APPENDIX 5

BIOLOGICAL RESESOURCES ASSESSMENT

Biological Resources Assessment & Jurisdictional Delineation Report

Jacobs

Jacobs

San Bernardino County

Proposed San Bernardino County Animal Care Center Project

Biological Resources Assessment And Jurisdictional Delineation Report

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Executive Summary

Jacobs Engineering Group, Inc. was retained by Tom Dodson and Associates to conduct a Biological Resources Assessment and Jurisdictional Delineation for San Bernardino County's Proposed Animal Care Center Project. The proposed Project would construct a new small-animal care and shelter facility in the City of Bloomington, San Bernardino County, California.

In March of 2023, Jacobs biologists conducted a Biological Resources Assessment survey to address potential effects of the Project on designated Critical Habitats and/or special status species. Results of the Biological Resources Assessment are intended to provide sufficient baseline information to the Project Proponent and, if required, to City and/or County planning officials and federal and state regulatory agencies to determine if the Project is likely to result in any adverse effects on sensitive biological resources and to identify mitigation measures to offset those effects. Data regarding biological resources in the Project vicinity were obtained through literature review and field investigation. Available databases and documentation relevant to the Project Area were reviewed for documented occurrences of sensitive species that could potentially occur in the Project vicinity, including the U.S. Fish and Wildlife Service designated Critical Habitat online mapper and Information for Planning and Consultation System, as well as the most recent versions of the California Natural Diversity Database and California Native Plant Society Electronic Inventory. The result of the reconnaissance-level field survey was that no state or federally listed species were identified within the Project Area and the Project is not within any federal Critical Habitat. Due to the environmental conditions on site and the adjacent disturbances, the Project Area is likely not suitable to support any of the special status wildlife species that have been documented in the Project vicinity (within approximately 1 mile).

Jacobs biologists also assessed the Project Area for the presence of state and/or federal jurisdictional waters that may potentially be impacted by the Project. The jurisdictional waters assessment was conducted in accordance with the U.S. Army Corps of Engineers *Wetlands Delineation Manual, Jurisdictional Determination Form Instructional Guidebook,* and *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region*. The result of the jurisdictional waters assessment is that there are no wetland or non-wetland jurisdictional waters within the Project Area. Therefore, the Project will not impact any jurisdictional waters and no state or federal jurisdictional waters permitting will be required under current regulation.

This report describes delineated resources, provides an aquatic resource delineation map, identifies state and/or federally listed species with potential to occur on site and presents representative site photographs. The delineation results and conclusions presented in this report are considered preliminary and valid under current regulatory context. Additionally, according to protocol and standard practices, the results of the habitat assessment surveys will remain valid for the period of one year, or until July 2024, after which time, if the site has not been disturbed in the interim, another survey may be required to determine the persisting absence of special status species and to verify environmental conditions on site. Regardless of survey results and conclusions given herein, if any state or federally listed species are found on site during Project-related work activities, all activities likely to affect the animal(s) should cease immediately and regulatory agencies should be contacted to determine appropriate management actions.

1. Introduction

San Bernardino County is proposing to redevelop Ayla Park Site in order to relocate all small animal care services from the Devore Animal Shelter to the proposed project site, which is located in Bloomington. The new facility for the County will serve the unincorporated communities located in the Central Valley Region of the County and the Cities of Highland, Yucaipa, Rialto, Fontana, Colton, and Grand Terrace. The proposed project site is approximately 6 acres in size and with sufficient area and ease of access to support the County's goals in continuing to provide excellent animal care services to County residents.

The proposed Animal Care Center Project consists of development within an approximately 6-acre site designated for Valley Corridor/Bloomington Enterprise (VC/BE) use by the Valley Corridor Specific Plan and San Bernardino Countywide Plan located along Valley Boulevard east of Locust Avenue, west of Linden Avenue, and north of I-10 in the community of Bloomington in Unincorporated San Bernardino County. The project consists of a total of 6 acres consisting of two parcels with the following Assessor's Parcel Number (APN): 0252-161-09-0000 and 0252-161-10-0000.

Jacobs Engineering Group, Inc. (Jacobs) was retained by Tom Dodson and Associates (TDA) to prepare this Biological Resources Assessment (BRA) report for County of San Bernardino proposed Animal Care Center (Project) located in the City of Bloomington, San Bernardino County, California. The BRA fieldwork was conducted by Jacobs biologist Lisa Patterson in March of 2023. The purpose of the BRA survey was to address potential effects of the Project on designated Critical Habitats and/or any species currently listed or formally proposed for listing as endangered or threatened under the federal Endangered Species Act (ESA) and/or the California Endangered Species Act (CESA), as well as any species otherwise designated as sensitive by the California Department of Fish and Wildlife (CDFW [formerly California Department of Fish and Game]) and/or the California Native Plant Society (CNPS).

The Project Area was assessed for sensitive species known to occur locally. Attention was focused on those state and/or federally listed as threatened or endangered species and California Fully Protected species that have been documented in the vicinity of the Project Area, whose habitat requirements are present within or adjacent to the Project Area. Results of the habitat assessment are intended to provide sufficient baseline information to the Project Proponent (San Bernardino County) and, if required, to City, County or other local government planning officials and federal and state regulatory agencies, including the U.S. Fish and Wildlife Service (USFWS) and CDFW, respectively, to determine if the Project is likely to result in any adverse effects on sensitive biological resources and to identify mitigation measures to offset those effects.

In addition to the BRA survey, Jacobs biologists assessed the Project Area for the presence of state and/or federal jurisdictional waters potentially subject to regulation by the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (CWA), Regional Water Quality Control Board (RWQCB) under Section 401 of the CWA and Porter Cologne Water Quality Control Act, and CDFW under Section 1600 of the California Fish and Game Code (FGC), respectively.

1.1 Project Description

The project will include enhanced services, expanded capacity, and additional work areas to accommodate the growth of the Animal Care Division. The new facility will increase animal housing units to allow the County to serve additional municipalities in the Central Valley Region of the County. Program services will be enhanced to include a veterinary clinic; expanded pet adoption areas; animal exercise play yard; increased staffing work areas; volunteer work areas; expanded parking and other provisions to allow the Division to accommodate growth and increased demand for services.

