GENERAL BIOLOGICAL RESOURCES ASSESSMENT

FONTANA, SAN BERNARDINO COUNTY, CALIFORNIA

(Township 1 South, Range 6 West, Section 9)
(APN 0229-082-14, 29, 30)

Prepared for:

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13341 Temescal Canyon Road
Corona, California 92883

Prepared by:

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Project: #2018-122

December 27, 2018

TITLE PAGE

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Prepared for:	**BOC ENTS, LLC** **13341 Temescal Canyon Road** **Corona, California 92883**
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1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a parcel that is approximately 4-acre in size located in the City of Fontana (8424 Cottonwood Ave. Fontana, California, 92335) (Township 1 South, Range 6 West, Section 9) Guasti, California 1966 USGS Quadrangle (Figures 1, 2 and 3). Focused surveys were also performed for the burrowing owl. The property supports a disturbed nonnative grassland community consisting primarily of brome grasses (*Bromus sp.*) and schismus (*Schismus* sp.) (Figure 3).

As part of the environmental process, California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS) data sources were reviewed. Following the data review, surveys were performed on the site on December 27, 2018, during which the biological resources on the site and in the surrounding areas were documented by biologists from RCA Associates, Inc**. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife species. The property and adjoining area were also evaluated for the presence of sensitive habitats including wetlands, vernal pools, riparian habitats, and jurisdictional areas.**

Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDB, 2017), there are thirty-seven sensitive species that have been documented in the general region within approximately five miles of the project site. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980). Tables 1 and 2 provides information on the various special status plants and animal species which occur in the area (Appendix A). The proponent is proposing to use the parcel for a commercial development.

2.0 EXISTING CONDITIONS

2.1 Environmental Setting

The property is approximately 4-acre located in the City of Fontana (8424 Cottonwood Ave. Fontana, California, 92335) (Township 1 South, Range 6 West, Section 9) Guasti, California 1966 USGS Quadrangle (Figures 1, 2, 3, and 4). The site does show signs of being disturbed in the recent past, with little native vegetation throughout the site. The site is bordered on the north, east, south, and west by developed land.

2.2 Vegetation Communities

Brome grasses (*Bromus* sp.) and schismus (*Schismus* sp.) are the dominant species throughout the project site. A few palm trees were also present on the site during the December 27, 2018 field surveys. Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

2.3 Wildlife

The site is expected to support a variety of wildlife species on the site; however, only a few species were observed during the field investigations. Mammals observed on the site or which are expected to inhabit the site include California ground squirrel (*Otospermophilus beecheyi*), and cottontails (*Sylvilagus auduboni*).

Birds observed included ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), rock pigeon *(Columba livia*), and mourning dove (*Zenaida macroura*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys. Reptiles were not observed given the time of year the survey was performed. Table 2 provides a compendium of wildlife species.

2.4 Soils

The soil of the project site is composed of Soboba stony loamy sand. The sandy loam series are well drained and have moderately rapid permeability. The soil series onsite are not considered hydric per the U.S. Department of Agriculture (USDA) National List of Hydric Soils (USDA, 2018).

In addition, no sensitive habitats (e.g., sensitive species critical habitats, etc.) have been documented in the immediate area according to the CNDDB (2018) and none were observed during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on December 27, 2018, during which biologists from RCA Associates, Inc. initially walked meandering transects throughout the property site and adjoining areas. During the surveys, data was collected on the plant and animal species present on the site. All plants and animals detected during the surveys were recorded and are provided in Tables 1 & 2 (Appendix A). The property was also evaluated for the presence of habitats which might support sensitive species. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000), and Whitaker (1980). Following completion of the initial reconnaissance survey, protocol surveys were conducted for the burrowing owl as per agency requirements. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the mid 50's (°F) (AM) with mostly clear skies. The applicable methodologies are summarized below.

3.1 Plants

Plant species observed during the field survey were identified by visual characteristics and morphology in the field and recorded in a field notebook. Samples of unusual and less familiar plants were collected and returned to the lab for identification using taxonomical guides. Soil maps were used to identify areas of the site which may contain suitable soils to support sensitive plant species. A list of all species observed on the project site was compiled from the survey data (Appendix A, Table 2). The taxonomic nomenclature used in this study follows the California Native Plant Society (CNPS 2018).

3.2 Wildlife

Wildlife species detected during the field surveys were identified by sight, calls, tracks, scat, or other signs and were recorded in a field notebook. Field guides were used to assist with identification of species during surveys and included the Sibley Field Guide to Birds of Western North America (2017) and Burt and Grossenheider (1980) for mammals. Although common names of wildlife species are fairly well standardized, scientific names are used in this report and are provided in Appendix A for reference.

