APPENDIX 3

BIOLOGICAL RESOURCES ASSESSMENT

September 16, 2022

TRANSTECH
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SUBJECT: Biological Resources Assessment for the Proposed Expansion of the Dovid Oved Retreat Center Located in Running Springs, San Bernardino County, California

Introduction

This report contains the findings of ELMT Consulting's (ELMT)biological resources assessment for the proposed expansion of the Dovid Oved Retreat Center (project, project site) located in Runing Springs, San Bernardino County, California. The assessment was conducted by biologists Travis J. McGill and Jacob H. Lloyd Davies on May 12, 2022, to document baseline conditions and assess the potential for special-status[1] plant and wildlife species to occur within the project site that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the project site to support special-status plant and wildlife species identified by the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB), and other electronic databases as potentially occurring in the general vicinity of the project site.

The site was also evaluated for its potential to support natural drainage features, ponded areas, and/or water bodies that have the potential to fall under the regulatory authority of the of the United States Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), or California Department of Fish and Wildlife (CDFW) pursuant to Sections 401 and 404 of the Federal Clean Water Act (CWA), the California Porter-Cologne Water Quality Control Act, and Section 1600 *et seq.* of the Fish and Game Code.

Project Location

The project site is generally located south of State Route 18, west and north of State Route 38, and east of State Route 330 in the census-designated place Running Springs, San Bernardino County, California. The site is depicted on the Keller Peak quadrangle of the United States Geological Survey's (USGS) 7.5-minute map series within section 9 of Township 1 North, Range 2 West. Specifically, the approximately 3-acre project site is located near the southeast corner of the intersection of Pine Manor Land and Cepu Road within Assessor's Parcel Number 296-211-67. Refer to Exhibits 1-3 in Attachment A.

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

Project Description

The project proposes the construction of an approximately 8,671 square foot synagogue with a 3,153 square foot outdoor entry and 2,199 square foot outdoor seating/patio area on approximately 3 acres. Refer to Attachment B, *Site Plan*.

Methodology

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

Literature Review

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

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

- Google Earth Pro historic aerial imagery (1985-2020);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey[2];
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS Endangered Species Profiles.

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

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

Field Investigation

Following the literature review, biologists Travis J. McGill and Jacob H. Lloyd Davies inventoried and evaluated the condition of the habitat within the project on May 12, 2022. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking meandering transects throughout the project site. In addition, aerial photography was reviewed prior to the site investigation to locate potential natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

Soil Series Assessment

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

Plant Communities

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

Plants

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

Wildlife

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

Jurisdictional Drainages and Wetlands

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

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

Existing Site Conditions

The Dovid Oved Retreat Center occurs in the mountain community of Running Springs in a primarily undeveloped mountain community in the San Bernardino Mountains. The majority of the area surrounding the Retreat Center is comprised of natural mountain forest habitats with scattered campgrounds, residential developments, and similar camp-like settings occurring primarily to the northwest, north, and northeast. The project site is surrounded by the existing campgrounds and facilities associated with the Retreat Center. The site itself supports undeveloped land.

Topography and Soils

On-site elevation range from approximately 6,205 to 6,248 feet above mean sea level, is generally flat with no areas of significant topographic relief, and slopes moderately from east to west. Based on the NRCS USDA Web Soil Survey, the site is underlain by Runningsprings-Cedarpines-Plaskett complex (15 to 35 percent slopes). Refer to Exhibit 4, *Soils*, in Attachment A. The majority of soils on-site are lightly disturbed in association with uses as an amphitheater or walking paths.

Vegetation

The project site supports one (1) plant community: mixed conifer woodland. In addition, the site supports one (1) land cover type that would be classified as disturbed (refer to Exhibit 5, *Vegetation*, in Attachment A). The site supports undeveloped land that has been subject to limited disturbances associated with historic and ongoing land uses such as foot traffic, vegetation clearing, assembly space uses, and adjacent development. In addition, several rock outcrops are present throughout the site and rows of large rocks are present along walking paths. According to historic aerials, the site and surrounding area that support the existing Retreat Center have supported similar recreational land uses since at least 1980. Refer to Attachment C, *Site Photographs*, for representative site photographs.

The majority of the site supports a mixed conifer woodland that is dominated by Coulter pine (*Pinus coulteri*). Following several decades of anthropogenic disturbances associated with historic and ongoing land uses, the Coulter pine woodland supported on-site features a sparser community of conifers and other tree species and somewhat limited plant diversity than occurs in undisturbed areas nearby. Common plant species observed during the field investigation include sugar pine (*Pinus lambertiana*), California black oak (*Quercus kelloggii*), Pringle manzanita (*Arctostaphylos pringlei*), yarrow (*Achillea millefolium*), Davidson's Sierra Nevada lotus (*Acmispon nevadensis* var. *davidsonii*), Spanish lotus (*Acmispon americanus*), pine lousewort (*Pedicularis semibarbata*), wallflower (*Erysimum capitatum*), bastardsage (*Eriogonum wrightii*), rock buckwheat (*Eriogonum saxatile*), lupine (*Lupinus bicolor*), bigleaf maple (*Acer macrophyla*), mistletoe (*Phoradendron leucarpum*), cudweed (*Pseudognaphalium* spp.), willowherb (*Epilobium* spp.), June grass (*Koeleria macrantha*), bluegrass (*Poa* sp.), ripgut (*Bromus diandrus*), downy chess (*Bromus tectorum*), and Hartweg's iris (*Iris hartwegii*).

The disturbed portions of the project site are unvegetated or minimally vegetated with more diminutive species as these areas are frequently used for foot traffic and assembly activities and larger species are not permitted to establish. Plant species observed in the disturbed portions of the site include pine lousewort, yarrow, lotus species, wallflower, lupine, and the grasses observed in the Coulter pine woodland.

Wildlife

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

Fish

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

Amphibians

No amphibians were observed during the field investigation. While no hydrogeomorphic features with frequent sources of water are present within the project site, portions of the site support a litter layer that may provide suitable foraging and refuge conditions for hardy amphibian species that are adapted to routine anthropogenic disturbance, especially during the wetter months. Common amphibian species that may be expected to occur include garden slender salamander (*Batrachoseps major major*) and ensatina (*Ensatina eschscholtzii*).

