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**MANNING HOMES**
Contact: *Craig Kozma*
20151 SW Birch St., Suite 150
Newport Beach, California 92660

**SUBJECT: Habitat and Jurisdictional Assessment for the Proposed Residential Development Located within Assessor Parcel Numbers (APNs) 0225-191-17 and 0225-191-09 in the City of Rancho Cucamonga, San Bernardino County, California**

## Introduction

This report contains the findings of ELMT Consulting's (ELMT) habitat and jurisdictional assessment for the proposed residential development (project site or site) located within Assessor Parcel Numbers (APNs) 0225-191-17 and 0225-191-09 in the City of Rancho Cucamonga, San Bernardino County, California. The habitat and jurisdictional assessment was conducted by biologists Travis McGill, and Jacob H. Lloyd Davies on January 23, 2020 and updated by Thomas J. McGill, Ph.D. on October 29, 2020 to document baseline conditions and assess the potential for special-status[1] plant and wildlife species to occur within the project site that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the project site to support burrowing owl (*Athene cuincularia*) and San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and other special-status plant and wildlife species identified by the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB), and other electronic databases as potentially occurring in the general vicinity of the project site.

## Project Location

The project site is generally located north of State Route 210, west of Interstate 15, east of State 83, and south of the foothills of the San Gabriel Mountains in the City of Rancho Cucamonga, San Bernardino County, California. The project site is depicted on the Cucamonga Peak quadrangle of the United States Geological Survey's (USGS) 7.5-minute map series within section 28 of Township 1 North, Range 6 West. Specifically, the site is bordered by East Avenue along its western boundary, Golden Lock Place along its eastern boundary, approximately 330 feet south of Banyan Street, and approximately 480 feet north of Cassia Street. Refer to Exhibits 1-3 in Attachment A.

## Project Description

The proposed project will subdivide the approximately 10.05-acre project site into seventeen 15,000 square foot minimum residential lots, and 4 open space landscaped lettered lots. Access to the residential lots will

1 As used in this report, "special-status" refers to plant and wildlife species that are federally and State 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.

be provided by a new public street (refer to Attachment B, *Site Plans*). Each residential lot will undergo grading associated with residential development and pads will be constructed to accommodate residential structures.

## Methodology

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

### *Literature Review*

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

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

- Google Earth Pro historic aerial imagery (1994-2018);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey[2];
- USFWS National Wetland Inventory;
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS Endangered Species Profiles.

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

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

*Habitat Assessment/Field Investigation*

Following the literature review, biologists Travis J. McGill and Jacob H. Lloyd Davies inventoried and evaluated the condition of the habitat within the project site on January 23, 2020 which was subsequently updated by Thomas J. McGill, Ph.D. on October 29, 2020. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking meandering transects throughout the project site. In addition, aerial photography was reviewed prior to the site investigation to locate potential natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

All plant and wildlife species observed, as well as dominant plant species within each plant community, were recorded. Plant species observed during the field investigation were identified by visual characteristics and morphology in the field. Unusual and less familiar plant species were photographed during the field investigation 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 land cover types, and presence of potential jurisdictional drainage and/or wetland features were noted.

*Soil Series Assessment*

Onsite and adjoining soils were researched prior to the field investigation using the USDA NRCS Soil Survey for San Bernardino County, 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 have undergone.

*Plant Communities*

Plant communities were mapped using 7.5-minute USGS topographic base maps and aerial photography. The plant communities were classified in accordance with Sawyer, Keeler-Wolf and Evens (2009), delineated on an aerial photograph, and then digitized into GIS Arcview. The Arcview application was used to compute the area of each plant community and/or land cover type in acres.

*Plants*

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

*Wildlife*

Wildlife species detected during the field investigation by sight, calls, tracks, scat, or other sign were recorded during surveys in a field notebook. Field guides used to assist with identification of wildlife species during the survey included The Sibley Field Guide to the Birds of Western North America (Sibley 2003), A Field Guide to Western Reptiles and Amphibians (Stebbins 2003), and A Field Guide to Mammals

of North America (Reid 2006). Although common names of wildlife species are well standardized, scientific names are provided immediately following common names in this report (first reference only).

*Jurisdictional Drainages and Wetlands*

Aerial photography was reviewed prior to conducting a field investigation in order to locate and inspect any potential natural drainage features, ponded areas, or water bodies that may fall under the jurisdiction of the United States Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), or CDFW. In general, surface drainage features indicated as blue-line streams on USGS maps that are observed or expected to exhibit evidence of flow are considered potential riparian/riverine habitat and are also subject to state and federal regulatory jurisdiction. In addition, ELMT reviewed jurisdictional waters information through examining historical aerial photographs to gain an understanding of the impact of land-use on natural drainage patterns in the area. The USFWS National Wetland Inventory (NWI) and Environmental Protection Agency (EPA) Water Program "My Waters" data layers were also reviewed to determine whether any hydrologic features and wetland areas have been documented on or within the vicinity of the project site.

## Existing Site Conditions

The proposed project site is located in an area that primarily supports residential and institutional land uses. The site is bordered to the north and south by undeveloped, vacant land that were historically used for agricultural purposes, with residential developments to the east and west. A single family residential home is located immediate adjacent to the northwest corner of the project site.

Elevation ranges from approximately 1,452 to 1,500 feet above mean sea level and generally slopes from the northeast corner to the southwest corner of the site. Based on the NRCS USDA Web Soil Survey, the project site is underlain by the following soil units: Soboba stony loamy sand (2 to 9 percent slopes) and Tujunga gravelly loamy sand (0-9 percent slopes). Refer to Exhibit 4, *Soils*, in Attachment A. Soils onsite have been mechanically disturbed and compacted from grading and weed abatement activities, and onsite development.

The majority of the project site has been subject to anthropogenic disturbances from historic agricultural and weed abatement activities. Historic aerials show that these disturbances have been ongoing since at least 1938. These disturbances have greatly disturbed or eliminated most of the natural plant communities that once occurred within the boundaries of the project site, reducing their ability to provide suitable habitat for special-status plant and wildlife species. The easternmost portion of the site (approximately 1.21 acres) supports native habitat mixed with a eucalyptus forest that historically occurred in the area prior to development of the surrounding residential developments. Refer to Attachment C, *Site Photographs*, for representative site photographs.

It should be noted that existing storm drain improvements have been constructed north of the project site along Banyan Ave. These storm drain improvements intercept and redirect historical stormwater drainage flows from the north that one time flowed across this native habitat on the eastern portion of the project site. Storm water flows north of Banyan are currently collected into a city storm drain system and ultimately discharge into the channelized portion of Etiwanda Creek approximately 1,750 feet east of the project site.

**Vegetation**

Three (3) plant communities were observed within the project site: non-native grassland (NNG), eucalyptus windrow, and a mature strip of Riversidean alluvial fan sage scrub (RAFSS) habitat along the eastern boundary that has been invaded by eucalyptus trees (*Eucalyptus* sp.) creating a eucalyptus forest that runs through the historic drainage channel that once carried storm waters through this eastern portion of the project site (refer to Exhibit 5, *Vegetation*, in Attachment A). The majority of the site supports a NNG plant community that has been subject to regular disturbances associated with historic agricultural activities on ongoing weed abatement activities. This plant community is dominated by non-native grasses (i.e., *Bromus*) and other early successional ruderal/weedy plant species. Plant species observed within this plant community include brome (*Bromus* sp.), wild oat (*Avena sp.*), dwarf nettle (*Urtica urens*), horehound (*Marrubium vulgare*), tree tobacco (*Nicotiana glauca*), short-podded mustard (*Hirschfeldia incana*), filaree (*Erodium cicutarium*), Russian thistle (*Salsola tragus*), elderberry (*Sambucus nigra*), fiddleneck (*Amsinckia menziesii*), common phacelia (*Phacelia distans*), doveweed (*Croton setiger*), Jimson weed (*Datura stramonium*), wild cucumber (*Marah macrocarpa*), and golden crown beard (*Verbesina enceliodes*).

The northern and southern boundaries of the project site are lined with eucalyptus windrows that are a remnant of the agricultural activities that dominated the site and surrounding area. These windrows are almost entirely composed of eucalyptus trees with an understory composed primarily of non-native weedy species such as Russian thistle and short-podded mustard. It should be noted that eucalyptus trees are a non-native species that can significantly impact native habitats, including RAFSS habitat, as discussed below.