Burrowing Owl: A habitat assessment (Phase 1) was conducted for the burrowing owl in conjunction with the general biological surveys to determine if the site supports suitable habitat

for the species. Following completion of the habitat assessment, it was determined that the site does not support suitable habitat for the burrowing owl. Therefore, a focused survey (Phase II) does not need to be conducted for burrowing owls for the absence of occupiable (i.e., suitable) burrows which could potentially be utilized by owls. As part of the burrow survey, transects were walked throughout the site during which any suitable burrows were evaluated for owls and owl sign. Burrowing owls typically utilize burrows which have been excavated by other animals (squirrels, coyotes, foxes, dogs, etc.) since owls rarely dig their own burrows. CDFW protocol also requires surveys be conducted in the surrounding area out to a distance of about 500 feet; however, the zone of influence (ZOI) surveys could not be performed due to the surrounding area being developed land. If present on a site, CDFW typically requires the owls to be passively relocated during the non-breeding season.

Nesting Birds

The project site contains some suitable nesting habitat for avian species. Nesting birds are protected under section 3503 of the CDFW code and/or the Migratory Bird Treaty Act (MBTA). A few common bird species were observed within the project area during the survey with ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), mourning dove (*Zenaida macroura*), and white-crowned sparrow (*Zonotrichia leucophrys*). All bird species observed are included in the faunal compendium in Appendix A, Table 3.

3.3 Riparian/Riverine Habitat and Jurisdictional Areas

Aerial photography was reviewed prior to conducting the field investigations on December 27, 2018. The aerial photographs were used to locate and inspect any potential natural drainage features and water bodies that may be considered riparian/riverine habitat or which may be under the jurisdiction of either the U.S. Army Corps of Engineers (USACE) and/or CDFW. In general, surface drainage features are typically indicated as blue-line streams on USGS maps, which are expected to exhibit evidence of water flow through the channel. Such areas are considered potentially riparian/riverine habitat and may be subject to State and federal regulatory authority as "Waters of the State" or "Waters" of the U.S. Riparian/riverine habitat is defined as lands which contain habitat dominated by trees, shrubs, persistent emergent, or emergent mosses and lichens,

which occur close to or which depend upon soil moisture from a nearby freshwater source, or areas with freshwater flow during all or a portion of the year.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDB) search was performed. Based on this review, it was determined that twenty-nine special status species have been documented within the Ontario quad of the property. The following tables provide data on each special status species which has been documented in the area.

Table 4-1: Federal and State Listed Species and State Species of Special Concern.
E = Endangered; T = Threatened; SSC = Species of special concern; CNPS = California Native Plant Society; CNDDB = California Natural Diversity Data Base

Name	Listing Status	Habitat Requirements	Presence/Absence
California glossy snake (*Arizona elegans occidentalis*)	Fed: None State: None	range of scrub and grassland habitats	The site does not support suitable habitat for the species.
Coastal California gnatcatcher *(Polioptila californica californica*)	Fed: None State: None	Coastal bluff scrub Coastal scrub	The site does not support suitable habitat for the species.
Southern California legless lizard (*Anniella stebbinsi*)	Fed: None State: None	Broadleaved upland forest Chaparral Coastal dunes Coastal scrub	The site does not support suitable habitat for the species.
Plummer's mariposa-lily (*Calochortus plummerae*)	Fed: None State: None	Chaparral Cismontane woodland Coastal scrub Lower montane coniferous forest Valley & foothill grassland	The site does not support suitable habitat for the species.
Northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*)	Fed: None State: None	Chaparral Coastal scrub	The site does not support suitable habitat for the species.
San Bernardino kangaroo rat (*Chorizanthe xanti var. leucotheca*)	Fed: E State: None	Coastal scrub	The site does not support suitable habitat for the species.
Slender-horned spineflower (*Dodecahema leptoceras*)	Fed: E State: E	Chaparral Cismontane woodland Coastal scrub	The site does not support suitable habitat for the species.
Burrowing owl (*Athene cunicularia*)	Fed: None State: None	Grasslands and desert habitats	The site does support suitable habitat for the species; however, no owl observed during field surveys.

