BIOLOGICAL RESOURCES ASSESSMENT
FOR CAJON TRUCK PARKING FACILITY

Unincorporated Community of Devore, San Bernardino County, California
USGS – Devore 7.5 Quadrangle
Section 2 of Township 1 North, Range 5 West

Date Prepared: October 2021

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CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

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Lisa Patterson, National Senior Environmental Project Manager

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1 INTRODUCTION AND SUMMARY OF FINDINGS

Jacobs Engineering Group was retained by Tom Dodson & Associates (TDA) to prepare a Biological Resources Assessment (BRA) report for the proposed Cajon Truck Parking Facility (Project). The proposed Project site is located on approximately 9.6 acres on western side of Cajon Boulevard, south of where Kendal Drive intersects Cajon Boulevard. The site is mapped within the United States Geological Survey (USGS) 7.5-minute topographic quadrangle "Devore", Section 2 of Township 2 North and Range 5 West. (See Figure 1 – Regional Location Map and Figure 2 – Site Location Map)

The Project survey area is predominantly vacant land situated between the industrial buildings (FedEx Freight and Cajon Distribution Center) to the north and south, and the BNSF Railway main line track to the east. The location for the parking facility is characterized by disturbed and routinely disced open space with relatively compacted areas. There are no native habitats occurring with the proposed project site

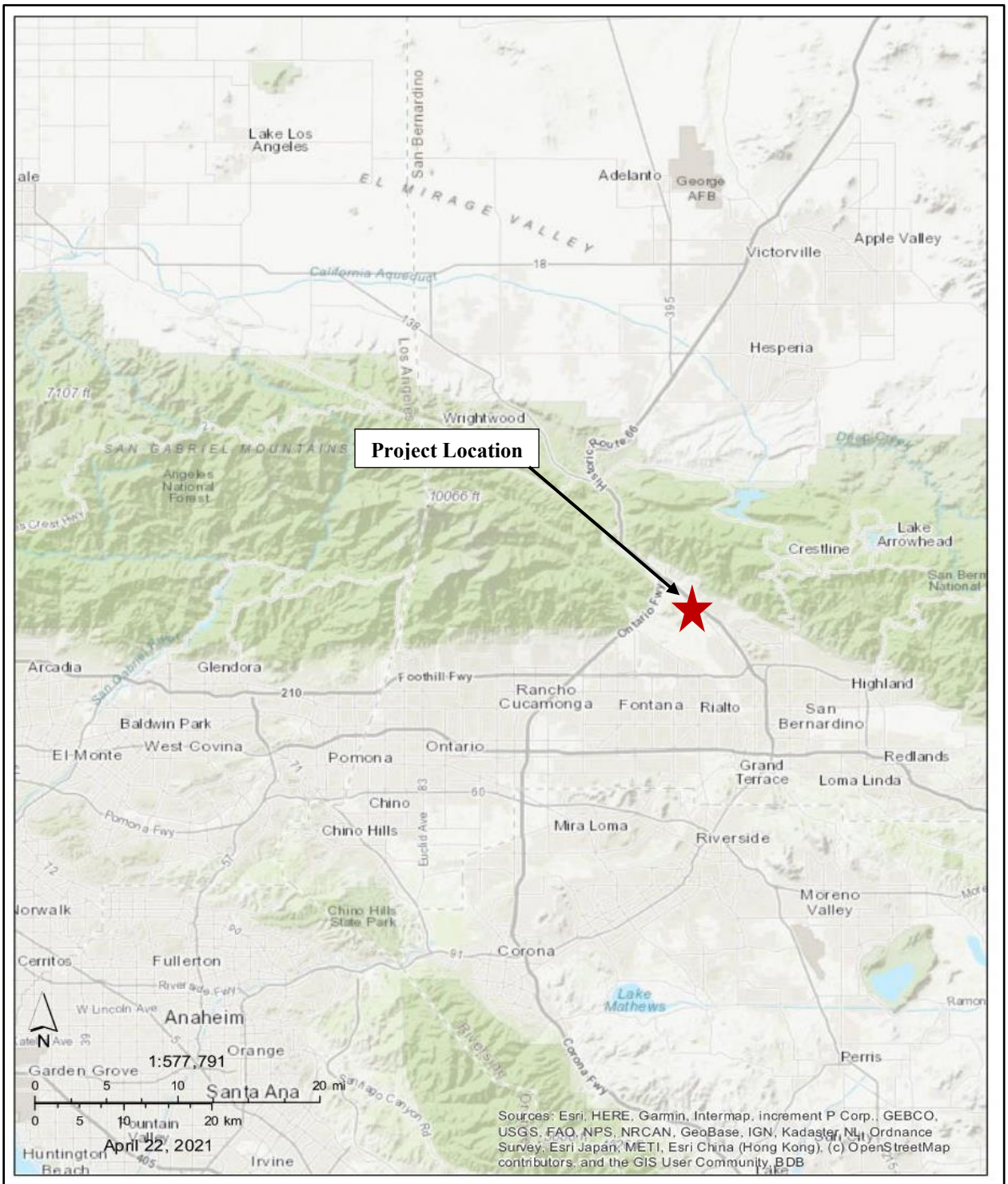
The BRA fieldwork was conducted by Jacobs' biologist, Lisa Patterson, on June 15, 2021. The purpose of the BRA is to address potential effects of the Project to designated Critical Habitats and/or any species currently listed or formally proposed for listing as endangered or threatened under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA) or species designated as sensitive by the California Department of Fish and Wildlife (CDFW [formerly California Department of Fish and Game]) and/or the California Native Plant Society (CNPS).

The Project Area of Potential Effect (APE) was assessed for sensitive species known to occur locally. Attention was focused on those state and/or federally listed as threatened or endangered species and California Fully Protected species that have been documented in the Project vicinity, whose habitat requirements are present within or adjacent to the Project survey area. There are several sensitive species documented within the Project vicinity, including the following State and federally-listed species: Arroyo Toad (Anaxyrus californicus); Southern mountain yellow-legged frog (Rana muscosa); San Bernardino Merriams's Kangaroo Rat (Dipodomys merriami parvus); California gnatcatcher (Polioptila californica californica); Least Bell's vireo (Vireo bellii pusillus; Southwestern Willow Flycatcher (Empidonax traillii extimus); Burrowing Owl (Athene cunicularia); Crotch bumble bee (Bombus crotchii); Santa Ana River Woolly-star (Eriastrum densifolium ssp sanctorum); and Slender-horned Spineflower (Dodecahema leptoceras).

The result of this habitat assessment and survey was that no undisturbed native habitat occurs withing the Project survey area. Although there are remnant individuals of coastal sage scrub species, they are sporadically scattered, small, and adjacent to existing roads; and are unlikely to support sensitive species. Further, no evidence of historic use by BUOW individuals or sign were detected within the survey area. Therefore, these species are considered absent from the Project site at the time of survey.

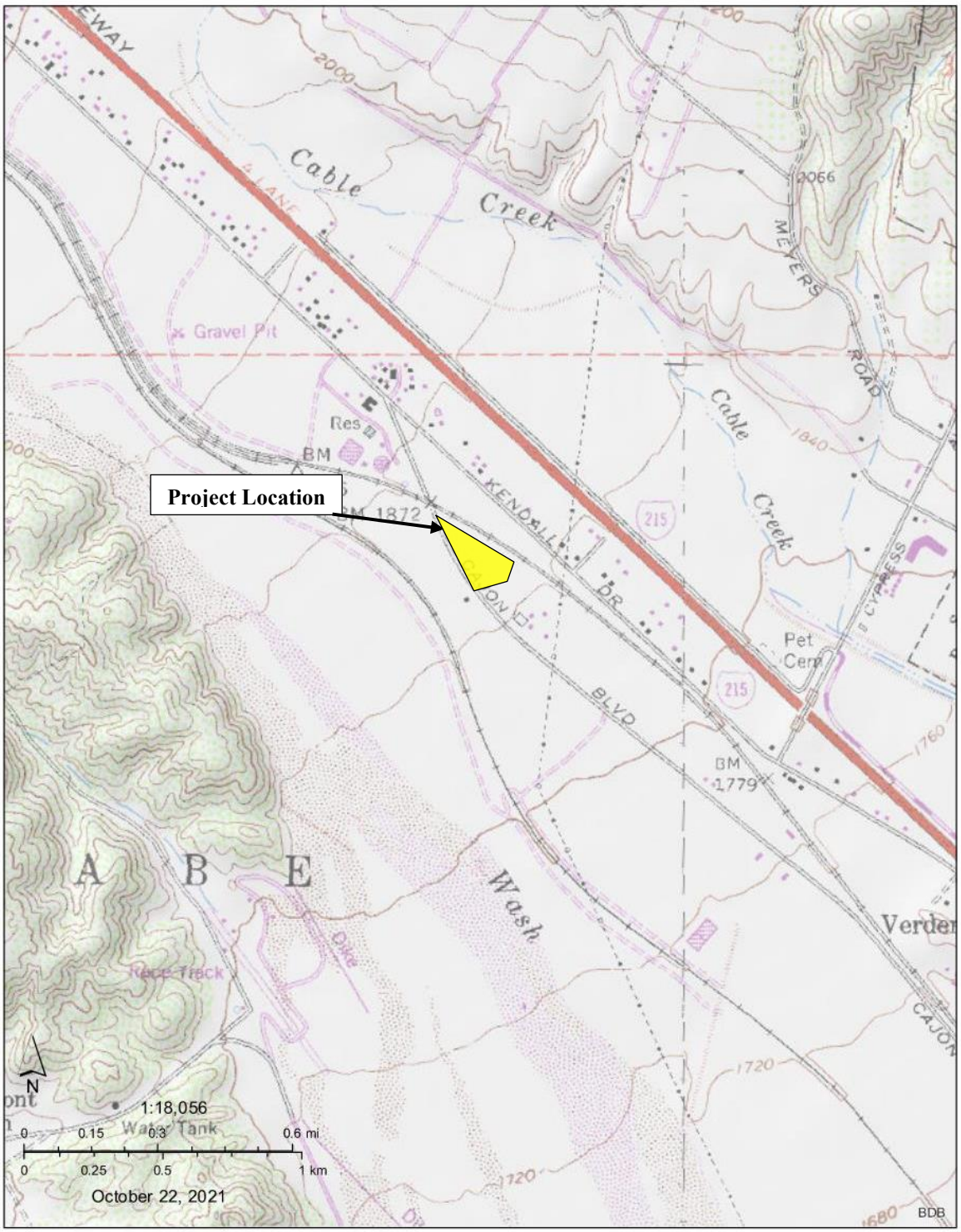
No other listed or otherwise sensitive species or sensitive habitat was observed within the Project APE and none are expected to occur on site.

