

APPENDIX B

Biological Resources Assessment



November 25, 2024

CSG CONSULTANTS, INC.

Attention: Liza Debies

3875 Hopyard Road, Suite 141

Pleasanton, California 94588

SUBJECT: Biological Resources Assessment for the Palos Verdes Estates 2021-2029 Housing Element Program 13 Rezoning Project Located in the City of Palos Verdes Estates, Los Angeles County, California

Introduction

This report contains the findings of ELMT Consulting's (ELMT) literature review and biological field investigation for the Palos Verdes Estates 2021-2029 Housing Element Program 13 Rezoning Project located in the City of Palos Verdes Estates, Los Angeles County, California. The field investigation was conducted by biologist Andrew N. Mestas on October 10, 2024 to document baseline conditions and assess the potential for special-status¹ plant and wildlife species to occur within the project sites that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the project sites to support special-status plant and wildlife species identified by the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB), and other electronic databases as potentially occurring in the general vicinity of the project sites.

Project Location

The City is a coastal city within the Los Angeles, Long Beach metropolitan area approximately 30 miles southwest of downtown Los Angeles within Los Angeles County, California. The City covers approximately 4.8 square miles situated on the Palos Verdes Peninsula and neighbors the cities of Rancho Palos Verdes and Rolling Hills Estates. The City is generally bound to the west/southwest by the Pacific Ocean, the City of Torrance to the north, the City of Rolling Hills Estates to the east, and the City of Rancho Palos Verdes to the south. The nearest highway to the City is State Route (SR)-1, to the north of the City. Palos Verdes Drive West and Palos Verdes Drive North provide primary access to the City. (refer to Exhibits 1 and 2 in Attachment A)

The City has identified a total of three sites to rezone, Malaga Cove (Site 1), Lunada Bay (Site 2), and the First Church of Christ, Scientist (Site 3). Site 1 and Site 2 would be re-zoned with MU-O designation and the Site 3 would be rezoned to R-M with the HO-O overlay zone. Both overlay zones would allow for by-right residential uses with objective design standards. The opportunity sites (referred herein as "opportunity

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

sites” or “sites”) are all within the incorporated area of the City. Refer to Exhibits 3 to 5 in Attachment A.

The specific location of each project site subarea is provided below:

Site No.	Name	Address	Assessor's Parcel Number (APN)	Existing Uses	Acreage (Acres)	Year Built	Density Range	Maximum Capacity
1	Malaga Cove	316 Tejon Pl; 304 Tejon Pl	7539-016-018; 7539-016-019	Office	0.42 0.26	1956; 1952	25-30	20
2	Lunada Bay	2325 Palos Verdes Dr. W	7542-015-025	Office/Retail/Restaurant	0.68	1967	25-30	20
3	First Church of Christ, Scientist	4010 Palos Verdes Dr. N; 4010 Palos Verdes Dr. N;	7538-027-010; 7538-027-009	Church	4.63	1969	20-25	116
Totals					5.99	—	—	156

Source: City of Palos Verdes Estates, 2024

Project Description

The City has identified five candidate parcels within three sites to be rezoned to accommodate by-right housing, which will be implemented as part of Housing Program 13. Two new housing overlay zones would be implemented: the Mixed-Use Overlay (MU-O) and Housing Opportunity Overlay (HO-O). These sites could support a variety of housing choices and are conveniently located near employment and transportation options for all residents.

The opportunity sites are presented in the table above. To present a conservative analysis of potential environmental impacts, this Draft IS/MND assumes a maximum number of residential units on each site totaling 156 units. Assuming a factor of 2.57 for the housing, this document assumes the proposed project could result in a maximum of 401 new residents.² This factor is based on existing single-family homes, which typically have a higher person per household than multi-family homes, which provides a conservative analysis. It is unlikely that all the sites would develop at maximum density and this approach provides a conservative analysis with respect to environmental impacts.

A description of the three sites is provided in the table below:

Subarea	Name	Description
1	Malaga Cove	Site 1 is made up of 2 parcels for a total of 0.68 acres. The site contains two 1 and 2 -story office buildings totaling 15,450 square feet for an FAR of 0.52. This site is the westernmost portion of the Malaga Cove area. The site's location and existing conditions photos are provided as Exhibits 3a and 3b.

² California Department of Finance. 2024. Table 2: E-5 City/County Population and Housing Estimates, 1/1/2024. Website: https://dof.ca.gov/wp-content/uploads/sites/352/Forecasting/Demographics/Documents/E-5_2024_InternetVersion.xlsx. Accessed September 30, 2024.

Subarea	Name	Description
		Roughly one quarter of the site area is devoted to vehicular parking and circulation. Access is taken from Tejon Place. Several vacancies, including the entire second floor of one of the site's buildings (a 3,330 square foot office space) were observed at this site at the time of adoption of the Housing Element. Existing uses include offices for realtors, interior designers, and an outpatient medical office. The Mixed-Use Overlay zoning designation would allow for the existing uses to continue operating on the ground floor of any future development in a vertically mixed configuration. Parking for any ongoing uses would be incorporated into the design of future residential development. As the current FAR is only 0.52 (0.43 and 0.66 for each parcel respectively), the site could be intensified to an FAR of up to 1.25 and accommodate one or more of the existing uses. It is likely that the existing buildings would be demolished and replaced, therefore any existing use would need to be temporarily relocated. The rezoning is consistent with the existing General Plan designation and no GPA would be required on this site.
2	Lunada Bay Patio Building	Site 1 is made up of 2 parcels for a total of 0.68 acres. The site contains two 1 and 2 -story office buildings totaling 15,450 square feet for an FAR of 0.52. This site is the westernmost portion of the Malaga Cove area. The site's location and existing conditions photos are provided as Exhibits 3a and 3b. Roughly one quarter of the site area is devoted to vehicular parking and circulation. Access is taken from Tejon Place. Several vacancies, including the entire second floor of one of the site's buildings (a 3,330 square foot office space) were observed at this site at the time of adoption of the Housing Element. Existing uses include offices for realtors, interior designers, and an outpatient medical office. The Mixed-Use Overlay zoning designation would allow for the existing uses to continue operating on the ground floor of any future development in a vertically mixed configuration. Parking for any ongoing uses would be incorporated into the design of future residential development. As the current FAR is only 0.52 (0.43 and 0.66 for each parcel respectively), the site could be intensified to an FAR of up to 1.25 and accommodate one or more of the existing uses. It is likely that the existing buildings would be demolished and replaced, therefore any existing use would need to be temporarily relocated. The rezoning is consistent with the existing General Plan designation and no GPA would be required on this site.
3	First Church of Christ, Scientist Site	The First Church of Christ, Scientist Site consists of two parcels totaling 4.63-acre (3.56 acres & 1.07 acres each). Church facilities include a 12,082 square foot church building with ample open parking, open areas, and landscaping. Access taken off of Palos Verdes Drive North and Via Campesina. The site is large enough to allow the current church use to continue while accommodating residential units. The site's location and existing conditions photos are provided in Exhibits 5a and 5b. A GPA from R-1 to R-M would be required to accommodate the required number of units.

