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MAXSUM DEVELOPMENT, LLC

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SUBJECT: Habitat Assessment and Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Consistency Analysis for the Proposed Project Located on the Northeast Corner of Alessandro Boulevard and Day Street in the City of Moreno Valley, Riverside County, California.

Introduction

This report contains the findings of ELMT Consulting's (ELMT) habitat assessment and Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) consistency analysis for the proposed project located on the northeast corner of Alessandro Boulevard and Day Street (project site or site) located in the City of Moreno Valley, Riverside County, California.

The habitat assessment was conducted by biologists Thomas J. McGill, Ph.D. and Travis J. McGill on August 15, 2018 to document baseline conditions and assess the potential for special-status¹ plant and wildlife species to occur on the project site that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the on-site habitat to support burrowing owl (*Athene cunicularia*) and several other special-status plant and wildlife species identified by the MSHCP, the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB), and other electronic databases as potentially occurring in the vicinity of the project site.

The Western Riverside County Regional Conservation Authority (RCA) MSHCP Information Map was queried to determine if the MSHCP identifies any potential survey requirements for the project site. Further, the proposed project site was reviewed against the MSHCP to determine if the site is located within any MSHCP areas including Criteria Cells (core habitat and wildlife movement corridors) and areas proposed for conservation.

Based on the RCA MSHCP Information Map query and review of the MSHCP, it was determined that the project site is located within the Reche Canyon/Badlands Area Plan of the MSHCP but is not located within

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.

any Criteria Cells or MSHCP Conservation Areas. Further, it was determined that the project site is located within the designated survey area for burrowing owl (*Athene cuicularia*) within Sections 6.3.2 of the MSHCP.

Project Location

The project site is generally located east of Interstate 215, south of State Route 60, north of State Route 74, and west of Lake Perris in the City of Moreno Valley, Riverside County, California. The proposed project site is depicted on the Riverside East quadrangle of the United States Geological Survey's (USGS) 7.5-minute topographic map series within Section 11 of Township 3 South, Range 4 West. Specifically, the project site is located on the northeast corner of the intersection of Alessandro Boulevard (southern boundary) and Day Street (western boundary) within Assessor Parcel Numbers (APNs) 291-191-004, -007, -008, -009, -010, -011, -012, -013, -025, -026, -027, -028, and -029. Refer to Exhibits 1 thru 3 in Appendix A.

Methodology

Western Riverside County MSHCP Consistency Analysis

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

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

The project was reviewed to determine consistency with the MSHCP. Geographic Information System (GIS) software was utilized to map the project site in relation to MSHCP areas including Criteria Cells (core habitat and wildlife movement corridors) and the Conservation Area, including PQP lands.

Riparian/Riverine Areas and Vernal Pools

The MSHCP requires that an assessment be completed if impacts to riparian/riverine areas and vernal pools will occur as a result of implementation of the proposed project. According to the MSHCP, the documentation for the assessment shall include mapping and a description of the functions and values of the mapped areas with respect to the species listed in Section 6.1.2 of the MSHCP, *Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools*.

Aerial photography was reviewed prior to conducting the habitat assessment. The aeriels were used to locate and inspect any potential natural drainage features and water bodies that may be considered riparian/riverine habitat and/or 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 authorities.

Narrow Endemic Plant Species

Section 6.1.3 of the MSHCP, *Protection of Narrow Endemic Plant Species*, states that the MSHCP database does not provide sufficient detail to determine the extent of the presence/distribution of Narrow Endemic Plant Species within the MSHCP Plan Area. Additional surveys may be needed to gather information to determine the presence/absence of these species to ensure that appropriate conservation of these species occurs. Based on the RCA MSHCP Information Map query and review of the MSHCP, it was determined that the project site is not located within the designated survey area for Narrow Endemic Plant Species.

Additional Survey Needs and Procedures

In accordance with Section 6.3.2 of the MSHCP, *Additional Survey Needs and Procedures*, additional surveys may be needed for certain species in order to achieve coverage for these species. The query of the RCA MSHCP Information Map and review of the MSHCP determined that the project site is located within the designated survey area for burrowing owl as depicted in Figure 6-4 within Section 6.3.2 of the MSHCP.

Even though, no burrowing owls or sign (i.e. burrows, pellets, feathers, castings, or whitewash) were observed on or adjacent to the project site during the initial field survey conducted on August 15, 2018, several California ground squirrel (*Otospermophilus beecheyi*) burrows and were observed throughout the project site. Since the proposed project site supports open habitat favored by burrowing owls and has the potential to provide suitable burrows, three additional focused burrowing owl surveys were conducted on August 20, 23 and 28, 218 in accordance with the “Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area” (County of Riverside 2006).

Urban/Wildlands Interface Guidelines

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

Literature Review

The first step in determining if a project is consistent with the above listed sections of the MSHCP is to conduct a literature review and records search 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 CDFWs

CNDDDB Rarefind 5, the California Native Plant Society (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California, Calflora Database, compendia of special-status species published by CDFW, United States Fish and Wildlife Service (USFWS) species listings, and species covered within the MSHCP and associated technical documents.

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 on 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 (1994-2018);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey;
- United States Fish and Wildlife Service (USFWS) Critical Habitat designations for Threatened and Endangered Species;
- Stephen's Kangaroo Rat Habitat Conservation Plan; and
- RCA MSHCP Information Map.

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

Habitat Assessment/Field Investigation

Following the literature review, biologists Thomas J. McGill, Ph.D. and Travis J. McGill inventoried and evaluated the condition of the habitat within the project site on August 15, 2018. Plant communities identified on aerial photographs during the literature review were verified by walking meandering transects through the plant communities and along boundaries between plant communities. In addition, aerial photography was reviewed prior to the site investigation to locate potential natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field survey.

All plant and wildlife species observed, as well as dominant plant species within each plant community, were recorded. Plant species observed during the field survey were identified by visual characteristics and morphology in the field. Unusual and less familiar plant species were photographed during the field survey and identified in the laboratory using taxonomical guides. Wildlife detections were made through observation of scat, trails, tracks, burrows, nests, and/or visual and aural observation. In addition, site characteristics such as soil condition, topography, hydrology, anthropogenic disturbances, indicator species, condition of on-site plant communities, and presence of potential jurisdictional drainage and/or wetland features were noted.

Soil Series Assessment

On-site and adjoining soils were researched prior to the field survey using the USDA NRCS Soil Survey for Western Riverside Area, California. In addition, a review of the local geological conditions and historical aerial photographs was conducted to assess the ecological changes that the project site has undergone.

Plant Communities

Plant communities were mapped using 7.5-minute USGS topographic base maps and aerial photography. The plant communities were delineated on an aerial photograph, classified in accordance with those described in the MSHCP, and then digitized into GIS Arcview. The Arcview application was used to compute the area of each plant community in acres.

Plants

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

Wildlife

Wildlife species detected during field surveys by sight, calls, tracks, scat, or other sign were recorded during surveys in a field notebook. Field guides were used to assist with identification of wildlife species during the survey included The Sibley Field Guide to the Birds of Western North America (Sibley 2003), A Field Guide to Western Reptiles and Amphibians (Stebbins 2003), and A Field Guide to Mammals of North America (Reid 2006). Although common names of wildlife species are fairly well standardized, scientific names are provided immediately following common names in this report (first reference only).

Jurisdictional Drainages and Wetlands

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

Stephen's Kangaroo Rat Habitat Conservation Plan

Separate from the consistency review against the policies of the MSHCP, Riverside County established a boundary in 1996 for protecting the Stephens' kangaroo rat (*Dipodomys stephensi*), a federally endangered and state threatened species. The Stephens' kangaroo rat is protected under the Stephens' Kangaroo Rat Habitat Conservation Plan (County Ordinance No. 663.10; SKR HCP). As described in the MSHCP Implementation Agreement, a Section 10(a) Permit, and California Fish and Game Code Section 2081 Management Authorization were issued to the Riverside County Habitat Conservation Agency (RCHCA)

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

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

Existing Site Conditions

On-site surface elevation ranges from 1,575 to 1,550 feet above mean sea level with no areas of topographic relief. The eastern half of the project site is located at a higher elevation than the western half of the project site, and generally slopes from east to west. Based on the NRCS USDA Web Soil Survey, the project site is underlain by Monserate sandy loam (0 to 5 percent slopes) and Monserate sandy loam (5 to 8 percent slopes) (refer to Exhibit 4, *Soils*). Soils on-site have been mechanically disturbed and heavily compacted from historic land uses.

The project site consists of vacant, undeveloped land that has been subject to a variety of anthropogenic disturbances including on-going weed abatement activities, and disturbances associated with existing residential development on and surrounding the project site. The project site is bordered by residential developments to the north, west, and east, and commercial developments to the south.

A review of historic aerials (1994-2018) shows that the project site supported approximately six (6) to seven (7) residential developments until 2009. Between June 2008 and June 2009, the residential developments were removed from the project site. From 2009 to today, the project site consists of a graded lot that is subject to routine weed abatement activities.