Reptiles

The project site provides suitable foraging and cover habitat for reptile species adapted to anthropogenic disturbance in the mountains. The only reptile species observed during the field investigation was western side-blotched lizard (*Uta stansburiana elegans*). Common reptilian species that could potentially occur on-site include and great basin fence lizard (*Sceloporus occidentalis longipes*), San Diego alligator lizard (*Elgaria multicarinata webbii*), and southern Pacific rattlesnake (*Crotalus oreganus helleri*).

Birds

The project site provides suitable foraging and nesting habitat for avian species adapted to anthropogenic disturbance. Avian species observed during the field investigation include acorn woodpecker (*Melanerpes formicivorus*), mountain chickadee (*Poecile gambeli*), western bluebird (*Sialia Mexicana*), mourning dove (*Streptopelia decaocto*), Stellar's jay (*Cyanocitta stelleri*), and common raven (*Corvus corax*).

Mammals

The project site provides limited foraging and cover habitat for a mammalian species adapted to

anthropogenic disturbance. The only mammalian species detected during the field investigation was western gray squirrel (*Sciurus griseus*). Other common mammalian species that could be expected to occur on-site include mule deer (*Odocoileus hemionus*), California ground squirrel (*Otospermophilus beecheyi*), Merriam's chipmunk (*Neotamias merriami*), and common racoon (*Procyon lotor*).

Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field survey, which was conducted during breeding season. Although subjected to routine disturbance, the trees and shrubs supported on-site and the similar plant communities and structures supported in the surrounding area have 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.

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.

According to the San Bernardino County General Plan, the project site has not been identified as occurring within a Wildlife Corridor or Linkage. As designated by the San Bernardino County General Plan Open Space Element, major open space areas documented in the vicinity of the project site surrounds Deep Creek, located approximately 1.5 miles to the north beyond the developed majority of Running Springs.

The proposed project will be confined to existing areas that have been disturbed. In addition, there are no riparian corridors, creeks, or useful patches of steppingstone habitat (natural areas) within or connecting the site to a recognized wildlife corridor or linkage. As such, implementation of the proposed project is not expected to impact wildlife movement opportunities. Therefore, impacts to wildlife corridors or linkages are not expected to occur.

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 discernible drainage courses, inundated areas, or wetland features/obligate plant species that would be considered jurisdictional by the United States Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), or CDFW were observed within the proposed project site. Based on the proposed site plan, project activities will not result in impacts to Corps, Regional Board, or CDFW jurisdictional areas and regulatory approvals will not be required.

Special-Status Biological Resources

The CNDDB Rarefind 5 and the CNPS Electronic Inventory of Rare and Endangered Vascular Plants of California were queried for reported locations of special-status plant and wildlife species as well as special-status natural plant communities in the Keller Peak USGS 7.5-minute quadrangle. The habitat assessment evaluated the conditions of the habitat(s) within the boundaries of the project site to determine if the existing plant communities, at the time of the survey, have the potential to provide suitable habitat(s) for special-status plant and wildlife species.

The literature search identified twenty-three (23) special-status plant species and thirteen (13) special-status wildlife species were identified as having potential to occur within the Keller Peak USGS 7.5-minute quadrangle. No special-status plant communities were identified as occurring within the Keller Peak quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site is presented in Attachment D*: Potentially Occurring Special-Status Biological Resources*.

Special-Status Plants

According to the CNDDB and CNPS, twenty-three (23) special-status plant species have been recorded in the Keller Peak quadrangle (refer to Attachment D). No special-status plant species were observed on-site during the habitat assessment. The project site has been subject to anthropogenic disturbances from historic and ongoing land uses and surrounding development. These disturbances have diminished, if not eliminated, the suitability of the habitat to support the majority of the special-status plant species known to occur in the general vicinity of the project site. Based on habitat requirements for specific special-status plant species and the availability and quality of habitats needed by each species, it was determined that the project site has a low potential to support Joshnton's bedstraw (*Galium johnstonii*), and Parish's alumroot (*Heuchera parishii*). It was further determined that the project site does not provide suitable habitat for any of the other special-status plant species known to occur in the area and all are presumed to be absent. Portions of the project site have been and area regularly disturbed and maintained in association with historic and ongoing recreation activities.

None of the aforementioned special-status plant species are state or federally listed as threatened or endangered. In addition, the limits of disturbance for the proposed project are expected to be limited to routinely maintained portions of the site and no significant impacts to these species are expected to occur, if present. No focused surveys are recommended.

Special-Status Wildlife

According to the CNDDB, thirteen (13) special-status wildlife species have been reported in the Keller Peak quadrangle (refer to Attachment D). No special-status wildlife species were observed during the field investigation. The project site has been subject to anthropogenic disturbances from historic and ongoing land uses and surrounding development. These disturbances have diminished, if not eliminated, the suitability of the habitat to support the majority of the special-status plant species known to occur in the general vicinity of the project site.

Based on habitat requirements for specific species, the availability and quality of on-site habitats, and local records, it was determined that the proposed project site has a high potential to support lodgepole chipmink (*Neotamias speciosus speciosus*); and a low potential to support San Bernardino golden-mantled ground squirrel (*Callospermophilus lateralis bernardinus*) and California spotted owl (*Strix occidentalis occidentalis*). It was further determined that the project site does not provide suitable habitat for any of the other special-status wildlife species known to occur in the area and all are presumed to be absent.

None of the aforementioned special-status wildlife species are federally or state listed as endangered or threatened. In order to ensure that impacts to California spotted owl do not occur from implementation of the proposed project, a pre-construction nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of the pre-construction nesting bird clearance survey, impacts to California spotted owl will be less than significant and no mitigation will be required.

Based on regional significance, the potential occurrence of southern rubber boa, San Bernardino flying squirrel, and California spotted owl within the project site are described in further detail below.

Southern Rubber Boa

The southern rubber boa (SRB) has been designated by the CDFW as a threatened species under the California Endangered Species Act and is also considered a sensitive species in the San Bernardino National Forest by the U.S. Forest Service. SRB inhabits oak-conifer and mixed-conifer forests at elevations between 5,000 to 8,200 feet where rocks and logs or other debris provide shelter. It is semi-fossorial with either nocturnal or crepuscular tendencies, making it difficult to find in a general diurnal field survey. It is restricted to the San Bernardino and San Jacinto Mountains. They emerge from hibernation in April and general disappear during the summer months though they can appear after rains or periods of high humidity (Stewart et. al. 2005). Hoyer and Stewart (2000), found that almost all collections of SRB were on or around small to large rock outcrops which are important for hibernacula.

