APPENDIX B

Biological Resources Assessment

August 25, 2023

Belfield Developments LLC
Attn: Sam Friedman
3705 West Pic Blvd., Suite 890
Los Angeles, CA 90019

SUBJECT: Biological Resources Assessment for the Proposed Hotel Project Located in Landers, San Bernardino County, California

Introduction

This report contains the findings of ELMT Consulting's (ELMT) biological resources assessment for the proposed Landers Hotel facility located in the unincorporated community of Landers, San Bernardino County, California. The field investigation was conducted by biologists Jacob H. Lloyd Davies and Megan E. Peukert on June 21, 2023, to document baseline conditions and assess the potential for special-status[1] plant and wildlife species to occur within the project site that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the project site to support burrowing owl (*Athene cunicularia*), desert tortoise (*Gopherus agassizii*), Joshua tree (*Yucca brevifolia*), and other special-status plant and wildlife species identified by the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB), and other electronic databases as potentially occurring in the general vicinity of the project site. Additionally, the report also addresses resources protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (FGC), federal Clean Water Act (CWA) regulated by the United States Army Corps of Engineers (Corps) and Regional Water Quality Control Board (Regional Board) respectively, and Section 1602 of the FGC administered by CDFW.

Project Location

The project site generally located north of State Route 62, east of the Marine Corps Air Ground Combat Center, west of State Route 247, and south of Interstate 40 in San Bernardino County, California. The site is depicted on the Landers quadrangle of the United States Geological Survey's (USGS) 7.5-minute map series within Section 7 of Township 2 North, Range 6 East. Specifically, the project site is bounded to the west by Belfield Boulevard and is located north of Reche Road, west of Landers Lane, and south of Park Lane within Assessor's Parcel Numbers 0630-031-05 and -06. Refer to Exhibits 1-3 in Attachment A.

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

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.

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

Literature Review

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

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

- Google Earth Pro historic aerial imagery (1985-2022);
- 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.

Field Investigation

Following the literature review, biologist Jacob H. Lloyd Davies and Megan E. Peukert inventoried and evaluated the condition of the habitat within a 200-foot buffer around the project site, where applicable, on June 21, 2023. 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.

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.

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 proposed project site is located in a rural area in the southern portion of the unincorporated community of Landers. Land in the vicinity of the site is primarily undeveloped with scattered residential parcels and

a network of paved and unpaved roads throughout. The site is bounded to the north, south, and east by undeveloped vacant land; and is bound to the east by Belfield Boulevard; with residential development beyond in all directions. The project site itself supports undeveloped land supporting natural plant communities.

Topography and Soils

On-site elevation ranges from approximately 3,050 to 3,060 feet above mean sea level and generally slopes from south to north. Based on the NRCS USDA Web Soil Survey, soils underlying the project site have not been mapped in detail, but the surrounding area is mapped as being underlain by Cajon-Arizo soils.

Vegetation

The project site supports one (1) plant community: creosote bush scrub. (refer to Exhibit 4, *Vegetation* in Attachment A). Refer to Attachment B, *Site Photographs*, for representative site photographs.

The majority of the project site supports a creosote bush scrub plant community. Common species observed on-site include creosote (*Larrea tridentata*), western Joshua tree (*Yucca brevifolia*), Mediterranean grass (*Schismus barbatus*), Desert tea (*Ephedra californica*), beavertail cactus (*Opuntia basilaris*), pencil cholla (*Cylindropuntia leptocaulis*), silver cholla (Cylindropuntia echinocarpa), catclaw acacia (*Senegalia greggii*), mesquite mistletoe (*Phoradendron californicum*), desert woollystar (*Eriastrum eremicum*), coyote melon (*Cucurbita palmata*), scale broom (*Lepidospartum squamatum*), devil's spineflower (*Chorizanthe rigida*), desert dandelion (*Malacothrix glabrata*), and bladder pod (*Peritoma arborea*).

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

Amphibians

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

Reptiles

The project site and surrounding area provide suitable foraging and cover habitat for local reptile species adapted to the desert. No reptilian species were observed during the field investigation. Common reptilian

species that could be expected to occur include western side-blotched lizard (*Uta stansburiana elegans*), Great Basin whiptail (*Aspidoscelis tigris tigris*), desert spiny lizard (*Sceloporus magister*), Great Basin fence lizard (*Sceloporus occidentalis longipes*), Great Basin gopher snake (*Pituophis catenifer deserticola*), southwestern speckled rattlesnake (*Crotalus mitchellii pyrrhus*).

Birds

The project site and surrounding area provide suitable foraging and nesting habitat for local bird species adapted to desert environments. Bird species detected during the field investigation include black-throated sparrow (*Amphispiza bilineata*), Bullock's oriole (*Icterus bullockii*), and verdin (*Auriparus flaviceps*). Other common avian species that could be expected to occur on site include mourning dove (*Zenaida macroura*) and turkey vulture (*Cathartes aura*). It should be noted that there were owl pellets observed below the western Joshua tree located off-site in the eastern buffer of the project site likely left by a barn owl (*Tyto alba*) as this species is common to the area.

Mammals

The project site and surrounding area provide suitable foraging and cover habitat for mammalian species adapted to conditions within the Mojave Desert. Mammalian species detected during the field investigation include California ground squirrel (*Otospermophilus beecheyi*), coyote (*Canis latrans*), kangaroo rat (*Dipodomys* sp.), and domestic cat (*Felis catus*).

Nesting Birds

No active nests were observed on-site during the field investigation; however, several birds exhibiting nesting behavior were observed in adjacent areas. The project site and surrounding area, including structures, provide suitable nesting opportunities 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 anthropogenic 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, the nearest major open space area to the site is located approximately 6.1 miles to the west within the San Bernardino Mountains. The site is separated from nearby open spaces by existing development and roadways, and undeveloped open space, and there are no riparian corridors or creeks connecting the project site to these areas.

However, Pipes Wash, which occurs immediate east of the site, serves as a seasonal migratory corridor for local wildlife species migrating between northwest limits of the San Bernardino Mountains and the Bed Mountains and Bullion Mountains to the north. The area surrounding nearby portions of Pipes Wash is primarily composed of undeveloped land that supports natural plant communities, with scattered road and residential developments throughout. No impacts to Pipes Wash are expected to occur from project implementation.

The project site provides local wildlife movement opportunities for wildlife species moving through the immediate area; however, surrounding residential developments reduce wildlife movement opportunities. As such, implementation of the proposed project is not expected to have a significant impact to wildlife movement opportunities or prevent local wildlife movement through the area since there is ample habitat adjacent to the project site to support wildlife movement opportunities.

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.