Methodology

A literature review and records search were conducted to determine which special-status biological resources have the potential to occur on or within the general vicinity of the project sites. In addition to the

literature review, a general habitat assessment or field investigation of the project sites was conducted to document existing conditions and assess the potential for special-status biological resources to occur within the project sites.

Literature Review

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

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

- Google Earth Pro historic aerial imagery (1985-2024);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey³;
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS Endangered Species Profiles.

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

Field Investigation

Following the literature review, biologist Andrew N. Mestas inventoried and evaluated the condition of the habitat within the project sites on October 10, 2024. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking meandering transects throughout the project site. In addition, aerial photography was reviewed prior to the site investigation to locate potential natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

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

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

Soil Series Assessment

On-site and adjoining soils were researched prior to the field investigation using the USDA NRCS Soil Survey for Los Angeles County, California. In addition, a review of the local geological conditions and historical aerial photographs was conducted to assess the ecological changes that the project sites have undergone.

Plant Communities

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

Plants

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

Wildlife

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

Jurisdictional Drainages and Wetlands

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

are also subject to state and federal regulatory jurisdiction. In addition, ELMT reviewed jurisdictional waters information through examining historical aerial photographs to gain an understanding of the impact of land-use on natural drainage patterns in the area. The USFWS National Wetland Inventory (NWI) and Environmental Protection Agency (EPA) Water Program “My Waters” data layers were also reviewed to determine whether any hydrologic features and wetland areas have been documented on or within the vicinity of the project sites.

Existing Site Conditions

Palos Verdes Estates is situated on a coastal plateau that ranges from 0 to 1,000 feet above mean sea level. Onsite topography is characterized by generally flat paved areas of topographic relief with sloped regions that adhere to the natural sloping of the surrounding area.

Based on the NRCS USDA Web Soil Survey, the Malaga Cove site is historically underlain by Urban land-Dapplegray-Oceanaire complex, (10 to 35 percent slopes). The Lunada Bay site and the First Church of Christ, Scientist site are historically underlain by Urban land-Dapplegray-Vertic Calcixerolls complex (3 to 12 percent slopes) and Urban land-Dapplegray-Filiorum complex (5 to 15 percent slopes). Soils on the three sites have been mechanically disturbed from existing development.

The majority of the sites are developed, with an assortment of ornamental plants that decorate unpaved areas.

Vegetation

Due to existing land uses, no native plant communities or natural communities of special concern were observed on or adjacent to the project sites. The majority of the project sites consist of developed land that has been subject to a high degree of anthropogenic disturbances associated with development. The development has eliminated the natural plant communities that once occurred within the boundaries of the project sites. Refer to Attachment B, *Site Photographs*, for representative site photographs. No native plant communities will be impacted from implementation of the proposed project.

One (1) land cover type was observed on the three sites during the field investigation that would be classified as developed. The following is a description of the land cover type found within the three sites.

Developed

Developed areas generally encompass all buildings/structures, parks, and paved, impervious surfaces. Within the boundaries of the project sites, developed areas include residential, commercial, and institutional development, roadways, and other public infrastructure. These areas are largely devoid of natural vegetation and support primarily ornamental vegetation that may be maintained in association with or without artificial irrigation. Plant species present within the developed areas include juniper (*Juniperus spp.*), pine (*Pinus spp.*), hibiscus (*Hibiscus spp.*), palm (*Washingtonia sp.*), Lily of the Nile (*Agapanthus spp.*), New Zealand flax (*Phormium tenax*), fig trees (*Ficus spp.*), Indian hawthorne (*Rhaphiolepis indica*), gum tree (*Eucalyptus spp.*), and Peruvian pepper tree (*Schinus molle*).

Wildlife

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

Fish

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

Amphibians

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

Reptiles

The project sites provide minimal foraging and cover habitat for reptile species adapted to highly disturbed conditions. No reptile species were observed during the field investigation. Common reptilian species adapted to a high degree of anthropogenic disturbances that have the potential to occur on the project sites include western side-blotched lizard (*Uta stansburiana elegans*), and alligator lizard (*Elgaria multicarinata*). Due to the high level of anthropogenic disturbances on-site and surrounding development, no special-status reptilian species are expected to occur within project sites.

Birds

The project sites provide suitable foraging and nesting habitat for a variety of bird species adapted to urban environments. Bird species detected onsite during the investigation include house finch (*Haemorrhous mexicanus*), California towhee (*Melospiza crissalis*), red-tailed hawk (*Buteo jamaicensis*), mourning dove (*Zenaidura macroura*), American crow (*Corvus brachyrhynchos*), and northern mocking bird (*Mimus polyglottos*). Due to existing development and routine disturbances, the project sites do not provide suitable habitat for special-status bird species known to occur in the area.

Mammals

The project sites provide limited habitat for a mammalian species adapted to regular disturbance and developed conditions. No mammalian species were detected onsite during the investigation. Common mammalian species that could be expected to occur onsite include raccoon (*Procyon lotor*), black rat (*Rattus rattus*), ground squirrel (*Otospermophilus beecheyi*), coyote (*Canis latrans*), and domestic cat (*Felis catus*).

Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field survey, which was conducted outside of the breeding season. Although subjected to routine disturbance, the vegetation found on and adjacent to the project sites has the potential to provide suitable nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area that area adapted to urban environments. No raptors are expected to nest on-site due to lack of suitable nesting opportunities.

Nesting birds are protected pursuant to the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (Sections 3503, 3503.5, 3511, and 3513 prohibit the take, possession, or destruction of birds, their nests or eggs). If construction occurs between February 1st and August 31st, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction.

Migratory Corridors and Linkages

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

The Los Angeles County Department of Regional Planning (LACDRP) refers to habitat linkages, wildlife corridors, and major open spaces as “Significant Ecological Areas” (SEAs) and typically defines SEAs as habitat that consists of large, contiguous blocks with intervening areas of roads, rural residential development, and other low intensity disturbance. The LACDRP establishes and protects SEAs with the goal of maintaining high levels of connectivity between core habitat areas via a network of core open space areas and wide linkages and corridors.

As mapped by the LACDRP, the project sites do not occur within or near a SEA covered by the SEA ordinance. A portion of the Palos Verdes Peninsula and Coastline SEA occurs approximately 3,034 feet to the southeast of the Lunada Bay site, while a large majority exists as the ocean bordering the western coast, however, this SEA is not covered by the SEA ordinance. Additionally, the project sites support developed land which is surrounded by existing development. Therefore, implementation of the proposed project will not have any direct or indirect impacts to the SEA. Further, the sites do not function as a Wildlife Movement Pathway (WMP) or support wildlife movement opportunities through the area.

Jurisdictional Areas

There are three key agencies that regulate activities within inland streams, wetlands, and riparian areas in California. The Corps Regulatory Branch regulates discharge of dredge or fill materials into “waters of the United States” pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Of the State agencies, the CDFW regulates alterations to streambed and bank under Fish and

Wildlife Code Sections 1600 et seq., and the Regional Board regulates discharges into surface waters pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act.

No jurisdictional drainage and/or wetland features were observed on the project site during the field investigation. Further no blueline streams have been recorded on the project site. Therefore, development of the project will not result in impacts to Corps, Regional Board, or CDFW jurisdiction and regulatory approvals will not be required.

Special-Status Biological Resources

The CNDDDB Rarefind 5 and the CNPS Electronic Inventory of Rare and Endangered Vascular Plants of California were queried for reported locations of special-status plant and wildlife species as well as special-status natural plant communities in the Torrance and Redondo Beach USGS 7.5-minute quadrangles. The habitat assessment evaluated the conditions of the habitat(s) within the boundaries of the project sites to determine if the existing plant communities have the potential to provide suitable habitat(s) for special-status plant and wildlife species.

The literature search identified thirty (30) special-status plant species, seventy-two (72) special-status wildlife species, and one (1) special-status plant community as having potential to occur within the Torrance and Redondo Beach USGS 7.5-minute quadrangles. Special-status plant and wildlife species were evaluated for their potential to occur within the project sites based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project sites are presented in Attachment C: *Potentially Occurring Special-Status Biological Resources*.

Special-Status Plants

According to the CNDDDB and CNPS, thirty (30) special-status plant species have been recorded in the Torrance and Redondo Beach quadrangles (refer to Attachment C). No special-status plant species were observed on-site during the habitat assessment. The project sites consist of developed land that has been subject to decades of anthropogenic disturbance from associated development. These disturbances have eliminated the natural plant communities that once occurred on-site which has removed suitable habitat for special-status plant species known to occur in the general vicinity of the project sites. Based on habitat requirements for specific special-status plant species and the availability and quality of habitats needed by each species, it was determined that the project sites do not provide suitable habitat for any of the special-status plant species known to occur in the area and all are presumed to be absent from the sites. No focused surveys are recommended.

Special-Status Wildlife

According to the CNDDDB, seventy-two (72) special-status wildlife species have been reported in the Torrance and Redondo Beach quadrangles (refer to Attachment C). No special-status wildlife species were observed onsite during the habitat assessment. The project sites consist of developed land that has been subject to decades of anthropogenic disturbance from associated development. Based on habitat requirements for specific special-status wildlife species and the availability and quality of habitats needed by each species, it was determined that the project sites have a moderate potential to support foraging habitat

for Cooper's hawk (*Accipiter cooperii*), monarch butterfly (*Danaus plexippus pop.1*), and rufous hummingbird (*Selasphorus rufus*); and a low potential to support foraging habitat for great egret (*Ardea alba*), great blue heron (*Ardea herodias*), snowy egret (*Egretta thula*), and California gull (*Larus californicus*). All remaining special-status wildlife species are presumed to be absent due to a lack of suitable habitat.

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

Additionally, The project sites were determined to have a moderate potential to support overwintering habitat for monarch butterflies because of their location relative to the coast, proximity to known overwintering sites, and support of large trees (i.e., juniper, pine, palm, gum tree, and Peruvian pepper). The Project may require trees to be removed or trimmed in order to facilitate building demolition and construction. Removing trees during the overwintering period could have impacts on monarch butterflies. Prior to project implementation, the Project Applicant will need to conduct an overwintering grove habitat and impact assessment for the Project sites. The qualified biologist should conduct season appropriate surveys to determine if the Project site supports overwintering groves/monarch population. The assessment should provide information on where overwintering habitat is located; what Project activities would impact overwintering habitat; what are the impacts (e.g., number and species of trees removed); where impacts would occur; and measures to avoid, minimize, or mitigate for those potential impacts.

Special-Status Plant Communities

According to the CNDDDB, 1 special-status plant community has been reported in the Torrance and Redondo Beach USGS 7.5-minute quadrangles: Southern Coastal Bluff Scrub, which was not observed onsite during the field investigation. Therefore, no special-status plant communities will be impacted by implementation of the proposed project.

Critical Habitat

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

The project site is not located within federally designated Critical Habitat. Critical Habitat for California gnatcatcher (*Poliophtila californica californica*) is located throughout the peninsula within the small patches of undeveloped areas. Refer to Exhibit 6, *Critical Habitat* in Attachment A. Therefore, no impacts to federally designated Critical Habitat will occur from implementation of the proposed project.

