North, Range 4 West (refer to Exhibit 2, *Site Vicinity*). Specifically, the project site is located on the southwest corner of the intersection of Stoddard Wells Road and Abbey Lane, east of the Mojave River, within APNs: 0472-181-11, 0472-181-12, 0472-181-13, 0472-181-43, 0472-181-44, 0472-181-47, 0472-181-72 (refer to Exhibit 3, *Project Site*).

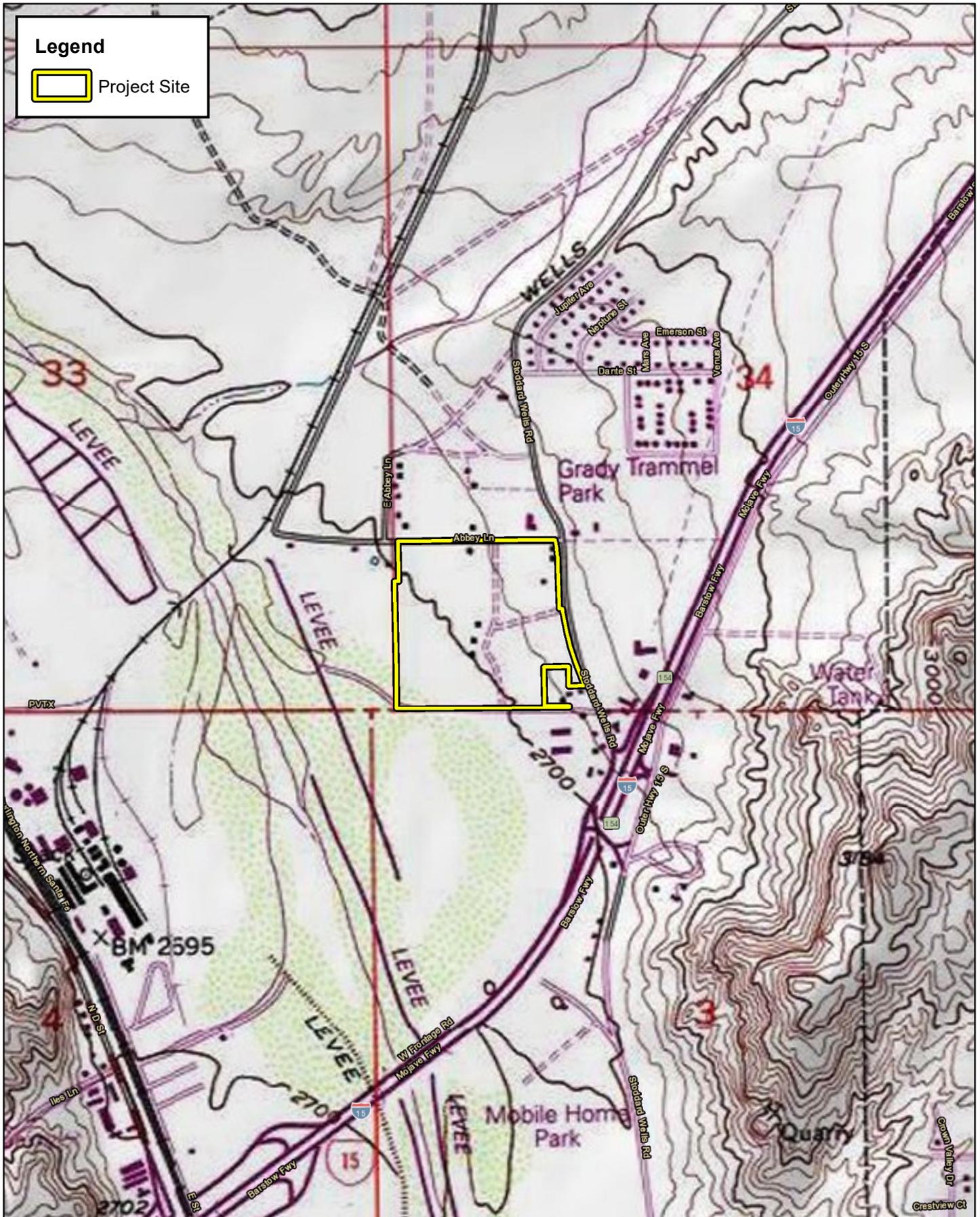


STODDARD WELLS ROAD AT ABBEY LANE INDUSTRIAL PROJECT  
 BIOLOGICAL RESOURCES ASSESSMENT

Regional Vicinity



Source: World Street Map, San Bernardino County



STODDARD WELLS ROAD AT ABBEY LANE INDUSTRIAL PROJECT  
 BIOLOGICAL RESOURCES ASSESSMENT

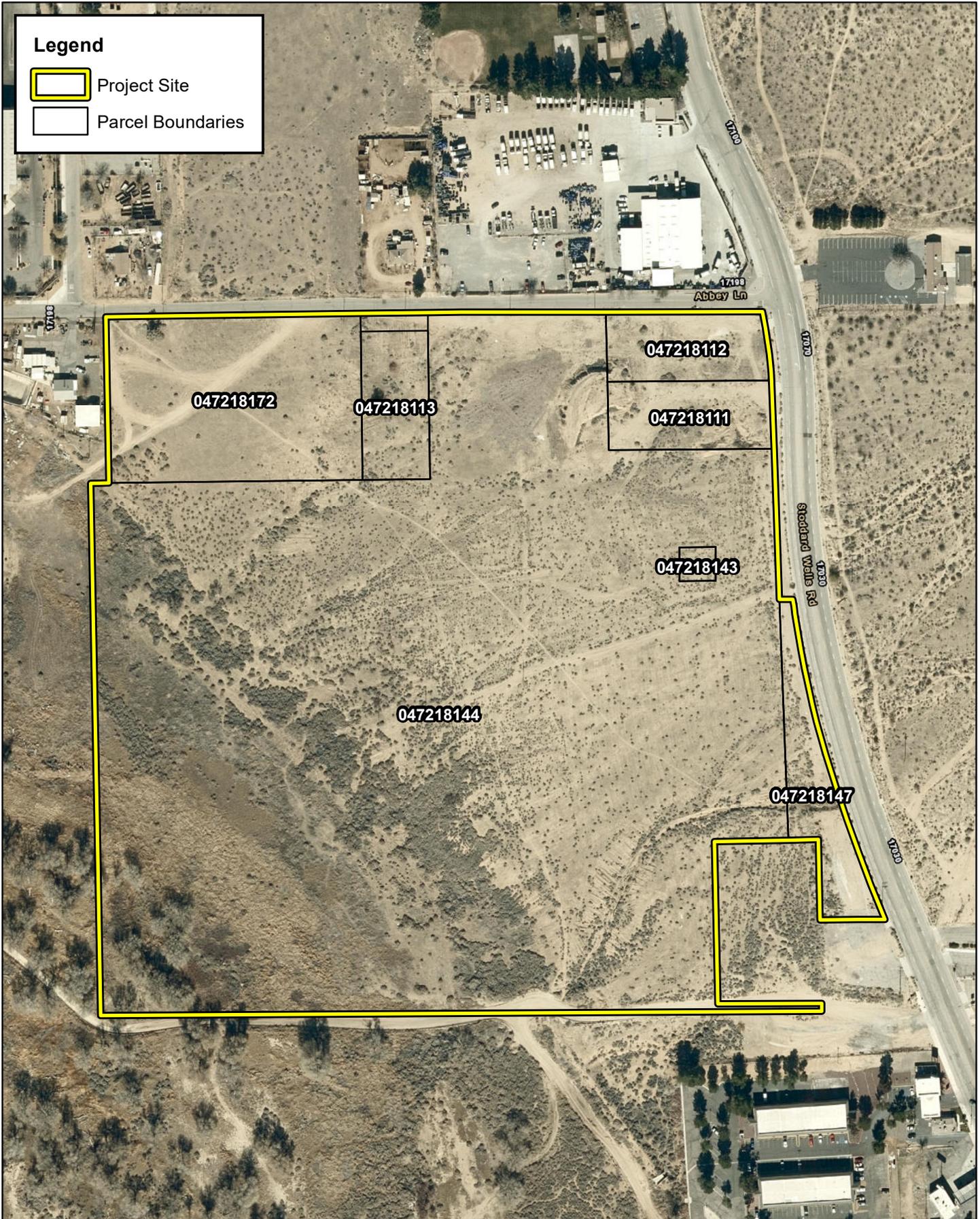
Site Vicinity



Source: USA Topographic Map, San Bernardino County

**Legend**

-  Project Site
-  Parcel Boundaries



STODDARD WELLS ROAD AT ABBEY LANE INDUSTRIAL PROJECT  
BIOLOGICAL RESOURCES ASSESSMENT  
**Project Site**



Source: ESRI Aerial Imagery, San Bernardino County

## Section 2 Methodology

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

### 2.1 LITERATURE REVIEW

Prior to conducting the field study, species and habitat information was gathered from the reports related to the specific project and relevant databases for the *Victorville* USGS 7.5-minute quadrangle to identify species and habitats known to occur locally. These quadrangles were queried due to the proximity of the project site to quadrangle boundaries, and regional topography. The literature review sources included:

- U.S. Fish and Wildlife (USFWS) threatened and endangered species occurrence GIS overlay;
- USFWS Designated Critical Habitat Maps;
- California Natural Diversity Database (CNDDDB) *Rarefind 5*;
- International Union for Conservation of Nature (IUCN);
- CNDDDB Biogeographic Information and Observation System (BIOS);
- California Native Plant Society Electronic Inventory (CNPSEI) database;
- Calflora Database;
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey;
- USFWS National Wetland Inventory;
- Environmental Protection Agency (EPA) Water Program “My Waters” data layers;
- Google Earth Pro historic aerial imagery (1985-2021);
- San Bernardino County General Plan;
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS National Wetlands Inventory (NWI).

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

### 2.2 FIELD INVESTIGATION

ELMT biologists Travis J. McGill and Jacob H. Lloyd Davies evaluated the conditions of the plant communities found within the boundaries of the project site on November 24, 2021 and April 12, 2022. Plant communities identified on aerial photographs during the literature review were verified in the field. The plant communities were evaluated for their potential to support special-status plant and wildlife species.

In addition, field staff identified any natural corridors and linkages that may support the movement of wildlife through the area.

The plant communities were evaluated for their potential to support special-status plant and wildlife species. Plant communities were mapped using 7.5-minute USGS topographic base maps and aerial photography. The plant communities were classified in accordance with Sawyer, Keeler-Wolf and Evens (2009) and delineated on an aerial photograph, and then digitized into ArcGIS. The ArcGIS application was used to compute the area of each plant community in acres.

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 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). In addition, field staff identified any natural corridors and linkages that may support the movement of wildlife through the area.

## **2.3 SOIL SERIES ASSESSMENT**

On-site and adjoining soils were researched prior to the field survey using the USDA NRCS Soil Survey for San Bernardino County Mojave River Area. 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.

## **2.4 JURISDICTIONAL DRAINAGES AND WETLANDS**

Aerial photography was reviewed prior to conducting a field investigation in order to locate and inspect any potential natural drainage features, ponded areas, or water bodies that may fall under the jurisdiction of the Corps, Regional Board, and/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. In addition, ELMT reviewed jurisdictional waters information through examining historical aerial photographs to gain an understanding of the impact of land-use on natural drainage patterns in the area. The USFWS NWI and Environmental Protection Agency (EPA) Water Program “My Waters” data layers were also reviewed to determine whether any hydrologic features and wetland areas have been documented on or within the vicinity of the Project site.

## Section 3 Existing Conditions

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### 3.1 LOCAL CLIMATE

The Mojave Desert is found at elevations of 2,000 to 5,000 feet above mean sea level and is characterized by cool winter temperatures and warm summer temperatures, with its rainfall occurring almost entirely in the winter. Climatological data obtained for the City of Victorville indicates the annual precipitation averages 6.18 inches per year. Almost all of the precipitation in the form of rain occurs in the months between October and April, with hardly any occurring between the months of May and September. The wettest month is February, with a monthly average total precipitation of 1.22 inches. The average minimum and maximum temperatures for the region are 45.7 and 78.9 degrees Fahrenheit (°F) respectively with December and January (monthly average 41° F) being the coldest months and July being the hottest (monthly average 100° F).

### 3.2 TOPOGRAPHY AND SOILS

On-site surface elevation ranges from approximately 2,694 to 2,742 feet above mean sea level and generally slopes to the northeast to southwest. The project site is relatively flat with no areas of significant topographic relief, and slopes to the southwest. Based on the USDA NRCS Web Soil Survey, the project site is underlain by the following soil units: Cajon-Arizo Complex (2 to 15 percent slopes), Cajon sand (2 to 9% slopes), and Villa loamy sand (refer to Exhibit 4, *Soils*).

