

**BIOLOGICAL RESOURCE ASSESSMENT
A-Z TRUCK CENTER PROJECT**

CHOWCHILLA, CA

APNs 014-020-043, -044, -045, -046, -047

Prepared for:

Precision Engineering, Inc.



September 12, 2023

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1.0 EXECUTIVE SUMMARY AND INTRODUCTION

EXECUTIVE SUMMARY

Argonaut Ecological, Inc. (Argonaut) conducted a biological assessment of an approximately 15.24-acre site in Madera County, near Chowchilla, California. The property is immediately east of Highway 99, just south of Avenue 26.

The evaluation included assessing the types of habitats present and sensitive species associated with those habitats. The biological assessment focused on inspecting existing habitat types based on a site review, reviewing public and commercial databases, and examining aerial photographs (current and historical) and other published information and available data.

The Study Area is located within an agricultural area that has been in production for several decades and more recently fallow and disced/mowed. The Study Area does not support suitable habitat for species of concern, and there are no aquatic resources (waters or wetlands) within or near the Study Area.

1.1 INTRODUCTION

The Project proposes a truck stop with car and semi-truck fuel canopies, a convenience store/market, fast food restaurants with drive-through, and a semi-truck maintenance shop off SR 99 in Chowchilla, CA. It includes parcels 014-020-043, -044, -045, -046, and -047 and is located near the southeast area of SR 99 and Avenue 26.

1.2 STUDY OBJECTIVES

This report describes the biological resources present within and adjacent to the Study Area, describes the area's biological characteristics, and evaluates the Study Area's likelihood to support sensitive biological resources (such as wetlands, creeks/drainages, and special status species). This assessment used available literature, aerial photography, historic topographic and aerial maps, and a site visit. For this study, wetland habitat includes those areas possibly considered "Waters of the U.S." by the U.S. Army Corps of Engineers (Army Corps) or "Waters of the State" by the State of California.

This report assesses the project's potential effects on biological resources and evaluates whether any associated regulatory approvals or permits are required. This report also evaluates potential impacts site development may have on protected habitat, species protected by the Federal Endangered Species Act (ESA), or those protected under the California Environmental Quality Act (CEQA) or California Endangered Species Act (CESA).

