

## 4.4 BIOLOGICAL RESOURCES

This section describes the potential impacts to biological resources that may result from construction and operation of the proposed project.

### 4.4.1 Scoping Process

The City of Menifee (City) received ten comment letters during the public review period of the Notice of Preparation (NOP). For copies of the NOP comment letters, refer to **Appendix A-1** of this Draft Environmental Impact Report (EIR). No comment letters included comments related to biological resources.

### 4.4.2 Methodology

Evaluation of impacts on biological resources is a requirement of federal, State, regional, and local laws and regulations. This section describes the methods used to evaluate biological resources and associated impacts, and presents the California Environmental Quality Act (CEQA) criteria used to evaluate the impacts.

For the purpose of this report special-status species is one that meets one or more of the following criteria: listed or considered for listing or proposed for listing under the Federal Endangered Species Act (FESA) or California Endangered Species Act (CESA), California Department of Fish and Wildlife (CDFW) Species of Special Concern, CDFW Fully Protected or Watch List Species, and/or listed as having a California Rare Plant Rank (CRPR) of 1 or 2.

The Project site and its offsite improvements footprint is not located within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Mammal or Amphibian Survey Areas, Narrow Endemic Plant Species Survey Area (NEPSSA), Criteria Area Species Survey Area (CASSA) for plants, nor does it contain suitable habitat for Delhi Sands flower-loving fly (*Rhaphiomidas terminates abdominalis*), sensitive riparian bird species, or fairy shrimp species. Therefore, focused surveys for these sensitive species are not required for MSHCP compliance. For these reasons, focused surveys for these species were not conducted for the Project.

#### 4.4.2.1 Literature Review

The following studies prepared for the Project site were reviewed and are included in **Appendix D** of this Draft EIR. As appropriate and applicable, information from these biological resource studies has been incorporated into this section of the Draft EIR. Additional literature specific to plants, animals, plant communities, and special-status species were also reviewed and are included in the references section of this Draft EIR.

- **Appendix D-1: Menifee Valley Project Biological Resources and Western Riverside County Multiple Species Habitat Conservation Plan Consistency Report, Menifee, Riverside County, California**, prepared by Rocks Biological Consulting, January 2022, revised December 8, 2022

- **Appendix D-2:** *Menifee Valley Project Off-Site Improvements Footprint Biological Resources and Western Riverside County Multiple Species Habitat Conservation Plan Consistency Report, Menifee, Riverside County, California*, prepared by Rocks Biological Consulting, July 2022, revised December 8, 2022
- **Appendix D-3:** *Menifee Valley Project Jurisdictional Delineation Report, Menifee, Riverside County, California*, prepared by Rocks Biological Consulting, July 2019
- **Appendix D-4:** *Menifee Valley Project Jurisdictional Delineation Report Addendum, Menifee, Riverside County, California*, prepared by Rocks Biological Consulting, July 2022
- **Appendix D-5:** *Western Riverside County Multiple Species Habitat Conservation Plan, Sections 6.1.2 and 6.3.2, Determination of Biologically Equivalent or Superior Prevention (DBESP) for the Menifee Valley Project*, prepared by Rocks Biological Consulting, August 2022<sup>1</sup>, revised November 3, 2022
- **Appendix D-6:** *Focused Burrowing Owl Survey Report, Menifee, Riverside County, California*, prepared by Rocks Biological Consulting, July 2022, revised November 23, 2022
- **Appendix D-7:** *Addendum to the Determination of Biologically Equivalent or Superior Preservation (DBESP) for the Menifee Valley Project (Additional Offsite Areas and Additional Jurisdictional Feature)*, VCS Environmental, September 18, 2023
- **Appendix D-8:** *Biological Technical Report and MSHCP Consistency Analysis: Menifee Valley Project (Additional Offsite Areas)*, VCS Environmental, September 2023

#### 4.4.2.2 Biological Resources and Habitat Assessment

As noted above, the evaluation of biological resources and habitat assessment for the Project site included literature review and reports from all recent and historical on-site surveys. The field surveys, including transect surveys for burrowing owl, were conducted on site and augmented with information from databases and other resources.

#### 4.4.3 Existing Environmental Setting

The Project site is an undeveloped, approximately 578-acre site<sup>2</sup>, located east of Interstate 215 (I-215) on State Route 74 (SR-74) between Menifee Road and Briggs Road in Menifee. The Project includes approximately 59.0 acres of off-site improvement areas including but not limited to areas along SR-74, Menifee Road, Briggs Road, and Matthews Road. The off-site disturbance footprint to facilitate construction is approximately 59.0 acres as shown in **Table 4.4.C** (provided later in this

<sup>1</sup> The mitigation ratio update recommended in the Menifee Valley Project Mitigation Memorandum will be added to the DBESP study provided in Appendix D-5.

<sup>2</sup> The project site acreage varies slightly among the various biological technical studies and does not include paved and dirt roads for purposes of the biological surveys.

section).<sup>3</sup> The off-site improvement footprint includes both developed and undeveloped land. The off-site components of the overall Menifee Valley Project will be referred to as the “off-site improvements footprint” in this text. The Project site and its off-site improvements footprint are located within Sections 13 and 24, Township 5 South, Range 3 West, within the United States Geological Survey’s (USGS) 7.5-minute *Romoland, California* quadrangle. Project elevations range from approximately 1,265 to 1,760 feet above mean sea level (amsl). Surrounding land consists of a mix of land uses, including industrial, residential, and public/quasi-public facilities (including Heritage High School). The Project survey area, defined as the project site and its off-site improvements footprint and areas within a surrounding 100-foot buffer, is primarily undeveloped with 3.5 acres of developed land consisting of paved roads as well as area devoid of vegetation, and 65.5 acres of developed land for its off-site improvement footprint. The Project site is primarily and was historically used for agricultural operations. Aquatic features (Feature 1, Feature 2, and Feature 2 Wetland) found within the on-site improvements footprint and aquatic features (Feature 1, Feature 3, Feature 3A, Feature 4, and Feature 4A) found within the off-site improvements footprint (**Figures 4.4-1A, 4.4-1B, and 4.4-1C**) are delineated features within the Project site that are considered jurisdictional under the Regional Water Quality Control Board (RWQCB) and the CDFW. These features do not support any potential United States Army Corps of Engineers (USACE) wetland or nonwetland ephemeral waters of the United States. An Approved Jurisdictional Determination (AJD) issued by the USACE in October 2019 confirms that none of the on-site drainages are USACE jurisdictional resources, and that no USACE permitting will be required for the Project. As for the off-site features, a jurisdictional delineation request form and AJD form will be provided to the USACE prior to any Project-related disturbances occurring in these areas to confirm that the features are not USACE jurisdictional via the USACE AJD process. Implementation of the Project would also result in off-site roadway improvements to address traffic impacts in conflict with the General Plan Circulation Element policies that strive to maintain desired LOS. Through project implementation, 0.25 acre of Ephemeral Streambed – Disturbed will be impacted within off-site roadway improvements (Feature 4, Feature 5, Feature 6, Feature 7, Feature 8, Feature 9). A jurisdictional delineation request form and AJD form will also be provided to the USACE prior to any Project-related disturbances occurring in the off-site roadway improvement areas to confirm that the features are not USACE jurisdictional via the USACE AJD process.

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<sup>3</sup> Acreage has been updated from the previous 61.4 acres of total impacts to the off-site improvements footprint. The change in acreage is due to a miscalculation that included areas of disturbance along Briggs Road near Granite Hill that were previously not included in the report for the overall Menifee Valley Project. Subsequently, the Menifee Valley Project Off-Site Improvements Footprint Biological Resources and Multiple Species Habitat Conservation Plan Consistency Report reflects a disturbance footprint of 61.4 acres in Table 5 of the document.

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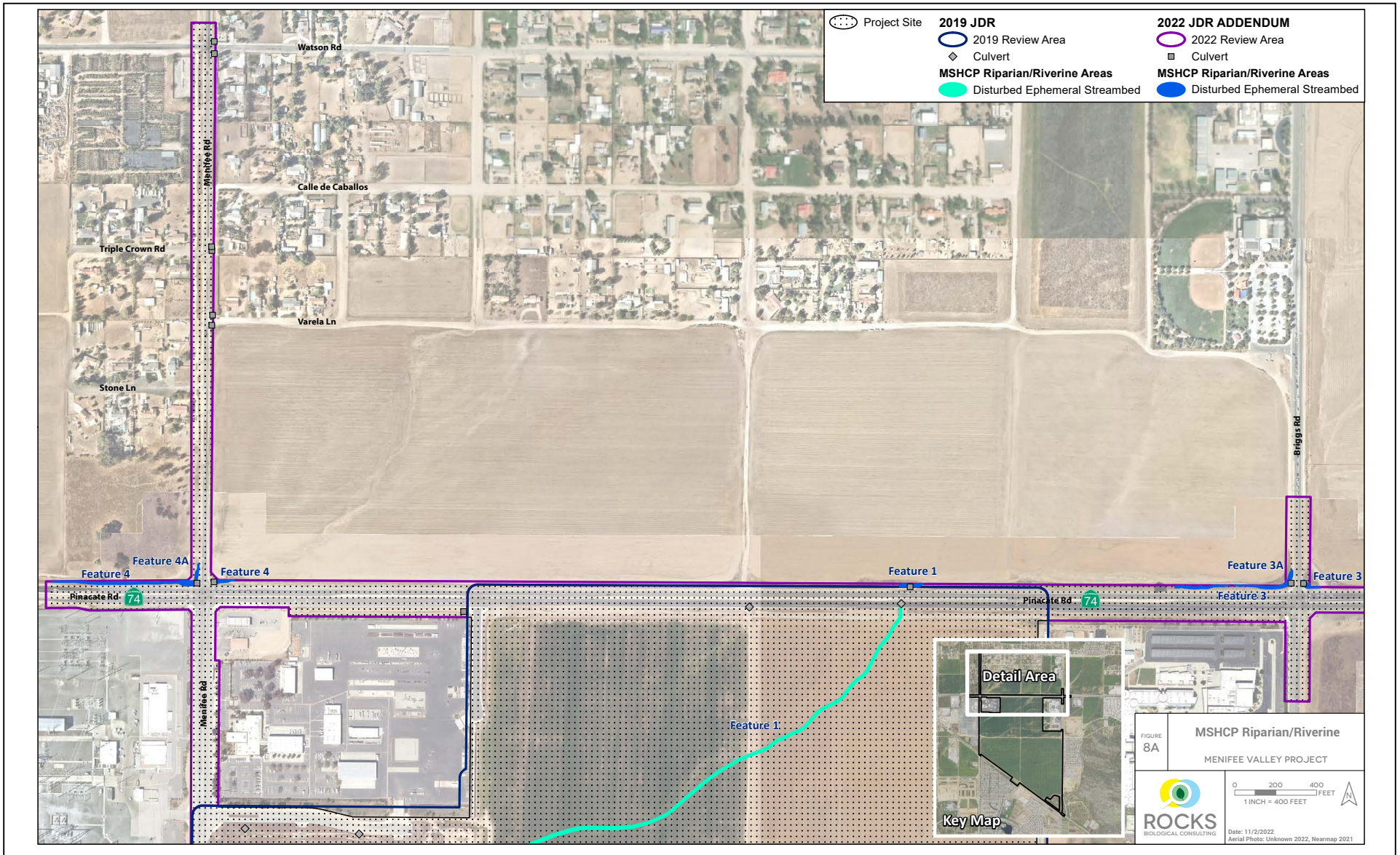
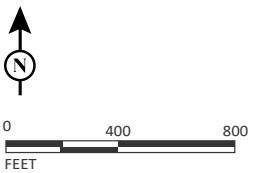


FIGURE 4.4-1A

LSA



SOURCE: Rocks Biological Consulting  
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Menifee Valley Specific Plan EIR  
 Aquatic Features

FIGURE 8A  
 MSHCP Riparian/Riverine  
 MENIFEE VALLEY PROJECT

Date: 11/2/2022  
 Aerial Photo: Unknown 2022, Nearmap 2021

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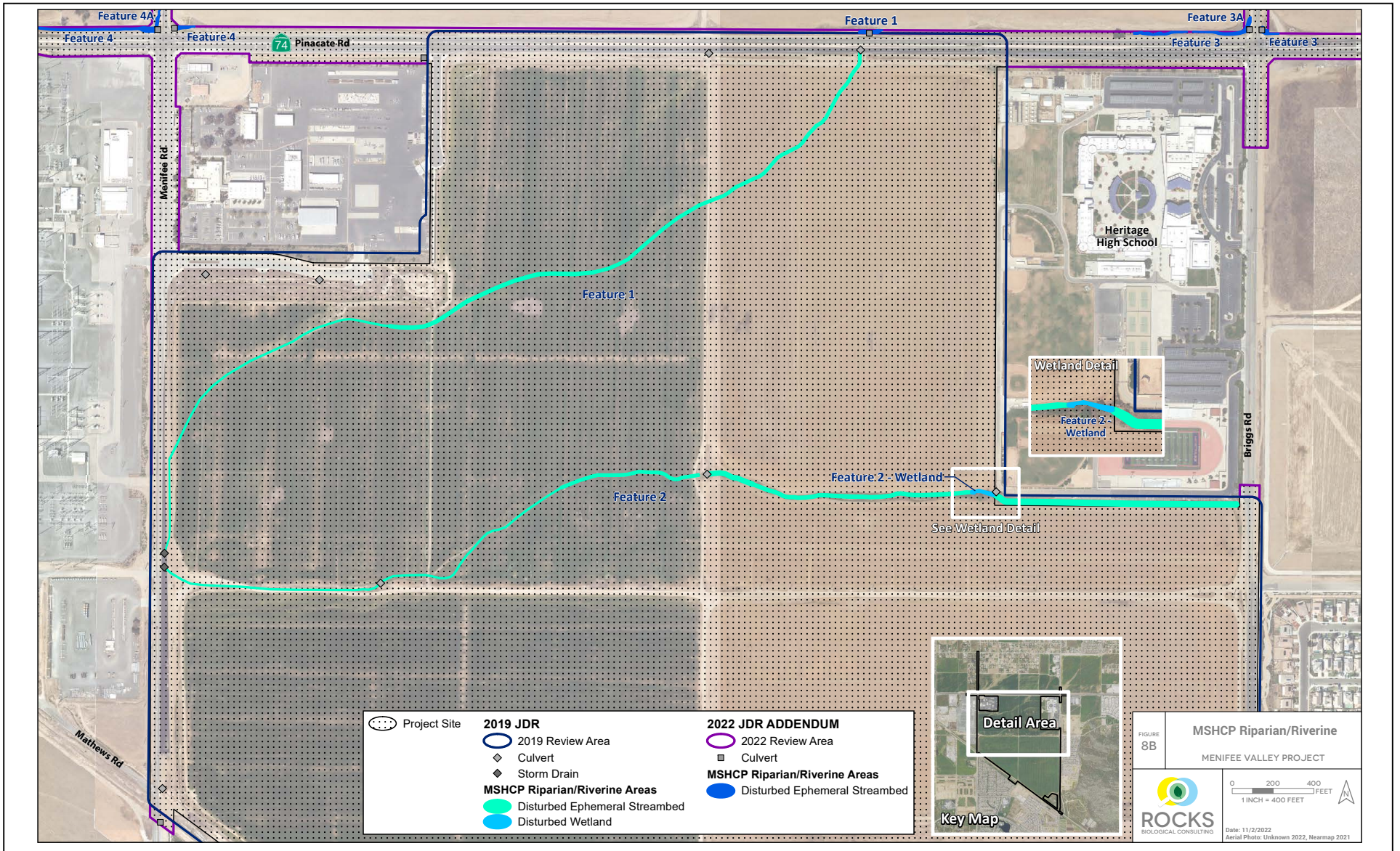


FIGURE 4.4-1B

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SOURCE: Rocks Biological Consulting

