March 23, 2026

REDLANDS PIONEER PARTNERS, LLC
C/O CITIVEST
Attention: *Qantas Corman and Michael Mossman*
4350 Von Karman Ave., Suite 200
Newport Beach, CA 92660

SUBJECT: Biological Resources Assessment for an Approximately 31.6 Acre Project Located in the City of Redlands, San Bernardino County, California.

Introduction

This report contains the findings of ELMT Consulting's biological resources assessment for an approximately 31.6 acre project located at the southeast corner of West Pioneer Avenue and the future Tennessee Street, north of San Bernardino Avenue within Assessor Parcel Numbers (APNs) 016-709-109, -110, -111, and -112 in the City of Redlands, San Bernardino County, California. The report was prepared to document baseline conditions and assess the potential for special-status[1] plant and wildlife species to occur within the boundaries of the proposed project that could pose a constraint to project implementation.

This report provides a detailed assessment of the suitability of the on-site habitat to support special-status plant and wildlife species that were identified by the California Natural Diversity Database (CNDDB) and other electronic databases as potentially occurring in the vicinity of the proposed project site. Special attention was given to the suitability of the on-site habitat to support burrowing owl (*Athene cunicularia*), San Bernardino kangaroo rat (*Dipodomys merriami parvus,* SBKR), and special-status species identified by the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB) and other electronic databases as potentially occurring in the general vicinity of the project. Additionally, the report also addresses resources protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (FGC), federal Clean Water Act (CWA) regulated by the United States Army Corps of Engineers (Corps) and Regional Water Quality Control Board (Regional Board) respectively, and Section 1602 of the FGC administered by CDFW.

Project Location

The proposed project site is generally located north of Interstate 10, east of State Route 210, south of State Route 330, and west of State Route 38 in the City of Redlands, San Bernardino County, California. The site is depicted on the Redlands quadrangle of the United States Geological Survey's (USGS) 7.5-minute topographic map series within Section 16 of Township 1 South, Range 3 West. Specifically, the 31.6-acre

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

proposed project site is located at the southeast corner of the intersection of West Pioneer Avenue and the future Tennessee Street, north of San Bernardino Avenue, within APNs 016-709-109, -110, -111, and -112. Refer to Exhibits 1-3 in Attachment A.

Project Description

The proposed development will include up to 282 residential units including 275 single family residences and seven multifamily residences.

Methodology

Literature Review

Prior to conducting the field investigation, a literature review and records search was conducted for special-status biological resources potentially occurring on or within the vicinity of the project site. Previously recorded occurrences of special-status plant and wildlife species and their proximity to the project site were determined through a query of the CDFW's 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.

Literature detailing biological resources previously observed in the vicinity of the project site and historical land uses were reviewed to understand the extent of disturbances to the habitats on-site. Standard field guides and texts on special-status and non-special-status biological resources were reviewed for habitat requirements, as well as the following resources:

- CDFW 2012 Staff Report on Burrowing Owl Mitigation;
- Google Earth Pro historic aerial imagery (1985-2024);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey[2]; and
- USFWS Critical Habitat designations for Threatened and Endangered Species.

The literature review provided a baseline from which to inventory the biological resources potentially occurring on the project site. Additional recorded occurrences of these species found on or near the project site were derived from database queries. The CNDDB ArcGIS database was used, in conjunction with ArcGIS software, to locate the nearest occurrence and determine the distance from the project site.

Field Investigation

ELMT biologist Andrew N. Mestas inventoried and evaluated the extent and conditions of the plant communities found within the boundaries of the project site on February 19, 2025. Plant communities identified on aerial photographs during the literature review were verified by walking meandering transects through the plant communities and along boundaries between plant communities. The plant communities

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.

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.

Soil Series Assessment

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

Plant Communities

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

Plants

Common plant species observed during the field 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).

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).

Jurisdictional Drainages and Wetlands

Aerial photography was reviewed prior to conducting a field investigation in order to locate and inspect any potential natural drainage features, ponded areas, or water bodies that may fall under the jurisdiction of the United States Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), or CDFW. In general, surface drainage features indicated as blue-line streams on USGS maps that

are observed or expected to exhibit evidence of flow are considered potential riparian/riverine habitat and are also subject to state and federal regulatory jurisdiction. In addition, ELMT reviewed jurisdictional waters information through examining historical aerial photographs to gain an understanding of the impact of land-use on natural drainage patterns in the area. The USFWS National Wetland Inventory (NWI) and Environmental Protection Agency (EPA) Water Program "My Waters" data layers were also reviewed to determine whether any hydrologic features and wetland areas have been documented on or within the vicinity of the project site.

Topography and Soils

On-site surface elevation ranges from approximately 1271 to 1294 feet above mean sea level. The project is relatively flat with no natural areas of significant topographic relief, and gently slopes from south to north. Based on the USDA NRCS Soil Survey, the site is underlain by the following soil units: Hanford sandy loam (0 to 2 percent slopes) and Tujunga loamy sand (0 to 5 percent slopes). Soils within the project site are heavily disturbed by historic agricultural and weed abatement activities. Refer to Exhibit 4, *Soils*, in Attachment A.

Existing Site Conditions

The project site is located in a mostly developed area in the northwest portion of the City of Redlands. Industrial, commercial, and residential developments are clustered through the area with a mix of undeveloped parcels. The site is bounded to the east by a residential development; to the west by State Route 210 with commercial development beyond; to the north by West Pioneer Road with institutional and undeveloped, vacant land beyond; and to the south by San Bernardino Avenue with undeveloped, vacant land beyond. The site itself primarily supports undeveloped land, highly disturbed land that does not support any natural plant communities, with project site parcels divided by Tennessee Street running from north to south through the center of the project site.

Vegetation

The project site does not support any natural plant communities. The site supports two (2) land cover types that would be classified as disturbed and developed (refer to Exhibit 5, *Vegetation*, in Attachment A). Refer to Attachment B, *Site Photographs*, for representative site photographs.