The USFWS NWI and the USGS National Hydrography Dataset were reviewed to determine if any blueline streams or riverine resources have been documented on the project site. Based on this review, a riverine feature is mapped as occurring approximately 400 feet east of site boundaries, associated with Pipes Wash. During the field investigation, a tributary of Pipes Wash was mapped as occurring approximately 50 feet to the southeast of the site, outside of the proposed project footprint. This tributary is an ephemeral drainage that only receives flows from direct precipitation during and immediately following storm events. No surface water was observed within the offsite tributary during the field investigation.

The proposed project is not expected to impact the adjacent ephemeral drainage feature and regulatory approval from the Corps, Regional Board, or CDFW will not be required. However, if it is later determined that impacts to the adjacent drainage feature will occur from project implementation, a formal jurisdictional delineation will need to be prepared to calculate potential impacts to the drainage feature.

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 Landers, Goat Mountain, Yucca Valley North, and Joshua Tree North USGS 7.5-minute quadrangles. Four quadrangles were queried due to the proximity of the site to

quadrangle boundaries and regional topography. 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-four (24) special-status plant species, fourteen (14) special-status wildlife species, and no special-status plant communities as having potential to occur within the Landers, Goat Mountain, Yucca Valley North, and Joshua Tree North USGS 7.5-minute quadrangles. 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 C*: Potentially Occurring Special-Status Biological Resources*.

Special-Status Plants

According to the CNDDB and CNPS, twenty-four (24) special-status plant species have been recorded in the Landers, Goat Mountain, Yucca Valley North, and Joshua Tree North quadrangles (refer to Attachment C). The majority of the site supports undisturbed native plant communities. Western Joshua tree was the only special-status plant species observed onsite. Based on habitat requirements for specific special-status plant species and the availability and quality of habitats needed by each species, and proximity of the site to known occurrences, it was determined that the undeveloped portions of project site have a low potential to support Providence Mountains milk-vetch (*Astragalus nutans*), white pygmy-poppy (*Canbya candida*), Joshua tree poppy (*Eschscholzia andrauxii*), and crowned mullia (*Muilla coronata*).

It was further determined that the project site does not have the potential to support the remainder of special-status plant species known to occur in the vicinity of the site and all are presumed to be absent.

Besides western Joshua tree, the aforementioned special-status plant species are not federally or state listed as threatened or endangered. They are designated as either CNPS Rare Plant Rank 4.2 or 4.3 species. CNPS Rare Plant Rank 4 species are of limited distribution or infrequent throughout a broader area in California, with 4.3 species considered to not be very threatened and 4.2 species considered to be moderately threatened. Since the site provides limited habitat for these species and no direct observations were made, it is unlikely that either of these species, if found onsite, would contribute meaningfully to the continued conservation of these species.

These special-status plant species are not state or federally listed as threatened or endangered. They are designated as a CNPS Rare Plant Rank species and potential impacts do not rise to the level of significance. Therefore, no mitigation obligations specific to these species are expected. No focused surveys or mitigation specific to these species are expected.

Western Joshua Tree

The California Fish and Game Commission (Commission) designated the western Joshua tree as a candidate for listing under the California Endangered Species Act (CESA) in October 2020. This action afforded the western Joshua tree the same CESA protections as listed species, which means that removal of the desert trees was subject to fines and criminal penalties unless authorized by a "take" permit issued by the CDFW. Such permits were difficult to obtain, and when issued would authorize removal only in limited

circumstances. The new law, which became effective July 1, streamlines the western Joshua Tree take permit process and broadens the purposes for which a permit may be issued. A western Joshua tree may now be removed for any purpose, so long as a permit is obtained and the removal is fully mitigated, or alternatively, an in-lieu mitigation fee is paid. The table below summarizes the new rules for the area in which the project site is located.

Location	Mitigation Fees
The project site is not located within the "Reduced Mitigation Fee Area": the area bounded on the east and west by Interstate 5 and Interstate 15, respectively, and on the north and south by Highway 58 and Highways 138 and 18, respectively.	Full mitigation, or in-lieu fee as follows: • $2,500 per tree > 5 meters tall • $500 per tree 1 to 5 meters tall • $340 per tree < 1 meter tall

One (1) western Joshua tree, 1 to 5 meters in height, was observed on the project site project site during the field investigation. In addition, three (3) clonal western Joshua trees, all less than 1 meter in height, were observed in association with the one western Joshua tree. In total, four (4) western Joshua trees were observed onsite. Impacts to the on-site Joshua trees will require a mitigation fee of $1,520 (one tree at $500, and 3 trees at $340) to be paid into the western Joshua tree mitigation tree fund.

Special-Status Wildlife

According to the CNDDB, fourteen (14) special-status wildlife species have been reported in the Landers, Goat Mountain, Yucca Valley North, and Joshua Tree North quadrangles (refer to Attachment C). No special-status wildlife species were observed during the field investigation. Based on habitat requirements for specific species and the availability and quality of on-site habitats, and proximity to known occurrences, it was determined that the proposed project site has a high potential to support loggerhead shrike (*Lanius ludovicianus*); and a low potential to support burrowing owl and desert tortoise. It was further determined that the project site does not have the potential to support the remainder of special-status wildlife species known to occur in the vicinity of the site and all are presumed to be absent.

In order to ensure impacts to special-status avian species 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 special-status avian species will be less than significant and no mitigation will be required.

Due to regional significance and listing status, the potential occurrence of burrowing owl and desert tortoise are discussed in further detail below.

Burrowing Owl

The burrowing owl is currently listed as a California Species of Special Concern. It is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with well-drained, level to gently-sloping areas characterized by sparse vegetation and bare ground (Haug and Didiuk 1993; Dechant et al. 1999). Burrowing owls are dependent upon the

presence of burrowing mammals (such as ground squirrels) whose burrows are used for roosting and nesting (Haug and Didiuk 1993). The presence or absence of colonial mammal burrows is often a major factor that limits the presence or absence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drain pipes, stand-pipes, and dry culverts. Burrowing mammals may burrow beneath rocks and debris or large, heavy objects such as abandoned cars, concrete blocks, or concrete pads. They also require open vegetation allowing line-of-sight observation of the surrounding habitat to forage as well as watch for predators.

No burrowing owls or recent sign (i.e., pellets, feathers, castings, or whitewash) was observed during the field investigation. The project site is vegetated with a variety of low-growing plant species that allow for line-of-sight observation favored by burrowing owls. However, no suitable burrows (>4 inches) for roosting and nesting were observed onsite. Therefore, the project site was determined not have a low potential to support burrowing owl. No further surveys are recommended. A pre-construction clearance survey is recommended to be conducted prior to project implementation.

