APPENDIX 2

TWENTYNINE PALMS YURT CAMPGROUND

SAN BERNARDINO COUNTY, CALIFORNIA
(Assessor Parcel Number 0609-121-14, and -15, Totaling 10 acres)

BIOLOGICAL RESOURCES ASSESSMENT

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March 2023

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BIOLOGICAL RESOURCES ASSESSMENT

The undersigned certify that the statements furnished in this report and exhibits present data and information required for this biological evaluation, and the facts, statements, and information presented is a complete and accurate account of the findings and conclusions to the best of our knowledge and beliefs.

Travis J. McGill
Director/Biologist

Thomas J. McGill, Ph.D.
Managing Director

March 2023

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EXHIBITS

APPENDIX

Section 1 Introduction

This report contains the findings of ELMT Consulting's (ELMT) habitat assessment for Yurt Campground Project (Project) located at 68282 Mesa Drive, in Twentynine Palms, San Bernardino County, California. The project site lies within APN 0609-121-14 and -15 and encompasses 10 acres. ELMT biologist Jacob H. Lloyd Davies conducted a field survey and evaluated the condition of the habitat within the project site and surrounding areas (survey area) on December 15, 2022.

The habitat assessment was conducted to characterize existing site conditions and to assess the probability of occurrence of special-status[1] plant and wildlife species that could pose a constraint to project implementation. This report provides an in-depth assessment of the suitability of the on-site habitat to support special status wildlife species, in particular desert tortoise (*Gopherus agassizii*) and burrowing owl (*Athene cunicularia*) as well as other special-status plant identified by the California Natural Diversity Data Base (CNDDB), the California Native Plant Society's (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California, as well as other electronic databases to identify species with the potential for occurring in the vicinity of the Project site.

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

1.1 PROJECT LOCATION

The project site is generally located north of State Route 62, east of State Route 247, southeast of the Bullion Mountains, and west of Cleghorn Lakes Wilderness Area in the City of Twentynine Palms, San Bernardino County, California (Exhibit 1, *Regional Vicinity*). The project site is depicted on the Sunfair quadrangle of the United States Geological Survey's (USGS) 7.5-minute topographic map series within Section 8 of Township 1 North, Range 8 East (Exhibit 2, *Site Vicinity*). Specifically, the site is bounded to the south by Mesa Drive, to the west by Lori Lane, lies to the south of Michael Way, and west of Los Olivos Avenue in the City of Twentynine Palms, California within Assessor Parcel Number (APNs) 0609-121-14 and -15 (Exhibit 3, *Project Site*).

1.2 PROJECT DESCRIPTION

The proposed development and expansion of the 28 Palms Ranch Campsite Project would transform the 10-acre project site into a glamping campground site (Refer to Appendix A, *Site Plan*). The existing portion

[1] As used in this report, "special-status" refers to plant and wildlife species that are federally or State listed, proposed, or candidates; plant species that have been designated a California Native Plant Society (CNPS) Rare Plant Rank; and wildlife species that are designated by the California Department of Fish and Wildlife (CDFW) as fully protected, species of special concern, or watch list species.

of the project has been operating without an approved Conditional Use Permit (CUP). As a result, the Applicant has been advised and directed by the County to cease all further expansion of the project until CEQA clearance is obtained and is approved under the Conditional Use Permit. Once the CUP is approved, the project would be required to adhere to all mitigation in the CEQA Mitigation Monitoring Response Plan (MMRP) and Conditions of Approval from all County Departments as codified in the CUP.

The project proposes to utilize the existing infrastructure and the 6 existing Yurts on the easterly parcel of the project site, and would install some new infrastructure in support of these existing Yurts, including connecting the existing Yurts to the new septic systems. However, the majority of the infrastructure (water connections, septic system connections, and electrical connections) that will be installed as part of the project would support the proposed installation of 2 new Yurts and utilization of the 3 existing Yurts on the westerly parcel. Each of the existing and new Yurts would be Authentic Mongolian Yurts made in Mongolia. The Yurts are structurally engineered to withstand the harsh Mongolian climate with certified blueprints including wind and snow load (refer to Figure 5 for the Manufacturer's Mongolian Yurt Specifications).

The proposed project would retain the two single-family homes that exist within the two parcels, with the Applicant, who also serves as the site caretaker and property manager, to reside in the easterly single-family residence within the site. The Applicant will retain the westerly single-family residence as living quarters for family, but may transition the single-family residence to a long-term rental in the future. No pets would be allowed at the westerly single-family residence because it will remain unfenced.

Upon project build-out, each of the 11 Yurts would be about 19' in diameter, and about 7'6" in height and would be installed on the ground, requiring no mass grading to enable each new Yurt installation. When completed, the proposed project will consist of 11 Mongolian Yurts with full camping accommodation provided for each Yurt. The accommodations include barbecues, covered picnic tables, outdoor showers, restrooms, and open fire pits. Each Yurt accommodation would include outdoor showers with insulated plumbing to protect against freezing temperatures in the winter months, in addition to indoor restroom/toilet facilities for each Yurt. The project would require installation of each of these amenities in conjunction with each of the 5 Yurts on the westerly parcel, while the existing 6 Yurts on the easterly parcel are presently outfitted with these amenities and brought up to County standards. All Yurts either have at present, or will have smoke/carbon monoxide detectors and will be equipped with fire extinguishers. The existing 6 Yurts on the easterly parcel will provide a maximum of two parking spaces, with each of the 5 Yurts on the westerly parcel to provide a maximum two parking spaces in support of future guests of the property.

The total number of parking spaces provided for guests to accommodate all visitor needs is 2 spaces per Yurt (22 required parking spaces), which is currently accounted for plus overflow parking as the project provides 2 parking spaces for each Yurt in addition to 10 additional overflow parking spaces. Thus, the proposed project would ultimately provide 32 parking spaces in total. Parking for the easterly single-family residence is provided at the southeastern corner of the site adjacent to the residence, while parking for the westerly single-family residence is provided just west of the central site entrance along Mesa Drive, shown on Figure 6, the site plan.

Ingress and egress from the site is provided along Mesa Drive and a new entrance will be provided along Lori Lane. Site access would be clearly marked and illuminated with solar lights for evening use and for the internal onsite accessible roadways.

Most of the electrical needs on the easterly parcel, including the single-family residence and the 6 existing Yurts, are met with onsite solar production, however the whole of the project site has an existing connection to Southern California Edison's (SCE) existing electrical distribution system. The project may or may not install additional solar panels in the future to meet the needs of the existing and new Yurts on the westerly parcel proposed as part of this project. Regardless, new internal electrical connections from SCE and/or from additional solar panel installation will be required to support the overall project's electrical needs at build-out.

Restroom facilities at 6 of the existing Yurts on the easterly parcel would utilize aboveground biogas generators to dispose of waste and food products; however, the proposed project would include the transition from this wastewater disposal method to septic systems for the 11 total Yurts ultimately proposed within the whole of the project site. Thus, the proposed project would install 4 onsite septic systems to meet County sewage disposal requirements, shown on Figure 7. The site currently contains 2 existing septic tank systems in support of the easterly primary residence and the westerly single-family residence. The existing septic systems will remain in place and will not be modified as part of the proposed project. Overall, each new septic tank system will accommodate 2-3 Yurts, and it is anticipated that 4 new septic systems would be developed in support of the proposed project. These systems will be capable of handling about 900 gallons of waste per day or about 300 gallons per Yurt per day and will be developed in accordance with 2019 California Plumbing Code (Part 5, Title 24, California Code of Regulations) standards, which sets parameters for private sewage disposal, and in compliance with the San Bernardino County Development Code, Article 6. These systems have been sized to accommodate greater waste than is anticipated to be generated by each Yurt per day.