Crotch bumble bee (*Bombus crotchii*)	Fed: None State: None	Food plant genera include Antirrhinum, Phacelia, Clarkia, Dendromecon, Eschscholzia, and Eriogonum.	The site does support suitable habitat for the species; however, no bees observed during field surveys.
Swainson's hawk (*Buteo swainsoni*)	Fed: None State: T	Riparian forest Riparian woodland Valley & foothill grassland	The site does support suitable habitat for the species; however, no raptors observed during field surveys.
Luck morning-glory (*Calystegia felix*)	Fed: None State: None Fed: None State: None	Meadow & seep Riparian scrub	The site does not support suitable habitat for the species.
California saw-grass (*Cladium californicum*)	Fed: None State: None	Alkali marsh Freshwater marsh Meadow & seep Wetland	The site does not support suitable habitat for the species.
California diplectronan caddisfly (*Diplectrona californica*)	Fed: None State: None	Aquatic	The site does not support suitable habitat for the species.
Western mastiff bat (*Eumops perotis californicus*)	Fed: None State: None	Chaparral Cismontane woodland Coastal scrub Valley & foothill grassland	The site does support suitable habitat for the species; however, no bats observed during field surveys.
Mesa horkelia (*Horkelia cuneata var. puberula*)	Fed: None State: None	Chaparral Cismontane woodland Coastal scrub	The site does not support suitable habitat for the species.
Western yellow bat (*Lasiurus xanthinus*)	Fed: None State: None	Desert wash	The site does not support suitable habitat for the species.
California black rail (*Laterallus jamaicensis coturniculus*)	Fed: None State: T	Brackish marsh Freshwater marsh Marsh & swamp Salt marsh Wetland	The site does not support suitable habitat for the species.
Robinson's pepper-grass (Lepidium virginicum var. robinsonii)	Fed: None State: None	Chaparral Coastal scrub	The site does support suitable habitat for the species; however, no pepper-grass observed during field surveys.
Pallid bat (*Antrozous pallidus*)	Fed: None State: None	Deserts, grasslands, shrublands, woodlands and forests.	The site does support suitable habitat for the species; however, no bat observed during field surveys.
California muhly (*Muhlenbergia californica*)	Fed: None State: None	Chaparral Coastal scrub Lower montane coniferous forest Meadow & seep	The site does support suitable habitat for the species; however, no muhly observed during field surveys.
Prostrate vernal pool navarretia (*Navarretia prostrata*)	Fed: None State: None	Coastal scrub Meadow & seep Valley & foothill grassland Vernal pool	The site does not support suitable habitat for the species.

		Wetland	
San Diego desert woodrat (*Neotoma lepida intermedia*)	Fed: None State: None	Coastal scrub	The site does support suitable habitat for the species; however, no rodents observed during field surveys.
Big free-tailed bat (*Nyctinomops macrotis*)	Fed: None State: None	Need high cliffs or rocky outcrops for roosting sites. Feeds principally on large moths.	The site does support suitable habitat for the species; however, no bats observed during field surveys.
White rabbit-tobacco (*Pseudognaphalium leucocephalum*)	Fed: None State: None	Chaparral Cismontane woodland Coastal scrub Riparian woodland	The site does support suitable habitat for the species; however, no rabbit-tobacco observed during field surveys.
Salt spring checkerbloom (*Sidalcea neomexicana*)	Fed: None State: None	Alkali playa Chaparral Coastal scrub Lower montane coniferous forest Mojavean desert scrub Wetland	The site does not support suitable habitat for the species.
San Bernardino aster (*Symphyotrichum defoliatum*)	Fed: None State: None	Cismontane woodland Coastal scrub Lower montane coniferous forest Marsh & swamp Meadow & seep Valley & foothill grassland	The site does support suitable habitat for the species; however, no aster observed during field surveys.
Two-stripped gartersnake (*Thamnophis hammondii*)	Fed: None State: None	Marsh & swamp Riparian scrub Riparian woodland Wetland	The site does not support suitable habitat for the species.
Rigid fringepod (*Thysanocarpus rigidus*)	Fed: None State: None	Pinon & juniper woodlands	The site does not support suitable habitat for the species.
Coast horned lizard (*Phrynosoma blainvillii*)	Fed: None State: None	Desert scrub Sandy washes	The site does support suitable habitat for the species; however, no coast horned lizard observed during field surveys.

5.0 RESULTS

5.1 General Biological Resources

The site supports a disturbed grassland community which covers most of the property (Figure 2). Species which were on the site are included in Table 1 which provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed included ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), rock pigeon *(Columba livia*), northern mockingbird (*Mimus polyglottos*), mourning dove (*Zenaida macroura*), white-crowned sparrow *(Zonotrichia leucophrys*), and Anna's hummingbird *(Calypte anna*).

California ground squirrels (*Spermophilus beecheyi*) and cottontail (*Sylvilagus auduboni*) were the only mammals observed on the site. Tables 1 and 2 (Appendix A) provides a compendium of the various plant and animal species identified during the field investigations and those common to the area. No distinct wildlife corridors were identified on the site or in the immediate area.

Reptiles common in the region which is expected to inhabit the site include alligator lizard (*Elgaria sp.*), side-blotched lizard (*Uta stansburiana*), and western whiptail lizard (*Cnemidophorus tigris*). Table 2 provides a compendium of wildlife species observed during the various surveys and those likely to occur in the area.

No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

5.3 Federal and State Listed Species

No federal or State-listed species were observed on the site or zone of influence during the field investigations nor are any listed species expected to inhabit the site.