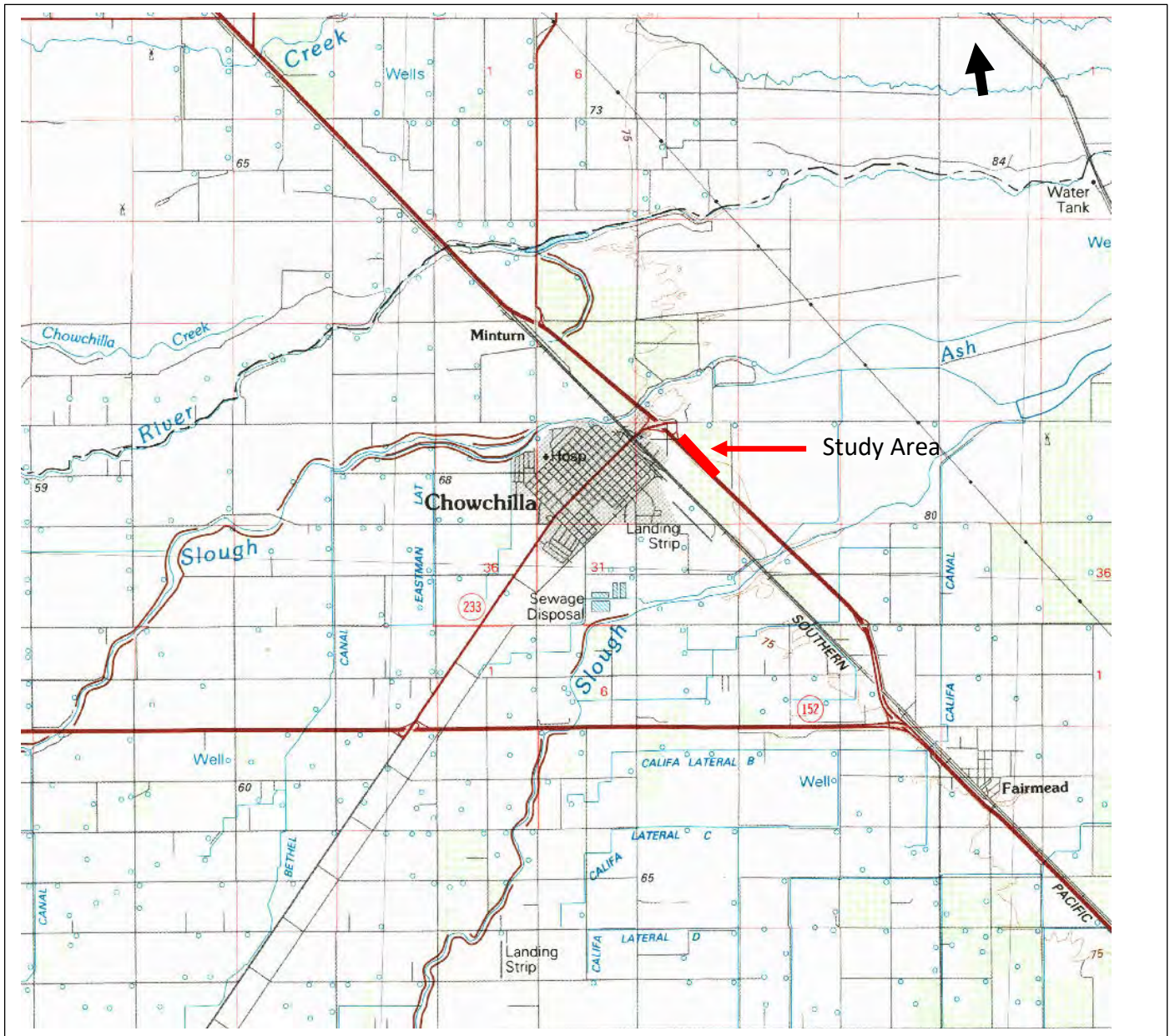


Figure 1

Location Map – A-Z Truck Center

Chowchilla, California

1.3 REGULATORY JURISDICTION AND BACKGROUND

Several agencies share regulatory jurisdiction over biological resources. The following is a brief description of the primary jurisdiction of each agency.

Wetland Protection

U.S. Army Corps of Engineers

Wetlands are a type of Waters of the U.S. The U.S. Army Corps of Engineers (Army Corps) and the U.S. Environmental Protection Agency regulate the placement of fill into the Waters of the U.S. under Section 404 of the Federal Clean Water Act and Section 10 of the Rivers and Harbor Act. For this purpose, the term "Waters of the U.S." is legally defined under Section 404 of the Federal Clean Water Act and includes interstate streams, creeks, and adjacent wetlands. The Army Corps defines wetlands as "*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*" (Environmental Laboratory 1987). In California, seasonally inundated areas that meet the criteria of all three wetland parameters (soils, hydrology, and vegetation), as defined in the recently issued Wetland Delineation Manual for the Arid West (USACE 2006), are also considered jurisdictional wetlands.

Since 2001, several U.S. Supreme Court rulings regarding the regulation of isolated, intrastate waters by the Army Corps have limited the scope of federal jurisdiction under the CWA and excluded many California wetlands from federal regulation.

In December 2019, the U.S. EPA and the U.S. Army published the final rule to repeal the 2015 Clean Water Rule. The "Clean Water Rule" clarified what constitutes waters of the U.S., and presumably, more precisely define and make permitting more predictable, thus less costly, and more straightforward.

After several challenges to the "Clean Water Rule," the U.S. EPA and the Department of the Army proposed the pre-2015 (pre-Obama-era rules) definition "of waters of the United States," updated to reflect consideration of Supreme Court decisions. The new rule went into effect on May 23, 2023. However, on May 25, 2023, the U.S. Supreme Court issued a decision in the case of *Sackett v. Environmental Protection Agency* that rolled back the definition of waters of the U.S. to better align with the original definition as included in the *Rapanos* decision. The new definition defines "waters" as "limited geographic[al] features that are described in ordinary parlance as 'streams, oceans, rivers, and lakes'" and "adjacent wetlands that are 'indistinguishable' from those bodies of water due to a continuous surface connection." The prior use of a "significant nexus" was set aside by the Court.

Waters typically do not include prior converted cropland (those areas converted prior to December 23, 1985). Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency for the purposes of the CWA, the final authority to determine jurisdiction remains with EPA.

California State Water Resources Control Board

Since 1993, California has had a Wetlands Conservation Policy (a.k.a. Executive Order W-51 59-93). It is commonly referred to as the *No Net Loss policy* for wetlands, establishing a state mandate for developing and adopting a policy framework and strategy to protect the State's wetland ecosystems. The policy was to be implemented voluntarily and was expressly not to be implemented on a "project-by-project" basis (See EO W-59-93, Section III).