Desert Tortoise

The Mojave population of the desert tortoise inhabits areas north and west of the Colorado River in the Mojave Desert of California, Nevada, Arizona, and southwestern Utah, and in the Sonoran Desert in California. Throughout the majority of the Mojave Desert, desert tortoises occur most commonly on gentle sloping soils characterized by an even mix of sand and gravel and sparsely vegetated low-growing vegetation where there is abundant inter-shrub space. Typical habitat for the Mojave desert tortoise has been characterized as Mojavean desert scrub below 5,500 feet in elevation with a high diversity of perennial and ephemeral plants. The dominant shrub commonly associated with desert tortoise habitat is creosote bush; however, other shrubs including burrobush (*Ambrosia dumosa*), Mojave yucca, cheesebush (*Ambrosia salsola*), and Mojave prickly pear (*Opuntia mojavensis*) also provide suitable habitat. The desert tortoise spends 95 percent of its life underground and will opportunistically utilize burrows of various lengths, deep caves, rock and caliche crevices, or overhangs for cover. Therefore, moderately friable soil is required to allow for burrow construction and ensure that burrows do not collapse.

No live desert tortoises, suitable burrows, or other sign were observed during the field investigation. The Creosote bush scrub plant community supported by the project site and adjacent open space have the potential to provide suitable foraging and burrowing habitat for desert tortoise. However, adjacent land uses and routine anthropogenic disturbance from light vehicles and off-highway recreational vehicles likely preclude desert tortoise from establishing. Therefore, the project site was determined to have a low potential to support desert tortoise. A pre-construction clearance survey is recommended to be conducted prior to project implementation.

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 USFWS regarding activities they authorize, fund, or permit which may affect a federally listed species or its designated Critical Habitat. The purpose of the

consultation is to ensure that projects will not jeopardize the continued existence of the listed species or adversely modify or destroy its designated Critical Habitat. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing is on federal lands, uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highways Administration or a Clean Water Act Permit from the United States Army Corps of Engineers). If a there is a federal nexus, then the federal agency that is responsible for providing the funding or permit would consult with the USFWS.

The project site is not located within federally designated Critical Habitat. Further, the nearest Critical Habitat designations is located approximately 15 miles west of the project site for Cushenbury buckwheat and Parish's daisy. Refer to Exhibit 5, *Critical Habitat*, in Attachment A. Therefore, no impacts to federally designated Critical Habitat will occur from implementation of the proposed project.

San Bernardino County Development Code

Section 88.01.060 of the County of San Bernardino Development Code provides regulations for the removal or harvesting of specified desert native plants in order to preserve and protect the plants and to provide for the conservation and wise use of desert resources. The provisions are intended to coincide with the Desert Native Plants Act (Food and Agricultural Code Section 8001 et seq.) and the State Department of Food and Agriculture to implement and enforce the Act.

Pursuant to Section 88.01.060 of the Development Code, the following desert native plants or any part of them, except the fruit, shall not be removed except under a Tree or Plant Removal Permit:

1) The following desert native plants with stems two inches or greater in diameter or six feet or greater in height:
    (A) *Dalea spinosa* (smoke tree)
    (B) All species of the genus *Prosopis* (mesquites)
2) All species of the family *Agavaceae* (century plants, nolinas, yuccas)
3) Creosote Rings, 10 feet or greater in diameter
4) All Joshua trees (*Yucca brevifolia*)
5) Any part of any of the following species, whether living or dead:
    (A) *Olneya tesota* (desert ironwood)
    (B) All species of the genus *Prosopis* (mesquites)
    (C) All species of the genus *Cercidium* (palos verdes)

Based on the results of the field investigation, western Joshua Tree is present on-site. If this species is expected to be impacted by project implementation, respective Tree or Plant Removal Permits will be required for each individual prior to ground disturbance in association with Section 88.01.060 of the County of San Bernardino Development Code.

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.

Burrowing Owl Clearance

To ensure burrowing owl remain absent from the project site, it is recommended that a pre-construction clearance survey be conducted in accordance with CDFWs 2012 Staff Report on Burrowing Owl Mitigation prior to any ground disturbing activities.

Desert Tortoise

A desert tortoise pre-construction clearance survey is recommended to be conducted prior to project implementation to ensure desert tortoise remain absent from the project site.

San Bernardino County Development Code

In accordance with Section 88.01.060 of the County of San Bernardino Development Code, Tree or Plant Removal Permits are required for each relevant plant and species that will be impacted by project implementation.