Palos Verdes Estates Municipal Code

Chapter 12.16, *Street Trees*, of the City of Palos Verdes Estates Municipal Code (or Code), provides protection for trees and shrubs to serve the public health, safety and general welfare of the City. In accordance with the Code, “Street trees” means trees or shrubs in public places along city streets, roads, boulevards and alleys, and trees and shrubs include all woody vegetation growing, planted or to be planted on any public place or area.

It is unlawful and it is prohibited for any person, firm, association, corporation or franchisee of the City to plant, move, remove, destroy, cut, trim, deface, injure or replace any tree or shrub in, upon or along any public street or other place of the city or to cause the same to be done without first obtaining a written permit from the public works director, issued in accordance with the procedures set forth in this chapter. Prior to the removal of any trees or shrubs on the project sites that qualify as “Street Trees”, a permit will need to be acquired from the City to remove these trees or shrubs trees from a project site.

Conclusion

Based on the proposed project footprint and existing site conditions discussed in this report, none of the special-status plant or wildlife species known to occur in the general vicinity of the project sites are expected to be directly or indirectly impacted from implementation of the proposed project. With completion of the recommendations provided below, no impacts to year-round, seasonal, or special-status avian residents will occur from implementation of the proposed project. Therefore, it was determined that implementation of the project will have “no effect” on federally or State listed species known to occur in the general vicinity of the project sites. Additionally, the development of the project will not result in any impacts to jurisdictional waters, or regional wildlife movement corridors/linkages. Further, the project site is not located within any adopted Habitat Conservation Plan or Natural Community Conservation Plan

Recommendations

Migratory Bird Treaty Act and Fish and Game Code

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

If construction occurs between January 15th and September 15th, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction

clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

Monarch Butterfly Overwintering Habitat Survey

Prior to project implementation, the Project Applicant will need to conduct an overwintering grove habitat and impact assessment for the Project sites. The qualified biologist should conduct season appropriate surveys to determine if the Project site supports overwintering groves/monarch population. The assessment should provide information on where overwintering habitat is located; what Project activities would impact overwintering habitat; what are the impacts (e.g., number and species of trees removed); where impacts would occur; and measures to avoid, minimize, or mitigate for those potential impacts.