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FIGURE 8B

**MSHCP Riparian/Riverine**  
MENIFEE VALLEY PROJECT

Date: 11/2/2022  
Aerial Photo: Unknown 2022, Nearmap 2021

Menifee Valley Specific Plan EIR

Aquatic Features

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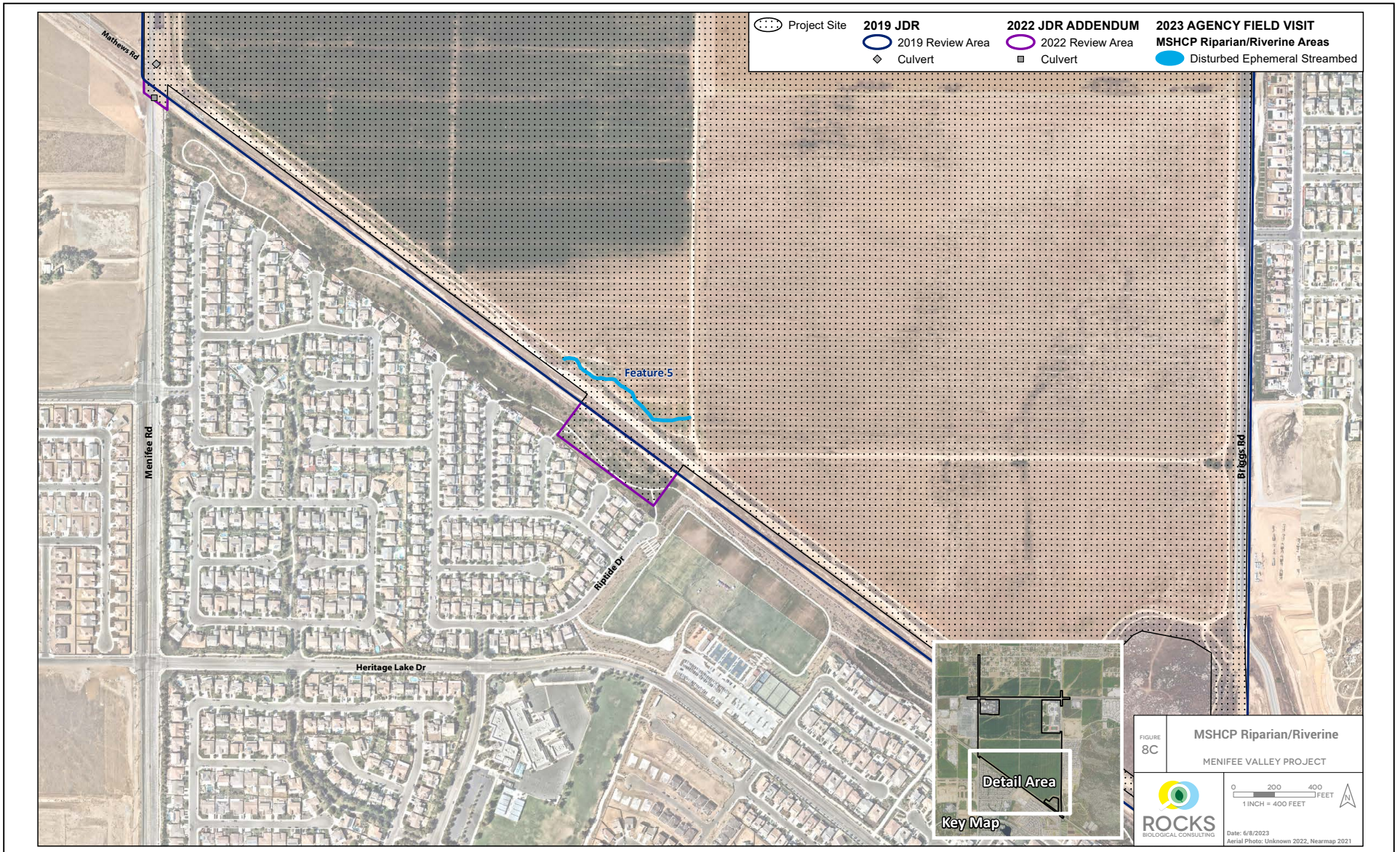


FIGURE 4.4-1C

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SOURCE: Rocks Biological Consulting

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Menifee Valley Specific Plan EIR

Aquatic Features

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#### 4.4.3.1 Vegetation

Vegetation communities and land covers within the proposed Project site consist of Active Agriculture, Developed, Disturbed, Ephemeral Streambed – Disturbed, Mulefat Thickets, Nonnative Grassland, Riversidean Sage Scrub, and Southern Willow Scrub – Disturbed. All on-site improvement areas will be impacted through project implementation. However, as noted in the Determination of Biologically Equivalent or Superior Prevention (DBESP), a 12.70-acre area northwest of the Matthews Road and Briggs Road intersection will remain in a natural condition as a passive park with preserved open space and is not included as part of the project site<sup>4</sup>. Vegetation types on the Project site are shown on **Figures 4.4-2A and 4.4-2B** and listed on **Table 4.4.A**.

**Table 4.4.A: Vegetation Within Study Area**

Vegetation Community/Land Use	Survey Area (acres)	
	On Site	Off Site
Active Agriculture	392.2	28.3
Developed	3.5	65.5
Disturbed	161.5	70.3
Ephemeral Streambed – Disturbed	1.9	<0.1
Mulefat Thickets	<0.01	<0.1
Nonnative Grassland	10.2	8.4
Riversidean Sage Scrub	8.7	5.4
Southern Willow Scrub – Disturbed	<0.01	—
<b>Totals for On Site and Off Site</b>	<b>578.1</b>	<b>177.9</b>
<b>Cumulative Total</b>	<b>756.0</b>	

Source 1: Table 1, Menifee Valley Center Biological Resources and Western Riverside County MSHCP Consistency Report (RBC 2022).

Source 2: Table 1, Menifee Valley Project Off-Site Improvements Footprint Biological Resources and Western Riverside County MSHCP Consistency Report (RBC 2022).

MSHCP = Multiple Species Habitat Conservation Plan

RBC = Rocks Biological Consulting

**Active Agriculture.** The Project site contains 392.2 acres of Active Agriculture. This land cover has previously been used to cultivate barley (*Triticum* sp.) and watermelon (*Citrullus* sp.) and are routinely disced and plowed. The off-site improvements footprint includes 28.3 acres of active agriculture. This active agricultural land cover occurs within the property boundary and areas north of SR-74, and is routinely disced and plowed.

**Developed.** The Project site contains approximately 3.5 acres of developed land which consists of paved roads at the perimeter of the site that bisect the site in east-west and north-south directions. The off-site improvements footprint includes 65.5 acres of developed land, which consists of paved roads and surfaces, residential and commercial buildings, and other areas devoid of vegetation.

<sup>4</sup> Western Riverside County Multiple Species Habitat Conservation Plan, Sections 6.1.2 and 6.3.2, Determination of Biologically Equivalent or Superior Prevention (DBESP) for the Menifee Valley Project, prepared by RBC, August 2022, revised November 3, 2022

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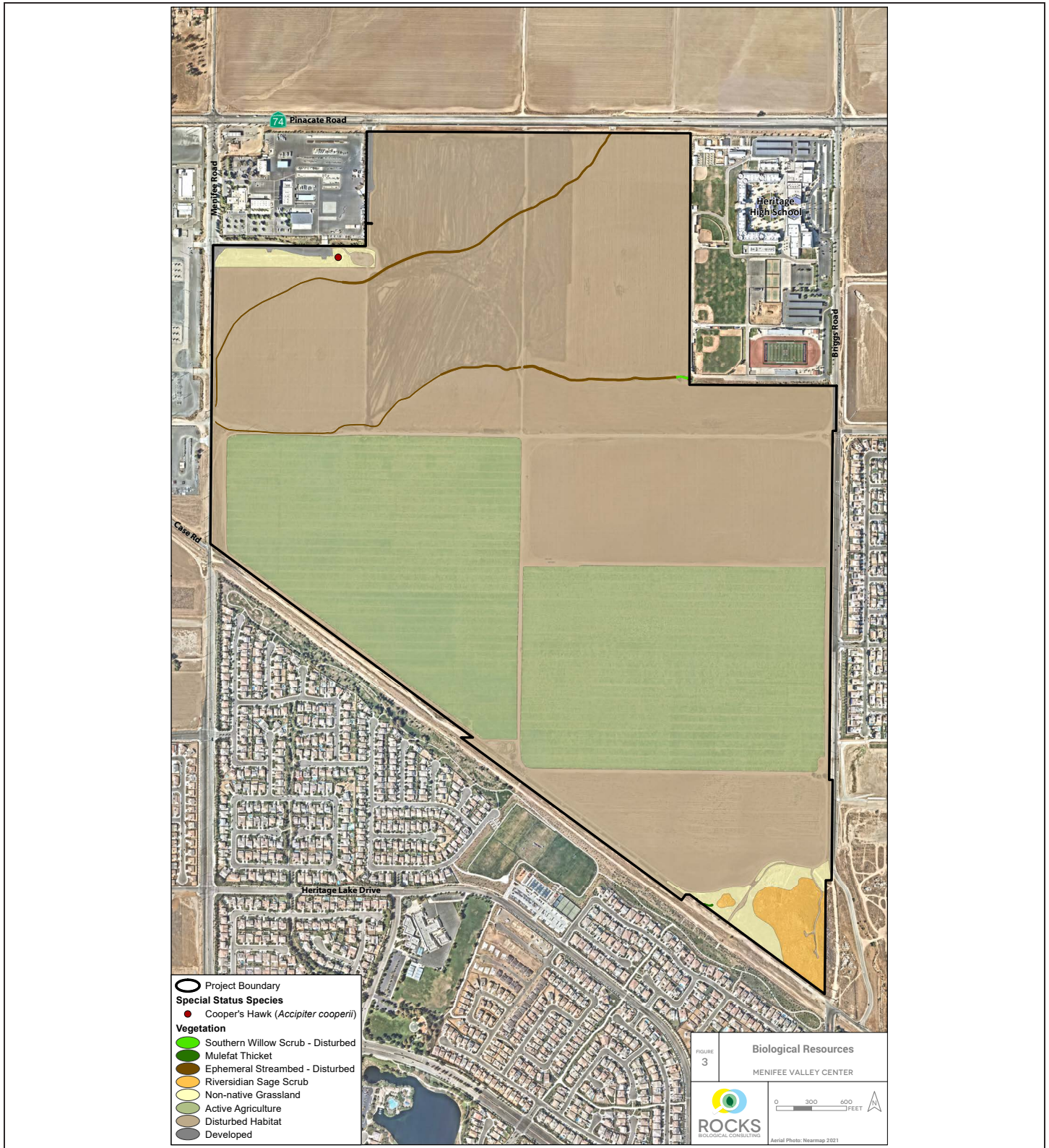
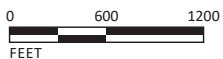


FIGURE 4.4-2A

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SOURCE: Rocks Biological Consulting

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Menifee Valley Specific Plan  
Vegetation Communities

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**Disturbed.** The Project site contains approximately 161.5 acres of Disturbed habitat. This habitat consists of largely disced parcels previously used for agriculture as well as dirt roads used to maintain the active agriculture land on site. The off-site improvements footprint includes 70.3 acres of disturbed habitat, including lands that have been graded, cleared, or otherwise directly impacted by anthropogenic activity, and does not support native vegetation.

**Ephemeral Streambed – Disturbed.** The Project site contains approximately 1.9 acres of disturbed Ephemeral Streambed. Ephemeral streambeds found on site are highly disturbed due to active agricultural operations but still show signs of intermittent water flow. Streambeds are devoid of vegetation and contain an indicator of hydrology in the form of an ordinary high water mark (OHWM). The off-site improvements footprint includes <0.1 acre of disturbed ephemeral streambed that has the presence of an OHWM, indicating the ephemeral flow of water within this subtype of vegetation.

**Mulefat Thickets.** The Project site contains approximately <0.01 acre of Mulefat Thickets habitat. This habitat is exclusively composed of mulefat (*Baccharis salicifolia*), is isolated from the ephemeral streambeds and southern willow scrub on site, and is immediately surrounded by nonnative grassland. The off-site improvements footprint includes <0.1 acre of mulefat thickets that is immediately surrounded by nonnative grassland and disturbed habitat.

**Nonnative Grassland.** The Project site contains approximately 10.2 acres of Nonnative Grassland habitat. This habitat is composed of ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), slender wild oat (*Avena barbata*), and soft chess (*Bromus hordeaceus*). Other species observed within this habitat include tocalote (*Centaurea melitensis*), shortpod mustard (*Hirschfeldia incana*), and tumbleweed (*Salsola australis*). This habitat is generally not suitable for other native or endangered plant species because the presence of nonnative grasses and weeds eliminates suitable habitat for native vegetation. The off-site improvements footprint includes 8.4 acres of nonnative grassland with dense to sparse cover of annual grasses, often with native and nonnative annual forbs.

**Riversidean Sage Scrub.** The Project site contains approximately 8.7 acres of Riversidean Sage Scrub habitat. This habitat is dominated by populations of California buckwheat (*Eriogonum fasciculatum*). This habitat is a sub-type of coastal sage scrub and is found on xeric steep slopes that release stored moisture slowly. The off-site improvements footprint includes 5.4 acres of Riversidean sage scrub that is concentrated on a large hill in the southeast corner of the Project site, known as Granite Hill.

**Southern Willow Scrub – Disturbed.** The Project site contains approximately <0.01 acre of Southern Willow Scrub habitat. This habitat is characterized by populations of Goodding's black willows (*Salix gooddingii*), sandbar willow (*Salix exigua*), and tamarisk (*Tamarix* sp.). This patch also contains an understory of freshwater marsh primarily made up of broadleaf cattail (*Typha latifolia*) and common spikerush (*Eleocharis palustris*).

#### 4.4.3.2 Plant Species

The MSHCP requires habitat assessments, surveys, and impact evaluations for certain special-status plant species within the designated survey areas for each species. These survey areas are referred to

as NEPSSA and CASSA plants in the MSHCP, and each survey area is associated with a suite of species that require assessment of impact potential. Focused surveys for sensitive plant species were not conducted for the Project. Section 6.1.3 of the MSHCP requires focused surveys for specified sensitive plant species if the project is within an NEPSSA and suitable habitat is present. The Project site and its off-site improvements footprint does not occur within a NEPSSA or within a mapped survey area for CASSA plant species. Impacts, whether direct or indirect, to sensitive plant species with MSHCP designated survey areas are not anticipated to occur as a result of project implementation.

#### 4.4.3.3 Animal Species

The Project site and its off-site improvements footprint currently provide suitable habitat for special-status animal species listed in **Table 4.4B**.

Habitat for riparian bird species, including least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), is not present within the Project site. The <0.01 acre of southern willow scrub on site is isolated and disturbed; therefore, due to the lack of suitable riparian habitat, no riparian bird species have a reasonable potential to occur on site and therefore will not be affected by the project. The MSHCP indicates the Project site is not within a MSHCP designated amphibian or mammal survey area.

As described in Section 2.1.4 of the MSHCP, 146 Covered Species are addressed in the MSHCP. 118 of those species are considered to be adequately conserved under the MSHCP. There are 28 Covered Species that remain and need to meet certain conservation requirements to be considered adequately conserved. The species-specific conservation objectives for the remaining 28 species can be found in Section 9.0 of the MSHCP. For those species considered adequately conserved, Take Authorization is allowed through the California Natural Community Conservation Planning (NCCP) Permit and for animals through the Section 10(a) Permit issued in conjunction with the Implementing Agreement (IA) of the MSHCP. For example, according to Table 9-3 of the MSHCP, for California spotted owl (*Strix occidentalis occidentalis*) to be considered adequately conserved under the MSHCP, a Memorandum of Understanding must be executed with the Forest Service that addresses management for this species on Forest Service Land. As noted above, the conservation objectives for the 28 remaining Covered Species varies by species.

**Burrowing Owl.** The proposed Project site, including the off-site improvements footprint, is located within the MSHCP Burrowing Owl Survey Area and suitable habitat is present. Protocol surveys for this species conducted in 2016, 2018, and 2022 were negative for the presence of this species. Surveys for the off-site improvements footprint were also negative. Several small mammal burrows suitable for burrowing owl were observed during the 2022 survey effort. However, no reports indicate documented prior use of the site or the Project survey area by burrowing owl. Burrowing owl is covered and adequately conserved under the MSHCP, but surveys are required within indicated habitats and/or survey areas.

**Table 4.4.B: Special-Status Species**

Species	Status
Southern California rufous-crowned sparrow <i>Aimophila ruficeps canescens</i>	US: – CA: WL MSHCP: C
Cooper’s hawk <i>Accipiter cooperii</i> (nesting)	US: – CA: WL MSHCP: C
Burrowing owl <i>Athene cunicularia</i> (burrow sites)	US: – CA: SSC (breeding) MSHCP: S
Northern harrier <i>Circus hudsonius</i> (nesting)	US: – CA: SSC (breeding) MSHCP: C
California horned lark <i>Eremophila alpestris actia</i>	US: – CA: WL MSHCP: C
Loggerhead shrike <i>Lanius ludovicianus</i> (nesting)	US: – CA: SSC (breeding) MSHCP: C
Coastal California gnatcatcher <i>Poliottila californica californica</i>	US: FT CA: SSC MSHCP: C
Yellow warbler <i>Setophaga petechia</i> (nesting)	US: CA: SSC (breeding) MSHCP: C
Dulzura pocket mouse <i>Chaetodipus californicus femoralis</i>	US: – CA: SSC MSHCP: –
Stephens’ kangaroo rat <i>Dipodomys stephensi</i>	US: FT CA: ST MSHCP: C
Los Angeles pocket mouse <i>Perognathus longimembris brevinasus</i>	US: – CA: SSC MSHCP: S

Source 1: California Natural Diversity Database (CDFW 2022)

Source 2: Biogeographic Information and Observation System (CDFW n.d.)