### 3.3 SURROUNDING LAND USES AND SITE CONDITIONS

Land uses in the surrounding area include:

- North – Abbey Lane; Victor Valley Material Recycling Center (VVMRF) and its support facilities on north side of Abbey Lane, with a few non-conforming residential uses at the intersection of Abbey Lane and E Abbey Lane
- East – Stoddard Wells Road and vacant land; Interstate-15 is approximately 0.21 mile east of Project Site
- South – Vacant land; motel approximately 0.24 mile to south of Project Site
- West – Rural Residential (non-conforming) and Mojave River

The project site currently undeveloped/vacant and is located east of the Mojave River and northwest of Interstate 15. Historically a residential development occurred on the northeast corner of the project site and stockpiling activities were observed along northern boundary until 2006.

**Legend**



Project Site



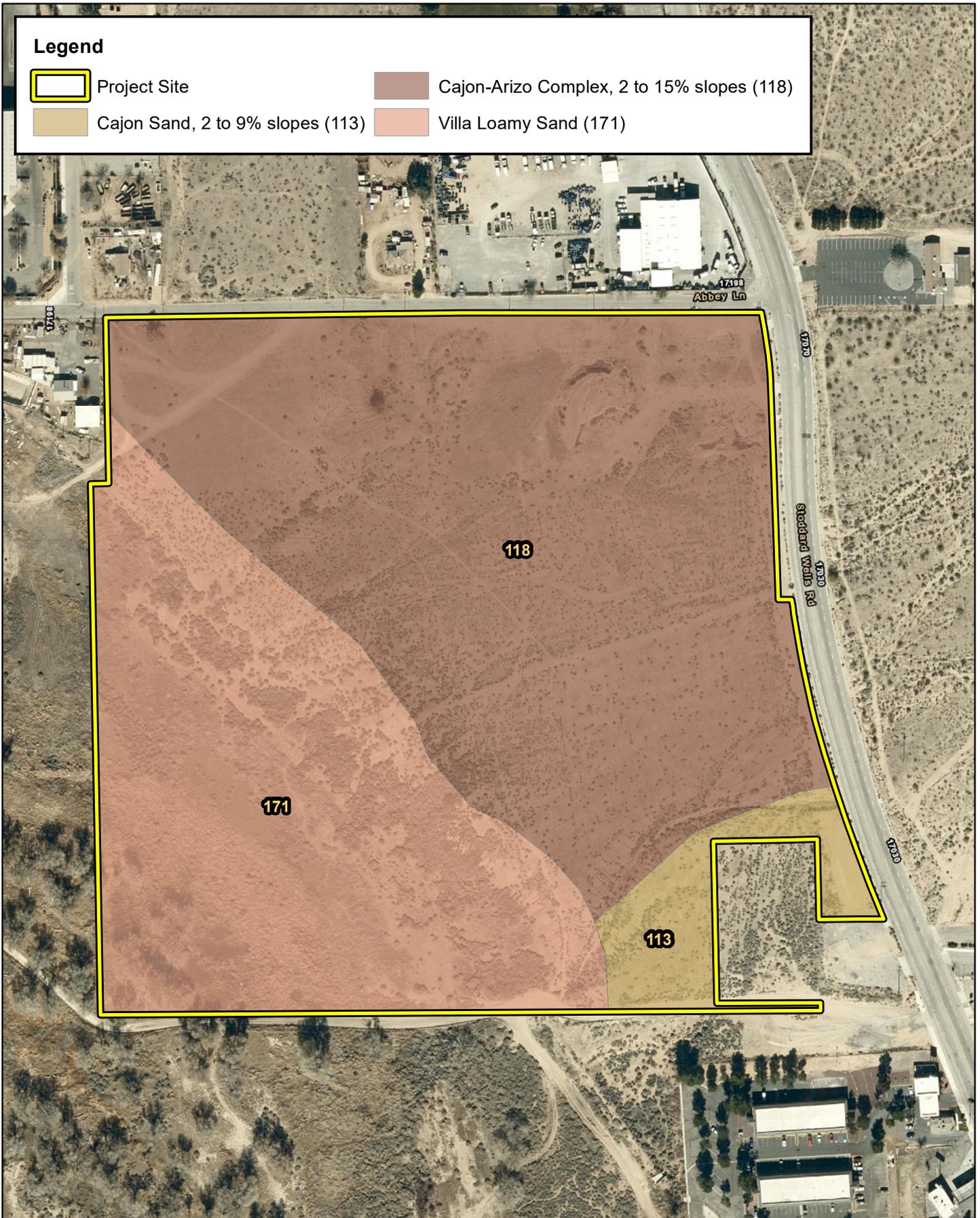
Cajon-Arizo Complex, 2 to 15% slopes (118)



Cajon Sand, 2 to 9% slopes (113)



Villa Loamy Sand (171)



**STODDARD WELLS ROAD AT ABBEY LANE INDUSTRIAL PROJECT  
BIOLOGICAL RESOURCES ASSESSMENT**



**Soils**

Source: ESRI Aerial Imagery, Soil Survey Geographic Database, San Bernardino County

## Section 4 Discussion

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### 4.1 LITERATURE REVIEW AND RESULTS

The literature search identified nine (9) special-status plant species and forty-three and (43) special-status wildlife species as having the potential to occur within the Victorville quadrangle. No special-status plant communities were identified on the Victorville quadrangle. Species determined to have the potential to occur within the general vicinity are presented in *Table B-1: Potentially Occurring Special-Status Biological Resources*, provide in Appendix B.

### 4.2 VEGETATION AND LAND COVER

During the field investigation two (2) plant communities was observed within the boundary of the project site: Allscale Scrub and (Exhibit 5, *Vegetation*). In addition, one (1) land cover type that would be classified as disturbed was observed on-site. This area is not a vegetation classification, but rather a land cover type. The vegetation communities and land cover type are described in further detail below.

**Table 1: Vegetation and Land Cover Types**

Plant Communities	Acres
Allscale Scrub	29.81
Cottonwood Stand	1.31
Disturbed	9.59
<b>TOTALS</b>	<b>40.81</b>

#### 4.2.1 Allscale Scrub (*Atriplex polycarpa* alliance)

The majority of the project site supports an Allscale scrub (*Atriplex polycarpa* alliance) plant community is dominated by Allscale saltbush (*Atriplex polycarpa*), Vegetation layers tend to support an intermittent to open shrub layer with tree species limited or absent and an open to intermittent herbaceous layer supporting seasonal annuals. Plant species observed in this community include brittlebush (*Encelia farinosa*), hoary saltbush (*Atriplex canescens*), jimsonweed (*Datura wrightii*), burrobush (*Ambrosia dumosa*), California buckwheat (*Eriogonum fasciculatum*), cheesebush (*Ambrosia salsola*), common sagebrush (*Artemisia tridentata*), desert croton (*Croton californicus*), desert dandelion (*Malacothrix glabrata*), matchweed (*Gutierrezia microcephala*), Mediterranean mustard (*Hirschfeldia incana*), narrowleaf goldenbush (*Ericameria linearifolia*), rattlesnake sandmat (*Euphorbia albomarginata*), rubber rabbitbrush (*Ericameria nauseosa*), sticky lessingia (*Lessingia glandulifera*), and western ragweed (*Ambrosia psilostachya*). Two western Joshua trees (*Yucca brevifolia*) were observed within this plant community.

#### 4.2.2 Cottonwood Stand

The cottonwood stand occurs along the southwest corner of the project site. This plant community was historically associated with the Mojave River and is dominated by Fremont's cottonwood (*Populus fremontii*). Other low-growing plant species found within the understory include tarragon (*Artemisia dracuncululus*), coyote brush (*Baccharis pilularis*), scalebroom (*Lepidospartum squamatum*), and tamarisk (*Tamarix ramosissima*). This plant community has been cut off from the influences of the Mojave River by a levee that separates the active portion of the River from the project site.

#### 4.2.3 Disturbed

Disturbed areas are generally areas that have been subject to a high level of human disturbances from anthropogenic activities and no longer comprise a native plant community. These areas are unpaved and are primarily or entirely devoid of vegetation, or support ruderal/weedy plant species. Disturbed areas observed within the boundaries of the Alternative Subareas are generally associated with off-highway recreational vehicle use and unpaved roads, but also include barren areas associated with existing anthropogenic disturbances. Plant species occurring within these disturbed areas include California buckwheat, common sunflower (*Helianthus annuus*), cudweed (*Pseudognaphalium canescens*), downey chess (*Bromus tectorum*), deer weed (*Acmispon glaber*), London rocket (*Sisymbrium irio*), Mediterranean mustard, Mediterranean grass (*Schismus arabicus*), rabbitbrush (*Ericameria nauseosa*), red brome (*Bromus rubens*), yellow sweet clover (*Melilotus indicus*), and western ragweed.

### 4.3 WILDLIFE

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

#### 4.3.1 Fish

No fish or hydrogeomorphic features (e.g., creeks, ponds, lakes, reservoirs) with frequent sources of water that would support populations of fish were observed on the project site. Therefore, no fish are expected to occur and are presumed absent from the project site.

It is important to note that the Mojave River is located immediately west of the project site and supports the native plant communities, hydrology, and substrates favored by fish known to occur in the general vicinity. Fish species expected to occur within the Mojave River include arroyo chub (*Gila orcutti*), western mosquitofish (*Gambusia affinis*), bluegill (*Lepomis macrochirus*), largemouth bass (*Micropterus salmoides*), flathead minnow (*Pimephales promelas*), and several other non-native fish species.

### 4.3.2 Amphibians

The riparian plant communities have the potential to provide suitable habitat for amphibian species known to occur within West Fork Mojave River and Mojave River. Common amphibian species that could potentially occur onsite include arroyo toad (*Bufo californicus*), western toad (*Bufo boreas*), California treefrog (*Pseudacris cadaverina*), Baja California tree frog (*Pseudacris hypochondriaca*), ensatina (*Ensatina eschscholtzii*), and bullfrog (*Rana catesbeiana*).

No amphibians or hydrogeomorphic features (e.g., creeks, ponds, lakes, reservoirs) with frequent sources of water that would support populations of amphibians were observed on the project site. Therefore, no amphibians are expected to occur and are presumed absent from the project site.

It is important to note that the Mojave River is located immediately west of the project site and supports the native plant communities, hydrology, and substrates favored by amphibians known to occur in the general vicinity. Common amphibian species expected to occur within the Mojave River include American bullfrog (*Lithobates catesbeianus*), Baja California treefrog (*Pseudacris hypochondriaca hypochondriaca*), and western toad (*Anaxyrus boreas*).

### 4.3.3 Reptiles

The project site and surrounding habitat has the potential to support a variety of reptilian species. Western side-blotched lizard (*Uta stansburiana elegans*) and Great Basin fence lizard (*Sceloporus occidentalis longipes*) were the only reptilian species observed during the field survey. Other reptilian species that are expected to occur on-site include San Diego alligator lizard (*Elgaria multicarinata webbii*), red racer (*Coluber flagellum piceus*), Great Basin gopher snake (*Pituophis catenifer deserticola*), northern Mohave rattlesnake (*Crotalus scutulatus scutulatus*), and southern pacific rattlesnake (*Crotalus viridis*).

### 4.3.4 Birds

The plant communities found on the project site provide suitable foraging and nesting habitat for a variety of resident and migrant bird species adapted to conditions within the Mojave Desert. Common bird species detected during the field survey included red-tailed hawk (*Buteo jamaicensis*), western wood pewee (*Contopus sordidulus*), American kestrel (*Falco sparverius*), house finch (*Haemorhous mexicanus*), lesser goldfinch (*Spinus psaltria*), Bewick's wren (*Thryomanes bewickii*), mourning dove (*Zenaida macroura*), American bushtit (*Psaltriparus minimus*), hooded oriole (*Icterus cucullatus*), song sparrow (*Melospiza melodia*), ash-throated flycatcher (*Myiarchus cinerascens*), western bluebird (*Sialia mexicana*), orange-crowned warbler (*Vermivora celata*), Anna's hummingbird (*Calypte anna*), California quail (*Callipepla californica*), common raven (*Corvus corax*), rock pigeon (*Columba livia*), and Say's phoebe (*Sayornis saya*). It should also be noted that Cooper's hawk (*Accipiter cooperii*), a CDFW Watch List species, and yellow warbler (*Setophaga petechia*), a California Species of Special Concern, were both observed foraging west of the project site during the field survey.

