

Appendix B

Biological Resources Assessment for General Pump's Proposed
Hesperia Equipment Yard Project located at the Southwest Corner of
the Intersection of I Avenue and Hercules Street in the City of Hesperia,
San Bernardino County, California

ELMT Consulting

February 1, 2025



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MARTINEZ + OKAMOTO ARCHITECTS, INC.

Attention: *Robert A. Martinex, AIA, CASp, CASI*

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Victorville, CA 92392

SUBJECT: Biological Resources Assessment for General Pump’s Proposed Hesperia Equipment Yard Project located at the Southwest Corner of the Intersection of I Avenue and Hercules Street in the City of Hesperia, San Bernardino County, California

Introduction

This report contains the findings of ELMT Consulting’s (ELMT) biological resources assessment for General Pumps’ proposed Hesperia Equipment Yard project located in the City of Hesperia, San Bernardino County, California. The report was prepared to document baseline conditions and assess the potential for special-status¹ plant and wildlife species to occur within the boundaries of the proposed project that could pose a constraint to project implementation. Special attention was given to the suitability of the on-site habitat to support special-status species identified by the California Department of Fish and Wildlife’s (CDFW) California Natural Diversity Database (CNDDDB) and other electronic databases as potentially occurring in the general vicinity of the project. Additionally, the report also addresses resources protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (FGC), federal Clean Water Act (CWA) regulated by the United States Army Corps of Engineers (Corps) and Regional Water Quality Control Board (Regional Board) respectively, and Section 1602 of the FGC administered by CDFW.

Project Location

The project site is generally located north of State Route 173, west of the Mojave River, south of State Route 18 and east of Interstate 15 in the City of Hesperia, San Bernardino County, California. The site is depicted on the Hesperia quadrangle of the United States Geological Survey’s (USGS) 7.5-minute map series within Section 15 of Township 4 North, Range 4 West. Specifically, the project site is located at the southwest corner of the intersection of Hercules Street and I Avenue within Assessor’s Parcel Number 0410-072-06. Refer to Exhibits 1-3 in Attachment A.

Project Description

General Pump (Applicant) has an existing yard at 159 N. Acacia St. San Dimas, California. The applicant is proposing to develop a similar yard on 4.53 acres of vacant land in Hesperia at the southwest corner of I

¹ As used in this report, “special-status” refers to plant and wildlife species that are federally, State, and MSHCP listed, proposed, or candidates; plant species that have been designated with a California Native Plant Society Rare Plant Rank; wildlife species that are designated by the CDFW as fully protected, species of special concern, or watch list species; and specially protected natural vegetation communities as designated by the CDFW.

Ave and Hercules St (APN 0410-072-06). Refer to Attachment B, *Site Plan*. This parcel is within the Main Street Freeway Corridor Specific Plan (MSFC-SP), zoned the CIBP (Commercial/Industrial Park), which identifies: *“This zone is intended to provide for service commercial, light industrial, light manufacturing, and industrial support uses, mainly conducted in enclosed buildings, which will produce only a small environmental impact, such as noise, vibration, air pollution, glare or waste disposal.”*

General Pump serves municipal water districts which requires their field crews to go to specific sites that have well pump issues. They detach the pumps and casings (which are 20 feet long and generally 12 inch diameter piping) and deliver to their yard on 25-foot flatbed trucks. At the yard, they unload, store, disassemble, fix issues generally in their machine shop, re-assemble, test and cause to be delivered back to the pump site. Their existing facility in San Dimas has a truck repair building (which will, not be reproduced in Hesperia), an 10,000 SF machine shop and tear down benches, an 8,000 SF office and a lot of yard storage for pumps and casings waiting to be worked on. In addition, their yard has storage for chemicals (for cleaning pipis/casings) and fuel pump. Lastly, they have 5 Pump Trucks and 4 flatbeds. The uses in Hesperia will be the same as the San Dimas yard, but there would be no mechanics truck shop.

Methodology

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 to document existing conditions and assess the potential for special-status biological resources to occur within the project site.

Literature Review

Prior to conducting the field investigation, a literature review and records search was conducted for special-status biological resources potentially occurring on or within the vicinity of the project site. Previously recorded occurrences of special-status plant and wildlife species and their proximity to the project site were determined through a query of the CDFW’s QuickView Tool in the Biogeographic Information and Observation System (BIOS), CNDDDB Rarefind 5, the California Native Plant Society’s (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California, Calflora Database, compendia of special-status species published by CDFW, and the United States Fish and Wildlife Service (USFWS) species listings.

All available reports, survey results, and literature detailing the biological resources previously observed on or within the vicinity of the project site were reviewed to understand existing site conditions and note the extent of any disturbances that have occurred within the project site that would otherwise limit the distribution of special-status biological resources. Standard field guides and texts were reviewed for specific habitat requirements of special-status and non-special-status biological resources, as well as the following resources:

- Google Earth Pro historic aerial imagery (1985-2024);

- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey²;
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS Endangered Species Profiles.

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

Field Investigation

Following the literature review, biologist Rachael A. Lyons inventoried and evaluated the condition of the habitat within a 200-foot buffer around the project site, where applicable, on March 6, 2024. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking meandering transects throughout the project site. In addition, aerial photography was reviewed prior to the site investigation to locate potential natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

Soil Series Assessment

On-site and adjoining soils were researched prior to the field investigation using the USDA NRCS Soil Survey for San Bernardino County, California, 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.

Plant Communities

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), delineated on an aerial photograph, and then digitized into GIS Arcview. The Arcview application was used to compute the area of each plant community and/or land cover type in acres.

Plants

Common plant species observed during the field investigation were identified by visual characteristics and morphology in the field and recorded in a field notebook. Unusual and less-familiar plants were photographed in the field and identified in the laboratory using taxonomic guides. Taxonomic nomenclature used in this study follows the 2012 Jepson Manual (Hickman 2012). In this report, scientific names are provided immediately following common names of plant species (first reference only).

Wildlife

Wildlife species detected during the field investigation by sight, calls, tracks, scat, or other sign were recorded during surveys in a field notebook. Field guides used to assist with identification of wildlife

² A soil series is defined as a group of soils with similar profiles developed from similar parent materials under comparable climatic and vegetation conditions. These profiles include major horizons with similar thickness, arrangement, and other important characteristics, which may promote favorable conditions for certain biological resources.

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 well standardized, scientific names are provided immediately following common names in this report (first reference only).