The site is served with water service by the City of Twentynine Palms and electrical service by SCE. The existing single-family residence on the westerly parcel is served by a pre-existing water and electrical connections. The electrical and water connections will be extended in support of the 5 Yurts on the westerly parcel, as shown on Figure 8 (water connections) and Figure 9 (electrical connections). Thus, new internal water distribution and electrical connections will be required in support of the 5 westerly Yurts. This effort will require some trenching, but existing utility connections will also be utilized. All waterline and electric connections for the eastern parcel are pre-existing that connect to the existing Yurts and the existing single-family residence.

Construction

Project construction will begin with clearing and grubbing the sites for the individual Yurts, in addition to the areas that will provide access to the new Yurts. This activity will consist of removing the vegetation from the areas that will eventually support the 2 new Yurts, the 4 new septic systems, and the site access road areas. There will be no mass grading required to facilitate the installation of the proposed Yurts. An estimated 2-3 workers will complete this phase of site preparation for a period of about 1-2 weeks. In addition to the clearing and grubbing described above, site development will include the installation of the 4 septic tanks to meet County requirements for onsite wastewater management. The 4 septic systems would

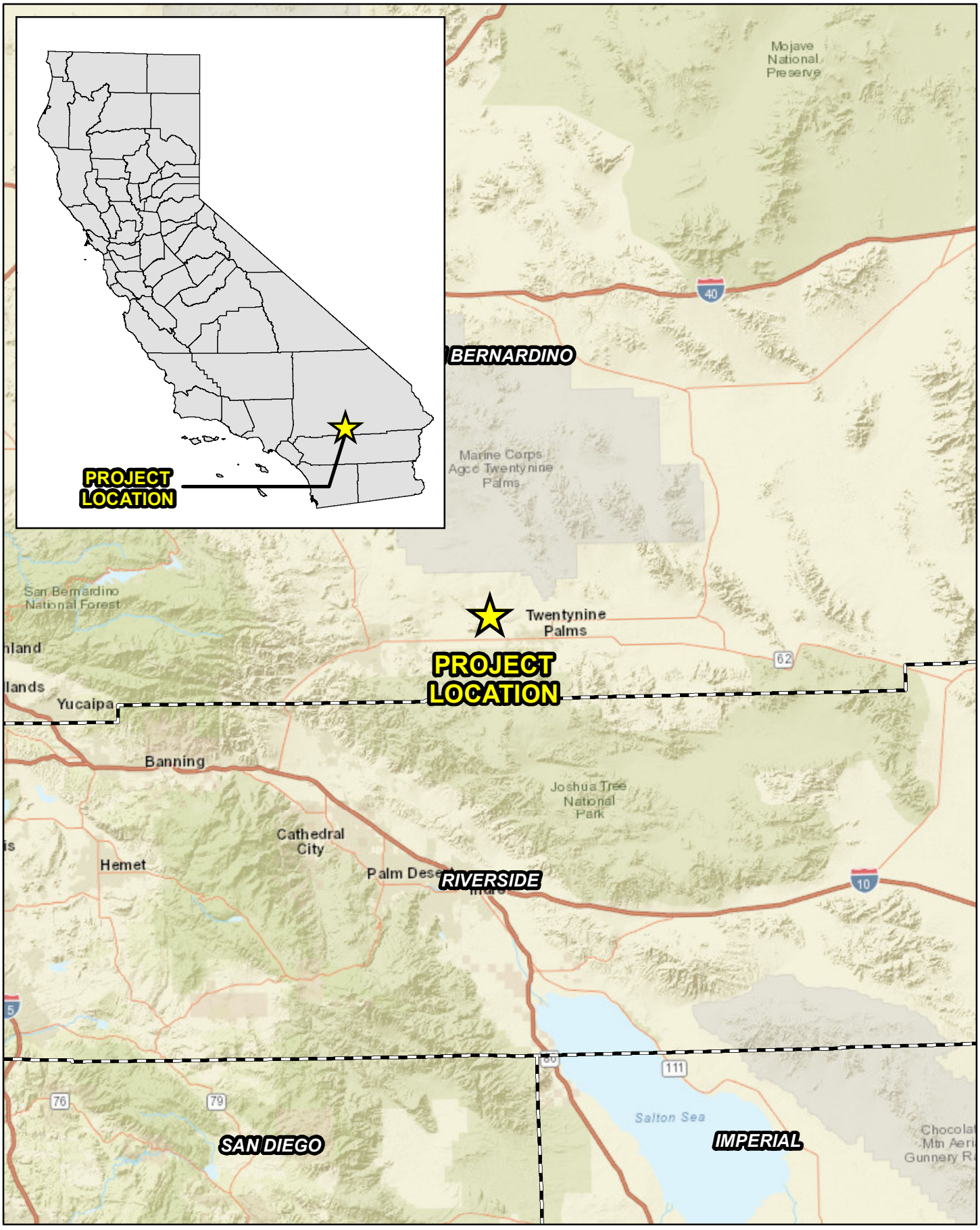
be installed at various points within the whole of the project site to support the 11 total Yurts onsite. The existing waterline and electrical system will be extended within the westerly parcel in support of the 5 Yurts on this portion of the site through trenching, no greater than 2-3 feet in depth. These utilities (electrical, water, and septic system connections) will require a backhoe and 2-3 workers for a period of 2-3 weeks. Construction equipment utilized for the above activities includes a small tractor, a small trencher, and a backhoe.

The internal roadways would be installed through surface grading with a small tractor to enable the continuation of internal access roads from the easterly parcel to the westerly parcel. During this effort, vegetation will be avoided to the extent feasible to maintain the native landscape within the site. It is anticipated that this effort will require 1-2 weeks with 1 worker to complete. The 2 new Yurts will be assembled/installed onsite over a period concurrent with other construction activities over a period of about 1 week by 1-2 workers. Appropriate living equipment and furniture will be installed in each of the 2 new Yurts. Desert-appropriate landscaping will be installed throughout the whole of the site, including shrubs and other plants. No asphalt or paving is proposed, and access roads and parking areas will be surface graded, and if fugitive dust is observed, access roads will be covered with rock, sprayed with water, or utilize other means of minimization. This is required to manage fugitive dust as a result of the fine particulate matter (PM-10) non-attainment status of the Mojave Desert area, which therefore requires that Best Available Control Measures (BACMs) be used to comply with the Mojave Desert Air Quality Management District (MDAQMD) Rule 403.

Design and construction of the project is anticipated to be begin at the beginning May of 2023 completed by June of 2023.

Operation

The applicant intends to be fully operational as the proposed 28 Palms Ranch Campsite by June of 2023. The facility will be open daily for guests. A property manager will be available onsite 24-hours and will handle daily operations and units will be visited daily for cleaning and maintenance. Check-In for guests arriving at the Campsite is 3:00 PM and Check-Out for guests departing from the Campsite is 11:00 AM. Guest activities will be required to be reduced for quite time at 10 PM each evening. The property manager enforces this requirement to ensure compliance with San Bernardino County Code Section 83.01.080, which pertains to noise reduction compliance. A maximum occupancy of 48 guests will be allowed at the 28 Palms Ranch Campsite. The project would support a total of 3 full-time employees, with 1 part-time employee that would be utilized on an as needed basis for maintenance and landscaping purposes.