The majority of the project site supports disturbed land that has been subjected to historic agricultural land uses and weed abatement activities, off-road vehicular use, and illicit dumping. Frequent disturbance has prevented the reestablishment of natural plant communities. Vegetative density in these areas varies from often barren to minimally vegetated, usually with weedy/early successional species. Common plants observed in the disturbed areas of the site include short podded mustard (*Hirschfeldia incana*), telegraphweed (*Heterotheca grandiflora*), sacred datura (*Datura wrightii*), cheeseweed (*Malva ambigua*), London rocket (*Sisymbrium irio*), redstem filaree (*Erodium cicutarium*), Mexican fan palm (*Washingtonia robusta*), common fiddleneck (*Amsinckia menziesii*), Russian thistle (*Salsola sp.*), and Mediterranean grass (*Schismus barbatus*). Additionally, one Mexican elderberry (*Sambucus mexicana*) exists along the center of the western boundary.

Developed land exists along the north-south central axis of the project site where Tennessee Road bisects the site. The land consists of a paved road that supports few plants due to the impermeable surface. A few,

hardy weedy species exist near the borders of the road such as those within the disturbed portions of the site.

Wildlife

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

Fish

No fish or hydrogeomorphic features (e.g., creeks, ponds, lakes, reservoirs) that would provide suitable habitat for fish were observed on or within the vicinity of the project site. Therefore, no fish are expected to occur and are presumed absent from the site.

Amphibians

No amphibians or hydrogeomorphic features that would provide suitable habitat for amphibian species were observed on or within the vicinity of the project site. Therefore, no amphibians are expected to occur and are presumed absent from the site.

Reptiles

The project site provides suitable foraging and cover habitat for reptilian species adapted to routine human disturbance and desert environments. No reptiles were observed during the field investigation, likely due to current time of year and weather conditions not being ideal for reptile inhabitance. Common reptile species that could be expected to occur include western side-blotched lizard (*Uta stansburiana elegans*) and western fence lizard (*Scleporus occidentalis*).

Birds

The project site provides suitable foraging and nesting habitat for avian species adapted to routine human disturbance. Avian species detected during the field investigation include house finch (*Haemorhous mexicanus*), red-tailed hawk (*Buteo jamaicensis*), Anna's hummingbird (*Calypte anna*), bushtit (*Psaltriparus minimus*), and American crow (*Corvus brachyrhynchos*). Other common avian species that could be expected to occur on-site include mourning dove (*Zenaida macroura*), white-crowned sparrow (*Zonotrichia leucophrys*), house sparrow (*Passer domesticus*), and common raven (*Corvus corax*).

Mammals

The project site provides suitable foraging and denning habitat for mammalian species adapted to routine human disturbance and desert environments. However, most mammal species are nocturnal and are difficult to observe during a diurnal field visit. Mammals detected and/or sign observed during the field investigation include Botta's pocket gopher (*Thomomys bottae*). Other common mammalian species that have the potential to occur on the project site include California ground squirrel (*Otospemophilus beecheyi*), desert cottontail (*Sylvilagus audubonii*), and coyote (*Canis latrans*). No bat species are expected to roost on-site due to a lack of suitable roosting habitat (i.e., trees, crevices, abandoned structures) within and surrounding

the project site.

Nesting Birds and Raptors

No active nests or birds displaying nesting behavior were observed during the field survey, which was conducted during beginning of the breeding season. The project site has the potential to provide suitable nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area that area adapted to urban environments. No raptors are expected to nest on-site due to lack of suitable nesting opportunities.

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

Migratory Corridors and Linkages

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

The project site has not been identified as occurring in a wildlife corridor or linkage, and there are no riparian corridors, creeks, or useful patches of steppingstone habitat (natural areas) within or connecting the site to a recognized wildlife corridor or linkage. Therefore, impacts to wildlife corridors or linkages are not expected to occur.

Jurisdictional Areas

There are three key agencies that regulate activities within inland streams, wetlands, and riparian areas in California. The Corps Regulatory Branch regulates discharge of dredge or fill materials into “waters of the United States” pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Of the State agencies, the CDFW regulates alterations to streambed and bank under Fish and Wildlife Code Sections 1600 et seq., and the Regional Board regulates discharges into surface waters pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act.

The USFWS NWI and the USGS National Hydrography Dataset were reviewed to determine if any blueline streams or riverine resources have been documented on the project site. Based on this review, no blueline stream or riverine resource has been documented on the project site. The closest mapped aquatic resource, the Santa Ana River, is located approximately 0.79 miles north of the project site. The Santa Ana River is separated from the project site by existing roadways and development.

ELMT 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.

Based on the field investigation, no jurisdictional drainage and/or wetland features were observed on the project site or within the during the field investigation. Further, no evidence of suspected jurisdictional areas were observed onsite. Therefore, development of the project will not result in impacts to Corps, Regional Board, or CDFW jurisdiction and regulatory approvals will not be required.

Special-Status Biological Resources

The CNDDB was queried for reported locations of special-status plant and wildlife species as well as special-status natural plant communities in the Redlands USGS 7.5-minute quadrangle. A search of published records of these species was conducted within this quadrangle using the CDFW's CNDDB Rarefind 5 online software and CNDDB Quickview Tool. The CNPS Inventory of Rare and Endangered Vascular Plants of California supplied information regarding the distribution and habitats of vascular plants in the vicinity of the project site. The field investigation was used to assess the ability of the plant communities found on-site to provide suitable habitat for relevant special-status plant and wildlife species.

The literature search identified twenty (20) special-status plant species, sixty-six (66) special-status wildlife species, and three (3) special-status vegetation communities as having potential to occur within the Redlands 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 of the project site are presented in Attachment C, *Potentially Occurring Special-Status Biological Resources*, and discussed below.