Jurisdictional Drainages and Wetlands

Aerial photography was reviewed prior to conducting a field investigation in order to locate and inspect any potential natural drainage features, ponded areas, or water bodies that may fall under the jurisdiction of the United States Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), or CDFW. In general, surface drainage features indicated as blue-line streams on USGS maps that are observed or expected to exhibit evidence of flow are considered potential riparian/riverine habitat and are also subject to state and federal regulatory jurisdiction. 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 National Wetland Inventory (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.

Existing Site Conditions

The proposed project site is located in an area that consists of developed and undeveloped land in the City of Hesperia. Development in the vicinity of the site is primarily composed of commercial and rural residential land uses. The project site is bounded to the west by undeveloped, vacant land; to the north by Hercules Street with undeveloped, vacant land and commercial land uses beyond; to the east by I Avenue with rural residential land uses beyond; and to the south by commercial land use. The site itself entirely supports undeveloped, vacant land that has been impacted by various anthropogenic disturbances such as grading, vehicle parking, off-highway recreational vehicle access, and illegal dumping.

Topography and Soils

On-site topography is generally flat with elevation ranging from approximately 3,100 to 3,113 feet above mean sea level and slopes marginally from east to west. Based on the NRCS USDA Web Soil Survey, the project site is historically underlain by Bryman loamy fine sand (2 to 5 percent slopes). Soils along the western, southern, and eastern boundaries have been compacted and disturbed by anthropogenic disturbances, while soils underlying the remainder of the site are relatively undisturbed.

Vegetation

Due to historic and ongoing disturbance, no natural plant communities are supported by the project site. The project site has been subjected to routine weed abatement activities which have eliminated the natural plant communities from the project site. As a result, the site supports a disturbed non-native grassland plant community and disturbed. Refer to Exhibit 4, *Vegetation*, in Attachment A, and Attachment C, *Site Photographs*, for representative site photographs.

Disturbed/Non-Native Grassland

The majority of the project site has been subject to a regime of anthropogenic disturbances such as weed abatement, illegal dumping, vehicle parking, and pedestrian use. As such the disturbed/non-native grassland

varies from patches of bare ground and litter to densely vegetated with non-native grasses with other weedy/early successional species intermixed. Plant species observed in the disturbed/non-native grassland plant community include Mediterranean mustard (*Hirschfeldia incana*), western ragweed (*Ambrosia psilostachya*), red brome (*Bromus rubens*), downy chess (*Bromus tectorum*), Mediterranean grass (*Schismus barbatus*), common purslane (*Portulaca oleracea*), Cooper's goldenbush (*Ericameria cooperi*), Russian thistle (*Salsola tragus*), chia sage (*Salvia columbariae*), sandmat (*Euphorbia* sp.), and yellow tansy mustard (*Descurainia pinnata*).

It should be noted that several western Joshua trees were observed within the non-native plant community. Only four (4) live and one (1) dead western Joshua trees were observed onsite, which does not have the requisite density to constitute a Joshua tree woodland.

Disturbed areas supported within the project site are generally barren or support minimal weedy/early successional species that are adapted to growing in heavily disturbed and compacted soils and are tolerant of routine disturbance.

Wildlife

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

Fish

No fish or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for fish were observed on or within the vicinity of the project site. Therefore, no fish are expected to occur and are presumed absent from the project site.

Amphibians

No amphibians or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for amphibian species were observed on or within the vicinity of the project site. Therefore, no amphibians are expected to occur on the project site and are presumed absent.

Reptiles

The survey area provides suitable foraging and cover habitat for reptile species adapted to conditions within the Mojave Desert. No reptilian species were observed during the field investigation. Common reptilian species that could be expected to occur include western side-blotched lizard (*Uta stansburiana elegans*), desert horned lizard (*Phrynosoma platyrhinos*), Mojave rattlesnake (*Crotalus scutulatus*), and red racer (*Masticophis flagellum piceus*).

Birds

The project site and surrounding area provide suitable foraging and nesting habitat for bird species adapted

to conditions within the Mojave Desert. Avian species detected during the field investigation include common raven (*Corvus corax*), house finch (*Haemorrhous mexicanus*), house sparrow (*Passer domesticus*), Say's phoebe (*Sayornis saya*), European starling (*Sturnus vulgaris*), and mourning dove (*Zenaida macroura*).

Mammals

The survey area provides suitable foraging and cover habitat for mammalian species adapted to conditions within the Mojave Desert. Mammalian species detected during the field investigation include black-tailed jackrabbit (*Lepus californicus*), and California ground squirrel (*Otospermophilus beecheyi*). Other common mammalian species that could be expected to occur include white-tailed antelope ground squirrel (*Ammospermophilus leucurus*), coyote (*Canis latrans*), and desert cottontail (*Sylvilagus audubonii*). No bat species are expected to roost on-site due to the lack of suitable roosting opportunities.

Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field survey, which was conducted during breeding season. The project site provides minimal nesting opportunities for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area that area adapted to urban environments. No raptors are expected to nest on-site due to lack of suitable nesting opportunities.

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.

Migratory Corridors and Linkages

Habitat linkages provide connections between larger habitat areas that are separated by development. Wildlife corridors are similar to linkages but provide specific opportunities for animals to disperse or migrate between areas. A corridor can be defined as a linear landscape feature of sufficient width to allow animal movement between two comparatively undisturbed habitat fragments. Adequate cover is essential for a corridor to function as a wildlife movement area. It is possible for a habitat corridor to be adequate for one species yet still inadequate for others. Wildlife corridors are features that allow for the dispersal, seasonal migration, breeding, and foraging of a variety of wildlife species. Additionally, open space can provide a buffer against both anthropogenic disturbance and natural fluctuations in resources.

According to the San Bernardino County General Plan, the project site has not been identified as occurring within a Wildlife Corridor or Linkage. As designated by the San Bernardino County General Plan Open Space Element, the nearest corridor/linkage documented in the vicinity of the site is the Mojave River, located approximately 2.2 miles to the east. The site is separated from identified regional wildlife corridors and linkages by existing development and there are no riparian corridors or creeks connecting the project site to these areas. As a result, implementation of the proposed project is not expected to have an impact to wildlife movement opportunities or prevent local wildlife movement through the area, since the undeveloped areas to the north, away from adjacent development and associated routine disturbances, provide more suitable movement opportunities with fewer routine anthropogenic disturbances.