TWENTYNINE PALMS YURT CAMPGROUND
BIOLOGICAL RESOURCES ASSESSMENT

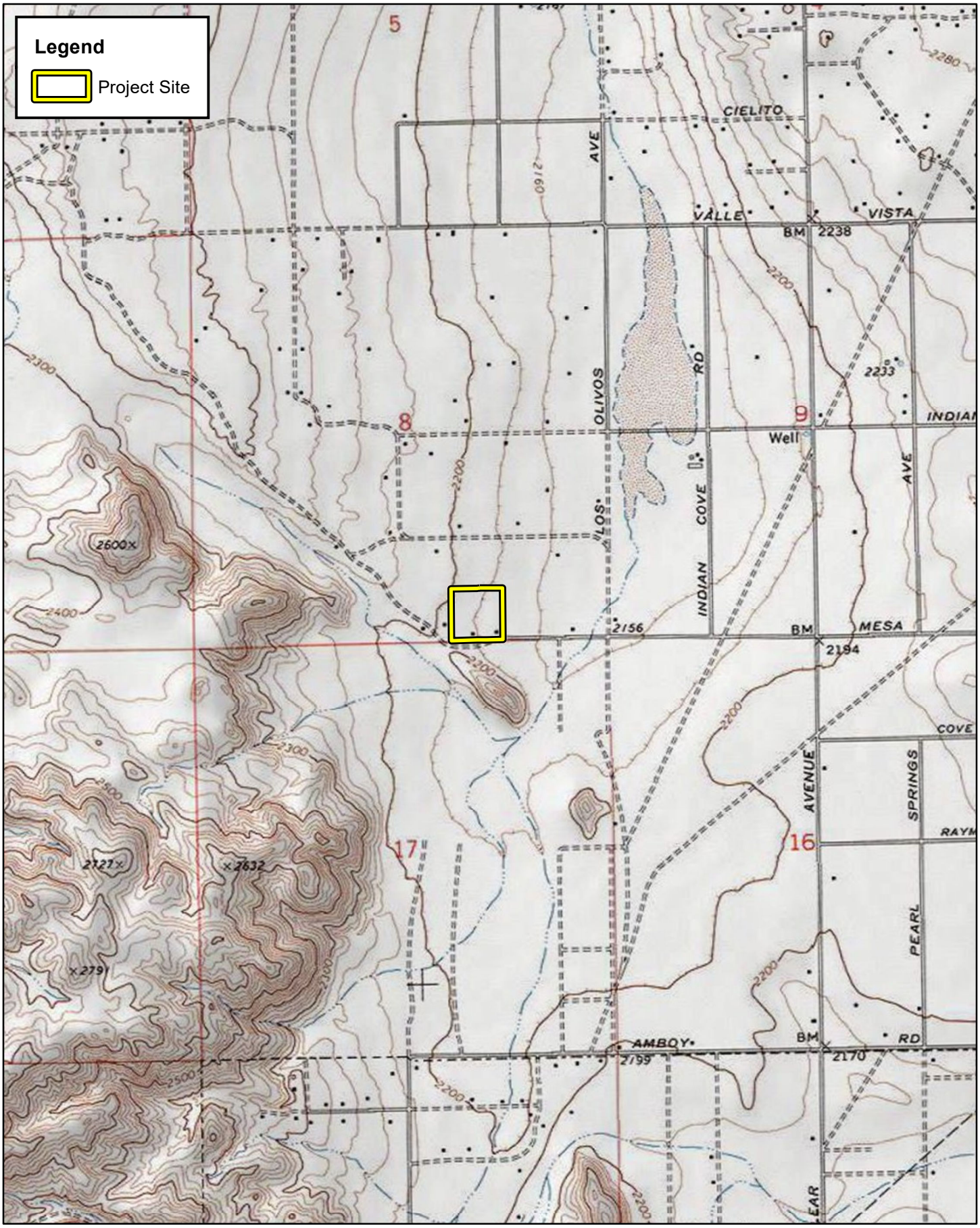
Regional Vicinity

ELMT CONSULTING

0 2.5 5 10
Miles

Source: World Street Map, San Bernardino County

Exhibit 1



TWENTYNINE PALMS YURT CAMPGROUND
BIOLOGICAL RESOURCES ASSESSMENT

Site Vicinity

ELMT CONSULTING

0 500 1,000 2,000 Feet

Source: USA Topographic Map, San Bernardino County

Exhibit 2

TWENTYNINE PALMS YURT CAMPGROUND
BIOLOGICAL RESOURCES ASSESSMENT

Project Site

ELMT CONSULTING

0 62.5 125 250 Feet

Source: ESRI Aerial Imagery, San Bernardino County

Exhibit 3

Section 2 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. The field investigation was conducted to document existing conditions within the project site and assess the potential for special-status biological resources to occur.

2.1 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 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 on 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 (1985-2021);
- San Bernardino County General Plan;
- 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 National Wetlands Inventory (NWI).

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

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

2.2 FIELD INVESTIGATION

ELMT biologist Jacob H. Llyod Davies evaluated the extent and conditions of the plant communities found within the boundaries of the project site on December 15, 2022. Plant communities identified on aerial photographs during the literature review were verified in the field by walking meandering transects through the on-site plant communities and along boundaries between plant communities. The plant communities were evaluated for their potential to support special-status plant and wildlife species. In addition, field staff identified any natural corridors and linkages that may support the movement of wildlife through the area. Special attention was given to special-status habitats and/or undeveloped areas, which have higher potentials to support special-status plant and wildlife species.

All plant and wildlife species observed, as well as dominant plant species within each plant community, were recorded. Wildlife detections were made through observation of scat, trails, tracks, burrows, nests, and/or visual and aural observation. In addition, site characteristics such as soil condition, topography, hydrology, anthropogenic disturbances, indicator species, condition of on-site plant communities, and presence of potential jurisdictional drainage and/or wetland features were noted.

2.3 SOIL SERIES ASSESSMENT

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

2.4 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), CDFW (2010) and Holland (1986), delineated on an aerial photograph, and then digitized into ArcGIS. The ArcGIS application was used to compute the area of each plant community in acres.

2.5 PLANTS

Common plant species observed during the field survey 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).

2.6 WILDLIFE

Wildlife species detected during field surveys by sight, calls, tracks, scat, or other sign were recorded during surveys in a field notebook. Field guides were 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 fairly well standardized, scientific names are provided immediately following common names in this report (first reference only).

2.7 JURISDICTIONAL DRAINAGES AND WETLANDS

The project site was also evaluated for the presence of jurisdictional waters of the United States, waters of the State, and/or jurisdictional streambed. Prior to the field visit, aerial photographs of the site were viewed and compared with the surrounding USGS 7.5-minute topographic quadrangle maps to identify drainage features within the survey area as indicated from topographic changes, blue-line features, or visible drainage patterns. The EPA Water Program "My Waters" data layer was also reviewed to determine whether any hydrologic features had been documented within the vicinity of the site. Similarly, the USDA NRCS soil maps for San Bernardino County were used to identify the soil series in the area and to check these soils to determine whether they are regionally identified as hydric soils. The biologists carefully assessed the site for depressions, inundation, presence of hydrophytic vegetation, staining, cracked soil, ponding, and indicators of active surface flow and corresponding physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris. Suspected jurisdictional areas were checked for the presence of definable channels, soils, and hydrology.

Section 3 Existing Conditions

3.1 LOCAL CLIMATE

The Mojave Desert is found at elevations of 2,000 to 5,000 feet above mean sea level and is characterized by cool winter temperatures and warm summer temperatures, with its rainfall occurring almost entirely in the winter. Climatological data obtained for the nearby City of Twentynine Palms indicates the annual precipitation averages 4.46 inches per year. Almost all of the precipitation in the form of rain occurs in the months between July and April, with hardly any occurring between the months of May and June. The wettest month is August, with a monthly average total precipitation of 0.80 inches. The average minimum and maximum temperatures for the region are 39.7 and 102.7 degrees Fahrenheit (°F) respectively with December and January (monthly average 50.5° F) being the coldest months and July being the hottest (monthly average 89.4° F). Temperatures during the site visit were in the mid-50s (° F).