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

Sincerely,



Thomas J. McGill, Ph.D.
Managing Director



Travis J. McGill
Director

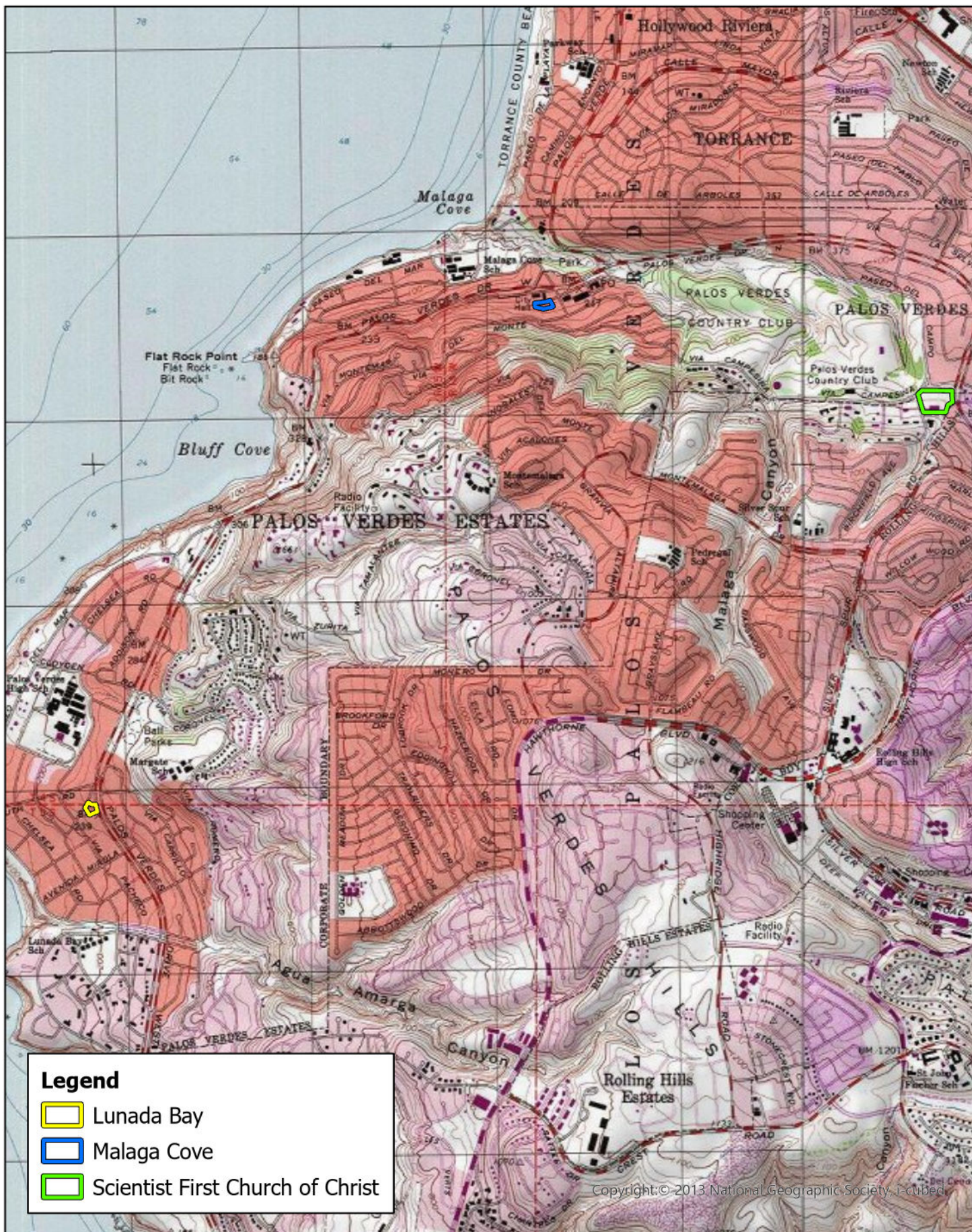
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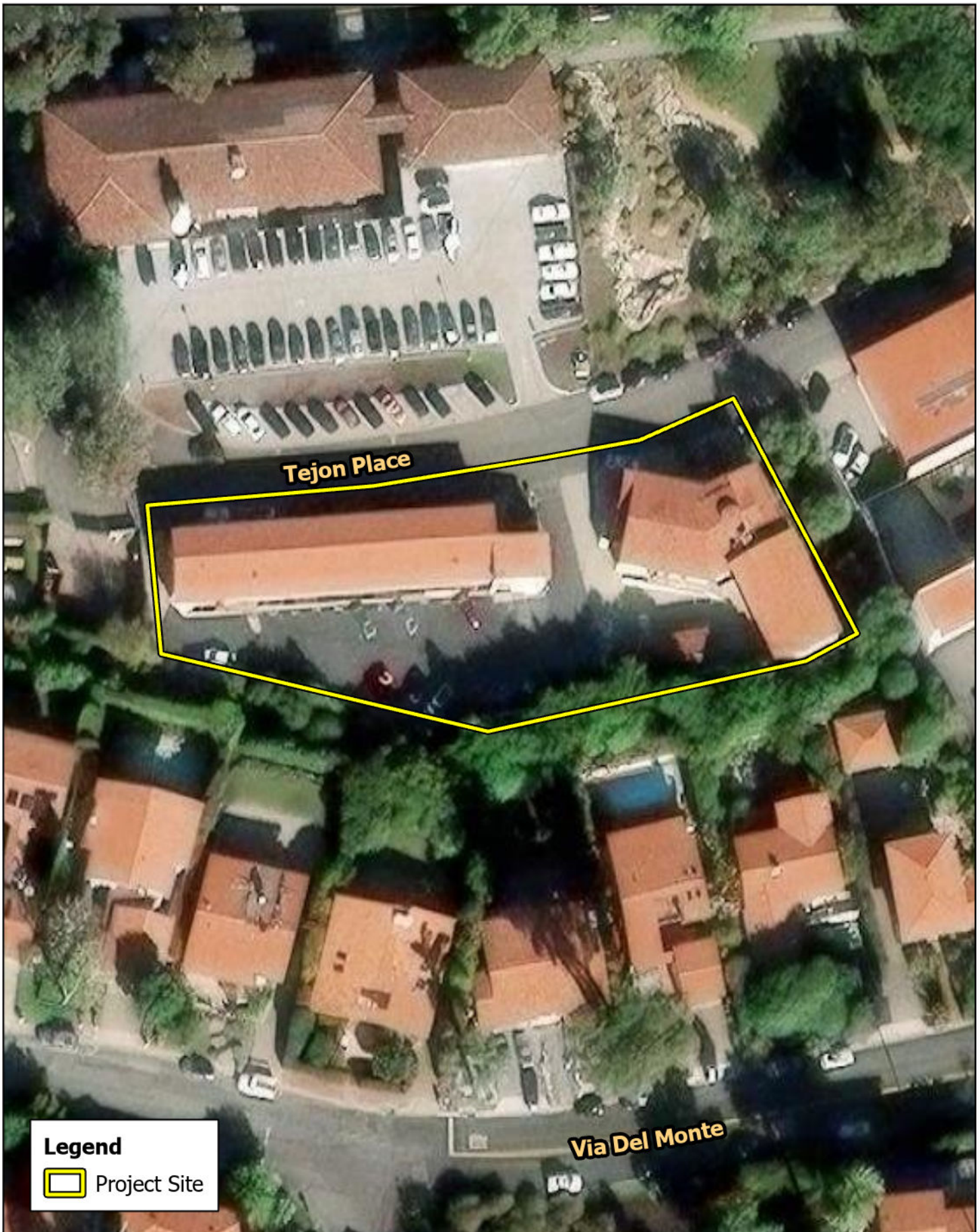
- A. *Project Exhibits*
- B. *Site Photographs*
- C. *Potentially Occurring Special-Status Biological Resources*
- D. *Regulations*