The proposed project footprint is located within an area that has been subject to routine anthropogenic disturbances associated with existing camp activities. The project site lacks rocky outcrops, needed for hibernacula. The lack of large rock outcrops, existing disturbances and continued anthropogenic disturbances onsite, preclude southern rubber boa from occurring onsite and are presumed absent, and no mitigation is recommended.

San Bernardino Flying Squirrel

The San Bernardino flying squirrel is not a listed species by USFWS or CDFW. However, CDFW has

designated San Bernardino flying squirrel a species of special concern. It is also considered a sensitive species in the San Bernardino National Forest by the U.S. Forest Service. The historic distribution of the San Bernardino flying squirrel includes both the San Bernardino and San Jacinto Mountains. Recent data analysis suggests that this subspecies may now only be extant in the San Bernardino Mountains. The San Bernardino flying squirrel is nocturnal and is rarely observed. It occurs in a range of coniferous and deciduous forests, including riparian forests and mixed conifer forests. They are usually found in mature old-growth forests, although forests with second-growth stands may also suffice. Occupied habitat tends to have an open understory with a heavy duff (organic debris) layer and a somewhat closed canopy. For locomotion/gliding purposes, they require somewhat dense tree cover (less than 120 feet between tall trees and preferably around 65 feet). Trees with snags and cavities suitable for nesting and denning are required, and trees that are greater than 100 feet tall and greater than 30 inches diameter at breast height are preferred. The San Bernardino flying squirrel depends strongly on truffles and arboreal moss for food, as well as to a much lesser degree seeds, nuts, insects, fruit, bird eggs, and even tree sap. Larger, older trees with associated woody debris and decaying logs tend to indicate a higher potential for healthy truffle growth in the underlying soil.

The proposed project footprint is located within an area that has been subject to routine anthropogenic disturbances associated with existing camp activities. The mixed conifer forest plant community onsite has a relatively open canopy as the trees are spaced out with limited old growth pine trees. The canopy is generally very open with few areas of closed canopy and most of the younger trees lack the habitat requirements needed for nesting/denning opportunities, gliding needs with a developed understory supporting adequate woody debris. Due to anthropogenic disturbances onsite, the mixed conifer forest plant community was determined to provide low quality habitat and San Bernardino flying squirrel was determined to have a very low potential to occur onsite, and no mitigation is recommended.

California Spotted Owl

The California spotted owl has been designated by the CDFW as a species of special concern and is also considered a sensitive species in the San Bernardino National Forest by the U.S. Forest Service. The California spotted owl is distributed across the Sierra Nevada from Shasta County to Kern County, and along coastal southern California mountain ranges from Monterey County to San Diego County. In the San Bernardino Mountains, California spotted owl nests in mixed conifer habitat, oak/ Douglas-fir habitat, and hardwood/conifer habitat. In the San Bernardino Mountains the average elevation of occupied nest habitat is at 6,000 feet. Home ranges in the San Bernardino Mountains vary from approximately 800 acres to 2,200 acres. Eighty percent of nesting trees have canopy cover greater than 70 percent, with surrounding nesting habitat having at least two canopy layers. Nest trees often contain large cavities, broken tops, and/or dwarf mistletoe brooms. In southern California conifer forest, stick nests placed on platforms built by other species are most common. In coniferous forests, such as that on-site, large snags and fallen logs are typically present in nesting habitat; this appears to be less important in lower-elevation nesting habitat. Nesting trees are on average 37 inches diameter at breast height in the San Bernardino Mountains and are typically on north-facing slopes where temperatures tend to be cooler. While California spotted owls may forage in the same habitat that they use for nesting and roosting, foraging habitat is often much more open, with canopy cover as low as 40 percent to provide large amounts of open space for flying. Although the California spotted owl

will forage opportunistically on a variety of different prey species, their primary prey (79 to 97 percent) is woodrats (typically dusky-footed woodrat [*Neotoma fuscipes*]).

As previously mentioned, the canopy is generally open with few areas of closed canopy needed for cover and only a few trees that are tall and mature enough to provide nesting cavities and hunting perches for this species. Due to existing anthropogenic disturbances onsite, California spotted owl was determined to have a very low potential to occur onsite, and no mitigation is recommended.

Critical Habitats

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

The project site is not located with federally designated Critical Habitat. The nearest designated Critical Habitat is located approximately 3.53 miles to the southeast for southwestern willow flycatcher (*Empidonax traillii extimus*) and 3.64 miles to the northwest for mountain yellow-legged frog (*Rana muscosa*). Refer to Exhibit 6, *Critical Habitat*, in Attachment A. Therefore, the loss or adverse modification of Critical Habitat from site development will not occur and consultation with the USFWS for impacts to Critical Habitat will not be required for implementation of the proposed project.

Conclusion

Based on the literature review and field survey, and existing site conditions discussed in this report, implementation of the project will have no significant impacts on federally or State listed species known to occur in the general vicinity of the project site. Additionally, the project will have no effect on designated Critical Habitat or regional wildlife corridors/linkage because none exists within the area. No jurisdictional drainage and/or wetland features were observed on the project site during the field investigation. No further surveys are recommended. With completion of the recommendations provided below, no impacts to year-round, seasonal, or special-status avian residents or special-status species will occur from implementation of the proposed project.