In 2020, California adopted the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. The State definition of wetland differs from the Federal definition in that the state definition includes areas with no vegetation, assuming the other criteria are met. Wetlands of the State include 1) natural wetlands, 2) wetlands created by modification of water of the State (at any point in history), and 3) artificial wetlands that meet specific criteria. The State definition only exempts a few types of waters. Examples of water features excluded from the State's definition include industrial or municipal wastewater, certain stormwater treatment facilities, agricultural crop irrigation, industrial processing or cooling, and fields flooded for rice growing.

Listed Protected Species and Habitat Protection

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service (USFWS) implements the Migratory Bird Treaty Act (16 USC Section 703-711), Bald and Golden Eagle Protection Act (16 United States Code [USC] Section 668), and Federal Endangered Species Act (FESA; 16 USC § 153 *et seq.*).

The **Migratory Bird Treaty Act (MBTA)** was first enacted in 1918 to protect migratory birds between the United States and Great Britain (acting on behalf of Canada). The MBTA makes it illegal for anyone to take, possess, import, transport, purchase, barter, offer for sale, or purchase any migratory birds, nests, or eggs unless a federal agency has issued a permit. The USFWS has statutory authority and responsibility for enforcing the MBTA. The MBTA was reformed in 2004 to include all species native to the U.S. or its territories due to natural biological or ecological processes (70 FR 12710, March 15, 2005). The Act does not include nonnative species whose occurrences in the U.S. are solely the result of intentional or unintentional human introduction. The USFWS maintains a list of bird species not protected under the MBTA.

In January 2021, the USFWS published a new rule in the Federal Register. Under the rule change, the unintentional killing of migratory birds does not violate the MBTA. Only the intentional "pursuing, hunting, taking, capturing, killing, or attempting to do the same ... directed at migratory birds, their nests, or their eggs" would be illegal under the changes.

The **Federal Endangered Species Act (FESA)** prohibits "take" "of any federally listed wildlife species (the destruction of federally listed plants on private property is not prohibited and does not require a permit). "Take" under the federal definition means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. "Incidental take" is harm death that may occur during the implementation of an otherwise lawful activity. "Candidate species" do not have the full protection of FESA. However, the USFWS advises project applicants

that it is prudent to address these species since they could be elevated to "listed status" before the completion of projects with long planning or development schedules.

The Projects that would result in "take" of any federally-listed threatened or endangered species can obtain authorization from the USFWS through either Section 7 (interagency consultation) or Section 10(a) (incidental take permit) of FESA. The authorization process determines if a project would jeopardize a listed species' continued existence and what mitigation measures would be required to avoid jeopardizing the species.

An Incidental Take Permit or Take Permit is required when an activity would either kill, harm, harass, or interrupt a listed species' breeding or nesting. The ESA definition of "harm" is somewhat less definitive since it includes ubiquitous activities. In 1999, the USFWS clarified the term "harm" as it applies to the ESA in the Federal Register. As stated, the final rule defined the term "harm" "to include any act that causes actual harm (kills or injures fish or wildlife) and emphasizes that such actions may have significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

California Department of Fish and Wildlife

The California Department of Fish and Wildlife (CDFW) is a Trustee Agency responsible under CEQA for reviewing and evaluating project impacts on plant and wildlife resources. Under the Fish and Game Code Section 1802, the CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitats necessary for biologically sustainable populations. The California Fish and Game Code also provides authority for the CDFW to regulate projects that could result in the "take" of any species listed by the State as threatened or endangered (Section 2081). CDFW also has authority over all state streams, as described below.

Perennial and intermittent streams also fall under the jurisdiction of CDFW according to Sections 1601-1603 of the Fish and Game Code (Streambed Alteration Agreements). CDFW's jurisdictional extent includes work within the stream zone, including the diversion or obstruction of the natural flow or changes in the channel, bed, or bank of any river, stream, or lake. Before issuing a 1601 or 1603 Streambed Alteration Agreement, the CDFW must demonstrate compliance with CEQA. In most cases, CDFW relies on the CEQA review performed by the local lead agency. However, in cases where no CEQA review was required for the project, CDFW would act as the lead agency under CEQA.

The CDFW also has authority for the protection of state-listed species issues under Section 2081 Incidental Take Permit if a project has the potential to negatively affect state-protected plant or animal species or their habitats, either directly or indirectly. Protected species include those "listed" by the State as endangered or threatened. Besides listed species, other species protection categories include "fully protected" and California Species of Special Concern (CSC). Adverse impacts to species that are "fully protected" are prohibited.

Under the California Fish & Game Code (FGC Section 3503), "it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird...." Birds of prey (falcons, hawks, owls, and eagles) get extra protection under the law (FGC Section 3503.5).