5.4 Wildlife Species of Special Concern

Sensitive Plants: There are numerous plants that have been documented in the quad. As mentioned above, about twelve sensitive plants have been documented within Ontario quadrangle.

However, the site does not support habitats typically associated with the sensitive plants know to occur in the region. Therefore, no sensitive plant species are expected to inhabit the site and the project is not expected to impact any sensitive species.

Sensitive Wildlife: Within the Devore quad there are multiple species that are of Special Concern; however, the site does not support habitats typically associated with most of the sensitive species in the region. The only sensitive species which could potentially occur on the site is the burrowing owl and no owls were detected during the focused surveys conducted on the site. In addition, the site is not expected to support any populations of any other sensitive wildlife species.

5.5 Jurisdictional Waters and Riparian Habitat

The United States Army Corps of Engineers (USACE) regulates discharges of dredged or fill material into waters of the United States, and the State of California also regulates waters of the State and streambeds under the prevue of regional water quality boards and CDFW jurisdiction. These waters include wetlands and non-wetland bodies of water that meet specific criteria. No riparian vegetation was observed in the channel (e.g., cottonwoods, willows, etc.) during the December 2018 surveys.

6.0 IMPACTS AND MITIGATION MEASURES

6.1 General Biological Resources

Future development of the site will impact the general biological resources present on the site and most of the vegetation will likely be removed during future construction activities. Wildlife will also be impacted by development activities and those species with limited mobility (i.e., small mammals and reptiles) will experience increases in mortality during the construction phase. There is potential for various nesting birds to utilize the shrubs within the project site. However, potential impacts to nesting birds can be eliminated or significantly reduced if vegetation suitable for nesting birds is removed outside of the nesting bird season. The nesting season for birds typically occurs from February 15th to August 31st.

No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

6.2 Federal and State Listed and Species of Special Concern

No federal or State-listed species were observed on the site during the field investigations. In addition, there are no documented observations of these species either on the site or in the immediate area. As per CDFW protocol, the burrowing owl survey results are valid for only 30 days; therefore, CDFW may require a 30-day pre-construction survey be performed prior to any clearing/grading activities to determine if owls have moved on to the site since the December 27, 2018 surveys.

7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities are expected to result in the removal of vegetation from the 4-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be negligible. This assumption is based on the presence of habitat on the site which is very common throughout the region. In addition, future development activities are not expected to have any impact on any State or Federal listed or State special status plant or animal species. In addition, burrowing owls do not inhabit the site and are not expected to be impacted given the absence of any suitable burrows. The following mitigation measures are recommended:

1. Pre-construction surveys for burrowing owls and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project-related ground disturbance.
    a. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized.
    b. In the event that listed species are encountered, authorization from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.
    c. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.

If any sensitive species are observed on the property during future activities, CDFW and USFWS (as applicable) should be contacted to discuss specific mitigation measures which may be required for the individual species. CDFW and USFWS are the only agencies which can grant authorization for the "take" of any sensitive species and can approve the implementation of any applicable mitigation measures.

8.0 BIBLIOGRAPHY

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CERTIFICATION

I hereby certify that the statements furnished above and in the attached exhibits, presents the data and information required for this biological evaluation, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief. Fieldwork conducted for this assessment was performed by Randall Arnold and other biologists under his direction. I certify that I have not signed a non-disclosure or consultant confidentiality agreement with the project applicant or applicant's representative and that I have no financial interest in the project.