No intermittent or ephemeral dry washes that would meet the definitions of State and federal jurisdictional waters as defined by Section 1600 of the State of California Fish and Game Code (FGC) or "Waters of the United States" (WoUS) as defined by Section 404 of the Clean Water Act (CWA) occur on the Project site. Therefore, no regulatory permits from these agencies may be required for this Project.



JACOBS

Regional Location
FIGURE 1



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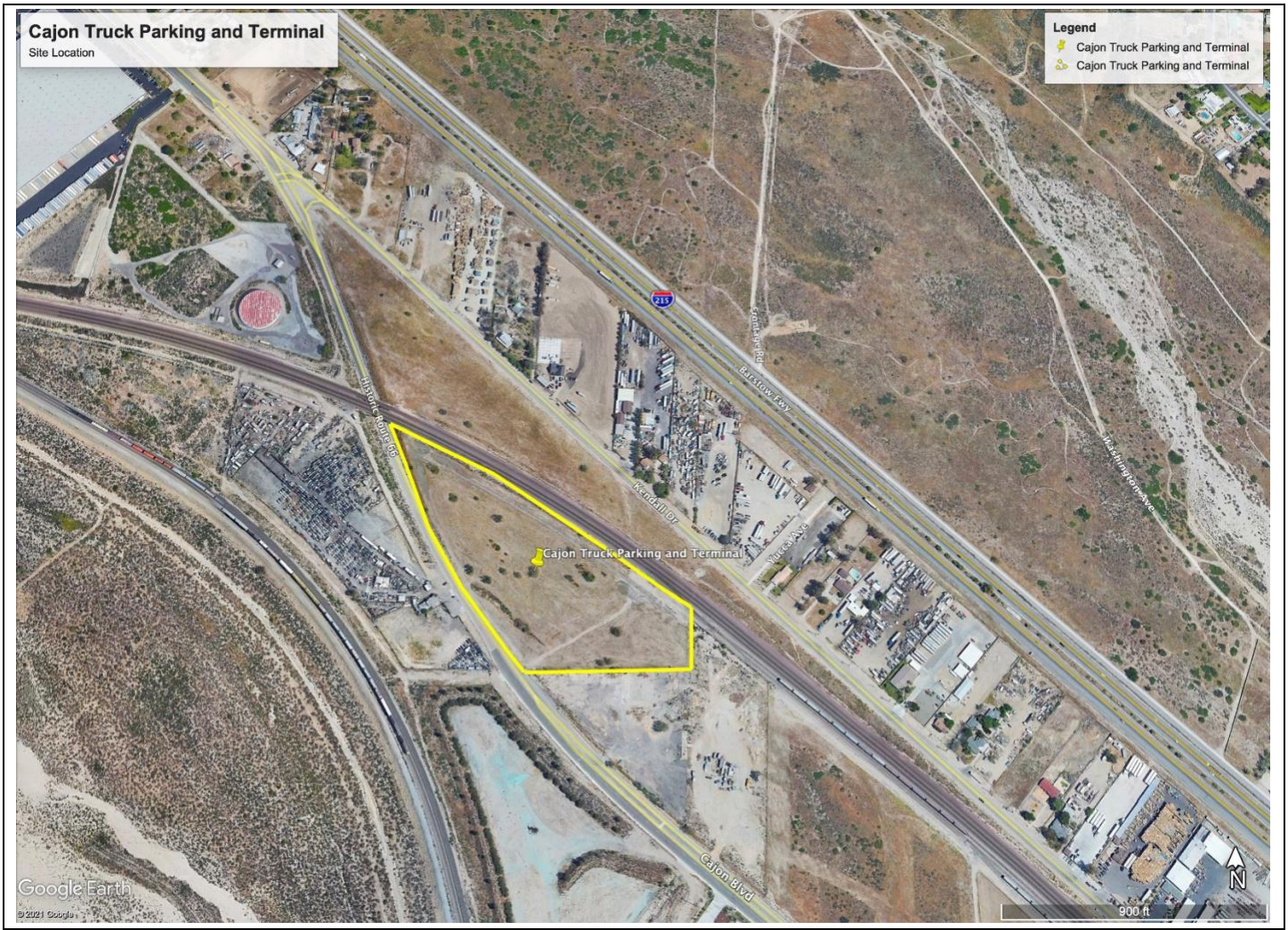
Site Location Map

SOURCE: USGS "Devore"

FIGURE 2



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Aerial Photograph of Project Area

SOURCE: Google Earth

FIGURE 3

1.1 Location

The proposed Project site is located on approximately 9.6 acres on western side of Cajon Boulevard, south of where Kendal Drive intersects Cajon Boulevard. The site is mapped within the United States Geological Survey (USGS) 7.5-minute topographic quadrangle "Devore", Section 2 of Township 2 North and Range 5 West. (See Figure 1 – Regional Location Map and Figure 2 – Site Location Map).

1.2 Environmental Setting

The Project APE consists of approximately 9.6 acres of previously graded and routinely disced lands. Site topography varies from an elevation of approximately 2,079 to 2,284 feet above msl. The site is predominantly flat with little or no topographical variation. (Figure 3).

The site is located east of Cajon Creek (Figures 1 and 3). Historically, Cajon Creek flowed through a broad alluvial plain. Currently Cajon Creek is controlled with berms, banks and rock barriers, roadway, and railroad high-fill. All of which limit the flood plan to the east of the BNSF right of way. The site is located in uplands outside the historic creek floodplain.

The site has a Mediterranean type climate, with hot dry summers, relatively cool winters and sparse rains. Annual precipitation for the region averages 16.0 inches, and average annual temperature ranges from 49º to 80º F.

1.3 Soils*:*

The soils on the study area are sandy loams from the Tujunga-Soboba association, which are nearly level to moderately sloping, somewhat excessively drained soils on alluvial valley floors (NRCS Soil Survey 2020; Woodruff 1980). Tujunga gravelly loamy sand is the dominant soil onsite, occurring in the flatter eastern portion of the site. Much of the rest of the site is covered by the Soboba-Hanford families association soils but this area has not been mapped to individual soil types (Figure 4). Site soils are as follows: However the majority of these soil have been disturbed by grading, import of gravel and rock, and compaction.

Tujunga gravelly loamy sand, 0 to 9 percent slopes (TvC)

This soil consists of excessively drained soils on alluvial fans and floodplains, derived from alluvium primarily from granitic materials. These soils contain many small braided to large meandering channels. Surface soils are light gray (10YR 6/1) loamy sand, underlain by light gray (10YR 7/1) fine sand. Tujunga soils are used for dryland grain, and if irrigated, truck crops, grapes and grain.

Soboba gravelly loamy sand, 0 to 9 percent slopes (SoC)

This soil consists of excessively drained, nearly level to moderately sloping soils on alluvial fans, and are derived from granitic alluvium. The upper 24 inches consist of grayish-brown (10YR 5/2) and brown (10YR 5/3) gravelly loamy sand. This soil is used for irrigated citrus and dry farmed seeded pasture.

2 ASSESSMENT METHODOLOGY

Data regarding biological resources in the Project APE were obtained through literature review and field investigation. Prior to performing the survey, available databases and documentation relevant to the Project APE were reviewed for documented occurrences of sensitive species in the Project vicinity (approximately 3 miles). The USFWS threatened and endangered species occurrence data overlay, USFWS Information for Planning and Consultation (IPaC) database and the most recent versions of the California Natural Diversity Database (CNDDB) and California Native Plant Society Electronic Inventory (CNPSEI) databases were searched for sensitive species data in the *Devore* USGS 7.5-Minute Series Quadrangles. These databases contain records of reported occurrences of state and federally listed species or otherwise sensitive species and habitats that may occur within the vicinity of the Project site (approximately 3 miles). Other available technical information on the biological resources of the area was also reviewed including previous surveys and recent findings. See Appendix A for CNDDB Element List and USFWS IPaC Report.

