July 25, 2022

KIMLEY-HORN
Contact: *Brian Leung*
765 The City Drive, Suite 200
Orange, California 92868

SUBJECT: Habitat and Jurisdictional Assessment for the Proposed Autozone Project Located in San Bernardino County, California

Introduction

This report contains the findings of ELMT Consulting's (ELMT) habitat and jurisdictional assessment for the proposed Autozone Project (project or project site) located in unincorporated San Bernardino County, California, outside the city limits of Hesperia. The habitat assessment was conducted by biologists Jacob H. Lloyd Davies and Rachael A. Lyons on July 29, 2020 to document baseline conditions and assess the potential for special-status[1] plant and wildlife species to occur within the project site that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the project site to support desert tortoise (*Gopherus agassizii*), burrowing owl (*Athene cunicularia*), western Joshua tree (*Yucca brevifolia*), and other special-status plant and wildlife species identified by the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB), and other electronic databases as potentially occurring in the general vicinity of the project site.

Project Location

The project site is generally located east of Interstate 15, north of State Route 138, and south of State Route 18, and west of the Mojave River in unincorporated San Bernardino County, California. The site is depicted on the Hesperia quadrangle of the United States Geological Survey's (USGS) 7.5-minute map series within section 2 of Township 3 North, Range 5 West. Specifically, the site is bounded to the north by Ranchero Road and is located east of Escondido Avenue, west of Mesa Avenue, and north of Cromdale Street within Assessor Parcel Number (APN) 0357-421-03. Refer to Exhibits 1-3 in Attachment A.

Methodology

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

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

Literature Review

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

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

- Google Earth Pro historic aerial imagery (1985-2018);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey[2];
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS Endangered Species Profiles.

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

Habitat Assessment/Field Investigation

Following the literature review, biologist Jacob H. Lloyd Davies inventoried and evaluated the condition of the habitat within a 200-foot buffer around the project site, where applicable, on July 29, 2020. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking meandering transects throughout the project site. In addition, aerial photography was reviewed prior to the site investigation to locate potential natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

Soil Series Assessment

On-site and adjoining soils were researched prior to the field investigation using the USDA NRCS Soil Survey for San Bernardino County, California. In addition, a review of the local geological conditions and

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

historical aerial photographs was conducted to assess the ecological changes that the project site has undergone.

Plant Communities

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

Plants

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

Wildlife

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

Jurisdictional Drainages and Wetlands

Aerial photography was reviewed prior to conducting a field investigation in order to locate and inspect any potential natural drainage features, ponded areas, or water bodies that may fall under the jurisdiction of the United States Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), or CDFW. In general, surface drainage features indicated as blue-line streams on USGS maps that are observed or expected to exhibit evidence of flow are considered potential riparian/riverine habitat and are also subject to state and federal regulatory jurisdiction. In addition, ELMT reviewed jurisdictional waters information through examining historical aerial photographs to gain an understanding of the impact of land-use on natural drainage patterns in the area. The USFWS National Wetland Inventory (NWI) and Environmental Protection Agency (EPA) Water Program "My Waters" data layers were also reviewed to determine whether any hydrologic features and wetland areas have been documented on or within the vicinity of the project site.

Existing Site Conditions

The proposed project site is located in an area with a mixture of developed and undeveloped land in the burgeoning community of Oak Hills. The surrounding census-designated place of Oak Hills contains a mosaic of undeveloped vacant land and industrial, commercial, and residential developments. The site is bounded to the north by Ranchero Road with commercial development beyond; to the east by undeveloped,

vacant land; to the south by undeveloped, vacant land with residential development beyond; and to the east by undeveloped, vacant land with Escondido Avenue and undeveloped, vacant land beyond. The site itself supports undeveloped, vacant land.

On-site elevation ranges from approximately 3,668 to 3,681 feet above mean sea level and generally slopes from southwest to northeast. Based on the NRCS USDA Web Soil Survey, the project site is underlain by Hesperia loamy fine sand (2 to 5 percent slopes). Refer to Exhibit 4, *Soils*, in Attachment A. Soils on-site are relatively undisturbed.

Vegetation

The majority of the site is relatively undisturbed, but surrounding development has altered seasonal storm flows from their historic trends. This has caused the distribution of on-site vegetation to shift away from natural patterns that would be expected to occur and create distinct vegetation communities dominated by single species. Refer to Attachment B, *Site Photographs*, for representative site photographs. The project site supports three (3) vegetation communities: California buckwheat scrub, great basin sagebrush scrub, and disturbed/non-native grassland (refer to Exhibit 5, *Vegetation*, in Attachment A).

Buckwheat Scrub

The majority of the project site supports a California buckwheat scrub plant community. This plant community is dominated by California buckwheat (*Eriogonum fasciculatum*). Other species observed in this vegetation community include slender buckwheat (*Eriogonum gracile*), Mediterranean mustard (*Hirschfeldia incana*), western ragweed (*Ambrosia psilostachya*), red brome (*Bromus rubens*), downy chess (*Bromus tectorum*), Mediterranean grass (*Schismus barbatus*), Mojave yucca (*Yucca schidigera*), Joshua tree, nightshade (*Solanum americanum*), wire lettuce (*Stephanomeria exigua*), Nevada ephedra (*Ephedra nevadensis*), paper bag bush (*Scutellaria Mexicana*), prickly poppy (*Argemone munita*), sticky lessingia (*Lessingia glandulifera* var. *glandulifera*), common purslane (*Portulaca oleracea*), Cooper's goldenbush (*Ericameria cooperi*), chia sage (*Salvia columbariae*), sandmat (*Euphorbia* sp.), coyote tobacco (*Nicotiana attenuata*), beavertail pricklybear (*Opuntia basilaris*), yellow tansy mustard (*Descurainia pinnata*), needle grass (*Stipa* sp.), and desert almond (*Prunus fasciculata*).

Great Basin Sagebrush Scrub

The southeast portion of the project site supports a swathe of great basin sagebrush scrub associated with an ephemeral wash that occurs to the east of the project site. This vegetation community is heavily dominated by great basin sagebrush (*Artemisia tridentata*) and supports mostly the same species diversity as the buckwheat scrub plant community.

Disturbed/Non-Native Grassland

The northern boundary of the project site has been subject to a regime of anthropogenic disturbances such as illegal dumping, vehicle parking, and pedestrian use. As such, most of the perennial species observed in the other plant communities on-site are absent and the disturbed/non-native grassland varies from patches of bare ground and litter to densely vegetated with non-native grasses with other weedy/early successional species intermixed. Plant species observed in the disturbed/non-native grassland plant community include red brome, downy chess, Mediterranean grass, Russian thistle (*Salsola tragus*), Mediterranean mustard, Russian thistle, and western ragweed.

Wildlife

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

Fish

No fish or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for fish were observed on or within the vicinity of the project site. The wash found on the eastern portion of the project site is ephemeral and does not provide a constant source of water for fish species. Therefore, no fish are expected to occur and are presumed absent from the project site.

Amphibians

No amphibians or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for amphibian species were observed on or within the vicinity of the project site. The wash found on the eastern portion of the project site is ephemeral and does not provide a constant source of water for amphibian species. Therefore, no amphibians are expected to occur on the project site and are presumed absent.

Reptiles

The survey area provides suitable foraging and cover habitat for local reptile species that do not require large foraging areas or territories and are adapted to light urbanization. Reptile species observed during the field investigation included great basin whiptail (*Aspidoscelis tigris tigris*) and western side-blotched lizard (*Uta stansburiana elegans*). Additional common reptile species that could potentially occur on-site include San Diego alligator lizard (*Elgaria multicarinata webbii*), Great Basin fence lizard (*Sceloporus occidentalis longipes*), and Great Basin gopher snake (*Pituophis catenifer deserticola*).

Birds

The project site and surrounding area provides suitable foraging and nesting habitat for a variety of local bird species that are adapted to light urbanization. Bird species detected during the field investigation include Say's phoebe (*Sayornis saya*), California quail (*Callipepla californica*), common raven (*Corvus corax*), and rock pigeon (*Columbia liva*).

Mammals

The project site provides suitable foraging and cover habitat for a variety of local mammalian species adapted to light urbanization. Most mammal species are nocturnal and are difficult to observe during a diurnal field visit. Mammalian species detected during the field investigation include desert cottontail (*Sylvilagus audubonii*), black-tailed jackrabbit (*Lepus californicus*), coyote (*Canis lastrans*), and kangaroo rat (*Dipodomys* sp.). Other common mammalian species that could be expected to occur include desert woodrat (*Neotoma lepida*) and raccoon (*Procyon lotor*). No bat species are expected to roost on-site due to

a lack of suitable roosting habitat (i.e., trees, crevices, abandoned structures).

Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field survey, which was conducted near the end of the breeding season. The on-site plant communites provide suitable foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that have adapted to conditiosn in the Mojave Desert.

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

Migratory Corridors and Linkages

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

According to the San Bernardino County General Plan, the project site has not been identified as occurring within a Wildlife Corridor or Linkage. As designated by the San Bernardino County General Plan Open Space Element, major open space areas documented in the vicinity of the project site include the Mojave River located approximately 7.5 miles east of the project site. The project site is separated from these identified regional wildlife corridors and linkages by existing development and roadways, and undeveloped land; however, there are no riparian corridors or creeks connecting the project site to these areas.

The undeveloped land in the immediate vicinity of the project site provides local wildlife movement opportunities for wildlife species moving through the immediate area. The project site does not function as a major wildlife movement corridor or linkage. As such, implementation of the proposed project is not expected to have a significant impact to wildlife movement opportunities or prevent local wildlife movement through the area since there is ample habitat adjacent to the project site to support wildlife movement opportunities.