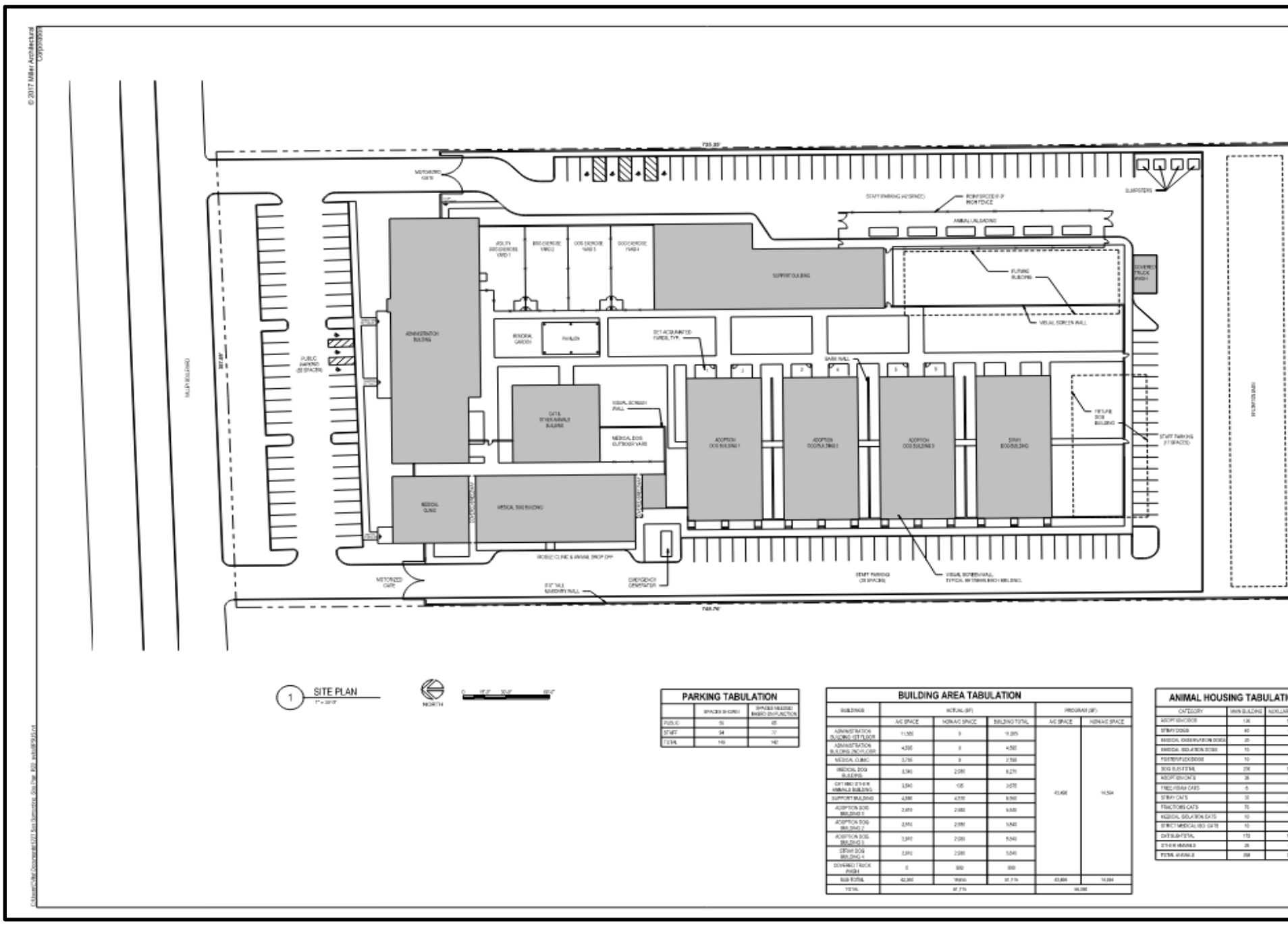
Animal care and housing standards have evolved over the past four decades since the Devore Animal Shelter was designed/constructed. The community expects the new facility to meet current industry standards for animal housing, care and welfare. The County envisions the facility to be a welcoming community centric facility that will encourage residents to consider supporting the animal welfare programs offered at this location, volunteer and collaborate with the County to address pet over-population.

The proposed San Bernardino County Animal Care Center Project consists of development within an approximately 6-acre site designated for Valley Corridor/Bloomington Enterprise (VC/BE) use by the Valley Corridor Specific Plan and San Bernardino Countywide Plan located along Valley Boulevard east of Locust Avenue, west of Linden Avenue, and north of I-10 in the community of Bloomington in Unincorporated San Bernardino County. The project consists of two parcels with the following Assessor's Parcel Number (APN): 0252-161-09-0000 and 0252-161-10-0000. Refer to the site plan, provided as Figure 3. The site plans as a whole are provided as Appendix 2.

Additional features of the project site include a car washing station, and landscaping that meet the County's landscaping standard requiring landscaping to equal at least 10% of the total parking area. The County also requires properties to maintain a landscaping screen along the property line abutting the Interstate 10 ROW, which this project would comply with, in addition to the requirement that at least one-third of the setback area adjacent to an abutting residential property line be landscaped at the adjoining edge of the property line. The Valley Boulevard Zone, within which the project is located, requires the provision of a consistent pattern of attractive and low-maintenance street trees that will provide shade without blocking exposure for commercial businesses, with which the proposed project site would be designed to comply.

The site boundary will be fenced using 8'0" to 12'0" high concrete block wall, (concrete masonry; cmu) at the side & rear perimeters w/ tubular steel pickets above to prevent climbing. The fencing will also run along the north side of the site in line with the Administration Building

Construction of the proposed San Bernardino County Animal Care Center Project is anticipated to be completed in two phases a described under Proposed Site Design, above.



SOURCE: Tom Dodson and Associates, from Clean Energy

1.1.1 Construction Sequence

Construction of Phase 1 would occur over a period of 12 months, beginning in August/3rd Quarter of 2024. Construction of Phase 2 would occur over a period of 8 months, beginning in April/2nd Quarter of 2028 Development of the site would require site preparation (i.e., clearing, grading, and excavation), paving, and construction of buildings. The project is anticipated to require minimal cut and fill with any cut being reused to balance of the site through grading, which will minimize import/export of material.

Development of the San Bernardino County Animal Care Center Project will require installation of pavement, curbs and sidewalk throughout the site. Additionally, the project will require installation of drainage inlets at several locations within the project site and installation of an infiltration basin towards the southern site boundary, in addition the project may include other Low Impact Development (LID) features including catch basin filters, perforated infiltration chambers, pervious pavement, and other water quality control measures as required by the site specific Water Quality Management Plan (WQMP).

Delivery of construction supplies and removal of any excavated materials, if necessary, will be accomplished using trucks during normal working hours, with a maximum of 50 round trips per day. It is anticipated that a maximum number of 50 employees will be required to support the construction of the project each day. Grading will be by traditional mechanized grading and compaction equipment including, but not limited to the following: front end loader, excavator, loader backhoe, dump truck, forklift, skid steer, mobile crane, bulldozer, grader, roller, water wagon, asphalt compactors, telehandlers, cement trucks, etc.

Construction of the site will include but not limited to the following:

1. Clear and grub;
2. Preparation of subgrade;
3. Mass site grading and road beds;
4. Installation of the on-site storm drain systems, including water quality infrastructure;
5. Installation of sewer service lateral;
6. Installation of water service lateral;
7. Fine grade to prepare for surface improvements;
8. Installation of building foundations;
9. Install aboveground fuel tanks and associated fuel dispensing system;
10. Install internal utility infrastructure;
11. Install curb, gutters, sidewalks and asphalt base course;
12. Minor street improvements on Valley Boulevard to include, but not limited to, the following: curb & gutter, driveways, sidewalk, and asphalt patch/repair;
13. Complete building construction;
14. Install landscaping; place final lift of asphalt; and
15. Install signage and striping.The following is a general construction sequence that will be adjusted by the

1.1.2 Operations

The new San Bernardino County Animal Care Center will employ about 55 persons, of which 17 would be new positions, with the remaining positions carried over from the Devore Animal Shelter operations. The San Bernardino County Animal Care Center will be open to the public between the hours of 10 AM and 6:30 PM daily, except in the event of an emergency. The San Bernardino County Animal Care Center will be staffed 24-hours per day. During daytime working hours (7 AM and 6:30 PM daily), the proposed project would staff an average of 25-30 persons. During nighttime working hours. No staff is proposed overnight.