The eastern portion of the site (approximately 1.21 acres) supports an isolated patch of mature/degraded RAFSS habitat. The mature RAFSS habitat supports large woody plant species (trees and large shrubs) as the result of isolation from historic scouring regimes associated with Etiwanda Creek. Plant species dominating the existing plant community include hollyleaf cherry (*Prunus ilicifolia*), California sagebrush (*Artemisia californica*), mountain mahogany (*Cercocarpus betuloides)* and basketbush (*Rhus trilobata*). Other species observed include scalebroom (*Lepidospartum squamatum*), pine goldenbush (*Ericameria pinifolia*), yerba santa (*Eriodictyon californicum*), short-podded mustard, filaree, and tree tobacco.

As mentioned above, the mature RAFSS plant community has become degraded due to its isolation from storm flows from Etiwanda Creek, which is needed to periodically scour the native habitat in order to maintain its openness and viability. This maturing/senescing strip of RAFSS habitat has been degraded by the invasion of eucalyptus trees into the main drainage channel that ran through the strip of habitat from north to south. Eucalyptus trees are deep rooted, causing the channelization of flood waters around their roots, creating deep narrow channels that funnel most of the water, eliminating sheet flooding that normally flows through RAFSS habitat. Without the scour associated with sheet flows, the vegetation in the RAFSS habitat becomes more dense and less available to RAFSS wildlife species which prefer open habitat. As a result of the presence of the eucalyptus forest, the site no longer provides open and viable intermediate RAFSS habitat with long-term conservation value.

**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. Wildlife detections were based on calls, songs, scat, tracks, burrows, and direct observation. The project site provides limited habitat for wildlife species except those adapted to a high degree of anthropogenic disturbances and development.

*Fish*

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

*Amphibians*

No amphibians were observed on or within the vicinity of the project site. The drainage feature that runs along the eastern portion of the site has potential to provide foraging and cover habitat for amphibian species that can tolerate a high degree of anthropomorphic disturbance and infrequent water flows. Amphibian species that could be expected to occur include and Baja California tree frog (*Pseudacris hypochondriaca hypochondriaca*).

*Reptiles*

During the field investigation Great Basin fence lizard (*Sceloporus occidentalis longipes*) and San Diego alligator lizard (*Elgaria multicarinata webbii*) were the only reptilian species observed onsite. Common reptilian species adapted to a high degree of anthropogenic disturbances that have the potential to occur on-site include western side-blotched lizard (*Uta stansburiana elegans*) and gopher snake (*Pituophis catenifer annectens*). Due to the high level of onsite disturbances and degradation of most, if not all, of the native habitats, plus the isolation of the site from surrounding development, no special-status reptilian species are expected to occur within project-site.

*Birds*

The project site provides foraging and cover habitat for a variety of bird species. Bird species detected during the field investigation include house finch (*Haemorhouse mexicanus*), California towhee (*Melozone crissalis*), lesser goldfinch (*Spinus psaltria*), Anna's hummingbird (*Calypte anna*), white-crowned sparrow (*Zonotrichia leucophrys*), American crow (*Corvus brachyrhynchos*), Say's phoebe (*Sayornis saya*), Cassin's kingbird (*Tyrannus vociferans*), black phoebe (*Sayornis nigricans*), red-tailed hawk (*Buteo jamaicensis*), yellow-rumped warbler (*Setophaga coronata*), California scrub jay (*Aphelocoma californica*), western meadowlark (*Sturnella neglecta*), and mourning dove (*Zenaida macroura*).

*Mammals*

The project site provides foraging and cover habitat for a variety of mammal species. The only mammal species observed during the field investigation was desert cottontail (*Sylvilagus audubonii*) and Botta's pocket gopher (*Thomomys bottae*). Common mammalian species that could potentially occur on-site include coyote (*Canis latrans*), opossum (*Didelphis virginiana*), and raccoon (*Procyon lotor*).

**Nesting Birds**

Survey transects were conducted at 10-meter (approximately 33 feet). All transects were walked at a pace that allowed for careful/detailed observation. Methods to detect the presence of nesting birds included direct observation, aural detection, and signs of presence including pellets, whitewash, feathers, or prey remains. All trees, shrubs, and ground dwellings were searched for the possible presence of avian nests and thoroughly examine for signs of presence. Binoculars were used to observe distant birds and their activity around potential nesting habitat.

No active nests or birds displaying nesting behavior were observed during the field investigation. It should be noted that a remnant avian nest was observed in a eucalyptus tree in the middle of the southern portion of the project site. While American crows and red-tailed hawks were observed onsite, no birds were observed interacting with the remnant nest or landed near it. The project site and surrounding area provides foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area. The project site has the potential to provide suitable nesting opportunities for birds that nest on the open ground and those aclimated to routine disturbances. In particular, the eucalyptus trees that border the project site provide suitable nesting opportunies. A pre-construction nesting bird clearance survey should be conducted within three (3) days prior to ground disturbance to ensure no nesting birds will be impacted from site development.

**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 isolation of the site combined with the removal of flows from an existing drainage channel and the maturation of the existing RAFSS plant community on the eastern portion of the site has eliminated most of the potential to support local wildlife movement that previously occurred along Etiwanda Creek and surrounding native habitats. Implementation of the proposed project will not 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.

A query of the USFWS National Wetland Inventory determined that no riverine or other freshwater resources are mapped within the boundaries of the project site. The nearest recognized resource is East Etiwanda Creek Channel, located approximately 1,750 feet east of the eastern portion of the site.

As previously noted, existing storm drain improvements have been constructed north of the project site along Banyan Ave. These storm drain improvements intercept and redirect historical stormwater flows from the north that historically flowed across the native habitat on the eastern portion of the project site. Storm water flows north of Banyan are currently collected into a city storm drain system and ultimately discharge into the channelized portion of Etiwanda Creek, approximately 1,750 feet east of the project site, and no longer flow within the native habitat on the eastern portion of the project site.

Within the proposed limits of the project site, no discernible drainage courses, inundated areas, or wetland features that would be considered jurisdictional by the Corps, Regional Board, or CDFW were observed. Based on the proposed site plan and limits of disturbance, project activities will not result in impacts to Corps, Regional Board, or CDFW jurisdictional areas and regulatory approvals will not be required.

## Special-Status Biological Resources

CDFW's QuickView Tool in BIOS, CNDDB 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 Cucamonga Peak 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 thirty-one (31) special-status plant species, forty-three (43) special-status wildlife species, and four (4) special-status plant communities as having the potential to occur within the Cucamonga Peak 7.5-minute quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site are presented in Attachment D, *Potentially Occurring Special-Status Biological Resources*.

### *Special-Status Plants*

According to the CNDDB and CNPS, thirty-one (31) special-status plant species have been recorded in the Cucamonga Peak quadrangle (refer to Attachment D). No special-status plant species were observed onsite during the habitat assessment. The majority of the project site has been subject to anthropogenic disturbances from historic agricultural and weed abatement activities, and surrounding development. These disturbances have greatly reduced, if not eliminated, the suitability of the habitat onsite to support 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. No focused surveys are recommended.

*Special-Status Wildlife*

According to the CNDDB, forty-three (43) special-status wildlife species have been reported in the Cucamonga Peak quadrangle (refer to Attachment C). No special-status wildlife species were observed onsite during the habitat assessment. The majority of the project site has been subject to anthropogenic disturbances from historic agricultural and weed abatement activities, and surrounding development. These disturbances have greatly reduced, if not eliminated, the suitability of the habitat onsite to support special-status wildlife species. 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 support Cooper's hawk (*Accipiter cooperii*), and a low potential to support western mastiff bat (*Eumops perotis californicus*) and loggerhead shrike (*Lanius ludovicianus*). All remaining special-status wildlife species are presumed to be absent from the project site due to lack of quality habitat. No focused surveys are recommended.

None of the aforementioned species are federally or state listed as endangered or threatened. In order to ensure impacts to the aforementioned species do not occur from implementation of the proposed project, a pre-construction clearance survey shall be conducted prior to ground disturbance. With implementation of mitigation through the pre-construction clearance survey, impacts to the aforementioned species will be less than significant.

Based on regional significance, the potential occurrence of burrowing owl and San Bernardino kangaroo rat within the project site are described in further detail below.

*Burrowing Owl*

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

No burrowing owls or recent sign (i.e., pellets, feathers, castings, or whitewash) were observed during the field investigation. The project site is unvegetated and/or vegetated with a variety of low-growing plant species that allow for line-of-sight observation favored by burrowing owls. However, the project site lacks suitable burrows (>4 inches in diameter) capable of providing roosting and nesting opportunities. Further, the eucalyptus trees that border the northern and southern boundaries of the project site further decrease the likelihood that burrowing owls would occur on the project site as these features provide perching opportunities for larger raptor species (i.e., red-tailed hawk [*Buteo jamaicensis*]) that prey on burrowing

owls.