Date: 12/27/2018 Signed: Randy Arnold
Randy Arnold

Field Work Performed By: Randall Arnold
President and Principal Biologist

Field Work Performed By: Parker Smith
Field Biological Technician

Field Work Performed By: Blake Curran
Environmental Scientist/Biologist

Appendix A

Tables and Figures

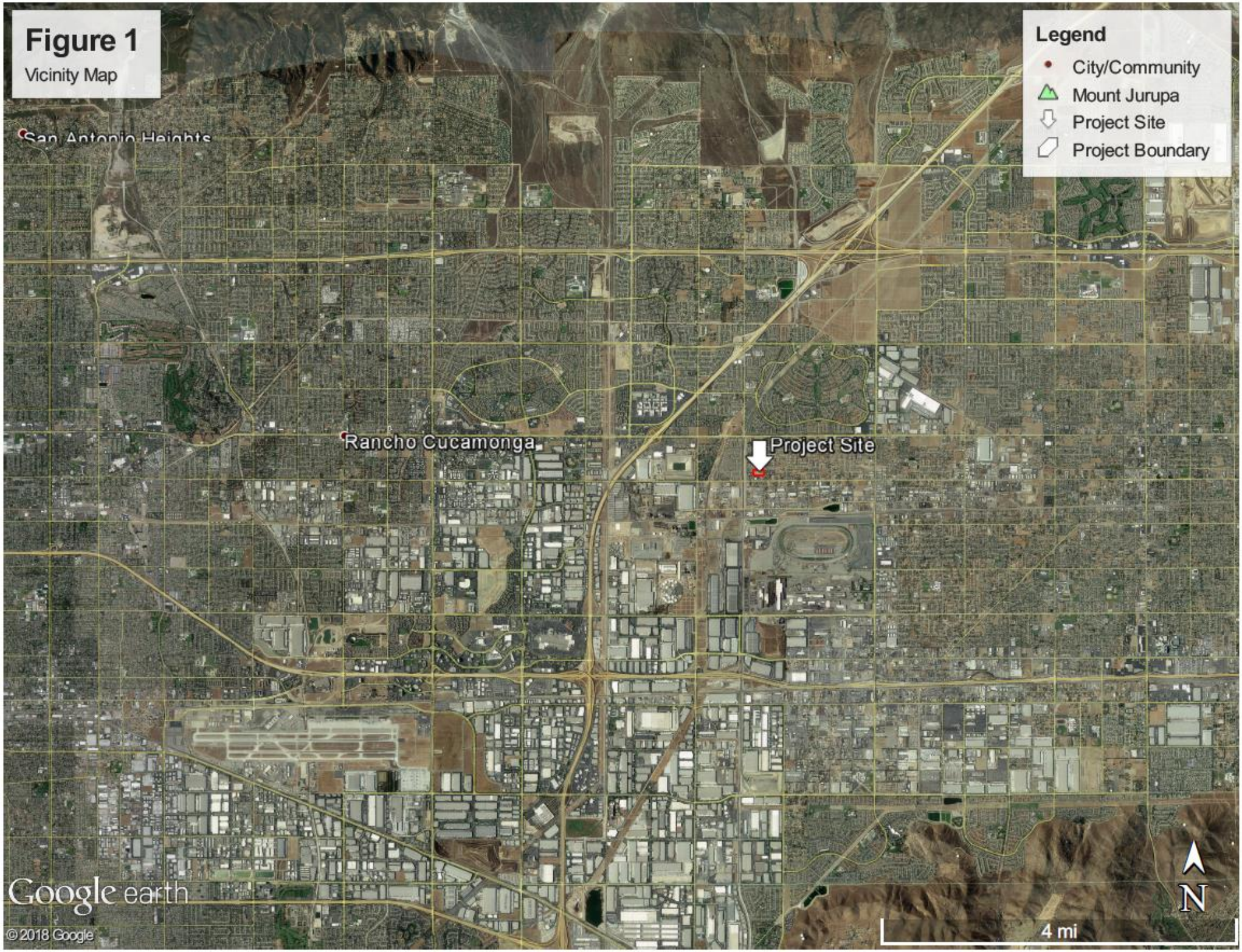


Figure 1
Vicinity Map
Legend
City/Community
Mount Jurupa
Project Site
Project Boundary
San Antonio Heights
Rancho Cucamonga
Project Site
Google earth
© 2018 Google
N
4 mi