As with USFWS, CDFW does not have the authority to require a landowner to apply for an Incidental Take Permit (ITP) authorizing take. Instead, the landowner has the legal obligation to avoid any take of state-listed species if it does not seek an ITP. CDFW (and USFWS) can initiate an enforcement action if they believe that an illegal take has occurred or will occur.

California Endangered Species Act

The California Endangered Species Act (CESA) protects candidate plants and animal species and those listed under CESA as rare, threatened, or endangered. This Act prohibits the take of any such species unless authorized. Section 2081 authorizes the State to issue ITPs. The state definition of taking applies only to acts that result in death or adverse impacts on protected species. The CESA mirrors the federal regulation as it relates to "take"; however, there is no State equivalent definition of "harm" or "harass." Incidental take is also not defined by the CESA statute or regulation. Unlike the federal ESA, CESA does qualify that incidental take "is not prohibited" "if it is the result of an act that occurs on a farm or ranch during an otherwise lawful routine and ongoing agricultural activity." Where disagreement occurs (and in some cases, this has been the subject of court cases) is in the common understanding of "routine and ongoing agricultural activity."

California Environmental Quality Act

The CEQA Guidelines require a review of projects to determine their environmental effects and identify mitigation measures to reduce impacts to a less than significant level. The Guidelines state that an effect may be significant if it affects rare and endangered species. Section 15380 of the Guidelines defines *rare* to include listed species and allows agencies to consider rare species other than those designated as State or Federal threatened or endangered but that meet the standards for rare under the Federal or State endangered species acts. On this basis, plants designated as rare by non-regulatory organizations (e.g., California Native Plant Society), species of special concern defined by CDFW, candidate species defined by USFWS, and other designations must be considered in CEQA analyses.

Land Use Entitlements

City of Chowchilla

The Project site is located in Chowchilla, CA. The City is responsible for all local land-use decisions within its jurisdiction under CEQA and would serve as the lead agency. As the lead agency, the City will consider other responsible agencies' recommendations during the CEQA review.

2.0 RESOURCES CONSULTED AND METHODS

The following section describes the methods used to assess the Study Area and includes data review and evaluation, field studies, and aerial photograph interpretations.

2.1 DATA AND LITERATURE REVIEW

Documents and sources of information used to prepare this evaluation include the following:

- Aerial photography (Google Earth®, Bing®, and historic aerials).
- California Department of Fish and Wildlife, California Natural Diversity Chowchilla and Berenda Quadrangles.
- EcoAtlas 2023.
- U.S. Department of Agriculture, Natural Resources Conservation Service, Soil Survey of Fresno County (Soils mapper).
- U.S. Fish and Wildlife Service, National Wetland Inventory Map.
- U.S. Fish and Wildlife Service, Information for Planning and Consultation (IPaC) query, July 28, 2023.
- U.S. Geological Survey, Historical Topographic Map, Chowchilla and Berenda Quadrangles, 1924, University of Texas, Austin, Perry-Castañeda Map Collection

Before conducting a site review, the California Natural Diversity Database/RareFind (CNDDDB) and the USFWS IPaC were consulted to determine the species potentially present within the Study Area based on location. The review aimed to assess the likelihood of special status species being present based on the site's distance from documented species occurrences and the presence or absence of habitat types utilized by such species. The CNDDDB includes records of reported observations for special status plant and animal species and is queried based on a search radius of USGS quadrangle maps. Before conducting the fieldwork, high-resolution aerial photographs were reviewed.

2.2 AERIAL PHOTOGRAPHY AND WETLAND MAPPING

Historical aerial photographs dating back to the 1980s of the Study Area were reviewed to identify site features and determine land-use changes over time. Also reviewed were wetland mapping and aerial photographs to determine if the Study Area recently supported wetlands.

2.3 FIELD INVESTIGATION

A site investigation was performed on August 30, 2023. The entire Study Area was reviewed, and all habitat features were mapped. Soils, vegetation, and drainage patterns within the Study Area were inspected to determine the habitat present and suitability for species of concern. The site was walked using transects to provide full coverage.

3.0 PHYSICAL RESOURCES, RESULTS, AND CONCLUSIONS

Section 3.1, below, describes the physical features (i.e., land use, soils, vegetation, hydrology, etc.) and the study area's biological features. The physical components and land use strongly influence the types of plants and animals present. This section also describes the habitats present and the specific biological resources observed during the site review.

Section 3.2 presents our conclusions, and Section 3.3 contains recommended avoidance and minimization measures to avoid potential impacts.