Recommendations

Migratory Bird Treaty Act and Fish and Game Code

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

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

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

Sincerely,

Thomas J. McGill, Ph.D.
Managing Director

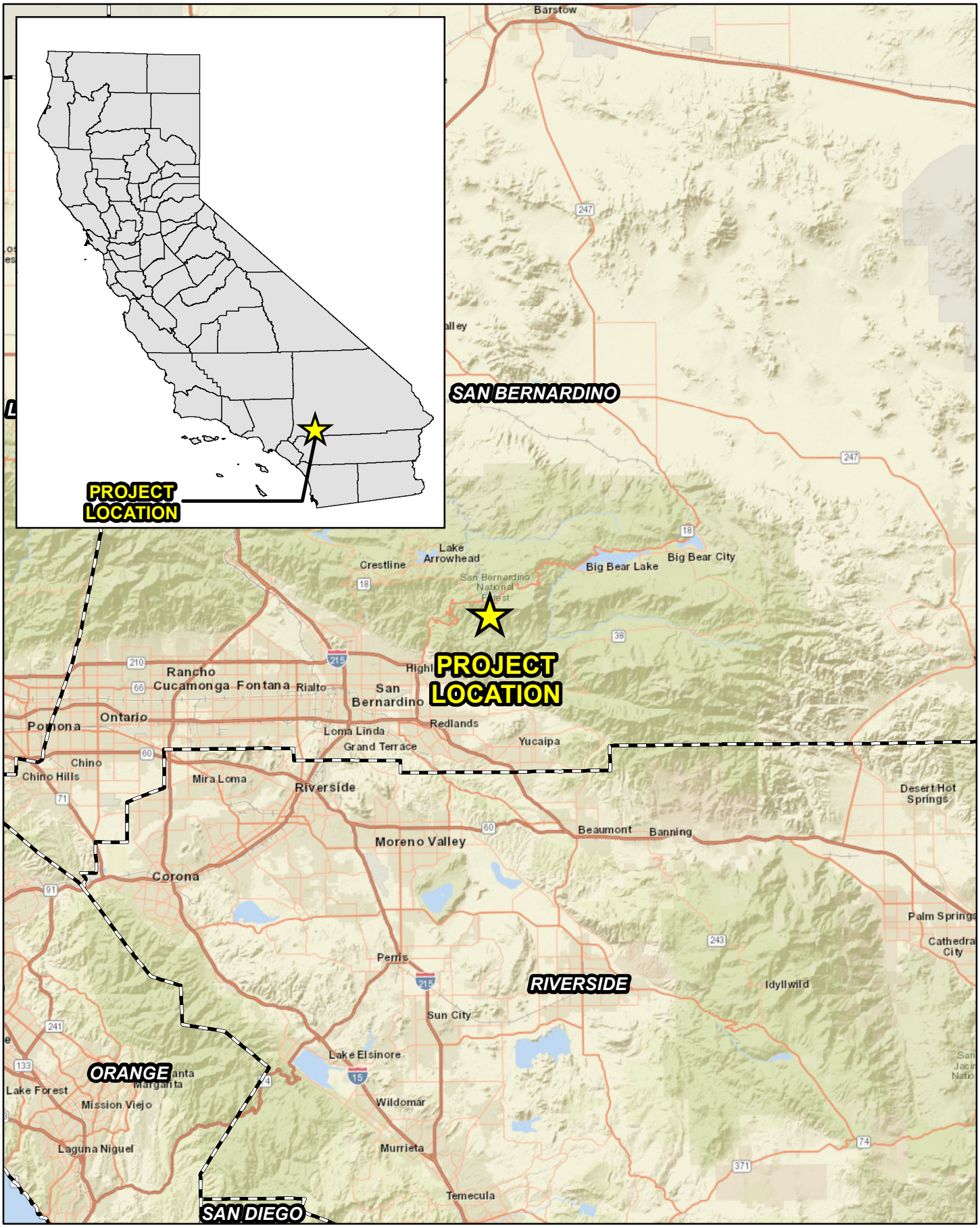
Travis J. McGill
Director

Attachments:

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

Attachment A

Project Exhibits



ELMT CONSULTING

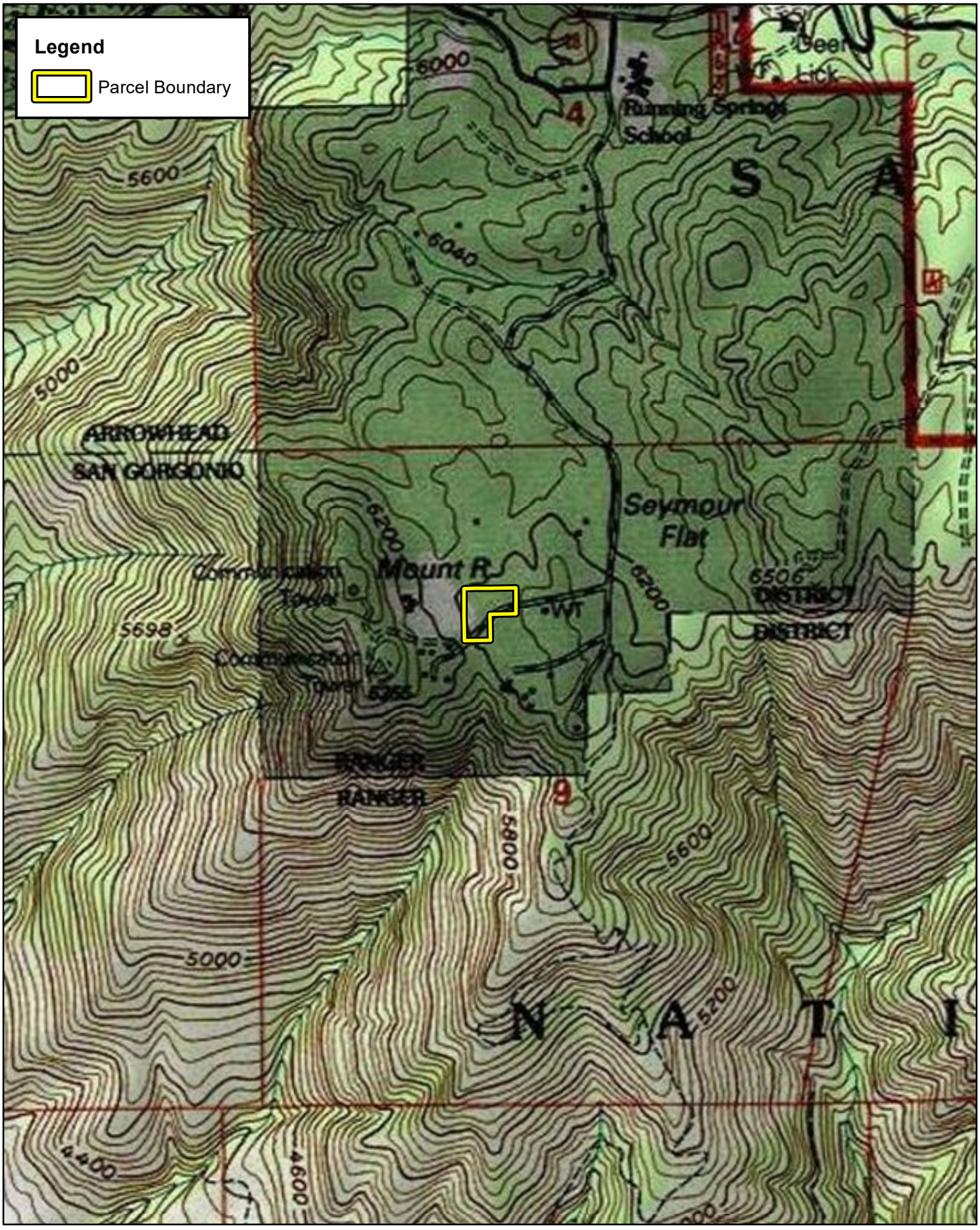
0 2.5 5 10 Miles

Source: World Street Map, San Bernardino County

DOVID OVED EXPANSION
BIOLOGICAL RESOURCES ASSESSMENT

Regional Vicinity

Exhibit 1



DOVID OVED EXPANSION
BIOLOGICAL RESOURCES ASSESSMENT

Site Vicinity

ELMT CONSULTING

0 500 1,000 2,000 Feet

Source: USA Topographic Map, San Bernardino County

Exhibit 2

ELMT CONSULTING

0 62.5 125 250 Feet

Source: ESRI Aerial Imagery, San Bernardino County

DOVID OVED EXPANSION
BIOLOGICAL RESOURCES ASSESSMENT

Project Site

Exhibit 3

DOVID OVED EXPANSION
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ELMT CONSULTING