Jurisdictional Areas

There are three key agencies that regulate activities within inland streams, wetlands, and riparian areas in California. The Corps Regulatory Branch regulates discharge of dredge or fill materials into “waters of the United States” pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Of the State agencies, the CDFW regulates alterations to streambed and bank under Fish and Wildlife Code Sections 1600 et seq., and the Regional Board regulates discharges into surface waters pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act.

The USFWS NWI and the USGS National Hydrography Dataset were reviewed to determine if any blueline streams or riverine resources have been documented on the project site. Based on this review, no riverine resources or blueline streams were documented on the project site. In addition, the project site does not support any inundated areas, wetland features, or hydric soils that would be considered jurisdictional by the Corps, Regional Board, or CDFW.

Therefore, project activities will not result in impacts to Corps, Regional Board, or CDFW jurisdictional areas and regulatory approvals will not be required.

Special-Status Biological Resources

The CNDDDB Rarefind 5 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 Hesperia USGS 7.5-minute quadrangle. Only one quadrangle was queried due to the proximity of the site to quadrangle boundaries, regional topography, and conditions in the vicinity of the site. The habitat assessment evaluated the conditions of the habitat(s) within the boundaries of the project site to determine if the existing plant communities, at the time of the survey, have the potential to provide suitable habitat(s) for special-status plant and wildlife species.

The literature search identified nine (9) special-status plant species and nineteen (19) special-status wildlife species as having potential to occur within the Hesperia USGS 7.5-minute quadrangle. No special-status plant communities were identified as having potential to occur within this quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability, and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site is presented in Attachment D: *Potentially Occurring Special-Status Biological Resources*.

Special-Status Plants

According to the CNDDDB and CNPS, nine (9) special-status plant species have been recorded in the Hesperia quadrangle (refer to Attachment D). The only special-status plant species observed during the field investigation was western Joshua tree. Based on the availability and quality of on-site habitats, habitat requirements for specific species, and general isolation of the site from nearby open spaces, it was determined that the project site does not have the potential to support any of the other special-status plant species known to occur in the area and all are presumed to be absent.

Western Joshua Tree

The California Fish and Game Commission (Commission) designated the western Joshua tree as a candidate for listing under the California Endangered Species Act (CESA) in October 2020. This action afforded the

western Joshua tree the same CESA protections as listed species, which means that removal of the desert trees was subject to fines and criminal penalties unless authorized by a “take” permit issued by the CDFW. Such permits were difficult to obtain, and when issued would authorize removal only in limited circumstances. The new law which became effective July 1, 2023, streamlines the western Joshua Tree take permit process and broadens the purposes for which a permit may be issued. A western Joshua tree may now be removed for any purpose, so long as a permit is obtained and the removal is fully mitigated, or alternatively, an in-lieu mitigation fee is paid. The Project is located in the “Standard Mitigation Fee Area” as outlined in the Western Joshua Tree Conservation Act (Fish and Game Code Section 1927). The table below summarizes the in-lieu fees for projects located in the “Standard Mitigation Fee Area.”

Project Location	Mitigation Fees
The project site is located within the Standard Fee Area	Full mitigation, or in-lieu fee as follows: • \$2,544.75 per tree > 5 meters tall • \$509 per tree 1 to 5 meters tall • \$346 per tree < 1 meter tall

Four (4) live western Joshua tree and one (1) dead Joshua tree were observed inside the boundaries of the project site. All trees measured between 1 and 5 meters tall. If implementation of the proposed project should result in impacts to, or removal of any of the western Joshua trees occurring onsite, mitigation will total \$2,545 to be paid into the western Joshua tree mitigation fund.

Additionally, the Site Plan identifies that the approximately 1.56 acre area where the western Joshua trees occur, would be fenced and remain undisturbed by project activities. No western Joshua trees would be removed for the Project, and all but one are located more than 50 feet from the proposed disturbance limits.

Special-Status Wildlife

According to the CNDDB, nineteen (19) special-status wildlife species have been reported in the Hesperia quadrangle (refer to Attachment D). No special-status wildlife species were observed during the field investigation. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that the proposed project site has a high potential to support Cooper’s hawk (*Accipiter cooperii*); and a low potential to support burrowing owl (*Athene cunicularia*), prairie falcon (*Falco mexicanus*), and loggerhead shrike (*Lanius ludovicianus*). It was further determined that the site does not have the potential to support any of the other special-status wildlife species known to occur in the vicinity, as identified in Attachment D, and all are presumed to be absent.

In order to ensure impacts to special-status avian species do not occur from implementation of the proposed project, a pre-construction nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of the pre-construction nesting bird clearance survey, impacts to special-status avian species will be less than significant and no mitigation will be required.

Due to regional significance and/or listing status, the potential occurrence of burrowing owl is discussed in further detail below.

Burrowing Owl

In October 2024, the California Fish and Game Commission listed the burrowing owl as a candidate species under CESA. Therefore, it must be afforded the same protection as if it was a listed species. the burrowing

owl is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with well-drained, level to gently-sloping areas characterized by sparse vegetation and bare ground (Haug and Didiuk 1993; Dechant et al. 1999). Burrowing owls are dependent upon the presence of burrowing mammals (such as ground squirrels) whose burrows are used for roosting and nesting (Haug and Didiuk 1993). The presence or absence of colonial mammal burrows is often a major factor that limits the presence or absence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drain pipes, stand-pipes, and dry culverts. Burrowing mammals may burrow beneath rocks and debris or large, heavy objects such as abandoned cars, concrete blocks, or concrete pads. They also require open vegetation allowing line-of-sight observation of the surrounding habitat to forage as well as watch for predators.

No burrowing owls or recent sign (i.e., pellets, feathers, castings, or whitewash) were observed during the field investigation. Portions of the project site are unvegetated and/or vegetated with a variety of low-growing plant species that allow for line-of-sight observation favored by burrowing owl. Based on the results of the field investigation, it was determined that the project site has a low potential to support burrowing owls and focused surveys are not recommended. However, out of an abundance of caution, a pre-construction burrowing owl clearance survey is recommended to be conducted prior to development to ensure burrowing owl remain absent from the project site.

Critical Habitats

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 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 Clean Water Act Permit from the United States Army Corps of Engineers). If there is a federal nexus, then the federal agency that is responsible for providing the funding or permit would consult with the USFWS.

The project site is not located within federally designated Critical Habitat. The nearest Critical Habitat designation is located approximately 3.2 miles to the northeast for southwestern willow flycatcher (*Empidonax traillii extimus*). Therefore, no impacts to federally designated Critical Habitat will occur from implementation of the proposed project.