Jurisdictional Areas

There are three key agencies that regulate activities within inland streams, wetlands, and riparian areas in California. The Corps Regulatory Branch regulates discharge of dredge or fill materials into “waters of the United States” pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Of the State agencies, the CDFW regulates alterations to streambed and bank under Fish and Wildlife Code Sections 1600 et seq., and the Regional Board regulates discharges into surface waters

pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act.

The USFWS NWI and the USGS National Hydrography Dataset were reviewed to determine if any blueline streams or riverine resources have been documented within or immediately surrounding the project site. Based on this review, no riverine resources were identified on the project site. One (1) riverine resource was identified approximately 1,290 feet to the northwest. In addition, an ephemeral drainage feature was observed in close proximity to the eastern portion of the project footprint within the parcel boundary during the field investigation (refer to Exhibit 6, *Jurisdictional Areas*, in Attachment A). This feature conveys flows southwest to northeast across site before flowing under Ranchero Road via existing culverts.

Based on the proposed limits of disturbance, no impacts to this on-site drainage feature will occur from project implementation and regulatory approvals will not be required. However, if project activities encroach into the drainage feature, further review will be required to define project impacts and acquire regulatory approvals from the regulatory agencies, if necessary. No other potential jurisdictional drainage features and/or wetland features were observed within or near the project site during the field investigation that would be considered jurisdictional by the Corps, Regional Board, or CDFW.

Special-Status Biological Resources

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

The literature search identified ten (10) special-status plant species and twenty-one (21) special-status wildlife species as having potential to occur within the Hesperia and Baldy Mesa USGS 7.5-minute quadrangles. No special-status plant communities were identified within this quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site is presented in Attachment D*: Potentially Occurring Special-Status Biological Resources*.

Special-Status Plants

According to the CNDDB and CNPS, nine (9) special-status plant species have been recorded in the Hesperia and Baldy Mesa quadrangles (refer to Attachment D). The only special-status plant species observed during the field investigation was western Joshua tree. Based on habitat requirements for specific special-status plant species and the availability and quality of habitats needed by each species, it was determined that the project site has a low potential to support white pygmy-poppy (*Canbya candida*; CNPS 4.2). It was further determined that the project site does not have the potential to support the remainder of the special-status plant species known to occur in the vicinity of the site and all are presumed to be absent.

Of the aforementioned species, only western Joshua tree is state-listed as a candidate species and does not have a federal listing. White pygmy-poppy is neither state or federally listed as threatened or endangered.

Western Joshua Tree

The western Joshua tree was granted candidate status under the California Endangered Species Act on September 25, 2020. This species is endemic to the Mojave Desert and occupies an elevation range of 1,600 and 6,660 feet above mean sea level. This species is recognized in several vegetation communities in varying densities. Known occupied communities include sagebrush scrub, desert shrub, southwestern shrubsteppe, pinyon-juniper woodland, and desert grasslands. When this species is dominant in high densities, the occupied habitat may be classified as a Joshua tree woodland, although densities are typically low due to their extensive and competitive root systems. Mature size varies greatly due to irregular branching, and large individuals can exceed 40 feet in height. Like other large members of family Agavaceae, western Joshua trees grow slowly, with estimated growth rates ranging from 2.3 to 4.6 inches per year depending on individual age and conditions. Western Joshua trees are long-lived species, with most estimates of average lifespan ranging from 150 to 300 years, although some estimates exceed 700 years. The largest known western Joshua tree exceeds 60 feet in height and is an estimated 1,000 years old. Like other long-lived plant species, seed production occurs very slowly and irregularly, although rhizome production and clonal growth can occur. Western Joshua trees are only known to be pollinated by once species: the yucca moth (*Tegeticula synthetica*).

Three (3) western Joshua trees were observed within the proposed limits of disturbances. Please see Table 1 below that provides details on the location, and health of the trees.

Table 1: On-Site Joshua Trees

Joshua Tree No.	Location	Height	Clones	Branches/Flowers
1	34.382508, -117.371244	1.5 meters	1 clone	0 branches/0 flowers
2	34.382508, -117.371276	2 meters	2 clones	2 branches/1 flower
3	34.382244, -117.371316	>1 meter	No clones	0 branches/0 flowers

As a candidate endangered species, western Joshua trees have the same protection as listed species in the California Endangered Species Act. Joshua trees are also considered a significant resource under the CEQA and are a covered species under the Desert Plant Protection Act. In accordance with Section 2081 subdivision (b) of the California Fish and Game Code, removal of Joshua trees will require an Incidental Take Permit (ITP) to be prepared and processed if the Joshua trees cannot be avoided.

Current available literature (CDFW 2022) discusses the primary method of western Joshua tree seed dispersal as "scatter-hoarding behavior of rodents who actively collect seeds from fruits in the canopies of trees and fruits and seeds that have fallen on the ground, and bury seeds within the local area", most of the time within 186 feet of the source tree. White-tailed antelope squirrels (*Ammospermophilus leucurus*) and kangaroo rats (*Dipodomys merriami and D. agilis*) were noted as likely having a large role in this process. Because of these data, CDFW has determined that a buffer of 186 feet surrounding each tree is considered within the tree's associated seedbank, and therefore protected like that of the tree itself. In order to determine mitigation for impacts to Joshua tree, a 186 foot buffer will be placed around each tree to determine the acreage of impacts.

Special-Status Wildlife

According to the CNDDB, twenty-one (21) special-status wildlife species have been reported in the Hesperia and Baldy Mesa quadrangles (refer to Attachment D). No special-status wildlife species were observed on-site during the habitat assessment. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that the proposed project site has a high potential to support Cooper's hawk (*Accipiter cooperii*) and Costa's hummingbird (*Calypte costae*); a moderate potential to support loggerhead shrike (*Lanius ludovicianus*); and a low potential to support California horned lark (*Eremophila alpestris actia*), and coast horned lizard (*Phrynosoma blainvillii*). It was further determined that the project site does not have the potential to support the remainder of the special-status wildlife species known to occur in the vicinity of the site and all are presumed to be absent.

None of the aforementioned species are federally or state listed as threatened or endangered. In order to prevent impacts to special-status avian species from occurring due to project implementation, a pre-construction nesting bird clearance survey shall be conducted prior to ground disturbance. With the implementation of a pre-construction nesting bird clearance survey, impacts to special-status avian species will be less than significant and no mitigation will be required.

Based on regional significance, the potential occurrence of desert tortoise and burrowing owl within the project site are described in further detail below.

Desert Tortoise

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

No desert tortoise or recent sign (i.e. burrows, tracks, or scat) were observed during the field investigation. The project site does not support vegetation communities routinely associated with desert tortoise, nor does available on-site vegetation feature the openness preferred by desert tortoises. Therefore, it was determined that the project site does not have potential to provide suitable habitat for desert tortoise and focused surveys are not recommended.

Burrowing Owl

The burrowing owl is currently listed as a California Species of Special Concern. It is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with well-drained, level to gently-sloping areas characterized by sparse vegetation

and bare ground (Haug and Didiuk 1993; Dechant et al. 1999). Burrowing owls are dependent upon the presence of burrowing mammals (such as ground squirrels) whose burrows are used for roosting and nesting (Haug and Didiuk 1993). The presence or absence of colonial mammal burrows is often a major factor that limits the presence or absence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drain pipes, stand-pipes, and dry culverts. Burrowing mammals may burrow beneath rocks and debris or large, heavy objects such as abandoned cars, concrete blocks, or concrete pads. They also require open vegetation allowing line-of-sight observation of the surrounding habitat to forage as well as watch for predators.

No burrowing owls or recent sign (i.e., pellets, feathers, castings, or whitewash) was observed during the field investigation. Portions of the project site are unvegetated and/or vegetated with a variety of low-growing plant species that allow for line-of-sight observation favored by burrowing owls. However, the project site lacks suitable burrows (>4 inches in diameter) capable of providing roosting and nesting opportunities. In addition, the site is bordered by electrical towers and power lines which decrease the likelihood that burrowing owls would occur on the project site as these features provide perching opportunities for larger raptor species (i.e., red-tailed hawk [*Buteo jamaicensis*]) that prey on burrowing owls. Therefore, it was determined that the project site does not have potential to provide suitable habitat for burrowing owls and focused surveys are not recommended.

Critical Habitats

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

The project site is not located within federally designated Critical Habitat. The closest Critical Habitat designations are located approximately 4.3 miles south of the site for arroyo toad (*Anaxyrus californicus*) and 5.0 miles southeast of the site for southwestern willow flycatcher (*Empidonax traillii extimus*) (Exhibit 7, *Critical Habitat* in Attachment A). Therefore, no impacts to federally designated Critical Habitat will occur from implementation of the proposed project.

San Bernardino County Development Code

Section 88.01.060 of the County of San Bernardino Development Code provides regulations for the removal or harvesting of specified desert native plants in order to preserve and protect the plants and to provide for

the conservation and wise use of desert resources. The provisions are intended to coincide with the Desert Native Plants Act (Food and Agricultural Code Section 8001 et seq.) and the State Department of Food and Agriculture to implement and enforce the Act.