Attachment A

Project Exhibits







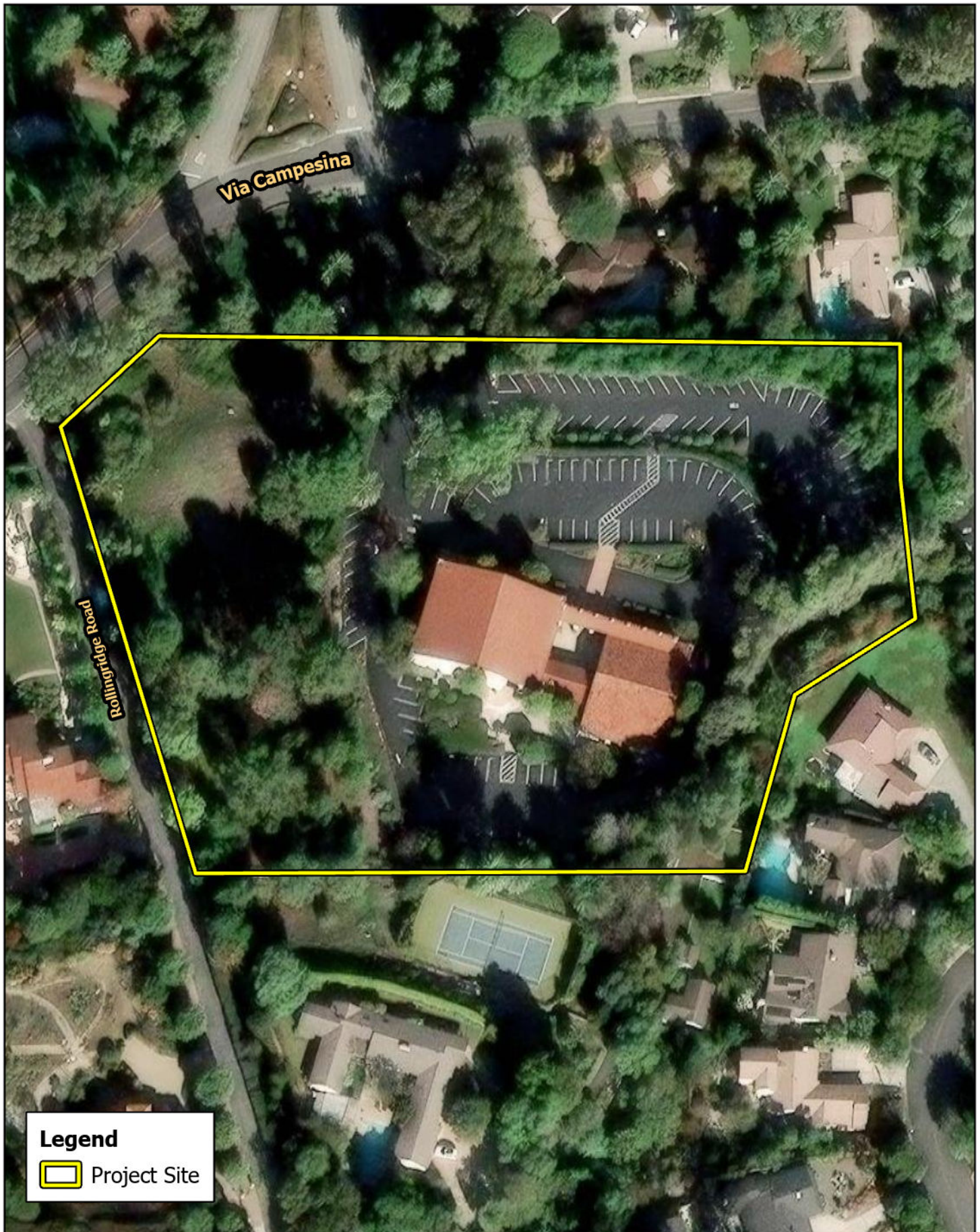
Legend

 Project Site



Legend

 Project Site





Attachment B

Site Photographs



Photograph 1: From the northeastern boundary of the Lunada Bay site looking southwest.



Photograph 2: From the central portion of the Lunada Bay site looking west.



Photograph 3: From the northwestern edge of the Lunada Bay site looking southeast.



Photograph 4: From the northern boundary of the Malaga Cove site looking south.



Photograph 5: From the northeastern corner of the Malaga Cove site looking southwest.



Photograph 6: From the southwest corner of the Malaga Cove site looking northeast.



Photograph 7: From the northwest portion of the First Church of Christ, Scientist site looking southeast at ornamental vegetation.



Photograph 8: From the western portion of the First Church of Christ, Scientist site looking east.



Photograph 9: From the southwest corner of the First Church of Christ, Scientist site looking northeast.



Photograph 10: From the northeastern portion of the First Church of Christ, Scientist site looking west.

Attachment C

Potentially Occurring Special-Status Biological Resources

Scientific Name	Common Name	Federal Status	State Status	CDFW Listing	CNPS Rare Plant Rank	Potential to Occur
Special-Status Wildlife Species						
<i>Accipiter cooperii</i>	Coopers hawk	None	None	WL	-	Moderate Minimal foraging habitat, no suitable nesting habitat onsite, but suitable nesting opportunities occur in the area.
<i>Accipiter striatus</i>	sharp-shinned hawk	None	None	WL	-	Presumed Absent No suitable habitat.
<i>Agelaius tricolor</i>	tricolored blackbird	None	Threatened	SSC	-	Presumed Absent No suitable habitat.
<i>Aimophila ruficeps canescens</i>	southern California rufous-crowned sparrow	None	None	WL	-	Presumed Absent No suitable habitat.
<i>Anniella stebbinsi</i>	Southern California legless lizard	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Aquila chrysaetos</i>	golden eagle	None	None	FP WL	-	Presumed Absent No suitable habitat.
<i>Ardea alba</i>	great egret	None	None	-	-	Low Minimal foraging habitat, no suitable nesting habitat onsite.
<i>Ardea herodias</i>	great blue heron	None	None	-	-	Low Minimal foraging habitat, no suitable nesting habitat onsite.
<i>Athene cunicularia</i>	burrowing owl	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Aythya americana</i>	redhead	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Bombus crotchii</i>	Crotch's bumble bee	None	Candidate Endangered	-	-	Presumed Absent No suitable habitat.
<i>Bombus pensylvanicus</i>	American bumble bee	None	None	-	-	Presumed Absent No suitable habitat.
<i>Brennania belkini</i>	Belkins dune tabanid fly	None	None	-	-	Presumed Absent No suitable habitat.
<i>Calypte costae</i>	Costas hummingbird	None	None	-	-	Presumed Absent No suitable habitat.
<i>Campylorhynchus brunneicapillus sandiegensis</i>	coastal cactus wren	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Chaetura vauxi</i>	Vauxs swift	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Charadrius montanus</i>	mountain plover	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Charadrius nivosus nivosus</i>	western snowy plover	Threatened	None	SSC	-	Presumed Absent No suitable habitat.
<i>Chlidonias niger</i>	black tern	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Cicindela hirticollis gravida</i>	sandy beach tiger beetle	None	None	-	-	Presumed Absent No suitable habitat.
<i>Cicindela latesignata</i>	western beach tiger beetle	None	None	-	-	Presumed Absent No suitable habitat.