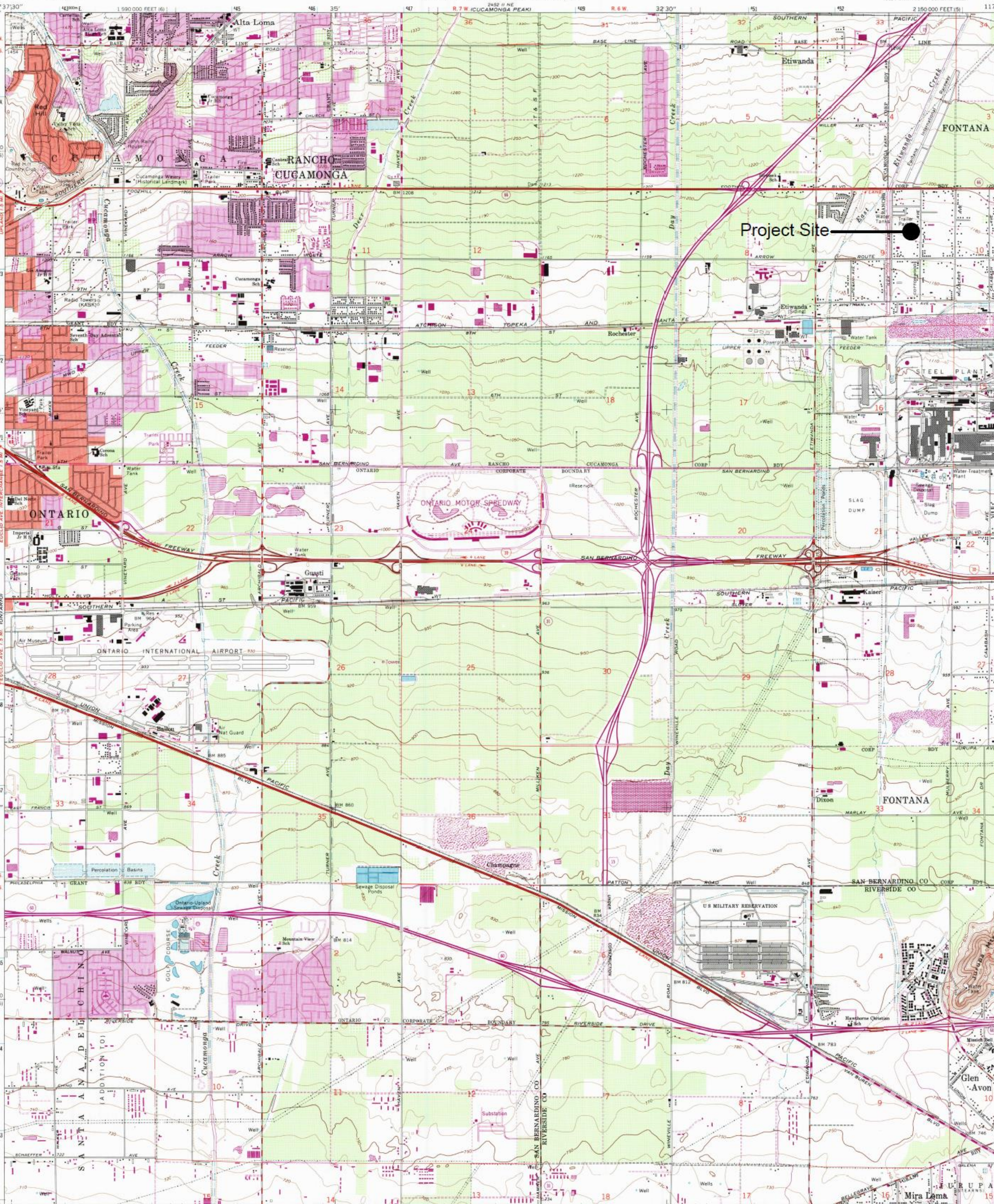

Figure 2
Aerial View
Legend
Project Site
Untitled Polygon
Owen St
Durango Ave
Project Site
Seville Ave
Arrow Route
Ilex St
Cottonwood Ave
Google earth
© 2018 Google
N
700 ft

USGS science for a changing world U.S. DEPARTMENT OF THE INTERIOR U.S. GEOLOGICAL SURVEY

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Figure 3

GUASTI QUADRANGLE
CALIFORNIA
7.5 MINUTE SERIES (TOPOGRAPHIC)
SE/4 ONTARIO 15' QUADRANGLE



Mapped, edited, and published by the Geological Survey

Control by USGS, NOS/NOAA, and Metropolitan Water District of Southern California

Topography by planetable surveys 1933. Planimetry revised by photogrammetric methods from aerial photographs taken 1966. Field checked 1966

Polyconic projection. 10,000-foot grid ticks based on California coordinate system, zones 5 and 6. 1000-meter Universal Transverse Mercator grid ticks, zone 11, shown in blue. 1927 North American Datum. To place on the predicted North American Datum 1983 move the projection lines 1 meter north and 84 meters east as shown by dashed corner ticks

Red tint indicates areas in which only landmark buildings are shown

Jurupa grant sectionized by private survey

There may be private inholdings within the boundaries of the National or State reservations shown on this map

UTM GRID AND 1981 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET

Revisions shown in purple and woodland compiled from aerial photographs taken 1978 and other sources. This information not field checked. Map edited 1981

Purple tint indicates extension of urban areas

SCALE 1:24 000

CONTOUR INTERVAL 10 FEET
NATIONAL GEODETIC VERTICAL DATUM OF 1929

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U.S. GEOLOGICAL SURVEY, P.O. BOX 25286, DENVER, COLORADO 80225
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

ROAD CLASSIFICATION
Heavy-duty — Light-duty
Medium-duty — Unimproved dirt
Interstate Route — U.S. Route — State Route

QUADRANGLE LOCATION

GUASTI, CALIF.
SE/4 ONTARIO 15' QUADRANGLE
N3400—W11730/7.5
1966
PHOTOREVISED 1981
DMA 2452 II SE–SERIES V895

Table 1 - Plants observed on the site and known to occur in the immediate surrounding area.