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

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

Based on the results of the field investigation western Joshua trees were identified as occurring within the project site. In addition to being listed at the state level as a candidate species for endangered status, Joshua trees are regulated pursuant to Section 88.01.060 of the San Bernardino County Development Code and Section 80073 of the California Desert Native Plant Act. Therefore, impacts to this species should be avoided in all instances. In the event that avoidance is not feasible, the project applicant will need an inventory of the trees on-site completed and a Tree or Plant Removal Permit will need to be obtained from the County of San Bernardino prior to removal of any regulated tree or plant.

Recommendations

Migratory Bird Treaty Act and Fish and Game Code

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

If construction occurs between February 1st and August 31st, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will

be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

San Bernardino County Development Code

In accordance with the San Bernardino County Development Code, an application for a desert native plant removal or relocation shall be filed with County for review and processing. All of the impacted Mojave yucca and cactus can be salvaged as part of this effort. In addition, Joshua trees found to be suitable for transplantation (Joshua trees between 5 and 15 feet in height typically have the best chance for survival) that will be impacted from site development will be salvaged and transplanted to an off-site area, to be approved by the County, or to be stockpiled for transplantation once a County-approved area has been designated.

The application shall include certification from an appropriate tree expert or native desert plant expert to determine that proposed removal or relocation of protected native desert plants are appropriate, supportive of a healthy environment, and in compliance with the County Development Code. The application shall include a detailed Native Desert Transplant Plan for removal of all Joshua trees and Mojave yucca to be potentially transplanted. The plan shall be prepared by an appropriate tree expert or desert native plant expert, and shall include but not be limited to the following measures:

- Salvaged plants will be transplanted immediately to a permanent approved offsite area if possible. If the plants cannot be immediately taken to the permanent relocation area at the time of excavation, they may be transplanted in a temporary area (stockpiled) prior to being moved to the permanent relocation area in an approved area within the project site, either a designated area within the parcels to be developed, or within the designated remainder parcel.
- Joshua trees shall be marked on the north facing side prior to excavation. Transplanted Joshua trees shall be planted in the same orientation as they occurred on the project site, with the marking on the north side of the trees facing north at the transplantation site.
- Transplanted plants will be watered at the time of transplantation, either to the permanent relocation site or the stockpile area, and monthly, as necessary. The schedule of watering will be determined by the tree expert or desert native plant expert to maintain plant health. Watering of the transplanted plants will continue until it has been determined that the transplants have become established in the permanent relocation area and no longer require supplemental watering.

State Incidental Take Permit

Approximately 1.5 acres of the project site fall with the 186 foot buffer around the onsite Joshua trees that will need to be mitigated if impacts cannot be avoided. Impacts to 1.5 acre of Joshua tree habitat will be mitigated at an agreed upon ratio with CDFW that fully mitigate impacts to Joshua trees. The project applicant will prepare and process a Section 2081 ITP with CDFW and will purchase credits out of an

approved conservation bank.

Conclusion

With the exception of Joshua tree, based on the proposed project footprint and existing site conditions discussed in this report, none of the special-status plant or wildlife species known to occur in the general vicinity of the project site are expected to be directly or indirectly impacted from implementation of the proposed project. Development of the project will not impact designated Critical Habitats or regional wildlife movement corridors/linkages, or jurisdictional drainage features. With completion of a pre-construction nesting bird clearance survey, impacts to year-round, seasonal, or special-status avian residents will not occur from implementation of the proposed project.

If any impacts to the Joshua trees onsite will occur from project implementation, a CDFW Section 2081 ITP will need to be prepared and processed to mitigate impacts to the Joshua trees onsite.

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

Sincerely,

Thomas J. McGill, Ph.D.
Managing Director

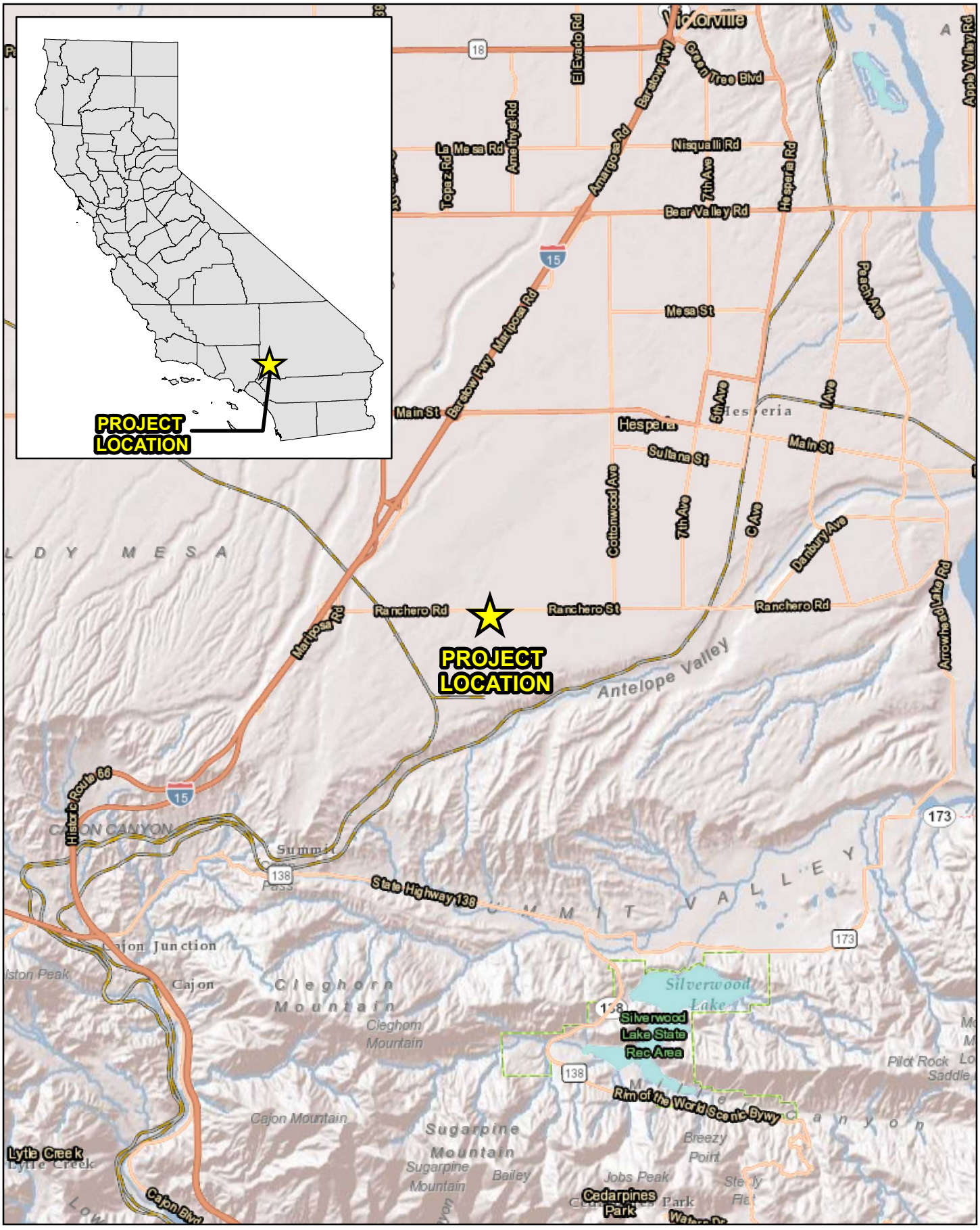
Travis J. McGill
Director

Attachments:

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

Attachment A

Project Exhibits



HESPERIA AUTOZONE PROJECT
HABITAT AND JURISDICTIONAL ASSESSMENT

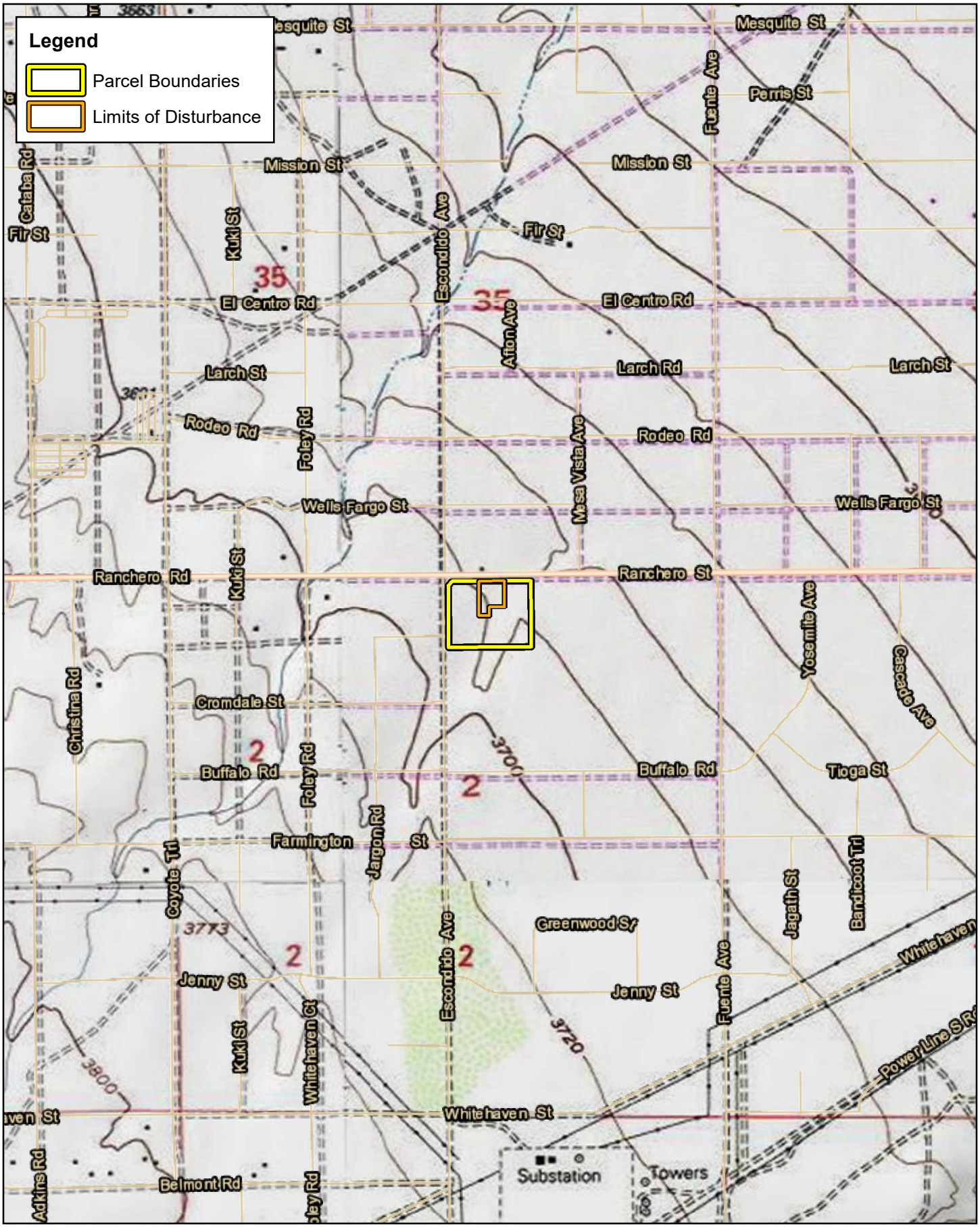
Regional Vicinity

ELMT CONSULTING

0 1.25 2.5 5 Miles

Source: World Transportation, World Shaded Relief, San Bernardino County

Exhibit 1



AUTOZONE HESPERIA PROJECT
HABITAT AND JURISDICTIONAL ASSESSMENT

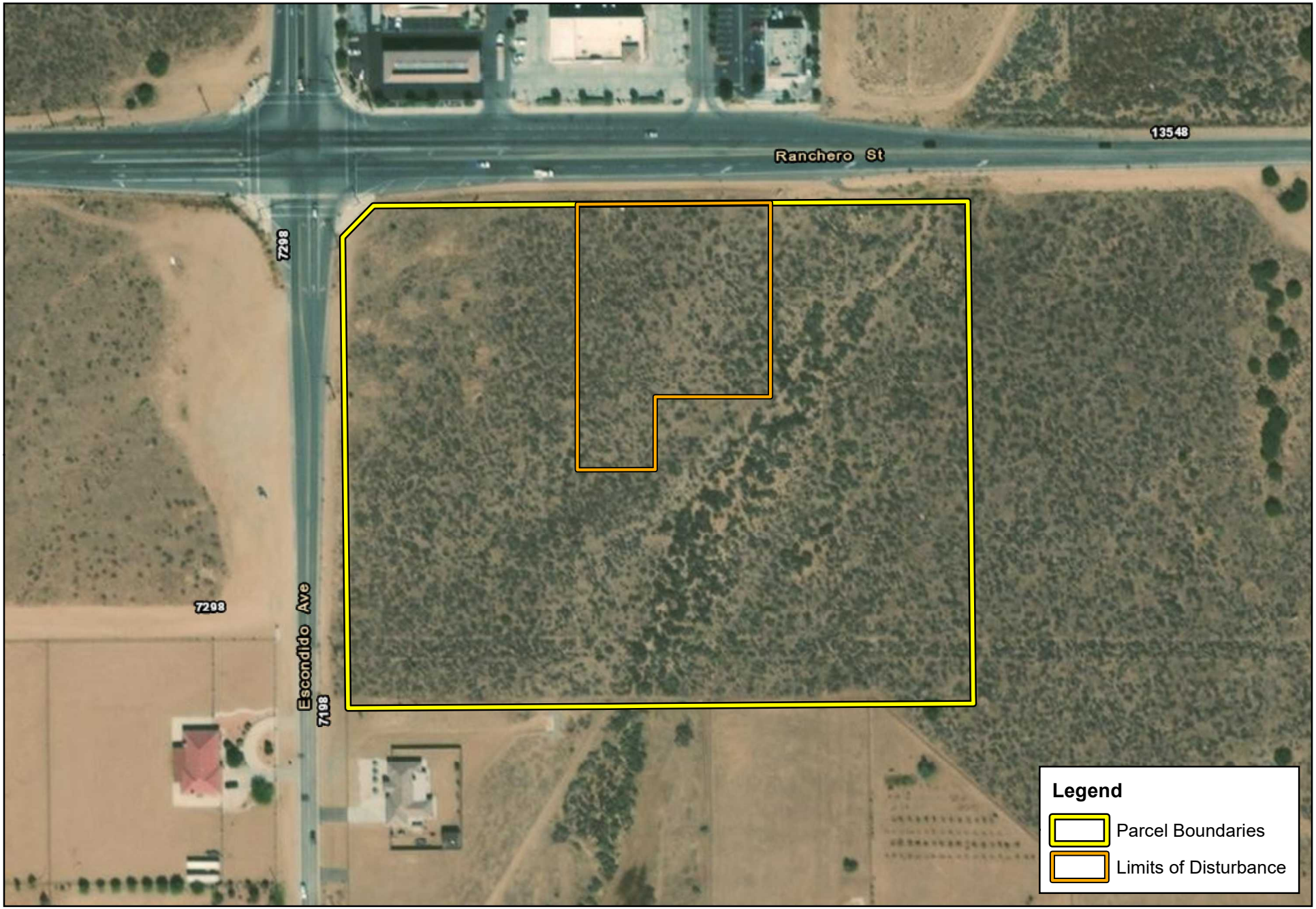
Site Vicinity

ELMT CONSULTING

0 625 1,250 2,500 Feet

Source: USA Topographic Map, San Bernardino County

Exhibit 2



ELMT CONSULTING

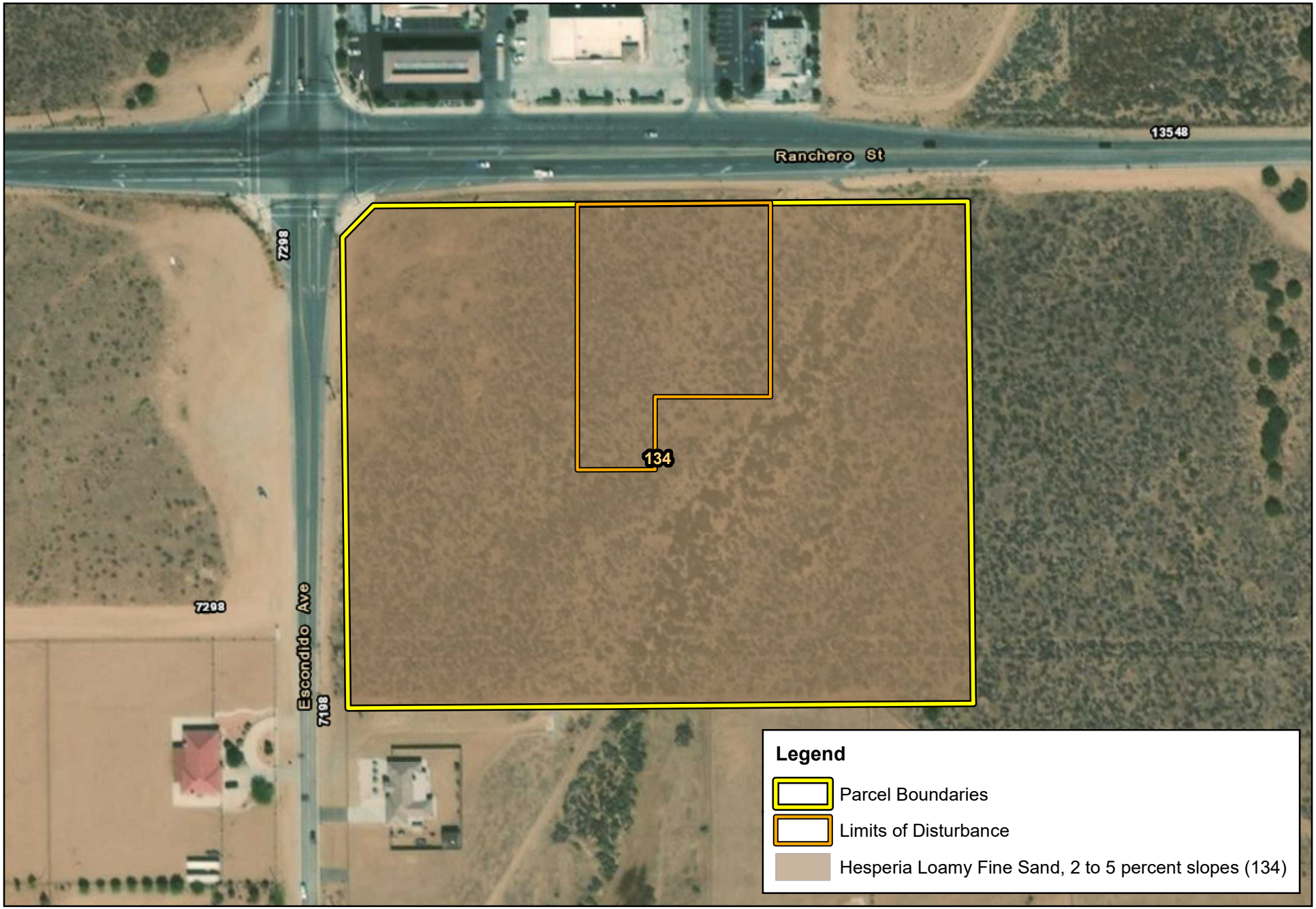
0 125 250 500 Feet

Source: ESRI Aerial Imagery, San Bernardino County

AUTOZONE HESPERIA PROJECT
HABITAT AND JURISDICTIONAL ASSESSMENT

Project Site

Exhibit 3



ELMT CONSULTING

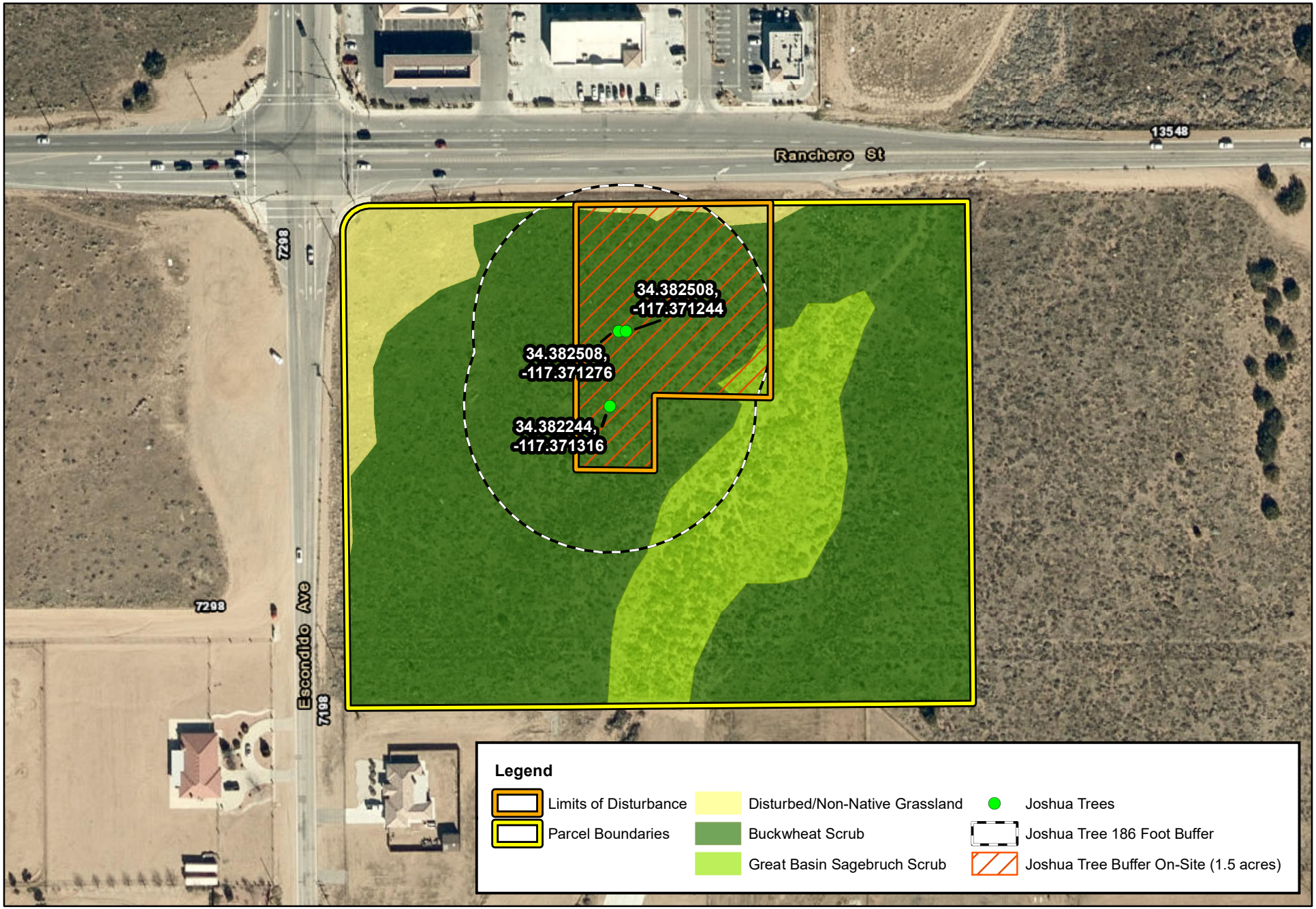
0 125 250 500 Feet

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

AUTOZONE HESPERIA PROJECT