<i>Circus hudsonius</i>	northern harrier	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Cistothorus palustris clarkae</i>	Clarks marsh wren	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Coccyzus americanus occidentalis</i>	western yellow-billed cuckoo	Threatened	Endangered	-	-	Presumed Absent No suitable habitat.
<i>Contopus cooperi</i>	olive-sided flycatcher	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Danaus plexippus plexippus pop. 1</i>	monarch - California overwintering population	Candidate	None	-	-	Moderate Minimal foraging habitat, no suitable overwintering habitat onsite.
<i>Dendrocygna bicolor</i>	fulvous whistling-duck	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Diadophis punctatus modestus</i>	San Bernardino ringneck snake	None	None	-	-	Presumed Absent No suitable habitat.
<i>Egretta thula</i>	snowy egret	None	None	-	-	Low Minimal foraging habitat, no suitable nesting habitat onsite.
<i>Empidonax traillii</i>	willow flycatcher	None	Endangered	-	-	Presumed Absent No suitable habitat.
<i>Enhydra lutris nereis</i>	southern sea otter	Threatened	None	FP	-	Presumed Absent No suitable habitat.
<i>Eucyclogobius newberryi</i>	tidewater goby	Endangered	None	SSC	-	Presumed Absent No suitable habitat.
<i>Eumops perotis californicus</i>	western mastiff bat	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Euphilotes allyni</i>	El Segundo blue butterfly	Endangered	None	-	-	Presumed Absent No suitable habitat.
<i>Falco peregrinus anatum</i>	American peregrine falcon	Delisted	Delisted	-	-	Presumed Absent No suitable habitat.
<i>Gavia immer</i>	common loon	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Glaucopsyche lygdamus palosverdesensis</i>	Palos Verdes blue butterfly	Endangered	None	-	-	Presumed Absent No suitable habitat.
<i>Glyptostoma gabrielense</i>	San Gabriel chestnut	None	None	-	-	Presumed Absent No suitable habitat.
<i>Habroscelimorpha gabbii</i>	western tidal-flat tiger beetle	None	None	-	-	Presumed Absent No suitable habitat.
<i>Hydroprogne caspia</i>	Caspian tern	None	None	-	-	Presumed Absent No suitable habitat.
<i>Icteria virens</i>	yellow-breasted chat	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Lanius ludovicianus</i>	loggerhead shrike	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Larus californicus</i>	California gull	None	None	WL	-	Low Minimal foraging habitat, no suitable nesting habitat onsite.
<i>Lasionycteris noctivagans</i>	silver-haired bat	None	None	-	-	Presumed Absent No suitable habitat.

<i>Microtus californicus stephensi</i>	south coast marsh vole	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Nannopterum auritum</i>	double-crested cormorant	None	None	WL	-	Presumed Absent No suitable habitat.
<i>Neotoma lepida intermedia</i>	San Diego desert woodrat	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Nycticorax nycticorax</i>	black-crowned night heron	None	None	-	-	Presumed Absent No suitable habitat.
<i>Nyctinomops femorosaccus</i>	pocketed free-tailed bat	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Passerculus sandwichensis beldingi</i>	Beldings savannah sparrow	None	Endangered	-	-	Presumed Absent No suitable habitat.
<i>Pelecanus occidentalis californicus</i>	California brown pelican	Delisted	Delisted	-	-	Presumed Absent No suitable habitat.
<i>Perognathus longimembris pacificus</i>	Pacific pocket mouse	Endangered	None	SSC	-	Presumed Absent No suitable habitat.
<i>Phrynosoma blainvillii</i>	coast horned lizard	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Polioptila californica californica</i>	coastal California gnatcatcher	Threatened	None	SSC	-	Presumed Absent No suitable habitat.
<i>Pyrocephalus rubinus</i>	vermillion flycatcher	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Rallus obsoletus levipes</i>	light-footed Ridgways rail	Endangered	Endangered	FP	-	Presumed Absent No suitable habitat.
<i>Rhaphiomidas terminatus terminatus</i>	El Segundo flower-loving fly	None	None	-	-	Presumed Absent No suitable habitat.
<i>Selasphorus rufus</i>	rufous hummingbird	None	None	-	-	Moderate Minimal foraging habitat, no suitable nesting habitat onsite, but suitable nesting opportunities occur in the area.
<i>Setophaga petechia</i>	yellow warbler	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Siphateles bicolor mohavensis</i>	Mohave tui chub	Endangered	Endangered	FP	-	Presumed Absent No suitable habitat.
<i>Sorex ornatus salicornicus</i>	southern California saltmarsh shrew	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Spea hammondi</i>	western spadefoot	Proposed Threatened	None	SSC	-	Presumed Absent No suitable habitat.
<i>Spizella breweri</i>	Brewers sparrow	None	None	-	-	Presumed Absent No suitable habitat.
<i>Sternula antillarum browni</i>	California least tern	Endangered	Endangered	FP	-	Presumed Absent No suitable habitat.
<i>Streptocephalus woottoni</i>	Riverside fairy shrimp	Endangered	None	-	-	Presumed Absent No suitable habitat.
<i>Taxidea taxus</i>	American badger	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Thalasseus elegans</i>	elegant tern	None	None	WL	-	Presumed Absent No suitable habitat.
<i>Thamnophis hammondi</i>	two-striped gartersnake	None	None	SSC	-	Presumed Absent No suitable habitat.

<i>Thamnophis sirtalis pop. 1</i>	south coast gartersnake	None	None	SSC	-	Presumed Absent No suitable habitat.
<i>Tryonia imitator</i>	mimic tryonia (=California brackishwater snail)	None	None	-	-	Presumed Absent No suitable habitat.
<i>Vireo bellii pusillus</i>	least Bells vireo	Endangered	Endangered	-	-	Presumed Absent No suitable habitat.
<i>Xanthocephalus xanthocephalus</i>	yellow-headed blackbird	None	None	SSC	-	Presumed Absent No suitable habitat.
Special-Status Plant Species						
<i>Aphanisma blitoides</i>	aphanisma	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Atriplex coulteri</i>	Coulters saltbush	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Atriplex pacifica</i>	south coast saltscale	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Atriplex parishii</i>	Parish's brittle scale	None	None	-	1B.1	Presumed Absent No suitable habitat.
<i>Atriplex serenana var. davidsonii</i>	Davidson's saltscale	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Calochortus catalinae</i>	Catalina mariposa-lily	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Calystegia peirsonii</i>	Peirson's morning-glory	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Centromadia parryi ssp. australis</i>	southern tarplant	None	None	-	1B.1	Presumed Absent No suitable habitat.
<i>Centromadia pungens ssp. laevis</i>	smooth tarplant	None	None	-	1B.1	Presumed Absent No suitable habitat.
<i>Chloropyron maritimum ssp. maritimum</i>	salt marsh birds-beak	Endangered	Endangered	-	1B.2	Presumed Absent No suitable habitat.
<i>Cistanthe maritima</i>	seaside cistanthe	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Convolvulus simulans</i>	small-flowered morning-glory	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Dithyrea maritima</i>	beach spectaclepod	None	Threatened	-	1B.1	Presumed Absent No suitable habitat.
<i>Dudleya virens ssp. insularis</i>	island green dudleya	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Erysimum suffrutescens</i>	suffrutescent wallflower	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Hibiscus lasiocarpus var. occidentalis</i>	woolly rose-mallow	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Horkelia cuneata var. puberula</i>	mesa horkelia	None	None	-	1B.1	Presumed Absent No suitable habitat.
<i>Isocoma menziesii var. decumbens</i>	decumbent goldenbush	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Juglans californica</i>	southern California black walnut	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Juncus acutus ssp. leopoldii</i>	southwestern spiny rush	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Lasthenia glabrata ssp. coulteri</i>	Coulters goldfields	None	None	-	1B.1	Presumed Absent No suitable habitat.