Vegetation

Due to existing land uses (i.e., weed abatement activities, existing residential development), no native plant communities or natural communities of special concern were observed on or adjacent to the proposed project site. The vegetation on-site can be characterized as a heavily disturbed land cover type that is sparsely vegetated with a variety of non-native and early successional weedy plant species (refer to Exhibit 5, *Vegetation*). Common ruderal/weedy plant species observed on-site include tumbleweed (*Salsola tragus*), lamb's quarters (*Chenopodium album*), London rocket (*Sisymbrium irio*), wild oat (*Avena fatua*), cheese weed (*Malva parviflora*), red brome (*Bromus madritensis ssp. rubens*), goats head (*Tribulus terrestris*), horseweed (*Erigeron bonariensis*), telegraph weed (*Heterotheca grandiflora*), sow thistle (*Sonchus oleraceus*), and Tasmanian goosefoot (*Chenopodium pumelo*). Other plant species associated with the historical residential developments observed on-site include Peruvian pepper (*Schinus molle*), olive (*Elaeagnus angustifolia*), eucalyptus (*Eucalyptus* sp.), Mexican fan palm (*Washingtonia robusta*), chinaberry (*Melia azedarach*), black locust (*Robinia pseudoacacia*), salt cedar (*Tamarix ramosissima*), and tree of heaven (*Ailanthus altissima*). Refer to Attachment B, *Site Photographs*, for representative

photographs of the project site.

Wildlife

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

Fish

The MSHCP does not identify any covered or special-status fish species as potentially occurring on the project site. Further, 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

The MSHCP does not identify any covered or special-status amphibian species as potentially occurring on the project site. Further, 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 MSHCP does not identify any covered or special-status reptilian species as potentially occurring on the project site. The project site provides a limited amount of habitat for a few reptile species adapted to a high degree of human disturbance associated with the on-site weed abatement activities and surrounding development. Great Basin fence lizard (*Sceloporus occidentalis longipes*) was the only reptilian species observed during the habitat assessment. Other common reptilian species expected to occur include common side-blotched lizard (*Uta stansburiana elegans*), gopher snake (*Pituophis catenifer*), and southern alligator lizard (*Elgaria multicarinata*). Due to the high level of anthropogenic disturbances on-site, and surrounding development, no special-status reptilian species are expected to occur on-site.

Birds

The project site provides minimal foraging habitat for bird species adapted to a high degree of human disturbance. Bird species detected during the field surveys included killdeer (*Charadrius vociferus*), northern mockingbird (*Mimus polyglottos*), mourning dove (*Zenaida macroura*), mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), house finch (*Haemorhouse mexicanus*), American crow (*Corvus brachyrhynchos*), lesser goldfinch (*Spinus psaltria*), American kestrel (*Falco sparverius*), red-tailed hawk (*Buteo jamaicensis*), rock pigeon (*Columba livia*), and horned lark (*Eremophila alpestris*).

Mammals

The MSHCP does not identify any covered or special-status mammalian species as potentially occurring

on the project site. The project site and surrounding areas have the potential to support mammalian species adapted to human presence and disturbance. Several California ground squirrel burrows and were observed throughout the project site. Common mammalian species expected to occur include Botta's pocket gopher (*Thomomys bottae*), opossum (*Didelphis virginiana*), and raccoon (*Procyon lotor*). No bat species are expected to occur due to a lack of suitable roosting habitat (i.e., suitable trees, crevices) on and surrounding the project site.

Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field surveys. Although heavily disturbed, the project site, in particular the trees on-site provide foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area that area adapted to urban environments. In addition, the project site has the potential to support birds that nest on open ground, such as killdeer. Additionally, the ornamental vegetation associated with the immediately adjacent residential developments, although exposed to high level of anthropogenic disturbances, has the potential to provide suitable nesting opportunities for birds.

Migratory Corridors and Linkages

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

The project site has not been identified as a wildlife corridor or linkage. However, Interstate 215 west of the project site as well as surrounding development restricts potential wildlife movement through the general area and the project site. The project site is located approximately 1 mile east of open space in the Sycamore Canyon area, which is separated from the project site by Interstate 215 and existing developments. Development of the proposed project is not expected to disrupt or have any adverse effects on any migratory corridors or linkages that may occur in the general vicinity of the project site.

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.

Two 24-inch culverts/storm drains with concrete head walls were observed in the middle of the northern boundary of the project site that convey water following storm events from the surrounding residential

developments. Based on the aerial review, the culverts/storm drains were constructed in the uplands between February 2016 and October 2016 when street improvements (i.e., sidewalk, curb and gutter) along Sherman Avenue were conducted.

No standing water, discernable Ordinary High Water Mark, or bed and bank were observed in association with the culverts/storm drains. Based on the field investigation and review of historical aerials the project site does not support drainages and/or wetland features that would be considered jurisdictional by the Corps, Regional Board, or CDFW. Therefore, development of the project site will not result in impacts to Corps, Regional Board, or CDFW jurisdiction and regulatory approvals will not be required.

Special-Status Biological Resources

The CNDDDB 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 Riverside East USGS 7.5-minute quadrangle. 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 thirteen (13) special-status plant species, fifty-six (56) special-status wildlife species, and one (1) special-status plant communities as having potential to occur within the Riverside East quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project boundaries based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity are presented in *Table C-1: Potentially Occurring Special-Status Biological Resources*, provide din Attachment C. Refer to Table C-1 for a determination regarding the potential occurrence of special-status plant and wildlife species within the project site.

Special-Status Plants

According to the CNDDDB and CNPS, thirteen (13) special-status plant species have been recorded in the Riverside East quadrangle (refer to Attachment C). Although the field investigation was not conducted during the blooming season for the majority of the special-status plant species known to occur in the general vicinity of the project site, based on habitat requirements for specific special-status plant species and the availability and quality of habitats needed by each species, it was determined that the project site does not provide suitable habitat for any of the special-status plant species known to occur in the area and are presumed to be absent from the project site.

Special-Status Wildlife

According to the CNDDDB, fifty-six (56) special-status wildlife species have been reported in the Riverside East quadrangle (refer to Attachment C). California horned lark (*Eremophila alpestris actia*) was the only special-status wildlife species were observed on-site during the habitat assessment. 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 moderate potential to provide suitable habitat for Cooper's hawk (*Accipiter cooperii*), sharp-shinned hawk (*Accipiter striatus*), and burrowing owl. Further it was determined that the

project site does not provide suitable habitat for any of the other special-status wildlife species known to occur in the area since the project site has been heavily disturbed from on-site disturbances and existing development.

In order to ensure no impacts to California horned lark, Cooper's hawk, sharp-shinned hawk, and burrowing owl do not occur from site development, a pre-construction burrowing owl and nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of a pre-construction nesting bird clearance survey, impacts to these will be less than significant and no mitigation will be required.

Special-Status Plant Communities

The CNDDDB lists one (1) special-status plant communities as being identified within the Riverside East quadrangle: Southern Sycamore Alder Riparian Woodland. This special-status plant community does not occur within the boundaries of the project site.

Critical Habitat

Under the federal Endangered Species Act, "Critical Habitat" is designated at the time of listing of a species or within one year of listing. Critical Habitat refers to specific areas within the geographical range of a species at the time it is listed that include the physical or biological features that are essential to the survival and eventual recovery of that species. Maintenance of these physical and biological features requires special management considerations or protection, regardless of whether individuals or the species are present or not. All federal agencies are required to consult with the United States Fish and Wildlife Service (USFWS) regarding activities they authorize, fund, or permit which may affect a federally listed species or its designated Critical Habitat. The purpose of the consultation is to ensure that projects will not jeopardize the continued existence of the listed species or adversely modify or destroy its designated Critical Habitat. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing is on federal lands, uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highways Administration or a CWA Permit from the Corps). If there is a federal nexus, then the federal agency that is responsible for providing the funding or permit would consult with the USFWS.

The project site is not located with federally designated Critical Habitat. The nearest designated Critical Habitat is located approximately 8.3-miles to the northwest of the project site in association with the Santa Ana River for Santa Ana sucker (*Catostomus santaanae*). Therefore, the loss or adverse modification of Critical Habitat from site development will not occur and consultation with the USFWS will not be required for implementation of the proposed project.

Western Riverside County MSHCP

The project site is located within the Reche Canyon/Badlands Area Plan of the MSHCP but is not located within any Criteria Cells or MSHCP Conservation Areas (Exhibit 6, *MSHCP Conservation Areas*). Additionally, the project site is located within the designated survey area for burrowing owl as depicted in Figures 6-4 within Sections 6.3.2 of the MSHCP.

Riparian/Riverine Areas and Vernal Pools

Riparian/Riverine Areas

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

It should be noted that two 24-inch culverts/storm drains with concrete head walls were observed in the middle of the northern boundary of the project site that convey water following storm events from the surrounding residential developments. Based on the aerial review, the culverts/storm drains were installed between February 2016 and October 2016 when street improvements (i.e., sidewalk, curb and gutter) along Sherman Avenue were conducted. No standing water, discernable Ordinary High Water Mark, or bed and bank were observed in association with the culverts/storm drains. Based on the field investigation and review of historical aerials the project site does not support drainages and/or wetland features that would be considered riparian/riverine habitat under the MSHCP. Therefore, development of the project site will not result in impacts to riparian/riverine habitat and a Determination of Biologically Equivalent or Superior Preservation (DBESP) will not be required for the loss of riparian/riverine habitat.

Vernal Pools and Fairy Shrimp Habitat

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

Vernal pools are seasonally inundated, ponded areas that only form in regions where specialized soil and climatic conditions exist. During fall and winter rains typical of Mediterranean climates, water collects in shallow depressions where downward percolation of water is prevented by the presence of a hard pan or

clay pan layer (duripan) below the soil surface. Later in the spring when rains decrease and the weather warms, the water evaporates and the pools generally disappear by May. The shallow depressions remain relatively dry until late fall and early winter with the advent of greater precipitation and cooler temperatures. Vernal pools provide unusual "flood and drought" habitat conditions to which certain plant and wildlife species have specifically adapted as well as invertebrate species such as fairy shrimp.