Based on the results of the field investigation, it was determined that the project site does not provide suitable habitat for burrowing owls and focused surveys are not recommended.

*San Bernardino Kangaroo Rat*

The San Bernardino kangaroo rat, federally listed as endangered, is one of several kangaroo rat species in its range. The Dulzura, the Pacific kangaroo rat (*Dipodomys agilis*) and the Stephens kangaroo rat (*Dipodomys stephensi*) occur in areas occupied by the San Bernardino kangaroo rat, but these other species have a wider habitat range. San Bernardino kangaroo rat historically ranged from the San Bernardino Valley in San Bernardino County to southwest Perris, Bautista Canyon, and Murrieta Hot Springs in Riverside County, with at least 25 separate localities identified. Currently, populations of the San Bernardino kangaroo rat are limited to seven widely separated locations in San Bernardino and Riverside Counties, four of which (City Creek, Etiwanda, Reche Canyon, and South Bloomington) support only small, remnant populations. The Santa Ana River, Lytle and Cajon washes, and the San Jacinto River support the largest extant concentrations of San Bernardino kangaroo rat and the largest areas of habitat for this species (approximately 3,200 acres total). The total area of occupied habitat occurs across a mosaic of approximately 13,697 acres of potential habitat; however, all but the 3,215 occupied areas are currently more mature than the open, early successional habitat types preferred by the San Bernardino kangaroo rat (USFWS 2009).

San Bernardino kangaroo rat is found primarily on sandy and loamy sand substrates, where they can readily excavate simple, shallow burrows. This is typically associated with RAFSS habitats, a relatively uncommon desert-influenced plant community in southern California that develops on alluvial fans and floodplains subjected to scouring and deposition (USFWS 2009). Adjacent upland habitat provide refuge for San Bernardino kangaroo rat during flood events. Animals occupying this refugia habitat are able to repopulate core habitat areas within the floodplain following major flood events. Most of the drainages have been historically altered as a result of flood control efforts and the resulting increased use of river resources, including mining, off-road vehicle use and road and housing development. This increased use of river resources has resulted in a reduction in both the amount and quality of habitat available for the San Bernardino kangaroo rat. The past habitat losses and potential future losses prompted the emergency listing of the San Bernardino kangaroo rat as an endangered species (USFWS, 1998a).

For decades, the project site generally consisted of agriculture land uses (mainly orchards), but the site is currently fallow. The project site and surrounding area are no longer exposed to fluvial processes needed to maintain the intermediate RAFSS habitat that would be required for long-term San Bernardino kangaroo rat conservation. An assessment of the existing 1.21 acres of RAFSS habit on the eastern portion of the project site was completed and determined that the plant cover from non-native grasses was too dense to support San Bernardino Kangaroo Rat. No San Bernardino kangaroo rat signs was found within the 1.21-acre area.

The site has been isolated from the influences of Etiwanda Creek and the alluvial fans extending out of the San Gabriel Mountains since the late-1990s to early-2000s from channelization of Etiwanda Creek for flood control purposes and residential development to the east. Due to the history of regular disruption and

manipulation of the native soils, the loss of fluvial scouring due to flood control activities, and isolation from known occupied habitat, it was determined that the project site does not provide suitable habitat for San Bernardino kangaroo rat. No further studies are recommended.

*Special-Status Plant Communities*

According to the CNDDB, four (4) special-status plant communities has been reported in the Cucamonga Peak USGS 7.5-minute quadrangle: California Walnut Woodland, Coastal and Valley Freshwater Marsh, Riversidean Alluvial Fan Sage Scrub, and Southern Sycamore Alder Riparian Woodland. Based on the results of the field investigation, one special-status plant communities were observed onsite: RAFSS.

RAFSS is a community restricted to intermittently or rarely-flooded, low-gradient alluvial deposits along streams, washes, and fans within large canyons on the coastal slopes of the San Gabriel Mountains and San Bernardino Mountains in San Bernardino County. RAFSS vegetation is comprised mostly of drought-deciduous subshrubs in which scale broom is dominant, co-dominant, or conspicuous in the shrub canopy.

The RAFSS observed on the eastern boundary of the project site has been isolated from seasonal scouring regimes associated with flood waters for decades. As a result, the onsite habitat has matured/senesced into mature RAFSS habitat that is less open and less available for RAFSS wildlife species. The area has been further degraded by the invasion of the historic drainage channel by a eucalyptus forest, a non-native plant community that further degrades RAFSS habitat. This relictual plant community is no longer functioning as viable intermediate RAFSS habitat with long-term conservation value.

## Critical Habitats

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

The project site is not located within, but is located immediately adjacent to federally designated Critical Habitat. Refer to Exhibit 6, *Critical Habitat* in Attachment A. The designated Critical Habitat bordering the eastern boundary of the project site has been converted from natural habitat into a residential development and no longer supports native RAFSS habitat needed to be considered viable Critical Habitat for the species and a source of recolonization potential for the project site. As noted, no San Bernardino

kangaroo rat, signs of San Bernardino kangaroo rat, or suitable burrows for San Bernardino kangaroo rat were observed during the field investigation, particularly on the eastern portion of the site. Further, the channelization of Etiwanda Creek has thoroughly isolated the site from the historic scouring regimes that create the RAFSS habitat utilized by San Bernardino kangaroo rat. Therefore, the loss or adverse modification of viable Critical Habitat from site development will not occur and consultation with the USFWS for impacts to Critical Habitat will not be required for implementation of the proposed project.

## Recommendations

*Migratory Bird Treaty Act and Fish and Game Code (Pre-Construction Nesting Bird Clearance Survey)*

Nesting birds are protected pursuant to the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (Sections 3503, 3503.5, 3511, and 3513 prohibit the take, possession, or destruction of birds, their nests or eggs). In order to protect migratory bird species, a nesting bird clearance survey should be conducted prior to any ground disturbance or vegetation removal activities that may disrupt the birds during the nesting season.

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

## Conclusion

Based on the proposed project footprint and existing site conditions discussed in this report, none of the special-status plant or wildlife species known to occur in the general vicinity of the project site are expected to be directly or indirectly impacted from implementation of the proposed project. With completion of the recommendations provided above, no impacts to year-round, seasonal, or special-status avian residents will occur from implementation of the proposed project. Therefore, it was determined that implementation of the project will have “no effect” on federally or State listed species known to occur in the general vicinity of the project site. Additionally, the development of the project will not impact designated Critical Habitats or regional wildlife movement corridors/linkages.

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

Sincerely,

Thomas J. McGill, Ph.D.
Managing Director

Travis J. McGill
Director

Attachments:

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

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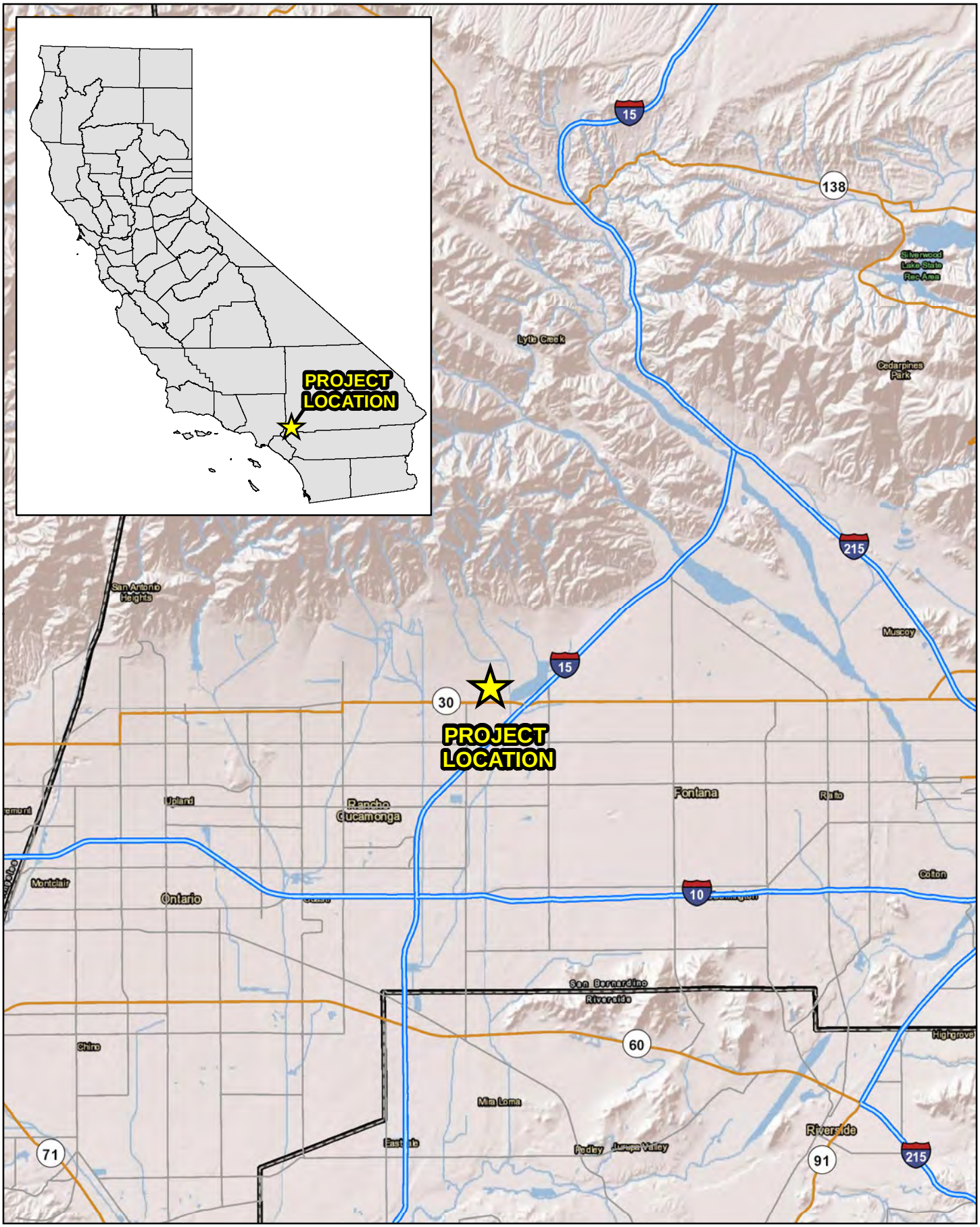
# Attachment A