Special-Status Plants

According to the CNDDB and CNPS, twenty (20) special-status plant species have been recorded in the Redlands quadrangle (refer to Attachment C). No special-status plants were observed on the project site during the field investigation. The project site is disturbed and no longer supports native plant communities that have the potential to provide suitable habitat for special-status plant species. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that that the project site does not have the potential to support any of the special-status plant species known to occur in the area.

Special-Status Wildlife

According to the CNDDB, sixty-six (66) special-status wildlife species have been reported in the Redlands quadrangle (refer to Attachment C). No special-status wildlife species were observed during the field investigation. Based on habitat requirements for the identified special-status species, known distributions, and the availability and quality of on-site habitats, it was determined that the project site has a low potential to support Cooper's hawk (*Accipiter cooperii*), burrowing owl, and California horned lark (*Eremophila alpestris actia*). Further, it was determined that no other special-status wildlife species have the potential

to occur on-site and are presumed absent.

Due to regional significance, the potential occurrence of burrowing owl, San Bernardino kangaroo rat, and Crotch's bumble bee are discussed in further detail below.

Burrowing Owl

In October 2024, the California Fish and Game Commission listed the burrowing owl as a candidate species under CESA. Therefore, it must be afforded the same protection as if it was a listed species. the burrowing owl 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.

Despite a systematic search of the project site on February 19, 2025, and a follow up survey on March 11, 2026, no burrowing owls or sign (i.e., pellets, feathers, castings, or whitewash) were observed during the field investigation. The majority of the project site is unvegetated and/or vegetated with a variety of low-growing plant species that allow for line-of-sight observation favored by burrowing owl that are subject to routine weed abatement activities. However, no suitable mammal burrows or structures/pipes that have the potential to provide suitable burrowing owl nesting habitat (>4 inches in diameter) were observed within the boundaries of the site. Further, trees surrounding the site, and surrounding electrical poles along the northern and southern boundaries provide suitable perching opportunities for large raptors (i.e., red-tailed hawk) that can prey on burrowing owl. It should be noted that a red-tailed hawk was observed foraging over the site during the field investigation.

Based on the results of the field investigation, it was determined that the project site has a low potential to support burrowing owl, and focused surveys are not recommended. However, out of an abundance of caution, a pre-construction burrowing owl clearance survey is recommended to be conducted prior to development to ensure burrowing owl remain absent from the project site.

San Bernardino Kangaroo Rat

The San Bernardino kangaroo rat, federally listed as endangered, is one of several kangaroo rat species in its range. The Dulzura, the Pacific kangaroo rat (*Dipodomys agilis*) and the Stephens kangaroo rat (*Dipodomys stephensi*) occur in areas occupied by the San Bernardino kangaroo rat, but these other species have a wider habitat range. The habitat of the San Bernardino kangaroo rat is described as being confined to pioneer and intermediate Riversidean Alluvial Fan Sage Scrub (RAFSS) habitats, with sandy soils deposited by fluvial (water) rather than Aeolian (wind) processes. Burrows are dug in loose soil, usually

near or beneath shrubs.

The San Bernardino kangaroo rat is one of three subspecies of the Merriam's kangaroo rat. The Merriam's kangaroo rat is a widespread species that can be found from the inland valleys to the deserts. The subspecies known as the San Bernardino kangaroo rat, however, is confined to inland valley scrub communities, and more particularly, to scrub communities occurring along rivers, streams and drainages. Most of the drainages have been historically altered as a result of flood control efforts and the resulting increased use of river resources, including mining, off-road vehicle use, and road and housing development. This increased use of river resources has resulted in a reduction in both the amount and quality of habitat available for the San Bernardino kangaroo rat. The past habitat losses and potential future losses prompted the emergency listing of the San Bernardino kangaroo rat as an endangered species (USFWS, 1998a). PCE's are physical or biological features essential to the conservation of a species for which its designated critical habitat is based on. Examples of PCE's include food, water, space for individual and population growth, cover or shelter, etc. The PCEs essential to support the biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, or sheltering for San Bernardino kangaroo rat are:

1. River, creek, stream, and wash channels; alluvial fans, flood plains, flood benches and terraces; and historic braided channels that are subject to dynamic geomorphological and hydrological processes;
2. Alluvial sage scrub and associated vegetation such as coastal sage scrub and chamise chaparral with a moderately open canopy;
3. Soil series consisting of sand, sandy loam, or loam within its geographical range; and
4. Upland areas proximal to flood plains containing suitable habitat (land adjacent to alluvial fan that provides refugia).

The site does not support Riversidean sage scrub, nor does it coincide with any natural waterway that provides seasonal scouring needed to form RAFSS, and no RAFSS habitat, nor any plant communities formed in alluvial fans, are present within or adjacent to the project site.

Undeveloped portions of the project site are underlain with rocky soils in varying degrees of disturbance and compaction due to historic agricultural land uses and ongoing anthropogenic disturbance. Field sign for kangaroo rat, including San Bernardino kangaroo rat, is distinctive and readily noted in the field. No sign (e.g., San Bernardino kangaroo rat characteristic burrows, dusting baths, and/or tail drags) was observed during the field investigation.

Based on these conditions, it was determined that the project site does not provide the requisite habitat elements needed by San Bernardino kangaroo rat to be present. Therefore, it was determined that San Bernardino kangaroo rat is presumed absent from the project site. No focused surveys are recommended.

Crotch's Bumble Bee

Crotch's bumble bee is a candidate species for listing status by the CESA. It is a colonial species that lives almost exclusively from coastal California east towards the Sierra-Cascade Crest and can be found uncommonly in western Nevada and south through Baja California. Crotch's bumble bee inhabits grassland and scrub habitats in hotter and drier climates than most other bumblebee species and is only capable of

tolerating a narrow range of climatic conditions. This species feeds on a variety of annual and perennial plant species, classifying it as a dietary generalist. It usually nests underground, often in abandoned rodent dens. Queens are active from March to May, with peak activity occurring in April; workers are active from April to August, with peak activity occurring between May and June; and males are active from May to September, with peak activity occurring in July.