HABITAT AND JURISDICTIONAL ASSESSMENT

Soils

Exhibit 4



ELMT CONSULTING

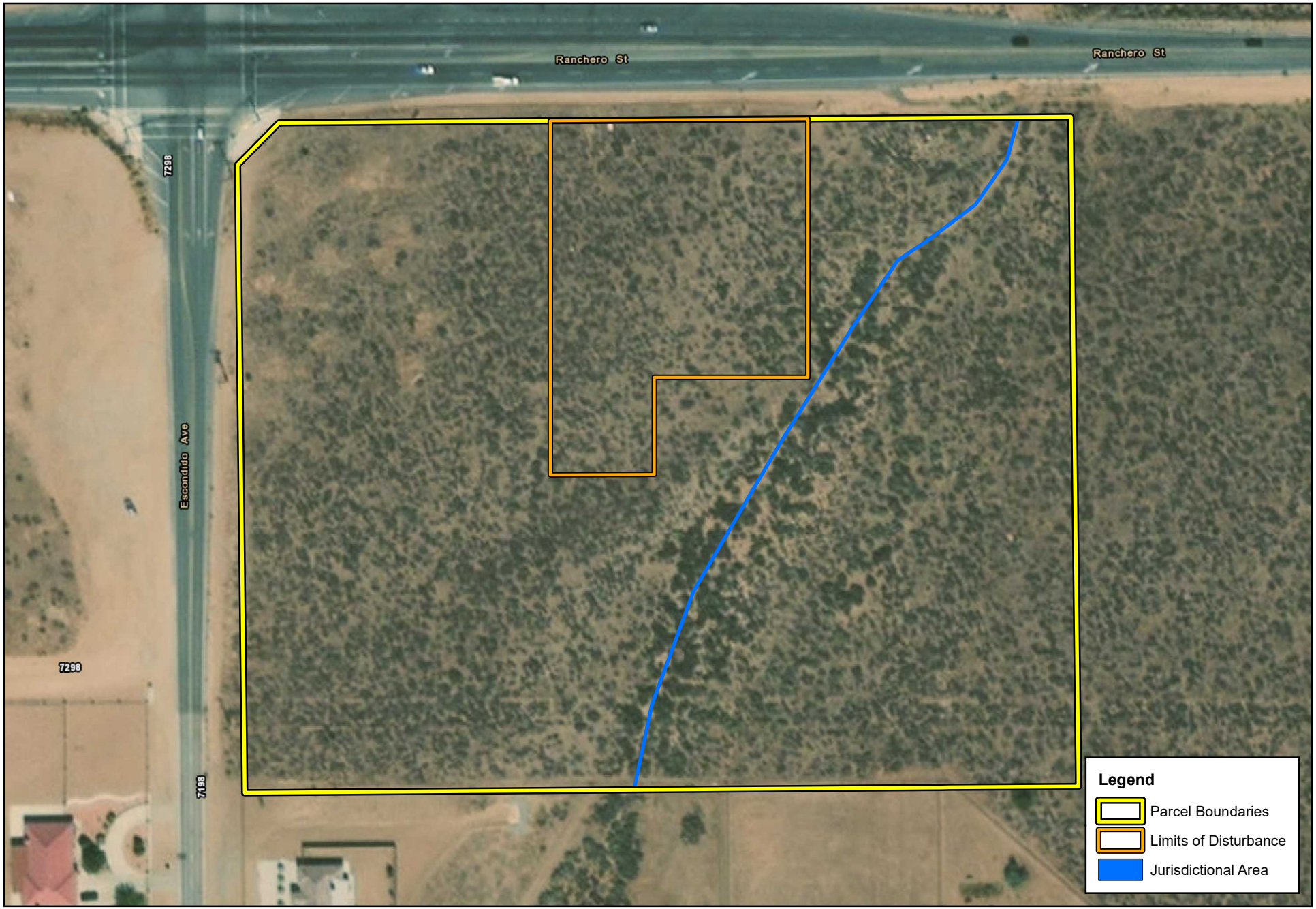
0 125 250 500 Feet

Source: ESRI Aerial Imagery, San Bernardino County

AUTOZONE HESPERIA PROJECT
HABITAT AND JURISDICTIONAL ASSESSMENT

Vegetation

Exhibit 5



ELMT CONSULTING

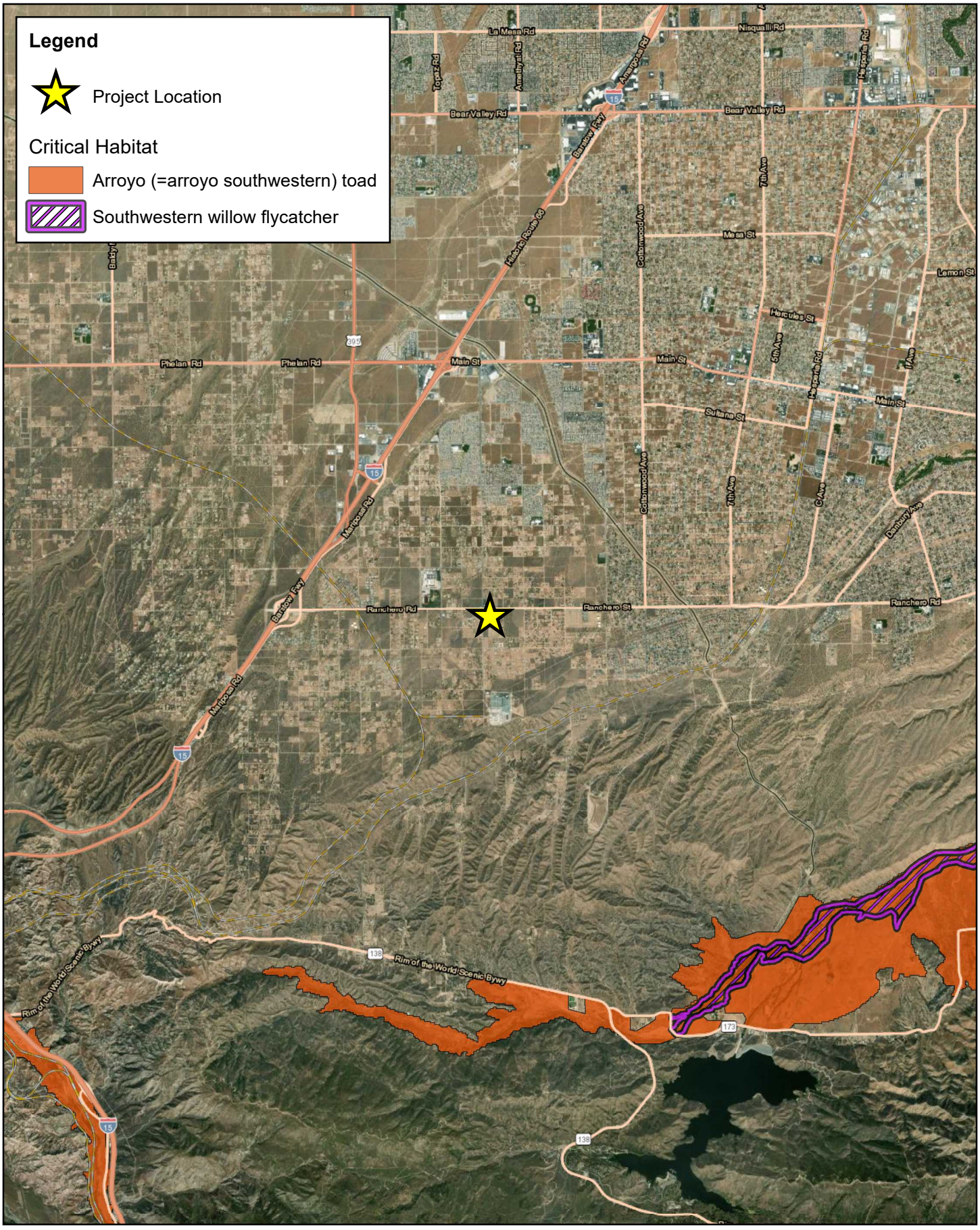
0 125 250 500 Feet

Source: ESRI Aerial Imagery, San Bernardino County

AUTOZONE HESPERIA PROJECT
HABITAT AND JURISDICTIONAL ASSESSMENT

Jurisdictional Areas

Exhibit 6



AUTOZONE HESPERIA PROJECT
HABITAT AND JURISDICTIONAL ASSESSMENT

ELMT CONSULTING

0 1.25 2.5 5 Miles

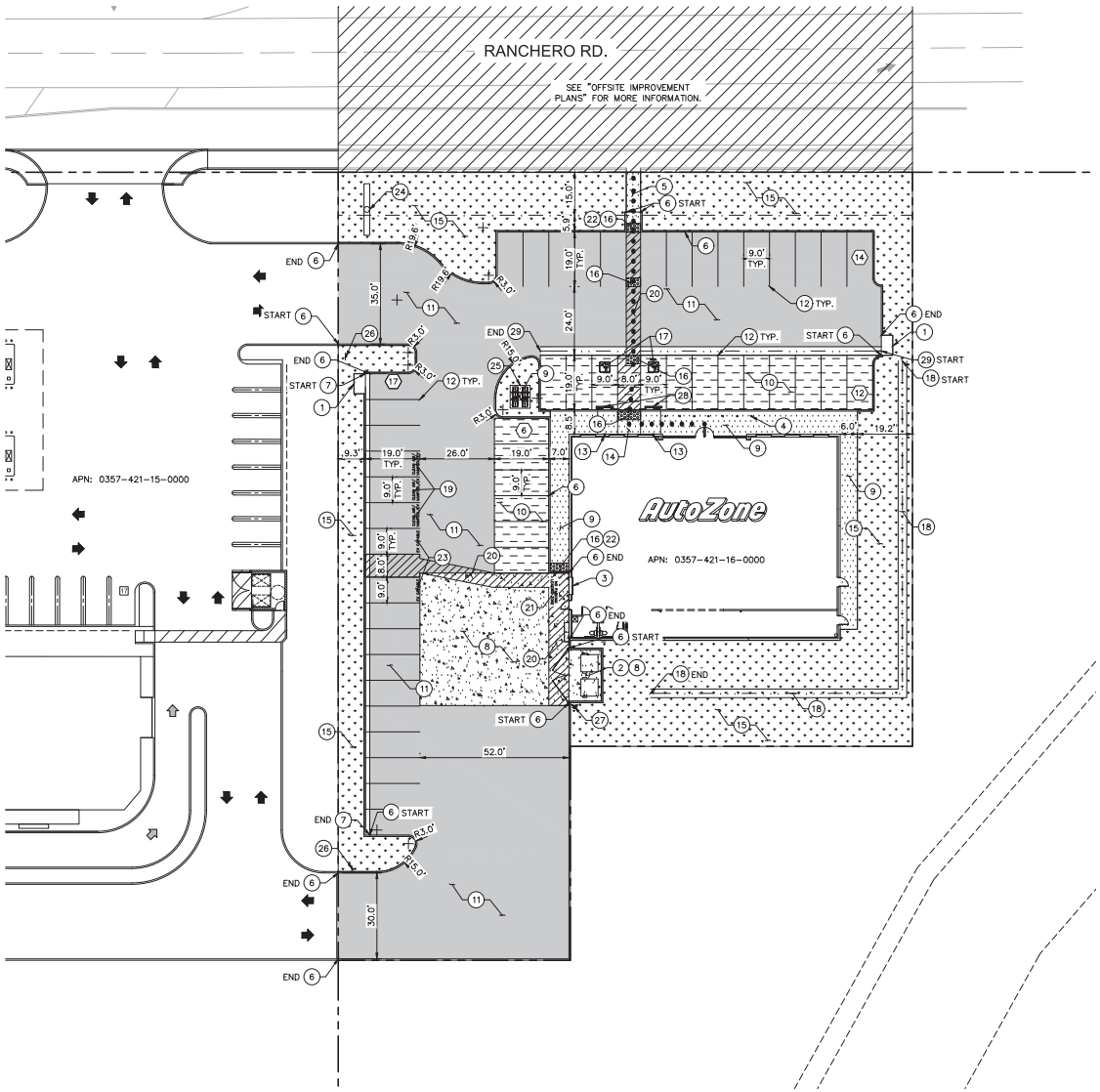
Source: ESRI Aerial Imagery, USFWS Critical Habitat, San Bernardino County

Critical Habitat

Exhibit 7

Attachment B

Site Plan



LEGEND

- PROPERTY LINE
- BUILDING SETBACK
- ACCESSIBLE ROUTE (LOCATION PURPOSES ONLY, DO NOT PAINT)
- ACCESSIBLE PARKING SPACE
- (X) NUMBER OF PARKING SPACES