Project Exhibits




EAST AVENUE AND BANYAN STREET
HABITAT AND JURISDICTIONAL ASSESSMENT

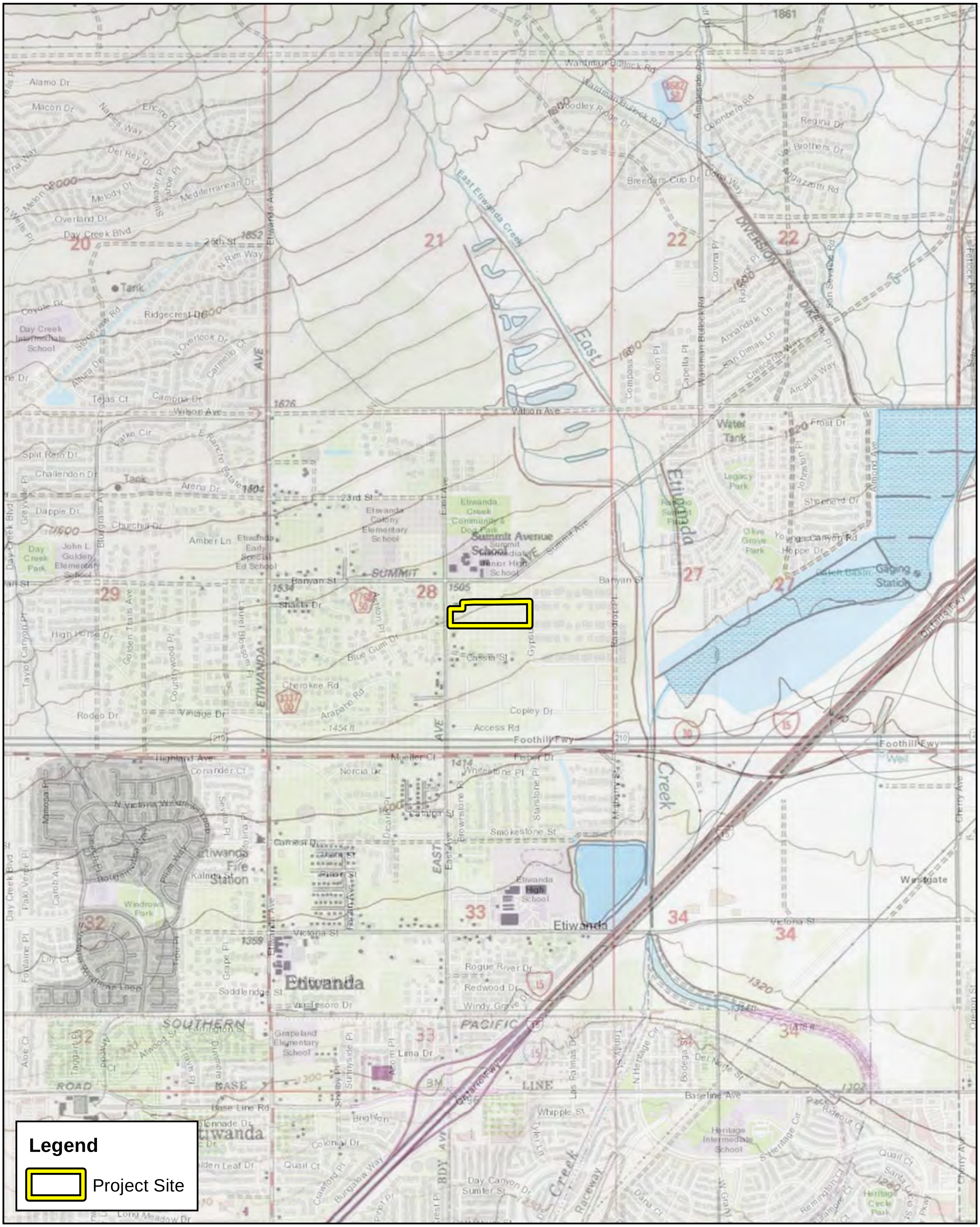
ELMT CONSULTING

0 2.5 5 10 Miles

Source: World Transportation, World Shaded Relief, San Bernardino County

# Regional Vicinity

Exhibit 1




ELMT CONSULTING

0 1,250 2,500 5,000 Feet

Source: USA Topographic Map, San Bernardino County

EAST AVENUE AND BANYAN STREET
HABITAT AND JURISDICTIONAL ASSESSMENT

# Site Vicinity

Exhibit 2

ELMT CONSULTING

0 125 250 500 Feet

Source: ESRI Aerial Imagery, San Bermardino County

EAST AVENUE AND BANYAN STREET
HABITAT AND JURISDICTIONAL ASSESSMENT

# Project Site

Exhibit 3

ELMT CONSULTING

0 125 250 500 Feet

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

EAST AVENUE AND BANYAN STREET
HABITAT AND JURISDICTIONAL ASSESSMENT

# Soils

Exhibit 4

ELMT CONSULTING

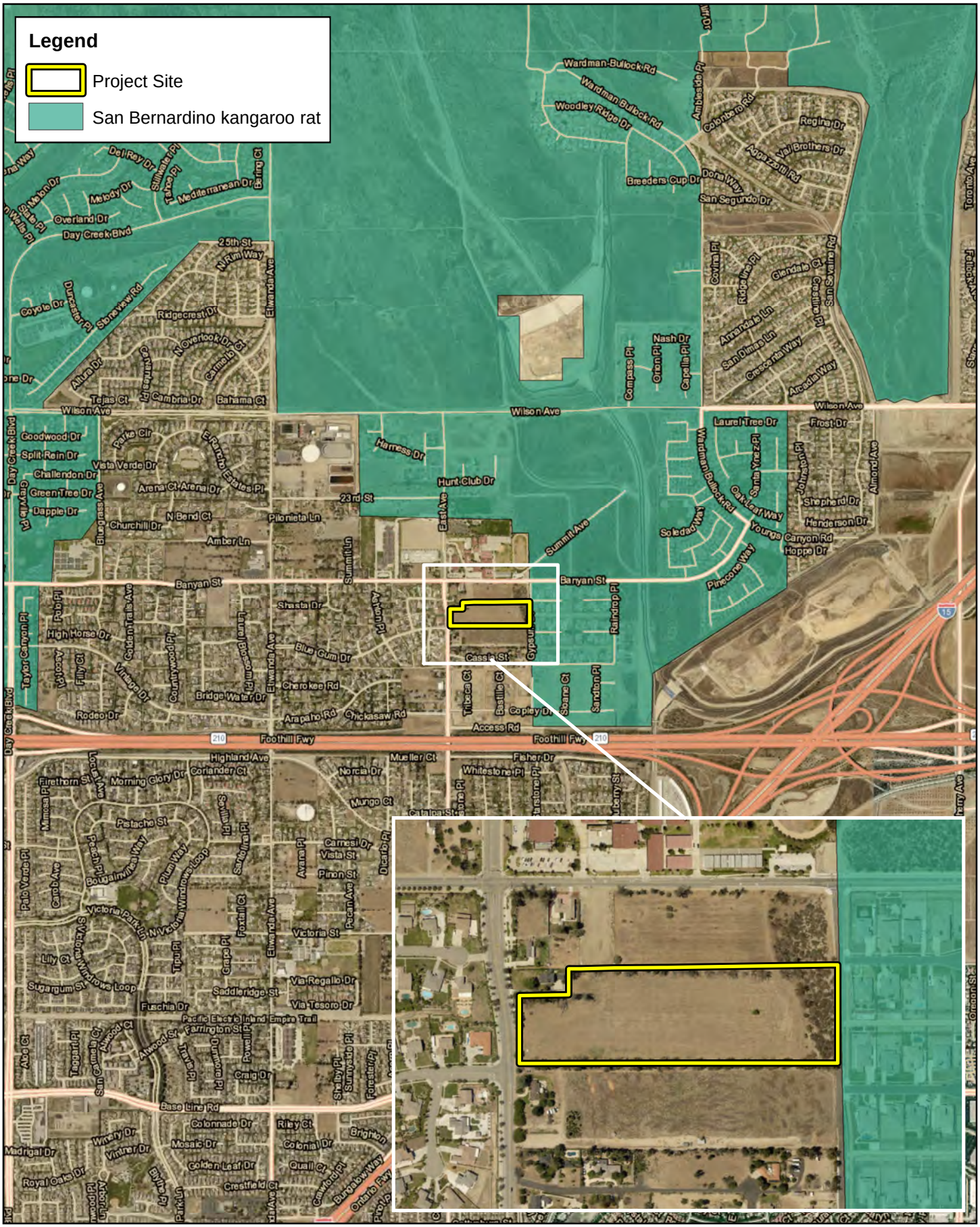
0 125 250 500 Feet

Source: ESRI Aerial Imagery, San Bermardino County

EAST AVENUE AND BANYAN STREET
HABITAT AND JURISDICTIONAL ASSESSMENT

# Vegetation

Exhibit 5




EAST AVENUE AND BANYAN STREET
HABITAT AND JURISDICTIONAL ASSESSMENT

# Critical Habitat

ELMT CONSULTING

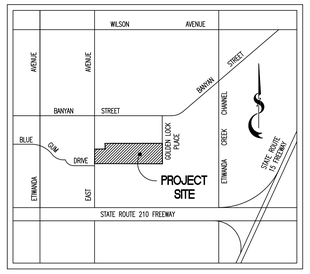
0 1,250 2,500 5,000 Feet

Source: USA Topographic Map, USFWS Critical Habitat, San Bermardino County

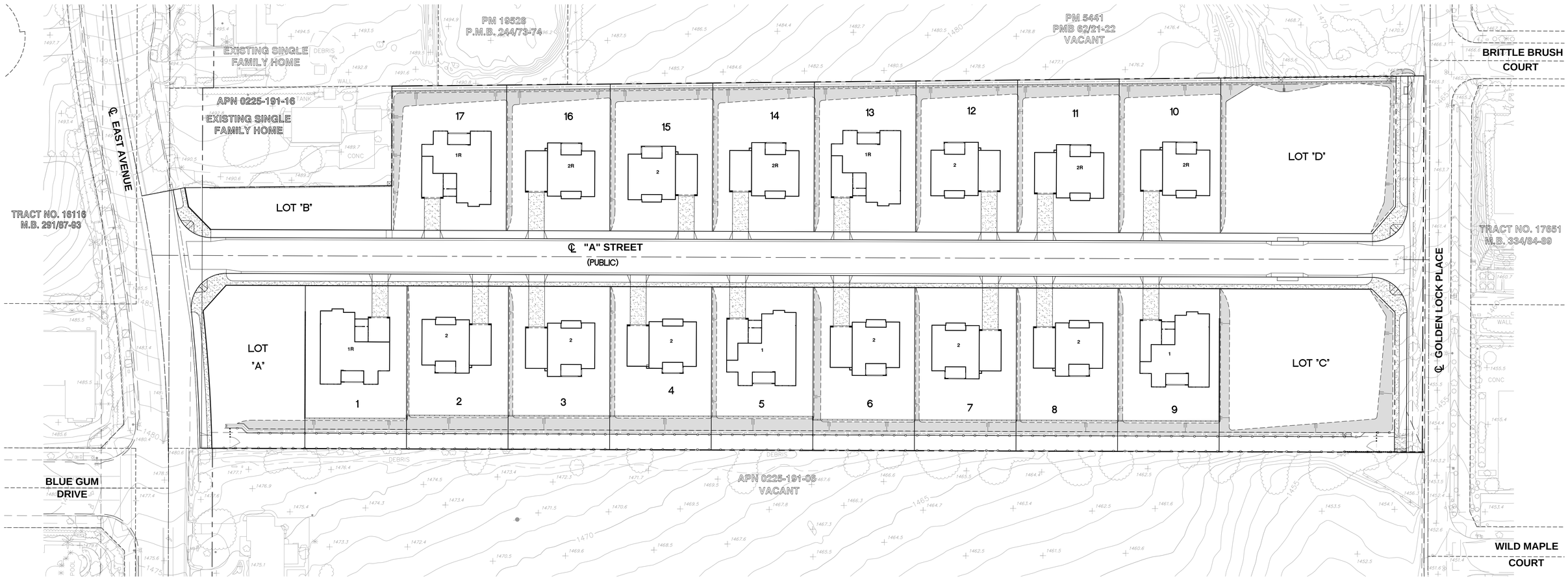
Exhibit 6

# Attachment B

Site Plans




**VICINITY MAP**
N.T.S.




PREPARED FOR:

**MANNING HOMES**

20151 SW BIRCH STREET SUITE 150
NEWPORT BEACH, CA. 92660
CONTACT: CRAIG KOZMA
TEL: (949) 250-4200

PREPARED BY:

MADOLE & ASSOCIATES, INC.
Engineering Communities for Life
9302 PITTSBURGH AVE., SUITE 230
RANCHO CUCAMONGA, CA. 91730
PHONE: 909.481.5322
FAX: 909.481.5320

# TENTATIVE TRACT NO. 20334

**RESIDENTIAL LOTS 1-17**

# SITE PLAN

## SUBTT 20334

**DATE PREPARED: JANUARY, 2021**

**SHEET 1 OF 1**

**CITY OF RANCHO CUCAMONGA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA**

TENTATIVE TRACT NO. 20334