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

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

Narrow Endemic Plant Species

Based on the RCA MSHCP Information Map query and review of the MSHCP, it was determined that the project site is not located within the designated survey area for Narrow Endemic Plant Species. Additionally, it was determined that the project site does not provide suitable habitat for any of the Narrow Endemic Plant Species listed under Section 6.1.3 of the MSHCP. Therefore, no additional surveys or analysis is required.

Additional Survey Needs and Procedures

The RCA MSHCP Information Map query and review of the MSHCP was identified that the project site is located within the designated survey area for burrowing owl as depicted in Figure 6-4 within Section 6.3.2 of the MSHCP.

Burrowing Owl

Burrowing owl is currently designated as a California Species of Special Concern. The burrowing owl is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with level to gently-sloping areas characterized by open vegetation and bare ground. The western burrowing owl (*A.c. hypugaea*), which occurs throughout the western United States including California, rarely digs its own burrows and is instead dependent upon the presence of burrowing mammals (i.e., California ground squirrels, coyotes, and badgers) whose burrows are often used for roosting and nesting. The presence or absence of colonial mammal burrows is often a

major factor that limits the presence or absence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drain pipes, stand-pipes, and dry culverts. They also require low growth or open vegetation allowing line-of-sight observation of the surrounding habitat to forage and watch for predators. In California, the burrowing owl breeding season extends from the beginning of February through the end of August.

Focused Burrowing Owl Survey

ELMT biologist Thomas J. McGill, Ph.D. and Travis J. McGill conducted a focused burrow survey on August 15, 2018 within the boundaries of the project site. The project site was surveyed to determine the suitable habitat areas consisting of low-growing vegetation, open areas for foraging, and availability of small mammal burrows. The focused burrow survey and subsequent focused surveys were conducted in accordance with the “*Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area*” (County of Riverside 2006).

General weather conditions during each of the surveys were suitable for detections of burrowing owls. The weather during the surveys had clear skies and minimal wind, with temperatures ranging from 70 to 85 degrees Fahrenheit (°F). Surveys are not accepted if they are conducted during rain, high winds (> 20 mph), dense fog, or temperatures over 90°F. The protocol survey for burrowing owl requires a systematic survey of all areas that provide suitable habitat plus a 150-meter (approximately 500 feet) zone of influence on all sides of suitable habitat, where applicable. Where applicable, binoculars were used to scan open areas adjacent to the project site that have the potential to provide suitable habitat for burrowing owl.

Survey transects were conducted at a maximum of 30-meter (approximately 100 feet) intervals to ensure 100% visual coverage of all areas in suitable habitat, as applicable based on topography of the site. The focused burrowing owl surveys were conducted during the recognized timeframe in the morning one hour before sunrise to two hours after sunrise.

Areas providing potential habitat for burrowing owls were surveyed for suitable burrows, consisting of natural and non-natural substrates in areas with low, open vegetation. All burrows encountered were examined for shape, scat, pellets, white-wash, feathers, tracks, and prey remains. The location of all suitable burrowing owl habitat, potential owl burrows, burrowing owl sign, and any owls observed were recorded and mapped, with a hand-held GPS unit. Methods to detect presence of burrowing owls included direct observation, aural detection, and signs of presence; including pellets, white wash, feathers, or prey remains. Suitable burrows/sites, including rock piles and non-natural substrates, were thoroughly examined for signs of presence. The survey included identifying avian species in the area and observing behaviors that suggested nesting activity. Binoculars were used to observe distant birds and their activity around potential nesting habitat.

Following the results of the focused burrow survey and initial focused burrowing owl survey conducted on August 15, 2015, three additional focused burrowing owl surveys were conducted within the suitable habitat areas. ELMT biologist Travis J. McGill conducted the three subsequent focused burrowing owl surveys on August 20, 23, and 28, 2018.

Results

The project site provides line-of-site opportunities favored by burrowing owls; however, on-site disturbances and surrounding land uses have likely discouraged the use of the project site by burrowing owls. In addition, surrounding residential developments and ornamental trees on and adjacent to the project site have further decreased the likelihood that burrowing owls would occur on-site as these features provide perching opportunities for larger raptor species (i.e., red-tailed hawk) that prey on burrowing owls. Despite a systematic search of the project site, no burrowing owls or sign (pellets, feathers, castings, or white wash) were observed on or within 500 feet, where assessable, of the project site during the focused surveys.

Recommendations

Migratory Bird Treaty Act

Pursuant to the Migratory Bird Treaty Act (MBTA) and Fish and Game Code, removal of any trees, shrubs, or any other potential nesting habitat should be conducted outside the avian nesting season. The nesting season generally extends from February 1 through August 31, but can vary slightly from year to year based upon seasonal weather conditions. If ground disturbance and vegetation removal cannot occur outside of the nesting season, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any 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 300-foot buffer around the active nest. For raptors and special-status species, this buffer will be expanded to 500 feet. It is recommended that a biological monitor 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, normal construction activities can occur.

Pre-Construction Burrowing Owl Clearance Survey

Based on the results of the burrowing owl focused survey, no burrowing owls or evidence of recent or historic use by burrowing owls was observed on the project site during the focused surveys. As a result, burrowing owl are presumed absent from the project site. However, out of an abundance of caution, and to ensure burrowing owl remain absent from the project site, it is recommended that a burrowing owl pre-construction clearance survey be conducted prior to any ground disturbing activities in accordance with the *Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area*. A pre-construction clearance surveys shall be conducted no more than 30 days prior to the start of ground disturbing activities to document the continued absence of burrowing owl from the project site.

Conclusion

The project site consists of vacant, undeveloped land that has been subject to a variety of anthropogenic disturbances (i.e. weed abatement, surrounding development). The project site consists of disturbed land with heavily mixed and compacted soils, that historically supported seven residential developments. Based on the historic land uses and ongoing anthropogenic disturbances no special-status plant species are expected to occur and are presumed to be absent from the project site. No additional surveys are

recommended for special-status plant species.

Horned lark was the only special-status wildlife species observed during the field investigation. Based on the field investigation, it was determined that the project site has a moderate potential to provide suitable habitat for Cooper's hawk, sharp-shinned hawk, and burrowing owl. All remaining special-status wildlife species are presumed to be absent from the project site based on habitat requirements, availability and quality of habitat needed by each species, and known distributions.

Two 24-inch culverts/storm drains with concrete head walls were observed in the middle of the northern boundary of the project site that convey water following storm events from the surrounding residential developments. Based on the field investigation and review of historical aerials these culverts/storm drainages are not associated with any jurisdictional drainage feature that would be considered jurisdictional by the Corps, Regional Board, or CDFW, or considered riparian/riverine habitat under the MSHCP.

Based on the proposed project footprint, and with the implementation of a pre-construction burrowing owl nesting bird clearance survey, none of the special-status species known to occur in the general vicinity of the project site will be directly or indirectly impacted from implementation of the proposed project. Therefore, we have determined that this project will have "no effect" on federally, State, or MSHCP listed species known to occur in the general vicinity of the project site. Additionally, the project will have "no effect" on designated Critical Habitats.

With completion of the recommendations in this document and payment of the MSHCP and SKR HCP mitigation fees, development of the project site is fully consistent with the Western Riverside County MSHCP.