1.2 Location

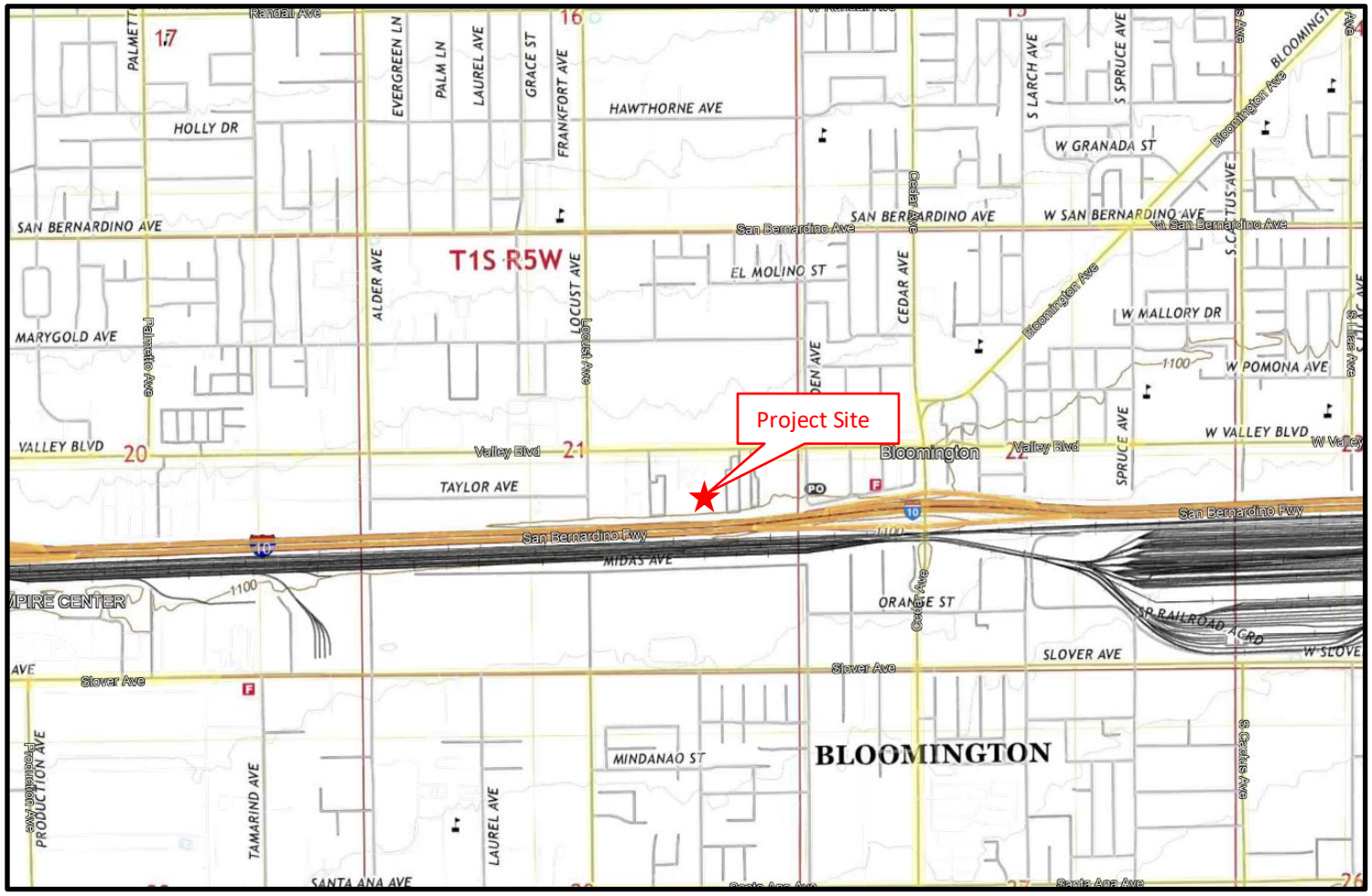
The proposed project site previously served as Bloomington Recreation and Park District operated Ayala Park located in the Valley Region of San Bernardino County, in the community of Bloomington.

The Project is generally located in the City of Bloomington, San Bernardino County, California. The site is located on the south side of Valley Boulevard between Linden Avenue and Locust Avenue. The site is mapped in Section 21 of Township 1 South, Range 5 West, San Bernardino Base Meridian of USGS 7.5 Minute Series Quadrangle “Fontana” (Figure 1 – Regional Location Map, and Figure 2-Site Location Map).

SOURCE: Esri ArcMap 10.6 – World Street Map 1:500,000 scale

FIGURE 2

Regional Location
San Bernardino County Animal Care Center



SOURCE: Esri ArcMap 10.6 – USGS Topo 1:24,000 scale

FIGURE 3

Topographic Map of Project Location
San Bernardino County Animal Care Center

SOURCE: Esri ArcMap 10.6 – USGS Topo 1:2,500 scale

FIGURE 4

Aerial Photo of Project Site
San Bernardino County Animal Care Center

1.3 Environmental Setting

The Project Area lies in the geographically based ecological classification known as the Inland Valleys – Level IV ecoregion, of the Southern California/Northern Baja Coast – Level III ecoregion (Griffith et al. 2016). The goal of regional ecological classifications is to reduce variability based on spatial covariance in climate, geology, topography, climax vegetation, hydrology, and soils. The Inland Valleys ecoregion is a heavily urbanized ecoregion that historically consisted of the alluvial fans and basin floors immediately south of the San Gabriel and San Bernardino Mountains (Griffith et al. 2016). The topography of the Project site consists of a flat landscape. The elevation of the Project site is approximately 1,055 feet above mean sea level (amsl).

The Project Area is within a hot-summer Mediterranean climate (Csa), characterized by both seasonal and annual variations in temperature and precipitation. Average annual maximum temperatures peak at 96.2 degrees Fahrenheit (° F) in July and August and drop to an average annual minimum temperature of 38.5° F in January. Average annual precipitation is greatest from November through April and reaches a peak in February (3.25 inches). Precipitation is lowest in the month of July (0.04 inches). Annual total precipitation averages 16.12 inches.

Hydrologically, the Project Area is situated within the 12-digit HU (Subwatershed): East Etiwanda Creek-Santa Ana River drainage area, within the larger Santa Ana Watershed (HUC 18070203). The Santa Ana River is the major hydrogeomorphic feature within the Santa Ana Watershed. The Santa Ana River flows generally northeast to southwest, approximately 0.21 miles south of the Project site at its closest point.

Soils within the Project Area consist entirely of Tujunga loamy sand, 0 to 5 percent slopes. This soil type consists of loamy sand and gravelly sand layers comprised of alluvium derived from granite. This soil type is somewhat excessively drained, with a very low runoff class and does not have a hydric soil rating.

The Project Area is entirely within an urban landscape that no longer supports any native habitat. The Project site previously consisted of a community park, however currently consists of bare ground. Surrounding land use consists entirely of commercial/industrial and residential development (Figure 3).

2. Assessment Methodology

2.1 Biological Resources Assessment

Data regarding biological resources in the Project vicinity were obtained through literature review, desktop evaluation and field investigation. Prior to performing the field survey, available databases, and documentation relevant to the Project Area were reviewed for documented occurrences of sensitive species that could potentially occur in the Project vicinity. The USFWS designated Critical Habitat online mapper, USFWS threatened and endangered species occurrence data overlay, and the most recent versions of the California Natural Diversity Database (CNDDB) and California Native Plant Society Electronic Inventory (CNPSEI) databases were searched for sensitive species data in the *Fontana* USGS 7.5-Minute Series Quadrangles. The Project site is situated within the central portion of the *Fontana* quad. These databases contain records of reported occurrences of state and federally listed species or otherwise sensitive species and habitats that may occur within the vicinity of the Project site (approximately 1 mile). Other available technical information on the biological resources of the area was also reviewed including previous surveys and recent findings.

2.1.1 Biological Resources Assessment Field Survey

Jacobs biologist Lisa Patterson conducted a biological resources assessment of the Project Area on March 27, 2023. The reconnaissance-level field survey consisted of a pedestrian survey that encompassed the entire Project Area and included 100 percent visual coverage of the site and immediate surrounding area. Wildlife species were detected during field surveys by sight, calls, tracks, scat, and/or other sign. In addition to species observed, expected wildlife usage of the site was determined based on known habitat preferences of regional wildlife species and knowledge of their relative distributions in the area. The focus of the faunal species survey was to identify potential habitat for special status wildlife that may occur within the Project vicinity.