### 4.3.5 Mammals

The project site and surrounding habitat has the potential to support a variety of mammalian species. Most mammal species are nocturnal and are difficult to observe during a diurnal field visit. California ground squirrel (*Otospermophilus beecheyi*) and Audubon's cottontail (*Sylvilagus audubonii*) were the only mammalian species observed/detected during the field survey. Other common mammalian species that are expected to occur include Botta's pocket gopher (*Thomomys bottae*), raccoon (*Procyon lotor*), coyote (*Canis latrans*), black-tailed jackrabbit (*Lepus californicus*), mule deer (*Odocoileus hemionus*), striped skunk (*Mephitis mephitis*), desert woodrat (*Neotoma lepida*), western gray squirrel (*Sciurus griseus*), canyon bat (*Parastellus hesperus*), and mouse-eared bats (*Myotis* sp.).

## 4.4 NESTING BIRDS

No active nests or birds displaying nesting behavior were observed during the field survey. However, the plant communities within and immediately adjacent to the project site provide suitable foraging and nesting habitat for a variety of year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area.

Nesting birds are protected pursuant to the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (Sections 3503, 3503.5, 3511, and 3513 prohibit the take, possession, or destruction of birds, their nests or eggs). 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.

## 4.5 WILDLIFE CORRIDORS AND LINKAGES

Habitat linkages provide links between larger undeveloped 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 inadequate for others. Wildlife corridors are significant features for dispersal, seasonal migration, breeding, and foraging. Additionally, open space can provide a buffer against both human disturbance and natural fluctuations in resources.

The project site has been identified as abutting a Wildlife Corridor or Linkage on its western boundary by the San Bernardino County General Plan. This linkage is associated with the Mojave River and is relatively undeveloped and consists of natural habitats which allows wildlife to easily move through relatively undisturbed habitat in search of food, shelter, or nesting habitat.

The project site does not support or function as a wildlife movement corridor or linkage. As such, implementation of the proposed project is not expected to have a significant impact to wildlife movement opportunities or prevent local wildlife movement through the area since there is ample habitat adjacent to the project site to support wildlife movement opportunities. However, implementation of the proposed

project has the potential to indirectly and temporarily impact (i.e., noise) potential wildlife movement opportunities along the western boundary during construction activities.

## 4.6 STATE AND FEDERAL 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 and/or fill materials into “waters of the United States” 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 Regional Board regulates discharges into surface waters pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act and the CDFW regulates alterations to streambed and associated plant communities pursuant to Section 1602 of the California Fish and Game Code.

The USFWS NWI and the USGS National Hydrography Dataset were reviewed to determine if any blueline streams or riverine resources have been documented within or immediate surrounding the project site. Based on this review, no blue-line resources have been mapped on the project site.

One (1) unnamed ephemeral water feature was observed on the southeast corner of the project site during the field investigation (refer to Exhibit 6, *Jurisdictional Areas*). This feature originates near the southeast corner of the project site under Stoddard Wells Road and conveys flows in a southwest direction before exiting the middle of the southern boundary of the project site. East of Stoddard Wells Road, outside of the project footprint, this drainage feature conveys stormwater runoff from Interstate 15 and storm flows from undeveloped areas east of Interstate 15. The onsite drainage feature was created when Interstate 15 was created.

Once onsite, this feature traverses the site from east to west towards the middle of the southern boundary of the project site, where the water infiltrates/dissipates into the dirt access road on the southern boundary of the site. Once offsite, water continues to flow in a southwesterly direction before infiltrating east of the Mojave River. It should be noted that water flows from this onsite drainage feature are not expected to reach the Mojave River since a levee separates the active portion of the Mojave River from project site. The onsite drainage feature only conveys flows from direct precipitation during storm events. No surface water was present during the field investigation, and no riparian vegetation was observed onsite within the drainage feature during the field investigation.

It was preliminarily determined that water dissipation from this drainage feature has an insubstantial or speculative effect on the chemical, physical or biological significant nexus to the downstream waters (i.e., the Mojave River). Storm flows are not expected to flow across the project site during most storm events. There are no existing blueline streams traversing the project site, and the majority of the water flows from the feature do not leave the project site. Plant species associated with this area is consistent with the vegetation found on the majority of the project site.

The onsite drainage feature, after flowing offsite, eventually infiltrate east of the Mojave River and is separated from the Mojave River by an existing levee. This levee has reduced if not eliminated the onsite drainage feature’s connectivity to the Mojave River. As a result, the onsite drainage features do not have a surface hydrologic connection to downstream waters of the United States and will not be considered

jurisdictional by the Corps. However, the onsite drainage will fall under the regulatory authority of the Regional Board as waters of the State, and, potentially, CDFW as jurisdictional streambed. Table 2, *Jurisdictional Areas and Impacts*, identifies the onsite jurisdictional features including the total acreage of jurisdiction for each regulatory agency within the boundaries of the project site and proposed project impacts to jurisdiction.

**Table 2: Jurisdictional Areas and Impacts**

Jurisdictional Features	Regional Board Non-Wetland Waters		CDFW Jurisdictional Streambed	
	On-Site Jurisdiction acreage (linear feet)	Impacts acreage (linear feet)	On-Site Jurisdiction acreage (linear feet)	Impacts acreage (linear feet)
Drainage 1	0.08 (727)	0.08 (727)	0.08 (727)	0.08 (727)
<b>TOTALS</b>	<b>0.08 (727)</b>	<b>0.08 (727)</b>	<b>0.08 (727)</b>	<b>0.08 (727)</b>

Impacts to on-site jurisdictional areas will likely require a Regional Board Report of Waste Discharge permit and CDFW Section 1602 Lake or Streambed Alteration Agreement prior to project implementation.

## 4.7 SPECIAL-STATUS BIOLOGICAL RESOURCES

The CNDDDB Rarefind 5, CNDDDB Quickview Tool in BIOS and the CNPS Electronic Inventory of Rare and Endangered Vascular Plants of California were queried for reported locations of special-status plant and wildlife species as well as special-status natural plant communities in the Victorville USGS 7.5-minute quadrangles. 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 nine (9) special-status plant species and forty-three (43) special-status wildlife species as having the potential to occur within the Victorville quadrangle. No special-status plant communities were identified on the Victorville quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project boundaries 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 B-1: Potentially Occurring Special-Status Biological Resources*, provide in Appendix B. Refer to Table B-1 for a determination regarding the potential occurrence of special-status plant and wildlife species within the project site, and Exhibit 7, *CNDDDB Observations*.

### 4.7.1 Special-Status Plants

According to the CNDDDB and CNPS, nine (9) special-status plant species have been recorded in Victorville quadrangle (refer to Appendix B). The only special-status plant species observed on-site was western Joshua tree (*Yucca brevifolia*; State Candidate Endangered, CNPS N/A). No other special-status plant species were observed on-site during the field investigation. With the exception of western Joshua tree,

none of the other special-status plant species known to occur in the area are federally or state listed as endangered or threatened; they are only listed as CNPS Rare Plant Rank Species.

The project site consists of a vacant, undeveloped parcel that has been subject to a variety of anthropogenic disturbances. Based on habitat requirements for the identified special-status species, and known distributions, it was determined that the undeveloped portions of the project site do not have the potential to support any of the special-status species documented as occurring within the vicinity of the project site are presumed absent.

The occurrence of Joshua tree onsite is described in further detail below.

### Western Joshua Tree

The western Joshua tree was granted candidate status under the California Endangered Species Act on September 25, 2020. This species is endemic to the Mojave Desert and occupies an elevation range of 1,600 and 6,660 feet above mean sea level. This species is recognized in several vegetation communities in varying densities. Known occupied communities include sagebrush scrub, desert shrub, southwestern shrubsteppe, pinyon-juniper woodland, and desert grasslands. When this species is dominant in high densities, the occupied habitat may be classified as a Joshua tree woodland, although densities are typically low due to their extensive and competitive root systems. Mature size varies greatly due to irregular branching, and large individuals can exceed 40 feet in height. Like other large members of family Agavaceae, western Joshua trees grow slowly, with estimated growth rates ranging from 2.3 to 4.6 inches per year depending on individual age and conditions. Western Joshua trees are long-lived species, with most estimates of average lifespan ranging from 150 to 300 years, although some estimates exceed 700 years. The largest known western Joshua tree exceeds 60 feet in height and is an estimated 1,000 years old. Like other long-lived plant species, seed production occurs very slowly and irregularly, although rhizome production and clonal growth can occur. Western Joshua trees are only known to be pollinated by one species: the yucca moth (*Tegeticula synthetica*).

Two (2) western Joshua trees were observed onsite. As a candidate endangered species, western Joshua trees have the same protection as listed species in the California Endangered Species Act. Joshua trees are also considered a significant resource under the CEQA and are a covered species under the Desert Plant Protection Act. In accordance with Section 2081 subdivision (b) of the California Fish and Game Code, removal of Joshua trees will require an Incidental Take Permit (ITP) to be prepared and processed if the Joshua trees cannot be avoided.

**Table 3: On-Site Joshua Trees**

Joshua Tree No.	Location	Height	Clones	Branches/Flowers	Health
1	34.560735, -117.294570	>5 meters	0 clone	35 branches/4 flowers	Poor Health, Decaying
2	34.557910, -117.291478	1.5 meters	0 clones	8 branches/5 flowers	Good health

Based on the proposed project footprint, the larger Joshua tree on the northwest corner of the project site that is in poor health will be impacted from project implementation. The smaller of the two Joshua trees near the southeast corner of the site will not be impacted from project implementation. This Joshua tree will be located in a landscaped planter and will be preserved in place.

#### 4.7.2 Special-Status Wildlife

According to the CNDDDB, forty-three (43) special-status wildlife species have been reported in the Victorville quadrangle (refer to Appendix B). Based on habitat requirements for the identified special-status species, and known distributions, it was determined that the undeveloped/undisturbed plant communities found within the project site have the potential to support the following special-status wildlife species:

High Potential to occur:

- Cooper's hawk (*Accipiter cooperii*)
- prairie falcon (*Falco mexicanus*)
- loggerhead shrike (*Lanius ludovicianus*)

Moderate Potential to occur:

- great egret (*Ardea alba*)
- great blue heron (*Ardea herodias*)

Low Potential to occur:

- burrowing owl (*Athene cunicularia*)
- Swainson's hawk (*Buteo swainsoni*)
- western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)
- olive-sided flycatcher (*Contopus cooperi*)
- willow flycatcher (*Empidonax traillii*)
- southwestern willow flycatcher (*Empidonax traillii extimus*)
- American peregrine falcon (*Falco peregrinus anatum*)
- Mojave desert tortoise (*Gopherus agassizii*)
- yellow-breasted chat (*Icteria virens*)
- hoary bat (*Lasiurus cinereus*)
- Yuma myotis (*Myotis yumanensis*)
- summer tanager (*Piranga rubra*)
- Vermillion flycatcher (*Pyrocephalus rubinus*)
- yellow warbler (*Setophaga petechia*)
- Lawrence's goldfinch (*Spinus lawrencei*)
- two-striped garter snake (*Thamnophis hammondi*)
- least Bell's vireo (*Vireo bellii pusillus*)

Based on regional significance and listing status, the potential occurrence of arroyo toad, burrowing owl, least Bell's vireo, willow flycatcher, southwestern willow flycatcher, Mojave desert tortoise, and Mohave ground squirrel are described in further detail below.

### Arroyo Toad

The arroyo toad inhabits rivers and streams of coastal southern California, from Monterey County southward into northern Baja California, Mexico. In the United States, the arroyo toad was listed as an endangered species on December 16, 1994 (59 Federal Register 64859). In California, the arroyo toad is identified as a Species of Special Concern. The arroyo toad is about 2 to 3 inches in length with light olive green, gray, or light brown skin color with a light-colored stripe shaped “V” across the head and eyelids. Arroyo toads are found in low gradient, medium-to-large streams and rivers with intermittent and perennial flow in coastal and desert drainages in central and southern California, and Baja California, Mexico. Arroyo toads occupy aquatic, riparian, and upland habitats within its range and require slow-moving streams that are composed of sandy soils with sandy streamside terraces. Suitable habitat is created and maintained by periodic flooding and scouring that modify stream channels, redistribute channel sediments, and alter pool location and form.