2.1 Biological Resources Assessment

Jacobs biologist Lisa Patterson conducted a biological resources assessment of the Project APE on April 12 and 16, 2021. The assessment included both desktop review of Google Earth aerial imagery and field survey. The field survey consisted of a reconnaissance-level pedestrian survey of the Project site, as well as the immediate surrounding area where feasible and appropriate. Wildlife species were detected during field survey by sight, calls, tracks, scat, or other sign. In addition to species observed, expected wildlife usage of the site was determined based on known habitat preferences of regional wildlife species and knowledge of their relative distributions in the area. The focus of the faunal species survey was to identify potential habitat for special status wildlife within the Project APE.

2.2 Jurisdictional Delineation

On April 16, 2021, Ms. Patterson also evaluated the Project APE for the presence of riverine/riparian/wetland habitat and jurisdictional waters, i.e. Waters of the U.S. (WOTUS), as regulated by the USACE and RWQCB, and/or jurisdictional streambed and associated riparian habitat as regulated by the CDFW.

Prior to the field visit, aerial photographs of the Project APE were viewed and compared with the surrounding USGS 7.5-Minute Topographic Quadrangle maps to identify drainage features within the survey area as indicated from topographic changes, blue-line features, or visible drainage patterns. The USFWS National Wetland Inventory and Environmental Protection Agency (EPA) Water Program "My Waters" Google Earth Pro data layer were also reviewed to determine whether any hydrologic features and wetland areas had been documented within the vicinity of the site. Similarly, the United States Department of Agriculture (USDA) – Natural Resources Conservation Service (NRCS) Web Soil Survey was reviewed for soil types found within the Project APE to identify the soil series in the area and to check these soils to determine whether they are regionally identified as hydric soils. Upstream and downstream connectivity of waterways (if present) were reviewed on Google Earth Pro aerial photographs and topographic maps to determine jurisdictional status. The lateral extent of potential USACE jurisdiction was measured at the Ordinary High Watermark (OHWM) in accordance with regulations set forth in 33CFR part 328 and the USACE guidance documents listed below:

- *USACE Wetlands Research Program Technical Report Y-87-1 (on-line edition), Wetlands Delineation Manual, Environmental Laboratory, 1987 (Wetland Delineation Manual).*

- *USACE Minimum Standards for Acceptance of Preliminary Wetlands Delineations, November 30, 2001 (Minimum Standards).*
- *USACE Jurisdictional Determination Form Instructional Guidebook, May 30, 2007 (JD Form Guidebook).*
- *USACE Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid Lands, (Version 2.0), May 2010.*
- *USACE A Guide to Ordinary High-Water Mark (OHWM) Delineation for Non-Perennial Streams in the Western Mountains, Valleys, and Coast Region of the United States, August 2014 (Delineation Manual).*
- *The Environmental Protection Agency (EPA) and the Department of the Army's "Navigable Waters Protection Rule: Definition of 'Waters of the United States,'" April 21, 2020 (effective June 22, 2020) (85 FR 22250).*

To be considered a *jurisdictional wetland* under the federal CWA, Section 404, an area must possess three (3) wetland characteristics: hydrophytic *vegetation*, hydric *soils*, and wetland *hydrology*.

► *Hydrophytic vegetation*: Hydrophytic vegetation is plant life that grows, and is typically adapted for life, in permanently or periodically saturated soils. The hydrophytic vegetation criterion is met if more than 50 percent of the dominant plant species from all strata (tree, shrub, and herb layers) is considered hydrophytic. Hydrophytic species are those included on the *2016 National Wetland Plant List (Western Mountains, Valleys & Coast Region)* (Lichvar, 2016). Each species on the list is rated with a wetland indicator category, as shown below. To be considered hydrophytic, the species must have *wetland indicator status*, i.e., be rated as OBL, FACW or FAC.

Table 1. Wetland Indicator Vegetation Categories

Category	Probability
Obligate Wetland (OBL)	Almost always occur in wetlands (estimated probability >99%)
Facultative Wetland (FACW)	Usually occur in wetlands (estimated probability 67 to 99%)
Facultative (FAC)	Equally likely to occur in wetlands and non-wetlands (estimated probability 34 to 66%)
Facultative Upland (FACU)	Usually occur in non-wetlands (estimated probability 67 to 99%)
Obligate Upland (UPL)	Almost always occur in non-wetlands (estimated probability >99%)

► *Hydric Soil*: Soil maps from the USDA-NRCS Web Soil Survey (USDA 2021) were reviewed for soil types found within the Project APE. Hydric soils are saturated or inundated long enough during the growing season to develop anaerobic conditions that favor growth and regeneration of hydrophytic vegetation. There are several indirect indicators that may signify the presence of hydric soils including hydrogen sulfide generation, the presence of iron and manganese concretions, certain soil colors, gleying, and the presence of mottling. Generally, hydric soils are dark in color or may be gleyed (bluish, greenish, or grayish), resulting from soil development under anoxic (without oxygen) conditions. Bright mottles within an otherwise dark soil matrix indicate periodic saturation with intervening periods of soil aeration. Hydric indicators are particularly difficult to observe in sandy soils, which are often recently deposited soils of flood plains (entisols) and usually lack sufficient fines (clay and silt) and organic material to allow use of soil color as a reliable indicator of hydric conditions. Hydric soil indicators in sandy soils include accumulations of organic matter in the surface horizon, vertical streaking of subsurface horizons by organic matter,

and organic pans.

The hydric soil criterion is satisfied at a location if soils in the area can be inferred or observed to have a high groundwater table, if there is evidence of prolonged soil saturation, or if there are any indicators suggesting a long-term reducing environment in the upper part of the soil profile. Reducing conditions are most easily assessed using soil color. Soil colors are evaluated using the Munsell Soil Color Charts (Gretag/Macbeth, 2000). Soil pits (when necessary) are dug to an approximate depth of 16-20 inches to evaluate soil profiles for indications of anaerobic and redoximorphic (hydric) conditions in the subsurface.

- *Wetland Hydrology*: The wetland hydrology criterion is satisfied at a location based upon conclusions inferred from field observations that indicate an area has a high probability of being inundated or saturated (flooded, ponded, or tidally influenced) long enough during the growing season to develop anaerobic conditions in the surface soil environment, especially the root zone (USACE, 1987 and 2008b).

Evaluation of CDFW jurisdiction followed guidance in the FGC. Specifically, CDFW jurisdiction would occur where a stream has a definite course showing evidence of where waters rise to their highest level and to the extent of associated riparian vegetation.

3 RESULTS

3.1 Existing Biological and Physical Conditions

The Project APE consists of an approximately 9.6 acres of undeveloped lands that have been historically disturbed. Further, this area is routinely disced to keep it free of vegetation for fire protection. The Project site situated between the heavy industry to the north and south and the BNSF Railway to the west. Disturbances on site include historic and ongoing OHV, pedestrian uses, and vegetation clearing. There are also human disturbances associated with the surrounding developments.

3.1.1 Communities occurring on the Project Site

Non-native annual grassland.

This vegetation type describes areas dominated by non-native annual grasses, with a large component of ruderal forbs. Non- native grasslands are associated with areas of historic grazing, disking and off-road recreational vehicle use. Soils are generally deep, well-drained sand to fine sandy loam. The Project site the dominant species in the included brome grasses (*Bromus sp*p.), stork's bill (*Erodium cicutarium*), Maltese star thistle (*Centaurea melitensis*) and slender oat (*Avena barbata*). The non-native grassland onsite is regularly disked. These areas were very homogenous in species composition throughout the site.

Remnant/Disturbed Coastal Sage Scrub

Coastal Sage Scrub -California Buckwheat scrub is composed of low growing, soft, woody, drought-deciduous shrubs and herbaceous plants that grow on steep usually south-facing slopes, severely drained soils. Species composition and diversity is determined by soil factors, fire, and topography. This vegetation community is typically found on bouldery, gravelly slopes with sandy loam soils, from 250-950m in elevation.

The disturbed coastal sage scrub occurres in a patchy distribution along the northeastern edge adjacent to the dirt roads and the BNSF right of way. This vegetation was dominated by California sagebrush (Artemisia californica) and California buckwheat (*Eriogonum fasciculatum*). Other dominant species included everlasting (*Gnaphalium californicum*), distant phacelia (*Phacelia distans*), deerweed (*Lotus scoparius*) and telegraph weed (*Heterotheca grandiflora*). A number of other subshrubs species made up most of other cover, with some annual species growing in gaps between perennials. This vegetation is very dense where it occurs on the Project site. (Note: species nomenclature follows Clark (2008))

3.1.2 Wildlife Observed

Wildlife at the study area consisted of common species and species associated with open, disturbed areas. The most abundant species detected during the site visit were birds such as mourning dove (*Zenaida macroura*), house finch (*Carpodacus mexicanus*) and northern mockingbird *(Mimus polyglottos*); and California ground squirrel (*Otospermophilus beecheyi*) (See Table 2 for a list of species observed on the site)

3.1.3 Special Status Species

Based on a review of CNDDB, IPac, other published literature, and field surveys and assessments, a number of special status wildlife species were identified as potentially occurring onsite, five federally/state listed have been identified with potential to occur in the Project vicinity.

No special-status wildlife species were observed on the Cajon Project site during the April 2021 site surveys, and there are no historic site records for any special status wildlife species onsite (CNDDB 2020).