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

Sincerely,



Thomas J. McGill, Ph.D.
Managing Director
Natural Resources



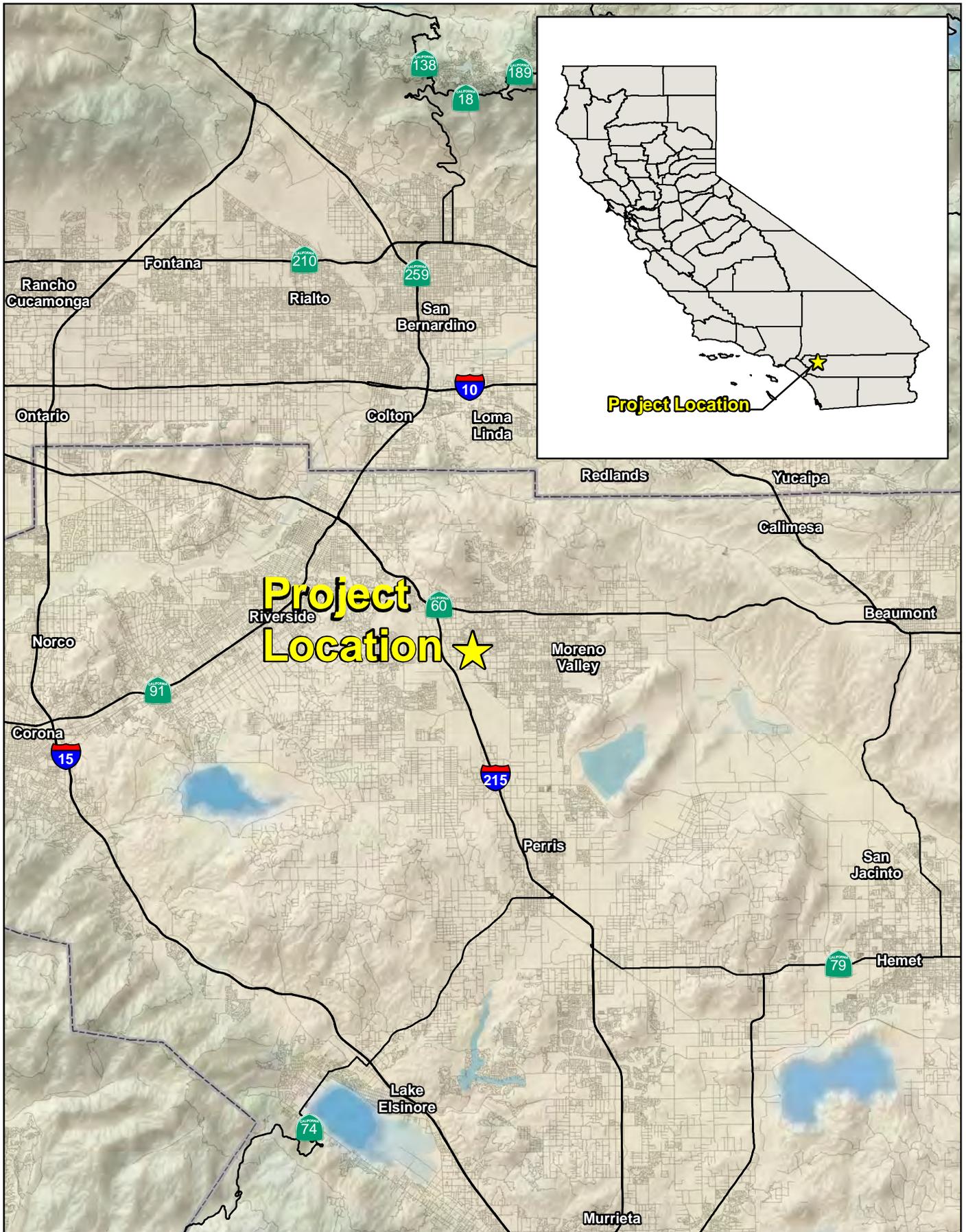
Travis J. McGill
Director
Natural Resources

Attachments:

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

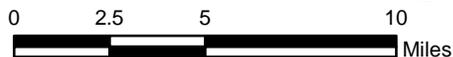
Attachment A

Project Exhibits

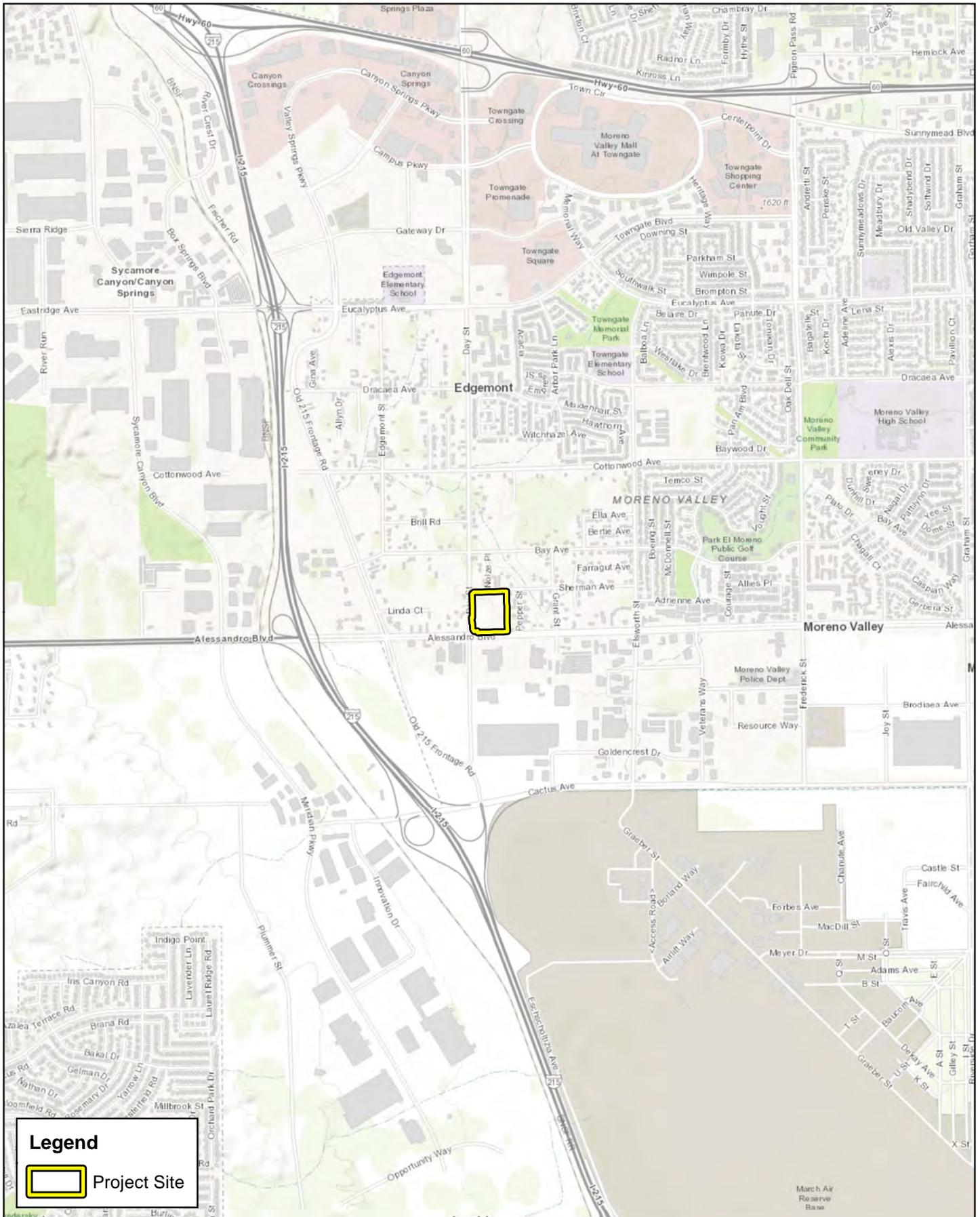


ALESSANDRO BOULEVARD AND DAY STREET PROJECT
 HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS

Regional Vicinity



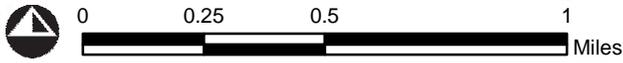
Source: ESRI Relief Map, National Highway Planning Network