- ASPHALT PAVING
- LANDSCAPING SEE CONCEPTUAL LANDSCAPE PLAN
- HEAVY DUTY CONCRETE PAVING
- LIGHT DUTY CONCRETE PAVING
- CONCRETE SIDEWALK
- OFFSITE IMPROVEMENTS

NOTE

1. CONSTRUCTION SHALL CONFORM TO THE CURRENT BUILDING CODES.
2. BUILDING WILL BE FIRE SPRINKLERED.

DATA SUMMARY

ADDRESS:	SEC OF RANCHERO ROAD & ESCONDIDO AVENUE
APN:	0357-421-15-0000 & 0357-421-16-0000
ZONING DISTRICT:	NEIGHBORHOOD COMMERCIAL (OH/CN)
FLOOD ZONE:	ZONE X – AREA OF MINIMAL FLOOD HAZARD

LEASE COVERAGE:

TOTAL SITE AREA:	46,204 S.F.	(1.06 AC)	100%
BUILDING AREA:	6,797 S.F.	(0.16 AC)	15.1%
IMPERVIOUS AREA:	26,270 S.F.	(0.60 AC)	55.7%
LANDSCAPE AREA:	13,137 S.F.	(0.30 AC)	29.2%
FLOOR AREA RATIO:			17.8%

PARKING/LANDSCAPE BUFFER:

FRONT:	25'
REAR:	10'
SIDE:	10'

PARKING SUMMARY

PARKING REQUIREMENTS: (6,797 S.F. * 1 STALL/250 S.F.) = 28 STALLS REQUIRED PER CITY CODE
ADA PARKING FOR 26-50 PARKING STALLS = 2 ADA PARKING STALLS REQUIRED PER CALIFORNIA BUILDING CODE