Common Name	Scientific Name	Location
California buckwheat	*Eriogonum fasciculatum*	On site and Surrounding Area
Prickly-pear	*Opuntia spp.*	"
Deerweed	*Acmispon glaber*	"
California yerba santa	*Eriodictyon californicum*	"
California broomsage	*Lepidospartum squamatum*	"
Tree tobacco	*Nicotiana glauca*	"
Brome grass	*Bromus* sp.	"
Jimsonweed	*Datura stramonium*	"
Castor bean	*Ricinus communi*	"
Sahara mustard	*Brassica tournefortii*	"
Annual Bursage	*Ambrosia acanthicarpa*	"
Flat Topped Buckwheat	*Eriogonum deflexum*	"
Western tansymustard	*Descurainia pinnata*	"
Schismus	*Schismus barbatus*	"
Fiddleneck	*Amsinckia tessellata*	"
Filaree	*Erodium cicutarium*	"
Persian silk tree	*Albizia julibrissin*	"
Ash tree	*Fraxinus ssp.*	"
Brazilin pepper tree	*Schinus terebinthifolius*	"
Chinese elm	*Ulmus parvifolia*	"
Palm	*Arecaceae ssp.*	"

Note: The above list is not intended to be a comprehensive list of every plant which may occur on the site or in the zone of influence.

Table 2 - Wildlife observed on the site during the field investigations.

Common Name	Scientific Name	Location
Common raven	*Corvus corax*	On-site and in the surrounding area.
California ground squirrel	*Spermophilus beecheyi*	"
House sparrow	*Passer domesticus*	"
House finch	*Carpodacus mexicanus*	"
Northern mockingbird	*Mimus polyglottus*	"
Mourning dove	*Zenaida macroura*	"
Turkey vulture	*Cathertes aura*	On site and surrounding area
Red-tailed Hawk	*Buteo jamaicensis*	"
Western whiptail lizard	*Cnemidophorus tigris*	"
Alligator lizard	*Elgaria sp.*	
Side-blotched lizard	*Uta stansburiana*	"
Spiny lizard	*Sceloporus sp.*	"
Desert cottontail	*Sylvilagus auduboni*	"
Coyotes	*Canis latrans*	"

Note: The above Table is not a comprehensive list of every animal species which may occur in the area, but is a list of those common species which were identified on the site or which have been observed in the region by biologists from RCA Associates, Inc.

REGULATORY CONTEXT

The following provides a summary of federal and state regulatory jurisdiction over biological and wetland resources. Although most of these regulations do not directly apply to the site, given the general lack of sensitive resource, they provide important background information.

Federal Endangered Species Act

The USFWS has jurisdiction over federally listed threatened and endangered plant and animal species. The federal Endangered Species Act (ESA) and its implementing regulations prohibit the take of any fish or wildlife species that is federally listed as threatened or endangered without prior approval pursuant to either Section 7 or Section 10 of the ESA. ESA defines "take" as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Federal regulation 50CFR17.3 defines the term "harass" as an intentional or negligent act that creates the likelihood of injuring wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns such as breeding, feeding, or sheltering (50CFR17.3). Furthermore, federal regulation 50CFR17.3 defines "harm" as an act that either kills or injures a listed species. By definition, "harm" includes habitat modification or degradation that actually kills or injures a listed species by significantly impairing essential behavior patterns such as breeding, spawning, rearing, migrating, feeding, or sheltering (50CFR217.12).

Section10(a) of the ESA establishes a process for obtaining an incidental take permit that authorizes nonfederal entities to incidentally take federally listed wildlife or fish. Incidental take is defined by ESA as take that is "incidental to, and not the purpose of, the carrying out of another wise lawful activity." Preparation of a habitat conservation plan, generally referred to as an HCP, is required for all Section 10(a) permit applications. The USFWS and National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries Service) have joint authority under the ESA for administering the incidental take program. NOAA Fisheries Service has jurisdiction over anadromous fish species and USFWS has jurisdiction over all other fish and wildlife species.

Section 7 of the ESA requires all federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any species listed under the ESA, or result in the destruction or adverse modification of its habitat. Federal agencies are also required

to minimize impacts to all listed species resulting from their actions, including issuance or permits or funding. Section 7 requires consideration of the indirect effects of a project, effects on federally listed plants, and effects on critical habitat (ESA requires that the USFWS identify critical habitat to the maximum extent that it is prudent and determinable when a species is listed as threatened or endangered). This consultation results in a Biological Opinion prepared by the USFWS stating whether implementation of the HCP will result in jeopardy to any HCP Covered Species or will adversely modify critical habitat and the measures necessary to avoid or minimize effects to listed species.

Although federally listed animals are legally protected from harm no matter where they occur, the Section 9 of the ESA provides protection for endangered plants by prohibiting the malicious destruction on federal land and other "take" that violates State law. Protection for plants not living on federal lands is provided by the California Endangered Species Act.