Conclusion

Based literature review and field survey, and existing conditions discussed in this report, implementation of the proposed project will have less than significant impacts on federally or State listed species known to

occur in the general vicinity of the project site. Further, no impacts to designated Critical Habitat or regional wildlife corridors/linkage will occur because none exist within the area. No jurisdictional drainage and/or wetland features were observed on the project site during the field investigation. Western Joshua tree was the only special-status species observed onsite, and payment into the Western Joshua Tree Mitigation fund would reduce impacts to less than significant.

With completion of the recommendations provided below, no impacts to year-round, seasonal, or special-status avian residents or special-status species will occur from implementation of the proposed project.

Recommendations

Migratory Bird Treaty Act and Fish and Game Code

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). In order to protect migratory bird species, a nesting bird clearance survey should be conducted prior to any ground disturbance or vegetation removal activities that may disrupt the birds during the nesting season.

If construction occurs between February 1st and August 31st, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

Pre-construction Burrowing Owl Clearance Survey

No burrowing owl or sign were observed during the field investigation. Based on the results of the field investigation, the project site was determined to have a low potential to support burrowing owl. A pre-construction burrowing owl clearance survey shall be conducted concurrently with the pre-construction nesting bird clearance survey to ensure that burrowing owl remains absent from the project site.

Western Joshua Tree Incidental Take Permit

In total, five (5) western Joshua trees will be directly impacted from project implementation. Impacts to the on-site Joshua trees will require a total mitigation fee of \$2,545 to be paid into the Western Joshua Tree Mitigation Tree fund, and a Western Joshua Tree Incidental Take Permit to be prepared and processed.