Source 3: Information for Planning and Consultation (IPaC) Database (USFWS n.d.)

C = Species is adequately conserved under the MSHCP

FT = Federally listed as Threatened

S = Species is covered and adequately conserved under the MSHCP, but surveys are required within indicated habitats and/or survey areas

SSC = CDFW Species of Special Concern

ST = State listed as Threatened

WL = CDFW Watch List Species

**Southern California Rufous-Crowned Sparrow.** During focused burrowing owl surveys conducted in 2022, southern California rufous-crowned sparrow was observed in the proximity of the southeastern portion of the off-site improvements footprint. The overall Project site and its off-site improvements offer suitable foraging and nesting habitat within/around the Riversidean sage scrub portions found on site. Southern California rufous-crowned sparrow is covered and adequately conserved under the MSHCP.

**Northern Harrier.** During focused burrowing owl surveys conducted in 2022, one individual northern harrier was observed flying over the Project site. This species has a high potential to occur within the Project site and its off-site improvements footprint. Northern harrier is a California SSC when nesting. This species is known to breed from sea level to 5,700 feet amsl in California's central valley. Nests are typically placed on the ground along marsh edges.<sup>5</sup> Additionally, their home range usually includes fresh water despite having a probability of nesting in grasslands, grainfields, and sagebrush flats found several miles from water.<sup>6</sup> This species has continued with a declining population trend particularly in southern California. No reports indicate documented prior nesting within the site or within the Project survey area by this species. Northern harrier is covered and adequately conserved under the MSHCP.

**Loggerhead Shrike.** During surveys conducted in 2021 and 2022, no loggerhead shrike were observed. However, suitable foraging habitat for this species does occur on the Project site. This species requires dense trees and shrubs for nesting, which the site does not offer. Loggerhead shrike is not anticipated to nest within the Project site. Loggerhead shrike is covered and adequately conserved under the MSHCP.

**Cooper's Hawk.** During surveys conducted in 2021, one individual Cooper's hawk was observed along Biscayne Road. The Project site offers suitable foraging habitat for this species but lacks suitable trees for nesting on site. Cooper's hawk is not anticipated to nest within the Project site. Cooper's hawk is covered and adequately conserved under the MSHCP.

**Coastal California Gnatcatcher.** During surveys conducted between 2016 and 2022, no coastal California gnatcatcher has been observed. Surveys conducted between 2016 and 2022 by RBC and Cadre Environmental were not coastal California gnatcatcher focused. The United States Fish and Wildlife Service (USFWS) Sensitive Species database has a record of a coastal California gnatcatcher occurring within Riversidean sage scrub in the southeast corner of the Project site in 2012. While suitable habitat for this species is present, the Riversidean sage scrub on site is isolated and this species is particularly vulnerable to habitat fragmentation. Given that the habitat remains in the same condition as it was during the 2012 surveys, coastal California gnatcatcher has a moderate potential to occur. For the on-site improvements footprint, 8.7 acres of Riversidean sage scrub occurs. For the off-site improvements footprint, 5.4 acres of Riversidean sage scrub occurs. The Riversidean sage scrub occurring within the on-site and off-site improvements footprint is contiguous and found northwest and east of the Briggs Road and Case Road intersection. As noted in **Table 4.4.C**, 7.2 acres of Riversidean sage scrub found within on-site and off-site areas will be preserved. Protocol surveys for this species were not conducted given that this species is adequately conserved by the MSHCP and such surveys are not required, as described in Table 9-2 Species Conservation Summary of the MSHCP.

<sup>5</sup> Brown, L., and D. Amadon. 1968. Eagles, hawks and falcons of the world. 2 Vols. Country Life Books, London. 945pp.

<sup>6</sup> Zeiner, D.C. et al. 1988-1990. California's Wildlife. Vol. I-III. California Depart. of Fish and Game, Sacramento, California.

**Table 4.4.C: Vegetation Communities/Land Use Impacts  
Within Study Area**

Vegetation Community/Land Use	Study Area Impacts (acres)		Preservation (acres)	
	On Site	Off Site	On Site	Off Site
Active Agriculture	392.2	0.5	—	—
Developed	3.5	29.0	—	—
Disturbed	161.3	27.5	0.3	—
Ephemeral Streambed – Disturbed	1.9	—	—	—
Mulefat Thicket	<0.01	<0.1	—	—
Nonnative Grassland	6.3	1.0	3.9	—
Riversidean Sage Scrub	1.5	1.9	7.2	—
Southern Willow Scrub – Disturbed	<0.01	—	—	—
<b>Total On Site and Off Site</b>	<b>566.8</b>	<b>59.0</b>	<b>11.3</b>	<b>0</b>
<b>Cumulative Total</b>	<b>628.2</b>		<b>11.3</b>	

Source 1: Table 9, Menifee Valley Center Biological Resources and Western Riverside County MSHCP Consistency Report (RBC 2022).

Source 2: Table 7, Menifee Valley Project Off-Site Improvements Footprint Biological Resources and Western Riverside County MSHCP Consistency Report (RBC 2022).

MSHCP = Multiple Species Habitat Conservation Plan

RBC = Rocks Biological Consulting

**Yellow Warbler.** During focused burrowing owl surveys conducted in 2022, this species was detected within the areas surrounding the project. However, the Project site does not offer suitable mature riparian habitat for yellow warbler. The individual observed during the burrowing owl surveys in 2022 was likely passing through the site to access suitable foraging/nesting habitat in the vicinity of the Project. Impacts to this species are not expected to occur with project implementation. Yellow warbler is covered and adequately conserved under the MSHCP.

**California Horned Lark.** During surveys conducted in 2018 and 2022, California horned lark was observed within the Project site. The overall Project site offers suitable foraging and nesting habitat for this species. California horned lark is covered and adequately conserved under the MSHCP.

**Stephens’ Kangaroo Rat.** The on-site and off-site improvement footprints are not located within an MSHCP mammal survey area, thus no trapping was required for the surveys conducted within the last 5 years. Suitable habitat in the form of annual grassland with sparse shrub cover does occur for this species on the Project site and its off-site improvements footprint. However, the historical agricultural operations, including disced soil, have likely precluded this species. Although there is very low potential for Stephens’ kangaroo rat (SKR) to occur within the Project site and its off-site improvements footprint, the on-site and off-site improvement footprints are within the SKR Habitat Conservation Plan (HCP) Fee Area, and payment of the appropriate fees will be required. The on-site and off-site improvement footprints are not located within an MSHCP mammal survey area. Stephens’ kangaroo rat is covered and adequately conserved under the MSHCP.

**Dulzura Pocket Mouse.** The on-site and off-site improvement footprints are not located within an MSHCP mammal survey area, thus no trapping was required for surveys conducted between 2016 and 2022. Database reviews indicate one historical occurrence of Dulzura pocket mouse from 1993 within 1 mile of the Project site. However, no suitable border zones between grassland and

chaparral habitats for this species occur on the Project site or on its off-site improvements footprint. Dulzura pocket mouse is not expected to occur within the site.

**Los Angeles Pocket Mouse.** The on-site and off-site improvement footprints are not located within an MSHCP mammal survey area, thus no trapping was required for surveys conducted between 2016 and 2022. Database reviews indicate historical occurrences of Los Angeles pocket mouse within 1 mile of the Project site. However, no suitable Riversidean alluvial fan sage scrub and native grassland habitat capable of supporting Los Angeles pocket mouse is present. The Project site is not located within a mammal survey area, and no trapping is required. Los Angeles pocket mouse is covered and adequately conserved under the MSHCP. Furthermore, this species is not expected to occur within the site.

#### 4.4.3.4 On-Site Aquatic Resources

The Project site is undeveloped and is currently and has historically been used for agricultural operations. Two drainages are present within the proposed Project site and several features occur within the off-site improvements footprint.

**Vernal Pools.** Section 6.1.2 of the MSHCP defines vernal pools as “seasonal wetlands that occur in depression areas that have wetland indicators of all three parameters (soils, vegetation, and hydrology) during the wetter portion of the growing season, but normally lack wetland indicators of hydrology and/or vegetation during the drier portion of the growing season”. Seasonal pooling suitable as fairy shrimp habitat were not present on site or within the off-site improvements footprint; therefore, focused surveys for fairy shrimp were not conducted. Several field surveys conducted by RBC on December 28, 2017 (the wetter portion of the growing season); August 13, 2018 (the drier portion of the growing season); April 26, 2019 (the wetter portion of the growing season); October 15, 2021 (the wetter portion of the growing season); February 24, 2022 (the wetter portion of the growing season); and May 26, 2022 (the drier portion of the growing season), determined that the site lacked suitable soils, characteristic hydrophytic vegetation, and depressions or low-lying areas that would support vernal pools. Due to the lack of suitable habitat for sensitive fairy shrimp species and no areas within the Project survey area meeting the MSHCP definition for vernal pools, no focused surveys are required.

#### 4.4.4 Regulatory Setting

Policies and regulations that potentially apply to the biological resources associated with the Project are listed below. Any impacts that conflict with these policies and regulations could be considered significant under CEQA.

##### 4.4.4.1 Federal Regulations

**United States Endangered Species Act.** The USFWS, pursuant to the FESA, protects endangered and threatened species. FESA defines an endangered species as a species in danger of extinction throughout all or a significant part of its range and a threatened species as one that is likely to become endangered in the foreseeable future. USFWS also identifies species proposed for listing as endangered or threatened. Other than for federal actions, there is no formal protection for

candidate species under FESA. However, consultation with USFWS regarding species proposed for listing can prevent project delays that could occur if a species is listed prior to project completion.

**Migratory Bird Treaty Act.** The federal Migratory Bird Treaty Act (MBTA) governs the take, possession, import, export, transport, selling, purchasing, or bartering of migratory birds and their eggs, parts, and nests. Section 704 of the MBTA states that the United States Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing take while ensuring that take is compatible with protection of the species. Most bird species are protected under the MBTA.

#### 4.4.4.2 State Regulations

**California Fish and Game Code – Nesting Birds and Raptors.** Under the California Fish and Game Code, it is unlawful to take, possess, or needlessly destroy any bird or the nests or eggs of any bird species except as otherwise provided in the California Fish and Game Code and its regulations. This code also specifically protects raptors, including owls. The CDFW considers a disturbance that results in nest abandonment or loss of reproductive effort as take. Disturbances of active nesting territories should be avoided during the nesting season.

**California Endangered Species Act.** The CDFW, through provisions of the California Administrative Code and policies formulated by the California Fish and Game Commission, regulates plant and animal species in danger of, or threatened with, extinction based on the list of endangered, threatened, and candidate species developed by the Fish and Game Commission. Endangered species are native species or subspecies of plants and animals that are in serious danger of becoming extinct throughout all or a significant part of their range. Threatened species are those species that, although not presently threatened with extinction, are likely to become endangered in the foreseeable future without special protection and management. Candidate species are species that the Fish and Game Commission has formally noticed as being under review for addition to the list of endangered or threatened species or as a species proposed for listing.

#### 4.4.4.3 Regional Regulations

**Western Riverside County Multiple Species Habitat Conservation Plan.** The MSHCP covers 146 species and 14 natural communities within a plan area of about 1.26 million acres, or 1,970 square miles, extending from the western Riverside County boundary to the San Jacinto Mountains. Roughly 506,000 acres are planned for conservation. The MSHCP was implemented in 2003 and is administered by the Western Riverside County Regional Conservation Authority (RCA).

The purpose of the MSHCP is to conserve large contiguous blocks of habitat to maintain species richness and density, to ensure population viability, to protect habitats from encroachment, and to reduce nonnative species invasion. The Criteria Area consists of quarter-section (161-acre) criteria cells within the MSHCP planning boundary that will be used to assemble 153,000 acres of new conservation land (the Conservation Area). The MSHCP provides for the assembly of a Reserve

consisting of Core Areas and Linkages for the conservation of Covered Species.<sup>7</sup> The MSHCP provides an incentive-based program (the Habitat Evaluation and Acquisition Negotiation Strategy) for adding land to the MSHCP. A Core is the largest planning unit, and its extent is large enough to support the population of several species. A Linkage is a habitat connection between Cores that is wide enough and long enough to provide live-in habitat and movement corridors for plants, herbivores, and carnivores. Projects in proximity to the MSHCP Conservation Area may result in edge effects that would adversely affect biological resources within the MSHCP Conservation Area. MSHCP Urban/Wildlands Interface Guidelines (MSHCP Section 6.1.4) are intended to reduce such indirect effects.

The MSHCP requires focused surveys for certain plant and animal species for project sites within designated survey areas when potential suitable habitat is present. In addition to species that have designated survey areas, surveys for listed riparian birds are required when suitable riparian habitat is present, and surveys for listed fairy shrimp species are required when vernal pools or other suitable habitat is present.

The MSHCP sets forth conservation goals for each covered species. A development project must either demonstrate that the conservation goals for each covered species (that were identified within the project site) have been met or prepare a DBESP report enumerating mitigation measures to achieve equivalent or superior preservation for each not conserved covered species through deed restriction, conservation easement, or other appropriate method. Mitigation measures may include restoration and/or enhancement of on-site and/or off-site habitat.

The City of Menifee was incorporated in 2008. The City was not a party to the Implementing Agreement for the MSHCP when it was implemented in 2004. There were 13 other cities that were parties to the original Implementing Agreement, and 4 additional cities have become member agencies of the RCA since the Implementing Agreement was adopted in 2004, including Menifee. Since the incorporation of the City of Menifee, it has since signed the Joint Powers Agreement that governs the RCA's operations.

The Project site and the off-site improvements footprint is in the MSHCP plan area, but not within any Criteria Cells, Core Groups, Cores, or Linkages. The Project site is in an area where burrowing owl surveys are required. The Project site is not within a mapped survey area for mammals, amphibians, narrow endemic plant species, or CASSA for plants.

“Covered species adequately conserved” under the MSHCP means covered species where the species objectives set forth in the MSHCP are met and which are provided take authorization through the Natural Community Conservation Plan (NCCP) Permit and, for animals, through the FESA Section 10(a) Permit issued for the MSHCP.

***MSHCP Mitigation Fees.*** Developments within the MSHCP Plan Area are charged mitigation fees, which are one of the primary sources of funding for implementing the MSHCP.

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<sup>7</sup> Western Riverside County Regional Conservation Authority. 2022. Habitat Conservation. Website: <https://www.wrc-rca.org/habitat-conservation/>, accessed October 14, 2022.

Fees for projects within the City of Menifee are payable to the City, and fees for projects in unincorporated Riverside County are payable to the County of Riverside (County).

**MSHCP Construction Guidelines.** Project construction activities would be required to comply with Construction Guidelines set forth in Section 7.5.3 of the MSHCP.

**MSHCP Best Management Practices.** The design and construction of projects developed pursuant to the Specific Plan would be required to comply with MSHCP Best Management Practices (BMPs) set forth in Appendix C of the MSHCP.

**Stephens' Kangaroo Rat (SKR) Habitat Conservation Plan (HCP).** The MSHCP and the SKR HCP are the principal habitat conservation plans in western Riverside County. Riverside County established a boundary in 1996 for protecting the Stephens' kangaroo rat, a federally and state threatened species. As described in the MSHCP Implementation Agreement, a Section 10(a) Permit, and California Fish and Game Code Section 2081 Management Authorization were issued to the Riverside County Habitat Conservation Agency (RCHCA) for the Long-Term SKR HCP and was approved by the USFWS and CDFW in August 1990. Relevant terms of the SKR HCP have been incorporated into the MSHCP and its Implementation Agreement. The SKR HCP will continue to be implemented as a separate HCP; however, to provide the greatest conservation for the largest number of Covered Species, the Core Reserves established by the SKR HCP are managed as part of the MSHCP Conservation Area consistent with the SKR HCP. Actions shall not be taken as part of the implementation of the SKR HCP that will significantly affect other Covered Species. Take of Stephens' kangaroo rat outside of the boundaries but within the MSHCP area is authorized under the MSHCP and the associated permits.

#### 4.4.4.4 Local Regulations

**City of Menifee Municipal Code.** Menifee Landscape Standards (Section 9.2 of the Municipal Code) consists of Section 9.205.030 of the City Municipal Code, which establishes Tree Preservation Regulations that are described below.

**Section 9.205.030 (Tree Preservation Regulations).** This section serves to outline its purpose to protecting mature trees that are in good health, do not pose safety threats, are not nuisance trees, and those categorized as heritage trees. Application of a tree removal permit is required despite status of existing trees.

Project impacts to protected trees shall follow this guideline: Existing healthy trees with a 6-inch or larger trunk diameter measured at 4 feet from the surrounding grade shall be replaced at a three-to-one ratio if removed, in addition to any other new tree installation required. Existing healthy trees, with a 6-inch or larger trunk diameter measure at 4 feet from the surrounding grade which are retained on site shall be credited toward the tree installation requirements of this chapter at a one-to-two ratio (one tree saved equals a two-tree credit toward the installation of new trees required).