California Endangered Species Act

CDFW has jurisdiction over species listed as threatened or endangered under Section 2080 of the California Fish and Wildlife Code. Section 2080 prohibits the take of a species listed by CDFW as threatened or endangered. The state definition of take is similar to the federal definition, except that Section 2080 does not prohibit indirect harm to listed species by way of habitat modification. To qualify as take under the state ESA, an action must have direct, demonstrable detrimental effect on individuals of the species. Impacts on habitat that may ultimately result in effects on individuals are not considered take under the state ESA but can be considered take under the federal ESA.

Proponents of a project affecting a state-listed species must consult with CDFW and enter into a management agreement and take permit under Section 2081. The state ESA consultation process is similar to the federal process. California ESA does not require preparation of a state biological assessment; the federal biological assessment and the CEQA analysis or any other relevant information can provide the basis for consultation. California ESA requires that CDFW coordinate consultation for joint federally listed and state-listed species to the extent possible; generally, the state opinion for the listed species is brief and references provisions under the federal opinion.

Clean Water Act, Section 404

The COE and the U.S. Environmental Protection Agency regulate the placement of dredged or fill material into "Waters of the United States" under Section 404 of the Clean Water Act. Waters of the United States include lakes, rivers, streams, and their tributaries, and wetlands. Wetlands are defined for regulatory purposes as "areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (33 Code of Federal Regulations [CFR] 328.3, 40 CFR 230.3).

The COE may issue either individual permits on a case-by-case basis or general permits on a program level. General permits are pre-authorized and are issued to cover similar activities that are expected to cause only minimal adverse environmental effects. Nationwide permits (NWP's) are general permits issued to cover particular fill activities. All NWP's have general conditions that must be met for the permits to apply to a particular project, as well as specific conditions that apply to each NWP.

Clean Water Act, Section 401

Section 401 of the Clean Water Act requires water quality certification and authorization of placement of dredged or fills material in wetlands and Other Waters of the United States. In accordance with Section 401 of the Clean Water Act, criteria for allowable discharges into surface waters have been developed by the State Water Resources Control Board, Division of Water Quality. As such, proponents of any new project which may impair water quality as a result of the project are required to create a post construction storm water management plan to insure offsite water quality is not degraded. The resulting requirements are used as criteria in granting National Pollution Discharge Elimination System (NPDES) permits or waivers, which are obtained through the Central Valley Regional Water Quality Control Board (RWQCB). Any activity or facility that will discharge waste (such as soils from construction) into surface waters, or from which waste may be discharged, must obtain an NPDES permit or waiver from the RWQCB.

California Fish and Wildlife Code, Sections 1600-1616

Under the California Fish and Wildlife Code, Sections1600-1616 CDFW regulates projects that divert, obstruct, or change the natural flow or bed, channel, or bank of any river, stream, or lake. Proponents of such projects must notify CDFW and enter into streambed alteration agreement with them.

Section 1602 of the California Fish and Wildlife Code requires a state or local government agency, public utility, or private entity to notify CDFW before it begins a construction project that will: (1) divert, obstruct, or change the natural flow or the bed, bank, channel, or bank of any river, stream, or lake; (2) use materials from a streambed; or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake. Once the notification is filed and determined to be complete, CDFW issues a streambed alteration agreement that contains conditions for construction and operations of the proposed project.

California Fish and Wildlife Code, Section 3503.5

Under the California Fish and Wildlife Code, Section 3503.5, it is unlawful to take, possess, or destroy any birds in the orders Falconiformes (hawks, eagles, and flacons) or Strigiformes (owls). Take would include the disturbance of an active nest resulting in the abandonment or loss of young.

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits the taking, hunting, killing, selling, purchasing, etc. of migratory birds, parts of migratory birds, or their eggs and nests. As used in the MBTA, the term "take" is defined as "to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill, unless the context otherwise requires." Most bird species native to North America are covered by this act.

Sensitive Natural Communities

The California Office of Planning and Research and the Office of Permit Assistance (1986) define project effects that substantially diminish habitat for fish, wildlife, or plants, or that disrupt or divide the physical arrangement of an established community as significant impacts under CEQA. This definition applies to certain natural communities because of their scarcity and ecological

values and because the remaining occurrences are vulnerable to elimination. For this study, the term "sensitive natural community" includes those communities that, if eliminated or substantially degraded, would sustain a significant adverse impact as defined under CEQA. Sensitive natural communities are important ecologically because their degradation and destruction could threaten populations of dependent plant and wildlife species and significantly reduce the regional distribution and viability of the community. If the number and extent of sensitive natural communities continue to diminish, the status of rare, threatened, or endangered species could become more precarious, and populations of common species (i.e., not special status species) could become less viable. Loss of sensitive natural communities also can eliminate or reduce important ecosystem functions, such as water filtration by wetlands and bank stabilization by riparian woodlands for example.