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

Sincerely,



Thomas J. McGill, Ph.D.
Managing Director



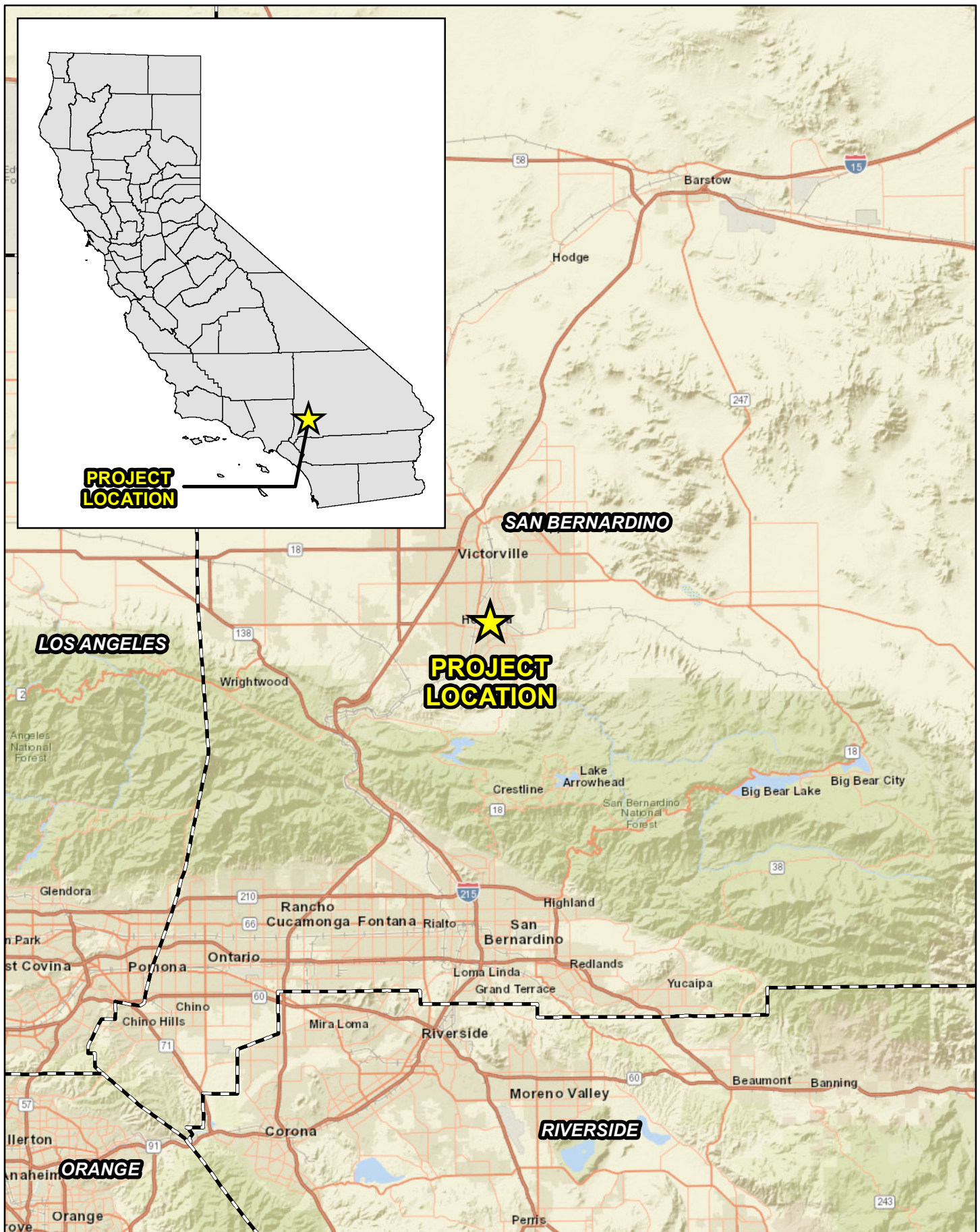
Travis J. McGill
Director

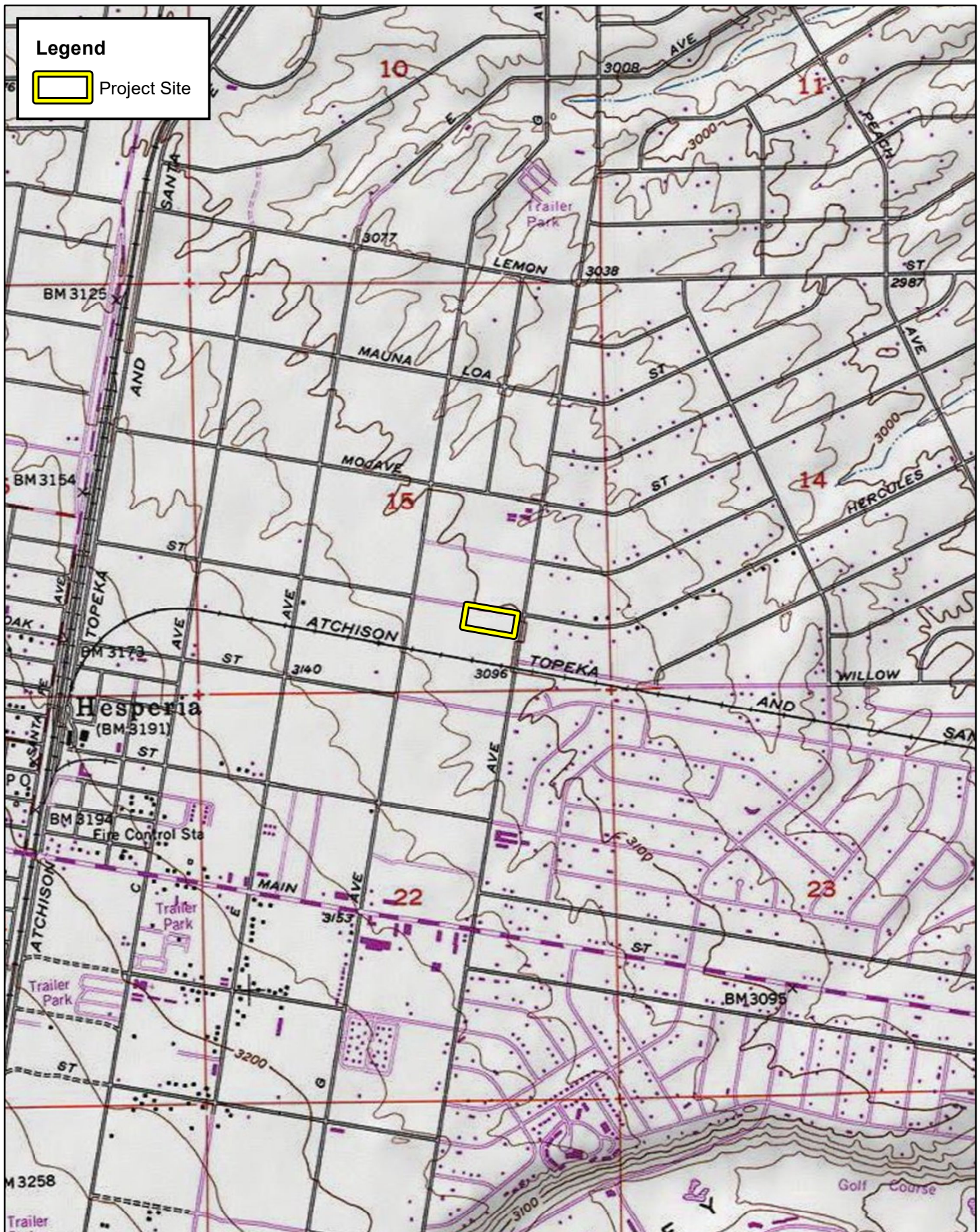
Attachments:

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

Attachment A

Project Exhibits



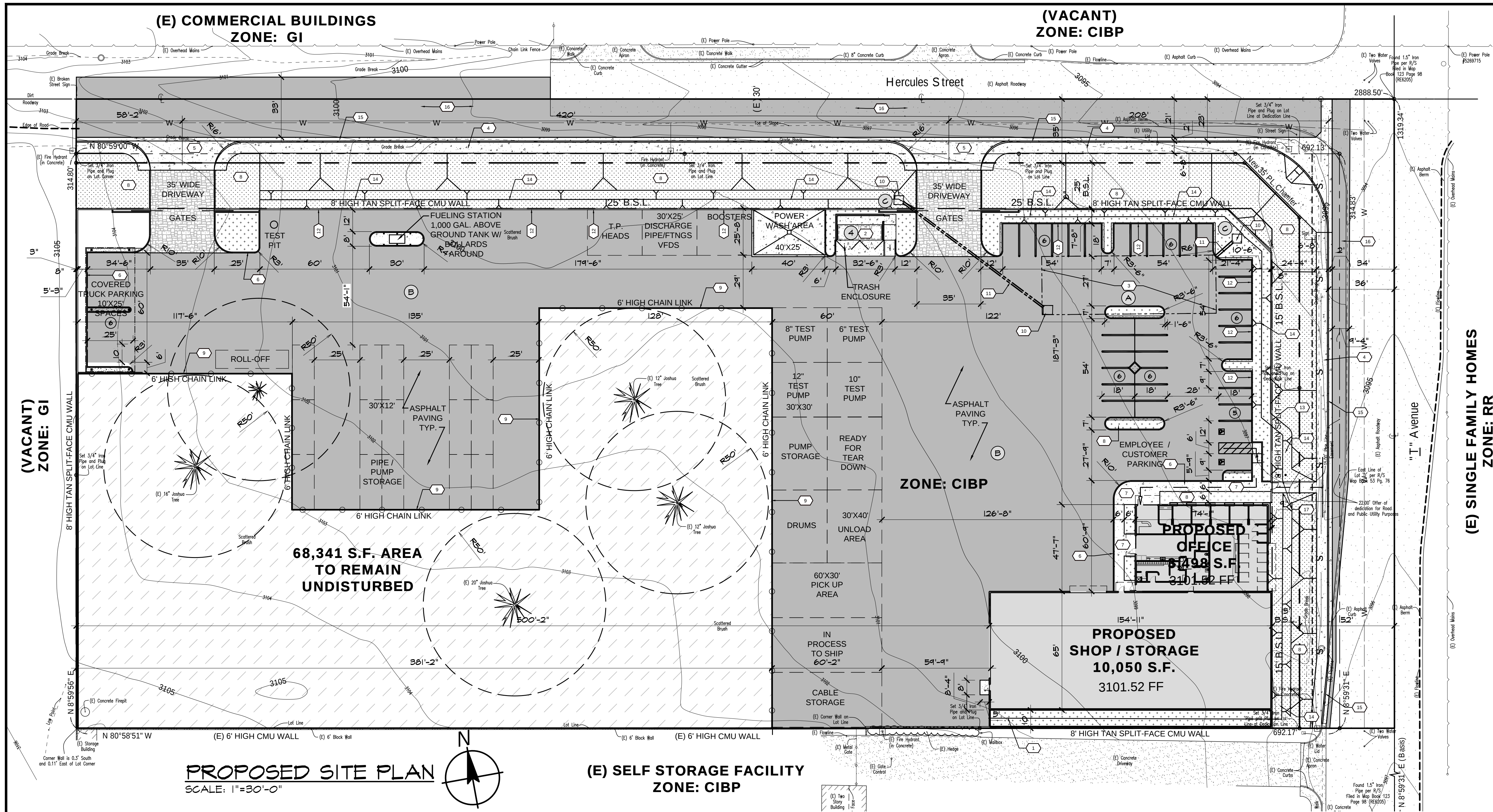






Attachment B

Site Plan



Attachment C

Site Photographs



Photograph 1: From the northwest corner of the project site looking east along the northern boundary and Hercules Street



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



Photograph 3: From the northeast corner of the project site looking west along the northern boundary and Hercules Street.