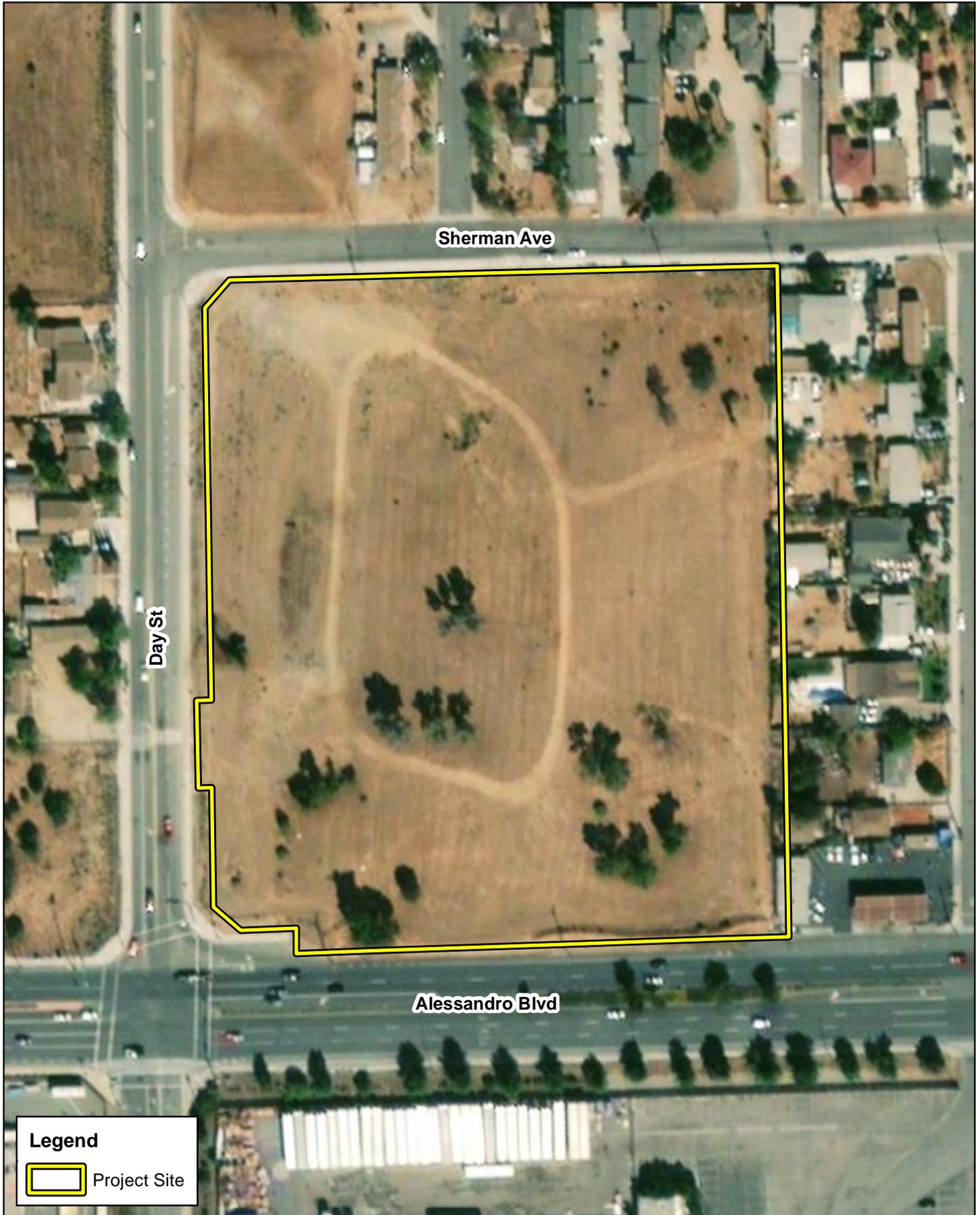
Legend

 Project Site

**ALESSANDRO BOULEVARD AND DAY STREET PROJECT
HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS
Site Vicinity**



Source: Riverside County, USGS Contours, ESRI World Topo Basemap



Legend

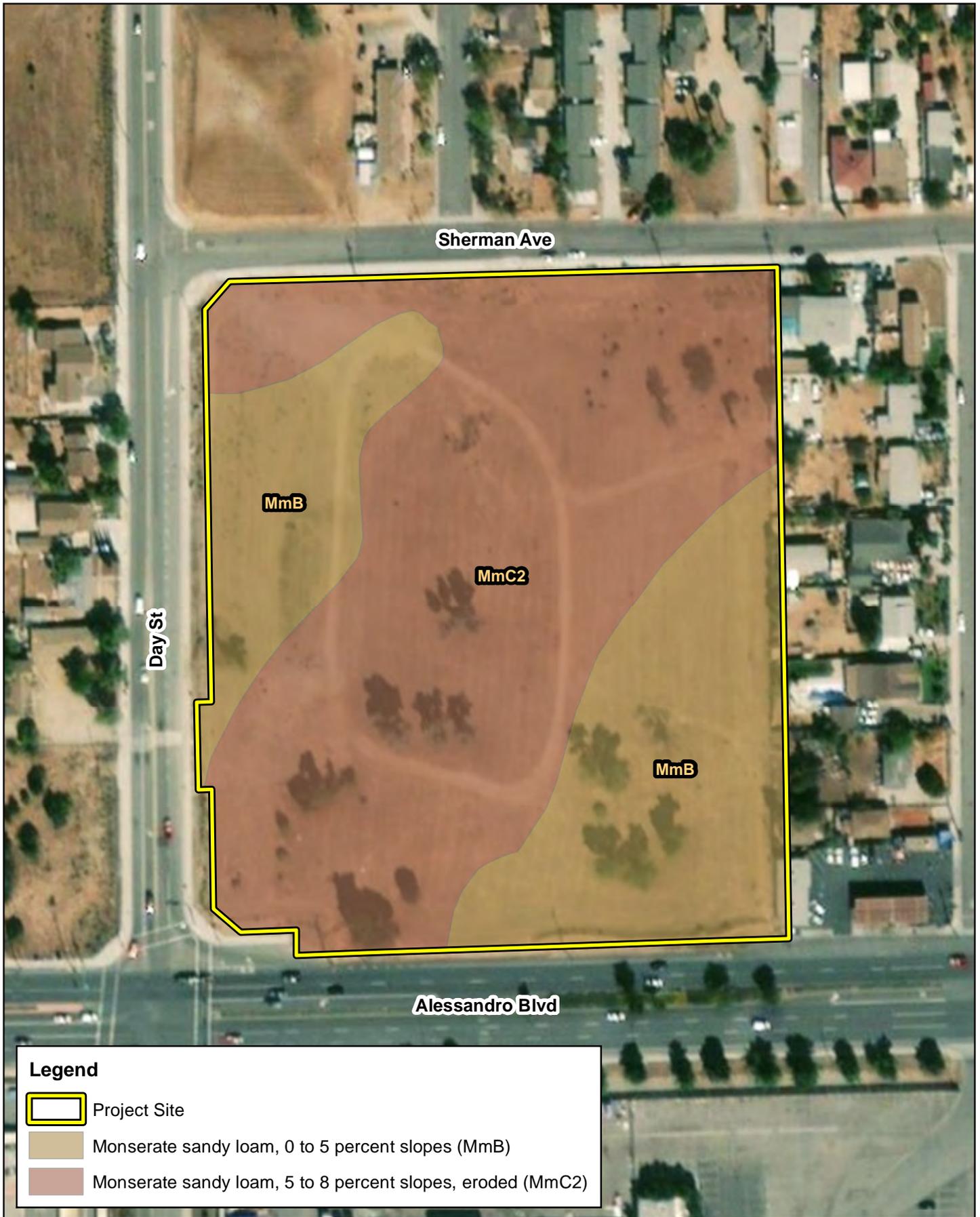
 Project Site



Source: Riverside County, ESRI Aerial Basemap

ALESSANDRO BOULEVARD AND DAY STREET PROJECT
HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS

Project Site



ALESSANDRO BOULEVARD AND DAY STREET PROJECT
HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS

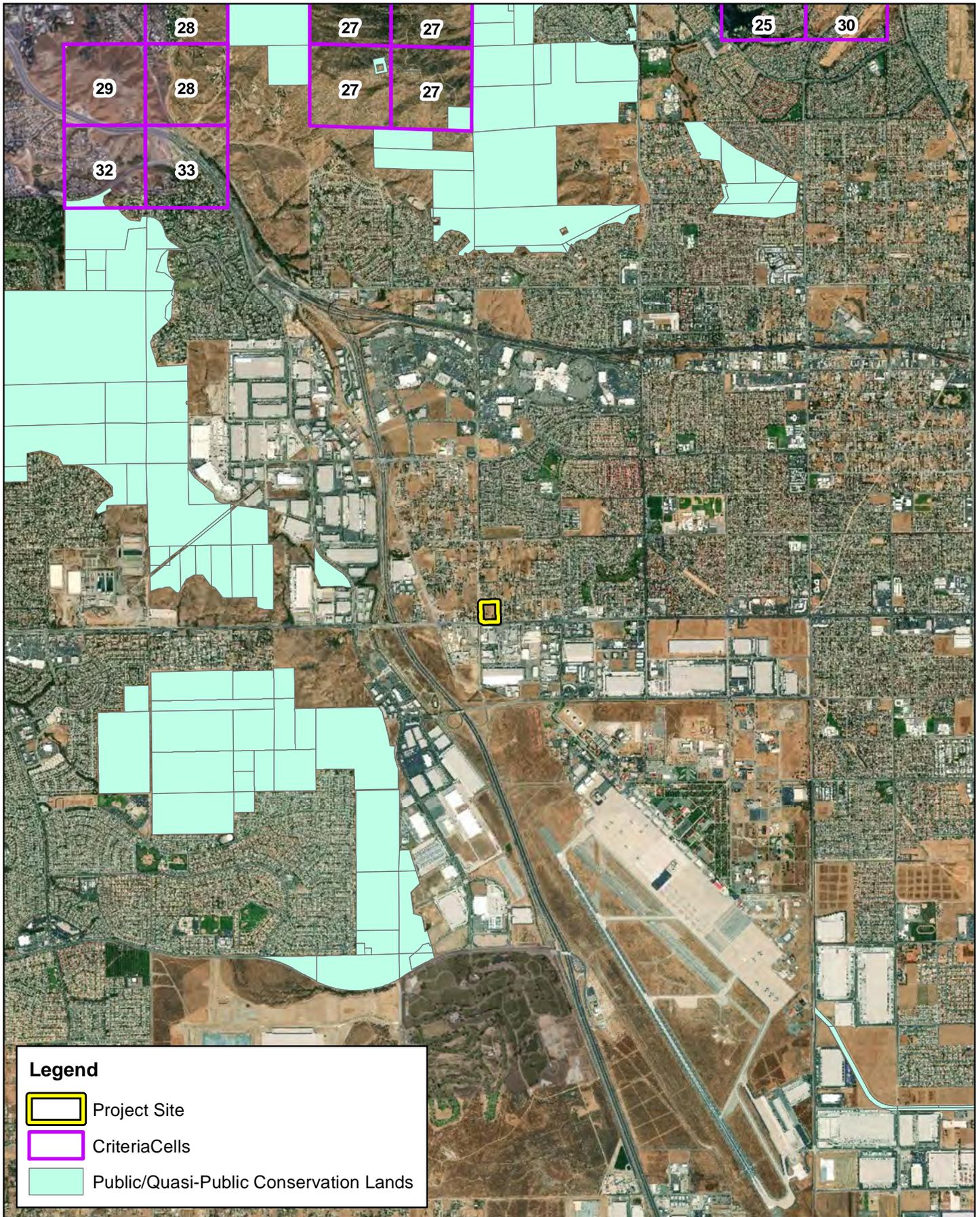
Soils



Source: Riverside County, ESRI Aerial Basemap, SSURGO NRCS Soils Data

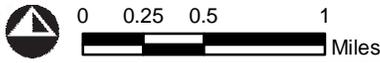


ALESSANDRO BOULEVARD AND DAY STREET PROJECT
 HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS
Vegetation



Legend

-  Project Site
-  CriteriaCells
-  Public/Quasi-Public Conservation Lands



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

ALESSANDRO BOULEVARD AND DAY STREET PROJECT
 HABITAT ASSESSMENT AND MSHCP CONSISTENCY ANALYSIS
MSHCP Conservation Areas

Attachment B

Site Photographs



Photograph 1: From the northeast corner of the project site looking south along the eastern boundary.