0 62.5 125 250 Feet

Soils

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

Exhibit 4

ELMT CONSULTING

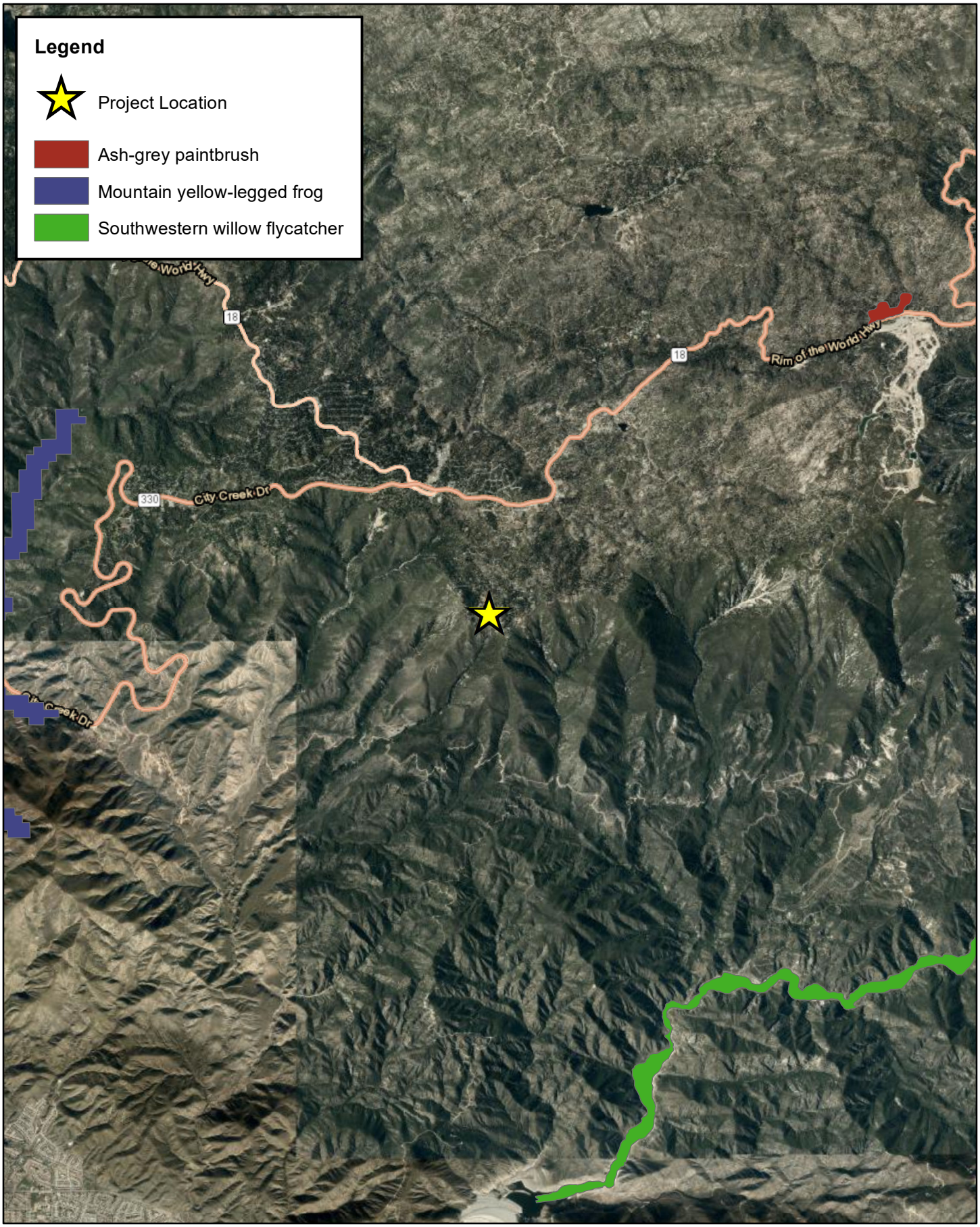
0 62.5 125 250 Feet

Source: ESRI Aerial Imagery, San Bernardino County

DOVID OVED EXPANSION
BIOLOGICAL RESOURCES ASSESSMENT

Vegetation

Exhibit 5



DOVID OVED EXPANSION
BIOLOGICAL RESOURCES ASSESSMENT

Critical Habitat

ELMT CONSULTING

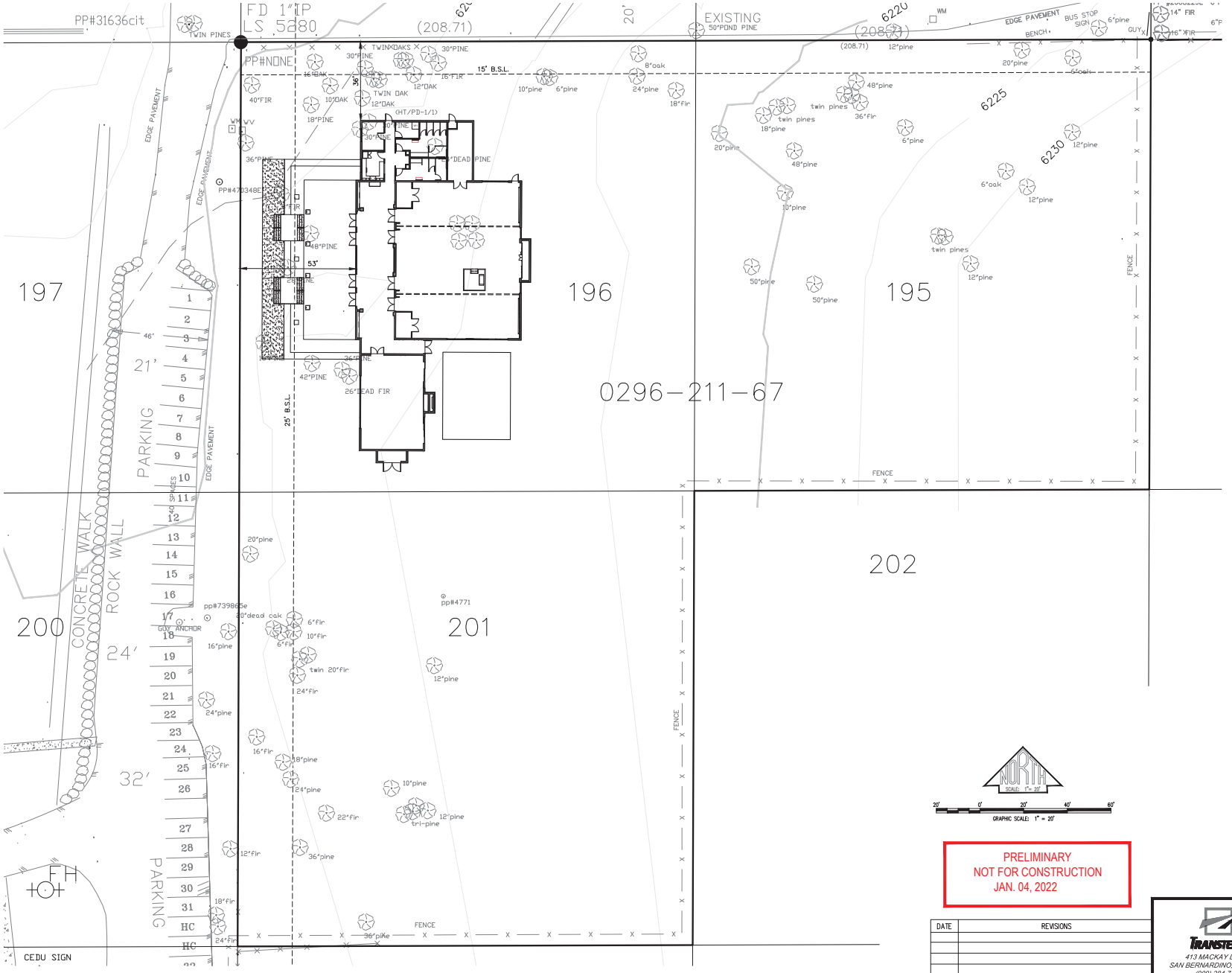
0 2,500 5,000 10,000 Feet

Source: ESRI Aerial Imagery, USFWS Critical Habitat, San Bernardino County

Exhibit 6

Attachment B

Site Plan



PRELIMINARY
NOT FOR CONSTRUCTION
JAN. 04, 2022

DATE	REVISIONS

TRANSTECH
413 MACKAY DRIVE
SAN BERNARDINO, CA. 92408
(909) 384-7464

SAN BERNARDINO COUNTY

PRELIMINARY SITE PLAN

RUNNING SPRINGS RETREAT
RUNNING SPRINGS, CALIFORNIA
APN 0296-211-67

DRAWN BY:	DATE:	SCALE:	SHEET:	JOB NO.
G.D.A.	01-04-2022	AS SHOWN	1 OF 1	19091

Attachment C

Site Photographs

Photograph 1: From the southwest corner of the parcel boundary looking north along the western boundary.

Photograph 2: From the southwest corner of the parcel boundary looking east.

Photograph 3: From the middle of the southern boundary of the parcel looking west.

Photograph 4: View of the northwest corner of the parcel boundary where the building will be installed.

Photograph 5: Existing benches on the parcel.

Photograph 6: Existing benches/stage within the parcels.

Photograph 7: View of the northeast portion of the property.

Photograph 8: View of the northwest corner of the parcel where the building will be installed.