<i>Lycium brevipes</i> var. <i>hassei</i>	Santa Catalina Island desert-thorn	None	None	-	3.1	Presumed Absent No suitable habitat.
<i>Lycium californicum</i>	California box-thorn	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Nama stenocarpa</i>	mud nama	None	None	-	2B.2	Presumed Absent No suitable habitat.
<i>Navarretia prostrata</i>	prostrate vernal pool navarretia	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Pentachaeta lyonii</i>	Lyons pentachaeta	Endangered	Endangered	-	1B.1	Presumed Absent No suitable habitat.
<i>Phacelia stellaris</i>	Brands star phacelia	None	None	-	1B.1	Presumed Absent No suitable habitat.
<i>Suaeda esteroa</i>	estuary seablite	None	None	-	1B.2	Presumed Absent No suitable habitat.
<i>Suaeda taxifolia</i>	woolly seablite	None	None	-	4.2	Presumed Absent No suitable habitat.
<i>Symphyotrichum defoliatum</i>	San Bernardino aster	None	None	-	1B.2	Presumed Absent No suitable habitat.
Special-Status Plant Communities						
Southern Coastal Bluff Scrub		None	None	-	-	Absent

U.S. Fish and Wildlife Service (Fed) - Federal

END- Federal Endangered
 THR- Federal Threatened
 DL- Delisted

California Department of Fish and Wildlife (CA) - California Native Plant Society (CNPS) California

END- California Endangered
 THR- California Threatened
 Candidate- Candidate for listing under the California
 Endangered Species Act
 FP- California Fully Protected
 SSC- Species of Special Concern
 WL- Watch List
 CE- Candidate Endangered

California Rare Plant Rank

1B Plants Rare, Threatened, or
 Endangered in California and Elsewhere
 2B Plants Rare, Threatened, or
 Endangered in California, But More
 Common Elsewhere
 3 Plants About Which More Information
 is Needed – A Review List
 4 Plants of Limited Distribution – A
 Review List

CNPS Threat Ranks

0.1- Seriously threatened in California
 0.2- Moderately threatened in
 California
 0.3- Not very threatened in California

Attachment D

Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

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

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

State Regulations

California Environmental Quality Act (CEQA)

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

California Endangered Species Act (CESA)

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

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

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

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

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

Fish and Game Code

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

Native Plant Protection Act

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

California Native Plant Society Rare and Endangered Plant Species

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

California Rare Plant Rank

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

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

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

Threat Ranks

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

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

Federal Regulations

Section 404 of the Clean Water Act

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

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

(1) Waters which are:

- (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (ii) The territorial seas; or
- (iii) Interstate waters;

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

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

(4) Wetlands adjacent to the following waters:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) **Wetlands** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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

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

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

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

Section 401 of the Clean Water Act

Pursuant to Section 401 of the CWA, any applicant for a federal license or permit to conduct any activity which may result in any discharge to waters of the United States must provide certification from the State or Indian tribe in which the discharge originates. This certification provides for the protection of the physical, chemical, and biological integrity of waters, addresses impacts to water quality that may result from issuance of federal permits, and helps insure that federal actions will not violate water quality standards of the State or Indian tribe. In California, there are nine Regional Water Quality Control Boards (Regional Board) that issue or deny certification for discharges to waters of the United States and waters of the State, including wetlands, within their geographical jurisdiction. The State Water Resources Control Board assumed this responsibility when a project has the potential to result in the discharge to waters within multiple Regional Boards.

State Regulations

Fish and Game Code

Fish and Game Code Sections 1600 et. seq. establishes a fee-based process to ensure that projects conducted in and around lakes, rivers, or streams do not adversely impact fish and wildlife resources, or, when adverse impacts cannot be avoided, ensures that adequate mitigation and/or compensation is provided.

Fish and Game Code Section 1602 requires any person, state, or local governmental agency or public utility to notify the CDFW before beginning any activity that will do one or more of the following:

- (1) substantially obstruct or divert the natural flow of a river, stream, or lake;
- (2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake;
- or
- (3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake.

Fish and Game Code Section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the State. CDFW's regulatory authority extends to include riparian habitat (including wetlands) supported by a river, stream, or lake regardless of the presence or absence of hydric soils and saturated soil conditions. Generally, the CDFW takes jurisdiction to the top of bank of the stream or to the outer limit of the adjacent riparian vegetation (outer drip line), whichever is greater. Notification is generally required for any project that will take place in or in the vicinity of a river, stream, lake, or their tributaries. This includes rivers or streams that flow at least periodically or permanently through a bed or channel with banks that support fish or other aquatic life and watercourses having a surface or subsurface flow that support or have supported riparian vegetation. A Section 1602 Streambed Alteration Agreement would be required if impacts to identified CDFW jurisdictional areas occur.

Porter Cologne Act

The California *Porter-Cologne Water Quality Control Act* gives the State very broad authority to regulate waters of the State, which are defined as any surface water or groundwater, including saline waters. The Porter-Cologne Act has become an important tool in the post SWANCC and Rapanos regulatory environment, with respect to the state’s authority over isolated and insignificant waters. Generally, any person proposing to discharge waste into a water body that could affect its water quality must file a Report of Waste Discharge in the event that there is no Section 404/401 nexus. Although “waste” is partially defined as any waste substance associated with human habitation, the Regional Board also interprets this to include fill discharged into water bodies.