Photograph 2: From the northeast corner of the project site looking west along the northern boundary.



Photograph 3: Near the northeast corner of the project site looking southwest.



Photograph 4: From the middle of the eastern boundary looking west across the middle of the site.



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



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



Photograph 7: Looking at the cluster of Peruvian pepper trees on the southeast corner of the site.



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



Photograph 9: From the middle of the western boundary looking north.



Photograph 10: From the middle of the western boundary looking east across the middle of the site.



Photograph 11: Looking at the middle of the project site.



Photograph 12: From the northwest corner of the project site looking southeast.



Photograph 13: Western culvert/storm drain on the northern boundary of the site.



Photograph 14: Looking at the downstream area of the culvert. No evidence of water flow.



Photograph 15: Eastern culvert/storm drain on the northern boundary of the site.



Photograph 16: Looking at the downstream area of the culvert. No evidence of water flow.

Attachment C

Potentially Occurring Special-Status Biological Resources

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

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
WILDLIFE SPECIES				
<i>Accipiter cooperii</i> Cooper's hawk	Fed: None CA: WL	Generally found in forested areas up to 3,000 feet in elevation, especially near edges and rivers. Prefers hardwood stands and mature forests, but can be found in urban and suburban areas where there are tall trees for nesting. Common in open areas during nesting season.	No	Moderate. There is marginal foraging habitat throughout the site. This species is adapted to urban environments and occurs commonly.
<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	Moderate. There is marginal foraging habitat throughout the site. This species does not nest in southern California. This species is adapted to urban environments and occurs commonly.
<i>Agelaius tricolor</i> tricolored blackbird	Fed: None CA: SSC	Range is limited to the coastal areas of the Pacific coast of North America, from Northern California to upper Baja California. Can be found in a wide variety of habitat including annual grasslands, wet and dry vernal pools and other seasonal wetlands, agricultural fields, cattle feedlots, and dairies. Occasionally forage in riparian scrub habitats along marsh borders. Basic habitat requirements for breeding include open accessible water, protected nesting substrate (freshwater marsh dominated by cattails, willows, and bulrushes [<i>Schoenoplectus</i> sp.]), and either flooded or thorny or spiny vegetation and suitable foraging space providing adequate insect prey.	No	Presumed absent. No suitable habitat is present on-site.
<i>Aimophila ruficeps canescens</i> southern California rufous-crowned sparrow	Fed: None CA: WL	Typically found between 3,000 and 6,000 feet in elevation. Breed in sparsely vegetated scrubland on hillsides and canyons. Prefers coastal sage scrub dominated by California sagebrush (<i>Artemisia californica</i>), but they can also be found breeding in coastal bluff scrub, low-growing serpentine chaparral, and along the edges of tall chaparral habitats.	No	Presumed absent. No suitable habitat is present on-site.
<i>Ammodramus savannarum</i> grasshopper sparrow	Fed: None CA: SSC	Occurs in grassland, upland meadow, pasture, hayfield, and old field habitats. Optimal habitat contains short- to medium-height bunch grasses interspersed with patches of bare ground, a shallow litter layer, scattered forbs, and few shrubs. May inhabit thickets, weedy lawns, vegetated landfills, fence rows, open fields, or grasslands.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Aquila chrysaetos</i> golden eagle	Fed: None CA: FP; WL	Occupies nearly all terrestrial habitats of the western states except densely forested areas. Favors secluded cliffs with overhanging ledges and large trees for nesting and cover. Hilly or mountainous country where takeoff and soaring are supported by updrafts is generally preferred to flat habitats. Deeply cut canyons rising to open mountain slopes and crags are ideal habitat.	No	Presumed absent. No suitable habitat is present on-site.
<i>Arizona elegans occidentalis</i> California glossy snake	Fed: None CA: SSC	Inhabits arid scrub, rocky washes, grassland, and chaparral. Appears in microhabitats of open areas and areas with soil loose enough for easy burrowing.	No	Presumed absent. No suitable habitat is present on-site.
<i>Artemisiospiza belli belli</i> Bell's sparrow	Fed: None CA: WL	Generally prefers semi-open habitats with evenly spaced shrubs 1 – 2 meters in height. Dry chaparral and coastal sage scrub. Less common in tall dense, old chaparral.	No	Presumed absent. No suitable habitat is present on-site.
<i>Aspidoscelis hyperythra</i> orangethroat whiptail	Fed: None CA: SSC	Semi-arid brushy areas typically with loose soil and rocks, including washes, streamsides, rocky hillsides, and coastal chaparral.	No	Presumed absent. No suitable habitat is present on-site.
<i>Aspidoscelis tigris stejnegeri</i> coastal whiptail	Fed: None CA: None	Found in a variety of ecosystems, primarily hot and dry open areas with sparse foliage - chaparral, woodland, and riparian areas.	No	Presumed absent. No suitable habitat is present on-site.
<i>Athene cunicularia</i> burrowing owl	Fed: None CA: SSC	Occurs in open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. Dependent upon fossorial mammals for burrows, most notable ground squirrels.	No	Moderate. The open habitat and suitable ground squirrel burrows have the potential to provide suitable habitat. No burrowing owls were observed during the focused surveys.
<i>Bombus crotchii</i> Crotch bumble bee	Fed: None CA: None	Exclusive to coastal California east towards the Sierra-Cascade Crest; less common in western Nevada.	No	Presumed absent. No suitable habitat is present on-site.
<i>Buteo regalis</i> ferruginous hawk	Fed: None CA: WL	Occurs primarily in open grasslands and fields, but may be found in sagebrush flats, desert scrub, low foothills, or along the edges of pinyon-juniper woodland. Feeds primarily on small mammals and typically found in agricultural or open fields.	No	Presumed absent. No suitable habitat is present on-site.
<i>Buteo swainsoni</i> Swainson's hawk	Fed: None CA: THR	Typical habitat is open desert, grassland, or cropland containing scattered, large trees or small groves. Breeds in stands with few trees in juniper-sage flats, riparian areas, and in oak savannah in the Central Valley. Forages in adjacent grassland or suitable grain or alfalfa fields or livestock pastures.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Calypte costae</i> Costa's hummingbird	Fed: None CA: None	Desert and semi-desert, arid brushy foothills and chaparral. A desert hummingbird that breeds in the Sonoran and Mojave Deserts. Departs desert heat moving into chaparral, scrub, and woodland habitats.	No	Presumed absent. No suitable habitat is present on-site.
<i>Ceratochrysis longimala</i> desert cuckoo wasp	Fed: None CA: None	Occurs in arid soils and uses flowers for sustenance. Lays eggs in the nests of bees, wasps, and other host insects.	No	Presumed absent. No suitable habitat is present on-site.
<i>Chaetodipus fallax fallax</i> northwestern San Diego pocket mouse	Fed: None CA: SSC	Occurs in desert and coastal habitats in southern California, Mexico, and northern Baja California, from sea level to at least 1,400 meters. Found in a variety of temperate habitats ranging from chaparral and grasslands to scrub forests and deserts. Requires low growing vegetation or rocky outcroppings, as well as sandy soils for burrowing.	No	Presumed absent. No suitable habitat is present on-site.
<i>Chaetura vauxi</i> Vaux's swift	Fed:CA: None SSC	Prefers redwood and Douglas-fir habitats with nest-sites in large hollow trees and snags, especially tall, burned-out snags. Fairly common migrant throughout most of the state in April and May, and August and September.	No	Presumed absent. No suitable habitat is present on-site.
<i>Circus cyaneus</i> northern harrier	Fed: None CA: SSC	Frequents meadows, grasslands, open rangelands, desert sinks, fresh and saltwater emergent wetlands; seldom found in wooded areas. Mostly found in flat, or hummocky, open areas of tall, dense grasses moist or dry shrubs, and edges for nesting, cover, and feeding.	No	Presumed absent. No suitable habitat is present on-site.
<i>Coccyzus americanus occidentalis</i> western yellow-billed cuckoo	Fed: THR CA: END	Obligate riparian species with a primary habitat association of willow-cottonwood riparian forest. Nests are typically placed (72% of the time) in willows (<i>Salix</i> spp.), particularly in black willow (<i>S. gooddingii</i>), red willow (<i>S. laevigata</i>), and sandbar willow (<i>S. exigua</i>). This species typically requires large blocks of intact riparian habitat, with anything less than 37 acres in size and 328 feet wide generally considered unsuitable. Breeding season home ranges can be as much as 100 acres per individual bird. Yellow-billed cuckoos are considered rare anywhere in southern California outside of the Colorado River.	No	Presumed absent. No suitable habitat is present on-site.
<i>Coleonyx variegatus abbotti</i> San Diego banded gecko	Fed: None CA: None	Occurs in coastal and cismontane southern California from interior Ventura County south, although it is absent from the extreme outer coast. It is uncommon in coastal scrub and chaparral, most often occurring in granite or rocky outcrops in these habitats.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Crotalus ruber</i> red-diamond rattlesnake	Fed: None CA: SSC	It can be found from the desert, through dense chaparral in the foothills (it avoids the mountains above around 4,000 feet), to warm inland mesas and valleys, all the way to the cool ocean shore. It is most commonly associated with heavy brush with large rocks or boulders. Dense chaparral in the foothills, cactus or boulder associated coastal sage scrub, oak and pine woodlands, and desert slope scrub associations are known to carry populations of the northern red-diamond rattlesnake; however, chamise and red shank associations may offer better structural habitat for refuges and food resources for this species than other habitats.	No	Presumed absent. No suitable habitat is present on-site.
<i>Diadophis punctatus modestus</i> San Bernardino ringneck snake	Fed: None CA: None	Common in open, relatively rocky areas within valley-foothill, mixed chaparral, and annual grass habitats.	No	Presumed absent. No suitable habitat is present on-site.
<i>Diadophis punctatus similis</i> San Diego ringneck snake	Fed: None CA: None	Prefers moist habitats, including wet meadows, rocky hillsides, gardens, farmland, grassland, chaparral, mixed coniferous forests, and woodlands.	No	Presumed absent. No suitable habitat is present on-site.
<i>Dipodomys merriami parvus</i> San Bernardino kangaroo rat	Fed: END CA: SSC	Primarily found in Riversidian alluvial fan sage scrub and sandy loam soils, alluvial fans and flood plains, and along washes with nearby sage scrub. May occur at lower densities in Riversidian upland sage scrub, chaparral and grassland in uplands and tributaries in proximity to Riversidian alluvial fan sage scrub habitats. Tend to avoid rocky substrates and prefer sandy loam substrates for digging of shallow burrows.	No	Presumed absent. No suitable habitat is present on-site.
<i>Chaetodipus californicus femoralis</i> Dulzura pocket mouse	Fed: None CA: SSC	Found most often in grass-chaparral edges, but may also be found in coastal scrub or other habitats, primarily in San Diego County.	No	Presumed absent. No suitable habitat is present on-site.
<i>Dipodomys stephensi</i> Stephens' kangaroo rat	Fed: END CA: THR	Occur in arid and semi-arid habitats with some grass or brush. Prefer open habitats with less than 50% protective cover. Require soft, well-drained substrate for building burrows and are typically found in areas with sandy soil.	No	Presumed absent. No suitable habitat is present on-site.
<i>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. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Empidonax traillii</i> <i>extimus</i> southwestern willow flycatcher	Fed: END CA: END	Occurs in riparian woodlands in southern California. Typically requires large areas of willow thickets in broad valleys, canyon bottoms, or around ponds and lakes. These areas typically have standing or running water, or are at least moist.	No	Presumed absent. No suitable habitat is present on-site.
<i>Eremophila alpestris</i> <i>actia</i> California horned lark	Fed: None CA: WL	Generally found in shortgrass prairies, grasslands, disturbed fields, or similar habitat types along the coast or in deserts. Trees and shrubs are usually scarce or absent. Generally rare in montane, coniferous, or chaparral habitats. Forms large flocks outside of the breeding season.	Yes	Present. This species was observed foraging on-site. However, the project site is not expected to provide suitable nesting opportunities.
<i>Falco columbarius</i> merlin	Fed: None CA: WL	Nest in forested openings, edges, and along rivers across northern North America. Found in open forests, grasslands, and especially coastal areas with flocks of small songbirds or shorebirds.	No	Presumed absent. No suitable habitat is present on-site.