In the event that a heritage tree is removed, required replacement with the largest nursery-grown tree(s) available as determined by the approval authority. To determine adequate replacement values for heritage trees, the applicant may be required to submit an

independent appraisal prepared by a horticulturist, ISA-certified arborist or licensed landscape architect to determine the replacement value of the tree(s) to be removed.

All trees that are to remain on site are to be enclosed by an appropriate construction barrier, such as a chain-link fence or other means, prior to the issuance of a grading permit or building permit, or before commencement of work, whichever occurs first. Fences are to remain in place during all phases of construction and may not be removed until construction is complete. Protection of trees, their, roots, and drip lines is also required. Compaction of soil within any part of the tree, including its drip line, is not permitted.

#### 4.4.5 Thresholds of Significance

The City has not established local CEQA significance thresholds as described in Section 15064.7 of the *State CEQA Guidelines*. Therefore, significance determinations utilized in this section are based on Appendix G of the *State CEQA Guidelines*. According to Section I of Appendix G to the *State CEQA Guidelines*, the Project would result in a significant impact to biological resources if the Project or any Project-related component would:

- Threshold 4.4-1:** Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or the United States Fish and Wildlife Service.
- Threshold 4.4-2:** Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or the United States Fish and Wildlife Service.
- Threshold 4.4-3:** Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- Threshold 4.4-4:** Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.
- Threshold 4.4-5:** Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Threshold 4.4-6:** Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

## 4.4.6 Impact Analysis

### 4.4.6.1 Special Status Species

**Threshold 4.4-1: Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or the United States Fish and Wildlife Service?**

To address regional biological resources and habitat sustainability, the MSHCP was developed in 2001 by the County of Riverside in cooperation with State and federal agencies. The MSHCP applies to unincorporated and incorporated Riverside County land, excluding Native American tribal land, west of the crest of the San Jacinto Mountains to the Orange County line. It applies to a total area of approximately 1.26 million acres (approximately 1,997 square miles) and is one of the largest conservation plans in the United States. The MSHCP covers multiple species and multiple habitats within multiple jurisdictions. The City of Menifee is a member agency to the MSHCP.

The MSHCP was conceived, developed, and is being implemented specifically to address the direct, indirect, cumulative, and growth-related effects on covered species resulting from build out of planned land use and infrastructure, including the proposed project. The MSHCP involves efforts by the County, State, and federal governments, the 18 cities in western Riverside County, and private and public entities engaged in construction activities that potentially affect the species covered under the MSHCP. The MSHCP specifies an obligation of local projects, both public and private, to mitigate their impacts on species.

Biological resources on the Project site were evaluated in the Focused Burrowing Owl Survey Report, Jurisdictional Delineation Report, Jurisdictional Delineation Report Addendum, DBESP report, and Biological Resource Assessment and MSHCP Consistency Analysis (**Appendix D**), which were peer reviewed by LSA to ensure the proposed Project is consistent with the MSHCP and to analyze potential impacts to candidate, sensitive, and special-status species and associated habitat.

**On-Site Improvements.** The Project site is located within the boundaries of the MSHCP and is mapped within an MSHCP Burrowing Owl Survey Area but is not located within the CASSA for plant species, NEPSSA, Mammal Survey Area, or Amphibian Survey Area. Accordingly, various reconnaissance-level biological resource assessment field studies were conducted at the site between 2016 and 2022. Field surveys conducted in accordance with the MSHCP requirements included a burrowing owl habitat suitability assessment, vegetation mapping, jurisdictional delineation, general biological assessment, and focused burrowing owl surveys (**Appendix D**).

The reconnaissance-level biological resources assessment field studies determined that the habitat on the Project site has been altered. The site has undergone disturbance due to agricultural operations. Consequently, a majority of the vegetation communities present on site are disturbed. The Project site supports eight vegetation communities and other land covers, including Active Agricultural, Developed, Disturbed, Ephemeral Streambed – Disturbed, Mulefat Thickets, Nonnative Grassland, Riversidean Sage Scrub, and Southern Willow Scrub – Disturbed. Through project implementation, the proposed project will result in permanent impacts to upland vegetation

communities, including Mulefat Thickets, Nonnative Grassland, and Riversidean Sage Scrub as well as riparian vegetation in the form of Southern Willow Scrub – Disturbed. These impacts would be considered potentially significant due to the incremental loss of the habitat types listed above and subsequent impacts to special-status species. **Mitigation Measure BIO-1** has been identified to address potential impacts to vegetation communities found within the site. **Table 4.4.C** describes impact totals for the on-site improvement footprints. These impacts can be offset and reduced to a less than significant level through payment of MSHCP Local Development Mitigation Fees as noted in Section 6.1 of the MSHCP. Because project implementation will result in loss of eight different vegetation communities that provide suitable habitat for various animal species including several special-status species that have the potential to occur within the on-site improvements footprint impacts would be potentially significant. As discussed in **Section 4.4.3.3**, the Project site provides suitable habitat for eight animal species found within the on-site improvements footprint. Loggerhead shrike, Dulzura pocket mouse, and Los Angeles pocket mouse are all California SSCs that have been documented through the CNDDDB as occurring within 1 mile of the Project site. A majority of the Project site has been disturbed, and the habitat conditions required by these species are not present within the site. While foraging habitat exists for loggerhead shrike, no dense tree and shrub habitat for nesting is present on site. Dulzura pocket mouse is not expected to occur because this species prefers border zones between grassland and chaparral habitats that the site does not offer. Los Angeles pocket mouse is not expected to occur due to the sites lack of Riversidean alluvial fan sage scrub and native grassland. Loggerhead shrike and Los Angeles pocket mouse are covered and adequately conserved under the MSHCP. The other five animal species (burrowing owl, Cooper’s hawk, California horned lark, Stephens’ kangaroo rat, and coastal California gnatcatcher) that have a probability of occurring within the on-site improvements footprint are described below.

Two special-status species were observed on the project site during the reconnaissance-level field surveys. Cooper’s hawk and California horned lark are both CDFW Watch List species and are covered and adequately conserved under the MSHCP. Cooper’s hawk may use the site as foraging grounds because this species is broadly adapted to urban environments, but it is not anticipated to nest within the Project site due to its lack of suitable trees for nesting. Flocks of California horned larks, which are ground nesting birds, were present and foraging within the Project site during general biological surveys but were not detected nesting on site at the time of the surveys. Additionally, coastal California gnatcatcher, a federally threatened species and California Species of Special Concern (SSC) was observed within the Riversidean sage scrub on the southeastern corner of the Project site during surveys conducted in 2012. Project implementation will result in 1.5 acre of on-site impacts to Riversidean sage scrub and 1.9 acres for off-site improvements footprint impacts as noted in **Table 4.4.C**. This species was not observed within the Project site during biological surveys conducted between 2016 and 2022. While this species has a moderate probability of occurring within the site, protocol surveys for this species were not required due to this species being adequately conserved under the MSHCP. Impacts to these three species are therefore considered less than significant and no mitigation is required.

If construction is to begin during the bird breeding season (typically February 1 through August 31), impacts to nesting birds will be potentially significant due to nesting birds being protected under the MBTA and California Fish and Game Code. The Project site has the potential to be used by hawks, ravens, or other common or special-status open ground birds for nesting. Shrubs and other

vegetation may provide nest sites for smaller birds, and burrowing owls may nest in ground squirrel burrows, pipes, or similar features. Direct impacts to sensitive and common avian species from development of the project site would be reduced to less than significant levels with implementation of **Mitigation Measure BIO-2** by ensuring that nesting birds would be protected until the young have fledged. Indirect impacts from loss of habitat would be less than significant as a result of conservation planning through the MSHCP.

The reconnaissance survey confirmed any USFWS-designated Critical Habitat for any federally listed species, and development of the site would not result in any loss or adverse modification of Critical Habitat. No mitigation is required.

Cadre Environmental biologists conducted a habitat assessment for burrowing owl on May 31, 2016, October 16, 2017, and May 14, 2018 in accordance with MSHCP protocol. RBC biologists also conducted a habitat assessment for burrowing owl on December 20, 2017 and October 15, 2021. No evidence of burrowing owl was identified on the project site. The site has low vegetative cover, is mostly devoid of trees, and has California ground squirrel (*Otospermophilus beecheyi*) activity. Habitat assessments included the project site plus a 500-foot buffer. Protocol burrowing owl surveys were conducted by Cadre Environmental between July 22 and August 27, 2016, and May 17 and June 15, 2018 in accordance with the Burrowing Owl Survey Instructions for the Western Riverside MSHCP Area.<sup>8</sup> No burrowing owl or their sign were observed within the Project site during the presence/absence surveys conducted in 2016 and 2018. Despite this, impacts to burrowing owl can be potentially significant due to potential for this species to occupy the site and its surrounding areas prior to development of the project, as well as the potential for future occupation of the site, mitigation is required to ensure impacts to burrowing owl would be reduced to a less than significant level. **Mitigation Measure BIO-3** requires pre-construction surveys be conducted 30 days prior to any ground-disturbing activities to avoid potential impacts to burrowing owl. Implementation of this measure would ensure that no direct or indirect impacts to burrowing owl would occur by requiring that active nests are avoided and protected with appropriate buffers or that burrowing owls occupying the site would potentially be relocated by a qualified biologist through consultation with the CDFW.

The project is within the SKR HCP area, a region-wide plan for species permitting and conservation so that individual projects could receive Endangered Species Act (ESA) take authority for the species throughout the County, rather than individually. SKR has its own HCP that is independent from the MSHCP. SKR is federally and State listed as threatened. This species was “reclassified” from endangered to threatened in February of 2022 by the USFWS along with a concurrent ESA “4(d) rule” for management activities in approved management plans (RCHCA 2022). Although there is very low potential for SKR to occur within the project site due to regular disking and disturbance of the site, project impacts to this species would be considered potentially significant. However, the site falls within the SKR HCP Fee Assessment Area, where direct impacts to SKR from development of the project site would be reduced to less than significant levels through implementation of

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<sup>8</sup> Western Riverside County Regional Conservation Authority. 2006. Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area. Website: [https://www.wrc-rca.org/species/survey\\_protocols/burrowing\\_owl\\_survey\\_instructions.pdf](https://www.wrc-rca.org/species/survey_protocols/burrowing_owl_survey_instructions.pdf), accessed October 14, 2022.

**Mitigation Measure BIO-4**, by ensuring sufficient funding is established for habitat areas that can be effectively protected and managed for SKR survival and recovery.

As stated previously, the project site is substantially disturbed and is dominated by active agricultural operations. The site is also not included in a NEPSSA. California Orcutt grass (*Orcuttia californica*) is federally and State listed as Endangered and is included in the Riparian/Riverine 6.1.2 plant species list. Munz's onion (*Allium munzii*) is federally listed as Endangered and State listed as Threatened. Spreading navarretia (*Navarretia fossalis*) is federally listed as Threatened and is included in the Riparian/Riverine 6.1.2 plant species list. These three plant species are the only NEPSSA species that occurred within the California Natural Diversity Database (CNDDB) 1-mile query. The general biological surveys conducted by Cadre Environmental, and RBC yielded no evidence of any NEPSSA species identified by the MSHCP with potential to occur on the Project site. RBC determined, a majority of the Project site has been disturbed, and the habitat conditions required by these species are not present within the site. No suitable vernal pool habitat exists for California Orcutt grass. No suitable chaparral, cismontane woodland, coastal scrub, pinyon and juniper woodland, valley and foothill grassland habitats exist for Munz's onion. No suitable chenopod scrub, shallow freshwater marshes and swamps, playas, and vernal pool habitats are present to support spreading navarretia. Therefore, focused rare plant surveys were not required or conducted due to the site not being located in an NEPSSA. Impacts, whether direct or indirect, to sensitive plant species with MSHCP designated survey areas are not anticipated to occur as a result of project implementation.

A total of 10 species are listed as State and/or federal Threatened, Endangered, or Candidate species within the 1-mile CNDDB and USFWS database queries. Special-status plant and animal species have no to low potential to occur on site, except for Cooper's hawk, California horned lark, and coastal California gnatcatcher, which are addressed above. Tables 4 and 6 of the Menifee Valley Project Biological Resources and MSHCP Consistency Analysis,<sup>9</sup> which are found in **Appendix D-1** of this Draft EIR, documents 22 special-status species whose presence was evaluated on the project site, 19 of which are covered under the MSHCP. Due to the lack of suitable habitat and/or soils at the site, these species were found to either have low or no potential to occur on site unless addressed above. No sensitive plant species were observed on the Project site. Areas with vegetation consist primarily of nonnative species or species tolerant of disturbed areas.

**Off-Site Improvements.** Consistent with the on-site portion of the overall Menifee Valley Project, the off-site improvements footprint is within the boundaries of the MSHCP and is mapped within the MSHCP Burrowing Owl Survey Area but is not located within the CASSA for plant species, Narrow Endemic Plant Species Survey Areas, Mammal Survey Area, or Amphibian Survey Area. Field surveys conducted in accordance with the MSHCP requirements for off-site improvements included a burrowing owl habitat suitability assessment, vegetation mapping, jurisdictional delineation, general biological surveys, and focused burrowing owl surveys (**Appendix D**).

The reconnaissance-level biological resources assessment field studies determined that the off-site improvements footprint is dominated by Disturbed, Developed, and Active Agriculture vegetation

<sup>9</sup> Rocks Biological Consulting. 2022. Menifee Valley Project Biological Resources and MSHCP Consistency Report, Menifee, Riverside County, California. December.

communities, similar to the on-site Project area. Through project implementation, impacts to vegetation communities would be considered potentially significant. This is due to seven vegetation communities and land covers being present within the off-site improvements footprint, including Active Agriculture, Developed, Disturbed, Ephemeral Streambed – Disturbed, Mulefat Thickets, Nonnative Grassland, and Riversidean Sage Scrub. The majority of the off-site improvements footprint occurs within the existing right-of-way. Due to this, sensitive plants and wildlife are unlikely to occur. Permanent impacts to Developed, Disturbed, Active Agriculture, Riversidean Sage Scrub, Nonnative Grassland, and Mulefat Thickets would result if the proposed project were implemented. The project will not impact Ephemeral Streambed – Disturbed because this habitat type occurs outside of the project impact footprint but occurs within the project survey area. As discussed above, **Mitigation Measure BIO-1** has been identified to reduce potential impacts to vegetation communities found within the site to a less than significant level. This includes impacts to vegetation and land covers within the on-site Project area and its off-site improvements. **Table 4.4.C** describes impact totals for both on-site and off-site improvement footprints. Impacts must be offset through payment of MSHCP Local Development Mitigation Fees (Section 6.1).

Because project implementation will result impacts to seven different vegetation communities that provide suitable habitat for various animal species including several special-status species that have the potential to occur within the off-site improvements footprint, impacts would be potentially significant. As discussed in **Section 4.4.3.3**, suitable habitat for ten animal species can be found within the off-site improvements footprint. Loggerhead shrike, yellow warbler, and Los Angeles pocket mouse are all California SSCs that have been documented through the CNDDDB as occurring within 1 mile of the Project site. A majority of the Project site has been disturbed, and the habitat conditions required by these species are not present within the site. While foraging habitat exists for loggerhead shrike, no dense habitat for nesting is present in off-site areas. Impacts to yellow warbler are not expected because suitable mature riparian habitat for this species is not present in off-site areas. Los Angeles pocket mouse is not expected to occur due to the Project site's lack of Riversidean alluvial fan sage scrub and native grassland. Loggerhead shrike and Los Angeles pocket mouse are covered and adequately conserved under the MSHCP. The other seven animal species (burrowing owl, Cooper's hawk, California horned lark, Stephens' kangaroo rat, northern harrier, Southern California rufous-crowned sparrow, and coastal California gnatcatcher) that have a probability of occurring on site are described below.