The following is the list of special status species with the potential to occur in the Project APE:

- Arroyo Toad (*Anaxyrus californicus*) – FE/DCH:
- Southern mountain yellow-legged frog (*Rana muscosa*) – FE/SE
- San Bernardino Merriams's Kangaroo Rat (*Dipodomys merriami parvus*) – FE/DCH/SCE
- California gnatcatcher (*Polioptila californica californica*) – FT
- Least Bell's vireo (*Vireo bellii pusillus* – FE/SE
- Southwestern Willow Flycatcher *(Empidonax traillii extimus*) - FE/SE
- Burrowing Owl (*Athene cunicularia*) – MBTA/SFP
- Crotch bumble bee (*Bombus crotchii*) - SCE
- Santa Ana River Woolly-star (*Eriastrum densifolium ssp sanctorum)* – FE/SE
- Slender-horned Spineflower (Dodecahema leptoceras) – FE/SE

Definitions - status: Fed = federal, FE = federal endangered, FT = federal threatened, FPE = federally proposed for listing as endangered, FPT = federally proposed for listing as threatened, FC = federal candidate species, FSC = federal special concern species, state = state of California, SE = state endangered, ST = state threatened, SCE = state candidate for listing as endangered, SCT = state candidate for listing as threatened. MBTA= Migratory Bird Treaty Act protected: SFP=State Fully Protected Species

An analysis of the likelihood for occurrence of all CNDDB and IPac sensitive species documented in the *Devore* quad is provided in Appendix A. This analysis considers species' range as well as documentation within the vicinity of the Project APE and includes the habitat requirements for each species and the potential for their occurrence on site, based on required habitat elements and range relative to the current site conditions.

3.2 Special Status Plants

Although the surveys were conducted outside blooming period for the two listed species identified with potential to occur on the Project site, no suitable habitat for these special status plants species occurs within the Project APE. Further, the database identifies the populations in proximately to the Project APE as extirpated. Therefore, these species are unlikely to occur within or adjacent to the Project APE. No special status plants were observed during the field surveys. A complete list of all plant species observed during the field surveys can be found in Table 2.

Two listed plant species plant species were identified as having potential to occur on the Project site by the CNDDB and the IPaC database searches: Santa Ana Reiver woolystar (*Eriastrum densifolium ssp*

sanctorum) and slender-horned spineflower (*Dodecahema leptoceras*). These species are discussed in more detail below.

3.2.1 Santa Ana River Woollystar (*Eriastrum densifolium ssp sanctorum)* – FE/SE

Santa Ana River woollystar is a low shrubby perennial which can grow to one meter (3.3 feet) tall, with gray-green stems and leaves. This species blooms from May to August and produces bright blue flowers that are up to 1.4 inches long that occur in flower heads with about 20 blossoms each. There are three primary pollinators: long-tongued digger bee, giant flower-loving fly and hummingbirds. This species is associated with early- to moderate- successional alluvial scrub, and thus requires periodic flooding and silting for the creation of new habitats and colonization. The Santa Ana River woollystar is found only within open washes and early-successional alluvial fan scrub on open slopes above main watercourses on fluvial deposits where flooding and scouring occur at a frequency that allows the persistence of open shrublands. Suitable habitat is comprised of a patchy distribution of gravelly soils, sandy soils, rock mounds and boulder fields. The Santa Ana River woolly-star occurs along the Santa Ana River and Lytle and Cajon Creek flood plains from the base of the San Bernardino Mountains in San Bernardino County southwest along the Santa Ana River through Riverside County into the Santa Ana Canyon of northeastern Orange County from about 150 to 580 meters.

Although the survey was conducted outside the blooming period, it is a perennial species and any Eriastrum species would have been detected if present. There is no suitable habitat for this species, and none were detected during the site visit.

3.2.2 Slender-horned Spineflower (Dodecahema leptoceras) – FE/SE

The habitat that supports most Slender-horned spineflower occurrences is categorized as alluvial scrub. This shrub habitat is found on sandy and gravelly soils in sandy wash systems where intermittent, scouring flood events occur (Boyd et al. 1989, p. A-6). Alluvial scrub in the foothill areas of southern California often supports an indicator plant, Lepidospartum squamatum (scalebroom). Alluvial scrub is often a self-replacing transient vegetation whose long term existence and short term demise depends upon the associated fluvial systems. Scalebroom scrub is characterized by densities of the indicator shrub Lepidospartum squamatum of less that 1 percent cover in alluvial environments, occurring in intermittently or rarely flooded, low gradient alluvial deposits along streams, washes, and fans. Slender-horned spineflower are typically found in alluvial fan scrub on benches and terraces away from active channels in areas receiving little surface disturbance from flooding, but subject to sheet or overland flows. They bloom between April and May, and are difficult to detect.

There is no suitable habitat for this species on site, and none were detected during the site visit.

3.3 Special Status Wildlife

The Proposed Project survey area provides marginal habitat for wildlife, and is not suitable for sensitive species known to occur or with potential to occur in the Proposed Project survey area. Based on the literature search, reconnaissance and habitat assessment surveys, and additional focused biological surveys, several wildlife species are known to occur or have the potential to occur in the Proposed Project survey area.

Wildlife identified in the CNDDB and IPac are discussed in more detail in the following sections because of their state, federal and/or local status, or presence of critical habitat. This next section discusses species with the potential to occur or have been documented within three miles from the project site. No special

status wildlife species were observed within the Project APE.

3.3.1 Coastal California Gnatcatcher (*Polioptila californica californica*; FT, SSC)

The Coastal California gnatcatcher is a small blue-gray songbird. It has dark blue-gray feathers on its back and grayish-white feathers on its underside. The wings have a brownish wash to them. Its long tail is mostly black with white outer tail feathers. They have a thin, small bill. The males have a black cap during the summer which is absent during the winter. The gnatcatcher typically occurs in or near sage scrub habitat, which includes the following plant communities as classified by Holland (1986): Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan sage scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub. Ninety-nine percent of all gnatcatcher locality records occur at or below an elevation of 984 feet.

The Project does not occur within designated critical habitat for the coastal California gnatcatcher, nor does it occur within 3-miles of an extant population. Further, there is no suitable habitat for California gnatcatcher within the Project APE.

3.3.2 Least Bell's Vireo (*Vireo bellii pusillus*; FE, SE, Covered Species)

The least Bell's vireo (LBVI) is a small, olive-gray migratory songbird that nests and forages almost exclusively in riparian woodland habitats. Bell's vireos as a group are highly territorial and are almost exclusively insectivorous. Least Bell's vireo nesting habitat typically consists of well-developed overstory, understory, and low densities of aquatic and herbaceous cover. The understory frequently contains dense sub-shrub or shrub thickets. These thickets are often dominated by plants such as narrow-leaf willow, mulefat, young individuals of other willow species such as arroyo willow or black willow, and one or more herbaceous species. LBVI generally begin to arrive from their wintering range in southern Baja California and establish breeding territories by mid-March to late-March. A large majority of breeding vireos apparently depart their breeding grounds by the third week of September and only a very few have been found wintering in the United States.

There is no wetland or riparian habitat on or adjacent to the Project site.

3.3.3 Southwestern Willow Flycatcher (*Empidonax traillii extimus*; FE, SE, Covered Species)

Southwestern willow flycatcher is a migratory species which breeds in North America and winters in South and Central America. The species can be typically found in the region from early May to early to mid-September, individuals migrating further north may be seen earlier or later in the year. Southwestern willow flycatchers nest in dense riparian areas. Threats to the species include loss, fragmentation and modification of riparian habitat required for breeding, as well as brood parasitism by brown-headed cowbirds

There is no suitable habitat within the Project APE.

3.3.4 San Bernardino Merriams's Kangaroo Rat (Dipodomys merriami parvus) – FE/DCH/SCE)

The federally-listed as endangered San Bernardino kangaroo rat (SBKR) is one of three recognized subspecies of Merriam's kangaroo rat (D. merriami) in California. The Merriam's kangaroo rat is a small, burrowing rodent species that can be found within inland valleys and deserts of southwest United States of America and northern Mexico. The Dulzura kangaroo rat (Dipodomys simulans), the Pacific kangaroo rat (Dipodomys agilis) and the Stephens kangaroo rat (Dipodomys stephensi) occur in areas

occupied by SBKR, but these other species have a wider habitat range. SBKR, however, has a restricted southern California distribution, confined to certain inland valley scrub communities and, more particularly, to scrub communities occurring along rivers, streams, and drainages within the San Bernardino, Menifee, and San Jacinto valleys. Most of these drainages have been historically altered due to a variety of reasons including, mining, off-road vehicle use, road and housing development, and flood control efforts. This increased use of river floodplain resources resulted in a reduction in both the amount and quality of habitat available for SBKR.

The areas which SBKR occupy are subjected to periodic flooding and hence, the dominant vegetation type (alluvial fan sage scrub) is described in general terms as having three successional phases: pioneer, intermediate, and mature as determined by elevation and distance from the main channel and time since previous flooding. Vegetation cover generally increases with distance from the active stream channel. The pioneer phase is subject to frequent flood disturbance (). The intermediate phase, defined as the area between the active channel and mature terraces, is subject to periodic flooding at longer intervals. The vegetation on intermediate terraces is relatively open. As alluvial fan scrub vegetation ages in the absence of flooding, the suitability of this habitat for the SBKR declines (McKernan 1997, p. 58, as cited in USFWS 2009).