PARKING TABLE:	REQUIRED	PROVIDED
STANDARD	21	42
CLEAN AIR / VANPOOL / EV	3	3
EV CAPABLE	2	2
ACCESSIBLE	2	2
TOTAL:	28	49

KEY NOTES:

1. CURB OPENING CATCH BASIN – SEE GRADING AND DRAINAGE PLAN FOR MORE INFORMATION.
2. TRASH ENCLOSURE (8' X 15') – SEE ARCHITECTURAL PLANS FOR MORE INFORMATION.
3. SERVICE DOOR PLAN – SEE DETAIL 6 / SHEET 5.
4. BOLLARD PLAN – SEE DETAIL 18 / SHEET 5.
5. CONCRETE SIDEWALK – SEE DETAIL 2 & DETAIL 14 / SHEET 5 FOR SIDEWALK AROUND BUILDING. MAXIMUM SPACING FOR CONTROL JOINTS IS 15' O.C. EACH WAY.
6. CONCRETE CURB. HEIGHT PER PLAN – SEE DETAIL 1 / SHEET 5.
7. CONCRETE CURB AND GUTTER. HEIGHT PER PLAN – SEE DETAIL 20 / SHEET 5.
8. HEAVY DUTY CONCRETE – SEE DETAIL 2 / SHEET 5. CONCRETE JOINTS – SEE DETAIL 9 & DETAIL 10 / SHEET 5. SPACING FOR CONTROL JOINTS IS 15' O.C. EACH WAY.
9. CONCRETE HARDSCAPE – SEE DETAIL 13 / SHEET 5 FOR SIDEWALK AROUND BUILDING. MAXIMUM SPACING FOR CONTROL JOINTS IS 15' O.C. EACH WAY.
10. LIGHT DUTY CONCRETE – SEE DETAIL 2 / SHEET 5. CONCRETE JOINTS – SEE DETAIL 9 & DETAIL 10 / SHEET 5. SPACING FOR CONTROL JOINTS IS 15' O.C. EACH WAY.
11. ASPHALT PAVING – SEE DETAIL 3 / SHEET 5.
12. 4" WIDE PARKING STRIPE PAINTED WHITE (TYP.).
13. WALL MOUNTED ACCESSIBLE PARKING SIGN – SEE MODIFIED VERSION OF DETAIL 5 / SHEET 5. GC TO PROVIDE ONE VAN ACCESSIBLE STALL, LOCATION SHOWN ON PLANS.
14. PARALLEL ACCESSIBLE RAMP – SEE DETAIL 15 / SHEET 5 – MAXIMUM LONGITUDINAL SLOPE 1:12 (8.33%), MAXIMUM CROSS SLOPE 1:50 (2.00%).
15. NEW LANDSCAPE AREA – SEE LANDSCAPE PLANS FOR MORE INFORMATION.
16. CAST-IN-PLACE TRUNCATED DOMES – SEE DETAIL 12 / SHEET 5.
17. PAINTED ACCESSIBLE PARKING STALL – SEE DETAIL 4 / SHEET 5.
18. PROPOSED VEGETATED SWALE – SEE DETAIL 17 / SHEET 5.
19. PARKING STALLS DESIGNATED FOR COMBINATION OF LOW EMITTING, FUEL-EFFICIENCY AND CARPOOL/VAN POOL VEHICLES. PAINT, IN PAINT USED FOR STALL STRIPING, THE FOLLOWING CHARACTERS SUCH THAT THE LOWER EDGE OF THE LAST WORD ALIGNS WITH THE END OF THE STALL STRIPING: CLEAN AIR/VANPOOL/EV.
20. STRIPE ACCESSIBLE PATH-OF-TRAVEL – SEE DETAIL 16 / SHEET 5.
21. PAINT, IN PAINT USED FOR STALL STRIPING, THE FOLLOWING CHARACTERS SUCH THAT THE PAINT STRIPING IS CENTERED WITHIN THE STRIPED LOADING ZONE: NO PARKING LOADING ZONE.
22. IN-LINE ACCESSIBLE RAMP – SEE DETAIL 15 / SHEET 5 MAXIMUM SLOPE 1:12 (8.33%), CROSS SLOPE 1:50 (2.00%).
23. PARKING STALLS DESIGNATED FOR COMBINATION OF EV CAPABLE VEHICLES. SHOWN FOR REFERENCE ONLY.
24. ROAD SIGN – REFER TO ARCHITECTURAL PLANS FOR MORE INFORMATION.
25. BIKE RACK – SEE DETAIL 7 / SHEET 5.
26. INSTALL UNAUTHORIZED VEHICLE ACCESS SIGN AND POST – SEE DETAIL 5 AND 19, SHEET 5.
27. FREEZELESS YARD HYDRANT – SEE MEP PLANS FOR ADDITIONAL INFORMATION.
28. PROPOSED WHEELSTOPS.
29. PROPOSE VALLEY GUTTER – SEE DETAIL 21 / SHEET 5.

NORTH

GRAPHIC SCALE IN FEET
0 10 20 40

SCALE: 1" = 20'
WHEN PRINTED AT FULL SIZE 24"X36"

Underground Service Alert
Call: TOLL FREE
1-800
422-4133
TWO WORKING DAYS BEFORE YOU DIG

NOT FOR CONSTRUCTION

Kimley»Horn
© 2020 KIMLEY-HORN AND ASSOCIATES, INC.
765 THE CITY DRIVE, SUITE 200,
ORANGE, CA 92868
PHONE: 714-939-1030 FAX: 714-938-9488
WWW.KIMLEY-HORN.COM

MARK	REVISIONS	BY	APPR.	DATE

BENCH MARK:

APPROVED _____ 2020

SENIOR CIVIL ENGINEER _____
REGISTERED CIVIL ENGINEER NO. _____

DRAWN BY: TK
CHECKED BY: JSG
RECOMMENDED BY: JSG

FOR CITY USE ONLY: FILE NO. W.O. NO.

CITY OF OAKS HILLS
COUNTY OF SAN BERNARDINO - SPECIAL DISTRICTS

STORE #3658
STREET: RANCHERO ROAD AND ESCONDIDO AVENUE
CITY, STATE: OAK HILLS, CA 92344

SITE PLAN

DRAWING NO.

SHEET 4 OF 13 SHEETS

Attachment C

Site Photographs

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

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

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

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

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

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

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

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

Photograph 9: The first and second of the three western Joshua trees supported by the project site.

Photograph 10: The third of three western Joshua trees supported by the project site.