<i>Falco columbarius</i> merlin	Fed: None CA: WL	Nest in forested openings, edges, and along rivers across northern North America. Found in open forests, grasslands, and especially coastal areas with flocks of small songbirds or shorebirds.	No	Presumed absent. No suitable habitat is present on-site.
<i>Gila orcuttii</i> arroyo chub	Fed: None CA: SSC	Warm streams of the Los Angeles Plain, which are typically muddy torrents during the winter, and clear quiet brooks in the summer, possibly drying up in places. They are found both in slow-moving and fast-moving sections, but generally deeper than 40 cm.	No	Presumed absent. No suitable habitat is present on-site.
<i>Icteria virens</i> yellow-breasted chat	Fed: None CA: SSC	Primarily found in tall, dense, relatively wide riparian woodlands and thickets of willows, vine tangles, and dense brush with well-developed understories. Nesting areas are associated with streams, swampy ground, and the borders of small ponds. Breeding habitat must be dense to provide shade and concealment. It winters south the Central America.	No	Presumed absent. No suitable habitat is present on-site.
<i>Lampropeltis zonata</i> California mountain kingsnake (San Bernardino population)	Fed: None CA: WL	Habitat consists of moist open coniferous forests, oak woodlands, riparian woodlands, chaparral, coastal sage scrub, and openly wooded areas where there are rocks or rotting logs.	No	Presumed absent. No suitable habitat is present on-site.
<i>Lanius ludovicianus</i> loggerhead shrike	Fed: None CA: SSC	Often found in broken woodlands, shrublands, and other habitats. Prefers open country with scattered perches for hunting and fairly dense brush for nesting.	No	Presumed absent. No suitable habitat is present on-site.
<i>Lasiurus xanthinus</i> western yellow bat	Fed: None CA: SSC	Roosts in palm trees in foothill riparian, desert wash, and palm oasis habitats with access to water for foraging.	No	Presumed absent. No suitable habitat is present on-site.
<i>Laterallus jamaicensis</i> <i>coturniculus</i> California black rail	Fed: None CA: THR, FP	Shallow marshes, and wet meadows; in winter, drier fresh-water and brackish marshes, as well as dense, deep grass.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Lepus californicus bennettii</i> San Diego black-tailed jackrabbit	Fed: None CA: SSC	Occurs in diverse habitats, but primarily is found in arid regions supporting shortgrass habitats. Openness of open scrub habitat is preferred over dense chaparral.	No	Presumed absent. No suitable habitat is present on-site.
<i>Neotoma lepida intermedia</i> San Diego desert woodrat	Fed: None CA: SSC	Occurs in coastal scrub communities between San Luis Obispo and San Diego Counties. Prefers moderate to dense canopies, and especially rocky outcrops.	No	Presumed absent. No suitable habitat is present on-site.
<i>Nyctinomops femorosaccus</i> pocketed free-tailed bat	Fed: None CA: SSC	Often found in pinyon-juniper woodlands, desert scrub, desert succulent shrub, desert riparian, desert wash, alkali desert scrub, Joshua tree, and palm oasis.	No	Presumed absent. No suitable habitat is present.
<i>Onychomys torridus ramona</i> southern grasshopper mouse	Fed: None CA: SSC	Inhabits alkali desert scrub and other desert scrub habitats, and to a lesser extent succulent shrubs, desert washes, desert riparian, coastal scrub, mixed chaparral, and sagebrush habitats. Generally rare in valley foothill and montane riparian habitats. Prefers low to moderate shrub cover and requires friable soils.	No	Presumed absent. No suitable habitat is present on-site.
<i>Passerculus sandwichensis beldingi</i> Belding's savannah sparrow	Fed: None CA: END	This subspecies of Savannah sparrow is a salt marsh endemic, ranging historically from Goleta in Santa Barbara County south to el Rosario, Baja California.	No	Presumed absent. No suitable habitat is present on-site.
<i>Perognathus longimembris brevinasus</i> Los Angeles pocket mouse	Fed: None CA: SSC	Occurs in lower elevation grasslands and coastal sage scrub communities in and around the Los Angeles Basin. Prefers open ground with fine sandy soils. May not dig extensive burrows, but instead will seek refuge under weeds and dead leaves instead.	No	Presumed absent. No suitable habitat is present on-site.
<i>Phalacrocorax auritus</i> double-crested cormorant	Fed: None CA: WL	Common yearlong resident in southern California. Occurs widely in freshwater and marine habitats along coastlines. Require open water where they can forage for schooling fish.	No	Presumed absent. No suitable habitat is present on-site.
<i>Phrynosoma blainvillii</i> coast horned lizard	Fed: None CA: SSC	Occurs in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. In inland areas, this species is restricted to areas with pockets of open microhabitat, created by disturbance (i.e. fire, floods, roads, grazing, fire breaks). The key elements of such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense shrubs for refuge.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Polioptila californica californica</i> coastal California gnatcatcher	Fed: THR CA: SSC	Obligate resident of sage scrub habitats that are dominated by California sagebrush (<i>Artemisia californica</i>). This species generally occurs below 750 feet elevation in coastal regions and below 1,500 feet inland. Ranges from the Ventura County, south to San Diego County and northern Baja California and it is less common in sage scrub with a high percentage of tall shrubs. Prefers habitat with more low-growing vegetation.	No	Presumed absent. No suitable habitat is present on-site.
<i>Rana draytonii</i> California red-legged frog	Fed: THR CA: SSC	Inhabits quiet pools of streams, marshes, and occasionally ponds. Occurs along the coast ranges from Mendocino County south and in portions of the Sierra Nevada and Cascades ranges.	No	Presumed absent. No suitable habitat is present on-site.
<i>Salvadora hexalepis virgultea</i> coast patch-nosed snake	Fed: None CA: SSC	Found in brushy or shrubby vegetation along the coast and requires small mammal burrows for refuge and overwintering.	No	Presumed absent. No suitable habitat is present on-site.
<i>Setophaga petechia</i> yellow warbler	Fed: None CA: SSC	Nests over all of California except the Central Valley, the Mojave Desert region, and high altitudes and the eastern side of the Sierra Nevada. Winters along the Colorado River and in parts of Imperial and Riverside Counties. Nests in riparian areas dominated by willows, cottonwoods, sycamores, or alders or in mature chaparral. May also use oaks, conifers, and urban areas near stream courses.	No	Presumed absent. No suitable habitat is present on-site.
<i>Spea hammondi</i> western spadefoot	Fed: None CA: SSC	Prefers open areas with sandy or gravelly soils, in a variety of habitats including mixed woodlands, grasslands, coastal sage scrub, chaparral, sandy washed, lowlands, river floodplains, alluvial fans, playas, alkali flats, foothills, and mountains. Rainpools which do not contain bullfrogs, fish, or crayfish are necessary for breeding.	No	Presumed absent. No suitable habitat is present on-site.
<i>Spinus lawrencei</i> Lawrence's goldfinch	Fed: None CA: None	Open woodlands, chaparral, and weedy fields. Closely associated with oaks. Nests in open oak or other arid woodland and chaparral near water.	No	Presumed absent. No suitable habitat is present on-site.
<i>Streptocephalus woottoni</i> Riverside fairy shrimp	Fed: END CA: None	Freshwater crustacean that is found in vernal pools in the coastal California area.	No	Presumed absent. No suitable habitat is present on-site.
<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. No suitable habitat is present on-site.
<i>Thamnophis hammondi</i> two-striped garter snake	Fed: None CA: SSC	Occurs in or near permanent fresh water, often along streams with rocky beds and riparian growth up to 7,000 feet in elevation.	No	Presumed absent. No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Vireo bellii pusillus</i> least Bell's vireo	Fed: END CA: END	Primarily occupy Riverine riparian habitat that typically feature dense cover within 1 -2 meters of the ground and a dense, stratified canopy. Typically it is associated with southern willow scrub, cottonwood-willow forest, mule fat scrub, sycamore alluvial woodlands, coast live oak riparian forest, arroyo willow riparian forest, or mesquite in desert localities. It uses habitat which is limited to the immediate vicinity of water courses, 2,000 feet elevation in the interior.	No	Presumed absent. No suitable habitat is present on-site.
PLANT SPECIES				
<i>Arenaria paludicola</i> marsh sandwort	Fed: END CA: END CNPS: 1B.1	Grows mainly in wetlands and freshwater marshes in arid climates. The plant can grow in saturated acidic bog soils and soils that are sandy with a high organic content. Found at elevations ranging from 33 to 558 feet. Blooming period is from May to August.	No	Presumed absent. No suitable habitat is present.
<i>Berberis nevini</i> Nevin's barberry	Fed: END CA: END CNPS: 1B.1	Occurs on steep, north-facing slopes or in low-grade sandy washes in chaparral, cismontane woodland, coastal scrub, and riparian scrub. Found at elevations ranging from 951 to 5,167 feet. Blooming period is from March to June.	No	Presumed absent. No suitable habitat is present.
<i>Calochortus plummerae</i> Plummer's mariposa-lily	Fed: None CA: None CNPS: 4.2	Prefers openings in chaparral, foothill woodland, coastal sage scrub, valley foothill grasslands, cismontane woodland, lower montane coniferous forest and yellow pine forest. Often found on dry, rocky slopes and soils and brushy areas. Can be very common after a fire. Found at elevations ranging from 459 to 6,299 feet. Blooming period is from May to July.	No	Presumed absent. No suitable habitat is present.
<i>Centromadia pungens</i> <i>ssp. laevis</i> smooth tarplant	Fed: None CA: None CNPS: 1B.1	Found in alkaline soils within chenopod scrub, meadows and seeps, playas, riparian woodland, valley and foothill grassland habitats. Found at elevations ranging from 0 to 2,100 feet. Blooming period is from April to September.	No	Presumed absent. No suitable habitat is present.
<i>Chloropyron maritimum</i> <i>ssp. maritimum</i> salt marsh bird's-beak	Fed: END CA: END CNPS: 1B.2	Upper terraces and higher edges of coastal salt marshes where tidal inundation is periodic. Found at elevations ranging from 0 to 98 feet. Blooming period is from May to October.	No	Presumed absent. No suitable habitat is present.
<i>Chorizanthe parryi</i> <i>var. parryi</i> Parry's spineflower	Fed: None CA: None CNPS: 1B.1	Occurs on sandy and/or rocky soils in chaparral, coastal sage scrub, and sandy openings within alluvial washes and margins. Found at elevations ranging from 951 to 3,773 feet. Blooming period is from April to June.	No	Presumed absent. No suitable habitat is present.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Cylindropuntia californica</i> var. <i>californica</i> snake cholla	Fed: None CA: None CNPS: 1B.1	Found in chaparral and coastal scrub. Found at elevations ranging from 98 to 492 feet. Blooming period is from April to May.	No	Presumed absent. No suitable habitat is present.
<i>Deinandra paniculata</i> paniculate tarplant	Fed: None CA: None CNPS: 4.2	Typically found in vernal mesic, sometimes sandy soils in coastal scrub, valley and foothill grasslands, and vernal pools. Found at elevations ranging from 82 to 3,084 feet. Blooming period is from April to November.	No	Presumed absent. No suitable habitat is present.
<i>Juglas californica</i> southern California black walnut	Fed: None CA: None CNPS: 4.2	Found in chaparral, cismontane woodland, coastal scrub, and riparian woodland habitats. Found at elevations ranging from 164 to 2,953 feet. Blooming period is from March to August.	No	Presumed absent. No suitable habitat is present.
<i>Lepidium virginicum</i> var. <i>robinsonii</i> Robinson's pepper-grass	Fed: None CA: None CNPS: 4.3	Dry soils on chaparral and coastal sage scrub. Found at elevations ranging from 3 to 2,904 feet. Blooming period is from January to July.	No	Presumed absent. No suitable habitat is present.
<i>Myosurus minimus</i> ssp. <i>apus</i> little mousetail	Fed: None CA: None CNPS: 3.1	Occurs in alkaline soils in valley and foothill grassland and vernal pools. Found at elevations ranging from 66 to 2,100 feet. Blooming period is from March to June.	No	Presumed absent. No suitable habitat is present.
<i>Romneya coulteri</i> Coulter's matilija poppy	Fed: None CA: None CNPS: 4.2	Found in recently burned areas within chaparral and coastal scrub habitats. Found at elevations ranging from 66 to 3,937 feet. Blooming period is from March to July.	No	Presumed absent. No suitable habitat is present.
<i>Senecio aphanactis</i> chaparral ragwort	Fed: None CA: None CNPS: 2B.2	Found in sometimes alkaline soils in chaparral, cismontane woodland, and coastal scrub. Found at elevations ranging from 425 to 2,165 feet. Blooming period is from January to April.	No	Presumed absent. No suitable habitat is present.
CDFW SENSITIVE HABITATS				
Southern Sycamore Alder Riparian Woodland	CDFW Sensitive Habitat	Occurs below 2,000 meters in elevation, sycamore and alder often occur along seasonally-flooded banks; cottonwoods and willows are also often present. Poison oak, mugwort, elderberry and wild raspberry may be present in understory.	No	Absent