3.2 TOPOGRAPHY AND SOILS

On-site surface elevation ranges from approximately 2,172 to 2,193 feet above mean sea level. Topography on-site generally consists of shallow gently sloping hills and flat areas generally sloping south to north. Based on the NRCS USDA Web Soil Survey, the soils underlying the project site have not been mapped. However, soils in the greater area are underlain by a Dune land-Cajon complex. The majority of soils within the survey area are relatively undisturbed, with the exception of those associated with unpaved trails and existing development.

3.3 SURROUNDING LAND USES

The project site is located in a primarily undeveloped area, approximately 6.93 miles northwest of central Twentynine Palms and 18.29 miles southwest of the Bullion Mountains. Notable developments near the project site include a solar farm approximately 0.38 miles to the southeast, and Copper Mountain College approximately 3.84 miles to the southwest. Additionally, rural residential structures and associated development are scattered throughout the general area.

Section 4 Discussion

4.1 SITE CONDITIONS

The survey area supports a mixture of undeveloped, developed, and disturbed land. According to historic aerials the southern portion of the site has supported minimal development since at least 1994, and scattered development has expanded throughout the site since at least 2009. Refer to Appendix B, *Site Photographs*.

4.2 VEGETATION

During the field investigation one (1) plant community was observed within the boundary of the project site: creosote bush scrub (Exhibit 4, *Vegetation*). In addition, the site supports two (2) land cover types that would be classified as disturbed and developed. The vegetation community and land cover types are described in further detail below.

4.2.1 Creosote Bush Scrub

The creosote bush scrub plant community primarily occurs on the western half of the site and is scattered throughout the eastern half of the site. This plant community is dominated by creosote (*Larrea tridentata*). Other common plant species observed in this plant community include Mormon tea (*Ephedra nevadensis*), devil's spineflower (*Chorizanthe rigida*), white rhatany (*Krameria bicolor*), and big galleta (*Hilaria rigida*).

4.2.2 Disturbed

Disturbed land generally refers to areas that have been subject to a high level of anthropogenic disturbances from foot traffic, vehicular access, and activities associated with current and former site development. Disturbed areas on-site include unpaved paths throughout the site and graded areas associated with proposed yurt installation. These areas are generally unvegetated or support ruderal/weedy plant species. Species observed in the disturbed areas of the site include Mediterranean grass (*Schinus arabicus*) and Saharan mustard (*Brassica tournefortii*).

4.2.3 Developed

Developed areas generally encompass all buildings/structures and associated landscaping, parks, and paved or otherwise impervious surfaces. Within the project footprint, developed areas are concentrated within the northwestern portion of the project site and include all areas of the installed yurts and their associated facilities. Additional development occurs on the southeast portion of the project site, and middle of the southern boundary. These developments are associated with existing housing structures. Plant species supported by developed areas have been intentionally installed and include species such as desert willow (*Chilopsis linearis*), eucalyptus (*Eucalyptus* sp.), palo verde tree (*Parkinsonia* sp.), and cottonwood (*Populus augustifolia*).

4.3 WILDLIFE

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

4.3.1 Fish

No fish or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) with frequent sources of water that would provide suitable habitat for fish were observed on or immediately adjacent to the survey area. Therefore, no fish are expected to occur and are presumed absent from the project site.

4.3.2 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 immediately adjacent to the survey area. Therefore, no amphibians are expected to occur on the project site and are presumed absent.

4.3.3 Reptiles

The creosote bush scrub plant community provides suitable foraging and nesting habitat for a variety of reptilian species adapted to conditions within the Mojave Desert. No reptilian species were observed during the field investigation. Common reptilian species that could be expected to occur include common side-blotched lizard (*Uta stansburiana elegans*), desert horned lizard (*Phrynosoma platyrhinos calidiarum*), Great Basin collard lizard (*Crotaphytus bicinctores*), Great Basin whiptail (*Aspidoscelis tigris tigris*), southwestern speckled rattlesnake (*Crotalus mitchellii pyrrhus*), northern Mohave rattlesnake (*Crotalus scutulatus scutulatus*) and Great Basin gopher snake (*Pituophis catenifer deserticola*).

4.3.4 Birds

The creosote bush scrub plant community provides suitable foraging and nesting habitat for a variety of resident and migrant bird species adapted to conditions within the Mojave Desert. The only avian species observed onsite include mourning dove (*Zenaida macroura*), and common raven (*Corvus corax*). Common species expected to occur include horned lark (*Eremophila alpestris*), mourning dove (*Zenaida macroura*), common raven (*Corvus corax*), turkey vulture (*Cathartes aura*), Say's phoebe (*Sayornis saya*), verdin (*Auripes flaviceps*), white-crowned sparrow (*Zonotrichia leucophrys*), and yellow-rumped warbler (*Setophaga coronata*).

4.3.5 Mammals

The creosote bush scrub plant community provides suitable foraging and nesting habitat for a variety of mammalian species adapted to conditions within the Mojave Desert. Most mammal species are nocturnal and are difficult to observe during a diurnal field visit. Common mammalian species detected during the

field investigation include coyote (*Canis latrans*), and desert kangaroo rat (*Dipodomys deserti*). Other common mammalian species that have the potential to occur on-site include black-tailed jackrabbit (*Lepus californicus*), white-tailed antelope ground squirrel (*Ammospermophilus leucurus*), and desert cottontail (*Sylvilagus audubonii*).

4.4 NESTING BIRDS

No active nests or birds displaying nesting behavior were observed during the field survey. The creosote bush scrub plant community and various structures on-site provide suitable foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that have adapted to conditions 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.

4.5 WILDLIFE CORRIDORS AND LINKAGES

Habitat linkages provide links between larger undeveloped 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 inadequate for others. Wildlife corridors are significant features for dispersal, seasonal migration, breeding, and foraging. 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. The open and natural habitats on and surrounding the project site allow for local wildlife to move from the project site into the undeveloped areas surrounding the project site in search of food, shelter, or nesting habitat. As designated by the San Bernardino County General Plan Open Space Element, the nearest major open space documented within the vicinity of the project site occurs approximately 12.3 miles northeast of the site, in association with Cleghorn Lakes Wilderness Area.

The project site occurs in a largely undeveloped area on the outskirts of the City of Twentynine Palms, with the Bullion Mountains to the north and the Pinto Mountains to the south. The area immediately surrounding the site consists largely of undeveloped land with scattered residential institutional developments. Due to the openness of the habitats surrounding the site, it could be expected that the area supports wildlife movement between the Bullion and Pinto Mountains. However, the project footprint accounts for a minimal portion of the area and does not support riparian corridors or creeks or “stepping-stone” habitats commonly associated with wildlife movement. 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.

4.6 STATE AND FEDERAL 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 and/or fill materials into "waters of the United States" 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 Regional Board regulates discharges into surface waters pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act and the CDFW regulates alterations to streambed and associated plant communities pursuant to Section 1602 of the California Fish and Game Code.

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 immediate surrounding the project site. Based on this review, no aquatic resources have been mapped onsite or in the immediately vicinity of the project site.

The project site does not support any discernible drainage courses, inundated areas, wetland features, or hydric soils that would be considered jurisdictional by the Corps, Regional Board, or CDFW. A query of the NWI database found no potential blueline streams, riverine, or other aquatic resources within or adjacent to the project site. Therefore, project activities will not result in impacts to Corps, Regional Board, or CDFW jurisdictional areas and regulatory approvals will not be required.