Attachment D

Potentially Occurring Special-Status Biological Resources

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

Scientific Name Common Name	**Status**	**Habitat**	**Observed Onsite**	**Potential to Occur**
SPECIAL-STATUS WILDLIFE SPECIES				
Callospermophilus lateralis bernardinus San Bernardino golden-mantled ground squirrel	Fed: None CA: None	Inhabits mountain slopes and foothills, chaparral, open areas in pine, spruce, and fir forests, rocky outcroppings and slides, margins of mountain meadows, and rocky sagebrush country; campgrounds. Often in areas with abundant stumps, rocks, or fallen logs.	No	**Low** Limited habitat is present within the project site.
Charina umbratica southern rubber boa	Fed: None CA: **THR**	Found in a variety of montane forest habitats, particularly in the vicinity of streams or wet meadows. Requires loose, moist soil for burrowing and seeks cover in rotting logs. Restricted to the San Bernardino and San Jacinto Mountains.	No	**Presumed Absent.** On-site habitats are maintained to be open and free of deteriorated or deceased trees, and logs. There are no riparian areas in proximity to the project site.
Diadophis punctatus modestus San Bernardino ringneck snake	Fed: None CA: None	Common in open, relatively rocky areas within valley-foothill, mixed chaparral, and annual grass habitats.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Euchloe hyantis andrewsi Andrew's marble butterfly	Fed: None CA: None	Inhabits yellow pine forests near Lake Arrowhead and Big Bear Lake at elevations between 5,000 and 6,000 feet. Uses Laguna Mountains jewelflower (*Streptanthus bernardinus*) and pine rockcress (*Arabis holboelli var. pinetorum*) as host plants; larvae feed on mountain tansy mustard (*Descurainia incana*).	No	**Presumed Absent** Host plants were not observed on-site during the field investigation.
Glaucomys oregonensis californicus San Bernardino flying squirrel	Fed: None CA: SSC	Occurs in white fir (*Abies concolor*) and Jeffrey pine (*Pinus jeffreyi*) mixed conifer forests with black oak (*Quercus kelloggii*) components at higher elevations. Use cavities in large trees, snags, and logs for cover. Habitats are typically mature, dense conifer forest in close proximity to riparian areas.	No	**Presumed Absent.** On-site habitats are maintained to be open and free of deteriorated or deceased trees.
Myotis yumanensis Yuma myotis	Fed: None CA: None	Found in forests and woodlands near water. Roosts in caves, buildings, mines, and crevices.	No	**Presumed Absent** No perennial water sources are present within or near the project site.
Neotamias speciosus speciosus lodgepole chipmunk	Fed: None CA: None	Occurs in open-canopy forests of mixed conifer and pine, and occasionally in chaparral.	No	**High** There is suitable habitat present within the project site. This species is recorded as occurring nearby.
Oncorhynchus mykiss irideus pop. 10 steelhead – southern California DPS	Fed: **END** CA: None	Found in permanent coastal streams from San Diego to the Smith River.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed Onsite**	**Potential to Occur**
Phrynosoma blainvillii coast horned lizard	Fed: None CA: SSC	Occurs in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. In inland areas, this species is restricted to areas with pockets of open microhabitat, created by disturbance (i.e. fire, floods, roads, grazing, fire breaks). The key elements of such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense shrubs for refuge.	No	**Presumed Absent** On-site soils are not suitable for burrowing by this species.
Rana draytonii California red-legged frog	Fed: **THR** CA: SSC	Found mainly near ponds in humid forests, woodlands, grasslands, coastal scrub, and streamsides with plant cover. Most common in lowlands or foothills. Frequently found in woods adjacent to streams. Occurs along the coast ranges from Mendocino County south and in portions of the Sierra Nevada and Cascades ranges.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Rana muscosa southern mountain yellow-legged frog	Fed: **END** CA: **END**/WL	Occurs in lower elevation habitats characterized by rocky streambeds and wet meadows, while higher elevation habitats include lakes, ponds, and streams. Occupy well lit, streams in narrow, rock-walled canyons. Often found along rock walls or vegetated banks and always within a few feet of the water.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Strix occidentalis occidentalis California spotted owl	Fed: None CA: SSC	Primarily associated with oak and oak-conifer habitats and uses dense, multi-layered canopy cover for roost seclusion. Requires mature forest with permanent water and suitable nesting trees and snags.	No	**Low** Suitable foraging habitat is present within the project site. Suitable nesting opportunities may be found nearby.
Thamnophis hammondii two-striped gartersnake	Fed: None CA: SSC	Utilizes a variety of habitats including forests, mixed woodlands, grassland, chaparral, and farmlands. Often found near ponds, marshes, or streams.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
SPECIAL-STATUS PLANT SPECIES				
Acanthoscyphus parishii* var. *parishii Parish's oxytheca	Fed: None CA: None CNPS: 4.2	Habitats include sandy or shale chaparral. Found at elevations ranging from 3,750 to 6,748 feet above mean sea level (msl). Blooming period is from June to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Androsace elongata* ssp. *acuta California androsace	Fed: None CA: None CNPS: 4.2	Habitats include chaparral, cismontane woodland, coastal scrub, meadows and seeps, pinyon and juniper woodland, and valley and foothill grassland. Found at elevations ranging from 492 to 4,281 feet above msl. Blooming period is from March to June.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
Calochortus palmeri* var. *palmeri Palmer's mariposa-lily	Fed: None CA: None CNPS: 1B.2	Grows in mesic soils within chaparral, lower montane coniferous forest, and meadows and seeps. Found at elevations ranging from 2,329 to 7,841 feet above msl. Blooming period is from April to July.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed Onsite**	**Potential to Occur**
Calochortus plummerae Plummer's mariposa-lily	Fed: None CA: None CNPS: 4.2	Prefers openings in chaparral, foothill woodland, coastal sage scrub, valley foothill grasslands, cismontane woodland, lower montane coniferous forest, and yellow pine forest. Often found on dry, rocky slopes and soils and brushy areas. Can be very common after a fire. Found at elevations ranging from 459 to 6,299 feet above msl. Blooming period is from May to July.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Castilleja cinerea ash-grey paintbrush	Fed: **THR** CA: None CNPS: 1B.2	Grows within Mojavean desert scrub, meadows and seeps, pebble (pavement) plain, pinyon and juniper woodland, and upper montane coniferous forest (clay, openings) habitats. Found at elevations ranging from 5,905 to 9,710 feet. Blooming period is from June to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Castilleja lasiorhyncha San Bernardino Mountains owl's-clover	Fed: None CA: None CNPS: 1B.2	Occurs in mesic or drying sites along the edges of streams, meadows, and vernal pools. Found in meadows and seeps, pebble plains, upper montane coniferous forest, chaparral, and riparian woodland. Found at elevations ranging from 4,265 to 7,841 feet above msl. Blooming period is from May to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Castilleja montigena Heckard's paintbrush	Fed: None CA: None CNPS: 4.3	Grows within lower montane coniferous forest, pinyon and juniper woodland, and upper montane coniferous forest habitats. Found at elevations ranging from 6,400 to 9,185 feet. Blooming period is from May to August.	No	**Presumed Absent** The project site occurs outside of the known elevation range for this species.
Eriastrum densifolium* ssp. *sanctorum Santa Ana River woollystar	Fed: **END** CA: **END** CNPS: 1B.1	Grows in coastal scrub and chaparral habitats within sandy soils on river floodplains or terraces fluvial deposits. Found at elevations ranging from 295 to 2,001 feet above msl. Blooming period is from April to September.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
Eriophyllum lanatum* var. *obovatum southern Sierra woolly sunflower	Fed: None CA: None CNPS: 4.3	Prefers sandy loam soils within lower montane coniferous forest and upper montane coniferous forest habitats. Found at elevations ranging from 3,655 to 8,202 feet above msl. Blooming period is from June to July.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Erythranthe exigua San Bernardino Mountains monkeyflower	Fed: None CA: None CNPS: 1B.2	Grows in clay and mesic soils within meadows and seeps, pebble (pavement) plain, and upper montane coniferous forest habitats. Found at elevations ranging from 5,905 to 7,595 feet. Blooming period is from May to July	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Galium johnstonii Johnston's bedstraw	Fed: None CA: None CNPS: 4.3	Preferred habitats include chaparral, riparian woodland, lower montane coniferous forest, pinyon and juniper woodland. Found at elevations ranging from 4,003 to 7,546 feet above msl. Blooming period is from June to July.	No	**Low** Limited habitat is present within the project site. This species has been recorded as occurring nearby.
Heuchera caespitosa urn-flowered alumroot	Fed: None CA: None CNPS: 4.3	Grows in rocky soils within cismontane woodland, lower montane coniferous forest, riparian forest, and upper montane coniferous forest. Found at elevations ranging from 3,789 to 8,694 feet above msl. Blooming period is from May to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed Onsite**	**Potential to Occur**
Heuchera parishii Parish's alumroot	Fed: None CA: None CNPS: 1B.3	Found in lower montane coniferous forest, subalpine coniferous forest, upper montane coniferous forest, and alpine boulder and rock fields in rocky places. It sometimes occurs on carbonate soils. Found at elevations ranging from 4,921 to 12,467 feet above msl. Blooming period is from June to August.	No	**Low** Limited habitat is present within the project site
Imperata brevifolia California satintail	Fed: None CA: None CNPS: 2B.1	Occurs in mesic sites, alkali seeps, and riparian areas within coastal scrub, chaparral, riparian scrub, Mojavean scrub, and alkali meadows and seeps. Found at elevations ranging from 0 to 1,640 feet above msl. Blooming period is from September to May.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
Lilium humboldtii* ssp. *ocellatum ocellated humboldt lily	Fed: None CA: None CNPS: 4.2	Found in openings within chaparral, cismontane woodland, coastal scrub, lower montane coniferous forest, and riparian woodland habitats. Found at elevations ranging from 98 to 5,906 feet above msl. Blooming period is from March to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Lilium parryi lemon lily	Fed: None CA: None CNPS: 1B.2	Occurs in lower montane coniferous forest, meadows and seeps, riparian forest, and upper montane coniferous forest habitats. Generally occurs in wet, mountainous terrain; forested areas; on the shady edges of streams; or in open, boggy meadows and seeps. Found at elevations ranging from 4,003 to 9,006 feet above msl. Blooming period is from July to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Packera bernardina San Bernardino ragwort	Fed: None CA: None CNPS: 1B.2	Grows within meadows and seeps (mesic, sometimes alkaline), pebble (pavement) plain, and upper montane coniferous forest habitats. Found at elevations ranging from 5,905 to 7,545 feet. Blooming period is from May to July.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Perideridia parishii* ssp. *parishii Parish's yampah	Fed: None CA: None CNPS: 2B.2	Occurs in lower and upper montane coniferous forests and meadows and seeps. Found at elevations ranging from 4,806 to 9,842 feet. Blooming period is from June to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Phacelia mohavensis Mojave phacelia	Fed: None CA: None CNPS: 4.3	Occurs in sandy or gravelly soils within cismontane woodland, lower montane coniferous forest, meadows and seeps, pinyon and juniper woodland. Found at elevations ranging from 4,593 to 8,202 feet above msl. Blooming period is from April to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Sidalcea pedata bird-foot checkerbloom	Fed: **END** CA: **END** CNPS: 1B.1	Grows within meadows and seeps (mesic) and pebble (pavement) plain habitats. Found at elevations ranging from 5,250 to 8,205 feet. Blooming period is from May to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Sidotheca caryophylloides chickweed oxytheca	Fed: None CA: None CNPS: 4.3	Grows in sandy soils within lower montane coniferous forest. Found at elevations ranging from 3,655 to 8,530 feet above msl. Blooming period is from July to September.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed Onsite**	**Potential to Occur**
Streptanthus bernardinus Laguna Mountains jewelflower	Fed: None CA: None CNPS: 4.3	Grows in chaparral and lower montane coniferous forest on clay or decomposed granite soils. It is sometimes found in disturbed areas such as streamsides or roadcuts. Found at elevations ranging from 4,724 to 8,202 feet above msl. Blooming period is from May to August.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Streptanthus campestris southern jewelflower	Fed: None CA: None CNPS: 1B.3	Occurs in open, rocky areas in chaparral, lower montane coniferous forest, and pinyon-juniper woodland. Found at elevations ranging from 1,969 to 9,154 feet above msl. Blooming period is from May to July.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.