2.2 Jurisdictional Delineation

On March 28,2023, Ms. Patterson also evaluated the Project Area for the presence of riverine/riparian/wetland habitat and jurisdictional waters, i.e. Waters of the U.S. (WOTUS), as regulated by the USACE and RWQCB, and/or jurisdictional streambed and associated riparian habitat as regulated by the CDFW. Prior to the field visit, aerial photographs of the Project Area were viewed and compared with the surrounding USGS 7.5-Minute Topographic Quadrangle maps to identify drainage features within the survey area as indicated from topographic changes, blue-line features, or visible drainage patterns. The USFWS National Wetland Inventory (NWI) and Environmental Protection Agency (EPA) Water Program "My Waters" Google Earth Pro data layers were also reviewed to determine whether any hydrologic features and wetland areas had been documented within the vicinity of the site. Similarly, the United States Department of Agriculture (USDA) – Natural Resources Conservation Service (NRCS) "Web Soil Survey" was reviewed for soil types found within the Project Area to identify the soil series in the area and to check these soils to determine whether they are regionally identified as hydric soils. Upstream and downstream connectivity of waterways (if present) were reviewed on Google Earth Pro aerial photographs and topographic maps to determine jurisdictional status. The lateral extent of potential USACE jurisdiction was measured at the Ordinary High Water Mark (OHWM) in accordance with regulations set forth in 33CFR part 328 and the USACE guidance documents listed below:

- *USACE – Corps of Engineers Wetlands Delineation Manual, Wetlands Research Program Technical Report Y-87-1 (on-line edition), January 1987 - Final Report.*
- *USACE – Jurisdictional Determination Form Instructional Guidebook (JD Form Guidebook), May 30, 2007.*
- *USACE – A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States (A Delineation Manual), August 2008.*
- *USACE – Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), September 2008.*
- *USACE – Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (Minimum Standards), January 2016.*

- *The Environmental Protection Agency (EPA) and the Department of the Army's "2023 Amended Rule: Definition of 'Waters of the United States,'" September 8, 2023 (effective September 8,, 2024).*

To be considered a jurisdictional Waters of the United State under the CWA, Section 404 a feature must fall within one of the Categories below:

(a)(1) Traditionally Navigable Waters

(i) Traditional Navigable Waters: 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) Territorial Seas

(iii) Interstate Waters

(a)(2) Impoundments of Jurisdictional Waters

(a)(3) Tributaries: Tributaries of waters identified in paragraph (a)(1) or (2) that are relatively permanent, standing, or continuously flowing bodies of water.

(a)(4) Adjacent Wetlands: Wetlands adjacent to the following waters:

(i) Waters identified in Paragraphs (a)(1), (a)(2), or (a)(3) WOTUS and have a continuous surface connection to those waters.

(a)(5) Additional Waters: Intrastate Lakes and ponds not identified in (a)(1) through (4).that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to waters identified in (a)(1) or (a)(3).

To be considered a jurisdictional wetland under the federal CWA, Section 404, an area must possess three (3) wetland characteristics: hydrophytic vegetation, hydric soils, and wetland hydrology, and be adjacent to an (a)(1), (2), or(3) Water as defined in the Amended Waters Rule

- *Hydrophytic vegetation*: Hydrophytic vegetation is plant life that grows, and is typically adapted for life, in permanently or periodically saturated soils. The hydrophytic vegetation criterion is met if more than 50 percent of the dominant plant species from all strata (tree, shrub, and herb layers) is considered hydrophytic. Hydrophytic species are those included on the 2018 National Wetland Plant Lists for the Arid West Region (USACE 2018). Each species on the lists is rated with a wetland indicator category, as shown in Table 1. To be considered hydrophytic, the species must have *wetland indicator status*, i.e., be rated as OBL, FACW or FAC.

Table 1. Wetland Indicator Vegetation Categories

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

- *Hydric Soil*: Soil maps from the USDA-NRCS Web Soil Survey (USDA 2021) were reviewed for soil types found within the Project Area. Hydric soils are saturated or inundated long enough during the growing season to develop anaerobic conditions that favor growth and regeneration of hydrophytic vegetation. There are several

indirect indicators that may signify the presence of hydric soils including hydrogen sulfide generation, the presence of iron and manganese concretions, certain soil colors, gleying, and the presence of mottling. Generally, hydric soils are dark in color or may be gleyed (bluish, greenish, or grayish), resulting from soil development under anoxic (without oxygen) conditions. Bright mottles within an otherwise dark soil matrix indicate periodic saturation with intervening periods of soil aeration. Hydric indicators are particularly difficult to observe in sandy soils, which are often recently deposited soils of flood plains (entisols) and usually lack sufficient fines (clay and silt) and organic material to allow use of soil color as a reliable indicator of hydric conditions. Hydric soil indicators in sandy soils include accumulations of organic matter in the surface horizon, vertical streaking of subsurface horizons by organic matter, and organic pans.

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

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

Evaluation of CDFW jurisdiction followed guidance in the Fish and Game Code and *A Review of Stream Processes and Forms in Dryland Watersheds* (CDFW, 2010). Specifically, CDFW jurisdiction would occur where a stream has a definite course showing evidence of where waters rise to their highest level and to the extent of associated riparian vegetation.

3. Results

3.1 Existing Biological and Physical Conditions

The Project Area consists of the approximately 6-acre parcel located on the south side of Valley Boulevard between Locust Avenue and Linden on what used to be Ayala Community Park.(Figure 4). The park has been relocated, and proposed project area is completely disturbed, consisting of bare ground. Surrounding land uses consist of existing commercial/industrial development to the north, east, and west, with Interstate 10 to the south.

The proposed impact area no longer supports any native habitat. The Project site previously consisted of a local community park; however, the site has been cleared of vegetation and now only supports a few scattered non-native grasses. Vegetation in the Project Area is dominated by non-native ruderal species including Ailanthus (*Ailanthus altissima*), annual bursage (*Ambrosia acanthicarpa*), jimsonweed (*Datura wrightii*), red stemmed filaree (*Erodium cicutarium*), shortpod mustard (*Hirschfeldia incana*), and Russian thistle (*Salsola tragus*).

Only domestic animals and those wildlife species adapted to an urban environment are expected to occur within the Project Area. The only wildlife species observed or otherwise detected during the reconnaissance-level survey were rock pigeon (*Columba livia*), house finch (*Haemorhous mexicanus*), and European starling (*Sturnus vulgaris*),

3.2 Special Status Species and Habitats

According to the CNDDB, 34 sensitive species (15 plant species, 19 animal species) and five sensitive habitats have been documented in the *Fontana* USGS 7.5-Minute Series Quadrangles. This list of sensitive species and habitats includes any state and/or federally listed threatened or endangered species, California Fully Protected species, CDFW designated Species of Special Concern (SSC), and otherwise Special Animals. "Special Animals" is a general term that refers to all the taxa the CNDDB is interested in tracking, regardless of their legal or protection status. This list is also referred to as the list of "species at risk" or "special status species." The CDFW considers the taxa on this list to be those of greatest conservation need.

Of the 9 state and/or federally listed species documented within the *Fontana* quad, the following three state and/or federally listed species have been documented in the Project vicinity (within approximately 1 mile):

- San Bernardino kangaroo rat (*Dipodomys merriami parvus*)
- Santa Ana River woollystar (*Eriastrum densifolium* ssp. *sanctorum*)
- Least Bell's vireo (*Vireo bellii pusillus*)

Although not a state or federally listed as threatened or endangered species, burrowing owl (*Athene cunicularia*) are considered a state and federal SSC and this species is protected by international treaty under the Migratory Bird Treaty Act (MBTA) of 1918 and by State law under the California FGC (FGC #3513 & #3503.5). Additionally, this species is commonly found in open habitats consisting of short or sparse vegetation and disturbed areas. Therefore, burrowing owl will be included in the discussion below.