The following is not an exhaustive inventory of plants and animals present. Instead, the discussion provides sufficient information to characterize the habitat and habitat components present on site. This field survey identified the biological resources present. The biological evaluation discusses the habitat present and the potential for that habitat to support any species considered unique, sensitive, or protected by current law. The conclusion section (3.2) summarizes the results of the data review, fieldwork, and evaluation of biological resources and potential impacts. The conclusion sections also include recommendations for measures to minimize any potential impacts.

3.1 PHYSICAL RESOURCES

Climate

The Study Area climate is typical of the central San Joaquin Valley, with long, hot, dry summers and cool, mild winters. In the winter, rainfall averages approximately 9.99 inches per year, falling mainly between November and April (Western Regional Climate Center, 2004). During 2021 total rainfall, the Madera region had 11.37 inches from September 2022 – June 2023.

Topography, Drainage, and Soils

Topography and Drainage:

The Study Area lies within the Central Valley and is 250 feet (msl). The elevation has remained roughly the same since the early 1900s. The Study Area naturally slopes toward the south-southwest. The Study Area is between Berenda Slough to the south and Ash Slough to the north.

Soils:

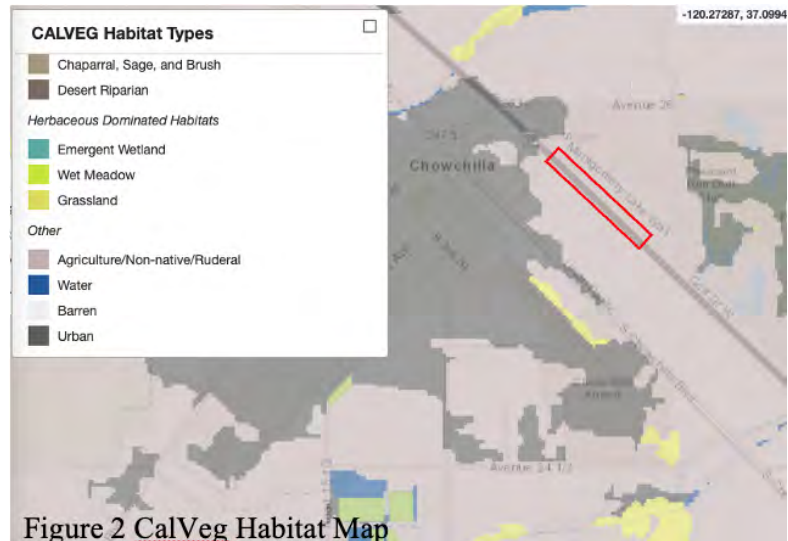
The site has one soil type: Atwater loamy sand, 0-3% slopes (1% of the Study Area), and Madera fine sandy loam, 0 to 3% slopes (99% of the Study Area). Neither soil is considered hydric soil. Hydric soils sometimes indicate periodic inundation and may indicate the potential presence of wetlands.

Land Use

The Study Area is historically rural agricultural, just outside the City of Chowchilla. Before 2000, the Study Area was planted in orchards, but the orchards were removed and used for dry land farming (likely wheat) and were periodically fallow. Around 2005, a row of palm trees were planted along the western edge of the Study Area, along the Caltrans right-of-way. The Study Area is currently designated as “Freeway Commercial/Light Industrial” land use and is disced.

Habitat

There are several California habitat classification systems. Most classification systems describe natural communities without established classifications for developed or agricultural habitats. CALVEG is a USDA Forest Service product providing a comprehensive spatial dataset of existing vegetation cover over California. The data were created using a combination of automated systematic procedures, remote sensing classification, photo editing, and field-based observations. Analyses are based “on a crosswalk of the CALVEG classifications to the California Wildlife Habitat Relationships (CWHR).”



Calveg lists the site as “Agriculture/Non-Native/Ruderal (shown above in Figure 2). Attachment A shows photographs of the Study Area.

Waters/Wetland

According to the National Wetland Inventory Map (Figure 3), no drainages, streams, creeks, or wetlands are in the Study Area.

The entire Study Area was walked to look for any evidence of potential wetlands/waters habitat, and wetland, waters, or any other aquatic habitat (either perennial or seasonal) is present. There are no seasonal wetlands within the Study Area or other waters of the U.S./waters of the State.