The most important factors in determining habitat suitability for arroyo toads are stream order, elevation, and floodplain width. Stream order ranks the size and potential power of streams. The smallest channels in a watershed with no tributaries are referred to as first-order streams. When two first-order streams unite, they form a second-order stream; when two second-order streams unite, they form a third-order stream, and so on. Fifth- and sixth-order streams are usually larger rivers, while first- and second-order streams are often small, steep, or intermittent. Arroyo toads are found at the lower end of the third to sixth order stream segments where the coarsest sediments are lacking and flow rates are great enough to keep silt and clay suspended. Arroyo toads breed and deposit egg masses in shallow, sandy pools bordered by sand and gravel flood terraces. Outside of the breeding season, arroyo toads are terrestrial utilizing riparian habitats with low to moderate vegetative cover for foraging and burrowing. Adult and sub-adult arroyo toads seek shelter during the day and other periods of inactivity by burrowing into upland terraces, along flood channels, and often in the soils below the canopy edge of willows or cottonwoods.

The substrate in habitats preferred by arroyo toads consists of sand, fine gravel, or friable soil, with varying amounts of large gravel, cobble, and boulders. Areas utilized by juveniles consists of sand or fine gravel bars adjacent to stabilized sandy terraces and oak flats. Habitats used outside of the breeding season for foraging and burrowing include riparian habitats such as sand bars, alluvial terraces, and streamside benches with no vegetation or have low to moderate cover composed of California sycamore, coast live oak (*Quercus agrifolia*), mulefat, cottonwoods, and willows. The types of upland habitats include alluvial scrub, coastal sage scrub, chaparral, grassland, and oak woodland. Studies have shown that arroyo toads are known to utilize upland habitats up to 1,063 feet from the active channel.

There are no perennial sources of water onsite. As a result, the project site does not provide any suitable habitat for arroyo toad and is presumed to be absent from the project site.

### Burrowing Owl

The burrowing owl is designated by the CDFW as a California species of special concern. It is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with well-drained, level to gently-sloping areas characterized by sparse vegetation and bare ground. They are dependent upon the presence of burrowing mammals (such as ground

squirrels) for roosting and nesting habitat. The presence or absence of colonial mammal burrows is often a major factor that limits the presence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drainpipes, standpipes, and dry culverts. Small mammals may also burrow beneath rocks and debris or large, heavy objects such as abandoned cars, concrete blocks, or concrete pads. This species requires open vegetation allowing line-of-sight observation of the surrounding habitat to forage as well as watch for predators. The burrowing owl nesting season generally extends from mid-March to the end of August.

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. However, 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 project site or off-site improvement areas. Additionally, the site supports and is surrounded by tall trees and buildings that provide perching opportunities for large raptors (i.e., red-tailed hawk) that can prey on burrowing owls. Being that no appropriate burrows or burrowing owl habitat was found, focused burrowing owl surveys are not recommended.

#### Least Bell's Vireo

Least Bell's vireo is a federally and state endangered subspecies of the Bell's vireo. It is a summer migrant to California and is the only regularly-occurring subspecies of Bell's vireo in San Bernardino County. Its nesting habitat typically consists of a well-developed over-story and understory, along with low densities of aquatic and herbaceous plant cover. The understory frequently contains dense sub-shrub or shrub thickets that are often dominated by plants such as willow, mulefat, and one or more herbaceous species. Least Bell's vireos begin to arrive at their breeding grounds in southern California riparian areas from mid-March to early April. Upon arrival, males establish breeding territories that range in size from 0.5 to 7.4 acres, with an average size of approximately two acres. In California, females begin laying eggs in April, fledging birds until the end of July (Kus et al. 2010). The fledglings will remain in the parental territory for up to a month. Bell's vireos leave the breeding grounds and migrate south mid- to late September. Although not common, a few have been found wintering in southern California (Hamilton and Willick 1996).

Occurrence records for the area indicate that there have been several least Bell's vireo nesting sites documented along the Mojave River (CNDDDB). However, the project site consists of a vacant, undeveloped land that has been subject to a variety of anthropogenic disturbances. As a result, the project site is heavily dominated by low-growing upland plant species. A stand of cottonwood trees occurs in the southwest portion of the project site, however, this area is outside the hydrologic influences of the Mojave River and lack the preferred plant species composition, density, and structure needed to provide suitable nesting habitat. Based on these conditions, it was determined that the project site does not provide the necessary Primary Constituent Elements (PCEs) which are essential to the conservation of the least Bell's vireo. Therefore, least Bell's vireo is presumed to be absent from the project site and focused surveys are not recommended.

### Willow Flycatcher & Southwestern Willow Flycatcher

The willow flycatcher is a nearly transcontinental species which breeds widely across temperate North America and migrates to Middle and northwestern South America for the winter. It consists of the following four subspecies, all of which are migratory. The species as a whole winters from southern Mexico south through Central America to Panama and western Venezuela. Subspecies *extimus* has been collected in winter in Guatemala, El Salvador, Honduras, and Costa Rica. Migrants of the more northern subspecies occur commonly in the breeding range of *extimus*. Because southern California lies across the main migration route of *brewsteri*, and specimens of *brewsteri* outnumber specimens of *extimus* in its own range. In fact, with the population crash of *extimus*, almost all Willow Flycatchers seen in southern California are *brewsteri*. *Extimus* is encountered only at the few sites where it breeds. In southern California the subspecies *extimus* arrives in spring, usually in early May.

The southwestern willow flycatcher is a federally and state endangered species that usually arrives in southern California in early May, but rarely as early as the last two or three days of April. In fall, adults depart mainly during the last half of August, but rarely can remain as late as September 4th. Juveniles remain until later in September but all have departed by October 1st. The southwestern willow flycatcher breeds only in riparian habitats, typically along a dynamic river or lakeside. Surface water or saturated soil is usually present in or adjacent to nesting sites during at least the initial portion of the nesting period. Riparian habitats used by southwestern willow flycatchers typically have a dense thicket of trees and shrubs that can range in height from about 2 to 30 meters. Preferred nesting sites usually contain riparian foliage from the ground level up to a dense (about 50 to 100 percent) tree or shrub canopy.

The project site consist of a vacant, undeveloped parcel that has been subject to a variety of anthropogenic disturbances. As a result, the project site is heavily dominated by low-growing upland plant species. The stand of cottonwood trees occurs in the southwest portion of the project site, however, this area is outside the hydrologic influences of the Mojave River and lack the preferred plant species composition, density, and structure needed to provide suitable nesting habitat. Further, the only recorded occurrence of southwestern willow flycatcher was located within the Mojave Narrows Regional Park approximately 2.95 miles southeast of the project site (CNDDDB). Based on these conditions, it was determined that the project site does not provide the necessary PCEs which are essential to the conservation of the southwestern willow flycatcher. Therefore, southwestern willow flycatcher is presumed to be absent from the project site and focused surveys are not recommended.

### Mojave Desert Tortoise

The Mojave population of the desert tortoise was listed as Threatened on April 2, 1990 and a recovery plan was published in June 1994 (revised May 2011) to describe a strategy for recovering the Mojave population of the desert tortoise including the identification of five recovery units, recommendations for a system of Desert Wildlife Management Areas (DWMAs) within the recovery units, and development and implementation of specific recovery actions, especially within DWMAs. The establishment of recovery units and DWMAs was intended to facilitate an ecosystem approach to land management and desert tortoise recovery. Based on the 2018 Revised Recovery Plan, the survey area is located within the Western Mojave Recovery Unit, but is not located within any designated DWMAs. Additionally, the survey area is not located within designated Critical Habitat for the desert tortoise and no desert tortoise have been recorded on the project site.

The Mojave population of the desert tortoise inhabits areas north and west of the Colorado River in the Mojave Desert of California, Nevada, Arizona, and southwestern Utah, and in the Sonoran Desert in California. Throughout the majority of the Mojave Desert, desert tortoises occur most commonly on gentle sloping soils characterized by an even mix of sand and gravel and sparsely vegetated low-growing vegetation where there is abundant inter-shrub space. Typical habitat for the Mojave desert tortoise has been characterized as creosote bush scrub below 5,500 feet in elevation with a high diversity of perennial and ephemeral plants. The dominant shrub commonly associated with desert tortoise habitat is creosote bush; however, other shrubs including burrobush, Mojave yucca (*Yucca schidigera*), cheesebush, and Mojave prickly-pear (*Opuntia mojavensis*) also provide suitable habitat. The desert tortoise spends 95 percent of its life underground and will opportunistically utilize burrows of various lengths, deep caves, rock and caliche crevices, or overhangs for cover. Therefore, a moderately friable soil is required to allow for burrow construction and ensure that burrows do not collapse.

Despite a systematic search of the project site, no suitable desert tortoise burrows or sign were observed during the field investigation. Being that no appropriate burrows were found, a focused desert tortoise survey is not recommended.

#### Mohave Ground Squirrel

The Mohave ground squirrel is endemic to the western Mojave Desert, California. It occupies portions of Inyo, Kern, Los Angeles, and San Bernardino counties in the western Mojave Desert. In general, the species ranges from near Palmdale on the southwest to Lucerne Valley on the southeast, Olancho on the northwest and the Avawatz Mountains on the northeast (Gustafson 1993). The historical range of suitable habitat for this species as decreased by 10 to 16% due to urbanization and range-wide declines in trapping success over the last few decades suggesting that their populations are declining. This species was listed as threatened under the California Endangered Species Act in 1985.

The Mohave ground squirrel is a medium-sized ground squirrel that measures 8.3 to 9.1 inches (in; 21 to 23 centimeters; cm) in total length, 2.2 to 2.8 in (5.7 to 7.2 cm) in tail length, and 1.3 to 1.5 in (3.2 to 3.8 cm) in hind foot length (Hall 1981). The Mohave ground squirrel occupies all major desert scrub habitats in the western Mojave Desert. It has been observed in the following habitats described by Holland (1986) as:

- Mojave creosote scrub, dominated by creosote bush and burrobush,
- Desert saltbush scrub, dominated by various species of saltbush (*Atriplex*),
- Desert sink scrub, which is similar in composition to saltbush scrub, but is sparser and grows on poorly drained soils with high alkalinity,
- Desert greasewood scrub, with very sparse vegetation generally located on valley bottoms and dry lake beds,
- Shadscale scrub, which is dominated by *Atriplex confertifolia* and/or *A. spinescens*, and
- Joshua tree woodland, which includes Joshua trees widely scattered over a variety of shrub species (Gustafson 1993).

These habitat types are distributed throughout the range of the Mohave ground squirrel. In the northern portion of its the range, Mohave ground squirrel is found in a plant association described as Mojave

mixed woody scrub, typically occurring on hilly terrain and composed of a variety of shrub species (Holland, 1986).

The CNDDDB recorded one individual of Mohave ground squirrel as occurring approximately 1 mile north of the project site (CNDDDB). However, the project site and surrounding area have undergone changes due to urbanization and agricultural land uses resulting in the loss of the native habitat for this species. Urban development has also resulted in direct loss of individuals due to increased vehicle use and an increased abundance of domestic pets. Per habitat intactness data from the DRECP, the project site and surrounding area consists of very low-quality habitat for this species. The project site consists of a disturbed habitats with compacted soils. Further, a recent study by Leitner (2015) on the current status of the Mohave Ground Squirrel did not detect any species within or around the boundaries of the project site. Based on habitat requirements for Mohave ground squirrel, it was determined the project site does not contain the native desert scrub habitats or sandy, alluvial soils preferred by this species. Additionally, the Mojave River west of the project site, Interstate 15 south and east of the project site, and existing residential and industrial developments north of the project site have isolated the project site potential occupied Mohave Ground Squirrel habitat, and Mohave Ground Squirrel are not anticipated to occur. Therefore, this species is presumed absent from the project site and trapping surveys for Mohave ground squirrel are not recommended.

## 4.8 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.

Federally designated Critical Habitat for southwestern willow flycatcher is located along the western boundary of the project site (refer to Exhibit 8, *Critical Habitat*). Specifically, this section of Critical Habitat is known as the Mojave Management Unit and belongs to the Basin and Mojave Recovery Unit (USFWS, 2005).