3.2.1 Special Status Species

No state and/or federally listed threatened or endangered species, or other sensitive species were observed within the Project Area during the reconnaissance-level field survey and due to the environmental conditions on site, none are expected to occur. An analysis of the likelihood for occurrence of all CNDDB sensitive species documented in the *Fontana* quads is provided in Appendix A. This analysis considers species' range as well as documentation within the vicinity of the Project site and includes the habitat requirements for each species and the potential for their occurrence on site, based on required habitat elements and range relative to the current site conditions.

Santa Ana River woollystar – Endangered (Federal/State)

The state and federally listed as endangered Santa Ana River woollystar (woollystar) is a short-lived, perennial subshrub of the phlox family (Polemoniaceae). It has a basally branched, generally erect or spreading form, occasionally reaching 1 meter (3.3 feet) in height. The entire plant, including the blue to violet-blue inflorescence, is covered with woolly pubescence, giving it a silvery-white appearance. This woollystar is found in alluvial scrub plant communities along the Santa Ana River and Lytle and Cajon Creek flood plains from the base of the San Bernardino Mountains in San Bernardino County southwest along the Santa Ana River through Riverside County into the Santa Ana Canyon of northeastern Orange County (USFWS 2010). It requires periodic flooding. Associated perennial plants include California croton (*Croton californicus*), California buckwheat (*Eriogonum fasciculatum*), fastigiated golden aster (*Heterotheca sessiliflora* ssp. *fastigiata*), and scale-broom (*Lepidospartum squamatum*). This woollystar typically blooms between May and August but most heavily in June (Muñoz 1991). However, woollystar is readily identifiable throughout the year.

> <u>*Findings*</u>: According to the CNDDB, the nearest documented woolystar occurrence (2023) is approximately 7 mile east of the Project site, in suitable alluvial scrub habitat within the Santa Ana River wash. However, the Project Area is not suitable to support woollystar. The habitat this species is associated with (i.e. pioneer and intermediate stage alluvial scrub) is absent from the Project Area and the Project site, which consists of cleared land previously planted with olive groves. Furthermore, this species is readily identifiable throughout the year and no woollystar were observed on site during the pedestrian field survey. Therefore, woollystar are considered absent from the Project Area and the Project will not adversely affect this species.

San Bernardino kangaroo rat – Endangered (Federal)

The federally listed as endangered San Bernardino kangaroo rat (SBKR) is one of three recognized subspecies of Merriam's kangaroo rat (*D. merriami*) in California. The Merriam's kangaroo rat is a small, burrowing rodent species that can be found within inland valleys and deserts of southwest United States of America and northern Mexico. The Dulzura kangaroo rat (*Dipodomys simulans*), the Pacific kangaroo rat (*Dipodomys agilis*) and the Stephens kangaroo rat (*Dipodomys stephensi*) occur in areas occupied by SBKR, but these other species have a wider habitat range. SBKR, however, has a restricted southern California distribution, confined to certain inland valley scrub communities and, more particularly, to scrub communities occurring along rivers, streams, and drainages within the San Bernardino, Menifee, and San Jacinto valleys. Most of these drainages have been historically altered due to a variety of reasons including, mining, off-road vehicle use, road and housing development, and flood control efforts. This increased use of river floodplain resources resulted in a reduction in both the amount and quality of habitat available for SBKR.

The areas which SBKR occupy are subjected to periodic flooding and hence, the dominant vegetation type (alluvial fan sage scrub) is described in general terms as having three successional phases: pioneer, intermediate, and mature as determined by elevation and distance from the main channel and time since previous flooding (Hanes et al. 1989, p. 187, as cited in USFWS 2009). Vegetation cover generally increases with distance from the active stream channel. The pioneer phase is subject to frequent flood disturbance (Smith 1980, p. 133; Hanes et al. 1989, p. 187, as cited in USFWS 2009). The intermediate phase, defined as the area between the active channel and mature terraces, is subject to periodic flooding at longer intervals. The vegetation on intermediate terraces is relatively open. As alluvial fan scrub vegetation ages in the absence of flooding, the suitability of this habitat for the SBKR declines (McKernan 1997, p. 58, as cited in USFWS 2009).

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

floodplain benches and terraces; and historic braided channels that are subject to dynamic geomorphological and hydrological processes typical of fluvial systems within the historical range of the SBKR; and 4) Upland areas proximal to floodplains with suitable habitat.

> *Findings*: According to the CNDDB, the nearest extant documented SBKR occurrence (2016) is approximately 6 miles northeast of the Project site, in suitable alluvial scrub habitat within the Santa Ana River wash. However, the Project Area is not suitable to support SBKR. The Project site consists of cleared/disked land that formerly served as a park and is isolated from any documented SBKR occurrences by existing development. Therefore, SBKR is presumed absent from the Project Area and the Project is not likely to adversely affect this species.

Least Bell's Vireo – Endangered (Federal/State)

The least Bell's vireo (LBVI) is a state and federally listed endangered migratory bird species. This species is a small, olive-gray migratory songbird that nests and forages almost exclusively in riparian woodland habitats. LBVI nesting habitat typically consists of well-developed overstory, understory, and low densities of aquatic and herbaceous cover. The understory frequently contains dense sub-shrub or shrub thickets. These thickets are often dominated by plants such as narrow-leaf willow, mulefat, young individuals of other willow species such as arroyo willow or black willow, and one or more herbaceous species. LBVI generally begin to arrive from their wintering range in southern Baja California and establish breeding territories by mid-March to late-March.

LBVI was first proposed for listing as endangered by the USFWS on May 3, 1985, (50 FR 18968 18975) and was subsequently listed as federally endangered on May 2, 1986 (51 FR 16474 16482). Critical habitat units were designated by the USFWS on February 2, 1994 (59 FR 4845) and included reaches of ten streams in six counties in southern California and the surrounding approximately 38,000 acres.

> *Findings*: According to the CNDDB, the nearest documented LBVI occurrence (2014) is approximately 5 mile southeast of the Project site, in suitable cottonwood-willow riparian habitat within the Santa Ana River wash. However, there is no riparian habitat within or adjacent the Project Area. Therefore, LBVI is presumed absent from the Project Area and the Project is not likely to adversely affect this species.

Burrowing Owl – SSC

The burrowing owl (BUOW) is a ground dwelling owl typically found in arid prairies, fields, and open areas where vegetation is sparse and low to the ground. The BUOW is heavily dependent upon the presence of mammal burrows, with ground squirrel burrows being a common choice, in its habitat to provide shelter from predators, inclement weather and to provide a nesting place (Coulombe 1971). They are also known to make use of human-created structures, such as cement culverts and pipes, for burrows. According to the definition provided in the *2012 CDFG Staff Report on Burrowing Owl Mitigation*, "Burrowing owl habitat generally includes, but is not limited to, short or sparse vegetation (at least at some time of year), presence of burrows, burrow surrogates or presence of fossorial mammal dens, well-drained soils, and abundant and available prey." BUOW spend a great deal of time standing on dirt mounds at the entrance to a burrow or perched on a fence post or other low to the ground perch from which they hunt for prey. They feed primarily on insects such as grasshoppers, June beetles and moths, but will also take small rodents, birds, and reptiles. They are active during the day and night but are considered a crepuscular owl; generally observed in the early morning hours or at twilight. The breeding season for BUOW is February 1 through August 31.