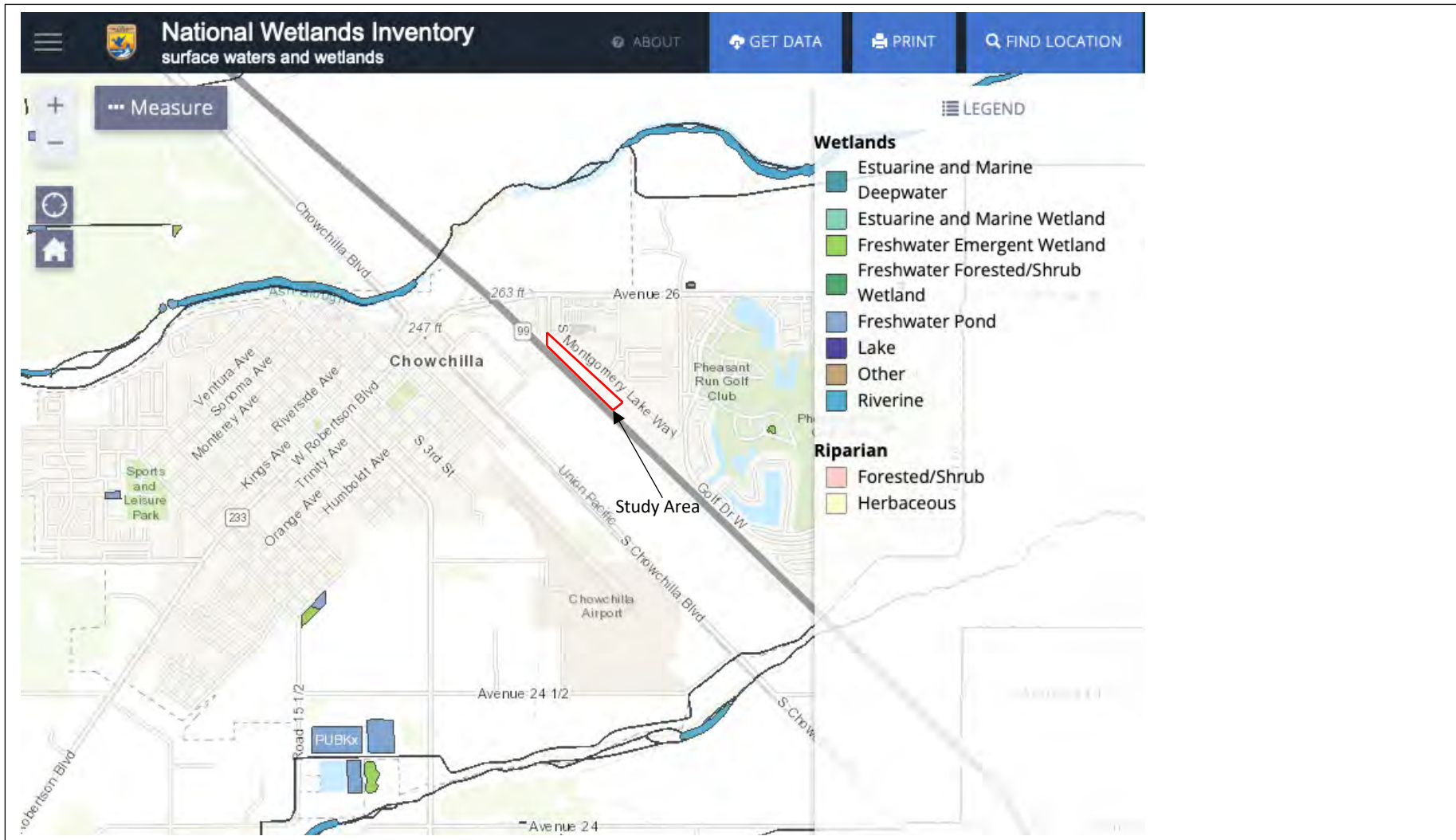


Figure 3

National Wetland Inventory (NWIS) Mapping

Project: A-Z Truck Center, Chowchilla, Ca

Special Status Species

A query of the California Natural Diversity Database (CNDDDB) and the USFWS IPaC was performed to determine which special status species could be present within the Study Area. No critical habitat exists for any species within or near the Study Area. The CNDDDB Bios mapping is shown in Figure 4¹. This map shows the location of known records of special status species near the Study Area, and Table 1 includes a summary of the CNDDDB query results.

The Study Area is not within any Critical Habitat for any listed species.

Birds

The CNDDDB and the IPaC include several bird species that have the potential to be present within or near the Study Area, including migratory birds. However, there is no nesting habitat for raptors or migratory birds within or near the Study Area. Palm trees are lining the west side of the Study Area and one tree along the Caltrans right-of-way.