4.7 SPECIAL-STATUS BIOLOGICAL RESOURCES

The CNDDB Rarefind 5, CNDDB Quickview Tool in BIOS 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 Sunfair USGS 7.5-minute quadrangle. This quadrangle was used due to the proximity of the project 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 five (5) special-status plant species, five (5) special-status wildlife species, and no special-status plant communities as having the potential to occur within the Sunfair quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project boundaries 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 are presented in *Table C-1: Potentially Occurring Special-Status Biological Resources*, provide in Appendix C. Refer to Table C-1 for a determination regarding the potential occurrence of special-status plant and wildlife species within the project site.

4.7.1 Special-Status Plants

According to the CNDDB and CNPS, five (5) special-status plant species have been recorded in the Sunfair quadrangle (refer to Appendix C). No special-status plant species were observed on-site during the field investigation. Based on habitat requirements for the identified special-status species, and known

distributions, it was determined that the creosote bush scrub plant community supported by the project site has a low potential to support Utah vine milkweed (*Funastrum utahense*; CNPS Rare Plant Rank 4.2), little San Bernardino Mountains linanthus (*Linanthus maculatus* ssp. *maculatus*; CNPS Rare Plant Rank 1B.2), and western Joshua tree (*Yucca brevifolia*; CNPS Rare Plant Rank). Further, it was determined that the project site does not have potential to support any of the other special-status species documented as occurring within the vicinity of the project site.

None of the aforementioned special-status plant species are federally or State listed as endangered or threatened and have only been listed by the CNPS as Rare Plant Rank species. These species are not regulated under the federal or state Endangered Species Acts. In an effort to increase coverage for unlisted but regionally sensitive plants under the California Environmental Quality Act (CEQA), the CNPS began publishing sensitivity rankings for special-status plant species. These species, therefore, do not rise to the level of a species of concern under CEQA. Project impacts to the aforementioned plant species, if found, would therefore be less than significant, and no mitigation is required. No focused surveys are recommended.

4.7.2 Special-Status Wildlife

According to the CNDDB, five (5) special-status wildlife species have been reported in the Sunfair quadrangle (refer to Appendix C). 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 onsite habitats, it was determined that the proposed project site has a low potential to support burrowing owl (*Athene cunicularia*), prairie falcon (*Falco mexicanus*), loggerhead shrike (*Lanius ludovicianus*), and desert tortoise (*Gopherus agassizii*). It was further determined that the project site does not provide suitable habitat for any of the other special-status wildlife species known to occur in the vicinity of the site.

In order to ensure impacts to loggerhead shrike, prairie falcon, desert tortoise, and burrowing owl do not occur from implementation of the project, pre-construction nesting bird and tortoise clearance surveys shall be conducted prior to ground disturbance. With implementation of the pre-construction clearance surveys, impacts to these special-status species will be less than significant and no mitigation will be required.

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

Burrowing Owl

The burrowing owl is currently listed as a California Species of Special Concern. It is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with well-drained, level to gently-sloping areas characterized by sparse vegetation and bare ground (Haug and Didiuk 1993; Dechant et al. 1999). Burrowing owls are dependent upon the presence of burrowing mammals (such as ground squirrels) whose burrows are used for roosting and nesting (Haug and Didiuk 1993). The presence or absence of colonial mammal burrows is often a major factor that limits the presence or absence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drain pipes, stand-pipes, and dry culverts. Burrowing mammals may burrow beneath rocks and debris or large, heavy objects such as

abandoned cars, concrete blocks, or concrete pads. They also require open vegetation allowing line-of-sight observation of the surrounding habitat to forage as well as watch for predators.

No burrowing owls or recent sign (i.e., pellets, feathers, castings, or whitewash) was observed during the field investigation. 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. Further, ground disturbance from ongoing land uses has minimized the potential for establishment of the species within the project site. 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.

Desert Tortoise

The Mojave population of the desert tortoise was listed as Threatened on April 2, 1990 and a recovery plan was published in June 1994 (revised May 2011) to describe a strategy for recovering the Mojave population of the desert tortoise including the identification of five recovery units, recommendations for a system of Desert Wildlife Management Areas (DWMAs) within the recovery units, and development and implementation of specific recovery actions, especially within DWMAs. The establishment of recovery units and DWMAs was intended to facilitate an ecosystem approach to land management and desert tortoise recovery. Based on the 2018 Revised Recovery Plan, the survey area is located within the Western Mojave Recovery Unit, but is not located within any designated DWMAs. Additionally, the survey area is not located within designated Critical Habitat for the desert tortoise and no desert tortoise have been recorded on the project site.

The Mojave population of the desert tortoise inhabits areas north and west of the Colorado River in the Mojave Desert of California, Nevada, Arizona, and southwestern Utah, and in the Sonoran Desert in California. Throughout the majority of the Mojave Desert, desert tortoises occur most commonly on gentle sloping soils characterized by an even mix of sand and gravel and sparsely vegetated low-growing vegetation where there is abundant inter-shrub space. Typical habitat for the Mojave desert tortoise has been characterized as 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 (*Larrea tridentata*); however, other shrubs including burrobush (*Ambrosia dumosa*), Mojave yucca (*Yucca schidigera*), 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.

The undeveloped portions of the project site are dominated by creosote bush scrub plant communities that have the potential to provide suitable habitat for desert tortoise. Despite a systematic search of the project site, no live tortoises, suitable burrows or signs was observed on the project site during the site investigation. Based on the results of the field investigation and lack of suitable burrows and no observed sign, desert tortoise was determined to have a low potential to occur onsite. However, out of an abundance of caution, a pre-construction desert tortoise clearance surveys shall be conducted prior to ground disturbing activities to ensure desert tortoise remain absent from the project site.

4.7.3 Special-Status Plant Communities

According to the CNDDB, no special-status plant communities have been reported in the Sunfair quadrangle. Further, no special-status plant communities were observed on-site. Therefore, no special-status plant communities will be impacted by implementation of the proposed project.

4.8 CRITICAL HABITAT

Under the federal Endangered Species Act, "Critical Habitat" is designated at the time of listing of a species or within one year of listing. Critical Habitat refers to specific areas within the geographical range of a species at the time it is listed that include the physical or biological features that are essential to the survival and eventual recovery of that species. Maintenance of these physical and biological features requires special management considerations or protection, regardless of whether individuals or the species are present or not. All federal agencies are required to consult with the United States Fish and Wildlife Service (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 CWA Permit from the Corps). 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 nearest Critical Habitat designation is located approximately 8.8 miles southwest of the site for desert tortoise (Exhibit 5, *Critical Habitat*). Therefore, no loss or adverse modification of federally designated Critical Habitat will occur from implementation of the proposed project.