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

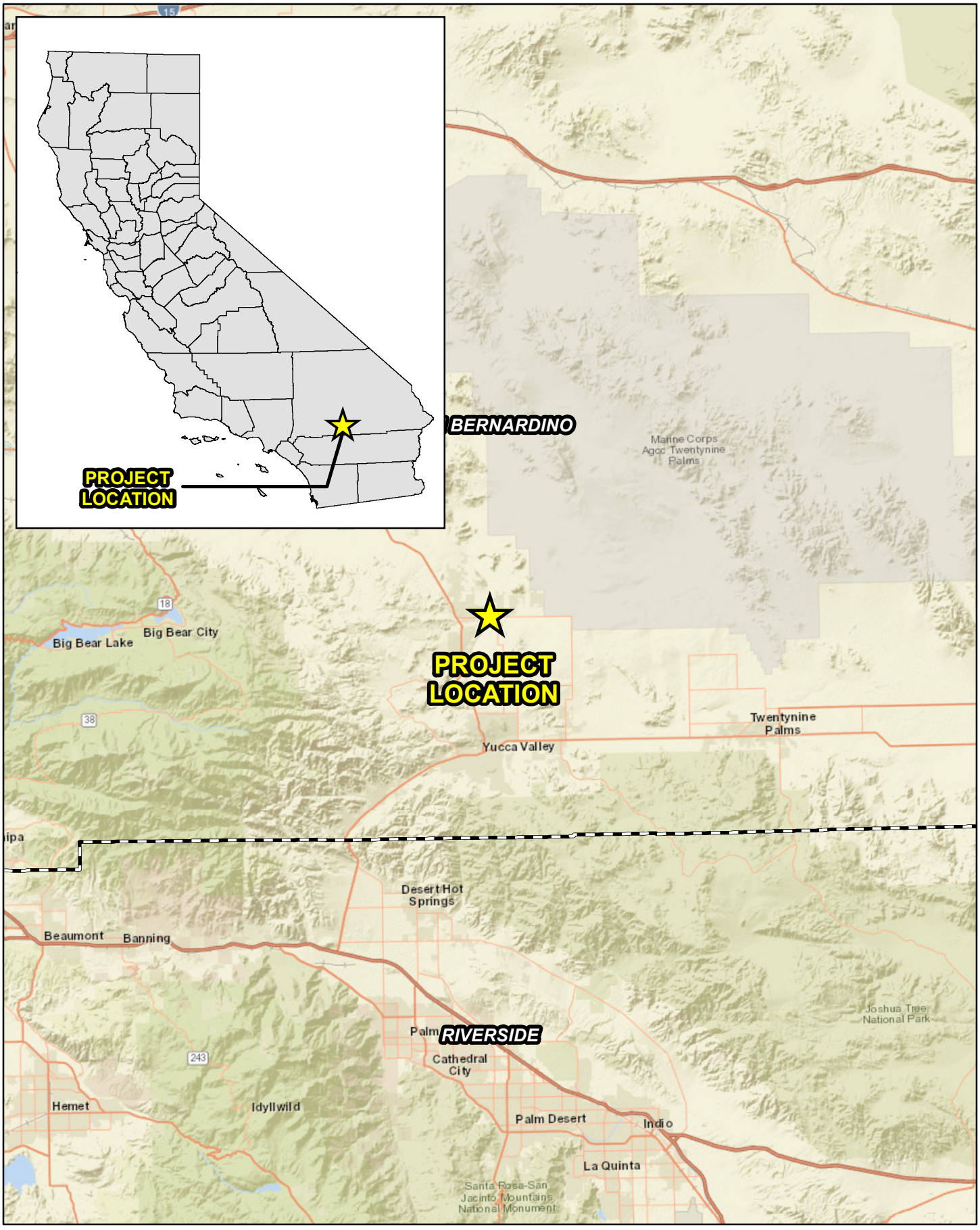
Travis J. McGill
Director

Attachments:

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

Attachment A

Project Exhibits



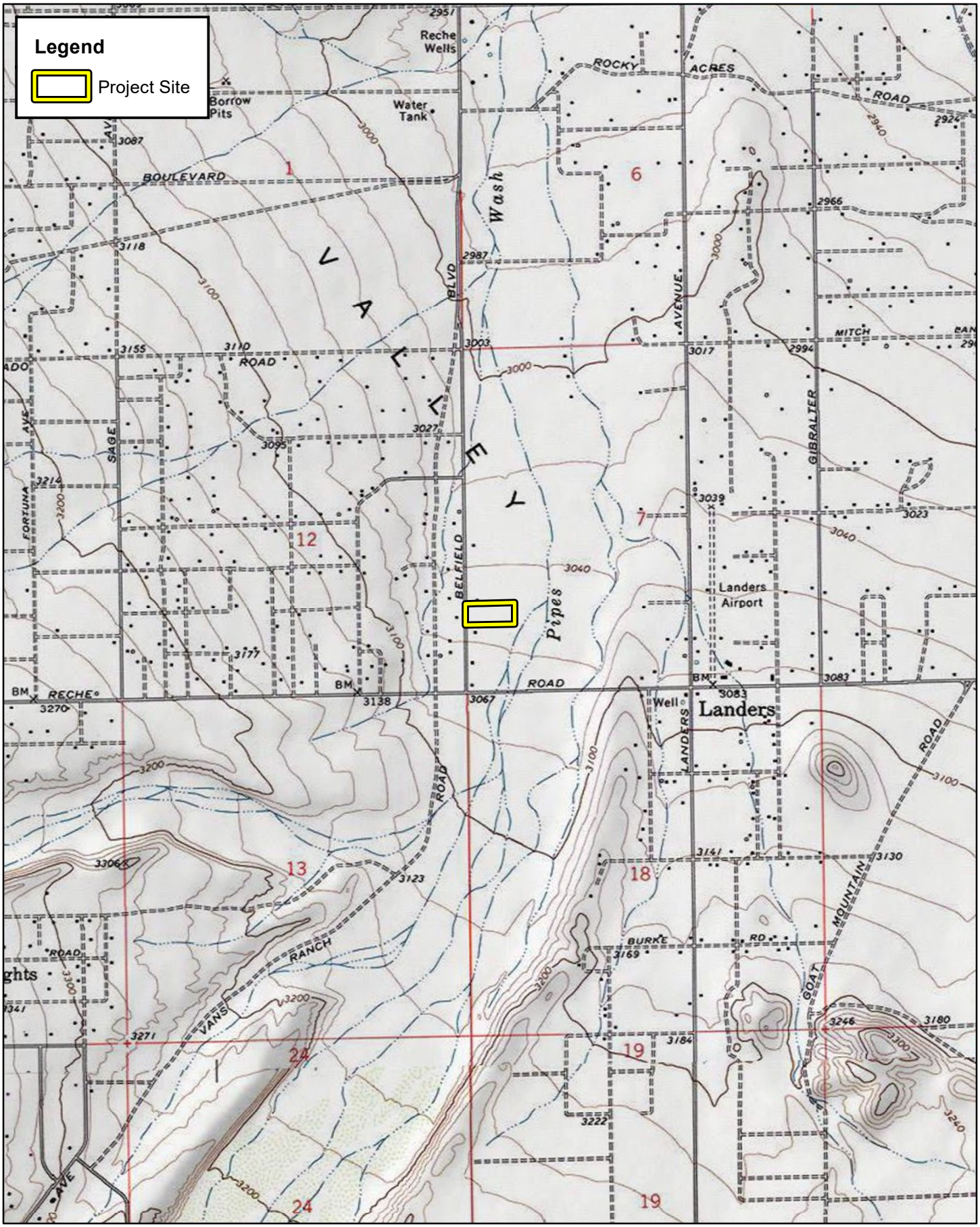
ELMT CONSULTING

Source: World Street Map, San Bernardino County

LANDERS HOTEL
BIOLOGICAL RESOURCES ASSESSMENT

Regional Vicinity

Exhibit 1



LANDERS HOTEL
BIOLOGICAL RESOURCES ASSESSMENT

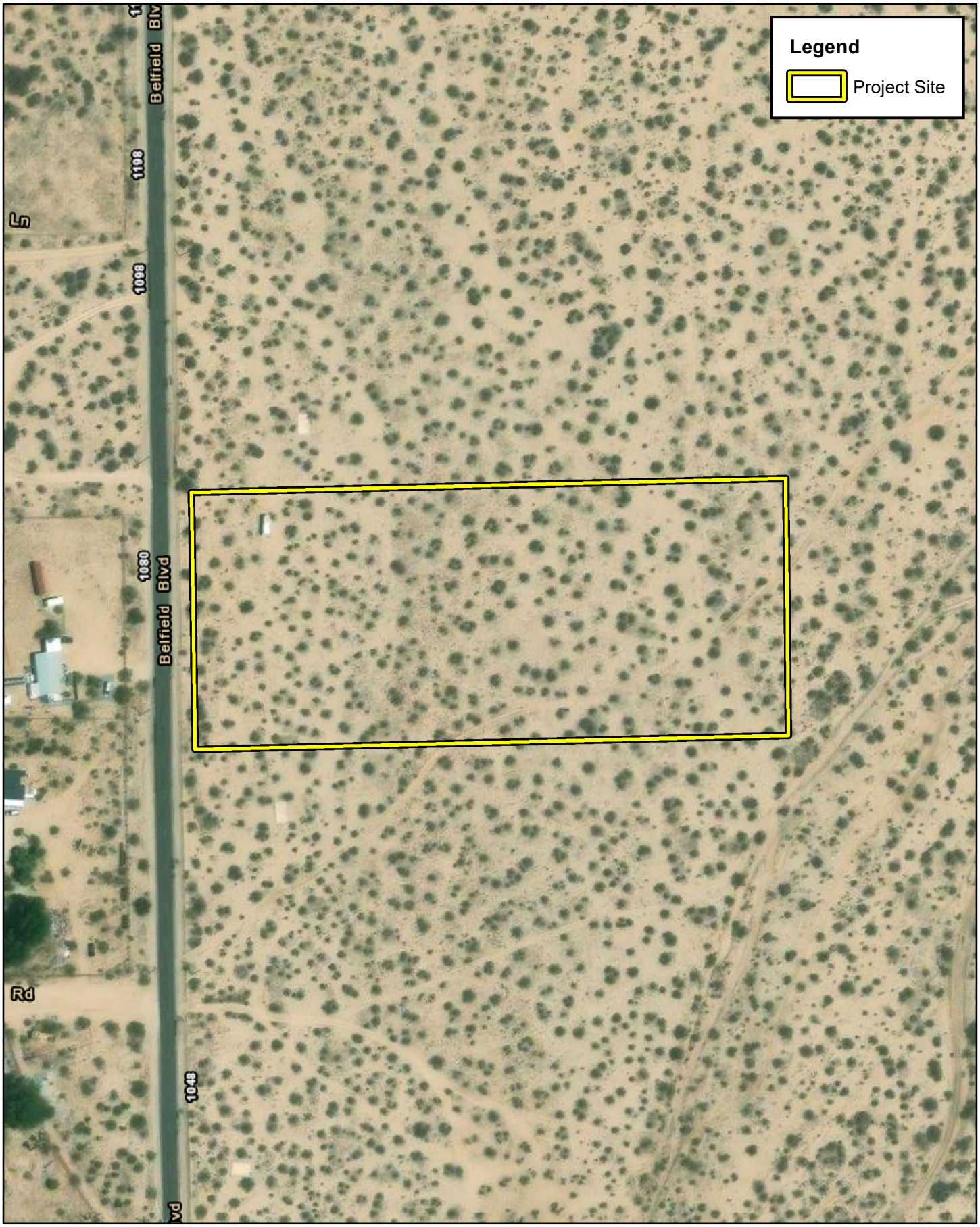
Site Vicinity

ELMT CONSULTING

0 5001,000 2,000 Feet

Source: USA Topographic Map, San Bernardino County

Exhibit 2



LANDERS HOTEL
BIOLOGICAL RESOURCES ASSESSMENT

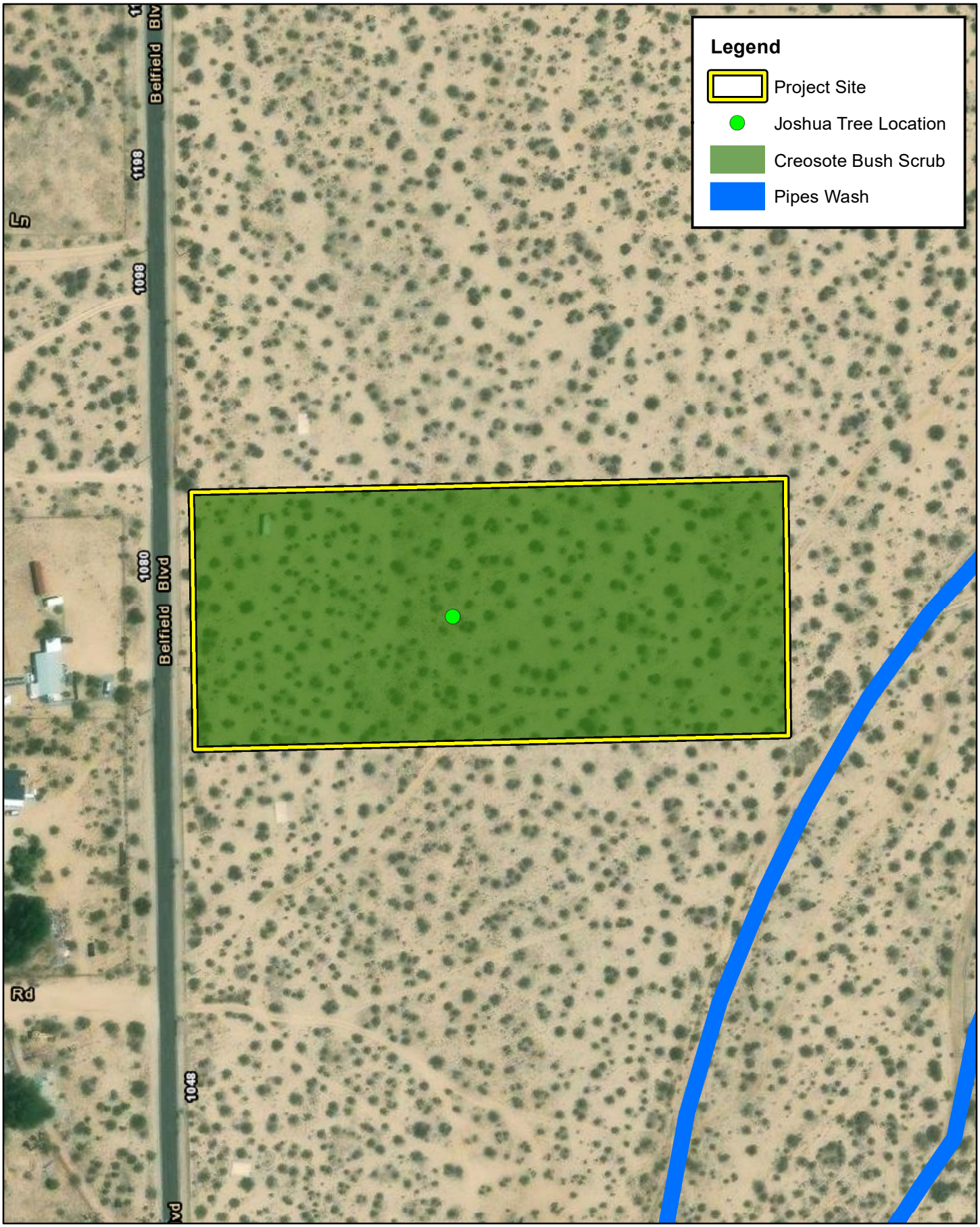
Project Site

Exhibit 3

ELMT CONSULTING

0 62.5 125 250 Feet

Source: ESRI Aerial Imagery, San Bernardino County



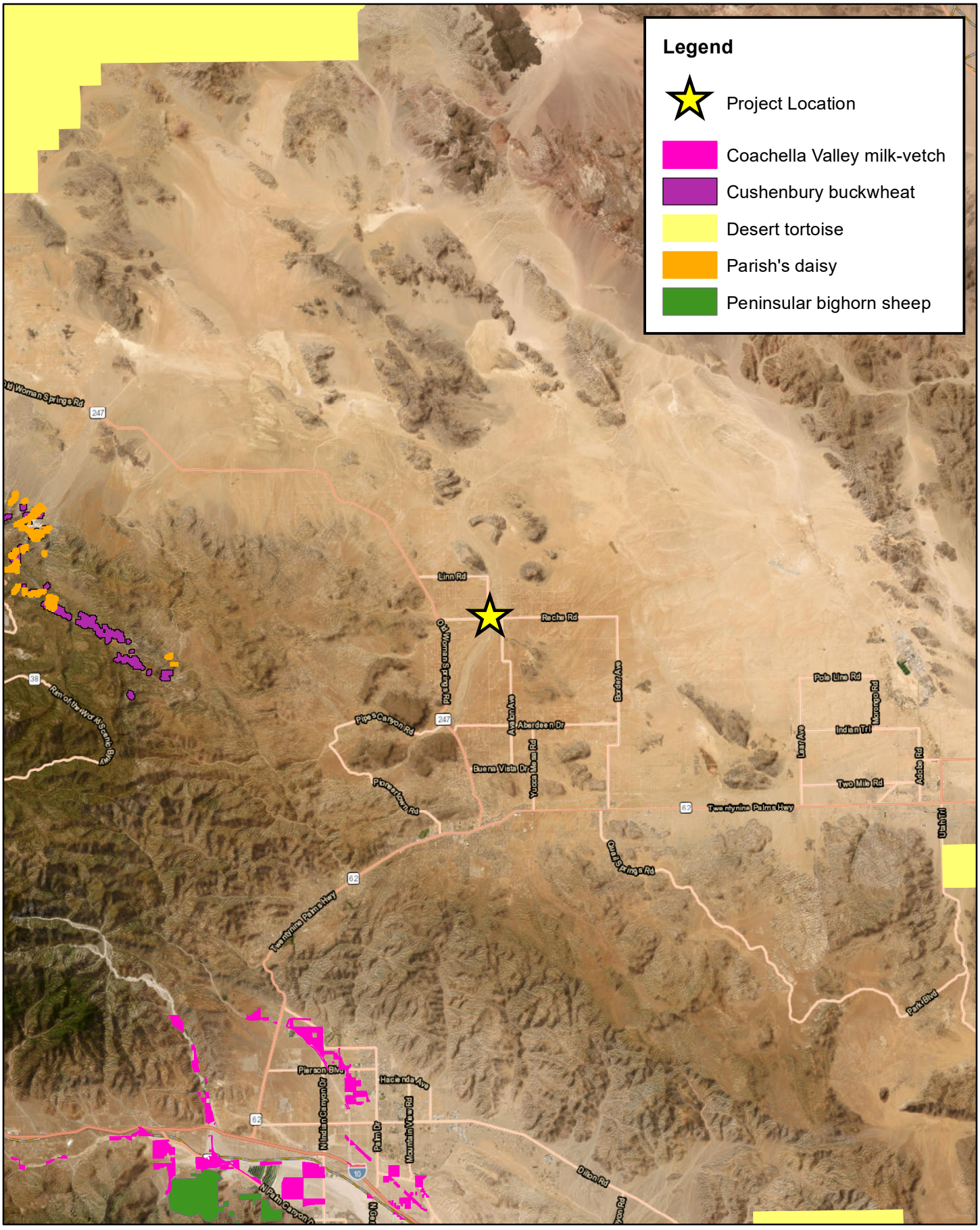
ELMT CONSULTING

Source: ESRI Aerial Imagery, San Bernardino County

LANDERS HOTEL
BIOLOGICAL RESOURCES ASSESSMENT

Vegetation

Exhibit 4



LANDERS HOTEL
BIOLOGICAL RESOURCES ASSESSMENT

Critical Habitat

Exhibit 6

Attachment B

Site Photographs

Photograph 1: From the northwest corner of the project site looking south along the western boundary and Belfield Boulevard.

Photograph 2: From the northwest corner of the project site looking east through the northern boundary.

Photograph 3: From the northeast corner of the project site looking west along the northern boundary.

Photograph 4: From the northeast corner of the project site looking south along the eastern boundary.

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

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

Photograph 7: From the southwest corner of the project site looking east along the southern boundary.

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

Photograph 9: The single western Joshua tree onsite, with the 3 clones.