The USFWS listed SBKR as endangered on September 24, 1998 and set aside 33,295 acres of critical habitat for the SBKR in 2002. The USFWS then revised that decision in 2008 after a lawsuit and cut the designation down to 7,779 acres in Riverside and San Bernardino counties. On January 10, 2011, a federal court struck down the 2008 designation. The ruling concluded that the USFWS improperly relied on "core habitat" to define critical habitat for the SBKR rather than specifying the physical and biological features essential for the kangaroo rat's conservation, as the law requires. The ruling reinstated the 2002 designation. The 2002 critical habitat rule for SBKR defined four Primary Constituent Elements (PCEs) that are essential to the conservation of SBKR. These PCEs are as follows: 1) Soil series consisting predominantly of sand, loamy sand, sandy loam, or loam; 2) Alluvial sage scrub and associated vegetation, such as coastal sage scrub and chamise chaparral, with a moderately open canopy; 3) River, creek, stream, and wash channels; alluvial fans; floodplains; floodplain benches and terraces; and historic braided channels that are subject to dynamic geomorphological and hydrological processes typical of fluvial systems within the historical range of the San Bernardino kangaroo rat; and 4) Upland areas proximal to floodplains with suitable habitat.

Findings: (PCE 1) Although the site is identified in the soil surveys as Tujunga gravelly loamy san; the soils on site have been graded, filled, and compacted during the site being used for parking and construction staging in the past.

(PCE 2) The vast majority of the site has been disturbed and does not support alluvial scrub associations. There are small patches of remnant coastal sage scrub species, these areas are do not have sufficient area, open features, or friable soils condusive to support this species.

(PCE 3) This area was never part of the active flood plain for Cajon Creek, and has been further removed from natural active flood processes by the railroad lines.

(PCE 4) The site is not proximal to Cajon Creek, and no upland areas with suitable habitat are adjacent. The subject parcel and surrounding upland areas are separated from Cajon Creek by roads, railroad high fill, and San Bernardino County Flood Control structures that stretches along the west side of the Cajon Creek floodplain. Thus, the subject parcel is no longer subject to the normal flood regimes that are conducive to creating the open structure of the pioneer and intermediate stages of alluvial sage scrub and sandy bare ground habitat

preferred by SBKR. Furthermore, the subject parcel is subject to a high degree of historic and ongoing human disturbance associated with the existing resort. Therefore, it is not likely that the habitat within the subject parcel is suitable to support SBKR.

Due to the lack of suitable with no primary constituent elements, there is an exceedingly low probability of this species occurring within the Project APE.

3.3.5 Southern mountain yellow-legged frog (Rana muscosa) – FE/SE

Mountain yellow-legged frogs are highly aquatic and are rarely found more than 3.3 feet from water. They can be found sitting on rocks along the shoreline where there may be little or no vegetation. This species eats a variety of terrestrial and aquatic invertebrates, including beetles, ants, bees, wasps, flies, and dragonflies. Tadpoles may also be consumed

This species historically inhabited lakes, ponds, marshes, meadows, and streams at elevations typically ranging from about 4,500 to 12,000 feet.

There is no suitable habitat, water, or aquatic habitat within the Project APE. Therefore, there is zero probability of this species occurring withing the Project APE.

3.3.6 Arroyo Toad (*Anaxyrus californicus*; FE, SSC, Covered Species)

The Arroyo toad is a small, light greenish-gray or tan toad restricted to rivers with shallow, gravelly pools with adjacent sand bars or terraces. During the breeding season, from late March to mid-June, they can be found in large streams or rivers containing shallow pools with minimal current and sand or pea-gravel bottom. The Arroyo toad is of particular concern because it is difficult to detect during certain times in its life cycle. The Arroyo toad breeds in stream habitats, but migrates through and hibernates in upland habitats up to 1 kilometer (0.6 mile) from known breeding sites, where it remains underground for much of the winter (Stebbins, 1954; 1972; 1985). Records from the CNDDB document the species within San Juan Creek, San Mateo Creek and Canyon, Cristianitos Creek, Talega Canyon, and Gabino Canyon. Marginally suitable habitat occurs within the Project APE, however suitable habitat and designated critical habitat occur approximately 1600-feet to the east of the Project site.

There is no suitable aquatic or upland hibernation habitat withing the Project APE. Therefore, the probability of this species occurring within the Project site is zero.

3.3.7 Burrowing Owl (*Athene cunicularia*; SSC, Covered Species)

Burrowing owls are crepuscular small ground-dwelling owls with a round head and no ear tufts. Typical habitat for this species includes open, dry grasslands, agricultural fields, sparse shrub lands, as well as developed areas with sufficient food sources. Common burrowing mammals that are associated with burrowing owls are ground squirrels, prairie dogs and badgers.

This species was not observed during habitat assessment survey or the focused arroyo toad survey. Further, there is only marginal habitat occurring along the concrete lined channel. Thus, the potential for this species to be within the Proposed Project survey area is very low.

Burrowing owls (Athene cunicularia) occur in shortgrass prairies, grasslands, lowland scrub, agricultural lands (particularly rangelands), prairies, coastal dunes, desert floors, and some artificial, open areas as a yearlong resident. They require large open expanses of sparsely vegetated areas on gently rolling or level

terrain with an abundance of active small mammal burrows. As a critical habitat feature, they require the use of rodent or other burrows for roosting and nesting cover. They can also use pipes, culverts, and nest boxes (USFWS 2003, Haug et al. 1993, Zeiner et al. 1990).

No burrowing owls we detected during the site visit and there was no evidence that burrowing owls were present. Due to the lack of suitable habit, burrows or evidence of historic use by burrowing owls, further protocol surveys are not warranted.

3.3.8 Crotch bumble bee (Bombus crotchii) - SCE

Crotch's bumblebee is characterized as a short- or medium- tongue length species. This species could be confused with Bombus caliginosus, Bombus occidentalis, and Bombus vandykei, as they have similar appearances to Crotch's bumblebee. B. crotchii males are generally present from May to September with their peak occurring in July. Workers of this species are active from April to August and queen bees are active for only two months from March until May; the peak of worker activity is between May and June, while queens reach maximum activity in April. Bees of this species all have a square-shaped face and a rounded ankle on the mid leg. Bumblebee abdomen segments are numbered.

This species lives primarily in California in the United States; inhabited regions of the state include the Mediterranean region, Pacific coast, western desert, great valley, SW foothills. Most observations of this species occur in southern California in coastal areas. The overwintering habitat of this bumblebee is not known, but it is believed that they have similar behaviors to other bumblebees in this respect, overwintering under leaf litter or soft soil. Crotch's bumblebee inhabits grassland and scrub areas, requiring a hotter and drier environment than other bumblebee species, and can only tolerate a very narrow range of climatic conditions. Crotch's bumblebee nests underground, often in abandoned rodent dens. It is a nonmigratory species of bumblebee. Its food plants include milkweeds, dustymaidens, lupines, medics, phacelias, and sages. It also feeds on snapdragons, Clarkia, poppies, and wild buckwheat. Milkweed is a favorite nectar source of Crotch's bumblebee.

This species was not observed during habitat assessment survey. Further, there is only marginal habitat occurring along the road margins. Due to the routine disking, the compaction and the past and current uses, it is this species is not likely to occur.

3.4 Special Status Habitats

The Project APE does not contain any sensitive habitats, however it is mapped within the USFWS Designated Critical Habitat for the San Bernardino Kangaroo Rat. However, as discussed above, there are no Primary Constituent Elements of Designated Critical Habitat for this species occurring on the Project site. Therefore, this Project will not adversely modify Designated Critical Habitat.

3.5 Jurisdictional Delineation

3.5.1 Waters of the U.S.

The USACE has authority to permit the discharge of dredged or fill material in WOTUS under Section 404 CWA. According to the EPA and the Department of the Army's April 21, 2020 (effective June 22, 2020) "Navigable Waters Protection Rule: Definition of 'Waters of the United States,'" WOTUS are defined as: "The territorial seas and traditional navigable waters; perennial and intermittent tributaries that contribute surface water flow to such waters; certain lakes, ponds, and impoundments of jurisdictional waters; and

wetlands adjacent to other jurisdictional waters." (85 FR 22250). The Navigable Waters Protection Rule specifically excludes from the definition of WOTUS:

- "Groundwater, including groundwater drained through subsurface drainage systems;
- ephemeral features that flow only in direct response to precipitation, including ephemeral streams, swales, gullies, rills, and pools;
- diffuse stormwater runoff and directional sheet flow over upland;
- ditches that are not traditional navigable waters, tributaries, or that are not constructed in adjacent wetlands, subject to certain limitations;
- prior converted cropland;
- artificially irrigated areas that would revert to upland if artificial irrigation ceases;
- artificial lakes and ponds that are not jurisdictional impoundments and that are constructed or excavated in upland or non-jurisdictional waters;
- water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel;
- stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off;
- groundwater recharge, water reuse, and wastewater recycling structures constructed or excavated in upland or in non-jurisdictional waters; and
- waste treatment systems." (85 FR 22250).

There are no features within the Project APE that would meet the definition of WOTUS. Therefore, the Project will not result in any impacts (temporary or permanent) to jurisdictional waters subject to regulation by the USACE or RWQCB under Sections 404/401 of the CWA.