Generally, for all bumble bee species, high-quality habitat has three major components: a diverse supply of flowers for nectar and pollen, nesting locations, and subterranean spaces for overwintering queens (Hatfield et al. 2012). Based on the results of the survey, it was determined that the study area does not provide suitable habitat for Crotch's bumble bee. No bumble bees were observed within the study area during the field investigation and no focused surveys are recommended.

Special-Status Plant Communities

The CNDDB lists three (3) special-status plant communities as being identified within the Redlands quadrangle: Riversidean Alluvial Fan Sage Scrub, Southern Coast Live Oak Riparian Forest, and Southern Sycamore Alder Riparian Woodland. Based on the results of the field investigation, no special-status plant communities were observed on-site. Therefore, no special-status plant communities will be impacted by project implementation.

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 adersely 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 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 with federally designated Critical Habitat (refer to Exhibit 6, *Critical Habitat*, in Attachment A). The nearest designated Critical Habitat to the site is located approximately 0.62 miles to the northeast for San Bernardino kangaroo rat, beyond existing development. Therefore, the loss or adverse modification of Critical Habitat will not occur as a result of the proposed project and consultation with the USFWS will not be required for implementation of the proposed project.

Conclusion

Based literature review and field survey, and existing site conditions discussed in this report, implementation of the project will have no significant impacts on federally or State listed species known to occur in the general vicinity of the project site. Additionally, the project will have no effect on designated

Critical Habitat or regional wildlife corridors/linkage because none exists within the area. No jurisdictional drainage and/or wetland features were observed on the project site during the field investigation. No further surveys are recommended. With completion of the recommendations provided below, no impacts to year-round, seasonal, or special-status avian residents or special-status species will occur from implementation of the proposed project.

Recommendations

Migratory Bird Treaty Act and Fish and Game Code

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

If construction occurs between February 1st and August 31st, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

Pre-Construction Burrowing Owl Clearance Survey

To ensure burrowing owl remain absent from the project site, a pre-construction burrowing owl clearance survey shall be conducted in accordance with CDFW's 2012 Staff Report on Burrowing Owl Mitigation. Two surveys shall be conducted, the first 14-30 days prior to ground disturbing activities and the second within 24 hours immediately before ground disturbing activities. If no burrowing owls are observed onsite, no further review will be required.

If the site survey determines the presence of burrowing owl, mitigation in accordance with requirements set forth by CDFW shall be implemented as follows:

A. If burrowing owls are found on the project site, construction activities should be avoided during the breeding season (February 1 to August 31).

B. If an active burrow is found during the breeding season and construction activities cannot be avoided, a qualified biologist will establish buffers around occupied burrowing owl nests in accordance with the *Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game (May 7, 2012)* to avoid any direct or indirect impacts to burrowing owl.

C. If impacts to active burrows cannot be avoided, coordination will need to occur with CDFW to determine whether a California Endangered Species Act (CESA) Incidental Take Permit (ITP) will be required pursuant to Fish and Game Code section 2081. As part of the ITP, a plan to minimize and fully mitigate project-related impacts, avoid the incidental take of burrowing owl, and minimize disturbance of the species' habitat will need to be prepared for approval by CDFW prior to commencing project activities.

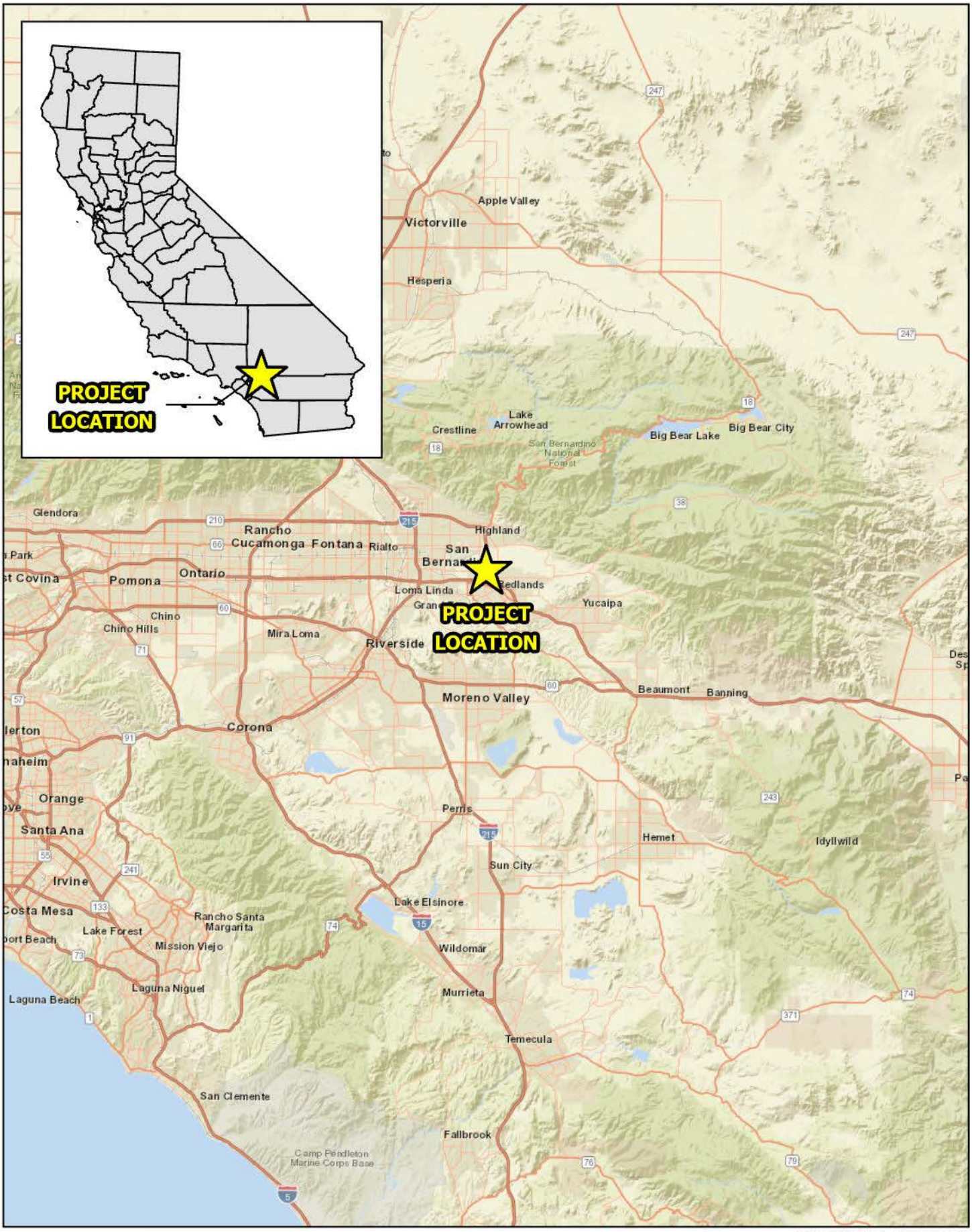
Please do not hesitate to contact Travis McGill at (909) 816-1646 or travismcgill@elmtconsulting.com should you have any questions.
Sincerely,