Attachment C

Potentially Occurring Special-Status Biological Resources

Table C-1: Potentially Occurring Sensitive Biological Resources

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
SPECIAL – STATUS WILDLIFE SPECIES				
Aquila chrysaetos golden eagle	Fed: None CA: FP/WL	Occupies nearly all terrestrial habitats of the western states except densely forested areas. Favors secluded cliffs with overhanging ledges and large trees for nesting and cover. Hilly or mountainous country where takeoff and soaring are supported by updrafts is generally preferred to flat habitats. Deeply cut canyons rising to open mountain slopes and crags are ideal.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Athene cunicularia Burrowing owl	Fed: None CA: SSC	Prefers habitat with short, sparse vegetation with few shrubs and well-drained soils in grassland, shrub steppe, and desert habitats. Primarily a grassland species, but it persists and even thrives in some landscapes highly altered by human activity. Occurs in open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. The overriding characteristics of suitable habitat appear to be burrows for roosting and nesting and relatively short vegetation with only sparse shrubs and taller vegetation.	No	**Low** Suitable foraging habitat is present within and surrounding the project site. No suitable burrows found onsite.
Chaetodipus fallax pallidus pallid San Diego pocket mouse	Fed: None CA: SSC	Common resident of sandy herbaceous areas, usually in association with rocks or course gravel in southwestern California. Occurs mainly in arid coastal and desert border areas. Habitats include coastal scrub, chamise-redshank chaparral, mixed chaparral, sagebrush, desert wash, desert scrub, desert succulent shrub, pinyon-juniper, and annual grassland.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Falco mexicanus prairie falcon	Fed: None CA: WL	Commonly occur in arid and semiarid shrubland and grassland community types. Also occasionally found in open parklands within coniferous forests. During the breeding season, they are found commonly in foothills and mountains which provide cliffs and escarpments suitable for nest sites.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Gopherus agassizii desert tortoise	Fed: **THR** CA: **THR**	Widely distributed in the Mojave, Sonoran, and Colorado deserts from below sea level to 7,220 feet. Most common in desert scrub, desert wash, and Joshua tree habitats, but occurs in almost every desert habitat except those on the most precipitous slopes.	No	**Low** Suitable foraging habitat is present within and surrounding the project site. No suitable burrows found onsite.
Lanius ludovicianus loggerhead shrike	Fed: None CA: SSC	Prefers open habitats with bare ground, scattered shrubs, and areas with low or sparse herbaceous cover including open-canopied valley foothill hardwood, riparian, pinyon-juniper, desert riparian, creosote bush scrub, and Joshua tree woodland. Requires suitable perches including trees, posts, fences, utility lines, or other perches.	No	**High** Suitable foraging and nesting habitat are present within and surrounding the project site.
Lasiurus xanthinus western yellow bat	Fed: None CA: SSC	Roosts in palm trees in foothill riparian, desert wash, and palm oasis habitats with access to water for foraging.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Ovis canadensis nelsoni desert bighorn sheep	Fed: None CA: FP	Preferred habitat is near mountainous terrain above the desert floor that is visually open, as well as steep and rocky. Most Mojave Desert Mountain ranges satisfy these requirements well. Surface water is another element that is considered important to population health.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Paranomada californica California cuckoo bee	Fed: None CA: None	Habitat data is unknown. It is a kleptoparasite of other solitary ground-nesting bees.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
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** There is no suitable habitat present within or adjacent to the project site.
Spizella breweri Brewer's sparrow	Fed: None CA: None	Habitats include arid sagebrush and brushy plains. Nests in tall and densely branching shrubs, most often in big sagebrush (*Artemesia tridentata*). Winters in desert grasslands.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Toxostoma bendirei Bendires thrasher	Fed: None CA: SSC	Prefers relatively open grassland, shrubland, or woodland with scattered trees or shrubs for breeding. Generally found in brushy habitats in deserts or grasslands, and Joshua tree stands.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Toxostoma lecontei Le Conte's thrasher	Fed: None CA: SSC	An uncommon to rare, local resident in southern California deserts from southern Mono Co. south to the Mexican border, and in western and southern San Joaquin Valley. Occurs primarily in open desert wash, desert scrub, alkali desert scrub, and desert succulent shrub habitats; also occurs in Joshua tree habitat with scattered shrubs.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Uma scoparia Mojave fringe-toed lizard	Fed: None CA: SSC	Restricted to sparsely vegetated, windblown sand in dunes, flats, riverbanks and washes. It requires fine, loose sand for burrowing and lays its eggs in subsurface burrows. Vegetation is typically scant and often consists of creosote bush scrub or other scrub.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
SPECIAL – STATUS PLANT SPECIES				
Astragalus bernardinus San Bernardino milk-vetch	Fed: None CA: None CNPS: 1B.2	Grows in carbonate (often), granitic (often) areas within Joshua tree "woodland" and Pinyon and juniper woodland habitats. Found at elevations ranging from 2,955 to 6,560 feet in the San Bernardino Mountains and Mojave Desert. Blooming period is from April to June.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site. The site is located outside of the geographical range of this species.
Astragalus nutans Providence Mountains milk-vetch	Fed: None CA: None CNPS: 4.3	Grows in gravelly (sometimes), sandy (sometimes) soils within Joshua tree "woodland", Mojavean desert scrub, Pinyon and juniper woodland, and Sonoran desert scrub habitats. Found at elevations ranging from 1,475 to 6,400 feet. Blooming period is from March to June (October).	No	**Low** Limited habitat is present within and adjacent to the project site.
Berberis fremontii Fremont berry	Fed: None CA: None CNPS: 2B.3	Grows in granitic (sometimes), rocky soils within Joshua tree "woodland" and Pinyon and juniper woodland habitats. Found at elevations ranging from 3,755 to 5,645 feet. Blooming period is from March to June.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site. The site occurs outside of the known elevation range for this species.
Boechera dispar pinyon rockcress	Fed: None CA: None CNPS: 2B.3	Found on loose, granitic slopes or compact talus soils in Joshua tree woodland, Mojavean Desert scrub, and pinyon-juniper woodland. Grows at elevations from 3,900 to 8,300 feet. Blooming period is from March to June.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site. The site occurs outside of the known elevation range for this species.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Camissonia kernensis ssp. Kernensis Kern County evening primrose	Fed: None CA: None CNPS: 4.3	Grows in granitic, gravelly (sometimes), sandy (sometimes) areas within chaparral, Joshua tree "woodland", and pinyon and juniper woodland habitats. Found at elevations ranging from 2,590 to 6,990 feet. Blooming period is from March to May.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Canbya candida white pygmy-poppy	Fed: None CA: None CNPS: 4.2	Occurs on gravelly, sandy, granitic soils in Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland. Found at elevations ranging from 2,297 to 5,249 feet above mean sea level (msl). Blooming period is from March to June.	No	**Low** Limited habitat is present within and adjacent to the project site.
Cymopterus multinervatus purple-nerve cymopterus	Fed: None CA: None CNPS: 2B.2	Grows in sandy or gravelly soils within Mojavean desert scrub and pinyon and juniper woodland habitats. Found at elevations ranging from 2,590 to 5,905 feet. Blooming period is from March to April.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Erigeron parishii Parish's daisy	Fed: **THR** CA: None CNPS: 1B.1	Grows in carbonate (usually) and granitic (sometimes) soils in Mojavean desert scrub and pinyon/juniper woodland habitats. Found at elevations ranging from 2,625 to 6,560 feet. Blooming period is from May to August.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Eschscholzia androuxii Joshua Tree poppy	Fed: None CA: None CNPS: 4.3	Occurs on sandy, gravelly, and/or rocky desert washes, flats, and slopes in Joshua tree woodland and Mojavean desert scrub. Found at elevations from 1,900 to 5,530 feet. Blooming period is February to June.	No	**Low** There is suitable habitat present within and surrounding the project site. This species has been reported as occurring in the vicinity.
Euphorbia abramsiana Abram's spurge	Fed: None CA: None CNPS: 2B.2	Found on sandy soils in Mojavean desert scrub and Sonoran Desert scrub. Found at elevations ranging from -15 to 4,300 feet. Blooming period is from September to November.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Euphorbia vallis-mortae Death Valley sandmat	Fed: None CA: None CNPS: 4.2	Grows within Mojavean desert scrub (gravelly, sandy) habitats. Found at elevations ranging from 755 to 4,790 feet. Blooming period is from May to October.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Funastrum utahense Utah vine milkweed	Fed: None CA: None CNPS: 4.2	Occurs in sandy or gravelly soil in Mojavean desert scrub and Sonoran desert scrub. Found at elevations ranging from 328 to 4,708 feet. Blooming period typically ranges from April to June but can begin as early as March and end as late as October.	No	**Presumed Absent** This species was not observed during the focused survey.
Galium angustifolium* ssp. *gracillimum slender bedstraw	Fed: None CA: None CNPS: 4.2	Grows on rocky, granitic soils within Joshua tree woodland and Sonoran desert scrub habitats. Found at elevations ranging from 427 to 5,085 feet. Blooming period is from April to June.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Grusonia parishii Parish's club-cholla	Fed: None CA: None CNPS: 2B.2	Grows in rocky, sandy soils within Joshua tree "woodland", Mojavean desert scrub, and Sonoran desert scrub habitats. Found at elevations ranging from 985 to 5,000 feet. Blooming period is from May to June (July).	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Linanthus bernardinus Pioneertown linanthus	Fed: None CA: None CNPS: 1B.2	Grows within Joshua tree "woodland" and pinyon and juniper woodland habitats. Found at elevations ranging from 460 to 4,005 feet. Blooming period is from March to May.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Linanthus maculatus* ssp. *maculatus Little San Bernardino Mtns. linanthus	Fed: None CA: None CNPS: 1B.2	Preferred habitats include desert dunes, Joshua tree woodland, Mojavean desert scrub, and Sonoran Desert scrub in sandy soils. Found at elevations ranging from 640 to 6,808 feet. Blooming period is from March to May.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Lycium torreyi Torrey's box-thorn	Fed: None CA: None CNPS: 4.2	Grows in rocky, sandy streambank, and wash areas within Mojave desert scrub and Sonoran desert scrub habitats. Found at elevations ranging from -165 to 4,005 feet. Blooming period is from (January to February) March to June (September to November).	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Monardella robisonii Robisons monardella	Fed: None CA: None CNPS: 1B.3	Grows within pinyon and juniper woodland habitats. Known to occur only in sky island habitats in the Mojave Desert mountains, primarily within areas of Joshua Tree National Park and of lower elevations in Sand to Snow National Monument. Found at elevations ranging from 2,000 to 4,920 feet. Blooming period is from (February) April to September (October).	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site
Muilla coronata crowned muilla	Fed: None CA: None CNPS: 4.2	Found in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland habitats. Blooming period is from May to April. Grows in elevation from 2,198 to 6,430 feet.	No	**Low** Suitable habitat is present within and adjacent to the project site.
Penstemon clevelandii* var. *mohavensis Mojave beardtongue	Fed: None CA: None CNPS: 1B.2	Grows in granitic (often), rocky areas within Mojavean desert scrub and Pinyon and juniper woodland habitats. Found at elevations ranging from 3,035 to 5,315 feet. Blooming period is from March to May.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site
Petalonyx thurberi* ssp. *gilmanii Death Valley sandpaper-plant	Fed: None CA: None CNPS: 1B.3	Grows within desert dunes and Mojavean desert scrub habitats. Found at elevations ranging from 855 to 4,740 feet. Blooming period is from May to September.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site
Saltugilia latimeri Latimer's woodland-gilia	Fed: None CA: None CNPS: 1B.2	Habitats include chaparral, Mojavean desert scrub, pinyon and juniper woodland. Prefers rocky or sandy, often granitic, soils. Found at elevations ranging from 1,310 to 6,235 feet. Blooming period is from March to June.	No	**Presumed Absent** There is no suitable habitat 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 2,955 to 7,545 feet. Blooming period is from May to July.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site
Yucca brevifolia western Joshua tree	Fed: None CA: CE CNPS: N/A	Occurs in a variety of arid habitats within the Mojave Desert. Found at elevations ranging from 1,600 to 6,600 feet. Blooming period is from March to June.	Yes	**Present** Suitable habitat is present within and surrounding 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
CE - California Candidate Endangered