# Attachment C

Site Photographs

**Photograph 1:** Looking northwest from the southeast corner of the main project site area, between the NNG and mature, isolated RAFSS habitat.

**Photograph 2:** Looking west along the southern boundary of the project site from the southeast corner. The eucalyptus row along the southern boundary of the site can be seen on the left.

**Photograph 3:** Looking southwest from the northeast corner of the main portion of the project site that supports NNG.

**Photograph 4:** Looking east from the southwest corner of the project site. The eucalyptus windrow along the northern boundary of the site can be seen on the left.

**Photograph 5:** Looking north along the western boundary from the southwest corner of the project site.

**Photograph 6:** Looking east along the southern boundary from the southwest corner of the project site.

**Photograph 7:** Looking northwest from the middle of the southern boundary of the project site.

**Photograph 8:** Looking northeast from the middle of the southern boundary of the project site.

**Photograph 9:** Looking south from the north side of Banyan Avenue at the drainage that no longer flows into the eastern portion of the site on the south side of Banyan Avenue. Note the eucalyptus trees in the top center of the photo that occupy the project site.

**Photograph 10:** Looking north at the southeast intersection of Banyan and Golden Lock Place where the drainage previously discharged onto the project site.

**Photograph 11:** Looking south at the historic drainage system within the project site that no longer receives storm flows.

**Photograph 12:** Looking south along the historic drainage channel that runs north to south through the RAFSS habitat in the eastern portion of the project site. Eucalyptus trees are pervasive throughout the entire length of the RAFSS habitat.