USACE Wetlands

Areas meeting all three wetland parameters (i.e. hydrophitic vegetation, hydric soils and wetland hydrology) and are adjacent to other jurisdictional waters would be designated as USACE wetlands. Hydrophitic vegetation, hydric soil indicators and wetland hydrology are absent from the Project APE. Therefore, the Project site does not meet all three wetland characteristics and does not contain any USACE wetlands.

Waters of the State

The Project APE does not contain any lakes, streams or riparian/riverine habitats subject to regulation by the CDFW under Section 1602 of the FGC, or by the RWQCB under the Porter Cologne Water Quality Control Act and the Project will not result in any impacts (temporary or permanent) to "waters of the State".

4 CONCLUSIONS AND RECOMMENDATIONS

4.1 Sensitive Biological Resources

The BRA surveys were conducted by Jacobs in April 2021 to identify potential habitat for special status wildlife within the Project APE. No special status wildlife species, including state and/or federally listed threatened or endangered species, were observed within the Project APE during the reconnaissance-level assessment survey and none are expected to occur. Due to the environmental conditions on site and the adjacent disturbances, the Project APE is likely not suitable to support any of the special status wildlife species that have been documented in the Project vicinity (within approximately 3 miles), including the state listed as threatened southern rubber boa, the federally delisted and state listed as endangered bald eagle, and the California SSC San Bernardino flying squirrel and California spotted owl.

The Project APE does not contain any sensitive habitats, including any USFWS designated Critical Habitat for any federally listed species, and the Project will not result in any loss or adverse modification of Critical Habitat.

Nesting Birds

There is habitat within the Project APE that is suitable to support nesting birds, including both natural and urban environments. Most native bird species are protected from unlawful take by the MBTA. In December 2017, the Department of the Interior (DOI) issued a memorandum concluding that the MBTA's prohibitions on take apply "[…] only to affirmative actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs" (DOI 2017). Then in April 2018, the USFWS issued a guidance memorandum that further clarified that the take of migratory birds or their active nests (i.e., with eggs or young) that is incidental to, and not the purpose of, an otherwise lawful activity does not constitute a violation of the MBTA (USFWS 2018).

However, the State of California provides additional protection for native bird species and their nests in the FGC (Appendix B). Bird nesting protections in the FGC include the following (Sections 3503, 3503.5, 3511, 3513 and 3800):

- Section 3503 prohibits the take, possession, or needless destruction of the nest or eggs of any bird.
- Section 3503.5 prohibits the take, possession, or needless destruction of any nests, eggs, or birds in the orders Falconiformes (new world vultures, hawks, eagles, ospreys, and falcons, among others), and Strigiformes (owls).
- Section 3511 prohibits the take or possession of Fully Protected birds.
- Section 3513 prohibits the take or possession of any migratory nongame bird or part thereof, as designated in the MBTA. To avoid violation of the take provisions, it is generally required that Project-related disturbance at active nesting territories be reduced or eliminated during the nesting cycle.
- Section 3800 prohibits the take of any any non-game bird (i.e., bird that is naturally occurring in California that is not a gamebird, migratory game bird, or fully protected bird).

In general, impacts to all bird species (common and special status) can be avoided by conducting work outside of the nesting season, which is generally March 15^{t} through September 1st. However, if all work

cannot be conducted outside of nesting season, the following is recommended:

- To avoid impacts to nesting birds (common and special status) during the nesting season, (generally March 15 to September 1 for most species and February 1 to August 1 for raptor species)a qualified Biologist should conduct pre-construction nesting bird surveys prior to Project-related disturbance to suitable nesting areas to identify any active nests. If no active nests are found, no further action would be required. If an active nest is found, the biologist should set no-work buffers around the nest. The extent of the buffer would be based upon the species nesting, its sensitivity to disturbance, nesting stage, and expected types, intensity and duration of disturbance. The nest(s) and buffer zones should be field checked weekly by a qualified biological monitor. The approved no-work buffer zone should be clearly marked in the field, within which no disturbance activity should commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.

4.2 Jurisdictional Waters

In addition to the BRA and focused botanical field survey, Jacobs also assessed the Project APE for the presence of any state and/or federal jurisdictional waters. The result of the jurisdictional waters assessment is that there are no wetland or non-wetland WOTUS or waters of the State potentially subject to regulation by the USACE under Section 404 of the CWA, the RWQCB under Section 401 of the CWA and/or Porter Cologne Water Quality Control Act, or the CDFW under Section 1602 of the California Fish and Game Code (FGC), respectively. Therefore, the Project will not impact and jurisdictional waters and no state or federal jurisdictional waters permitting will be required.

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Table 2 –
Species List

Plant species detected at the Project site, 2021

SCIENTIFIC NAME (SYNONYM)	COMMON NAME
ANGIOSPERMAE	**FLOWERING PLANTS**
ANGIOSPERMS - DICOTYLEDONES	**DICOTS**
ADOXACEAE	**MUSKROOT FAMILY**
Sambucus nigra spp. caerulea	Blue Elderberry
ASTERACEAE	**SUNFLOWER FAMILY**
Ambrosia acanthicarpa	Sand-bur or Annual Bur-sage
Artemisia californica	California Sagebrush
*Centaurea melitensis**	Tocalote
Helianthus annuus	Western Sunflower
Heterotheca grandiflora	Telegraph Weed
Gnaphalium californicum	California Everlasting
BORAGINACEAE	**BORAGE FAMILY**
Phacelia distans	Common Phacelia
BRASSICACEAE	**MUSTARD FAMILY**
Brassica nigra	Black mustard
Hirschfeldia incana	Shortpod or Summer Mustard
*Lobularia maritima**	Sweet-Alyssum
CONVOLVULACEAE	**MORNING GLORY FAMILY**
Cuscuta californica	Dodder
EUPHORBIACEAE	**SPURGE FAMILY**
Croton californicus	California Croton
FABACEAE	**LEGUME FAMILY**
Lotus scoparius	Deerweed
GERANIACEAE	**GERANIUM FAMILY**
*Erodium cicutarium**	Red-Stemmed Filaree
LAMIACEAE	**MINT FAMILY**
*Marrubium vulgare**	Common Horehound
MYRTACEAE	**MYRTLE FAMILY**
*Eucalyptus camaldulensis**	River Red Gum
ONAGRACEAE	**EVENING PRIMROSE FAMILY**
Camissoniopsis bistorta	California or Southern Sun Cup
Camissoniopsis hirtella	Field Sun Cup
POLYGONACEAE	**BUCKWHEAT FAMILY**
Eriogonum fasciculatum	California Buckwheat
ROSACEAE	**ROSE FAMILY**
Adenostoma fasciculatum	Chamise
SOLANACEAE	**NIGHTSHADE FAMILY**
Datura wrightii	Western Jimsonweed
ZYGOPHYLLACEAE	**CALTROP FAMILY**
*Tribulus terrestris**	Puncture Vine
ANGIOSPERMS - MONOCOTYLENDONES	**MONOCOTS**
POACEAE	**GRASS FAMILY**

*Avena barbata**	Slender Wild Oat
*Bromus diandrus**	Common Ripgut Grass
*Bromus madritensis ssp. rubens**	Foxtail Chess or Red Brome
*Hordeum murinum ssp. leporinum**	Hare Barley or Foxtail Barley
*Schismus barbatus**	Mediterranean Schismus

KEY: Asterisk (*) = non-native species or cultivated; $^{+}$ = sensitive species; ** = planted in landscaped area only. Sources: Taxonomy; Common names and non-native species designations according to Clark 2008

Wildlife species detected at the Project site, 2021

FAMILY/SPECIES NAME	COMMON NAME
REPTILIA	**REPTILES**
PHRYNOSOMATIDAE	**ZEBRA-TAILED, EARLESS, FRING-TOED, SPINY, TREE, SIDE-BLOTCHED AND HORNED LIZARDS**
Uta stansburiana	Common Side-blotched Lizard
AVES	**BIRDS**
CATHARTIDAE	**NEW WORLD VULTURES**
Cathartes aura	Turkey Vulture
ACCIPITRIDAE	**HAWKS, KITES, EAGLES AND ALLIES**
Buteo jamaicensis	Red-tailed Hawk
COLUMBIDAE	**PIGEONS AND DOVES**
Zenaida macroura	Mourning Dove
TYRANNIDAE	**TYRANT FLYCATCHERS**
Tyrannus vociferans	Cassin's Kingbird
CORVIDAE	**JAYS AND CROWS**
Aphelocoma californica	Western Scrub-Jay
Corvus corax	Common Raven

TROGLODYTIDAE	**WRENS**
Thryomanes bewickii	Bewick's Wren
SYLVIIDAE	**SYLVIID WARBLERS**
Chamaea fasciata	Wrentit
MIMIDAE	**MOCKINGBIRDS AND THRASHERS**
Mimus polyglottos	Northern Mockingbird
ICTERIDAE	**BLACKBIRDS**
Icterus cucullatus	Hooded Oriole
FRINGILLIDAE	**FRINGILLINE AND CARDUELINE FINCHES**
Haemorhous mexicanus	House Finch
PASSERIDAE	**OLD WORLD SPARROWS**
Passer domesticus	House Sparrow
MAMMALIA	**MAMMALS**
SCIURIDAE	**SQUIRRELS, CHIPMUNKS & MARMOTS**
Otospermophilus beecheyi	California Ground Squirrel
CANIDAE	**FOXES, WOLVES & RELATIVES**
Canis lupus familiaris	Dog
Canis latrans	Coyote