Two sensitive special-status species were observed on the project site during the 2022 burrowing owl surveys. Northern harrier is a California SSC when nesting and Southern California rufous-crowned sparrow is a CDFW Watch List species; both species are covered and adequately conserved under the MSHCP and have a high probability of occurring. Northern harrier was observed as a fly over in the general Project vicinity. Suitable foraging and nesting habitat for northern harrier is present in the form of grasslands. Southern California rufous-crowned sparrow was also observed foraging in the proximity of the southeastern portion of the off-site improvements footprint. The site offers suitable habitat for Southern California rufous-crowned sparrow in the form of grassland, patchy shrub habitats, and areas disturbed by soil compaction and nonnative vegetation. Project implementation will result in loss of both foraging and nesting habitat for the northern harrier and southern California rufous-crowned sparrow. However, these species are adequately conserved by the MSHCP, and impacts to northern harrier and southern California rufous-crowned sparrow can be

mitigated with payment of MSHCP Local Development Mitigation Fees (Section 6.1). Although no Cooper's hawk or California horned lark were observed within the off-site improvements footprint, these species have a high probability of occurring in the area. Cooper's hawk may use the site as foraging grounds because this species is broadly adapted to urban environments, but it is not anticipated to nest within the Project site and its off-site improvements footprint due to its lack of suitable nesting habitat. Flocks of California horned larks, which are ground nesting birds, were present and foraging within the on-site improvements footprint during general biological surveys but were not detected nesting on site or within the off-site improvements footprint. Cooper's hawk and California horned lark are covered and adequately conserved under the MSHCP. As mentioned above for the on-site improvements, a coastal California gnatcatcher was observed within the Riversidean Sage Scrub in the southeast corner of the site during surveys conducted in 2012. Project implementation will result in 1.5 acre of on-site impacts to Riversidean sage scrub and 1.9 acres for off-site improvements footprint impacts as noted in **Table 4.4.C**. This species has not been observed within the Project site or its off-site improvement area during biological surveys conducted between 2016 and 2022. While this species has a moderate probability of occurring within the site, protocol surveys for this species were not required due to this species being adequately conserved under the MSHCP. Cumulatively, this makes up enough suitable habitat for coastal California gnatcatcher; in addition it is fully mitigated per the MSHCP.

If construction is to begin during the bird breeding season (typically February 1 through August 31), impacts to nesting birds will be potentially significant due to nesting birds being protected under the MBTA and California Fish and Game Code. Similar to the on-site improvements section, direct impacts to sensitive and common avian species from development of the project site would be reduced to less than significant levels with implementation of **Mitigation Measure BIO-2** by ensuring that nesting birds would be protected until the young have fledged.

RBC biologists conducted a habitat assessment for burrowing owl on February 24, 2022 for the off-site improvements in accordance with MSHCP protocol. Due to suitable habitat for burrowing owl in the form of open grassland, disturbed habitat, and agriculture within the project site and surrounding 500-foot buffer, focused burrowing owl surveys were conducted between May 31 and July 1, 2022. Although no burrowing owls or their sign were observed on site, several small mammal burrows suitable for burrowing owl were observed on site. Impacts to burrowing owl would be potentially significant due to potential for this species to occupy the site and its surrounding areas prior to development of the project, as well as the potential for future occupation of the site. Similar to the on-site improvements discussion, direct impacts to burrowing owls can be avoided by implementation of **Mitigation Measure BIO-3**, which dictates a preconstruction presence/absence survey for burrowing owls within 30 days prior to site disturbance (RCA 2006).

The geographic range for SKR spans from western Riverside County to northern San Diego County. Despite this, SKR is federally and State listed as threatened and project impacts to this species would be considered potentially significant. Similar to the on-site improvements section, the off-site improvements footprint occurs within the SKR HCP Fee Assessment Area. The project shall provide payment to the RCHCA resulting from the removal of potential SKR habitat as discussed in **Mitigation Measure BIO-4**, which would reduce potential impacts to a less than significant level.

The off-site improvements footprint is substantially disturbed and dominated by active agricultural operations. The site is also not included in an NEPSSA. California Orcutt grass, Munz's onion, and spreading navarretia are the only NEPSSA species that occurred within the CNDDDB 1-mile query. The general biological surveys conducted by Cadre Environmental and RBC yielded no evidence of any NEPSSA species identified by the MSHCP with potential to occur within the off-site improvements footprint. RBC determined a majority of the off-site improvements footprint has been disturbed, and the habitat conditions required by these species are not present within the site. No suitable vernal pool habitat exists for California Orcutt grass. No suitable chaparral, cismontane woodland, coastal scrub, pinyon and juniper woodland, or valley and foothill grassland habitats exist for Munz's onion. No suitable chenopod scrub, shallow freshwater marshes and swamps, playas, and vernal pool habitats are present to support spreading navarretia. Consequently, focused rare plant surveys were not required or conducted due to the site not being located in an NEPSSA. Impacts, whether direct or indirect, to sensitive plant species with MSHCP designated survey areas are not anticipated to occur as a result of project implementation.

A total of 10 species are listed as State and/or federal Threatened, Endangered, or Candidate species within the 1-mile CNDDDB and USFWS database queries. Special-status plant and animal species have no to low potential to occur on site, except for Southern California rufous-crowned sparrow, northern harrier, Cooper's hawk, California horned lark, and coastal California gnatcatcher, which are addressed above. Tables 2 and 4 of the Menifee Valley Project – Off-Site Improvements Footprint Biological Resources and MSHCP Consistency Analysis found in **Appendix D-2** of this Draft EIR documents 25 special-status species whose presence was evaluated on the project site, 22 of which are covered under the MSHCP. Due to the lack of suitable habitat and/or soils at the site, these species were found to either have low or no potential to occur on site, unless addressed above. No sensitive plant species were observed on the project site. Areas with vegetation consist primarily of nonnative species or species tolerant of disturbed areas.

**Off-Site Roadway Improvements.** Implementation of the Project would also result in off-site roadway improvements to address traffic impacts in conflict with the General Plan Circulation Element policies that strive to maintain desired LOS. These roadway improvements, which include widening and additional turn lanes as required, include Matthews Road/Case Road (between McLaughlin Road and Ethanac Road), McLaughlin Road (between Matthews Road/Case Road and Menifee Road), and McCall Boulevard (between Encanto Drive and Menifee Road). These roadway improvements were identified in the General Plan Circulation Element and included in the Final General Plan Environmental Impact Report (EIR) certified by the City on December 18, 2013 (Certified 2013 EIR).

The Certified 2013 EIR concluded that future development projects in accordance with build out of the General Plan would be required to implement the MSHCP at the project-specific level, which would minimize direct and indirect species impacts. Additionally, payment of the mitigation fee and compliance with all applicable requirements of the MSHCP provide full mitigation under the California Environmental Quality Act, National Environmental Policy Act, Federal Endangered Species Act, and California Endangered Species Act for impacts to MSHCP-covered species and habitats. The MSHCP also addresses indirect impacts through cores and linkages, criteria cells, and MSHCP fees. Similar to the off-site improvements along Menifee Road, SR-74, Matthews Road, and

Briggs Road discussed above, implementation of **Mitigation Measures BIO-1 through BIO-4** as applicable would reduce potential impacts on special-status species associated with the off-site roadway improvements along Matthews Road (Case Road), McCall Boulevard, and east of McLaughlin Road to a *less than significant* level.

**Significance Determination Prior to Mitigation:** Potentially Significant Impact.

**Mitigation Measures:** The following mitigation measures would be applied to the Project.

- Mitigation Measure BIO-1** Prior to issuance of any building permits for non-residential uses and occupancy releases for residential uses, the applicant shall provide payment to the City of Menifee Community Development Department for applicable Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Local Development Mitigation Fees. The Local Development Mitigation Fees are subject to change each fiscal year. As such, the Applicant shall pay the current fee amounts according to timing outlined by the Western Riverside County Regional Conservation Authority (RCA). The Applicant shall pay the current fee amounts regarding roadways prior to approval of the Improvement Plan. The Applicant shall pay the current fee amounts regarding residential, commercial and industrial uses, prior to building permit issuance.
- Mitigation Measure BIO-2** Prior to issuance of any grading permits, the City of Menifee Community Development Department shall confirm that the construction plans indicate that vegetation, including suitable nesting habitat for birds, shall be removed outside the bird nesting season (February 15 through August 31). If vegetation cannot be removed outside the bird nesting season (February 15 through August 31), nesting bird surveys shall be conducted within 3 days prior to project ground disturbance or vegetation removal to ensure that nesting birds protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code are not disturbed by construction-related activities (i.e., brush clearing and noise). If nesting birds are documented on or in the immediate vicinity (within approximately 300 feet) of the project site, no construction or clearing shall be conducted within an appropriate avoidance buffer surrounding the active nest(s), as determined by a qualified biologist, until the project biologist determines that the young have fledged or the nest is no longer active.
- Mitigation Measure BIO-3** A qualified biologist shall conduct a pre-construction presence/absence survey for burrowing owls within 30 days prior to site disturbance. Proof of this pre-construction survey shall be provided for approval to the City of Menifee Community Development Department, prior to issuance of any grading permits.

If burrowing owls are documented on site, the owls shall be relocated/excluded from the site outside of the breeding season following accepted protocols, as specified in MSHCP Section 6.3.2.

**Mitigation Measure BIO-4**

Prior to issuance of any grading permits, the City of Menifee Community Development Department shall confirm that the project applicant has paid the fees pursuant to Ordinance 663.10 for the Stephens' kangaroo rat (SKR) Habitat Conservation Plan (HCP) Fee Assessment Area.

**Level of Significance after Mitigation:** Less Than Significant.

**4.4.6.2 Riparian Habitat**

**Threshold 4.4-2: Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or United States Fish and Wildlife Service?**

**On-Site Improvements.** The reconnaissance-level biological resources assessment survey indicates the Project site is substantially disturbed but contains Riversidean Sage Scrub, Southern Willow Scrub – Disturbed, Mulefat Thickets, and Ephemeral Streambed – Disturbed. The 8.7 acres of Riversidean Sage Scrub are found within the southeast corner of the site. The <0.01 acre of Mulefat Thickets within the southern portion of the site is isolated from ephemeral streambeds. The <0.01 Southern Willow Scrub – Disturbed within the central/eastern boundary of the site is disturbed and isolated but contains an understory of freshwater marsh. The 1.9 acres of ephemeral streambed are mostly unvegetated and are highly disturbed from agricultural uses. Despite this, impacts on non-wetland and wetland waters of the State jurisdictional by the RWQCB, and unvegetated streambed and associated wetland habitat jurisdictional by the CDFW will be potentially significant as the project is expected to permanently impact these resources. The nearest Critical Habitat unit is approximately 2.8 miles northwest of the Project site as part of the MSHCP unit (i.e., Unit 6, Subunit 6A) of USFWS designated Critical Habitat for the federally Threatened and MSHCP Riparian/Riverine 6.1.2 plant species spreading navarretia. However, no portion of the Project site is located in or adjacent to MSHCP Unit 6 or any other critical habitat. Additionally, a search of the CNDDDB indicates the nearest sensitive habitat is Southern Coast Live Oak Riparian Forest, which is located approximately 7.1 miles southwest of the Project site.

MSHCP Section 6.1.2 requires the assessment of impacts to riparian habitats, riverine areas, and vernal pools, including focused surveys for sensitive riparian species when suitable habitat is present. The 2019 Menifee Valley Project Jurisdictional Delineation Report indicates the Project site does not contain vernal pools but does contain several man-made features. The areas of disturbed ephemeral streambed (Feature 1 and Feature 2) and of disturbed wetland/southern willow scrub – disturbed (Feature 2 – Wetland) may technically meet the MSHCP definition of riparian/riverine

areas because they receive “fresh water flow during all or a portion of the year.”<sup>10</sup> Through project implementation, 1.93 acres of Ephemeral Streambed – Disturbed will be impacted. Impacts to the 1.96 acres of MSHCP riparian/riverine areas will be reduced to a less than significant level through application of **Mitigation Measure BIO-5**. A 1.5:1 mitigation ratio from the Riverpark Mitigation Bank or a 2:1 mitigation ratio from the Barry Jones Skunk Hollow Preservation Bank for impacts to 1.96 acres is the proposed mitigation strategy (specifically, 2.94 acres of rehabilitation credits or 3.92 acres of preservation credits for the on-site improvements). The proposed mitigation strategy will prioritize in-kind and in-watershed options per the regulatory agencies’ preferences. The Riverpark Mitigation Bank’s service area is less than 4.0 miles north of the Project site. The bank and the Project site are within the same Hydrologic Unit Code (HUC) 8 and 10 watersheds; the bank and a portion of the Project site are within the same HUC 12 watershed. Under the purchase, the disturbances created by the Project’s impacts on Waters of the State (WOS) and MSHCP riverine features should be fully mitigated with the purchasing of credits from the Riverpark Mitigation Bank. Further, through the purchase of 0.38 acres of rehabilitation credits, the Project will provide biologically equivalent or superior reservation. The regulatory agencies will make the final determination of the final compensatory mitigation requirements during the permit evaluation process.

Furthermore, the site lacks suitable riparian habitat for MSHCP riparian/riverine wildlife species, because MSHCP riparian/riverine areas are highly disturbed and isolated. No riparian bird species such as least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and western yellow-billed cuckoo (*Coccyzus americanus occidentalis*) have reasonable potential to occur on site and will not be affected by the project. Therefore, focused surveys for plant and animal species associated with riparian habitat are not required, and impacts are considered less than significant.

A DBESP memo was previously submitted to CDFW and USFWS in August 2019 to justify a waiver of a DBESP report. Although project delays prevented the formal approval of the DBESP memo that was submitted, the DBESP memo has since been updated and resubmitted in August 2022 to include additional off-site improvement areas as well as to reflect agency comments received in 2019. Based on comments received in August 2019 from CDFW and USFWS, and ongoing communications between RBC, CDFW, and USFWS, approval of the revised DBESP memo submitted in August 2022 was expected.

After the 60-day DBESP review period, comments from the wildlife agencies were received on January 17, 2023. In summary, the agencies concluded that the Project site and its off-site improvement areas contained more MSHCP riparian/riverine areas than the 2.29 acres of ephemeral MSHCP riparian/riverine resources originally accounted for. After aerial imagery review, the agencies concluded that 7.52 acres of riparian/riverine resources is present within the Project study area. The agencies also wanted to see protocol Focused Dry Season and Wet Season Fairy Shrimp Surveys in seasonal ponding areas that they believe were present within the Project survey area. Lastly, the agencies requested a 2:1 mitigation ratio if the mitigation credits are preservation,

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<sup>10</sup> Western Riverside County Multiple Species Habitat Conservation Plan, Sections 6.1.2 and 6.3.2, Determination of Biologically Equivalent or Superior Prevention (DBESP) for the Menifee Valley Project, prepared by RBC, August 2022, revised November 3, 2022

enhancement, or rehabilitation. Following agency comments, VCS Environmental prepared a memo in response to agency comments on February 10, 2023, detailing their opinion that the agency comments are inaccurate because they are solely based on aerial review. VCS Environmental, who is independent of RBC, has conducted two field visits on September 20th, 2022 and January 24th, 2023 to verify findings by RBC. The memo detailed that no revisions to the DBESP are warranted to conclude the DBESP process as it is up to the Permittee to determine the Biologically Equivalent and Superior Determination not the wildlife agencies.<sup>11</sup> As of March 1, 2023, the wildlife agencies have not approved the revised DBESP memo. Furthermore, a Section 1602 Lake and Streambed Alteration Agreement will be needed for project implementation and the wildlife agencies may not issue the permits needed for the project if they do not agree with the DBESP.

**Off-Site Improvements.** The reconnaissance-level biological resources assessment survey indicates the off-site improvements footprint is substantially disturbed but contains Riversidean Sage Scrub, Mulefat Thickets, and Ephemeral Streambed – Disturbed. The 5.4 acres of Riversidean Sage Scrub is found within the southeast corner of the site. The <0.1 acre of Mulefat Thickets within the southern portion of the site is isolated from ephemeral streambeds. Through project implementation, impacts on non-wetland waters of the State jurisdictional by the RWQCB and streambed jurisdictional by the CDFW will be potentially significant. The project is expected to permanently impact approximately 0.23 acre of potential non-wetland waters of the State jurisdictional by the RWQCB, approximately 0.25 acre of vegetated streambed, and 0.08 acre of unvegetated streambed jurisdictional by the CDFW.<sup>12</sup>

MSHCP Section 6.1.2 requires the assessment of impacts to riparian habitats, riverine areas, and vernal pools, including focused surveys for sensitive riparian species when suitable habitat is present. The 2022 Menifee Valley Project Jurisdictional Delineation Report Addendum<sup>13</sup> indicates the off-site improvements footprint does not contain vernal pools but does contain several man-made features. The areas of disturbed ephemeral streambed (Feature 1, Feature 3, Feature 3A, Feature 4, and Feature 4A) may technically meet the MSHCP definition of riparian/riverine areas because they receive “fresh water flow during all or a portion of the year.”<sup>14</sup> Impacts to the 0.32 acre of MSHCP riparian/riverine areas within the off-site improvements footprint will be reduced to a less than significant level through application of **Mitigation Measure BIO-5**. A 1.5:1 mitigation ratio from the Riverpark Mitigation Bank or a 2:1 mitigation ratio from the Barry Jones Skunk Hollow Preservation Bank for impacts to 0.32 acre is the proposed mitigation strategy (specifically, 0.48 acre of rehabilitation credits or 0.64 acre of preservation credits for the off-site improvements). Riparian/riverine areas existing within the off-site improvements footprint are extremely limited and disturbed. Therefore, no riparian bird species have reasonable potential to occur on site and will not be affected by the Project. Therefore, focused surveys for plant and animal species associated with

<sup>11</sup> Building Industry Association Riverside Chapter (BIA). 2003. MSHCP Response to Comments

<sup>12</sup> Rocks Biological Consulting (RBC). 2022. Menifee Valley Project Off-Site Improvements Footprint Biological Resources and MSHCP Consistency Report, Menifee, California. December.