# Attachment D

Potentially Occurring Special-Status Biological Resources

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

| ***Scientific Name***<br>Common Name | **Status** | **Habitat** | **Observed Onsite** | **Potential to Occur** |
|---|---|---|---|---|
| **SPECIAL-STATUS WILDLIFE SPECIES** | | | | |
| ***Accipiter cooperii***<br>Cooper's hawk | Fed: None<br>CA: WL | Common yearlong resident of California. Typically forages in broken woodland and habitat edges with dense stands of coast live oak (*Quercus agrifolia*), riparian deciduous, or other forest habitat near water. Usually nests in dense riparian areas, usually near streams. | No | **Moderate.** The project site and eucalyptus trees have the potential to provide suitable foraging and nesting opportunities. |
| ***Aimophila ruficeps canescens***<br>southern California rufous-crowned sparrow | Fed: None<br>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 (*Artemisia californica*), 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. |
| ***Anniella stebbinsi***<br>southern California legless lizard | Fed: None<br>CA: SSC | Occurs in sparsely vegetated habitat types including coastal sand dunes, chaparral, pine-oak woodland, desert scrub, open grassland, and riparian areas. Requires sandy or loose loamy substrates conducive to burrowing. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Ardea alba***<br>great egret | Fed: None<br>CA: None | Yearlong resident throughout California, except for the high mountains and deserts. Feeds and rests in fresh, and saline emergent wetlands, along the margins of estuaries, lakes, and slow-moving streams, on mudflats and salt ponds, and in irrigated croplands and pastures. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Ardea herodias***<br>great blue heron | Fed: None<br>CA: None | Fairly common all year throughout most of California, in shallow estuaries and fresh and saline emergent wetlands. Less common along riverine and rocky marine shores, in croplands, pastures, and in mountains about foothills. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Arizona elegans occidentalis***<br>California glossy snake | Fed: None<br>CA: SSC | Occurs in a wide variety of habitat types including open desert, grasslands, shrublands, chaparral, and woodlands. Prefers areas where the soil is loose and sandy which allows for burrowing. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Artemisiospiza belli belli***<br>Bell's sage sparrow | Fed: None<br>CA: WL | Occurs in chaparral dominated by fairly dense stands of chamise. Also found in coastal sage scrub in south of range. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Asio otus***<br>long-eared owl | Fed: None<br>CA: SSC | Requires riparian or other thickets with small, densely canopied trees for roosting and nesting. Also occurs in dense conifer stands at higher elevations. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Aspidoscelis hyperythra***<br>orange-throated whiptail | Fed: None<br>CA: WL | Inhabits low-elevations coastal scrub, chamise-redshank chaparral, mixed chaparral, and valley-foothill hardwood habitats. Semi-arid brushy areas typically with loose soil and rocks, including washes, stream sides, rocky hillsides, and coastal chaparral. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Aspidoscelis tigris stejnegeri***<br>coastal whiptail | Fed: None<br>CA: SSC | 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. |

| ***Scientific Name***<br>Common Name | **Status** | **Habitat** | **Observed Onsite** | **Potential to Occur** |
|---|---|---|---|---|
| ***Batrachoseps gabrieli***<br>San Gabriel slender salamander | Fed: None<br>CA: None | Known from select localities in the San Gabriel Mountains and the Mt. Baldy area of Los Angeles County and the western end of the San Bernardino Mountains in San Bernardino Co., with an elevation range of 1,200- 5,085 feet. Occurs on talus slopes surrounded by a variety of conifer and montane hardwood species, including bigcone spruce, pine, white fir, incense cedar, canyon live oak, black oak, and California laurel. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Bombus crotchii***<br>Crotch bumble bee | Fed: None<br>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. |
| ***Calypte costae***<br>Costa's hummingbird | Fed: None<br>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. |
| ***Chaetodipus fallax fallax***<br>northwestern San Diego pocket mouse | Fed: None<br>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 above msl. 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. |
| ***Circus hudsonius***<br>northern harrier | Fed: None<br>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. |
| ***Coleonyx variegatus abbotti***<br>San Diego banded gecko | Fed: None<br>CA: None | Prefers rocky areas in coastal sage and chaparral within granite or rocky outcrops. Occurs in coastal and cismontane southern California from interior Ventura Co. south. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Diadophis punctatus modestus***<br>San Bernardino ringneck snake | Fed: None<br>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. |
| ***Dipodomys merriami parvus***<br>San Bernardino kangaroo rat | Fed: **END**<br>CA: SSC | Primarily found in Riversidean alluvial fan sage scrub (RAFSS) and sandy loam soils, alluvial fans and flood plains, and along washes with nearby sage scrub. May also occur at lower densities in Riversidean upland sage scrub, chaparral and grassland in uplands and tributaries in proximity to RAFSS habitat. Tends to avoid rocky substrates. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Dipodomys simulans***<br>Dulzura kangaroo rat | Fed: None<br>CA: None | Relatively common in chaparral, coastal sage scrub, Riversidean alluvial fan sage scrub, and peninsular juniper woodland habitats. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Empidonax traillii***<br>willow flycatcher | Fed: None<br>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. |
| ***Empidonax traillii extimus***<br>southwestern willow flycatcher | Fed: **END**<br>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. |

| ***Scientific Name***<br>Common Name | **Status** | **Habitat** | **Observed Onsite** | **Potential to Occur** |
|---|---|---|---|---|
| ***Eumops perotis californicus***<br>western mastiff bat | Fed: None<br>CA: SSC | Primarily a cliff-dwelling species, roost generally under exfoliating rock slabs. Roosts are generally high above the ground, usually allowing a clear vertical drop of at least 3 meters below the entrance for flight. In California, it is most frequently encountered in broad open areas including dry desert washes, flood plains, chaparral, oak woodland, open ponderosa pine forest, grassland, and agricultural areas. | No | **Low.** There is limited foraging and nesting habitat on-site. |
| ***Lanius ludovicianus***<br>loggerhead shrike | Fed: None<br>CA: SSC | Common yearlong resident of California. Prefers open habitats with bare ground, scattered shrubs, and areas with low or sparse herbaceous cover. Requires suitable perches including trees, posts, fences, utility lines, or other perches. | No | **Low.** There is limited foraging and nesting habitat on-site. |
| ***Lasiurus xanthinus***<br>western yellow bat | Fed: None<br>CA: SSC | Occurs in valley/foothill riparian, desert riparian, desert wash, and palm oasis habitats. Roosts under palm trees and feeds in, and near, palm oases and riparian habitats. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Lepus californicus bennettii***<br>San Diego black-tailed jackrabbit | Fed: None<br>CA: SSC | Occupies many diverse habitats, but primarily is found in arid regions supporting short-grass habitats, agricultural fields, or sparse coastal scrub. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Neotoma lepida intermedia***<br>San Diego desert woodrat | Fed: None<br>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. |
| ***Nycticorax nycticorax***<br>black-crowned night heron | Fed: None<br>CA: None | Common in wetlands across North America, including saltmarshes, freshwater marshes, swamps, streams, rivers, lakes, ponds, lagoons, tidal mudflats, and wet agricultural fields. They require aquatic habitat for foraging and terrestrial vegetation for cover. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Onychomys torridus ramona***<br>southern grasshopper mouse | Fed: None<br>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. |
| ***Ovis canadensis nelsoni***<br>desert bighorn sheep | Fed: None<br>CA: FP | Require a variety of habitat characteristics related to topography, visibility, forage quality and quantity, and water availability (USFWS 2000). Prefer areas on or near mountainous terrain that are visually open, as well as steep and rocky. Alluvial fans and washed in flatter terrain is also used for foraging, water, and connectivity between mountainous areas. Tend to avoid dense vegetation and higher elevations that support chaparral. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Perognathus longimembris brevinasus***<br>Los Angeles pocket mouse | Fed: None<br>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. |
| ***Phalacrocorax auritus***<br>double-crested cormorant | Fed: None<br>CA: WL | Prefers water less than 30 feet deep with rocky or gravel bottom. Rests in daytime and roosts overnight beside water on offshore rocks, islands, cliffs, dead branches of trees, wharfs, jetties, or even transmission lines. | No | **Presumed absent.** No suitable habitat is present on-site. |