Photograph 4: From the northeast corner of the project site looking south along the eastern boundary and I Avenue.



Photograph 5: From the southeast corner of the project site looking north along the eastern boundary and I Avenue.



Photograph 6: From the southeast corner of the project site looking west along the southern boundary.



Photograph 7: From the southwest corner of the project site looking north along the western boundary.



Photograph 8: From the southwest corner of the project site looking east along the southern boundary.

Attachment D

Potentially Occurring Special-Status Biological Resources

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

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
Wildlife Species				
<i>Accipiter cooperii</i> Cooper's hawk	Fed: None CA: WL	Occurs along patches and groves of wooded areas within live oak, riparian deciduous, or other forest habitats near water. Forages in broken woodland habitat edges and nests in deciduous trees and second-growth conifer stands and riparian areas near streams and open water.	No	High Suitable foraging habitat is present within and surrounding the project site. No nesting opportunities are present.
<i>Accipiter striatus</i> Sharp-shinned hawk	Fed: None CA: WL	Found in pine, fir and aspen forests. They can be found hunting in forest interior and edges from sea level to near alpine areas. Can also be found in rural, suburban and agricultural areas, where they often hunt at bird feeders. Typically found in southern California in the winter months.	No	Presumed Absent There is no suitable habitat present within the project site.
<i>Antrozous pallidus</i> pallid bat	Fed: None CA: SSC	Forest, rocky areas (i.e., inland cliffs, mountain peaks), caves, and subterranean habitats (non-aquatic).	No	Presumed Absent There is no suitable habitat present within the project site.
<i>Asio otus</i> long-eared owl	Fed: None CA: SSC	Hunts mostly at night over grasslands and other open habitats. Nesting occurs in dense trees such as oaks and willows where it occupies stick nests of other species, particularly raptors or corvids.	No	Presumed Absent There is no suitable habitat present within the project site.
<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. Also occurs in agricultural areas, ruderal fields, vacant lots, and pastures. Requires underground burrows, cavities, debris piles, culverts, and pipes for nesting, roosting, and cover.	No	Low Portions of the project site are unvegetated or moderately vegetated, providing line-of-sight observations favored by this species. No suitable burrows (>4 inches) were observed.
<i>Calypte costae</i> Costa's hummingbird	Fed: None CA: None	Desert and semi-desert, arid brushy foothills and chaparral. A desert hummingbird that breeds in the Sonoran and Mojave Deserts. Departs desert heat moving into chaparral, scrub, and woodland habitats.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Empidonax traillii</i> willow flycatcher	Fed: None CA: END	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	Presumed Absent There is no suitable habitat present within the project site.
<i>Eremophila alpestris actia</i> California horned lark	Fed: None CA: WL	Generally found in shortgrass prairies, grasslands, disturbed fields, or similar habitat types along the coast or in deserts. Trees or shrubs are usually scarce or absent. Generally rare in montane, coniferous, or chaparral habitats. Forms large flocks outside of the breeding season.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Falco mexicanus</i> prairie falcon	Fed: None CA: WL	Distributed from annual grasslands to alpine meadows, but primarily associated with grasslands, savannahs, rangeland, agricultural fields, and desert scrub areas. Requires open terrains for foraging and nests on cliffs, escarpments, and rock outcrops.	No	Low Suitable foraging habitat is present within and surrounding the project site. No nesting suitable nesting opportunities are present.
<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	Low Suitable foraging habitat is present within and surrounding the project site. No nesting suitable nesting opportunities are present.
<i>Lasiurus xanthinus</i> western yellow bat	Fed: None CA: SSC	Occurs in valley/foothill riparian, desert riparian, desert wash, and palm oasis habitats. Roosts under palm trees and feeds in, and near, palm oases and riparian habitats.	No	Presumed Absent There is no suitable habitat present within the project site.
<i>Phrynosoma blainvillii</i> coast horned lizard	Fed: None CA: SSC	Occurs in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. In inland areas, this species is restricted to areas with pockets of open microhabitat, created by disturbance (i.e. fire, floods, roads, grazing, fire breaks). The key elements of such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense shrubs for refuge.	No	Presumed Absent There is no suitable habitat present within the project site.
<i>Setophaga petechia</i> yellow warbler	Fed: None CA: SSC	Nests over all of California except the Central Valley, the Mojave Desert region, and high altitudes and the eastern side of the Sierra Nevada. Winters along the Colorado River and in parts of Imperial and Riverside Counties. Nests in riparian areas dominated by willows, cottonwoods, sycamores, or alders or in mature chaparral. May also use oaks, conifers, and urban areas near stream courses.	No	Presumed Absent There is no suitable habitat present within the project site.
<i>Siphateles bicolor mohavensis</i> Mohave tui chub	Fed: END CA: END/FP	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	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Spinus lawrencei</i> Lawrence's goldfinch	Fed: None CA: None	Open woodlands, chaparral, and weedy fields. Closely associated with oaks. Nests in open oak or other arid woodland and chaparral near water.	No	Presumed Absent There is no suitable habitat present within the project site.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Taxidea taxus</i> American badger	Fed: None CA: SSC	Primarily occupy grasslands, parklands, farms, tallgrass and shortgrass prairies, meadows, shrub-steppe communities and other treeless areas with sandy loam soils where it can dig more easily for its prey. Occasionally found in open chaparral (with less than 50% plant cover) and riparian zones.	No	Presumed Absent There is no suitable habitat present within the project site.
<i>Toxostoma lecontei</i> Le Conte's thrasher	Fed: None CA: SSC	Occurs primarily desert washes and flats with scattered shrubs and large areas of open, sandy terrain in desert wash, desert scrub, alkali desert scrub, and desert succulent shrub habitats. Commonly nests in a dense, spiny shrub or densely branched cactus. Rarely found on rocky soils, hillsides, riparian, or on agricultural lands.	No	Presumed Absent There is no suitable habitat present within the project site.
<i>Vireo vicinior</i> gray vireo	Fed: None CA: SSC	Found in desert scrub, mixed juniper or pinyon pine and oak scrub associations, and chaparral in hot, arid mountains and high plans scrubland. A common factor to the habitat type is shrub cover that forms a continuous zone of twig growth from one to five feet above the ground. Shrubbery may either be closed as in chaparral, or partly open, as in the understory of pinyon-juniper woodland.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Xerospermophilus mohavensis</i> Mohave ground squirrel	Fed: None CA: THR	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	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
Plant Species				
<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	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Castilleja plagiotoma</i> Mojave paintbrush	Fed: None CA: None CNPS: 4.3	Found in Great Basin scrub (alluvial), Joshua tree woodland, lower montane coniferous forest, and pinyon and juniper woodland habitats. Found at elevations ranging from 984 to 8,202 feet above msl. Blooming period is from April to June.	No	Presumed Absent No suitable habitat is present within the project site.
<i>Chorizanthe spinosa</i> Mojave spineflower	Fed: None CA: None CNPS: 4.2	Grows in alkaline or non-alkaline soils in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, and playas. Found at elevations ranging from 20 to 4,265 feet. Blooming period is from March to July.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Eremothera boothii</i> ssp. <i>boothii</i> Booth's evening primrose	Fed: None CA: None CNPS: 2B.3	Joshua tree woodland, pinyon and juniper woodland. Found at elevations ranging from 2,675 to 7,875 feet. Blooming period is from June to August.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site. The project site occurs outside of this species' known elevation range.
<i>Johnstonella costata</i> ribbed cryptantha	Fed: None CA: None CNPS: 4.3	Preferred habitat includes desert dunes, Mojavean desert scrub, and Sonoran desert scrub habitats on sandy soil. Found at elevations ranging from 197 to 1,640 feet. Blooming period is from February to May.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Monardella exilis</i> Mojave monardella	Fed: None CA: None CNPS: 4.2	It is found in desert scrub, Joshua tree woodland, and pinyon pine habitats. Grows in elevations from 2,360 to 7,940 feet. Blooming period is from April to September.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Opuntia basilaris</i> var. <i>brachyclada</i> short-joint beavertail	Fed: None CA: None CNPS: 1B.2	Occurs in chaparral, Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodlands. Found at elevations ranging from 1,394 to 5,905 feet. Blooming period typically ranges from April to June, occasionally extending through August.	No	Presumed Absent There is no suitable habitat present within the project site. The project site occurs outside of the known elevation range for this species.
<i>Golden-rayed pentachaeta</i> Pentachaeta aurea ssp. aurea	Fed: None CA: None CNPS: 4.2	Chaparral, Cismontane woodland, Coastal scrub, Lower montane coniferous forest, Riparian woodland, Valley and foothill grassland. Elevation range is unknown; known from 260 feet. Blooms in March-July.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project 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	Present