<sup>13</sup> Rocks Biological Consulting. 2022. Menifee Valley Project Jurisdictional Delineation Report Addendum, Menifee, Riverside County, California. December.

<sup>14</sup> Western Riverside County Multiple Species Habitat Conservation Plan, Sections 6.1.2 and 6.3.2, Determination of Biologically Equivalent or Superior Prevention (DBESP) for the Menifee Valley Project, prepared by RBC, August 2022, revised November 3, 2022

riparian habitat are not required and impacts are considered less than significant. Due to anticipated permanent impacts to MSHCP riparian/riverine areas, a revised DBESP memo was submitted to the resource agencies in August 2022 that included the additional off-site improvement areas and addressed agency comments received in 2019. As mentioned above, wildlife agency comments were received on January 17, 2023 after the 60-day DBESP review period for the revised DBESP memo. VCS Environmental prepared a memo on February 10, 2023, who is independent of RBC, that details their opinion that the agency comments are inaccurate because they are solely based on aerial review. As of March 1, 2023, the wildlife agencies have not approved the revised DBESP memo. Furthermore, a Section 1602 Lake and Streambed Alteration Agreement will be needed for project implementation and the wildlife agencies may not issue the permits needed for the project if they do not agree with the DBESP despite approval from the permittee.

**Off-Site Roadway Improvements.** Implementation of the Project would also result in off-site roadway improvements to address traffic impacts in conflict with the General Plan Circulation Element policies that strive to maintain desired LOS. These roadway improvements, which include widening and additional turn lanes as required, include Matthews Road/Case Road (between McLaughlin Road and Ethanac Road), McLaughlin Road (between Matthews Road/Case Road and Menifee Road), and McCall Boulevard (between Encanto Drive and Menifee Road). These roadway improvements were identified in the General Plan Circulation Element and included in the Certified 2013 EIR.

The Certified 2013 EIR concluded that future development in accordance with the General Plan, including the off-site roadway improvements, would be required to comply with the requirements of Section 6.1.2 of the MSHCP and prepare a DBESP that would outline the mitigation to reduce impacts on riparian habitats. A revised DBESP memo was submitted to the resource agencies in August 2022 but did not include the additional off-site roadway improvement areas. As mentioned above, wildlife agency comments were received on January 17, 2023 after the 60-day DBESP review period for the revised DBESP memo. As of September 2023, the wildlife agencies have not approved the revised DBESP memo.

According to the General Plan EIR, two drainage features cross McCall Road within the limits of the off-site roadway improvements. Implementation of **Mitigation Measure BIO-5** requires that jurisdictional determination request forms shall be submitted to the United States Army Corps of Engineers (USACE) to confirm that no jurisdictional waters of the United States occur within the footprint of any off-site improvements would be required. The Applicant shall implement/comply with all permit conditions and mitigation measures required by the resource agencies. Through project implementation, 0.25 acre of Ephemeral Streambed – Disturbed will be impacted (Feature 4, Feature 5, Feature 6, Feature 7, Feature 8, Feature 9). Impacts to the 0.25 acre of MSHCP riparian/riverine areas will be reduced to a less than significant level through application of Mitigation Measure BIO-5. A 1.5:1 mitigation ratio from the Riverpark Mitigation Bank or a 2:1 mitigation ratio from the Barry Jones Skunk Hollow Preservation Bank for impacts to 0.25 acre is the proposed mitigation strategy (specifically, 0.38 acre of rehabilitation credits or 0.50 acre of preservation credits for the off-site roadway improvements). Therefore, implementation of **Mitigation Measure BIO-5** would ensure that impacts to these resources in off-site roadway improvement areas would be reduced to a less than significant level.

**Significance Determination Prior to Mitigation:** Potentially Significant Impact.

**Mitigation Measures:** The following mitigation measure would be applicable to the proposed Project.

**Mitigation Measure BIO-5**

Prior to any ground-disturbing activity near jurisdictional features on-site, the project applicant shall provide proof to the City of Menifee Community Development Department that applicable permits have been obtained through the Regional Water Quality Control Board (RWQCB) and the California Department of Fish and Wildlife (CDFW) and that permit conditions/mitigation has been fully satisfied for impacts to jurisdictional features. Based on the results of the on-site jurisdictional delineation for the proposed project, the proposed project would permanently impact 1.93 acres of RWQCB jurisdictional nonwetland waters of the State and CDFW jurisdictional unvegetated streambed (i.e., Feature 1 and Feature 2), and 0.03 acre of RWQCB jurisdictional wetland waters of the State and CDFW-jurisdictional associated wetland habitat (i.e., Feature 2 Wetland). The proposed mitigation strategy for on-site impacts shall be the purchase of 2.94 acres of rehabilitation credits (1.5:1 mitigation ratio;  $1.93 \text{ acres} + 0.03 \text{ acre} = 1.96 \times 1.5 \text{ ratio} = 2.94$  acres of mitigation) from the Riverpark Mitigation Bank. Alternatively, on-site impacts shall be mitigated with the purchase of 3.92 acres of preservation credits (2:1 mitigation ratio;  $1.93 \text{ acres} + 0.03 \text{ acre} = 1.96 \times 2 \text{ ratio} = 3.92$  acres of mitigation) from the Barry Jones Skunk Hollow Preservation Bank. The project applicant shall mitigate direct impacts on an additional 0.25 acre of streambed Waters of the State (WOS)/MSHCP riverine features by purchasing an additional 0.38 acres of rehabilitation credits (1.5:1 mitigation ratio) at the Riverpark Mitigation Bank to satisfy anticipated CDFW 1602 and/or RWQCB mitigation requirements. The proposed project would permanently impact 0.17 acre (Feature 5) and 0.08 acre (Feature 4, Feature 6, Feature 7, Feature 8, and Feature 9) of Ephemeral Streambed – Disturbed, which are found in off-site roadway improvement areas. The 1.5:1 ratio of mitigation was previously approved by the Wildlife Agencies following the field visit via email correspondence (Appendix D-7). Alternatively, the project applicant can also offset the additional 0.25 acres of streambed Waters of the State (WOS)/MSHCP riverine features (Feature 4, Feature 5, Feature 6, Feature 7, Feature 8, Feature 9), which are found in off-site roadway improvement areas, by purchasing an additional 0.5 acres of preservation credits at Barry Jones Skunk Hollow or another CDFW-approved mitigation bank within Riverside County at a 2:1 mitigation ratio. This option of mitigation shall also provide biologically equivalent or superior preservation. Notification of Streambed Alteration to CDFW shall be

provided to justify the purchasing of credits and mitigation used for the Project Site. In total, the project applicant shall purchase 0.38 acres of rehabilitation credits or 0.5 acres of preservation credits. The proposed mitigation strategy for off-site roadway improvement area impacts shall be the purchase of 0.38 acre of rehabilitation credits (1.5:1 mitigation ratio;  $0.17 \text{ acre} + 0.08 \text{ acre} = 0.25 \text{ acre} \times 1.5 \text{ ratio} = 0.38 \text{ acre}$  of mitigation) from the Riverpark Mitigation Bank. Alternatively, off-site roadway improvement area impacts shall be mitigated with the purchase of 0.50 acre of preservation credits (2:1 mitigation ratio;  $0.17 \text{ acre} + 0.08 \text{ acre} = 0.25 \text{ acre} \times 2 \text{ ratio} = 0.50 \text{ acre}$  of mitigation) from the Barry Jones Skunk Hollow Preservation Bank.

The Applicant shall be obligated to implement/comply with the permit conditions and mitigation measures required by the resource agencies regarding impacts on their respective jurisdictions. The proposed mitigation strategy shall prioritize in-kind and in-watershed options per the regulatory agencies' preferences. The regulatory agencies shall make the final determination of the final compensatory mitigation requirements during the permit evaluation process.

Prior to any ground-disturbing activity near jurisdictional aquatic resources in off-site improvement areas, the project applicant shall provide proof to the City of Menifee Community Development Department that applicable permits have been obtained through the RWQCB and the CDFW for impacts on off-site jurisdictional aquatic resources. Based on the results of the off-site jurisdictional delineation for the proposed project, the proposed project would permanently impact 0.32 acre of vegetated streambed (i.e., Feature 1, Feature 3, Feature 3A, Feature 4, and Feature 4A). The proposed mitigation strategy for off-site impacts shall be the purchase of 0.48 acre of rehabilitation credits (1.5:1 mitigation ratio;  $0.32 \text{ acre} \times 1.5 \text{ ratio} = 0.48 \text{ acre}$  of mitigation) from the Riverpark Mitigation Bank. Alternatively, off-site impacts shall be mitigated with the purchase of 0.64 acre of preservation credits (2:1 mitigation ratio;  $0.32 \text{ acre} \times 2 \text{ ratio} = 0.64 \text{ acre}$  of mitigation) from the Barry Jones Skunk Hollow Preservation Bank. Additionally, the jurisdictional determination request forms shall be submitted to the United States Army Corps of Engineers (USACE) to confirm that no jurisdictional waters of the United States occur within the footprint of any off-site improvements. Should the USACE not agree with the findings of the request forms and determine that jurisdictional waters of the United States occur within the off-site improvements footprint (i.e., the USACE does not issue an AJD confirming that none of the

features are USACE jurisdictional resources), applicable permits shall be obtained through the USACE for impacts on jurisdictional aquatic resources. The Applicant shall implement/comply with all permit conditions and mitigation measures required by the resource agencies. Compensatory mitigation to offset impacts on jurisdictional aquatic resources may be implemented through off-site, permittee-responsible mitigation; in-lieu fee program or mitigation bank credit purchase (e.g., Riverpark Mitigation Bank); or a combination of these options depending on availability. The proposed mitigation strategy shall prioritize in-kind and in-watershed options per the regulatory agencies' preferences. The regulatory agencies shall make the final determination regarding compensatory mitigation requirements during the permit evaluation process. The proposed project will impact a total of 2.53 acres of aquatic resources for project site improvements, off-site improvements, and off-site roadway improvements. Total mitigation required shall be 3.8 acres of rehabilitation credits (1.5:1 mitigation ratio) from the Riverpark Mitigation Bank for project site improvements, off-site improvements, and off-site roadway improvements. Alternatively, project site improvements, off-site improvements, and off-site roadway improvements shall be mitigated with the purchase of 5.06 acres of preservation credits (2:1 mitigation ratio) from the Barry Jones Skunk Hollow Preservation Bank.

**Significance Determination after Mitigation:** Less than Significant Impact with Mitigation Incorporated.

#### 4.4.6.3 Effects on Wetlands

**Threshold 4.4-3:** **Would the Project have a substantial adverse effect on State or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?**

**On-Site Improvements.** An assessment of the potentially significant effects of the proposed project on riparian, riverine, and vernal pool areas was conducted. There are no vernal pools on the property. The site lacks suitable soils and characteristic hydrophytic vegetation; therefore, it does not meet the vernal pool definition described in Section 6.1.2 of the MSHCP. In surveys conducted in 2016, 2017, 2018, 2019, 2021, and 2022 no features on site were observed by RBC or Cadre Environmental biologists with the capability of supporting MSHCP fairy shrimp species. Potential agricultural ponds, water diversions on site, and/or ditches used to continuously recycle water used on site for agricultural purposes were detected on recent and historical aerials of the site. However, none of these features were present on site during a visual reconnaissance site visit on December 28, 2017, or during a jurisdictional delineation field visit conducted on August 13, 2018. Additionally, sometime between 2016 and 2021, Cadre Environmental noted two heavily disturbed basins located

within the southern boundary that were noted as potentially able to support common versatile fairy shrimp (*Branchinecta lindahli*). However, these depressions were not observed during the October 15, 2021 and February 24, 2022 surveys conducted by RBC.

The Project contains 1.96 acres of riparian/riverine habitat as defined in Section 6.1.2 of the MSHCP. Feature 1 and Feature 2 support 1.93 acres of MSHCP riverine feature, while Feature 2 Wetland supports 0.03 acre of MSHCP riparian habitat. These features are discussed further below and impacts are shown in **Table 4.4.D**. The proposed project would permanently impact 1.96 acres of MSHCP riparian/riverine areas and impacts will be potentially significant. As such, a DBESP memo was previously submitted in August 2019 and a revised DBESP memo was submitted to the resource agencies in August 2022. Wildlife agency comments were received on January 17, 2023 after the 60-day DBESP review period. As mentioned above, the revised DBESP memo has not been approved as of March 1, 2023.

**Table 4.4.D: On-Site Potential RWQCB and CDFW Aquatic Resource Impacts**

Aquatic Resources	RWQCB		CDFW	
	Study Area Impacts (ac)	Linear Feet	Study Area Impacts (ac)	Linear Feet
Feature 1	1.03	4,666	1.03	4,666
Feature 2	1.20	5,369	1.61	5,369
Feature 2 Wetland	0.03	120	0.03	120
<b>Total</b>	<b>2.26</b>	<b>10,155</b>	<b>2.67</b>	<b>1,463</b>

Source: Tables 7 and 8, Menifee Valley Project Biological Resources and Western Riverside County MSHCP Consistency Report (RBC 2022).

Note: Acreages and linear feet totals were summed using raw numbers provided during RBC GIS analysis; therefore, the sum of the total rounded numbers may not directly add up in this table.

ac = acres

CDFW = California Department of Fish and Wildlife

GIS = geographic information system

MSHCP = Multiple Species Habitat Conservation Plan

RBC = Rocks Biological Consulting

RWQCB = Regional Water Quality Control Board

Distinct aquatic features (Features 1 and 2, including Feature 2 Wetland) identified within the 2019 jurisdictional delineated study area were delineated and are not considered jurisdictional by the USACE, and were determined to be potentially jurisdictional by RWQCB and CDFW.

- **Feature 1** includes a northeast-west trending feature within the northern portion of the project site. Wetland Sample Point (WSP) 4 taken within Feature 1 did not meet the hydrophytic vegetation, hydric soil, or wetland hydrology parameters. Feature 1 was overall unvegetated and surrounded by recently planted grain crops and weedy annual plant species.
- **Feature 2** includes an east-west trending feature that bisects the center of the Project site from north to south. Both nonwetland and wetland features were noted within Feature 2 by RBC biologists. Feature 2 Nonwetland was also surrounded by recently planted grain crops and weedy annual plants, and overall was unvegetated. WSP 3 was taken within Feature 2 downstream of the Feature 2 Wetland area and did not meet the hydrophytic vegetation, hydric soil, or wetland hydrology parameters.

- **Feature 2 Wetland** had a slight depression with a 0 percent slope through much of the feature. WSP 1, which was taken within the eastern section of Feature 2 Wetland and adjacent to a culvert beneath Heritage High School, met all three federal parameters. Feature 2 Wetland had a strong presence of wetland hydrology and hydrophytic vegetation. An assumption of hydric soil indicators was assumed for Feature 2 Wetland due to ponding and surface water observed during the jurisdictional delineation in August 2018 and the visual reconnaissance site visit in December 2017. An additional point (WSP 2) was taken solely to determine the wetland boundary of Feature 2 Wetland. A loamy sand texture was noted for this sample point and during the dry season field visit, this area remained ponded and the obligate hydrophytes. WSP 2 did not meet the hydrophytic vegetation, hydric soil, or wetland hydrology parameters.

RBC's jurisdictional delineation conducted in 2019 determined Features 1 and 2 to be potential nonwetland ephemeral waters of the State/surface waters (RWQCB) and ephemeral streambed (CDFW). Additionally, Feature 2 Wetland was determined to be a wetland waters of the State/surface waters that are potentially jurisdictional by the RWQCB and CDFW.

Three man-made ditches (Ditches 1, 2, and 3 on Figure 4A of **Appendix D-1**<sup>15</sup>) that are located within the Project site were delineated and are considered not jurisdictional by the USACE, RWQCB, or CDFW. These three ditches did not meet federal wetland parameters, show an OHWM, or a bed and bank. These ditches appeared to be excavated for the purpose of routing flows and/or on-site water for agricultural operations. Man-made ditches on site did not flow into Feature 1 or Feature 2. Furthermore, these three ditches exhibit ephemeral flow but are not a relocated tributary or excavated in a tributary.

Consequently, implementation of the proposed project would impact 1.93 acres of nonwetland waters of the State (jurisdictional by the RWQCB) and unvegetated streambed (jurisdictional by the CDFW), and 0.03 acre of wetland waters of the State (jurisdictional by the RWQCB) and associated wetland habitat (jurisdictional by the CDFW). Impacts to RWQCB- and CDFW-jurisdictional aquatic resources would require Waste Discharge Requirements (WDRs) from the RWQCB and a Streambed Alteration Agreement (SAA) from the CDFW. Additionally, compensatory mitigation may be required by the regulatory agencies to offset the proposed project impacts.