Attachment D

Potentially Occurring Special-Status Plant Species

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

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
SPECIAL-STATUS WILDLIFE SPECIES				
Accipiter cooperii Cooper's hawk	Fed: None CA: WL	Generally found in forested areas up to 3,000 feet in elevation, especially near edges and rivers. Prefers hardwood stands and mature forests, but can be found in urban and suburban areas where there are tall trees for nesting. Common in open areas during nesting season.	No	**High** Suitable foraging habitat is present within and surrounding the project site. No nesting opportunities are present. This species is adapted to urban environments and occurs commonly.
Antrozous pallidus pallid bat	Fed: None CA: SSC	Locally common species of low elevation in California. Occurs in grasslands, shrublands, woodlands, and forests from sea level up through mixed conifer forests. Most common in open, dry habitats with rocky areas for roosting.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Artemisiospiza belli belli Bell's sage sparrow	Fed: None CA: WL	Occurs in chaparral dominated by fairly dense stands of chamise. Also found in coastal sage scrub in south of range.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Asio otus long-eared owl	Fed: None CA: SSC	Uncommon yearlong resident throughout the state except the Central Valley and Southern California deserts where it is an uncommon winter visitor. Requires riparian habitat and uses live oak thickets and other dense stands of trees.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Athene cunicularia burrowing owl	Fed: None CA: SSC	Prefers habitat with short, sparse vegetation with few shrubs and well-drained soils in grassland, shrub steppe, and desert habitats. Primarily a grassland species, but it persists and even thrives in some landscapes highly altered by human activity. Occurs in open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. The overriding characteristics of suitable habitat appear to be burrows for roosting and nesting and relatively short vegetation with only sparse shrubs and taller vegetation.	No	**Presumed Absent** The project site does not readily provide line-of-sight opportunities favored by burrowing owl. No suitable burrows (>4 inches) were observed during the field investigation.
Calypte costae Costa's hummingbird	Fed: None CA: None	Desert and semi-desert, arid brushy foothills and chaparral. A desert hummingbird that breeds in the Sonoran and Mojave Deserts. Departs desert heat moving into chaparral, scrub, and woodland habitats.	No	**High** Suitable foraging habitat is present within and surrounding the project site. No nesting opportunities are present. This species is adapted to urban environments and occurs commonly.
Dipodomys panamintus panamintus Panamint kangaroo rat	Fed: None CA: None	Desert flats among Joshua trees, creosote bush scrub and pinyon-juniper woodland; also big sagebrush in west-central Nevada. Soil may be coarse sand, gravelly, alkaline, or crusty and impregnated with salts; avoids vicinity of cliffs and areas with desert pavement. When inactive, occupies burrow in mound at base of shrub.		**Presumed Absent** There is no suitable habitat within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Empidonax traillii willow flycatcher	Fed: None CA: **END**	A rare to locally uncommon, summer resident in wet meadow and montane riparian habitats (2,000 to 8,000 ft) in the Sierra Nevada and Cascade Range. Most often occurs in broad, open river valleys or large mountain meadows with lush growth of shrubby willows.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Eremophila alpestris actia California horned lark	Fed: None CA: WL	Occurs in meadows, grasslands, open fields, prairie, and alkali flats. This subspecies is typically found in coastal regions.	No	**Low** Suitable foraging habitat is present within and surrounding the project site. No nesting opportunities are present.
Gopherus agassizii desert tortoise	Fed: **THR** CA: **THR**	Widely distributed in the Mojave, Sonoran and Colorado deserts from below sea level to 7,220 feet. Most common in desert scrub, desert wash, and Joshua tree habitats, but occurs in almost every desert habitat except those on the most precipitous slopes.	No	**Presumed Absent** Limits habitat is present within and surrounding the project site. However, the site is thoroughly isolated from large swathes of suitable habitat. No suitable burrows, live tortoises, or signs were observed.
Lanius ludovicianus loggerhead shrike	Fed: None CA: SSC	Often found in broken woodlands, shrublands, and other habitats. Prefers open country with scattered perches for hunting and fairly dense brush for nesting.	No	**Moderate** Suitable foraging habitat is present within and surrounding the project site. Suitable nesting opportunities may be present to the east.
Lepus californicus bennettii San Diego black-tailed jackrabbit	Fed: None CA: None	Occurs in diverse habitats, but primarily is found in arid regions supporting shortgrass habitats. Openness of open scrub habitat is preferred over dense habitats.	No	**Low** Black-tailed jackrabbit was observed during the field investigation, but distinction of subspecies could not be made. The project site is located outside of the currently understood geographic range of this subspecies.
Microtus californicus mohavensis Mohave river vole	Fed: None CA: SSC	Found in moist habitats including meadows, freshwater marshes and irrigated pastures in the vicinity of the Mojave River. Suitable habitat it associated with ponds and irrigation canals along with the Mojave River proper. Alfalfa fields may also provide habitat.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Phrynosoma blainvillii coast horned lizard	Fed: None CA: SSC	Found in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. The key elements of such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense shrubs for refuge.	No	**Low** Limited habitat is present within the project site. More suitable habitat is present to the east.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Setophaga petechia yellow warbler	Fed: None CA: SSC	Nests over all of California except the Central Valley, the Mojave Desert region, and high altitudes and the eastern side of the Sierra Nevada. Winters along the Colorado River and in parts of Imperial and Riverside Counties. Nests in riparian areas dominated by willows, cottonwoods, sycamores, or alders or in mature chaparral. May also use oaks, conifers, and urban areas near stream courses.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Siphateles bicolor mohavensis Mojave tui chub	Fed: **END** CA: **END**; FP	Historically occurred throughout the Mojave River drainage. Only surviving natural populations occurs in Soda Spring at the Desert Studies Center near the town of Baker, Lark Seep on the China Lake Naval Weapons Center, Camp Cady, and at the Lewis Center for Educational Research in Apple Valley.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Spinus lawrencei Lawrence's goldfinch	Fed: None CA: None	Typical habitats include valley foothill hardwood, valley foothill hardwood-conifer, and, in southern California, desert riparian, palm oasis, pinyon-juniper, and lower montane habitats. Nearby herbaceous habitats often used for feeding. Open woodlands, chaparral, and weedy fields. Closely associated with oaks. Nests in open oak or other arid woodland and chaparral near water.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Taxidea taxus American badger	Fed: None CA: SSC	Primarily occupy grasslands, parklands, farms, tallgrass and shortgrass prairies, meadows, shrub-steppe communities and other treeless areas with sandy loam soils where it can dig more easily for its prey. Occasionally found in open chaparral (with less than 50% plant cover) and riparian zones.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Toxostoma lecontei LeConte's thrasher	Fed: None CA: SSC	An uncommon to rare, local resident in southern California deserts from southern Mono Co. south to the Mexican border, and in western and southern San Joaquin Valley. Occurs primarily in open desert wash, desert scrub, alkali desert scrub, and desert succulent shrub habitats; also occurs in Joshua tree habitat with scattered shrubs.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Vireo vicinior gray vireo	Fed: None CA: SSC	A common factor to the habitat type is shrub cover that forms a continuous zone of twig growth from one to five feet above the ground. Shrubbery may either be closed as in chaparral, or partly open, as in the understory of pinyon-juniper woodland.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Xerospermophilus mohavensis Mojave ground squirrel	Fed: None CA: **THR**	Restricted to the Mojave Desert in open desert scrub, alkali desert scrub, annual grassland, and Joshua tree woodland. Prefers sandy to gravelly soils and tends to avoid rocky areas. Occurs sympatrically with the white-tailed antelope squirrel.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
SPECIAL-STATUS PLANT SPECIES				
Canbya candida white pygmy-poppy	Fed: None CA: None CNPS: 4.2	Occurs on gravelly, sandy, granitic soils in Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland. Found at elevations ranging from 2,297 to 5,249 feet. Blooming period is from March to June.	No	**Low** The project site occurs outside of the known elevation range for this species.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Castilleja plagiotoma Mojave paintbrush	Fed: None CA: None CNPS: 4.3	Found in Great Basin Scrub (alluvial), Joshua tree woodland, lower montane coniferous forest, and pinyon and juniper woodland habitats. Blooming period is from April to June. Grows in elevation from 984 to 8,202 feet.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Chorizanthe spinosa Mojave spineflower	Fed: None CA: None CNPS: 4.2	Grows in alkaline or non-alkaline soils in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, and playas. Blooming period is from March to July. Grows in elevation from 20 to 4,265 feet.	No	**Presumed Absent** The project site occurs outside of the known elevational range for this species.
Eremothera boothii* ssp. *boothii Booth's evening primrose	Fed: None CA: None CNPS: 2B.3	Occurs in desert washes, open plains, and scrubland. Found at elevations ranging from 814 to 2,402 feet above msl. Blooming period is from June to August.	No	**Presumed Absent** The project site occurs outside of the known elevational range for this species.
Johnstonella costata ribbed cryptantha	Fed: None CA: None CNPS: 4.3	Occurs in sandy soils within desert dunes and Mojavean and Sonoran desert scrub. Found at elevations ranging from -197 to 1,640 feet. Blooming period is from February to May.	No	**Presumed Absent** The project site occurs outside of the known elevational range for this species.
Loeflingia squarrosa* var. *artemisiarum sagebrush loeflingia	Fed: None CA: None CNPS: 2B.2	Grows in sandy soils within desert dunes, Great Basin scrub, and Sonoran desert scrub habitats. Blooming period is from April to May. Grows in elevation from 2,297 to 5,299 feet.	No	**Presumed Absent** The project site occurs outside of the known elevational range for this species.
Muilla coronata crowned muilla	Fed: None CA: None CNPS: 4.2	Found in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland habitats. Blooming period is from May to April. Grows in elevation from 2,198 to 6,430 feet.	No	**Presumed Absent** The project site occurs outside of the known elevational range for this species.
Opuntia basilaris* var. *brachyclada short-joint beavertail	Fed: None CA: None CNPS: 1B.2	Occurs in chaparral, Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodlands. Found at elevations ranging from 1,394 to 5,905 feet. Blooming period typically ranges from April to June, occasionally extending through August.	No	**Presumed Absent** The project site occurs outside of the known elevational range for this species.
Saltugilia latimeri Latimer's woodland-gilia	Fed: None CA: None CNPS: 1B.2	Occurs in chaparral, Mojavean desert scrub, and pinyon and juniper woodland habitats. Blooming period is from March to June. Grows in elevation from 2,625 to 5,710 feet.	No	**Presumed Absent** The project site occurs outside of the known elevational range for this species.
Yucca brevifolia western Joshua tree	Fed: None CA: CE CNPS: N/A	Occurs in a variety of arid habitats within the Mojave Desert. Found at elevations ranging from 1,600 to 6,600 feet. Blooming period is from March to June.	Yes	**Present** Limited habitat is present within the project site. Three western Joshua trees were observed on-site.

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

California Department of Fish and Wildlife (CDFW) - California
END - State Endangered
CEND - State Candidate Endangered
SSC - Species of Special Concern
WL - Watch List
FP - Fully Protected

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

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

4 Plants of Limited Distribution – A Watch List

Attachment E

Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

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

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

State Regulations

California Environmental Quality Act (CEQA)

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

California Endangered Species Act (CESA)

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

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

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

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

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

Fish and Game Code

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

Native Plant Protection Act

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

California Native Plant Society Rare and Endangered Plant Species

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

California Rare Plant Rank

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

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

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

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

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

4- Plants of Limited Distribution - A Watch List

Threat Ranks

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

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

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

Local Policies

San Bernardino County Development Code

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

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

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

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

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

3) Creosote Rings, 10 feet or greater in diameter

4) All Joshua trees

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

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

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

Federal Regulations

Section 404 of the Clean Water Act

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

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

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

(iii) The territorial seas.

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

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

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

---

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

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

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

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

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

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

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

(ii) Prior converted cropland.

(iii) The following ditches:

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

(iv) The following features:

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

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

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

Section 401 of the Clean Water Act

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

State Regulations

Fish and Game Code

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

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

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

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

Porter Cologne Act

The California *Porter-Cologne Water Quality Control Act* gives the State very broad authority to regulate waters of the State, which are defined as any surface water or groundwater, including saline waters. The Porter-Cologne Act has become an important tool in the post SWANCC and Rapanos regulatory environment, with respect to the state's authority over isolated and insignificant waters. Generally, any

person proposing to discharge waste into a water body that could affect its water quality must file a Report of Waste Discharge in the event that there is no Section 404/401 nexus. Although "waste" is partially defined as any waste substance associated with human habitation, the Regional Board also interprets this to include fill discharged into water bodies.