The PCEs for southwestern willow flycatcher consist of the following:

- (1) Riparian habitat along a dynamic river or lakeside, in a natural or manmade successional environment (for nesting, foraging, migration, dispersal, and shelter) that is comprised of trees and shrubs (that can include Gooddings willow, coyote willow, Geyer’s willow, arroyo

willow, red willow, yewleaf willow, pacific willow, boxelder, tamarisk, Russian olive, buttonbush, cottonwood, stinging nettle, alder, velvet ash, poison hemlock, blackberry, seep willow, oak, rose, sycamore, false indigo, Pacific poison ivy, grape, Virginia creeper, Siberian elm, and walnut) and some combination of:

- (a) Dense riparian vegetation with thickets of trees and shrubs that can range in height from about 2 to 30 meters. Lower-stature thickets (2 to 4 meters) are found at higher elevation riparian forest and tall-stature thickets are found at middle- and lower-elevation riparian forests;
  - (b) Areas of dense riparian foliage at least from the ground level up to approximately 4 meters above ground or dense foliage only at the shrub or tree level as a low-density canopy;
  - (c) Sites for nesting that contain a dense (about 50 – 100%) tree or shrub (or both) canopy (the amount of cover provided by tree and shrub branches measures from the ground);
  - (d) Dense patches of riparian forests that are interspersed with small opening of open water or marsh or areas with shorter and sparser vegetation that creates a variety of habitat that is not uniformly dense. (patch size may be as small as 0.1 hectares (0.25 acres) or as large as 70 hectares (175 Acres).
- (2) A variety of insect prey populations found within or adjacent to riparian floodplains or moist environments, which can include: flying ants, wasps, and bees; dragonflies; flies; true bugs; beetles; butterflies, moths, and caterpillars; and spittlebugs.

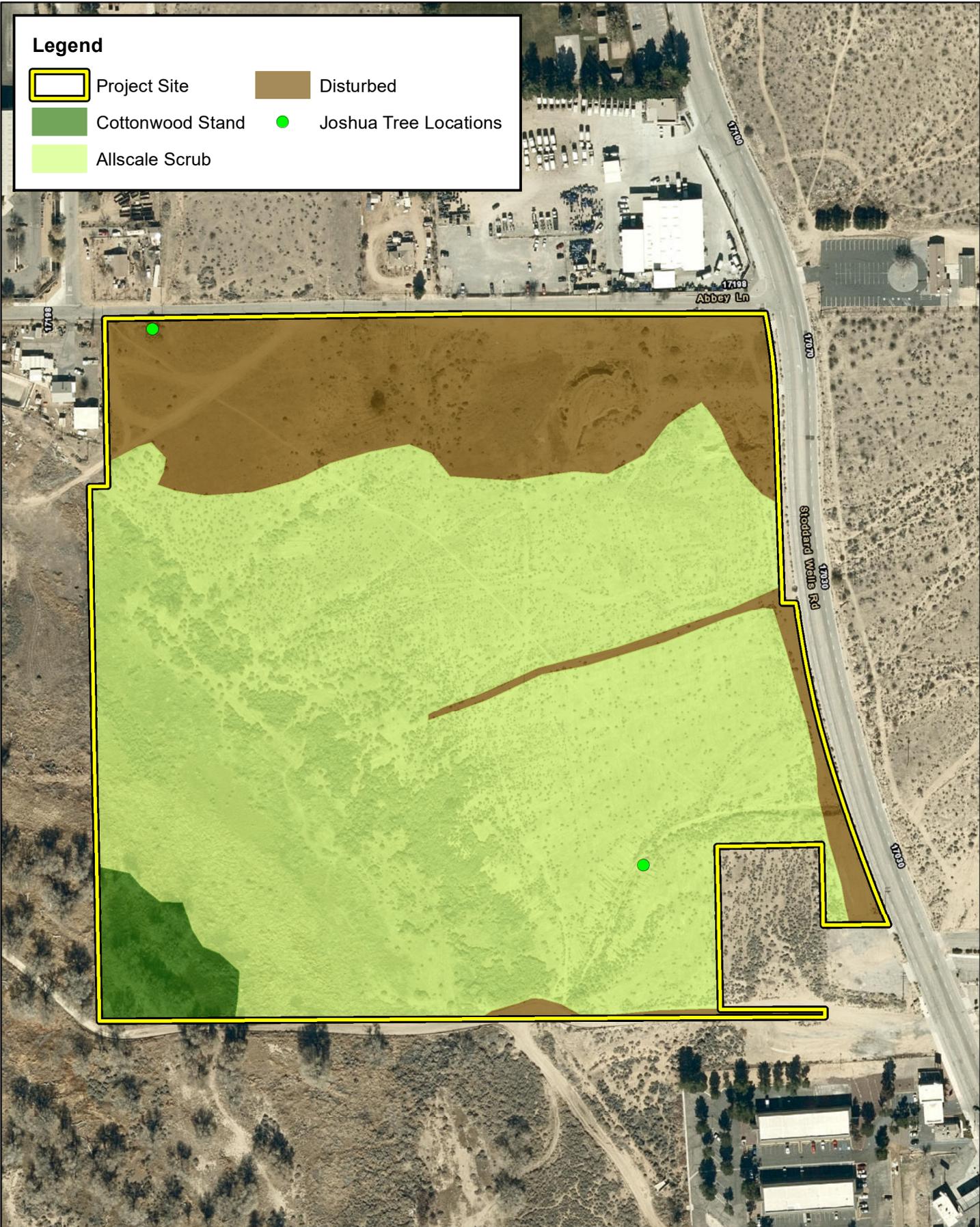
The western boundary of the project site does not provide any of the above listed PCEs which are essential to the conservation of the southwestern willow flycatcher. The stand of cottonwood on the southwest corner of the project site is outside the hydrologic influences of the Mojave River and lacks the preferred plant species composition, density, and structure needed to provide suitable nesting habitat. Further, since there is no federal nexus (i.e., CWA Section 404 permit, federal funding, etc.), the presence of Critical Habitat will not trigger consultation with the USFWS under Section 7 of the federal Endangered Species Act. However, if final design results in impacts to the Mojave River and a Corps CWA Section 404 permit is required, then a Section 7 consultation with the USFWS will likely be required to determine if loss or adverse modification to Critical Habitat will occur.

## 4.9 PROTECTION OF DESERT NATIVE PLANT SPECIES

The California Desert Native Plants Act (CDNPA) protects California desert native plants from unlawful harvesting on both public and privately owned lands within Imperial, Kern, Los Angeles, Mono, Riverside, San Bernardino, and San Diego Counties. The following native plants, or any part thereof, may not be harvested except under a permit issued by the commissioner or the sheriff of the county in which the native

plants are growing: all species of the Agavaceae (century plants, nolinias, and yuccas); all species of the family Cactaceae; all species of the family Fouquieriaceae (ocotillo, candlewood); all species of the genus *Prosopis* (mesquites); all species of the genus *Cercidium* (palo verdes); catclaw acacia (*Acacia greggii*); desert holly (*Atriplex hymenelytra*); smoke tree (*Dalea spinosa*); and desert ironwood (*Olneya tesota*), both dead and alive (provision 80073). This provision excludes any plant that is declared to be a rare, endangered, or threatened species by federal or State law or regulations, including, but not limited to, the California State Fish and Game Code.

Based on the results of the field investigation, Joshua tree, covered by the CDNPA and listed as a candidate endangered species under Fish and Game Code was observed within project boundaries during the field investigation that will be impacted from project implementation.