Table 2
Site Photographs

	Photo 1. View of northern end of site looking northwest
	Photo 2. View from the eastern edge of the site, looking north

		Photo 3: View of central portion of the site from the eastern edge looking south.
		Photo 4: View of stockpiles

Appendix A – CNDDB/IPAC

Selected Elements by Scientific Name

California Department of Fish and Wildlife

California Natural Diversity Database

Query Criteria: Quad IS (Devore (3411724))

Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
Ambrosia monogyra singlewhorl burrobrush	PDAST50010	None	None	G5	S2	2B.2
Anniella stebbinsi Southern California legless lizard	ARACC01060	None	None	G3	S3	SSC
Arizona elegans occidentalis California glossy snake	ARADB01017	None	None	G5T2	S2	SSC
Artemisiospiza belli belli Bell's sage sparrow	ABPBX97021	None	None	G5T2T3	S3	WL
Athene cunicularia burrowing owl	ABNSB10010	None	None	G4	S3	SSC
Batrachoseps gabrieli San Gabriel slender salamander	AAAAD02110	None	None	G2G3	S2S3	
Bombus crotchii Crotch bumble bee	IIHYM24480	None	Candidate Endangered	G3G4	S1S2	
Calochortus plummerae Plummer's mariposa-lily	PMLIL0D150	None	None	G4	S4	4.2
Chaetodipus fallax fallax northwestern San Diego pocket mouse	AMAFD05031	None	None	G5T3T4	S3S4	SSC
Chaetodipus fallax pallidus pallid San Diego pocket mouse	AMAFD05032	None	None	G5T3T4	S3S4	SSC
Chorizanthe parryi var. parryi Parry's spineflower	PDPGN040J2	None	None	G3T2	S2	1B.1
Chorizanthe xanti var. leucotheca white-bracted spineflower	PDPGN040Z1	None	None	G4T3	S3	1B.2
Dipodomys merriami parvus San Bernardino kangaroo rat	AMAFD03143	Endangered	Candidate Endangered	G5T1	S1	SSC
Dodecahema leptoceras slender-horned spineflower	PDPGN0V010	Endangered	Endangered	G1	S1	1B.1
Eriastrum densifolium ssp. sanctorum Santa Ana River woollystar	PDPLM03035	Endangered	Endangered	G4T1	S1	1B.1
Horkelia cuneata var. puberula mesa horkelia	PDROS0W045	None	None	G4T1	S1	1B.1
Lepus californicus bennettii San Diego black-tailed jackrabbit	AMAEB03051	None	None	G5T3T4	S3S4	SSC
Lilium parryi lemon lily	PMLIL1A0J0	None	None	G3	S3	1B.2
Lycium parishii Parish's desert-thorn	PDSOL0G0D0	None	None	G4	S1	2B.3
Malacothamnus parishii Parish's bush-mallow	PDMAL0Q0C0	None	None	GXQ	SX	1A

Selected Elements by Scientific Name

California Department of Fish and Wildlife

California Natural Diversity Database

Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
Neolarra alba white cuckoo bee	IIHYM81010	None	None	GH	SH	
Nyctinomops femorosaccus pocketed free-tailed bat	AMACD04010	None	None	G5	S3	SSC
Opuntia basilaris var. brachyclada short-joint beavertail	PDCAC0D053	None	None	G5T3	S3	1B.2
Perognathus longimembris brevinasus Los Angeles pocket mouse	AMAFD01041	None	None	G5T2	S1S2	SSC
Phrynosoma blainvillii coast horned lizard	ARACF12100	None	None	G3G4	S3S4	SSC
Polioptila californica californica coastal California gnatcatcher	ABPBJ08081	Threatened	None	G4G5T3Q	S2	SSC
Rana muscosa southern mountain yellow-legged frog	AAABH01330	Endangered	Endangered	G1	S1	WL
Rhinichthys osculus ssp. 3 Santa Ana speckled dace	AFCJB3705K	None	None	G5T1	S1	SSC
Riversidian Alluvial Fan Sage Scrub Riversidian Alluvial Fan Sage Scrub	CTT32720CA	None	None	G1	S1.1	
Southern Riparian Forest Southern Riparian Forest	CTT61300CA	None	None	G4	S4	
Southern Sycamore Alder Riparian Woodland Southern Sycamore Alder Riparian Woodland	CTT62400CA	None	None	G4	S4	
Streptanthus bernardinus Laguna Mountains jewelflower	PDBRA2G060	None	None	G3G4	S3S4	4.3
Vireo bellii pusillus least Bell's vireo	ABPBW01114	Endangered	Endangered	G5T2	S2	

Record Count: 33

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Carlsbad Fish And Wildlife Office
2177 Salk Avenue - Suite 250
Carlsbad, CA 92008-7385
Phone: (760) 431-9440 Fax: (760) 431-5901
http://www.fws.gov/carlsbad/

In Reply Refer To: October 22, 2021
Consultation Code: 08ECAR00-2022-SLI-0083
Event Code: 08ECAR00-2022-E-00198
Project Name: Cajon Truck Parking

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, and proposed species, designated critical habitat, and candidate species that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (http://www.fws.gov/windenergy/) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm; http://www.towerkill.com; and http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Carlsbad Fish And Wildlife Office
2177 Salk Avenue - Suite 250
Carlsbad, CA 92008-7385
(760) 431-9440

Project Summary

Consultation Code: 08ECAR00-2022-SLI-0083
Event Code: Some(08ECAR00-2022-E-00198)
Project Name: Cajon Truck Parking
Project Type: DEVELOPMENT
Project Description: Parking lot for trucks
Project Location:

Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@34.2029293,-117.38214331917533,14z

Counties: San Bernardino County, California

Endangered Species Act Species

There is a total of 9 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries[1], as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
San Bernardino Merriam's Kangaroo Rat *Dipodomys merriami parvus* There is **final** critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/2060	Endangered

Birds

NAME	STATUS
California Condor *Gymnogyps californianus* Population: U.S.A. only, except where listed as an experimental population There is **final** critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/8193	Endangered
Coastal California Gnatcatcher *Polioptila californica californica* There is **final** critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/8178	Threatened
Least Bell's Vireo *Vireo bellii pusillus* There is **final** critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/5945	Endangered
Southwestern Willow Flycatcher *Empidonax traillii extimus* There is **final** critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/6749	Endangered

Amphibians

NAME	STATUS
Arroyo (=arroyo Southwestern) Toad *Anaxyrus californicus*	Endangered

There is **final** critical habitat for this species. The location of the critical habitat is not available.
Species profile: https://ecos.fws.gov/ecp/species/3762

Insects

NAME	STATUS
Monarch Butterfly *Danaus plexippus*	Candidate

No critical habitat has been designated for this species.
Species profile: https://ecos.fws.gov/ecp/species/9743

Flowering Plants

NAME	STATUS
Santa Ana River Woolly-star *Eriastrum densifolium ssp. sanctorum*	Endangered

No critical habitat has been designated for this species.
Species profile: https://ecos.fws.gov/ecp/species/6575

Slender-horned Spineflower *Dodecahema leptoceras*	Endangered

No critical habitat has been designated for this species.
Species profile: https://ecos.fws.gov/ecp/species/4007

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

Appendix B
Regulatory Framework

REGULATORY FRAMEWORK

Federal Regulations

Clean Water Act

The purpose of the Clean Water Act (CWA) of 1977 is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." Section 404 of the CWA prohibits the discharge of dredged or fill material into "waters of the United States" without a permit from the United States Army Corps of Engineers (USACE). The definition of waters of the United States includes rivers, streams, estuaries, territorial seas, ponds, lakes, and wetlands. Wetlands are defined as those areas "that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (33 Code of Federal Regulations [CFR] 328.3 7b). The U.S. Environmental Protection Agency (EPA) also has authority over wetlands and may override a USACE permit. Substantial impacts to wetlands may require an individual permit. Projects that only minimally affect wetlands may meet the conditions of one of the existing Nationwide Permits. A Water Quality Certification or waiver pursuant to Section 401 of the CWA is required for Section 404 permit actions; in California this certification or waiver is issued by the Regional Water Quality Control Board (RWQCB).

Federal Endangered Species Act (ESA)

The federal Endangered Species Act (ESA) of 1973 protects plants and wildlife that are listed by the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) as endangered or threatened. Section 9 of the ESA (USA) prohibits the taking of endangered wildlife, where taking is defined as any effort to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in such conduct" (50 CFR 17.3). For plants, this statute governs removing, possessing, maliciously damaging, or destroying any endangered plant on federal land and removing, cutting, digging up, damaging, or destroying any endangered plant on non-federal land in knowing violation of state law (16 United States Code [USC] 1538). Under Section 7 of the ESA, federal agencies are required to consult with the USFWS if their actions, including permit approvals or funding, could adversely affect an endangered species (including plants) or its critical habitat. Through consultation and the issuance of a biological opinion, the USFWS may issue an incidental take statement allowing take of the species that is incidental to an otherwise authorized activity, provided the action will not jeopardize the continued existence of the species. The ESA specifies that the USFWS designate habitat for a species at the time of its listing in which are found the physical or biological features "essential to the conservation of the species," or which may require "special Management consideration or protection..." (16 USC § 1533[a][3].2; 16 USC § 1532[a]). This designated Critical Habitat is then afforded the same protection under the ESA as individuals of the species itself, requiring issuance of an Incidental Take Permit prior to any activity that results in "the destruction or adverse modification of habitat determined to be critical" (16 USC § 1536[a][2]).