BUOW have disappeared from significant portions of their range in the last 15 years and, overall, nearly 60 percent of the breeding groups of owls known to have existed in California during the 1980s had disappeared by the early 1990s (Burrowing Owl Consortium 1993). The BUOW is not listed under the state or federal ESAs but is considered both a state and federal SSC. Additionally, the BUOW is a migratory bird protected by the international treaty under the Migratory Bird Treaty Act of 1918 and by State law under the California FGC (FGC #3513 & #3503.5).

Findings: BUOW have not been documented within or adjacent the Project Area. The reconnaissance level pedestrian survey included a BUOW habitat suitability assessment survey that was structured, in part, to detect BUOW. The survey included 100 percent visual coverage of any potentially suitable BUOW habitat within and immediately adjacent the Project site.

The result of the survey was that no evidence of BUOW was found in the survey area. Although the vegetation on site is sparse and the soils are well drained, the Project site is surrounded by existing development. No BUOW individuals or sign including castings, feathers or whitewash were observed during survey. Furthermore, no suitably sized burrows, burrow surrogates, or fossorial mammal dens were observed within the Project Area. Therefore, BUOW are considered absent from the Project Area at the time of survey and the Project is not likely to adversely affect this species.

3.2.2 Special Status Habitats

The Project Area does not contain any sensitive habitats, including any USFWS designated Critical Habitat for any federally listed species. The nearest Critical Habitat unit is adjacent the east side of Tippecanoe Avenue, just east of the Project Area. This Critical Habitat unit is part of the Santa Ana River unit (Unit 1) of USFWS designated Critical Habitat for the federally listed as endangered SBKR. However, no portion of the Project Area is within this Critical Habitat unit, or any other sensitive habitats. Therefore, the Project will not result in any loss or adverse modification of USFWS designated Critical Habitat, or any other special status habitats.

3.2.3 Jurisdictional Delineation

The Project Area is within the Santa Ana Watershed (HUC 18070203). This watershed is primarily within San Bernardino County and Riverside Counties, with smaller areas in Orange and Los Angeles Counties. The Santa Ana Watershed is bound on the north by the Mojave and Southern Mojave Watersheds, on the southeast by the Whitewater and San Jacinto Watersheds, and on the west by the San Gabriel, Seal Beach, Newport Bay, and Aliso-San Onofre Watersheds. The Santa Ana Watershed encompasses a portion of the San Gabriel and San Bernardino Mountains in the north, the Santa Ana Mountains in the south, and is approximately 1,694 square miles in area. The Santa Ana River is the major hydrogeomorphic feature within the Santa Ana Watershed. The Santa Ana River flows generally northeast to southwest, approximately 0.21 miles south of the Project site at its closest point.

Waters of the U.S.
The USACE has authority to permit the discharge of dredged or fill material in WOTUS under Section 404 of the CWA. WOTUS are defined as:

"All waters used in interstate or foreign commerce; all interstate waters including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent and ephemeral streams), mudflats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds, where the use, degradation, or destruction of which could affect interstate commerce; impoundments of these waters; tributaries of these waters; or wetlands adjacent to these waters" (Section 404 of the CWA; 33 CFR 328.3 (a).

Therefore, in accordance with the 2023 Waters Rule, CWA jurisdiction exists over the following:

1. a(1) Water: All traditional navigable waters (TNWs); (1) Waters which are: (i) 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) The territorial seas; or (iii) Interstate waters.
2. a(2) Water: Impoundments of Jurisdictional Waters
3. a(3) Water: Tributaries of waters identified in paragraph (a)(1) or (2) of this section: That are relatively permanent, standing or continuously flowing bodies of water
4. a(4) Wetlands adjacent to the following waters: (a)(1) (a)(2), or (a)(3) WOTUS that have a continuous surface connection to those waters.

5. a(5) Additional Waters: Intrastate Lakes and ponds not identified in (a)(1) through (4).that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to waters identified in (a)(1) or (a)(3).

There are no wetland or non-wetland WOTUS within the Project Area. Therefore, the Project will not result in any permanent or temporary impacts to WOTUS.

State Lake/Streambed

There are no lake, river, stream or aquatic resources, stream-dependent wildlife resources or riparian habitats within the Project Area. Therefore, the Project will not result in any permanent or temporary impacts to jurisdictional waters of the State.

4. Conclusions and Recommendations

4.1 Sensitive Biological Resources

No sensitive species were observed within the Project Area during the reconnaissance-level field survey and due to the environmental conditions on site, none are expected to occur. The Project Area is completely disturbed (see attached Site Photos), consisting of consists of cleared/disked land surrounded by existing commercial/industrial and residential development. The Project Area no longer supports any native habitats that would be suitable to support any of the state or federally listed species, or other special status species documented in the Project vicinity. Therefore, the proposed Project is not likely to adversely affect any state or federally listed species, or other special status species, and the potential for any of the sensitive species identified in Appendix A to occur within the Project Area is low or low to moderate. Furthermore, although the Project Area is adjacent USFWS designated Critical Habitat for the federally listed SBKR, the Project will not result in any loss or adverse modification of Critical Habitat.

Burrowing Owl

A BUOW habitat suitability assessment was conducted by Jacobs biologists in March 2023 that included 100 percent visual coverage of the Project Area, wherever potentially suitable BUOW habitat was present. The result of the survey was that no evidence of BUOW was found in the survey area. No BUOW individuals or sign including castings, feathers or whitewash were observed and BUOW are considered absent from the Project Area at the time of survey. Although the Project is not likely to adversely affect this species, there is still a potential for the Project Area to become occupied by BUOW between the time the survey was conducted and the commencement of Project-related construction activities. Therefore, the following precautionary avoidance measures are recommended to ensure the Project does not result in any impacts to BUOW:

- Pre-construction surveys for BUOW should be conducted no more than 3 days prior to commencement of Project-related ground disturbance to verify that BUOW remain absent from the Project Area.

The BUOW is a state and federal SSC and is also protected under the MBTA and by state law under the California FGC (FGC #3513 & #3503.5). In general, impacts to BUOW can be avoided by conducting work outside of their nesting season (peak BUOW breeding season is identified as April 15th to August 15th). However, if all work cannot be conducted outside of nesting season, a project specific BUOW protection and/or passive relocation plan can be prepared to determine suitable buffers and/or artificial burrow construction locations. Regardless of survey results and conclusions given herein, BUOW are protected by applicable state and federal laws. As such, if a BUOW is found on-site at the time of construction, all activities likely to affect the animal(s) should cease immediately and regulatory agencies should be contacted to determine appropriate management actions. Importantly, nothing given in this report is intended to authorize any form of disturbance to BUOW. Such authorization must come from the appropriate regulatory agencies, including CDFW and/or USFWS.

Nesting Birds

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

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

- Section 3503 prohibits the take, possession, or needless destruction of the nest or eggs of any bird.

- Section 3503.5 prohibits the take, possession, or needless destruction of any nests, eggs, or birds in the orders Falconiformes (new world vultures, hawks, eagles, ospreys, and falcons, among others), and Strigiformes (owls).

- Section 3511 prohibits the take or possession of Fully Protected birds.

- Section 3513 prohibits the take or possession of any migratory nongame bird or part thereof, as designated in the MBTA. To avoid violation of the take provisions, it is generally required that Project-related disturbance at active nesting territories be reduced or eliminated during the nesting cycle.

- Section 3800 prohibits the take of any non-game bird (i.e., bird that is naturally occurring in California that is not a gamebird, migratory game bird, or fully protected bird).