**U.S. Fish and Wildlife Service
(Fed) - Federal**
END – Federal Endangered
THR – Federal Threatened
DL - Delisted

**California Department of Fish and Wildlife
(CA) - California**
END – California Endangered
THR – California Threatened
CTHR – California Candidate Threatened
DL - Delisted
FP – California Fully Protected
SSC – California Species of Special Concern
WL – California Watch List

California Native Plant Society (CNPS)
-
California Rare Plant Rank
1B Plants Rare, Threatened, or
Endangered in California and
Elsewhere
2B Plants Rare, Threatened, or
Endangered in California, but More
Common Elsewhere
4 Plants of Limited Distribution – A
Watch List

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

Attachment B

Regulations

Special status species are native species that have been afforded special legal or management protection because of concern for their continued existence. There are several categories of protection at both federal and state levels, depending on the magnitude of threat to continued existence and existing knowledge of population levels.

Federal Regulations

Endangered Species Act of 1973

Federally listed threatened and endangered species and their habitats are protected under provisions of the Federal Endangered Species Act (ESA). Section 9 of the ESA prohibits “take” of threatened or endangered species. “Take” under the ESA is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any of the specifically enumerated conduct.” The presence of any federally threatened or endangered species that are in a project area generally imposes severe constraints on development, particularly if development would result in “take” of the species or its habitat. Under the regulations of the ESA, the United States Fish and Wildlife Service (USFWS) may authorize “take” when it is incidental to, but not the purpose of, an otherwise lawful act.

Critical Habitat is designated for the survival and recovery of species listed as threatened or endangered under the ESA. Critical Habitat includes those areas occupied by the species, in which are found physical and biological features that are essential to the conservation of an ESA listed species and which may require special management considerations or protection. Critical Habitat may also include unoccupied habitat if it is determined that the unoccupied habitat is essential for the conservation of the species.

Whenever federal agencies authorize, fund, or carry out actions that may adversely modify or destroy Critical Habitat, they must consult with USFWS under Section 7 of the ESA. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highway Administration or a permit from the U.S. Army Corps of Engineers (Corps)).

If USFWS determines that Critical Habitat will be adversely modified or destroyed from a proposed action, the USFWS will develop reasonable and prudent alternatives in cooperation with the federal institution to ensure the purpose of the proposed action can be achieved without loss of Critical Habitat. If the action is not likely to adversely modify or destroy Critical Habitat, USFWS will include a statement in its biological opinion concerning any incidental take that may be authorized and specify terms and conditions to ensure the agency is in compliance with the opinion.

Migratory Bird Treaty Act

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

The MBTA covers the taking of any nests or eggs of migratory birds, except as allowed by permit pursuant to 50 CFR, Part 21. Disturbances causing nest abandonment and/or loss of reproductive effort (i.e., killing or abandonment of eggs or young) may also be considered “take.” This regulation seeks to protect migratory birds and active nests.

In 1972, the MBTA was amended to include protection for migratory birds of prey (e.g., raptors). Six families of raptors occurring in North America were included in the amendment: Accipitridae (kites, hawks, and eagles); Cathartidae (New World vultures); Falconidae (falcons and caracaras); Pandionidae (ospreys); Strigidae (typical owls); and Tytonidae (barn owls). The provisions of the 1972 amendment to the MBTA protects all species and subspecies of the families listed above. The MBTA protects over 800 species including geese, ducks, shorebirds, raptors, songbirds and many relatively common species.