Travis J. McGill
Director

Andrew N. Mestas
Associate Biologist

Attachments:

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



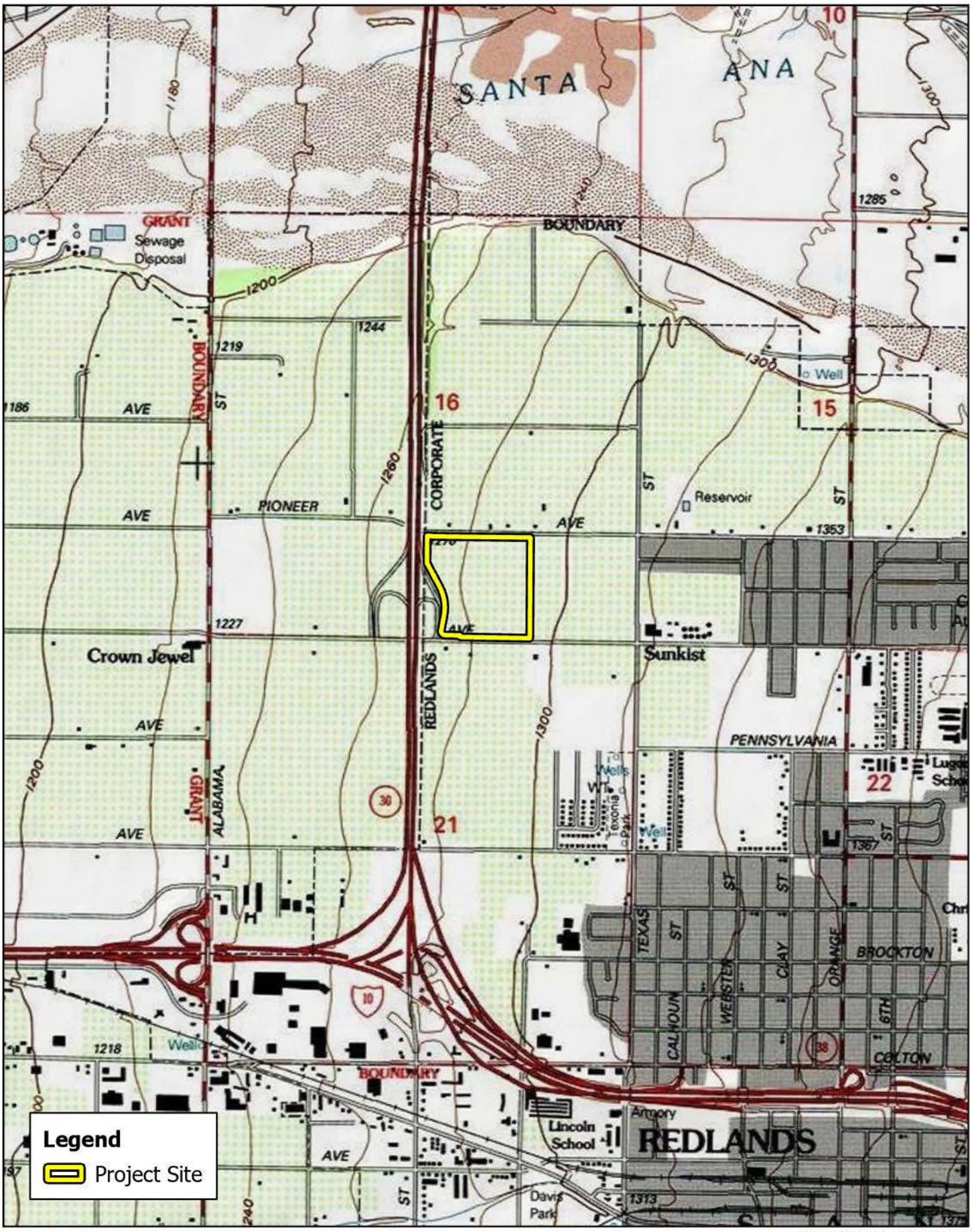
ELMT CONSULTING

Source: ESRI World Street Map

REDLANDS 31.6 ACRE SITE
BIOLOGICAL RESOURCES ASSESSMENT

Regional Vicinity

Exhibit 1



ELMT CONSULTING

N

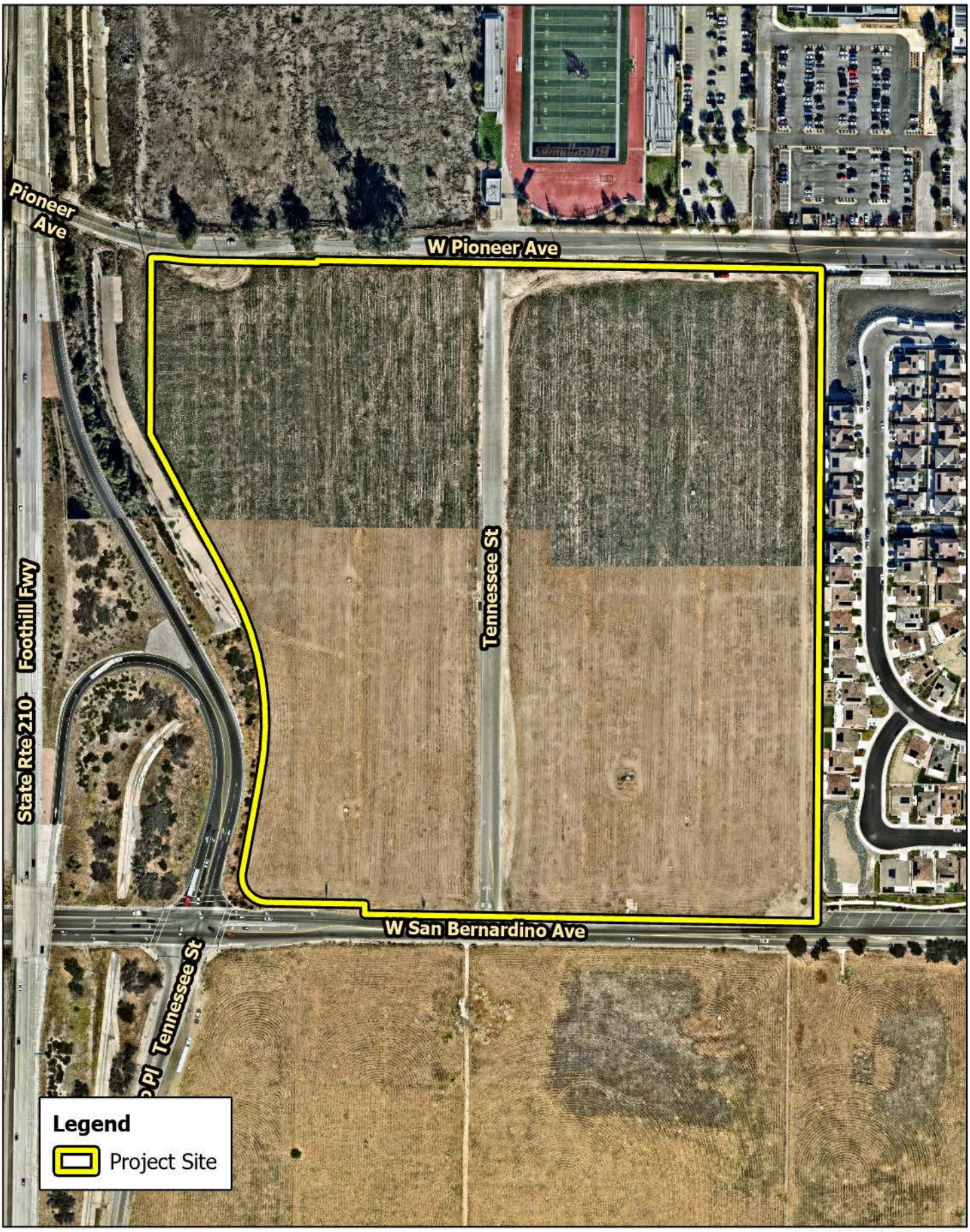
0 500 1,000 2,000 Feet

Source: ESRI USA Topographic Maps, San Bernardino County

REDLANDS 31.6 ACRE SITE
BIOLOGICAL RESOURCES ASSESSMENT

Site Vicinity

Exhibit 2



ELMT CONSULTING

N

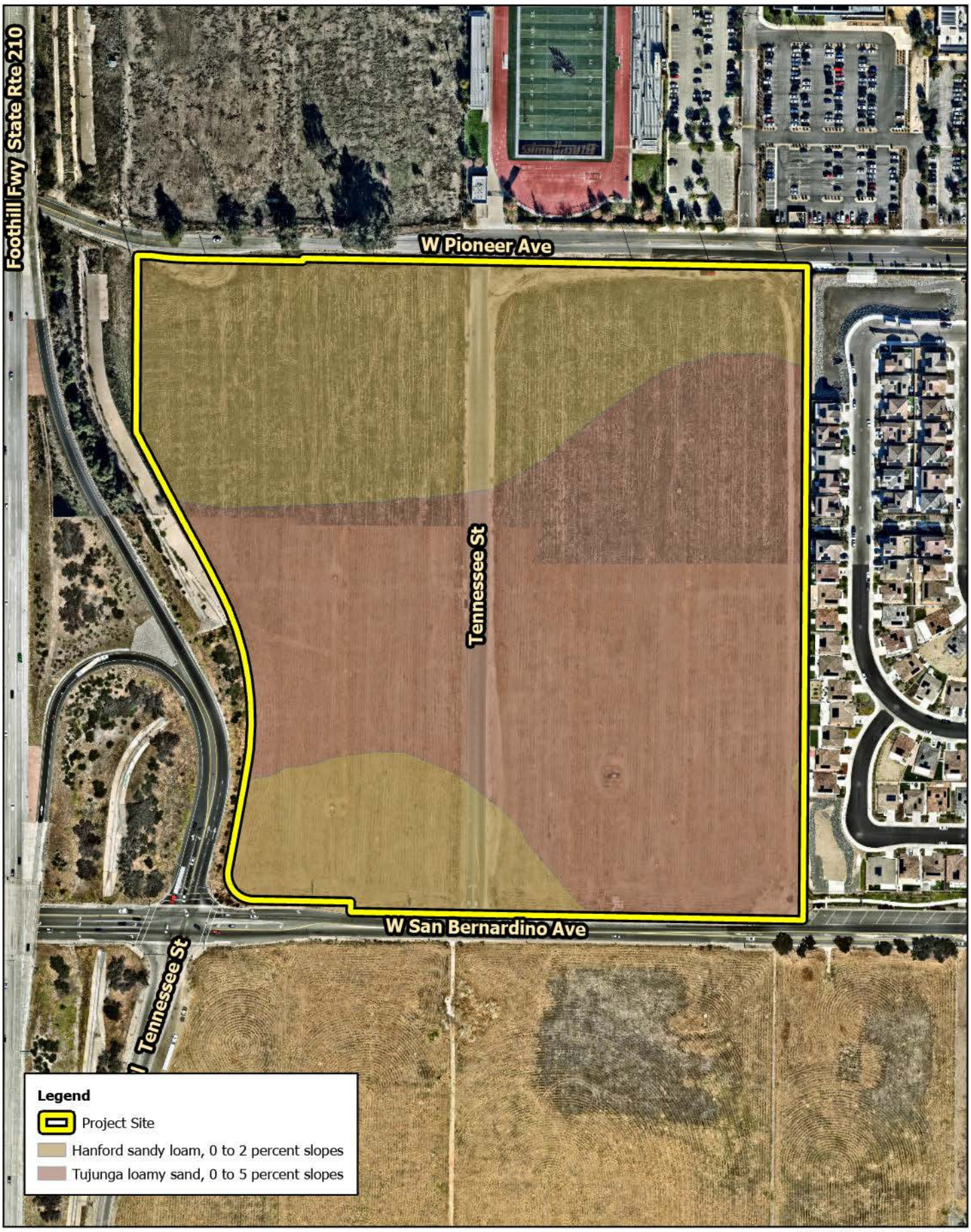
0 125 250 500 Feet

Source: Aerial Imagery, San Bernardino County

REDLANDS 31.6 ACRE SITE