| ***Scientific Name***<br>Common Name | **Status** | **Habitat** | **Observed Onsite** | **Potential to Occur** |
|---|---|---|---|---|
| ***Phrynosoma blainvillii***<br>coast horned lizard | Fed: None<br>CA: SSC | Found in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. 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. |
| ***Polioptila californica californica***<br>coastal California gnatcatcher | Fed: **THR**<br>CA: SSC | Common yearlong resident of southern California in sage scrub habitats that are dominated by California sagebrush (*Artemisia californica*). Prefers scrub habitat with more low-growing vegetation. Species generally occurs below 750 feet above mean sea level (msl) along the coast and below 1,500 feet above msl within inland regions. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Rana muscosa***<br>southern mountain yellow-legged frog | Fed: **END**<br>CA: **END** ; WL | Prefers high-altitude mountain streams, typically those with boulders in them. Always found in the water, on rocks, or within a foot or two of the water's edge. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Salvadora hexalepis virgultea***<br>coast patch-nosed snake | Fed: None<br>CA: SSC | Inhabits semi-arid brushy areas and chaparral in canyons, rocky hillsides, and plains. Requires friable soils for burrowing. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Selasphorus rufus***<br>rufous hummingbird | Fed: None<br>CA: None | Breed in open or shrubby areas, forest openings, yards, and parks. During migration they are commonly found in disturbed areas where its food flowers are in bloom. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Setophaga petechia***<br>yellow warbler | Fed: None<br>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. |
| ***Spea hammondii***<br>western spadefoot | Fed: None<br>CA: SSC | Prefers open areas with sandy or gravelly soils, in a variety of habitats including mixed woodlands, grasslands, coastal sage scrub, chaparral, sandy washes, lowlands, river floodplains, alluvial fans, playas, alkali flats, foothills, and mountains. Rain pools which do not contain bullfrogs, fish, or crayfish are necessary for breeding. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Spinus lawrencei***<br>Lawrence's goldfinch | Fed: None<br>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. |
| ***Spizella breweri***<br>Brewer's sparrow | Fed: None<br>CA: None | Habitats include sagebrush and brushy plains. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Strix occidentalis occidentalis***<br>California spotted owl | Fed: None<br>CA: SSC | Breeds and roosts in forests and woodland with large old trees and snags, high basal areas of trees and snags, dense canopies, multiple canopy layers, and downed woody debris. Large old trees are key as they provide nest sites and cover from weather. | No | **Presumed absent.** No suitable habitat is present on-site. |
| ***Thamnophis hammondii***<br>two-striped garter snake | Fed: None<br>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***<br>Common Name | **Status** | **Habitat** | **Observed Onsite** | **Potential to Occur** |
|---|---|---|---|---|
| ***Xanthocephalus xanthocephalus***<br>yellow-headed blackbird | Fed: None<br>CA: SSC | Occurs in freshwater emergent wetlands, and moist, open areas along croplands and mud flats of lacustrine habitats. Prefers to nest in dense wetland vegetation characterized by tules, cattails, or other similar plant species along the border of lakes and ponds. | No | **Presumed absent.** No suitable habitat is present on-site. |
| **SPECIAL-STATUS PLANT SPECIES** | | | | |
| ***Acanthoscyphus parishii var. parishii***<br>Parish's oxytheca | Fed: None<br>CA: None<br>CNPS: 4.2 | Habitats include sandy or shale chaparral. Found at elevations ranging from 3,750 to 6,748 feet above mean sea level (msl). Blooming period is from June to August. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Arctostaphylos glandulosa* ssp. *gabrielensis***<br>San Gabriel manzanita | Fed: None<br>CA: None<br>CNPS: 1B.2 | Habitat includes rocky chaparral. Found at elevations ranging from 1,952 to 4,921 feet above msl. Blooming period is March. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Asplenium vespertinum***<br>western spleenwort | Fed: None<br>CA: None<br>CNPS: 4.2 | Occurs on rocky soils in chaparral, cismontane woodland, and coastal scrub habitats. Found at elevations ranging from 590 to 3,280 feet above msl. Blooming period is from February to June. | No | **Presumed absent**. No suitable habitat is present. |
| ***Calochortus plummerae***<br>Plummer's mariposa-lily | Fed: None<br>CA: None<br>CNPS: 4.2 | Prefers openings in chaparral, foothill woodland, coastal sage scrub, valley and 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. From 328 to 5,577 feet in elevation. Blooming period is from May to July. | No | **Presumed absent**. No suitable habitat is present. |
| ***Calochortus weedii* var. *intermedius***<br>intermediate mariposa-lilly | Fed: None<br>CA: None<br>CNPS: 1B.2 | Prefers rocky, calcareous soils in chaparral, valley and foothill grassland, and coastal sage scrub habitats. From 360 to 2,265 feet in elevation. Blooming period is from May to July. | No | **Presumed absent**. No suitable habitat is present. |
| ***Chorizanthe parryi* var. parryi**<br>Parry's spineflower | Fed: None<br>CA: None<br>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. |
| ***Claytonia lanceolata* ssp. *peirsonii***<br>Peirson's spring beauty | Fed: None<br>CA: None<br>CNPS: 3.1 | Habitats include subalpine coniferous forest and upper montane coniferous forest. Found at elevations ranging from 4,954 to 9,005 feet. Blooming period is from March to June. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Diplacus johnstonii***<br>Johnston's monkeyflower | Fed: None<br>CA: None<br>CNPS: 4.3 | Occurs in lower montane coniferous forest (scree, disturbed areas, rocky or gravelly roadside) habitat. Found at elevations ranging from 3,199 to 9,580 feet above msl. Blooming period is from May to August. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Eriogonum microthecum* var. *alpinum***<br>alpine slender buckwheat | Fed: None<br>CA: None<br>CNPS: 4.3 | Associated with alpine dwarf scrub and great basin scrub. Found at elevations ranging from 8,202 to 10,862 feet above msl. Blooming period is from July to September. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Eriogonum microthecum* var. *johnstonii***<br>Johnston's buckwheat | Fed: None<br>CA: None<br>CNPS: 1B.3 | Grows in rocky soils within subalpine coniferous forest and upper montane coniferous forest. Found at elevations ranging from 6,000 to 9,600 feet above msl. Blooming period is from July to September. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |

| ***Scientific Name***<br>Common Name | **Status** | **Habitat** | **Observed Onsite** | **Potential to Occur** |
|---|---|---|---|---|
| ***Eriogonum umbellatum* var. *minus***<br>alpine sulphur-flowered buckwheat | Fed: None<br>CA: None<br>CNPS: 4.3 | Occurs in gravelly soils within subalpine coniferous forest and upper montane coniferous forests. Found at elevations ranging from 5,906 to 10,066 feet above msl. Blooming period is from June to September. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Eriophyllum lanatum* var. *obovatum***<br>southern Sierra woolly sunflower | Fed: None<br>CA: None<br>CNPS: 4.3 | Found in sandy loam soils within lower and upper montane coniferous forests. Found at elevations ranging from 3,655 to 8,202 feet above msl. Blooming period is from June to July. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Fritillaria pinetorum***<br>pine fritillary | Fed: None<br>CA: None<br>CNPS: 4.3 | Associated with granitic and metamorphic soils within chaparral, lower montane coniferous forest, upper montane coniferous forest, subalpine coniferous forest, pinyon and juniper woodland. Found at elevations ranging from 5,692 to 10,826 feet above msl. Blooming period is from May to September. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Galium angustifolium* ssp. *gabrielense***<br>San Antonio Canyon bedstraw | Fed: None<br>CA: None<br>CNPS: 4.3 | Grows in granitic, sandy or rocky soils within chaparral and lower montane coniferous forests. Found at elevations ranging from 3,937 to 8,694 feet above msl. Blooming period is from April to August. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Galium jepsonii***<br>Jepson's bedstraw | Fed: None<br>CA: None<br>CNPS: 4.3 | Found in granitic, rocky or gravelly soils within lower montane coniferous forest and upper montane coniferous forest habitats. Found at elevations ranging from 5,052 to 8,202 feet above msl. Blooming period is from July to August. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Galium johnstonii***<br>Johnston's bedstraw | Fed: None<br>CA: None<br>CNPS: 4.3 | Preferred habitats include chaparral, riparian woodland, lower montane coniferous forest, pinyon and juniper woodland. Found at elevations ranging from 4,003 to 7,546 feet above msl. Blooming period is from June to July. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Heuchera caespitosa***<br>urn-flowered alumroot | Fed: None<br>CA: None<br>CNPS: 4.3 | Grows in rocky soils within cismontane woodland, lower montane coniferous forest, riparian forest, and upper montane coniferous forest. Found at elevations ranging from 3,789 to 8,694 feet above msl. Blooming period is from May to August. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Horkelia cuneata* var. *puberula***<br>mesa horkelia | Fed: None<br>CA: None<br>CNPS: 1B.1 | Occurs on sandy or gravelly soils in chaparral, woodlands, and coastal scrub plant communities. Found at elevations ranging from 230 to 2,657 feet. Blooming period is from February to September. | No | **Presumed absent**. No suitable habitat is present. |
| ***Juglans californica***<br>southern California black walnut | Fed: None<br>CA: None<br>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. |
| ***Juncus duranii***<br>Duran's rush | Fed: None<br>CA: None<br>CNPS: 4.3 | Habitats include lower and upper montane coniferous forests, meadows and seeps. Found at elevations ranging from 5,801 to 9,199 feet above msl. Blooming period is from July to August. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Lepechinia fragrans***<br>fragrant pitcher sage | Fed: None<br>CA: None<br>CNPS: 4.2 | Occurs in chaparral habitat. Found at elevations ranging from 66 to 4,298 feet above msl. Blooming period is from March to October. | No | **Presumed absent**. No suitable habitat is present. |