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

California Department of Fish and Wildlife (CA) - California
END- California Endangered
THR- California Threatened
Candidate- Candidate for listing under the

California 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

CNPS Threat Ranks
0.1- Seriously threatened in California
0.2- Moderately threatened in California

California Endangered Species Act
FP- California Fully Protected
SSC- Species of Special Concern
WL- Watch List

California, But More Common Elsewhere
3 Plants About Which More Information is Needed –
A Review List
4 Plants of Limited Distribution – A Watch List

0.3- Not very threatened in
California

Attachment D

Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

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

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

State Regulations

California Environmental Quality Act (CEQA)

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

California Endangered Species Act (CESA)

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

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

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

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

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

Fish and Game Code

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

Native Plant Protection Act

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

California Native Plant Society Rare and Endangered Plant Species

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

California Rare Plant Rank

- 1A- Plants Presumed Extirpated in California and either Rare or Extinct Elsewhere
- 1B- Plants Rare, Threatened, or Endangered in California and Elsewhere

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

Threat Ranks

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

Local Policies

Western Riverside County MSHCP

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

The approval of the MSHCP and execution of the Implementing Agreement (IA) by the wildlife agencies allows signatories of the IA to issue “take” authorizations for all species covered by the MSHCP, including state- and federal-listed species as well as other identified sensitive species and/or their habitats. Each city or local jurisdiction will impose a Development Mitigation Fee for projects within their jurisdiction. With payment of the mitigation fee to the County and compliance with the survey requirements of the MSHCP where required, full mitigation in compliance with the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), CESA, and FESA will be granted. The Development Mitigation Fee varies according to project size and project description. The fee for residential development ranges from approximately \$800 per unit to \$1,600 per unit depending on development density (County Ordinance 810.2). Payment of the mitigation fee and compliance with the requirements of Section 6.0 of the MSHCP are intended to provide full mitigation under CEQA, NEPA, CESA, and FESA for impacts to the species and habitats covered by the MSHCP pursuant to agreements with the USFWS, the CDFW, and/or any other appropriate participating regulatory agencies and as set forth in the IA for the MSHCP.

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

Federal Regulations

Section 404 of the Clean Water Act

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

- (i) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- (ii) All interstate waters, including interstate wetlands¹.
- (iii) The territorial seas.
- (iv) All impoundments of waters otherwise defined as waters of the United States under the definition.
- (v) All tributaries² of waters identified in paragraphs (i) through (iii) mentioned above.
- (vi) All waters adjacent³ to a water identified in paragraphs (i) through (v) mentioned above, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

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

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

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

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

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

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

- (vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

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.