TWENTYNINE PALMS YURT CAMPGROUND
BIOLOGICAL RESOURCES ASSESSMENT

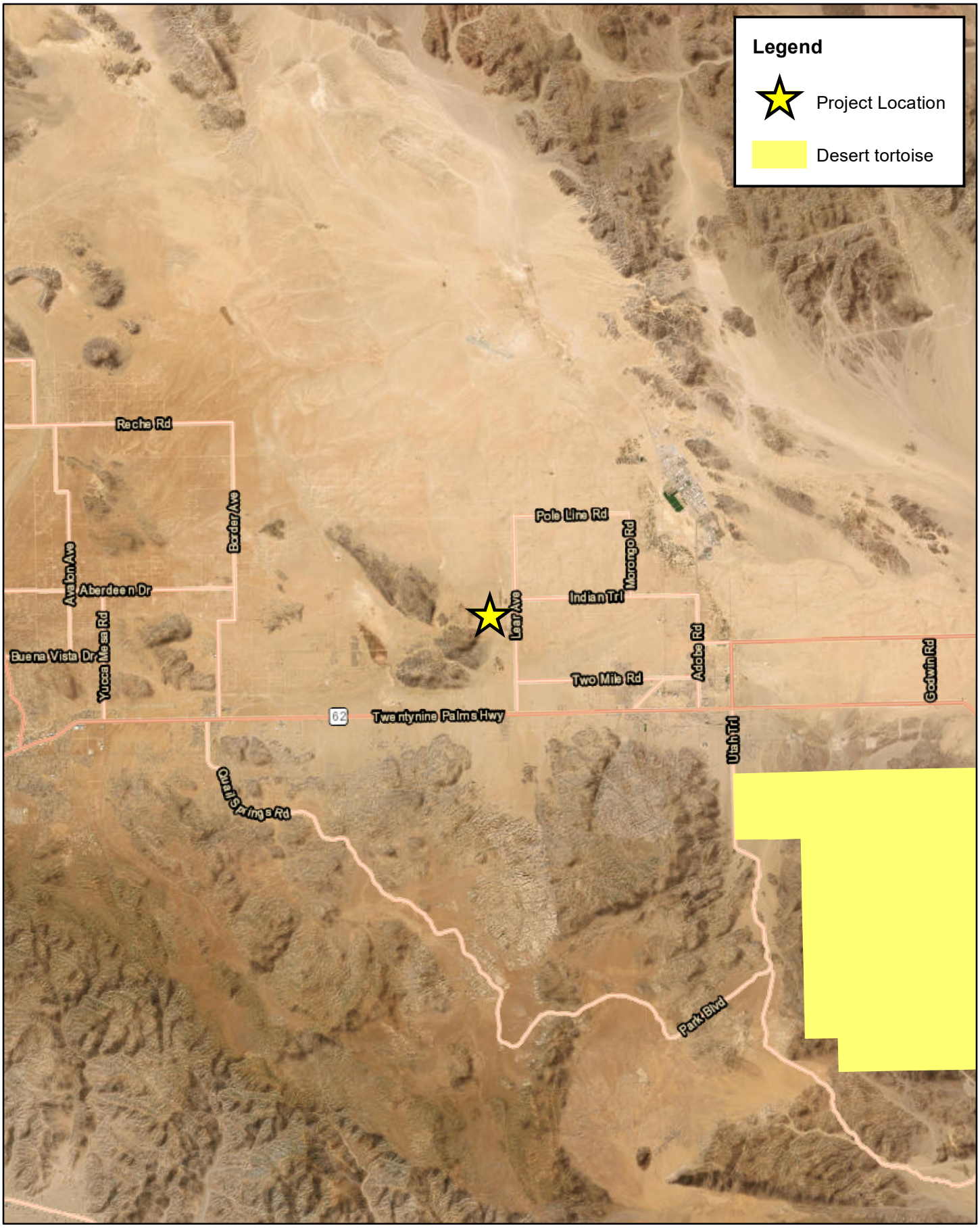
Vegetation

ELMT CONSULTING

0 62.5 125 250 Feet

Source: ESRI Aerial Imagery, San Bernardino County

Exhibit 4



TWENTYNINE PALMS YURT CAMPGROUND
BIOLOGICAL RESOURCES ASSESSMENT

Critical Habitat

ELMT CONSULTING

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

Exhibit 5

Section 5 Conclusion and Recommendations

The project site is located at 68282 Mesa Drive in the city of Twentynine Palms, San Bernardino County, California, within APN 0609-121-15-00100 in Section 8, Township 1 North, Range 8 East. The project site encompasses 5 acres. The project site is located within a generally undeveloped area. Areas surrounding the project site consist of vacant, undeveloped land, with scattered residential and small-scale institutional development beyond. The project site itself is primarily undeveloped with disturbance occuring in the northern and eastern regions allocated to the proposed Yurt campsite extension and administrative buildings. One (1) plant community and two (2) land cover types were observed onsite.

Special-Status Plant Species

No special-status plant species were observed on-site during the field investigation. Further, based on habitat requirements for the identified special-status species and known distributions, it was determined that the creosote bush scrub plant community has a low potential to support Utah vine milkweed, little San Bernardino Mountains linanthus, and western Joshua tree. Further, it was determined that the site does not have the potential to support any other special-status species documented as occurring within the vicinity of the project site are presumed absent.

None of the aforementioned special-status plant species are federally or State listed as endangered or threatened, and as such are not regulated under the federal or state Endangered Species Acts. They are only listed by the California Native Plant Society as Rare Plant Rank species, and impacts to this species do not rise to the level of a species of concern under CEQA and no mitigation would be required.

Special-Status Wildlife Species

No special-status wildlife species were observed on-site during the field investigation. 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 low potential to support burrowing owl, prairie falcon, desert tortoise, and loggerhead shrike. It was further determined that the project site does not provide suitable habitat for any of the other special-status wildlife species known to occur in the vicinity of the site.

Migratory Bird Treaty Act and Fish and Game Code Compliance

A pre-construction nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of the pre-construction clearance survey, impacts to loggerhead shrike, burrowing owl, prairie falcon, and loggerhead shrike will be less than significant and no mitigation will be required.

BIO-1: Pre-Construction Nesting Bird Clearance Survey

All construction activities shall comply with the federal Migratory Bird Treaty Act of 1918 (MBTA) and California Fish and Game Code Sections 3503, 3511 and 3513. The MBTA governs the taking and killing of migratory birds, their eggs, parts, and nests and prohibits the take of any migratory bird, their eggs, parts, and nests. Compliance with the MBTA shall be accomplished by completing the following:

Construction activities involving vegetation removal shall be conducted between September 1 and January 31. If construction occurs inside the peak nesting season (between February 1 and August 31), a pre-construction survey by a qualified Biologist shall be conducted within 72 hours prior to construction activities to identify any active nesting locations. If the Biologist does not find any active nests, the construction work shall be allowed to proceed. The biologist conducting the clearance survey shall document a negative survey with a report indicating that no impacts to active avian nests shall occur.

If the Biologist finds an active nest within the pre-construction survey area and determines that the nest may be impacted, the Biologist shall delineate an appropriate buffer zone around the nest. The size of the buffer shall be determined by the Biologist and shall be based on the nesting species, its sensitivity to disturbance, expected types of disturbance, and location in relation to the construction activities. These buffers are typically 300 feet from the nests of non-listed species and 500 feet from the nests of raptors and listed species. Any active nests observed during the survey shall be mapped on an aerial photograph. Only construction activities (if any) that have been approved by a Biological Monitor shall take place within the buffer zone until the nest is vacated. The Biologist shall serve as a Construction Monitor when construction activities take place near active nest areas to ensure that no inadvertent impacts on these nests occur. Results of the pre-construction survey and any subsequent monitoring shall be provided to the Property Owner/Developer and the City. The monitoring report shall summarize the results of the nest monitoring, describe construction restrictions currently in place, and confirm that construction activities can proceed within the buffer area without jeopardizing the survival of the young birds.

Desert Tortoise

Out of abundance of caution and to ensure desert tortoise remain absent from the project stie, a pre-construction clearance survey be conducted prior to ground disturbance.

BIO-2: Pre-Construction Desert Tortoise Clearance Survey

A pre-construction clearance survey be conducted thirty (30) days prior to ground disturbing activities in undeveloped areas to confirm the absence of desert tortoise within the boundaries of the survey area. Survey transects should be spaced at 10-meter (33-foot) intervals throughout the undeveloped portions of the project area to provide 100 percent visual coverage and increase the likelihood of locating desert tortoise and/or sign. All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets.