On October 10, 2019, the USACE issued an AJD corroborating that Feature 1, Feature 2, Feature 2 Wetland, Ditch 1, Ditch 2, and Ditch 3 are not USACE-jurisdictional resources. The 2019 AJD issued by the USACE also included written confirmation that no USACE permitting would be required for the project. The AJD issued by the USACE will remain valid until October 10, 2024.<sup>16</sup> Although the definition of "waters of the U.S." has changed since the USACE issued the 2019 AJD, all observed aquatic resources on site would also qualify as non-jurisdictional waters per the Corps' current definition of "waters of the U.S."

<sup>15</sup> Rocks Biological Consulting (RBC). 2022. Meniffee Valley Center Biological Resources and MSHCP Consistency Report, Meniffee, California. December.

<sup>16</sup> Rocks Biological Consulting (RBC). 2022. Meniffee Valley Center Biological Resources and MSHCP Consistency Report, Meniffee, California. December.

Due to impacts expected toward RWQCB- and CDFW-jurisdictional aquatic resources, implementation of **Mitigation Measure BIO-5** would reduce impacts on jurisdictional aquatic resources to a less than significant level. A 1.5:1 mitigation ratio from the Riverpark Mitigation Bank (specifically, 2.94 rehabilitation credits) is the proposed mitigation strategy. The proposed mitigation strategy will prioritize in-kind and in-watershed options per the regulatory agencies’ preferences. The Riverpark Mitigation Bank’s service area is less than 4.0 miles north of the Project site. The bank and the Project site are within the same Hydrologic Unit Code (HUC) 8 and 10 watersheds; the bank and a portion of the Project site are within the same HUC 12 watershed. Under the purchase, the disturbances created by the Project’s impacts on WOS and MSHCP riverine features should be fully mitigated with the purchasing of credits from the Riverpark Mitigation Bank. Further, through the purchase of 2.94 acres of rehabilitation credits, the Project will provide biologically equivalent or superior reservation. The regulatory agencies will make the final determination of the final compensatory mitigation requirements during the permit evaluation process. Alternatively, on-site impacts can be mitigated with the purchase of 3.92 acres of preservation credits (2:1 mitigation ratio) from the Barry Jones Skunk Hollow Preservation Bank.

**Off-Site Improvements.** In April 2022, the proposed Project footprint was formally expanded to include additional off-site improvements along Meniffee Road, SR-74, Matthews Road, Briggs Road and a non-vehicular bridge across Matthews Road. Similar to the On-Site Improvements section above, potentially significant effects on riparian, riverine, and vernal pool areas within the Project site were assessed. The off-site improvements area was also found to not support any vernal pool areas as defined in Section 6.1.2 of the MSHCP.

The off-site areas contain approximately 0.32 acre of riparian/riverine habitat as defined in Section 6.1.2 of the MSHCP. Features 1, 3, 3A, 4, and 4A support 0.32 acre of MSHCP riparian/riverine areas that the Project would permanently impact. Project implementation will result in potentially significant impacts to these resources. Consequently, a revised DBESP memo has been submitted to the resource agencies as of August 2022 that includes the additional off-site improvement areas and addresses agency comments received in 2019. All impacts to off-site aquatic resources are listed in **Table 4.4.E**.

**Table 4.4.E: Off-Site Potential RWQCB and CDFW Aquatic Resource Impacts**

Aquatic Resources	RWQCB		CDFW	
	Study Area Impacts (ac)	Linear Feet	Study Area Impacts (ac)	Linear Feet
Feature 1	0.04	132	0.05	132
Feature 3	0.05	410	0.10	410
Feature 3A	0.01	50	0.02	50
Feature 4	0.11	773	0.14	773
Feature 4A	0.01	97	0.01	97
<b>Total</b>	<b>0.23</b>	<b>1,463</b>	<b>0.32</b>	<b>1,463</b>

Source: Tables 7 and 8, Meniffee Valley Project Off-Site Improvements Footprint Biological Resources and Western Riverside County MSHCP Consistency Report (RBC 2022).

Note: Acreages and linear feet totals were summed using raw numbers provided during RBC GIS analysis; therefore, the sum of the total rounded numbers may not directly add up in this table.

ac = acres

CDFW = California Department of Fish and Wildlife

GIS = geographic information system

MSHCP = Multiple Species Habitat Conservation Plan

RBC = Rocks Biological Consulting

RWQCB = Regional Water Quality Control Board

Several distinct features (Features 1, 3, 3A, 4, and 4A) identified within the 2022 jurisdictional delineated study area were delineated and should not be considered jurisdictional by the USACE, but rather were determined to be potentially jurisdictional by the RWQCB and CDFW:

- **Feature 1** is a sparsely vegetated drainage composed of disturbed habitat that occurs just north of SR-74 and flows to the south before entering a culvert and continuing off site and into the 2019 jurisdictional delineation report survey area. Feature 1 did not meet the hydrophytic vegetation, hydric soil, or wetland hydrology parameters but displayed faint indicators of an OHWM.
- **Feature 3** is a vegetated drainage composed of disturbed habitat that occurs north of SR-74 and east and west of Briggs Road. Feature 3 did not meet the hydrophytic vegetation, hydric soil, or wetland hydrology parameters but displayed indicators of an OHWM.
- **Feature 4** is a sparsely vegetated drainage composed of disturbed habitat that occurs north of SR-74 and east and west of Menifee Road. Feature 4 did not meet the hydrophytic vegetation, hydric soil, or wetland hydrology parameters but displayed indicators of an OHWM.
- **Feature 4A** is a sparsely vegetated drainage composed of disturbed habitat that commences as road runoff north of SR-74 and west of Menifee Road and generally flows southwest before converging with Feature 4. Feature 4A did not meet the hydrophytic vegetation, hydric soil, or wetland hydrology parameters but displayed indicators of an OHWM.

RBC's jurisdictional delineation for the off-site improvements footprint determined that Features 1, 3, 3A, 4, and 4A are not USACE jurisdictional under the pre-2015 definition of waters of the United States. The off-site improvements footprint supports approximately 0.23 acre of potential nonwetland waters of the State (jurisdictional by the RWQCB) and approximately 0.08 acre of unvegetated streambed and 0.24 acre of vegetated streambed (both of which are jurisdictional by CDFW).

Two upland ditches (Ditches 4 and 5 on Figure 4 in **Appendix D-2<sup>17</sup>**) and five swales (Swales 1, 2, 3, 4, and 5 on Figure 4 in **Appendix D-2<sup>18</sup>**) are located within the Project that were delineated and should not be considered jurisdictional by the USACE, RWQCB, or CDFW. These two ditches and five swales did not meet federal wetland parameters, show an OHWM, or a bed and bank. Furthermore, these Ditches 4 and 5 exhibit ephemeral flow but are man-made for the purpose of draining only uplands for runoff conveyance purposes. The ditches and swales found within the off-site improvements footprint do not provide/have no impact on downstream beneficial uses and/or aquatic resource functions.

As noted above, the off-site improvements footprint would permanently impact approximately 0.23 acre of potential nonwetland waters of the State (jurisdictional by the RWQCB) and approximately 0.32 acre of streambed (jurisdictional by the CDFW). Similar to the on-site

<sup>17</sup> Rocks Biological Consulting (RBC). 2022. Menifee Valley Project Off-Site Improvements Footprint Biological Resources and MSHCP Consistency Report, Menifee, California. July.

<sup>18</sup> *Ibid.*

improvements section, impacts to RWQCB- and CDFW-jurisdictional aquatic resources would require WDRs from the RWQCB and an SAA from the CDFW. Additionally, compensatory mitigation may be required by the regulatory agencies to offset the proposed project impacts.

All observed aquatic resources within the off-site improvements footprint are not USACE-jurisdictional under the USACE's current definition of waters of the United States. Assuming USACE concurrence that no jurisdictional waters of the United States occur within the off-site improvements footprint, impacts on RWQCB- and CDFW-jurisdictional aquatic resources would require WDRs from the RWQCB and an SAA from the CDFW. If instead, the USACE determines that jurisdictional waters of the United States occur within the off-site improvements footprint, impacts on USACE-, RWQCB-, and CDFW-jurisdictional aquatic resources would require Section 404 authorization from the USACE, a Section 401 Water Quality Certification from the RWQCB, and an SAA from the CDFW. Additionally, compensatory mitigation may be required by the regulatory agencies to offset the proposed project impacts.

On October 10, 2019, the USACE issued an AJD corroborating that none of the features delineated within the 2019 jurisdictional delineated study area are USACE-jurisdictional resources. The 2019 AJD issued by the USACE also included written confirmation that no USACE permitting would be required for the project. In 2019, 31.0 acres of the off-site improvements footprint were delineated as part of the 2019 jurisdictional delineation report review area/project study area. The remaining 30.4 acres of the off-site improvements footprint were delineated as part of the 2022 jurisdictional delineation study area. Jurisdictional determination request forms will need to be provided to the USACE in order to confirm that no jurisdictional waters of the United States occur within the remaining 30.4 acres of the off-site improvements footprint.

With USACE concurrence that no jurisdictional waters of the United States occur within the remaining 30.4 acres of the off-site improvements footprint, impacts expected towards RWQCB- and CDFW-jurisdictional aquatic resources would be reduced to less than significant through the implementation of **Mitigation Measure BIO-5**. A minimum 1.5:1 mitigation ratio is typically required for impacts on aquatic resources as a part of an overall strategy to ensure no net loss, though ratios may be higher. As outlined in **Mitigation Measure BIO-5**, the proposed mitigation strategy for off-site impacts is the purchase of 0.48 acre of rehabilitation credits (1.5:1 mitigation ratio) from the Riverpark Mitigation Bank. Alternatively, off-site impacts can be mitigated with the purchase of 0.64 acre of preservation credits (2:1 mitigation ratio) from the Barry Jones Skunk Hollow Preservation Bank.

**Off-Site Roadway Improvements.** Implementation of the Project would also result in off-site roadway improvements to address traffic impacts in conflict with the General Plan Circulation Element policies that strive to maintain desired LOS. These roadway improvements, which include widening and additional turn lanes as required, include Matthews Road/Case Road (between McLaughlin Road and Ethanac Road), McLaughlin Road (between Matthews Road/Case Road and Menifee Road), and McCall Boulevard (between Encanto Drive and Menifee Road). These roadway improvements were identified in the General Plan Circulation Element and included in the Certified 2013 EIR.

The Certified 2013 EIR indicated that future development in accordance with the General Plan, including the off-site roadway improvements, would be required to comply with the requirements of Section 6.1.2 of the MSHCP and prepare a DBESP that would outline the mitigation to reduce impacts on jurisdictional waters, including wetlands. According to the General Plan EIR, two drainage features cross McCall Road within the limits of the off-site roadway improvements. The proposed project would permanently impact 0.17 acre (Feature 5) and 0.08 acre (Feature 4, Feature 6, Feature 7, Feature 8, and Feature 9) of Ephemeral Streambed – Disturbed, which are found in off-site roadway improvement areas. Implementation of **Mitigation Measure BIO-5** requires that jurisdictional determination request forms shall be submitted to the United States Army Corps of Engineers (USACE) to confirm that no jurisdictional waters of the United States occur within the footprint of any off-site improvements would be required. The Applicant shall implement/comply with all permit conditions and mitigation measures required by the resource agencies. As outlined in **Mitigation Measure BIO-5**, the proposed mitigation strategy for off-site roadway improvement area impacts is the purchase of 0.38 acre of rehabilitation credits (1.5:1 mitigation ratio) from the Riverpark Mitigation Bank. Alternatively, off-site roadway improvement area impacts can be mitigated with the purchase of 0.50 acre of preservation credits (2:1 mitigation ratio) from the Barry Jones Skunk Hollow Preservation Bank. Therefore, with implementation of **Mitigation Measure BIO-5** impacts to these resources in off-site roadway improvement areas would be **less than significant**.

**Significance Determination Prior to Mitigation:** Potentially Significant Impact.

**Mitigation Measures:** **Mitigation Measure BIO-5** would be applied to the Project.

**Significance Determination after Mitigation:** Less than Significant.

#### 4.4.6.4 Wildlife Movement or Nursery Site Impacts

**Threshold 4.4-4:** **Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?**

**On-Site Improvements.** The project area was evaluated for its function as a wildlife corridor that species would use to move between wildlife habitat zones. Features (e.g., mountain canyons or riparian corridors) typically used by wildlife as corridors are not present in the project area. The project site is located within the Sun City/Menifee Valley Area Plan of the Western Riverside County MSHCP. However, the project site is not located within a Criteria Cell or sub-unit of the Sun Valley/Menifee Valley Area Plan. The Project site is not within an area identified by the MSHCP as an important migratory or native resident wildlife corridor area. No fish species occur at the Project site or within the wider biological study area (BSA). Potential habitat for nesting birds does exist in the area. Increases in noise, construction traffic, and human activities during construction activities may temporarily deter movement of wildlife within the project vicinity. However, significant impacts to wildlife corridors or nursery sites are not expected from construction or operational activities of the proposed project. No mitigation is required.

Habitat fragmentation occurs when a single, contiguous habitat area is divided into two or more areas, or where an action isolates the two or more new areas from each other. Isolation of habitat occurs when wildlife cannot move freely from one portion of the habitat to another or to/from one

habitat type to another. Habitat fragmentation may occur when a portion of one or more habitats is converted to another habitat, as when scrub habitats are converted into annual grassland habitat because of frequent burning. Wildlife movement includes seasonal migration along corridors, as well as daily movements for foraging. Examples of migration corridors may include areas of unobstructed movement for deer, riparian corridors providing cover for migrating birds, routes between breeding waters and upland habitat for amphibians, and between roosting and feeding areas for birds.

The Project site is bordered by existing paved roads and development on three of its sides that already restrict wildlife movement in the Project vicinity. Although there is additional undeveloped land in the form of active agricultural lands adjacent to the north of the Project site, existing paved roads between the two areas already hinders wildlife movement. The closest Open Space to the site is Double Butte Mountain, which is within 0.5 to the far east of the site. Paved roads and residential development already hinder direct connectivity to Double Butte Mountain. Furthermore, the project does not interfere with any regional movement corridors between Double Butte Mountain and other areas of native open space habitats. Therefore, the proposed Project would not substantially limit wildlife movement. No mitigation is required.

Project implementation will result in potentially significant impacts to nesting birds if construction occurs during the bird breeding season (typically February 1 through August 31). The Project site may be used by hawks, ravens, or other common or special-status open ground birds for nesting. Shrubs and other vegetation may provide nest sites for smaller birds, and burrowing owls may nest in ground squirrel burrows, pipes, or similar features. Most birds and their active nests are protected from “take” (meaning destruction, pursuit, possession, etc.) under the MBTA and/or Sections 3503–3801 of the California Fish and Game Code. Activities that cause destruction of active nests, or that cause nest abandonment and subsequent death of eggs or young, may constitute violations of one or both of these laws. To avoid potential effects to fully protected raptors, special-status bird species, and other nesting birds protected by the California Fish and Game Code, and for compliance with MSHCP Incidental Take Permit Condition 5, State regulations require a nesting bird preconstruction survey to be conducted by a qualified biologist 3 days prior to ground-disturbing activities. Should nesting birds be found, an exclusionary buffer would be established by the qualified biologist. The buffer may be up to 500 feet in diameter, depending on the species of nesting bird found. This buffer would be clearly marked in the field by construction personnel under the guidance of a qualified biologist, and construction or clearing would not be conducted within this zone until the qualified biologist determines that the young have fledged or the nest is no longer active. Nesting bird habitat within the BSA would be resurveyed during bird breeding season if there is a lapse in construction activities longer than 7 days. The nesting bird preconstruction survey will be implemented through **Mitigation Measure BIO-2** as described below and would ensure that impacts to nesting birds are reduced to a less than significant level.

**Off-Site Improvements.** In April 2022, the overall Menifee Valley Project footprint was formally expanded to include additional off-site improvements along Menifee Road, SR-74, Matthews Road, and Briggs Road. The off-site improvements footprint is located along the existing right-of-way of the areas listed above. Similar to the on-site improvement section, this area was evaluated for its function as a wildlife corridor that species would use to move between wildlife habitat zones. The

off-site improvements footprint is not within an area identified by the MSHCP as an important migratory or native resident wildlife corridor area. The off-site improvements footprint is not located adjacent to extensive native open space habitats and would not substantially limit wildlife movement. No fish species occur at the off-site improvements footprint. However, suitable nesting habitat exists within the off-site improvements footprint. If construction is to begin during the bird breeding season (typically February 1 through August 31), impacts to nesting birds would be potentially significant due to nesting birds being protected under the MBTA and California Fish and Game Code. The off-site improvements may have potential to be used by hawks, ravens, or other common or special-status open ground birds for nesting. Shrubs and other vegetation may provide nest sites for smaller birds, and burrowing owls may nest in ground squirrel burrows, pipes, or similar features. Due to potential habitat for nesting birds existing within the off-site improvements footprint, implementation of **Mitigation Measure BIO-2** would reduce impacts to *less than significant*.