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 D

Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

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

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

State Regulations

California Environmental Quality Act (CEQA)

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

California Endangered Species Act (CESA)

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

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

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

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

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

Fish and Game Code

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

Native Plant Protection Act

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

California Native Plant Society Rare and Endangered Plant Species

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

California Rare Plant Rank

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

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

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

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

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

4- Plants of Limited Distribution - A Watch List

Threat Ranks

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

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

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

Local Regulations

San Bernardino County Development Code

Section 88.01.060 of the County of San Bernardino Development Code provides regulations for the removal or harvesting of specified desert native plants in order to preserve and protect the plants and to provide for the conservation and wise use of desert resources. The provisions are intended to coincide with the Desert Native Plants Act (Food and Agricultural Code Section 8001 et seq.) and the State Department of Food and Agriculture to implement and enforce the Act.

Pursuant to Section 88.01.060 of the Development Code, the following desert native plants or any part of them, except the fruit, shall not be removed except under a Tree or Plant Removal Permit:

1) The following desert native plants with stems two inches or greater in diameter or six feet or greater in height:

   (A) *Dalea spinosa* (smoke tree)
   (B) All species of the genus *Prosopis* (mesquites)

2) All species of the family *Agavaceae* (century plants, nolinas, yuccas)

3) Creosote Rings, 10 feet or greater in diameter

4) All Joshua trees

5) Any part of any of the following species, whether living or dead:

   (A) *Olneya tesota* (desert ironwood)
   (B) All species of the genus *Prosopis* (mesquites)
   (C) All species of the genus *Cercidium* (palos verdes)

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" (March 20, 2023), "waters of the United Sates" are defined as follows:

> The ''waters of the United States'' are defined in paragraph (a) of this rule:
>
> (1) traditional navigable waters, the territorial seas, and interstate waters;
>
> (2) impoundments of ''waters of the United States'';
>
> (3) tributaries to traditional navigable waters, the territorial seas, interstate waters, or impoundments when the tributaries meet either the relatively permanent standard or the significant nexus standard (''jurisdictional tributaries'');
>
> (4) wetlands adjacent to traditional navigable waters; wetlands adjacent to and with a continuous surface connection to relatively permanent paragraph impoundments or to jurisdictional tributaries when the jurisdictional tributaries meet the relatively permanent standard; and wetlands adjacent to impoundments or jurisdictional tributaries when the wetlands meet the significant nexus standard (''jurisdictional adjacent wetlands''); and
>
> (5) intrastate lakes and ponds, streams, or wetlands not identified in (1) through (4) above that meet either the relatively permanent standard or the significant nexus standard.

The ''relatively permanent standard'' means relatively permanent, standing or continuously flowing waters connected to traditional navigable waters, and waters with a continuous surface connection to such relatively permanent waters or to traditional navigable waters. The ''significant nexus standard'' means waters that, either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of traditional navigable waters, the territorial seas, or interstate waters.

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.