Although not anticipated, if desert tortoise are found onsite during the pre-construction clearance survey, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures can be implemented to avoid any direct or indirect impacts to desert tortoise, or if “Take” permits will need to be obtained prepared and approved by the USFWS and CDFW.

Riparian Habitat and Special-Status Natural Communities

The project site does not support any discernible drainage courses, inundated areas, wetland features, or hydric soils that would be considered jurisdictional by the Corps, Regional Board, or CDFW. A query of the NWI database found no potential blueline streams, riverine, or other aquatic resources within or adjacent to the project site. Therefore, project activities will not result in impacts to Corps, Regional Board, or CDFW jurisdictional areas and regulatory approvals will not be required.

Wildlife Corridors

The site was not identified as occurring within or adjacent to a recognized wildlife corridor. The site occurs in a largely undeveloped area between the Bullion and Pinto Mountains that could be expected to support local wildlife movement; however, 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. Due to the lack of any identified impacts to wildlife movement, migratory corridors or linkages or native wildlife nurseries, no mitigation is required.

Local, Regional, and State Plans

The project site is not located within an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state Habitat Conservation Plan. Therefore, impacts to any local, regional, or state habitat conservation plans are not expected to occur from development of the proposed project, and mitigation is not required.

Certain desert plant species (i.e. smoke trees, cacti. Mojave yuccas (*Yucca schidigera*)) 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 these species should be avoided in all instances. In the event that avoidance is not feasible, the project applicant will be required to obtain a Tree or Plant Removal Permit from the County of San Bernardino, prior to removal of any regulated tree or plant.

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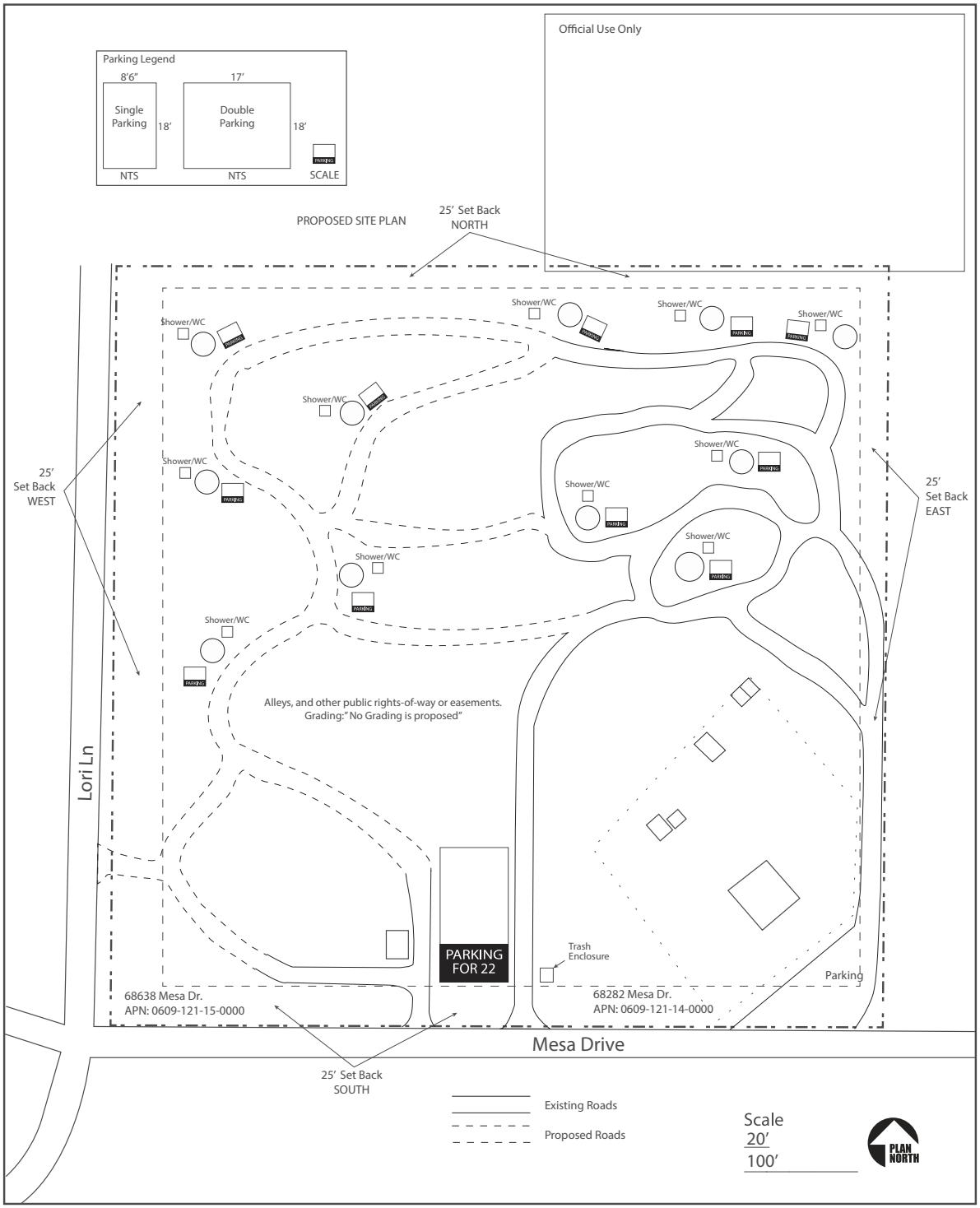
Appendix A Site Plan



The project proponent has developed the subject property as an Authentic Mongolian Yurt camping destination with six existing Yurts and a desire to add five more to the adjoining parcel. The applicant owns both 5 acre parcels and resides at 68282 Mesa Dr., Twentynine Palms, CA 92277. The subject property is located at 68282 Mesa Dr. and 68638 Mesa Dr. respectively and the APN' are 0609-121-14-0- 000 and 0609-121-15-0-000 and consists of 2/5 acre adjoining parcels. Each five-acre parcel currently has a single-family residence on the premises. There are a few outbuildings and a covered carport along with a ground mounted solar array. Limited native vegetation is present within a fenced enclosure however the vegetation in the remainder of the property is relatively undisturbed. The CUP applicant desires to convert these two sites into a premier glamping campground site.

Most of the electrical needs are met with onsite solar production. Restroom facilities utilize above ground biogas generators to dispose of waste and food products, there is no in-ground septic system needed for camp sites. The only septic systems on site are for the primary residence. Water is provided by City supply and all current water and electric connections were pre-existing from former owner's campground use.

The proposed use will consist of multiple Mongolian Yurts with full camping accommodation including but not limited to barbecue's, covered picnic tables, outdoor showers, and restrooms and open fire pits. All Yurts have smoke/co2 detectors and fire extinguishers. The Yurts are made in Mongolia and are structurally engineered to withstand the harsh Mongolian climate with certified blueprints including wind and snow load. There is ample guest parking to accommodate all visitor needs. Ingress and egress roads are clearly marked and illuminated with solar lighting for evening use.

The property is currently insured with a 1 million (twice a year occurrence) insurance policy as well as Airbnb's Million-dollar overlay. The insurance policy covers my guests even in the park, so if they were

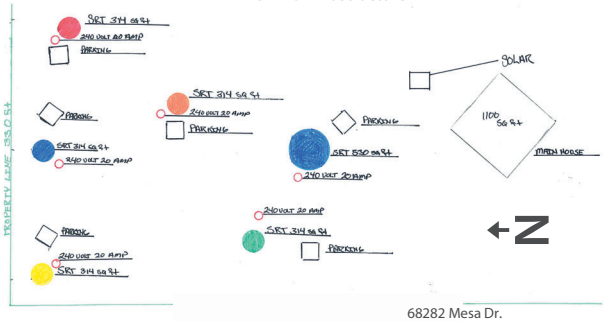
to get bit by a snake in the park, my insurance would cover them.