| ***Scientific Name***<br>Common Name | **Status** | **Habitat** | **Observed Onsite** | **Potential to Occur** |
|---|---|---|---|---|
| ***Lilium humboldtii* ssp. *ocellatum***<br>ocellated humboldt lily | Fed: None<br>CA: None<br>CNPS: 4.2 | Found in openings within chaparral, cismontane woodland, coastal scrub, lower montane coniferous forest, and riparian woodland habitats. Found at elevations ranging from 98 to 5,906 feet in elevation above msl. Blooming period is from March to August. | No | **Presumed absent**. No suitable habitat is present. |
| ***Lilium parryi***<br>lemon lily | Fed: None<br>CA: None<br>CNPS: 1B.2 | Prefers lower montane coniferous forest, riparian forests, upper montane coniferous forests, meadows and seeps. Found at elevations ranging from 4,003 to 9,006 feet above msl. Blooming period is from July to August. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Linanthus concinnus***<br>San Gabriel linanthus | Fed: None<br>CA: None<br>CNPS: 1B.2 | Occurs in rocky, openings within chaparral, lower montane and upper montane coniferous forests. Found at elevations ranging from 4,987 to 9,186 feet above msl. Blooming period is from April to July. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Monardella australis* ssp. *jokerstii***<br>Jokerst's monardella | Fed: None<br>CA: None<br>CNPS: 1B.1 | Habitat includes chaparral and lower montane coniferous forest. Found on steep or talus slopes between breccia, secondary alluvial benches along drainages and washes. Found at elevations ranging from 4,429 to 5,741 feet above msl. Blooming period is from July to September. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Muhlenbergia californica***<br>California muhly | Fed: None<br>CA: None<br>CNPS: 4.3 | Found in mesic, seeps, and streambanks within chaparral, coastal scrub, lower montane coniferous forest, and meadows and seeps. Found at elevations ranging from 328 to 6,562 feet. Blooming period is from June to September. | No | **Presumed absent**. No suitable habitat is present. |
| ***Oreonana vestita***<br>woolly mountain-parsley | Fed: None<br>CA: None<br>CNPS: 1B.3 | Associated with gravel and talus soils within lower montane coniferous forest, subalpine coniferous forest, and upper montane coniferous forest. Found at elevations ranging from 5,299 to 11,483 feet above msl. Blooming period is from March to September. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Phacelia mohavensis***<br>Mojave phacelia | Fed: None<br>CA: None<br>CNPS: 4.3 | Occurs in sandy or gravelly soils within cismontane woodland, lower montane coniferous forest, meadows and seeps, pinyon and juniper woodland. Found at elevations ranging from 4,593 to 8,202 feet above msl. Blooming period is from April to August. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| ***Sagittaria sanfordii***<br>Sanford's arrowhead | Fed: None<br>CA: None<br>CNPS: 1B.2 | Grows in freshwater marshes and swamps. Found at elevations ranging from 0 to 2,132 feet above msl. Blooming period is from May to November. | No | **Presumed absent**. No suitable habitat is present. |
| ***Streptanthus bernardinus***<br>Laguna Mountains jewelflower | Fed: None<br>CA: None<br>CNPS: 4.3 | Associated with chaparral and lower montane coniferous forest. Found at elevations ranging from 2,198 to 8,202 feet above msl. Blooming period is from May to August. | No | **Presumed absent**. No suitable habitat is present. |
| ***Viola pinetorum* ssp. *grisea***<br>grey-leaved violet | Fed: None<br>CA: None<br>CNPS: 1B.3 | Associated with upper montane coniferous forest, subalpine coniferous forest, meadows and seeps. Found at elevations ranging from 4,921 to 11,155 feet above msl. Blooming period is from April to July. | No | **Presumed Absent.** No suitable habitat. The project site is out of this species elevation range. |
| **SPECIAL-STATUS PLANT COMMUNITIES** | | | | |

| ***Scientific Name*** Common Name | **Status** | **Habitat** | **Observed Onsite** | **Potential to Occur** |
|---|---|---|---|---|
| California Walnut Woodland | CDFW Sensitive Habitat | Occurs on valley slopes and in valley bottoms, as well as around rocky outcrops. This habitat usually occurs in areas with relatively moist, fine soils. It can intergrade with coast live oak woodland and coast live oak forest in more mesic areas. The canopy is relatively open and is dominated by California walnut with a grassy understory. | No | **Absent** |
| Coastal and Valley Freshwater Marsh | CDFW Sensitive Habitat | Found along the coast and in coastal valleys near river mouths and around the margins of lakes and springs. Site lacks significant current and is permanently flooded by fresh water. Prolonged saturation permits accumulations of deep, peaty soils. | No | **Absent** |
| Riversidian Alluvial Fan Sage Scrub | CDFW Sensitive Habitat | Occur within broad washes of sandy alluvial drainages that carry rainfall runoff sporadically in winter and spring, but remain relatively dry through the remainder of the year. Is restricted to drainages and floodplains with very sandy substrates that have a dearth of decomposed plant material. These areas do not develop into riparian woodland or scrub due to the limited water resources and scouring by occasional floods. | Yes | **Present.** The project site supports a small section of mature, isolated RAFSS along the eastern boundary. This area lies outside of the limits of disturbance for the project and is not expected to be impacted. |
| Southern Sycamore Alder Riparian Woodland | CDFW Sensitive Habitat | Below 2,000 meters in elevation, sycamore and alder often occur along seasonally-flooded banks; cottonwoods and willows also are often present. Poison-oak, mugwort, elderberry and wild raspberry may be present in the understory. | No | **Absent** |

**U.S. Fish and Wildlife Service (USFWS) - Federal**
END - Federally Endangered
THR - Federally Threatened

**California Department of Fish and Wildlife (CDFW) - California**
END - State Endangered
CEND - State Candidate Endangered
SSC - Species of Special Concern
WL - Watch List
FP - Fully Protected

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

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

# Attachment E

Regulations

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

## Federal Regulations

### *Endangered Species Act of 1973*

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

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

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

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

### *Migratory Bird Treaty Act*

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

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

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

## State Regulations

### *California Environmental Quality Act (CEQA)*

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

### *California Endangered Species Act (CESA)*

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

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

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

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

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

### *Fish and Game Code*

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

### *Native Plant Protection Act*

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

### *California Native Plant Society Rare and Endangered Plant Species*

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

California Rare Plant Rank

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

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

2A- Plants Presumed Extirpated in California, But More Common Elsewhere

2B- Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere

3- Plants about Which More Information is Needed - A Review List

4- Plants of Limited Distribution - A Watch List

Threat Ranks

.1- Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)

.2- Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)

.3- Not very threatened in California (<20% of occurrences threatened / low degree and immediacy of threat or no current threats known).

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

## Federal Regulations

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

Since 1972, the Corps and EPA have jointly regulated the filling of waters of the United States, including wetlands, pursuant to Section 404 of the 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, the placement of sand, rock, clay, construction debris, wood chips, and "materials used to create any structure or infrastructure in the waters of the United States."

In April of 2020, the Corps and the EPA provided a new definition for *waters of the United States* [Federal Register, Vol. 85, No. 77 (April 21, 2020)] which encompass:

- The territorial seas and traditional navigable waters;
- Perennial and intermittent tributaries that contribute surface water flow to such waters;
- Certain lakes, ponds, and impoundments of jurisdictional waters; and
- Wetlands adjacent to other jurisdictional waters.

Additionally, the new definition identifies 12 categories of those waters and features that are excluded from the definition of ''waters of the United State, such as features that only contain water in direct response to rainfall (e.g., ephemeral features), groundwater, many ditches, prior converted cropland, and waste treatment systems. The final rule excludes from the definition of ''waters of the United States'' all waters or features not mentioned above. In addition to this general exclusion, the final rule specifically clarifies that waters of the United States do not include the following:

- Groundwater, including groundwater drained through subsurface drainage systems;
- Ephemeral features that flow only indirect response to precipitation, including ephemeral streams, swales, gullies, rills, and pools;
- Diffuse stormwater runoff and directional sheet flow over upland;
- Ditches that are not traditional navigable waters, tributaries, or that are not constructed in adjacent wetlands, subject to certain limitations;
- Prior converted cropland;
- Artificially irrigated areas that would revert to upland if artificial irrigation ceases;
- Artificial lakes and ponds that are not jurisdictional impoundments and that are constructed or excavated in upland or non-jurisdictional waters;

- Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non jurisdictional waters for the purpose of obtaining fill, sand, or gravel;
- Stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff;
- Groundwater recharge, water reuse, and wastewater recycling structures constructed or excavated in upland or in non-jurisdictional waters; and
- Waste treatment systems.

***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.