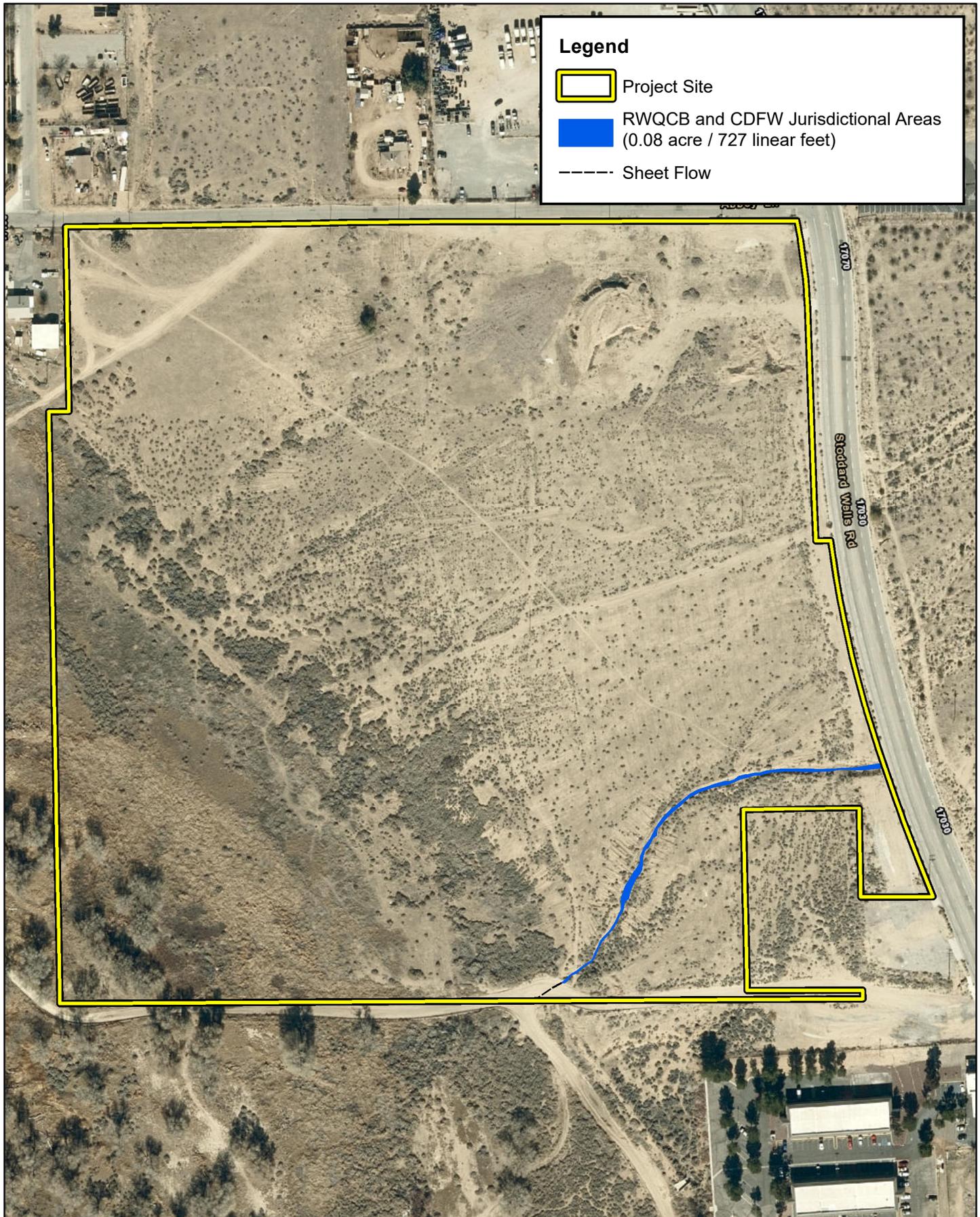


STODDARD WELLS ROAD AT ABBEY LANE INDUSTRIAL PROJECT  
 BIOLOGICAL RESOURCES ASSESSMENT

Vegetation



Source: ESRI Aerial Imagery, San Bernardino County



**Legend**

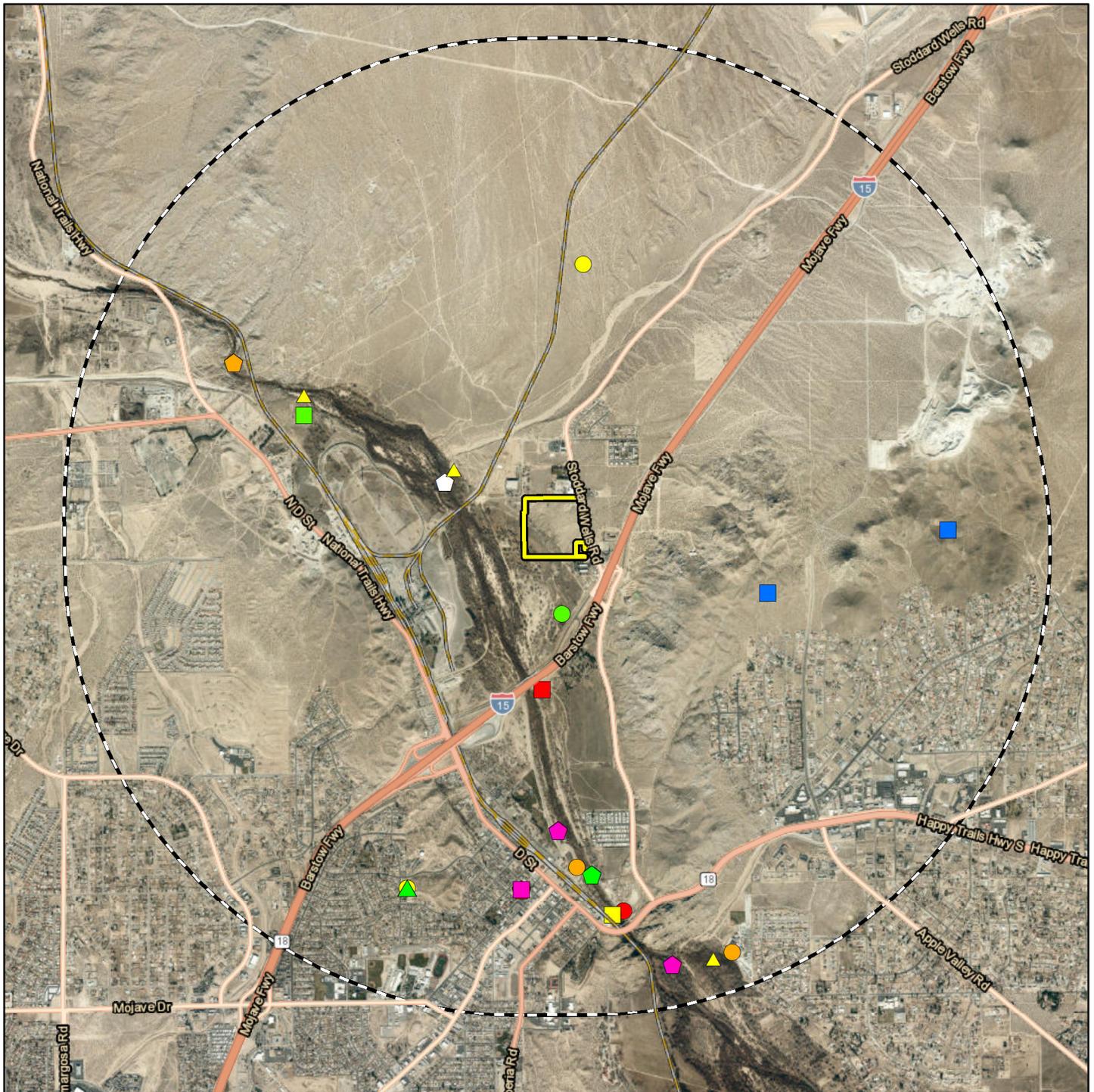
- Project Site
- RWQCB and CDFW Jurisdictional Areas (0.08 acre / 727 linear feet)
- Sheet Flow

STODDARD WELLS ROAD AT ABBEY LANE INDUSTRIAL PROJECT  
 BIOLOGICAL RESOURCES ASSESSMENT

**Jurisdictional Areas**



Source: ESRI Aerial Imagery, USFWS Critical Habitat, San Bernardino County

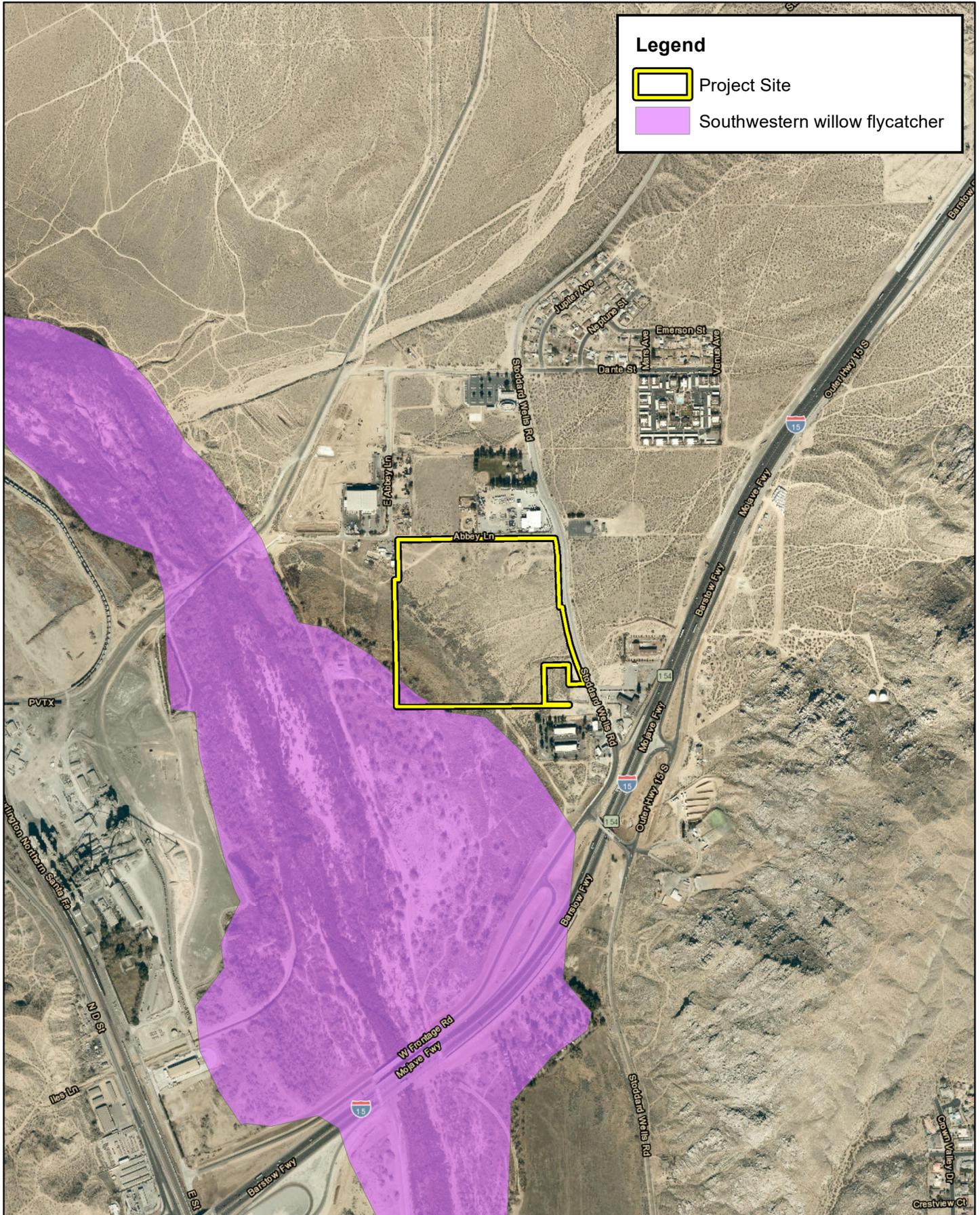


Legend			
	Project Site		Mohave river vole
	2 Mile Buffer		desert tortoise
	California red-legged frog		Mohave tui chub
	Cooper's hawk		golden eagle
	Le Conte's thrasher		hoary bat
	Mohave ground squirrel		least Bell's vireo
	Victorville shoulderband		loggerhead shrike
	arroyo toad		pallid San Diego pocket mouse
			southern mountains skullcap
			tricolored blackbird
			yellow warbler
			Beaver Dam breadroot
			Booth's evening-primrose
			white pygmy-poppy

STODDARD WELLS ROAD AT ABBEY LANE INDUSTRIAL PROJECT  
 BIOLOGICAL RESOURCES ASSESSMENT  
**CNDDDB Observations**



Source: ESRI Aerial Imagery, CDFW CNDDDB, San Bernardino County



**Legend**

- Project Site
- Southwestern willow flycatcher

STODDARD WELLS ROAD AT ABBEY LANE INDUSTRIAL PROJECT  
 BIOLOGICAL RESOURCES ASSESSMENT



**Critical Habitat**

Source: ESRI Aerial Imagery, USFWS Critical Habitat, San Bernardino County

## Section 5 Conclusion and Recommendations

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Based on the proposed design plans and the limits of disturbance from project activities, and with the implementation of the mitigation measures described below, none of the special-status biological resources known to occur in the general vicinity of the project site are expected to be directly or indirectly impacted from implementation of the proposed project. Therefore, we have determined that this project will have “no effect” on federally or State listed species known to occur in the general vicinity of the project site. Additionally, the project will not result in a loss or adverse impacts to federally designated Critical Habitat. The discussion below provides a summary of survey results:

### Special-Status Plant Species

The only special-status plant species observed on-site was western Joshua tree, a State Candidate Endangered species. No other special-status plant species were observed on-site during the field investigation. The project site consists of a vacant, undeveloped parcel that has been subject to a variety of anthropogenic disturbances. Based on habitat requirements for the identified special-status species, and known distributions, it was determined that the undeveloped portions of the project site do not have the potential to support any of the special-status species documented as occurring within the vicinity of the project site are presumed absent.

Two (2) western Joshua trees were observed onsite. Current available literature (CDFW 2022) discusses the primary method of western Joshua tree seed dispersal as “scatter-hoarding behavior of rodents who actively collect seeds from fruits in the canopies of trees and fruits and seeds that have fallen on the ground, and bury seeds within the local area”, most of the time within 186 feet of the source tree. White-tailed antelope squirrels (*Ammospermophilus leucurus*) and kangaroo rats (*Dipodomys merriami* and *D. agilis*) were noted as likely having a large role in this process. Because of these data, CDFW has determined that a buffer of 186 feet surrounding each tree is considered within the tree’s associated seedbank, and therefore protected like that of the tree itself.

In order to determine mitigation for impacts to Joshua tree, a 186-foot buffer was placed around the Joshua tree on the northwest corner of the project site to determine the acreage of impacts. However, the Joshua tree on the northwest corner of the project site is bordered by an existing paved road along its northern boundary, and existing buildings to the west. As a result, a 186-foot buffer was not placed around the entirety of the northwestern Joshua tree due to existing developments bordering it. Approximately 1.13 acres of impacts to Joshua tree and associated habitat will occur from project implementation.

The smaller of the two Joshua trees near the southeast corner of the site will not be impacted from project implementation. This Joshua tree will be located in a landscaped planter and will be preserved in place. An approximately 30-foot buffer will be placed around this tree to protect in place. An approved biological monitor will oversee the installation of orange construction fencing or the like around the tree to ensure avoidance of the tree. It should be noted that the project site only supported 2 Joshua trees, and no Joshua trees were observed in the area immediately surrounding the project site. Since the project site only supports 2 Joshua trees, and no other Joshua trees occur in the immediate area, it can be concluded that the project

site does not support a robust seed base for Joshua tree. As a result, the 30-foot buffer around the tree that will remain onsite will be sufficient to protect the tree. Mitigation measures include the following:

*Western Joshua Tree Incidental Take Permit*

The project proponent shall obtain an ITP from California Department of Fish and Wildlife (CDFW) under CDFW under §2081 of the California Endangered Species Act (CESA), prior to the relocation, removal, or take (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of the single western Joshua tree on the project site.

Approximately 1.13 acres of the project site falls within the 186-foot buffer around the onsite Joshua trees that will need to be mitigated for impacts from project implementation. Impacts to 1.13 acres of Joshua tree habitat will be mitigated by credits out of an approved conservation bank at an agreed upon ratio with CDFW that fully mitigates impacts to Joshua tree. The project applicant will prepare and process a Section 2081 ITP with CDFW and will purchase credits out of an approved conservation bank prior to project implementation.

Additionally, an avoidance buffer of approximately 30 feet will be installed around the smaller Joshua tree near the southeast corner of the project site with a highly visible barrier (e.g., orange snow fencing) that will represent an Environmentally Sensitive Area (ESA). The fencing is to be installed by the contractor, as directed by the monitoring biologist, around the tree and maintained during construction. No grading or fill activity of any type will be permitted within the ESAs. In addition, no construction activities, materials, or other equipment will be allowed within the ESA. All construction equipment will be operated in a manner to prevent accidental damage to nearby preserved areas. No structure of any kind or incidental storage equipment will be allowed within these protected zones. Silt fence barriers will be installed at the ESA boundary to prevent accidental deposition of cut or fill material in areas adjacent to the ESA.

*Special-Status Wildlife Species*

Based on habitat requirements for the identified special-status species, and known distributions, it was determined that the undeveloped/undisturbed plant communities found within the project site have the potential to support several special-status plant species known to occur in the area. With implementation of the following mitigation measures, impacts to special-status species will be less than significant. Mitigation measures include the following:

*Migratory Bird Treaty Act and Fish and Game Code*

In order to avoid violation of the Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code, site-preparation activities (removal of trees and vegetation) for all projects shall be avoided, to the greatest extent possible, during the nesting season (generally February 1 to August 31) of potentially occurring native and migratory bird species. If site-preparation activities for an implementing project are proposed during the nesting/breeding season (February 1 to August 31), a pre-activity field survey shall be conducted by a qualified biologist prior to the issuance of grading permits for such project, to determine if active nests of species protected by the MBTA or the California Fish and Game Code are present in the construction zone. If active nests are not located within the implementing project site and an appropriate buffer of 500 feet of an active listed species or raptor nest, 300 feet of other sensitive or protected bird nests

(non-listed), or 100 feet of sensitive or protected songbird nests, construction may be conducted during the nesting/breeding season. However, if active nests are located during the pre-activity field survey, no grading or heavy equipment activity shall take place within at least 500 feet of an active listed species or raptor nest, 300 feet of other sensitive or protected (under MBTA or California Fish and Game Code) bird nests (non-listed), or within 100 feet of sensitive or protected songbird nests until the nest is no longer active.