In general, impacts to all bird species (common and special status) can be avoided by conducting work outside of the nesting season, which is generally February 1st through August 31st. However, if all work cannot be conducted outside of nesting season, the following is recommended:

- To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist should conduct pre-construction nesting bird surveys no more than 3 days prior to Project-related disturbance to suitable nesting areas to identify any active nests. If no active nests are found, no further action would be required. If an active nest is found, the biologist should set appropriate no-work buffers around the nest which would be based upon the nesting species, its sensitivity to disturbance, nesting stage and expected types, intensity, and duration of disturbance. The nest(s) and buffer zones should be field checked weekly by a qualified biological monitor. The approved no-work buffer zone should be clearly marked in the field, within which no disturbance activity should commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.

4.2 Jurisdictional Waters

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

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Appendix A. CNDDB Species and Habitats Documented Within the *Fontana* USGS 7.5-Minute Quadrangle

Special Status Species Occurrence Potential Analysis

Scientific Name	Common Name	Listing Status Federal/ State	Other Status	Habitat	Occurrence Potential
Arizona elegans occidentalis	California glossy snake	None/ None	G5T2; S2; CDFW: SSC	Patchily distributed from the eastern portion of San Francisco Bay, southern San Joaquin Valley, and the Coast, Transverse, and Peninsular ranges, south to Baja California. Generalist reported from a range of scrub/grassland, often with loose or sandy soils.	The site has been graded. Given that the site has been cleared of vegetation and is subject to a significant level of human disturbance. Occurrence potential is **Zero**
Athene cunicularia	burrowing owl	None/ None	G4; S3; CDFW: SSC	Open, dry annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. Subterranean nester, dependent upon burrowing mammals, most notably, the California ground squirrel.	Although there is potentially suitable habitat for this species in the Project Area, this species is **absent** from the Project site.
Bombus crotchii	Crotch bumble bee	None/ None	G3G4; S1S2	Coastal California east to the Sierra-Cascade crest and south into Mexico. Food plant genera include *Antirrhinum, Phacelia, Clarkia, Dendromecon, Eschscholzia,* and *Eriogonum*.	The food plant genera required by this species are absent from the Project Area. Occurrence potential is **zero**.
Calochortus plummerae	Plummer's mariposa-lily	None/ None	G4; S4; CNPS: 4.2	Coastal scrub, chaparral, valley and foothill grassland, cismontane woodland, lower montane coniferous forest. Occurs on rocky and sandy sites, usually of granitic or alluvial material. Can be very common after fire. 60-2500 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Catostomus santaanae	Santa Ana sucker	Threatened/ None	G1; S1	Endemic to Los Angeles Basin south coastal streams. Habitat generalists, but prefer sand-rubble-boulder bottoms, cool, clear water, and algae.	The aquatic habitats this species requires are absent from the Project Area. Therefore, this species is considered **absent** from the Project Area.
Centromadia pungens ssp. *laevis*	smooth tarplant	None/ None	G3G4T2; S2; CNPS: 1B.1	Valley and foothill grassland, chenopod scrub, meadows and seeps, playas, riparian woodland. Alkali meadow, alkali scrub; also, in disturbed places. 5-1170 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Chaetodipus fallax fallax	northwestern San Diego pocket mouse	None/ None	G5T3T4; S3S4; CDFW: SSC	Coastal scrub, chaparral, grasslands, sagebrush, etc. in western San Diego County. Sandy, herbaceous areas, usually in association with rocks or coarse gravel.	No suitable habitat for this species exists in the Project Area. Occurrence potential is **zero**.

Scientific Name	Common Name	Listing Status Federal/ State	Other Status	Habitat	Occurrence Potential
Chloropyron maritimum ssp. *maritimum*	salt marsh bird's-beak	Endangered/ Endangered	G4?T1; S1; CNPS: 1B.2	Marshes and swamps, coastal dunes. Limited to the higher zones of salt marsh habitat. 0-10 m.	The habitats and mesic conditions this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Chorizanthe parryi var. *parryi*	Parry's spineflower	None/ None	G3T2; S2; CNPS: 1B.1	Coastal scrub, chaparral, cismontane woodland, valley and foothill grassland. Dry slopes and flats; sometimes at interface of 2 vegetation types, such as chaparral and oak woodland. Dry, sandy soils. 90-1220 m.	The site has been graded. Given that the site has been cleared of vegetation and is subject to a significant level of human disturbance. Occurrence potential is **Zero**
Dipodomys merriami parvus	San Bernardino kangaroo rat	Endangered/ Candidate Endangered	G5T1; S1; CDFW: SSC	Alluvial scrub vegetation on sandy loam substrates characteristic of alluvial fans and flood plains. Needs early to intermediate seral stages.	No suitable habitat for this species exists in the Project Area. Occurrence potential is **zero**.
Danaus plexippus	Monarch Butterfly	Candidate Endangered/ Threatened	CE/CDFW SSC	Monarch (Danaus plexippus) is a milkweed butterfly (subfamily Danainae) in the family Nymphalidae. Breeding, monarch habitats can be found in agricultural fields, pasture land, prairie remnants, urban and suburban residential areas, gardens, trees, and roadsides – anywhere where there is access to larval host plants. Their wintering habitat typically provides access to streams, plenty of sunlight (enabling body temperatures that allow flight), and appropriate roosting vegetation, and is relatively free of predators. Overwintering, roosting butterflies have been seen on basswoods, elms, sumacs, locusts, oaks, osage-oranges, mulberries, pecans, willows, cottonwoods, and mesquites.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Eriastrum densifolium ssp. *sanctorum*	Santa Ana River woollystar	Endangered/ Endangered	G4T1; S1; CNPS: 1B.1	Coastal scrub, chaparral. In sandy soils on river floodplains or terraced fluvial deposits. 180-705 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Eugnosta busckana	Busck's gallmoth	None/ None	G1G3; SH		Occurrence potential is **unknown**.

Scientific Name	Common Name	Listing Status Federal/ State	Other Status	Habitat	Occurrence Potential
Eumops perotis californicus	western mastiff bat	None/ None	G4G5T4; S3S4; CDFW: SSC	Many open, semi-arid to arid habitats, including conifer and deciduous woodlands, coastal scrub, grasslands, chaparral, etc. Roosts in crevices in cliff faces, high buildings, trees, and tunnels.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Gila orcuttii	arroyo chub	None/ None	G2; S2; CDFW: SSC	Native to streams from Malibu Creek to San Luis Rey River basin. Introduced into streams in Santa Clara, Ventura, Santa Ynez, Mojave, and San Diego river basins. Slow water stream sections.	The aquatic habitats this species requires are absent from the Project Area. Therefore, this species is considered **absent** from the Project Area.
Horkelia cuneata var. *puberula*	mesa horkelia	None/ None	G4T1; S1; CNPS: 1B.1	Chaparral, cismontane woodland, coastal scrub. Sandy or gravelly sites. 15-1645 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Lasiurus xanthinus	western yellow bat	None/ None	G4G5; S3; CDFW: SSC	Found in valley foothill riparian, desert riparian, desert wash, and palm oasis habitats. Roosts in trees, particularly palms.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Laterallus jamaicensis coturniculus	California black rail	None/ Threatened	G3G4T1; S1; CDFW: FP	Inhabits freshwater marshes, wet meadows and shallow margins of saltwater marshes bordering larger bays. Needs water depths of about 1 inch that do not fluctuate	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Lepidium virginicum var. *robinsonii*	Robinson's peppergrass	None/ None	G5T3; S3; CNPS: 4.3	Chaparral, coastal scrub. Dry soils, shrubland. 4-1435 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Lepus californicus bennettii	San Diego black-tailed jackrabbit	None/ None	G5T3T4; S3S4; CDFW: SSC	Intermediate canopy stages of shrub habitats and open shrub / herbaceous and tree / herbaceous edges. Coastal sage scrub habitats in Southern California.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Lycium parishii	Parish's desert-thorn	None/ None	G4; S1; CNPS: 2B.3	Coastal scrub, Sonoran Desert scrub. -3-570 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Malacothamnus parishii	Parish's bush-mallow	None/ None	GXQ; SX; CNPS: 1A	Chaparral, coastal sage scrub. In a wash. 305-455 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Monardella pringlei	Pringle's monardella	None/ None	GX; SX; CNPS: 1A	Coastal scrub. Sandy hills. 300-400 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.