My reviews on Airbnb are all 5 star and I am a Super

host. https://www.airbnb.com/performance/quality/overall/reviews/review/445642080403964027

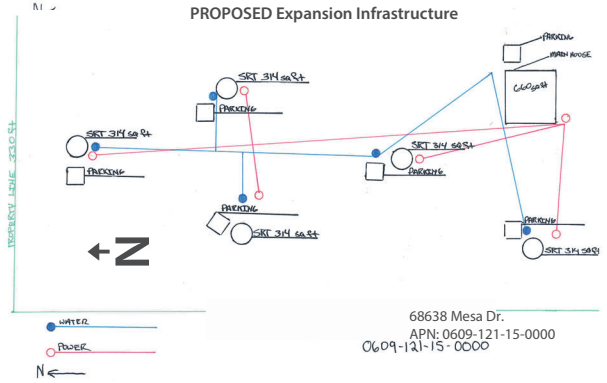
If you have any questions, please contact me at erin@28palmsranch.com.

EXISTING Infrastructure



68282 Mesa Dr.
APN: 0609-121-14-0000

PROPOSED Expansion Infrastructure



68638 Mesa Dr.
APN: 0609-121-15-0000

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Proposed Mongolian Yurt Camping Park expansion details
68282 & 68638 Mesa Dr., Twentynine Palms, CA 92277
APN: (0609-121-14-0000, APN: 0609-121-15-0000)

Appendix B Site Photographs

Photograph 1: From the southwest corner of the project site, looking north along the western boundary.

Photograph 2: From the southwest corner of the project site, looking diagonally northeast through the middle of the site.

Photograph 3: From the northwest corner of the project site, looking south along the western boundary.

Photograph 4: From the northwest corner of the project site, looking diagonally southeast through the middle of the site.

Photograph 5: From the northwest corner of the project site, looking east along the northern boundary.

Photograph 6: From the northeast corner of the project site, looking west along the northern boundary.

Photograph 7: From the northeast corner of the project site, looking diagonally southwest through the middle of the site.

Photograph 8: From the northeast corner of the project site, looking south along the eastern boundary.

Photograph 9: From the southeast corner of the project site, looking further east along the southern boundary of the adjacent site.

Photograph 10: From the southeast corner of the project site, looking west along the southern boundary.

Photograph 11: From the southeast corner of the project site, looking north along the eastern boundary.

Photograph 12: From the southeast corner of the project site, looking diagonally northwest through the middle of the site.

Photograph 14: From the middle of the eastern boundary of the project site, looking west through an ephemeral drainage present running from east to west through the center of the site.

Photograph 15: A completed Yurt facility present in the adjacent site to the east.

Appendix C Potentially Occurring Special-Status Biological Resources

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

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
WILDLIFE SPECIES				
Athene cunicularia burrowing owl	Fed: None CA: SSC	Occurs in open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. Dependent upon fossorial mammals for burrows, most notably ground squirrels.	No	**Low** The project site provides line-of-site opportunities favored by burrowing owls. However, the site does not support suitable burrows (>4 inches in diameter).
Circus hudsonius northern harrier	Fed: None CA: SSC	Found in wide-open habitats like prairies, tundras, and grasslands in both wet and dry regions. Prefer a moderate amount of ground cover, and common in marshes during nesting season. Nests on the ground in dense field or marsh vegetation, sometimes over shallow water.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Falco mexicanus prairie falcon	Fed: None CA: WL	Commonly occur in arid and semiarid shrubland and grassland community types. Also occasionally found in open parklands within coniferous forests. During the breeding season, they are found commonly in foothills and mountains which provide cliffs and escarpments suitable for nest sites.	No	**Low** The site and surrounding areas provide suitable foraging habitat.. The Bullion Mountains to the north and Pinto Mountains to the south provide suitable nesting opportunities.
Gopherus agassizii desert tortoise	Fed: **THR** CA: **THR**	Widely distributed in the Mojave, Sonoran, and Colorado deserts from below sea level to 7,220 feet. Most common in desert scrub, desert wash, and Joshua tree habitats, but occurs in almost every desert habitat except those on the most precipitous slopes.	No	**Low** The creosote bush scrub community in the project site provides suitable foraging habitat for this species; however, soils on-site are very rocky and tend to be unsuitable for burrow construction.. No desert tortoises or sign (i.e. scat, burrows, carapaces) were observed on-site.
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	**Low** Suitable foraging habitat is present in and surrounding the project site. However, no suitable nesting or roosting habitat was observed.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
PLANT SPECIES				
Funastrum utahense Utah vine milkweed	Fed: None CA: None CNPS: 4.2	Occurs in sandy or gravelly soil in Mojavean desert scrub and Sonoran desert scrub. Found at elevations ranging from 328 to 4,708 feet. Blooming period typically ranges from April to June but can begin as early as March and end as late as October.	No	**Low** Marginal habitat is present within the project site.
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** No suitable habitat is present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
Linanthus maculatus* ssp. *maculatus little San Bernardino Mountains linanthus	Fed: None CA: None CNPS: 1B.2	Grows in sandy flats at elevations of up to 3,500 feet. Found in creosote bush scrub and Joshua tree woodland in the Little San Bernardino Mountains area. Blooms from April to May.	No	**Low** Marginal habitat is present within the project site.
Saltugilia latimeri Latimer's woodland-gilia	Fed: None CA: None CNPS: 1B.2	Found in the western Mojave Desert and outlying areas to the north. Grows in coarse sand to rocky soils in dry desert slopes at elevations of up to 6,000 feet. Blooms from March to June.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Yucca brevifolia western Joshua tree	Fed: None CA: CE CNPS: CBR	Endemic to the Mojave Desert. Commonly found in open, rocky grasslands broad valleys, alluvial slopes, and on pediments with minimal runoff surrounding desert mountains and mesas growing in elevations between 1,600-7,200 feet.	No	**Low** Suitable habitat is present within the project site. However, soils onsite have been disturbed due to ongoing land uses.

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

California Department of Fish and Wildlife (CA) - California
END- California Endangered
THR- California Threatened
Candidate- Candidate for listing under the California Endangered Species Act
FP- California Fully Protected
SSC- Species of Special Concern
WL- Watch List

California Native Plant Society (CNPS)
California Rare Plant Rank
1B Plants Rare, Threatened, or Endangered in California and 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

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

Appendix D Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

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

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

State Regulations

California Environmental Quality Act (CEQA)

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

California Endangered Species Act (CESA)

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

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

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

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

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

Fish and Game Code

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

Native Plant Protection Act

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

California Native Plant Society Rare and Endangered Plant Species

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

California Rare Plant Rank

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

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

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

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

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

4- Plants of Limited Distribution - A Watch List

Threat Ranks

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

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

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

Local Regulations

San Bernardino County Development Code

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

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

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

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

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

3) Creosote Rings, 10 feet or greater in diameter

4) All Joshua trees

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

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

(C) All species of the genus *Cercidium* (palos verdes)

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

Federal Regulations

In accordance with the Revised Definition of "Waters of the United States" (March 20, 2023), "waters of the United Sates" are defined as follows:

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

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

Section 401 of the Clean Water Act

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

Board assumed this responsibility when a project has the potential to result in the discharge to waters within multiple Regional Boards.

State Regulations

Fish and Game Code

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

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

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

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

Porter Cologne Act

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