State Regulations

California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) provides for the protection of the environment within the State of California by establishing State policy to prevent significant, avoidable damage to the environment through the use of alternatives or mitigation measures for projects. It applies to actions directly undertaken, financed, or permitted by State lead agencies. If a project is determined to be subject to CEQA, the lead agency will be required to conduct an Initial Study (IS); if the IS determines that the project may have significant impacts on the environment, the lead agency will subsequently be required to write an Environmental Impact Report (EIR). A finding of non-significant effects will require either a Negative Declaration or a Mitigated Negative Declaration instead of an EIR. Section 15380 of the CEQA Guidelines independently defines “endangered” and “rare” species separately from the definitions of the California Endangered Species Act (CESA). Under CEQA, “endangered” species of plants or animals are defined as those whose survival and reproduction in the wild are in immediate jeopardy, while “rare” species are defined as those who are in such low numbers that they could become endangered if their environment worsens.

California Endangered Species Act (CESA)

In addition to federal laws, the state of California implements the CESA which is enforced by CDFW. The CESA program maintains a separate listing of species beyond the FESA, although the provisions of each act are similar.

State-listed threatened and endangered species are protected under provisions of the CESA. Activities that may result in “take” of individuals (defined in CESA as; “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) are regulated by CDFW. Habitat degradation or modification is not included in the definition of “take” under CESA. Nonetheless, CDFW has interpreted “take” to include the destruction of nesting, denning, or foraging habitat necessary to maintain a viable breeding population of protected species.

The State of California considers an endangered species as one whose prospects of survival and reproduction are in immediate jeopardy. A threatened species is considered as one present in such small numbers throughout its range that it is likely to become an endangered species in the near future in the

absence of special protection or management. A rare species is one that is considered present in such small numbers throughout its range that it may become endangered if its present environment worsens. State threatened and endangered species are fully protected against take, as defined above.

The CDFW has also produced a species of special concern list to serve as a species watch list. Species on this list are either of limited distribution or their habitats have been reduced substantially, such that a threat to their populations may be imminent. Species of special concern may receive special attention during environmental review, but they do not have formal statutory protection. At the federal level, USFWS also uses the label species of concern, as an informal term that refers to species which might be in need of concentrated conservation actions. As the Species of Concern designated by USFWS do not receive formal legal protection, the use of the term does not necessarily ensure that the species will be proposed for listing as a threatened or endangered species.

Fish and Game Code

Fish and Game Code Sections 3503, 3503.5, 3511, and 3513 are applicable to natural resource management. For example, Section 3503 of the Code makes it unlawful to destroy any birds' nest or any birds' eggs that are protected under the MBTA. Further, any birds in the orders Falconiformes or Strigiformes (Birds of Prey, such as hawks, eagles, and owls) are protected under Section 3503.5 of the Fish and Game Code which makes it unlawful to take, possess, or destroy their nest or eggs. A consultation with CDFW may be required prior to the removal of any bird of prey nest that may occur on a project site. Section 3511 of the Fish and Game Code lists fully protected bird species, where the CDFW is unable to authorize the issuance of permits or licenses to take these species. Pertinent species that are State fully protected by the State include golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*). Section 3513 of the Fish and Game Code makes it unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Native Plant Protection Act

Sections 1900–1913 of the Fish and Game Code were developed to preserve, protect, and enhance Rare and Endangered plants in the state of California. The act requires all state agencies to use their authority to carry out programs to conserve Endangered and Rare native plants. Provisions of the Native Plant Protection Act prohibit the taking of listed plants from the wild and require notification of the CDFW at least ten days in advance of any change in land use which would adversely impact listed plants. This allows the CDFW to salvage listed plant species that would otherwise be destroyed.

California Native Plant Society Rare and Endangered Plant Species

Vascular plants listed as rare or endangered by the CNPS, but which have no designated status under FESA or CESA are defined as follows:

California Rare Plant Rank

1A- Plants Presumed Extirpated in California and either Rare or Extinct Elsewhere

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

- 2A- Plants Presumed Extirpated in California, But More Common Elsewhere
- 2B- Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere
- 3- Plants about Which More Information is Needed - A Review List
- 4- Plants of Limited Distribution - A Watch List

Threat Ranks

- .1- Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)
- .2- Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)
- .3- Not very threatened in California (<20% of occurrences threatened / low degree and immediacy of threat or no current threats known).

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

In accordance with the Revised Definition of “Waters of the United States”; Conforming (September 8, 2023), “waters of the United States” are defined as follows:

(a) ***Waters of the United States*** means:

(1) Waters which are:

- (i) 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) The territorial seas; or
- (iii) Interstate waters;

(2) Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under [paragraph \(a\)\(5\)](#) of this section;

(3) Tributaries of waters identified in paragraph (a)(1) or (2) of this section that are relatively permanent, standing or continuously flowing bodies of water;

(4) Wetlands adjacent to the following waters:

- (i) Waters identified in [paragraph \(a\)\(1\)](#) of this section; or
- (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3) of this section and with a continuous surface connection to those waters;

(5) Intrastate lakes and ponds not identified in paragraphs (a)(1) through (4) of this section that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3) of this section

(b) The following are not “waters of the United States” even where they otherwise meet the terms of [paragraphs \(a\)\(2\)](#) through [\(5\)](#) of this section:

(1) Waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act;

(2) Prior converted cropland designated by the Secretary of Agriculture. The exclusion would cease upon a change of use, which means that the area is no longer available for the production of agricultural commodities. Notwithstanding the determination of an area's status as prior converted

cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA;

(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water;

(4) Artificially irrigated areas that would revert to dry land if the irrigation ceased;

(5) Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;

(6) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking dry land to retain water for primarily aesthetic reasons;

(7) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States; and

(8) Swales and erosional features (*e.g.*, gullies, small washes) characterized by low volume, infrequent, or short duration flow.

(c) In this section, the following definitions apply:

(1) ***Wetlands*** means those areas that are inundated or saturated by surface or ground water 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. Wetlands generally include swamps, marshes, bogs, and similar areas.

(2) ***Adjacent*** means having a continuous surface connection

(3) ***High tide line*** means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(4) ***Ordinary high water mark*** means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(5) ***Tidal waters*** means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

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.