Scientific Name	Common Name	Listing Status Federal/ State	Other Status	Habitat	Occurrence Potential
Neolarra alba	white cuckoo bee	None/ None	GH; SH	Known only from localities in Southern California. Cleptoparasitic in the nests of perdita bees.	Occurrence potential is **unknown**.
Nyctinomops femorosaccus	pocketed free-tailed bat	None/ None	G5; S3; CDFW: SSC	Variety of arid areas in Southern California; pine-juniper woodlands, desert scrub, palm oasis, desert wash, desert riparian, etc. Rocky areas with high cliffs.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Oncorhynchus mykiss irideus pop. 10	steelhead - southern California DPS	Endangered/ None	G5T1Q; S1	Federal listing refers to populations from Santa Maria River south to southern extent of range (San Mateo Creek in San Diego County).	The aquatic habitats this species requires are absent from the Project Area. Therefore, this species is considered **absent** from the Project Area.
Phrynosoma blainvillii	coast horned lizard	None/ None	G3G4; S3S4; CDFW: SSC	Most common in lowlands along sandy washes with scattered low bushes. Open areas for sunning, bushes for cover, patches of loose soil for burial, and abundant supply of ants and other insects.	No suitable habitat for this species exists in the Project Area. Occurrence potential is **low**.
Polioptila californica californica	coastal California gnatcatcher	Threatened/ None	G4G5T3Q; S2; CDFW: SSC	Obligate, permanent resident of coastal sage scrub below 2500 ft in Southern California. Low, coastal sage scrub in arid washes, on mesas and slopes. Not all areas classified as coastal sage scrub are occupied.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Rhaphiomidas terminatus abdominalis	Delhi Sands flower-loving fly	Endangered/ None	G1T1; S1	Found only in areas of the Delhi Sands formation in southwestern San Bernardino and northwestern Riverside counties. Requires fine, sandy soils, often with wholly or partly consolidated dunes and sparse vegetation. Oviposition requires shade.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Riversidian Alluvial Fan Sage Scrub	Riversidian Alluvial Fan Sage Scrub	None/ None	G1; S1.1		This habitat is **absent** from the Project Area.
Senecio aphanactis	chaparral ragwort	None/ None	G3; S2; CNPS: 2B.2	Chaparral, cismontane woodland, coastal scrub. Drying alkaline flats. 20-1020 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Sphenopholis obtusata	prairie wedge grass	None/ None	G5; S2; CNPS: 2B.2	Cismontane woodland, meadows, and seeps. Open moist sites, along rivers and springs, alkaline desert seeps. 15-2625 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.

Scientific Name	Common Name	Listing Status Federal/ State	Other Status	Habitat	Occurrence Potential
Symphyotrichum defoliatum	San Bernardino aster	None/ None	G2; S2; CNPS: 1B.2	Meadows and seeps, cismontane woodland, coastal scrub, lower montane coniferous forest, marshes and swamps, valley and foothill grassland. Vernally mesic grassland or near ditches, streams, and springs; disturbed areas. 3-2045 m.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.
Vireo bellii pusillus	least Bell's vireo	Endangered/ Endangered	G5T2; S2	Summer resident of Southern California in low riparian in vicinity of water or in dry river bottoms; below 2,000 ft. Nests placed along margins of bushes or on twigs projecting into pathways, usually willow, Baccharis, mesquite.	The habitats this species is associated with are absent from the Project Area. Occurrence potential is **zero**.

Coding and Terms

E = Endangered T = Threatened C = Candidate FP = Fully Protected SSC = Species of Special Concern R = Rare

State Species of Special Concern: An administrative designation given to vertebrate species that appear to be vulnerable to extinction because of declining populations, limited acreages, and/or continuing threats. Raptor and owls are protected under section 3502.5 of the California Fish and Game code: "It is unlawful to take, possess or destroy any birds in the orders Falconiformes or Strigiformes or to take, possess or destroy the nest or eggs of any such bird."

State Fully Protected: The classification of Fully Protected was the State's initial effort in the 1960's to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, mammals, amphibians and reptiles. Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock.

Global Rankings (Species or Natural Community Level):
G1 = Critically Imperiled – At very high risk of extinction due to extreme rarity (often 5 or fewer populations), very steep declines, or other factors.
G2 = Imperiled – At high risk of extinction due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors.
G3 = Vulnerable – At moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors.
G4 = Apparently Secure – Uncommon but not rare; some cause for long-term concern due to declines or other factors.
G5 = Secure – Common; widespread and abundant.

Subspecies Level: Taxa which are subspecies or varieties receive a taxon rank (T-rank**)** attached to their G-rank. Where the G-rank reflects the condition of the entire species, the T-rank reflects the global situation of just the subspecies. For example: the Point Reyes mountain beaver, *Aplodontia rufa* ssp. *phaea* is ranked G5T2. The G-rank refers to the whole species range i.e., *Aplodontia rufa.* The T-rank refers only to the global condition of ssp. *phaea*.

State Ranking:
S1 = Critically Imperiled – Critically imperiled in the State because of extreme rarity (often 5 or fewer populations) or because of factor(s) such as very steep declines making it especially vulnerable to extirpation from the State.
S2 = Imperiled – Imperiled in the State because of rarity due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors making it very vulnerable to extirpation from the State.

S3 = Vulnerable – Vulnerable in the State due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors making it vulnerable to extirpation from the State.
S4 = Apparently Secure – Uncommon but not rare in the State; some cause for long-term concern due to declines or other factors.
S5 = Secure – Common, widespread, and abundant in the State.

California Rare Plant Rankings (CNPS List):
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 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 (less than 20% of occurrences threatened / low degree and immediacy of threat or no current threats known)

Appendix B. Site Photos

	Photo 1. Northeast corner of Project site; looking east.
	Photo 2. Southeast corner of Project site; looking east along I-10 boundary.

	Photo 3. North at southwest corner of Project site.
	Photo 4. Southwest view across the property.

	Photo 5. View towards southwest; looking at transformer remaining from the Park demolition.
	Photo 6. Google Street view looking North from I-10.

Appendix C. Regulatory Framework

Federal Regulations

Clean Water Act

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

Federal Endangered Species Act (ESA)

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

Interagency Consultation and Biological Assessments

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

Habitat Conservation Plans

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

Fish and Wildlife Coordination Act

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

Bald and Golden Eagle Protection Act

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

Migratory Bird Treaty Act

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

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

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

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

Executive Orders (EO)

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

Migratory Bird Treaty Reform Act

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

Birds of Conservation Concern

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

State Regulations

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

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

California Endangered Species Act

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

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

Fully Protected Species

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

Bird Nesting Protections

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

- Section 3503 prohibits the take, possession, or needless destruction of the nest or eggs of any bird.
- Section 3503.5 prohibits the take, possession, or needless destruction of any nests, eggs, or birds in the orders Falconiformes (new world vultures, hawks, eagles, ospreys, and falcons, among others), and Strigiformes (owls).
- Section 3511 prohibits the take or possession of Fully protected birds.
- Section 3513 prohibits the take or possession of any migratory nongame bird or part thereof, as designated in the MBTA. To avoid violation of the take provisions, it is generally required that Project-related disturbance at active nesting territories be reduced or eliminated during the nesting cycle.

Section 3800 prohibits the take of any non-game bird (i.e., bird that is naturally occurring in California that is not a gamebird, migratory game bird, or fully protected bird).

Native Plant Protection Act

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