**Off-Site Roadway Improvements.** Implementation of the Project would also result in off-site roadway improvements to address traffic impacts in conflict with the General Plan Circulation Element policies that strive to maintain desired LOS. These roadway improvements, which include widening and additional turn lanes as required, include Matthews Road/Case Road (between McLaughlin Road and Ethanac Road), McLaughlin Road (between McLaughlin Road and Menifee Road), and McCall Boulevard (between Encanto Drive and Menifee Road). These roadway improvements were identified in the General Plan Circulation Element and included in the Certified 2013 EIR.

The Certified 2013 EIR concluded that the City is not located within designated or known wildlife corridors or movement areas. Further, the General Plan EIR found that consistency with the MSHCP will ensure that areas needed to provide a linkage or core for wildlife movement are conserved and impacts on migratory wildlife corridors would be less than significant. Suitable nesting habitat may exist within the off-site roadway improvements footprint. If construction is to begin during the bird breeding season (typically February 1 through August 31), impacts to nesting birds would be potentially significant due to nesting birds being protected under the MBTA and California Fish and Game Code. The off-site roadway improvements may have potential to be used by hawks, ravens, or other common or special-status open ground birds for nesting. Shrubs and other vegetation may provide nest sites for smaller birds, and burrowing owls may nest in ground squirrel burrows, pipes, or similar features. Due to potential habitat for nesting birds existing within the off-site roadway improvements footprint, implementation of **Mitigation Measure BIO-2** would reduce impacts to *less than significant*.

**Significance Determination Prior to Mitigation:** Potentially Significant Impact.

**Mitigation Measures:** **Mitigation Measure BIO-2** would be applied to the Project.

**Significance Determination after Mitigation:** Less Than Significant.

#### 4.4.6.5 Local Policies and Ordinances Protecting Biological Resources

**Threshold 4.4-5: Would the Project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?**

**On-Site Improvements.** The Project site lies within the MSHCP boundaries. As discussed previously in **Section 4.4.3** and **Section 4.4.6.1**, the proposed Project as designed, with mitigation applied, would comply with all applicable policies and ordinances protecting biological resources.

No special-status plant or amphibian species occur within the Project site. No special-status fairy shrimp species occur within the Project site. As a result, no impacts would occur.

Burrowing owl have been identified on site and could be directly and indirectly impacted by project construction, where impacts would be potentially significant. However, with implementation of **Mitigation Measures BIO-1** through **BIO-4** noted in **Section 4.4.6.1** above, impacts to burrowing owl at the Project site would be less than significant.

Aquatic features (Feature 1, Feature 2, and Feature 2 Wetland) occurring within the on-site improvement jurisdictional delineation area were determined to be jurisdictional by RWQCB and CDFW. As noted in **Section 4.4.6.3** above, with implementation of **Mitigation Measures BIO-5**, impacts to jurisdictional waters would be less than significant. A 1.5:1 mitigation ratio from the Riverpark Mitigation Bank (specifically, 2.94 rehabilitation credits) has been proposed to resource agency staff. The Riverpark Mitigation Bank's service area is less than 4.0 miles north of the Project site. The bank and the Project site are within the same Hydrologic Unit Code (HUC) 8 and 10 watersheds; the bank and a portion of the Project site are within the same HUC 12 watershed. Under the purchase, the disturbances created by the Project's impacts on WOS and MSHCP riverine features should be fully mitigated with the purchasing of credits from the Riverpark Mitigation Bank. Further, through the purchase of 2.94 acres of rehabilitation credits, the Project will provide biologically equivalent or superior reservation. Alternatively, on-site impacts can be mitigated with the purchase of 3.92 acres of preservation credits (2:1 mitigation ratio) from the Barry Jones Skunk Hollow Preservation Bank.

As mentioned above, wildlife agency comments were received on January 17, 2023 after the 60-day DBESP review period for the revised DBESP memo. VCS Environmental prepared a memo on February 10, 2023, who is independent of RBC, that details their opinion that the agency comments are inaccurate because they are solely based on aerial review. As of September 2023, the wildlife agencies have not approved the revised DBESP memo. Furthermore, a Section 1602 Lake and Streambed Alteration Agreement will be needed for project implementation and the wildlife agencies may not issue the permits needed for the project if they do not agree with the DBESP despite approval from the permittee.

Implementation of the Project is subject to all applicable federal, State, and local policies and regulations related to the protection of biological resources and tree preservation. Additionally, the Project is required to comply with the Menifee Landscape Standards (Section 9.2 of the Municipal Code) and Section 9.205 of the City Municipal Code establishing Tree Preservation Ordinance. RBC determined no protected trees exist on the Project site; therefore, the Project will not be subject to the City of Menifee's tree removal ordinance and no mitigation is required.

**Off-Site Improvements.** The off-site improvements footprint lies within the MSHCP boundaries. As discussed previously in **Section 4.4.3** and **Section 4.4.6.1**, the proposed Project as designed, with mitigation applied, would comply with all applicable policies and ordinances protecting biological resources.

No special-status plant or amphibian species occur within the off-site areas. No special-status fairy shrimp species occur within the off-site areas. As a result, no impacts would occur and no mitigation is required.

Burrowing owl have been identified on site and could be directly and indirectly impacted by project construction, where impacts would be potentially significant. However, with implementation of **Mitigation Measures BIO-1** through **BIO-4** noted in **Section 4.4.6.1** above, impacts to burrowing owl at the off-site areas would be less than significant.

Several features occurring within the off-site improvement jurisdictional delineation area were determined to be jurisdictional by RWQCB and CDFW. As noted in **Section 4.4.6.3** above, with implementation of **Mitigation Measure BIO-5**, impacts to jurisdictional waters would be less than significant. A minimum 1.5:1 mitigation ratio is typically required for impacts on aquatic resources as a part of an overall strategy to ensure no net loss, though ratios may be higher. Based on the results of the off-site jurisdictional delineation for the proposed project, the proposed project would permanently impact 0.32 acre of vegetated streambed (i.e., Feature 1, Feature 3, Feature 3A, Feature 4, and Feature 4A). The proposed mitigation strategy for off-site impacts is the purchase of 0.48 acre of rehabilitation credits (1.5:1 mitigation ratio) from the Riverpark Mitigation Bank. Alternatively, off-site impacts can be mitigated with the purchase of 0.64 acre of preservation credits (2:1 mitigation ratio) from the Barry Jones Skunk Hollow Preservation Bank. As mentioned above, wildlife agency comments were received on January 17, 2023 after the 60-day DBESP review period for the revised DBESP memo. VCS Environmental prepared a memo on February 10, 2023, who is independent of RBC, that details their opinion that the agency comments are inaccurate because they are solely based on aerial review. As of September 2023, the wildlife agencies have not approved the revised DBESP memo. Furthermore, a Section 1602 Lake and Streambed Alteration Agreement will be needed for project implementation and the wildlife agencies may not issue the permits needed for the project if they do not agree with the DBESP despite approval from the permittee.

Implementation of the Project is subject to all applicable federal, State, and local policies and regulations related to the protection of biological resources and tree preservation. Additionally, the Project is required to comply with the Menifee Landscape Standards (Section 9.2 of the Municipal Code) and Section 9.205 of the City Municipal Code establishing Tree Preservation Requirements. No protected trees exist on the Project site; therefore, the Project will not be subject to the City of Menifee's tree removal ordinance and no mitigation is required.

**Off-Site Roadway Improvements.** Implementation of the Project would also result in off-site roadway improvements to address traffic impacts in conflict with the General Plan Circulation Element policies that strive to maintain desired LOS. These roadway improvements, which include widening and additional turn lanes as required, include Matthews Road/Case Road (between McLaughlin Road and Ethanac Road), McLaughlin Road (between Matthews Road/Case Road and

Menifee Road), and McCall Boulevard (between Encanto Drive and Menifee Road). These roadway improvements were identified in the General Plan Circulation Element and included in the Certified 2013 EIR.

The off-site roadway improvements footprint lies within the MSHCP boundaries. As discussed previously in **Section 4.4.3** and **Section 4.4.6.1**, the proposed Project as designed, with mitigation applied, would comply with all applicable policies and ordinances protecting biological resources. Implementation of **Mitigation Measures BIO-1** through **BIO-4** noted in **Section 4.4.6.1** above would ensure impacts to burrowing owl at the off-site areas would be less than significant. **Mitigation Measure BIO-5** would mitigate impacts to jurisdictional aquatic resources through attaining proper permitting, following permit conditions, and through compensatory mitigation requirements. The project applicant shall mitigate direct impacts on an additional 0.25 acre of streambed Waters of the State (WOS)/MSHCP riverine features by purchasing an additional 0.38 acre of rehabilitation credits (1.5:1 mitigation ratio) at the Riverpark Mitigation Bank to satisfy anticipated CDFW 1602 and/or RWQCB mitigation requirements. The proposed project would permanently impact 0.17 acre (Feature 5) and 0.08 acre (Feature 4, Feature 6, Feature 7, Feature 8, and Feature 9) of Ephemeral Streambed – Disturbed, which are found in off-site roadway improvement areas. Alternatively, the project applicant can also offset the additional 0.25 acre of streambed Waters of the State (WOS)/MSHCP riverine features (Feature 4, Feature 5, Feature 6, Feature 7, Feature 8, Feature 9), by purchasing an additional 0.5 acre of preservation credits at Barry Jones/Skunk Hollow or another CDFW-approved mitigation bank within Riverside County at a 2:1 mitigation ratio. Further, implementation of the Project is subject to all applicable federal, State, and local policies and regulations related to the protection of biological resources and tree preservation. Additionally, the Project is required to comply with the Menifee Landscape Standards (Section 9.2 of the Municipal Code) and Section 9.205 of the City Municipal Code establishing Tree Preservation Requirements. No protected trees exist on the roadway areas; therefore, the Project will not be subject to the City of Menifee’s tree removal ordinance and no mitigation is required.

**Significance Determination Prior to Mitigation:** Potentially Significant Impact.

**Mitigation Measures:** **Mitigation Measures BIO-1** through **BIO-5** would be applied to the Project.

**Significance Determination After Mitigation:** Less Than Significant.

#### 4.4.6.6 Local Policies and Ordinances Protecting Biological Resources

**Threshold 4.4-6:** **Would the Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan?**

**On-Site Improvements.** The Project site lies within the MSHCP. The site is within MSHCP designated survey areas for burrowing owl. As discussed in **Section 4.4.3** above, burrowing owl has the potential to occur at the Project site and adjacent areas. The Project site is not within an MSHCP designated amphibian or mammal survey area or CASSA for plants. The Project site is not within any MSHCP Criteria Cells, Cell Groups, Cores, or Linkages.

As discussed in this section, implementation of **Mitigation Measures BIO-1** through **BIO-5** would ensure that the proposed Project would not conflict with or obstruct implementation of the MSHCP. Mitigation Measure BIO-1 would mitigate project impacts on vegetation communities through payment of development fees. Mitigation Measure BIO-2 would mitigate project impacts on nesting birds by conducting a pre-construction nesting bird survey and implementing the appropriate avoidance buffer if needed. Mitigation Measure BIO-3 would mitigate project impacts on burrowing owl by conducting a pre-construction presence/absence survey for burrowing owl and implementing accepted protocols following the survey. Mitigation Measure BIO-4 would mitigate project impact on Stephen's kangaroo rat through payment of the SKR HCP Fee to the County of Riverside. Mitigation Measure BIO-5 would mitigate impacts to jurisdictional aquatic resources through attaining proper permitting, following permit conditions, and through compensatory mitigation requirements.

**Off-Site Improvements.** Similar to the above section regarding on-site improvements, the off-site improvements footprint lies within the MSHCP. The site is within MSHCP designated survey areas for burrowing owl. As discussed in **Section 4.4.3** above, burrowing owl has the potential to occur at the Project site and immediately adjacent areas, including the off-site areas. The Project site is not within an MSHCP designated amphibian or mammal survey area or CASSA for plants. The Project site is not within any MSHCP Criteria Cells, Cell Groups, Cores, or Linkages.

As discussed in this section, implementation of **Mitigation Measures BIO-1** through **BIO-5** would ensure that the proposed Project would not conflict with or obstruct implementation of the MSHCP. Mitigation Measures BIO-1 would mitigate project impacts on vegetation communities through payment of development fees. Mitigation Measure BIO-2 would mitigate project impacts on nesting birds by conducting a pre-construction nesting bird survey and implementing the appropriate avoidance buffer if needed. Mitigation Measure BIO-3 would mitigate project impacts on burrowing owl by conducting a pre-construction presence/absence survey for burrowing owl and implementing accepted protocols following the survey. Mitigation Measure BIO-4 would mitigate project impact on Stephen's kangaroo rat through payment of the SKR HCP Fee to the County of Riverside. Mitigation Measure BIO-5 would mitigate impacts to jurisdictional aquatic resources through attaining proper permitting, following permit conditions, and through compensatory mitigation requirements.

**Off-Site Roadway Improvements.** Implementation of the Project would also result in off-site roadway improvements to address traffic impacts in conflict with the General Plan Circulation Element policies that strive to maintain desired LOS. These roadway improvements, which include widening and additional turn lanes as required, include Matthews Road/Case Road (between McLaughlin Road and Ethanac Road), McLaughlin Road (between Matthews Road/Case Road and Menifee Road), and McCall Boulevard (between Encanto Drive and Menifee Road). These roadway improvements were identified in the General Plan Circulation Element and included in the Certified 2013 EIR.

Similar to the off-site improvements along Menifee Road, SR-74, Matthews Road, and Briggs Road discussed above, the off-site roadway improvements along Matthews Road (Case Road), McCall Boulevard, and McLaughlin Road lie within the MSHCP. As discussed in this section, implementation of **Mitigation Measures BIO-1** through **BIO-5** would ensure that the proposed Project would not

conflict with or obstruct implementation of the MSHCP. **Mitigation Measure BIO-1** would mitigate project impacts on vegetation communities through payment of development fees. **Mitigation Measure BIO-2** would mitigate project impacts on nesting birds by conducting a pre-construction nesting bird survey and implementing the appropriate avoidance buffer if needed. **Mitigation Measure BIO-3** would mitigate project impacts on burrowing owl by conducting a pre-construction presence/absence survey for burrowing owl and implementing accepted protocols following the survey. **Mitigation Measure BIO-4** would mitigate project impacts on Stephen's kangaroo rat through payment of the SKR HCP Fee to the County of Riverside. **Mitigation Measure BIO-5** would mitigate impacts to jurisdictional aquatic resources through attaining proper permitting, following permit conditions, and through compensatory mitigation requirements. Impacts would therefore be **less than significant** with mitigation incorporated.

**Significance Determination Prior to Mitigation:** Potentially Significant Impact.

**Mitigation Measures:** **Mitigation Measures BIO-1** through **BIO-5** would be applied to the Project.

**Significance Determination after Mitigation:** Less Than Significant.

#### 4.4.7 Cumulative Impacts

According to Section 15130 of the *State CEQA Guidelines*, cumulative impacts refer to incremental effects of an individual project when viewed in connection with the effects of past projects, current projects, and probable future projects. Due to the proposed Project's historic and ongoing disturbance, proximity to development, lack of sensitive biological resources, and through compliance with the MSHCP, project impacts will not result in significant cumulative effects on biological resources.

Project construction will contribute to the incremental loss of Active Agriculture, Developed, Disturbed, Ephemeral Streambed – Disturbed, Mulefat Thickets, Nonnative Grassland, Riversidean Sage Scrub, and Southern Willow Scrub – Disturbed in the region, including potential habitat for some special-status species. Cumulative impacts potentially include habitat fragmentation, increased edge effects, reduced habitat quality, and increased wildlife mortality. The MSHCP provides a comprehensive approach to the regional conservation of these habitats and, as a regional plan, serves to provide mitigation for cumulative impacts to covered species. Project compliance and consistency with the MSHCP ensure that any cumulative impacts to covered species are effectively mitigated. Special-status species that are not covered by the MSHCP also benefit from the surveys, conservation, and other measures of the MSHCP because they occupy many of the same habitats. Additionally, the project will be required to pay MSHCP Local Development Mitigation Fees as described in **Mitigation Measure BIO-1**. Payment of MSHCP Local Development Mitigation Fees provides habitat-based mitigation within the plan area for all wildlife and plant species impacted due to the loss of suitable habitat from covered projects. The project would be consistent with the goals/objectives of the MSHCP with an approved DBESP and the implementation of the proposed avoidance and mitigation measures listed above.

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Focused biological resource studies have been conducted to assess potential impacts associated with development of the proposed uses. As outlined in **Section 4.4.5**, potential impacts on plant communities, sensitive wildlife species, habitat fragmentation, wildlife movement, jurisdictional waters, habitat conservation plans, or local ordinances or regulations protecting biological resources are considered less than cumulatively significant.

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