Plants

The CNDDDB and IPaC identify numerous special status plant species. Most plants are species-associated natural habitat (Valley grassland, cismontane, cenepode scrub) or within wetlands and require alkaline soils. No suitable habitat exists for any of these species within or immediately adjacent to the Study Area.

¹ It is important to keep in mind that a number of records in the CNDDDB database are historic records (beginning around the 1900s) and are not intended to affirm current presence or absence. Potential presence/absence is based on the specific habitat components that occur within a Study Area.

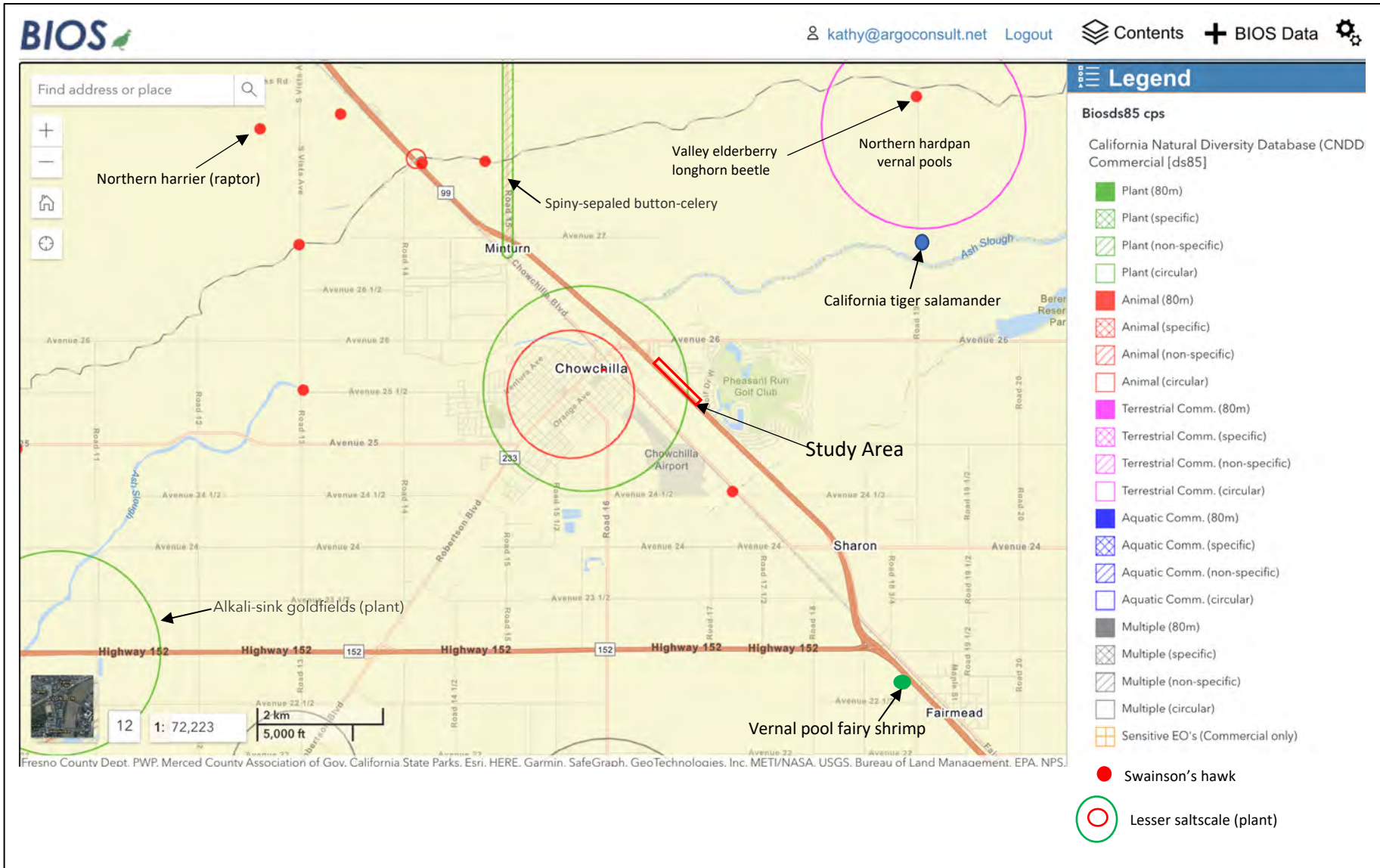


Figure 3

CNDDB BIOS Mapping

Table 2
Summary of Special Status Species, Potential Occurrence, and Impact

<i>Common Name</i>	<i>Scientific Name</i>	<i>Status</i> ¹	<i>Effects</i> ²	<i>Occurrence in the Study Area</i> ³
Birds				
Swainson's hawk	<i>Buteo swainsoni</i>	--/CT	NE	Absent. Nests in mature trees. There is one suitable nest tree within the Highway 99 right-of-way, but there is no nest within the tree. May occasionally forage within the area.
Mammals				
Hoary bat	<i>Lasiurus cinereus</i>		NE	Absent. Roosts in dense foliage of medium to large trees. Prefers open habitats or habitat mosaics, with access to trees for cover and open areas or habitat edges for feeding. There is no suitable nesting habitat for this species within the Study Area. One record was noted within the City of Chowchilla from a collection in 1921.
Plants				
Heartscale	<i>Atriplex cordulata</i> var. <i>cordulata</i>	--/1B.2	NE	Absent. Occurs in chenopod scrub, valley, foothill grassland, meadows, and seeps within alkaline flats and scalds in the Central Valley, sandy soils. There is no suitable habitat for this species within the Study Area. Record from the 1930s.
Lesser saltscale	<i>Atriplex minuscula</i>	--/1B.1	NE	Absent. One known record from 1921 is located near the City of Chowchilla. Occurs within alkali playa, chenopod scrub, and Valley and foothill grassland. Occurs in sandy, alkaline soils. No alkaline or slightly alkaline soils are within or near the Study Area.
Subtle orache	<i>Atriplex subtilis</i>	--/1B.2	NE	Absent. One record for the area from 1936. Requires alkaline soils. There is no suitable habitat for this species within the Study Area, and there are no alkaline soils within or near the Study Area.
Hoover's cryptantha	<i>Cryptantha hooveri</i>	--/1B.2	NE	Absent. There is no suitable nesting habitat for this species within the Study Area.
Recurved larkspur	<i>Delphinium recurvatum</i>	--/1B.2	NE	Absent. Chenopod scrub, valley and foothill grassland, cismontane woodland. Found within alkaline soils. There is no suitable nesting habitat for this species within the Study Area.