Interagency Consultation and Biological Assessments

Section 7 of ESA provides a means for authorizing the "take" of threatened or endangered species by federal agencies, and applies to actions that are conducted, permitted, or funded by a federal agency. The statute requires federal agencies to consult with the USFWS or National Marine Fisheries Service (NMFS), as appropriate, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of critical habitat for these species. If a Proposed Project "may affect" a listed species or destroy or modify critical habitat, the lead agency is required to prepare a biological assessment evaluating the nature and severity of

the potential effect.

Habitat Conservation Plans

Section 10 of the federal ESA requires the acquisition of an Incidental Take Permit (ITP) from the USFWS by non-federal landowners for activities that might incidentally harm (or "take") endangered or threatened wildlife on their land. To obtain a permit, an applicant must develop a Habitat Conservation Plan that is designed to offset any harmful impacts the proposed activity might have on the species.

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (16 U.S.C. Sections 661 to 667e et seq.) applies to any federal Project where any body of water is impounded, diverted, deepened, or otherwise modified. Project proponents are required to consult with the USFWS and the appropriate state wildlife agency.

Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (The Eagle Act) (1940), amended in 1962, was originally implemented for the protection of bald eagles (*Haliaeetus leucocephalus*). In 1962, Congress amended the Eagle Act to cover golden eagles (*Aquila chrysaetos*), a move that was partially an attempt to strengthen protection of bald eagles, since the latter were often killed by people mistaking them for golden eagles. This act makes it illegal to import, export, take (molest or disturb), sell, purchase, or barter any bald eagle or golden eagle or part thereof. The golden eagle, however, is accorded somewhat lighter protection under the Eagle Act than that of the bald eagle.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) of 1918 implements international treaties between the United States and other nations created to protect migratory birds, any of their parts, eggs, and nests from activities, such as hunting, pursuing, capturing, killing, selling, and shipping, unless expressly authorized in the regulations or by permit. As authorized by the MBTA, the USFWS issues permits to qualified applicants for the following types of activities: falconry, raptor propagation, scientific collecting, special purposes (rehabilitation, education, migratory game bird propagation, and salvage), take of depredating birds, taxidermy, and waterfowl sale and disposal. The regulations governing migratory bird permits can be found in 50 CFR Part 13 General Permit Procedures and 50 CFR part 21 Migratory Bird Permits. The State of California has incorporated the protection of birds of prey in Sections 3800, 3513, and 3503.5 of the California Fish and Game Code (CFGC).

However, on December 22, 2017 the U.S. Department of the Interior (DOI) issued a memorandum concluding that MBTA's prohibitions on take apply "[…] only to affirmative actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs" (DOI 2017). Therefore, take of migratory birds or their active nests (i.e., with eggs or young) that is incidental to, and not the purpose of, an otherwise lawful activity does not constitute a violation of the MBTA. Then, on April 11, 2018, the USFWS issued a guidance memorandum that provided further clarification on their interpretation:

> "We interpret the M-Opinion to mean that the MBTA's prohibitions on take apply when the purpose of an action is to take migratory birds, their eggs, or their nests. Conversely, the take of birds, eggs or nests occurring as the result of an activity, the purpose of which is not to take birds, eggs or nests, is not prohibited by the MBTA" (USFWS 2018).

Therefore, the MBTA is currently interpreted to prohibit the take of birds, nests or eggs when the *purpose*

or *intent* of the action is to take birds, eggs or nests, not when the take of birds, eggs or nests is incidental to but not the intended purpose of an otherwise lawful action.

Executive Orders (EO)

> *Invasive Species – EO 13112 (1999)*: Issued on February 3, 1999, promotes the prevention and introduction of invasive species and provides for their control and minimizes the economic, ecological, and human health impacts that invasive species cause through the creation of the Invasive Species Council and Invasive Species Management Plan.
>
> *Migratory Bird – EO 13186 (2001)*: Issued on January 10, 2001, promotes the conservation of migratory birds and their habitats and directs federal agencies to implement the Migratory Bird Treaty Act. Protection and Enhancement of Environmental Quality—EO 11514 (1970a), issued on March 5, 1970, supports the purpose and policies of the National Environmental Policy Act (NEPA) and directs federal agencies to take measures to meet national environmental goals.

Migratory Bird Treaty Reform Act

The Migratory Bird Treaty Reform Act (Division E, Title I, Section 143 of the Consolidated Appropriations Act, 2005, PL 108–447) amends the Migratory Bird Treaty Act (16 U.S.C. Sections 703 to 712) such that nonnative birds or birds that have been introduced by humans to the United States or its territories are excluded from protection under the Act. It defines a native migratory bird as a species present in the United States and its territories as a result of natural biological or ecological processes. This list excluded two additional species commonly observed in the United States, the rock pigeon (*Columba livia*) and domestic goose (*Anser domesticus*).

Birds of Conservation Concern

Birds of Conservation Concern (BCC) is a USFWS list of bird species identified to have the highest conservation priority, and with the potential for becoming candidates for listing as federally threatened or endangered. The chief legal authority for BCC is the Fish and Wildlife Conservation Act of 1980 (FWCA). Other authorities include the FESA, the Fish and Wildlife Act of 1956, and the Department of the Interior U.S Code (16 U.S.C. § 701). The 1988 amendment to the FWCA (Public Law 100-653, Title VIII) requires the Secretary of the Interior, through the USFWS, to "identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973" (USFWS, 2008a).

State Regulations

California Fish and Game Code Sections 1600 through 1606 of the CFGC

This section requires that a Streambed Alteration Application be submitted to the CDFW for "any activity that may substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake." The CDFW reviews the proposed actions and, if necessary, submits to the applicant a proposal for measures to protect affected fish and wildlife resources. The final proposal that is mutually agreed upon by the Department and the applicant is the Streambed Alteration Agreement. Often, Projects that require a Streambed Alteration Agreement also require a permit from the USACE under Section 404 of the CWA. In these instances, the conditions of the Section 404 permit and the Streambed Alteration Agreement may overlap.

California Endangered Species Act

The California Endangered Species Act (CESA) (Sections 2050 to 2085) establishes the policy of the state to conserve, protect, restore, and enhance threatened or endangered species and their habitats by protecting "all native species of fishes, amphibians, reptiles, birds, mammals, invertebrates, and plants, and their habitats, threatened with extinction and those experiencing a significant decline which, if not halted, would lead to a threatened or endangered designation." Animal species are listed by the CDFW as threatened or endangered, and plants are listed as rare, threatened, or endangered. However, only those plant species listed as threatened or endangered receive protection under the California ESA.

CESA mandates that state agencies do not approve a Project that would jeopardize the continued existence of these species if reasonable and prudent alternatives are available that would avoid a jeopardy finding. There are no state agency consultation procedures under the California ESA. For Projects that would affect a species that is federally and State listed, compliance with ESA satisfies the California ESA if the California Department of Fish and Wildlife (CDFW) determines that the federal incidental take authorization is consistent with the California ESA under Section 2080.1. For Projects that would result in take of a species that is state listed only, the Project sponsor must apply for a take permit, in accordance with Section 2081(b).

Fully Protected Species

Four sections of the California Fish and Game Code (CFGC) list 37 fully protected species (CFGC Sections 3511, 4700, 5050, and 5515). These sections prohibit take or possession "at any time" of the species listed, with few exceptions, and state that "no provision of this code or any other law will be construed to authorize the issuance of permits or licenses to 'take' the species," and that no previously issued permits or licenses for take of the species "shall have any force or effect" for authorizing take or possession.

Bird Nesting Protections

Bird nesting protections (Sections 3503, 3503.5, 3511, 3513 and 3800) in the CFGC include the following:

- Section 3503 prohibits the take, possession, or needless destruction of the nest or eggs of any bird.
- Section 3503.5 prohibits the take, possession, or needless destruction of any nests, eggs, or birds in the orders Falconiformes (new world vultures, hawks, eagles, ospreys, and falcons, among others), and Strigiformes (owls).
- Section 3511 prohibits the take or possession of Fully protected birds.
- Section 3513 prohibits the take or possession of any migratory nongame bird or part thereof, as designated in the MBTA. To avoid violation of the take provisions, it is generally required that Project-related disturbance at active nesting territories be reduced or eliminated during the nesting cycle.
- Section 3800 prohibits the take of any any non-game bird (i.e., bird that is naturally occurring in California that is not a gamebird, migratory game bird, or fully protected bird)

Native Plant Protection Act

The Native Plant Protect Act (NPPA) (1977) (CFGC Sections 1900-1913) was created with the intent to "preserve, protect, and enhance rare and endangered plants in this State." The NPPA is administered by CDFW. The Fish and Game Commission has the authority to designate native plants as endangered or rare and to protect endangered and rare plants from take. CESA (CFGC 2050-2116) provided further protection for rare and endangered plant species, but the NPPA remains part of the Fish and Game Code.