*Pre-Construction Burrowing Owl Clearance Survey*

A pre-construction clearance survey shall be conducted prior to any ground disturbance or vegetation removal activities to ensure that burrowing owls remain absent, and impacts do not occur to occupied burrows on or within 500 feet of the project site. In accordance with the CDFW's *Staff Report on Burrowing Owl Mitigation* (CDFW 2012), two (2) pre-construction clearance surveys should be conducted 14 – 30 days and 24 hours prior to any ground disturbance or vegetation removal activities

*Pre-Construction Desert Tortoise Clearance Survey*

A qualified biologist shall conduct pre-construction presence/absence surveys for desert tortoise 48 hours prior to initiation of project activities and after any pause in project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service (USFWS) 2019 desert tortoise survey methodology. Pre-construction surveys shall be completed using 100-percent visual coverage for desert tortoise and their sign and shall use perpendicular survey routes within the Project site and 50-foot buffer zone, where applicable. If the survey confirms desert tortoise absence, the biologist shall ensure desert tortoise do not enter the project area.

Should desert tortoise presence be confirmed during the survey, the project applicant shall submit to the USFWS and CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise all desert tortoises encountered during clearance surveys and subsequent monitoring efforts will be permanently removed from the project site and translocated to an off-site recipient site. If complete avoidance of desert tortoise cannot be achieved, the project applicant will not undertake project activities until appropriate authorization (i.e., Federal Endangered Species Act and California Endangered Species Act (CESA) Incidental Take Permits (ITPs)) is obtained.

If complete avoidance of desert tortoise is infeasible, the project applicant should apply for federal and State ITPs and shall prepare a site-specific Desert Tortoise Translocation Plan (Plan) that will provide details on the proposed recipient site, desert tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury, and will be consistent with project permits and current USFWS and CDFW guidelines. Prior to construction, the Plan shall be subject to the review and approval of the CDFW and the USFWS. Impacts shall be offset through acquisition of compensatory land within suitable and occupied desert tortoise habitat and/or monetary contributions to other recovery efforts in an approved mitigation bank at an agreed upon ratio. Final mitigation acreage is subject to the approval of the State and federal wildlife agencies.

### *Pre-Construction Bat Survey*

Hoary bat and Yuma myotis, both special-status bat species, were determined to have a low potential to occur on the project site. In order to ensure no impacts to special-status bat species occur, the following will be implemented.

No less than 60 days prior to initiating project activities, the project biologist shall conduct a bat roosting habitat suitability assessment of any vegetation that may be removed, altered, or indirectly impacted by the Project activities. Any locations with potential to support roosting bats shall be surveyed by the Project biologist using an appropriate combination of structure inspection, sampling, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate time of day/night to ensure detection of bats. The results of the pre-construction bat surveys shall be submitted to CDFW for review no less than 30 days prior to the initiation of Project activities. If the presence of bats within the Project is confirmed, avoidance and minimization measures, including the designation of buffers based upon what bat species are found, and phased removal of trees, shall be developed and submitted to CDFW for review and approval. If the site supports maternity roosts, Applicant shall avoid disturbing those areas during the breeding season and shall compensate for impacts and losses to maternity roosts and/or special-status bat habitat through a mitigation strategy approved by CDFW.

### *Jurisdictional Drainage Features*

One (1) unnamed ephemeral water feature was observed on the southeast corner of the project site during the field investigation. The onsite drainage feature, after flowing offsite, eventually infiltrate east of the Mojave River and is separated from the Mojave River by an existing levee. As a result, the onsite drainage features do not have a surface hydrologic connection to downstream waters of the United States and will not be considered jurisdictional by the Corps. However, the onsite drainage will fall under the regulatory authority of the Regional Board as waters of the State, and, potentially, CDFW as jurisdictional streambed. Impacts to on-site jurisdictional areas will likely require a Regional Board Report of Waste Discharge permit and CDFW Section 1602 Lake or Streambed Alteration Agreement prior to project implementation. Mitigation measures include the following:

### *Regulatory Approvals*

Prior to construction and issuance of any grading permit, the project applicant shall obtain a CDFW-executed Lake and Streambed Alteration Agreement and Regional Board Report of Waste Discharge, authorizing impacts to the jurisdictional drainage onsite.

### *Federally Protected Wetlands*

No federally protected wetlands occur onsite. The unnamed drainage feature onsite is ephemeral and does not support wetland plant species or hydric soils.

### *Wildlife Corridors*

According to the San Bernardino County General Plan, the Mojave River, immediately west of the project site, has been identified as Wildlife Corridor or Linkage. The project site does not support or function as a wildlife movement corridor or linkage due to surrounding adjacent development and its proximity to

Interstate 15. As such, implementation of the proposed project is not expected to have a significant impact to wildlife movement opportunities or prevent local wildlife movement through the area since there is ample habitat adjacent to the project site to support wildlife movement opportunities.

However, implementation of the proposed project has the potential to indirectly and temporarily impact potential wildlife movement opportunities along the western boundary during construction activities. Construction-related noise shall be mitigated to be consistent with the City of Victorville's Noise Ordinances by limiting construction activities to daytime hours and requiring construction equipment to be tuned and equipped with mufflers.

Local, Regional, and State Plans

The project site is not located within an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state Habitat Conservation Plan. Therefore, impacts to any local, regional, or state habitat conservation plans are not expected to occur from development of the proposed project, and mitigation is not required.

## Section 6      References

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## **Appendix A      Site Photographs**

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**Photograph 1:** From the northeast corner of the project site looking west along the northern boundary.



**Photograph 2:** From the northeast portion of the project site looking southwest across the site.



**Photograph 3:** Representative photograph of the Allscale Scrub habitat onsite.



**Photograph 4:** Denser pocket of vegetation onsite.



**Photograph 5:** Looking southeast across the project site.



**Photograph 6:** Looking northwest across the project site.



**Photograph 7:** From the middle of the western boundary of the project site looking south.



**Photograph 8:** From the southwest corner of the project site looking north along the western boundary of the site.



**Photograph 9:** From the middle of the southern boundary looking north.



**Photograph 10:** From the southeast corner of the project site looking west along the southern boundary.



**Photograph 11:** Culvert under Stoddard Wells Road where the onsite drainage feature starts.



**Photograph 12:** From the eastern end of the drainage feature looking west.



**Photograph 13:** Looking west within the middle portion of the onsite drainage feature.



**Photograph 14:** Ending of the onsite drainage feature where it begins to sheet flow at the dirt access road before flowing across.