1 Status= Listing of special status species, unless otherwise indicated

CE: California listed as Endangered

CT: California listed as Threatened

SSC: California Species of Special Concern

FE: Federally listed as Endangered

FT: Federally listed as Threatened

1B.1, 1B.2, 2B.2, 2B.3: California Native Plant Society

Ranking

Source: CNDDDB = California Natural Diversity Database provided by CDFG and U.S. Fish and Wildlife Service, Information for Planning and Consultation. (IPaC).

2 Effects = Effect determination

NE: No Effect

ME: May Effect, not likely to adversely effect

3 Definition of Occurrence Indicators: Present/Potentially: Species recorded in the area and some habitat elements in the Study Area similar to known occurrences. **Absent/Likely Absent:** Species not recorded in the Study Area and/or suitable habitat or critical habitat components not present.

3.2 CONCLUSIONS/RECOMMENDATIONS

CONCLUSIONS

- The Study Area was in orchard production until around 1998; after that, it was either dry land farms or put into dry land farming. The Study Area appears to be routinely disked and/or mowed.
- There are no suitable nesting trees for tree-nesting raptors within the Study Area. No raptor nest was found within a large tree adjacent to the Study Area (within the Caltrans right of way).
- No suitable habitat exists for special status species within or near the Study Area.

References

California Natural Diversity Database (CNDDDB) Online. Subscription with updates. Available at: URL <https://www.wildlife.ca.gov/Data/CNDDDB>

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U.S. Geologic Survey, Historic topographic Map, Chowchilla and Beranda
Quadrangle, 1924. University of Texas, Austin, Perry-Castañeda Map
Collection. Available at: URL: <https://legacy.lib.utexas.edu/maps/>



Photograph Key



Study Area

Chowchilla A-Z Truck Center, City of Chowchilla, Madera County, California





Photographs: August 31, 2023

Project: A - Z Truck Center, Highway 99 at Ave 26, Chowchilla



Photograph 1

View of northern end of Study Area, looking west toward Highway 99. There is a business adjacent to the northern boundary.



Photograph 2

View Study Area looking south along Road 16 1/2.



Photographs: August 31, 2023

Project: A - Z Chowchilla Truck Center, Chowchilla, CA



Photograph 3

Another view along Road 16 ½
looking south



Photograph 4

View of southern end of
Study Area, looking north
across site.



Photographs: August 31, 2023

Project: A - Z Chowchilla Truck Center, Chowchilla, CA



Photograph 5

Photograph taken from the southwest corner of the Study Area. Highway 99 left of the palm trees.



Photograph 6

View of mature trees along Caltrans right-of-way. No raptor nests are present.