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

California Department of Fish and Wildlife (CDFW) - California
END- California Endangered
THR - California Threatened
SSC - California Species of Concern
WL - Watch List
FP - California Fully Protected

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

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

Attachment E

Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

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

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

State Regulations

California Environmental Quality Act (CEQA)

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

California Endangered Species Act (CESA)

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

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

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

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

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

Fish and Game Code

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

Native Plant Protection Act

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

California Native Plant Society Rare and Endangered Plant Species

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

California Rare Plant Rank

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

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

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

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

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

4- Plants of Limited Distribution - A Watch List

Threat Ranks

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

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

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

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

Federal Regulations

Section 404 of the Clean Water Act

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

(i) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(ii) All interstate waters, including interstate wetlands[1].

(iii) The territorial seas.

(iv) All impoundments of waters otherwise defined as waters of the United States under the definition.

(v) All tributaries[2] of waters identified in paragraphs (i) through (iii) mentioned above.

(vi) All waters adjacent[3] to a water identified in paragraphs (i) through (v) mentioned above, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

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

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

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

(vii) All prairie potholes, Carolina bays and Delmarva bays, Pocosins, western vernals pools, Texas coastal prairie wetlands, where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (i) through (iii) meantioned above.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (i) through (iii) mentioned above and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (i) through (v) mentioned above, where they are determined on a case-specific basis to have a significant nexus to a waters identified in paragraphs (i) through (iii) mentioned above.

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

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

(ii) Prior converted cropland.

(iii) The following ditches:

- (A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (C) Ditches that do not flow, either directly or through another water, into a water of the United States as identified in paragraphs (i) through (iii) of the previous section.

(iv) The following features:

- (A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;
- (B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;
- (C) Artificial reflecting pools or swimming pools created in dry land;
- (D) Small ornamental waters created in dry land;
- (E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;
- (F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of a tributary, non-wetland swales, and lawfully constructed grassed waterways; and
- (G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

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

Section 401 of the Clean Water Act

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

State Regulations

Fish and Game Code

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

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

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

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

Porter Cologne Act

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