**Photograph 15:** Joshua tree on the northwest corner of the project site.



**Photograph 16:** Joshua tree in the middle of the southern portion of the project site.

**Appendix B Potentially Occurring Special-Status  
Biological Resources**

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

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<b>SPECIAL-STATUS WILDLIFE SPECIES</b>				
<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	<b>High.</b> Suitable foraging habitat and minimal nesting opportunities are present onsite. This species is adapted to urban environments and occurs commonly.
<i>Agelaius tricolor</i> tricolored blackbird	Fed: None CA: 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	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Anaxyrus californicus</i> arroyo toad	Fed: <b>END</b> CA: SSC	Typically found in sandy and/or gravelly washes and creeks with moderate in-stream vegetation dominated by willows ( <i>Salix</i> sp.) and mulefat ( <i>Baccharis salicifolia</i> ). Will forage along the bases of in-stream vegetation or at the bases of trees, including California sycamore ( <i>Platanus racemosa</i> ), Fremont cottonwood ( <i>Populus fremontii</i> ), or oaks ( <i>Quercus</i> spp.). Typically breeds in waters that are still or slowly moving, generally around six to eight inches in depth. Burrows along sandy terraces but may in some cases burrow directly in streambeds.	No	<b>Presumed absent.</b> 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	<b>Presumed absent.</b> 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	<b>Moderate.</b> Suitable foraging habitat and minimal nesting opportunities are present onsite. This species is adapted to urban environments and occurs commonly.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Ardea herodias</i> great blue heron	Fed: None CA: None	Forages along streams, marshes, lakes, and meadows. Nests colonially in tall trees (typically Eucalyptus sp.) on cliffsides, or in isolated spots in marshes.	No	<b>Moderate.</b> Suitable foraging habitat and minimal nesting opportunities are present onsite. This species is adapted to urban environments and occurs commonly.
<i>Athene cunicularia</i> burrowing owl	Fed: None CA: SSC	Prefers habitat with short, sparse vegetation with few shrubs and well-drained soils in grassland, shrub steppe, and desert habitats. Primarily a grassland species, but it persists and even thrives in some landscapes highly altered by human activity. Occurs in open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. The overriding characteristics of suitable habitat appear to be burrows for roosting and nesting and relatively short vegetation with only sparse shrubs and taller vegetation.	No	<b>Low.</b> The project site provides minimal foraging opportunities. No suitable burrows were observed onsite.
<i>Buteo swainsoni</i> Swainson's hawk	Fed: None CA: <b>THR</b>	Typical habitat is open desert, grassland, or cropland containing scattered, large trees or small groves. Breeds in stands with few trees in juniper-sage flats, riparian areas, and in oak savannah in the Central Valley. Forages in adjacent grassland or suitable grain or alfalfa fields or livestock pastures.	No	<b>Low.</b> The project site provides minimal foraging opportunities. This species is not known to nest in this area.
<i>Chaetodipus fallax pallidus</i> pallid San Diego pocket mouse	Fed: None CA: SSC	Commonly occurs in sandy herbaceous areas with a substrate consisting of rocks or coarse gravel. Prefers chaparral but also occurs in desert wash, desert scrub, succulent scrub, annual grassland, and pinyon juniper woodland.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Coccyzus americanus occidentalis</i> western yellow-billed cuckoo	Fed: <b>THR</b> CA: <b>END</b>	In California, the breeding distribution is now thought to be restricted to isolated sites in Sacramento, Amargosa, Kern, Santa Ana, and Colorado River valleys. Obligate riparian species with a primary habitat association of willow-cottonwood riparian forest.	No	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Contopus cooperi</i> olive-sided flycatcher	Fed: None CA: SSC	Uncommon to common, summer resident in a wide variety of forest and woodland habitats below 9,000 ft. throughout California exclusive of the deserts, the Central Valley, and other lowland valleys and basins. Preferred nesting habitats include mixed conifer, montane hardwood-conifer, Douglas-fir, redwood, red fir, and lodgepole pine.	No	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Corynorhinus townsendii</i> Townsend's big-eared bat	Fed: None CA: SSC	Found typically in montane forests; at higher elevations, the surrounding vegetation is subalpine. Roosts most commonly in caves, cliffs, and rock ledges but have been found in abandoned mines and other man-made structures.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Empidonax traillii</i> willow flycatcher	Fed: None CA: <b>END</b>	A rare to locally uncommon, summer resident in wet meadow and montane riparian habitats (2,000 to 8,000 ft) in the Sierra Nevada and Cascade Range. Most often occurs in broad, open river valleys or large mountain meadows with lush growth of shrubby willows.	No	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Empidonax traillii extimus</i> southwestern willow flycatcher	Fed: <b>END</b> CA: <b>END</b>	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	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Emys marmorata</i> western pond turtle	Fed: None CA: SSC	Found in ponds, lakes, rivers, streams, creeks, marshes, and irrigation ditches, with abundant vegetation, either rocky or muddy bottoms, in woodland, forest, and grassland. In streams, prefers pools to shallower areas. Logs, rocks, cattail mats, and exposed banks are required for basking. May enter brackish water and even seawater.	No	<b>Presumed absent.</b> 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	<b>High.</b> Suitable foraging habitat and minimal nesting opportunities are present onsite.
<i>Falco peregrinus anatum</i> American peregrine falcon	Fed: DL CA: DL/FP	Uncommon winter resident of the inland region of southern California. Active nesting sites are known along the coast north of Santa Barbara, in Orange County, in the Sierra Nevada, and in other mountains of northern California. Breeds mostly in woodland, forest, and coastal habitats. Riparian areas and coastal and inland wetlands are important habitats yearlong, especially in nonbreeding seasons.	No	<b>Low.</b> The project site provides minimal foraging opportunities.
<i>Gopherus agassizii</i> Mojave desert tortoise	Fed: <b>THR</b> CA: <b>THR</b>	Occurs in desert scrub, desert wash, and Joshua tree habitats with friable, sandy, well-drained soils for nest and burrow construction. Highest densities occur in creosote bush scrub with extensive annual wildflower blooms and succulents with little to no non-native plant species.	No	<b>Low.</b> Minimal foraging and burrowing habitat are present onsite. No suitable burrows were observed onsite.
<i>Helminthoglypta mohaveana</i> Victorville shoulderband	Fed: None CA: None	Data is limited. Among granite boulders and at the base of rocky cliffs; known only from along the Mojave River in San Bernardino County.	No	<b>Presumed absent.</b> 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	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Lanius ludovicianus</i> loggerhead shrike	Fed: None CA: SSC	Prefers open habitats with bare ground, scattered shrubs, and areas with low or sparse herbaceous cover including open-canopied valley foothill hardwood, riparian, pinyon-juniper, desert riparian, creosote bush scrub, and Joshua tree woodland. Requires suitable perches including trees, posts, fences, utility lines, or other perches.	No	<b>High.</b> Suitable foraging habitat and minimal nesting opportunities are present onsite.
<i>Lasionycteris noctivagans</i> silver-haired bat	Fed: None CA: None	Silver-haired bats prefer temperate, northern hardwoods with ponds or streams nearby. The typical day roost for the bat is behind loose tree bark. Silver-haired bats appear to be particularly fond of willow, maple and ash trees (most likely due to the deeply fissured bark). Hollow snags and bird nests also provide daytime roosting areas for silver-haired bats. Less common daytime roosts include buildings, such as open sheds and garages.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Lasiurus cinereus</i> hoary bat	Fed: None CA: None	Most widespread North American bat. Winters along the coast and in southern California, breeding inland and north of the winter range. Habitats suitable for bearing young include all woodlands and forests with medium to large-size trees and dense foliage. During migration in southern California, males are found in foothills, deserts and mountains, while females are found in lowlands and coastal valleys.	No	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Microtus californicus mohavensis</i> Mohave river vole	Fed: None CA: SSC	Found in moist habitats including meadows, freshwater marshes and irrigated pastures in the vicinity of the Mojave River. Suitable habitat it associated with ponds and irrigation canals along with the Mojave River proper, north of Hesperia. Alfalfa fields may also provide habitat.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Myotis ciliolabrum</i> western small-footed myotis	Fed: None CA: None	Rock outcrops on open grasslands to canyons in the foothills to lower mountains with yellow pine woodlands. Day roosts are variable, but include cracks and crevices in cliffs, beneath tree bark, in mines and caves, and occasionally in tunnels and dwellings of humans. Night roosts are under a variety of natural and human-induced structures.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Myotis yumanensis</i> Yuma myotis	Fed: None CA: None	Common and widespread in California. Uncommon in the Mojave and Colorado Desert regions, except for the mountain ranges bordering the Colorado River Valley. Optimal habitats are open forests and woodlands with sources of water for foraging.	No	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Phalacrocorax auritus</i> double-crested cormorant	Fed: None CA: WL	Occurs widely in freshwater and marine habitats along coastlines. Require open water where they can forage for schooling fish.	No	<b>Presumed absent.</b> No suitable habitat is present on site.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<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	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Piranga rubra</i> summer tanager	Fed: None CA: SSC	Breed in gaps and edges of open deciduous or pine-oak forests across the southern and mid-Atlantic U.S. Uncommon (formerly common) summer resident and breeder in desert riparian habitat along lower Colorado River. Breeds in mature, desert riparian habitat dominated by cottonwoods and willows.	No	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Plebejus saepiolus aureolus</i> San Gabriel Mountains blue butterfly	Fed: None CA: None	Occurs in bogs, roadsides, stream edges, open fields, meadows, and open forests. Larvae host plants include various clovers.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Pseudocopaodes eunus eunus</i> alkali skipper	Fed: None CA: None	Inland stands of the foodplant desert saltgrass ( <i>Distichlis spicata</i> var. <i>spicata</i> ), occurring in desert seeps or around alkalai flats. Very local.		<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Pyrocephalus rubinus</i> vermillion flycatcher	Fed: None CA: SSC	Occupies low-lying, open riparian areas with accessible water and dominated by mesquite ( <i>Prosopis</i> spp.). Willow ( <i>Salix</i> spp.) and Fremont cottonwood ( <i>Populus fremontii</i> ) are also used for breeding.	No	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Rana draytonii</i> California red-legged frog	Fed: <b>THR</b> CA: SSC	Inhabits quiet pools of streams, marshes, and occasionally ponds. Occurs along the coast ranges from Mendocino County south and in portions of the Sierra Nevada and Cascades ranges.	No	<b>Presumed absent.</b> 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.	Yes	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Siphateles bicolor mohavensis</i> Mojave tui chub	Fed: <b>END</b> CA: <b>END; FP</b>	Historically occurred throughout the Mojave River drainage. Only surviving natural populations occurs in Soda Spring at the Desert Studies Center near the town of Baker, Lark Seep on the China Lake Naval Weapons Center, Camp Cady, and at the Lewis Center for Educational Research in Apple Valley.	No	<b>Presumed absent.</b> 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	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Thamnophis hammondi</i> two-striped garter snake	Fed: None CA: SSC	Occurs in or near permanent fresh water, often along streams with rocky beds and riparian growth up to 7,000 feet in elevation.	No	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Toxostoma bendirei</i> Bendire's thrasher	Fed: None CA: SSC	Closely associated with plants in the genera <i>Yucca</i> and <i>Opuntia</i> . Avoid areas with steep slopes and rocky terrain.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Toxostoma lecontei</i> Le Conte's thrasher	Fed: None CA: SSC	An uncommon to rare, local resident in southern California deserts from southern Mono Co. south to the Mexican border, and in western and southern San Joaquin Valley. Occurs primarily in open desert wash, desert scrub, alkali desert scrub, and desert succulent shrub habitats; also occurs in Joshua tree habitat with scattered shrubs.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Vireo bellii pusillus</i> least Bell's vireo	Fed: <b>END</b> CA: <b>END</b>	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	<b>Low.</b> No suitable habitat is present on site. Suitable habitat is found west of the project site in association with the Mojave River.
<i>Xanthocephalus androcephalous</i> yellow-headed blackbird	Fed: None CA: SSC	Occurs in freshwater emergent wetlands, and moist, open areas along croplands and mud flats of lacustrine habitats. Prefers to nest in dense wetland vegetation characterized by tules, cattails, or other similar plant species along the border of lakes and ponds.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Xerospermophilus mohavensis</i> Mohave ground squirrel	Fed: None CA: <b>THR</b>	Restricted to the Mojave Desert in open desert scrub, alkali desert scrub, annual grassland, and Joshua tree woodland. Prefers sandy to gravelly soils and tends to avoid rocky areas. Occurs sympatrically with the white-tailed antelope squirrel.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<b>SPECIAL-STATUS PLANT SPECIES</b>				
<i>Canbya candida</i> white pygmy-poppy	Fed: None CA: None CNPS: 4.2	Occurs on gravelly, sandy, granitic soils in Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland. Found at elevations ranging from 2,297 to 5,249 feet above mean sea level (msl). Blooming period is from March to June.	No	<b>Presumed absent.</b> No suitable habitat is present on site.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Mimulus mohavensis</i> Mojave monkeyflower	Fed: None CA: None CNPS: 1B.2	Found only in the Mojave Desert of California with the highest population densities in areas south of Daggett and Barstow; it has also been found within the Barstow city limits. Found in Joshua tree woodland and creosote bush scrub communities. Grows in granitic soils on gravelly banks of desert washes, in sandy openings between creosote bushes and along rocky slopes above washes, areas that are not subject to regular water flows. Found at elevations ranging from 1,969 to 3,937 feet. Blooming period is from April to June.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Eremothera boothii</i> ssp. <i>boothii</i> Booth's evening-primrose	Fed: None CA: None CNPS: 2B.3	Occurs in desert washes, open plains, and scrubland. Found at elevations ranging from 814 to 2,402 feet above msl. Blooming period is from June to August.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Lycium torreyi</i> Torrey's box-thorn	Fed: None CA: None CNPS: 4.2	Grows within sandy, rocky, washes, streambanks, desert valley habitats. Found at elevations ranging from 164 to 4,003 feet above msl. Blooming period is from January to November.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Pediomelum castoreum</i> Beaver Dam breadroot	Fed: None CA: None CNPS: 1B.2	Occurs in sandy soils, washes, and roadcuts within Joshua tree woodland and Mojavean desert scrub. Found at elevations ranging from 2,000 to 5,000 feet. Blooming period is from April to May.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Sclerocactus polyancistrus</i> Mojave fish-hook cactus	Fed: None CA: None CNPS: 4.2	Grows in carbonate soils within great basin scrub, Joshua tree woodland, and Mojavean desert scrub habitats. Found at elevations ranging from 2,100 to 7,612 feet.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Scutellaria bolanderi</i> ssp. <i>austromontana</i> southern mountains skullcap	Fed: None CA: None CNPS: 1B.2	Typically grows on the moist embankments of montane creeks. Found at elevations ranging from 1,936 to 7,841 feet above msl. Blooming period is from June to August.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Symphotrichum defoliatum</i> San Bernardino aster	Fed: None CA: None CNPS: 1B.2	Grows in cismontane woodland, coastal scrub, lower montane coniferous forest, meadows and seeps, marshes and swamps, valley and foothill grassland (vernally mesic). Can be found growing near ditches, streams, and springs within these habitats. Found at elevations ranging from 7 to 6,693 feet. Blooming period is from July to November.	No	<b>Presumed absent.</b> No suitable habitat is present on site.
<i>Yucca brevifolia</i> western Joshua tree	Fed: None CA: CE CNPS: N/A	Occurs in a variety of arid habitats within the Mojave Desert. Found at elevations ranging from 1,600 to 6,600 feet. Blooming period is from March to June.	Yes	<b>Present.</b> Two individuals were observed onsite.

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

California Native Plant Society (CNPS) -  
*California Rare Plant Rank*  
1B Plants Rare, Threatened, or Endangered  
in California and Elsewhere

*Threat Ranks*  
0.2- Moderately threatened in  
California  
0.3- Not very threatened in California

DL - Delisted

CTHR – California Candidate Threatened  
DL - Delisted  
FP – California Fully Protected  
SSC – California Species of Special Concern  
WL – California Watch List  
CE – Candidate Endangered

2B Plants Rare, Threatened, or Endangered  
in California, but More Common  
Elsewhere  
4 Plants of Limited Distribution – A Watch  
List

## **Appendix C      Regulations**

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*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**

***San Bernardino County Development Code***

Section 88.01.060 of the County of San Bernardino Development Code provides regulations for the removal or harvesting of specified desert native plants in order to preserve and protect the plants and to provide for the conservation and wise use of desert resources. The provisions are intended to coincide with the Desert Native Plants Act (Food and Agricultural Code Section 8001 et seq.) and the State Department of Food and Agriculture to implement and enforce the Act.

Pursuant to Section 88.01.060 of the Development Code, the following desert native plants or any part of them, except the fruit, shall not be removed except under a Tree or Plant Removal Permit:

- 1) The following desert native plants with stems two inches or greater in diameter or six feet or greater in height:
  - (A) *Dalea spinosa* (smoke tree)
  - (B) All species of the genus *Prosopis* (mesquites)
- 2) All species of the family *Agavaceae* (century plants, nolinias, yuccas)
- 3) Creosote Rings, 10 feet or greater in diameter
- 4) All Joshua trees
- 5) Any part of any of the following species, whether living or dead:
  - (A) *Olneya tesota* (desert ironwood)
  - (B) All species of the genus *Prosopis* (mesquites)
  - (C) All species of the genus *Cercidium* (palos verdes)

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

## **Federal Regulations**

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

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

- (i) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- (ii) All interstate waters, including interstate wetlands<sup>1</sup>.
- (iii) The territorial seas.
- (iv) All impoundments of waters otherwise defined as waters of the United States under the definition.
- (v) All tributaries<sup>2</sup> of waters identified in paragraphs (i) through (iii) mentioned above.
- (vi) All waters adjacent<sup>3</sup> to a water identified in paragraphs (i) through (v) mentioned above, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

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<sup>1</sup> The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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

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

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

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

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

### ***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.