BIOLOGICAL RESOURCES ASSESSMENT

Project Site

Exhibit 3



ELMT CONSULTING

N

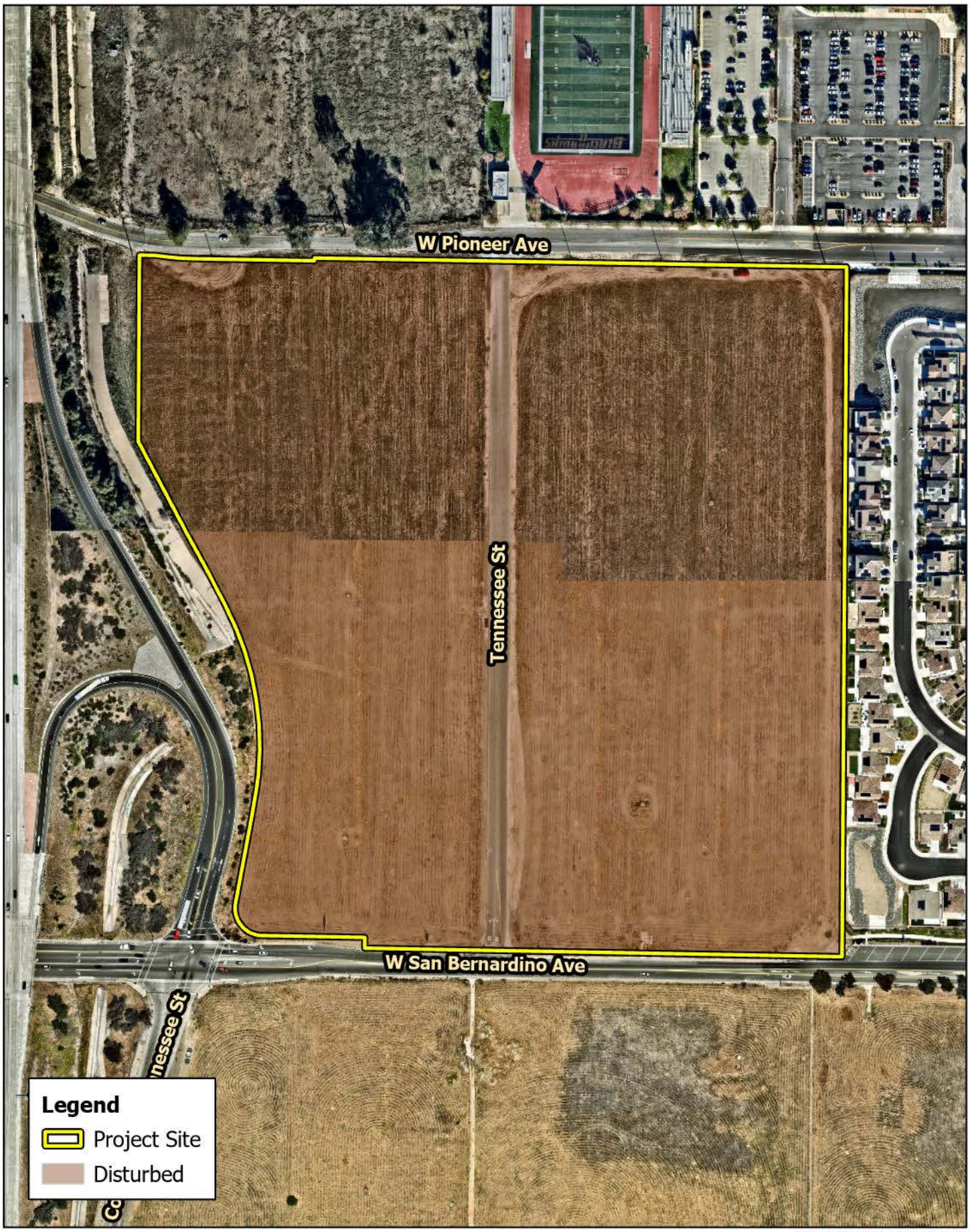
0 125 250 500 Feet

Source: Aerial Imagery, San Bernardino County

REDLANDS 31.6 ACRE SITE
BIOLOGICAL RESOURCES ASSESSMENT

Soils

Exhibit 4



ELMT CONSULTING

N

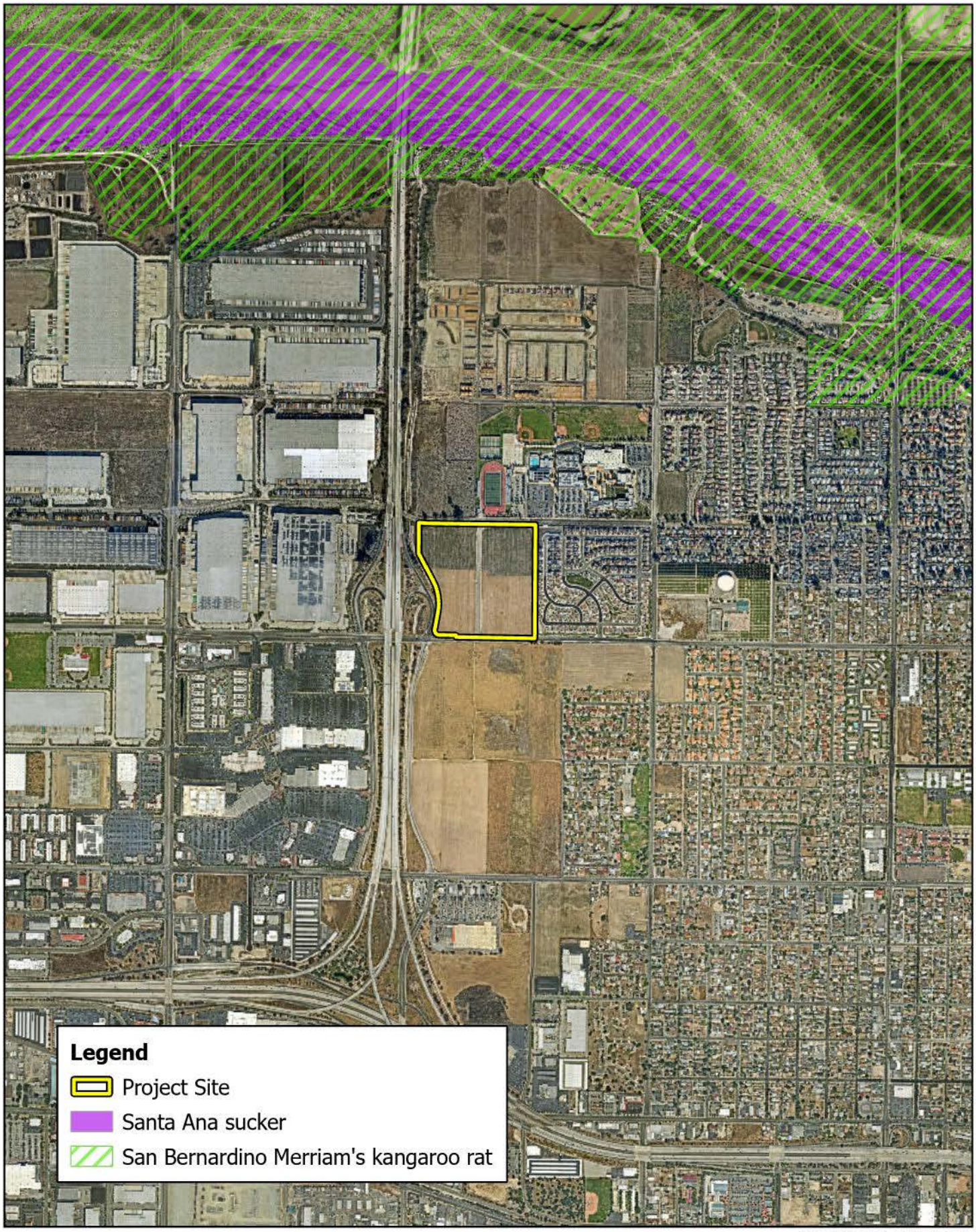
0 75 150 300 Feet

Source: Aerial Imagery, San Bernardino County

REDLANDS 31.6 ACRE SITE
BIOLOGICAL RESOURCES ASSESSMENT

Vegetation

Exhibit 5



ELMT CONSULTING

N

0 500 1,000 2,000 Feet

Source: Aerial Imagery, San Bernardino County

REDLANDS 31.6 ACRE SITE
BIOLOGICAL RESOURCES ASSESSMENT

Critical Habitat

Exhibit 6

Attachment A

Project Exhibits

Attachment B

Site Photographs

Photograph 1: From the northeast corner of the project site, looking south along the eastern boundary.

Photograph 2: From the northeast corner of the project site, looking west along the northern boundary.

Photograph 3: From the northwest corner of the project site looking east along the northern boundary.

Photograph 4: From the northwest corner of the project site looking south along the western boundary.

Photograph 5: From the southeast corner of the project site looking west along the southern boundary.

Photograph 6: From the southeast corner of the project site looking north along the eastern boundary.

Photograph 7: From the southwest corner of the project site looking north along the western boundary.

Photograph 8: From the southwest corner of the project site looking east along the southern boundary.

Attachment 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**
SPECIAL-STATUS WILDLIFE SPECIES				
Accipiter cooperii Cooper's hawk	Fed: None CA: WL	Generally found in forested areas up to 3,000 feet in elevation, especially near edges and rivers. Prefers hardwood stands and mature forests, but can be found in urban and suburban areas where there are tall trees for nesting. Common in open areas during nesting season.	No	**Low** There is marginal foraging habitat on the site and no nesting opportunities. This species is adapted to urban environments and occurs commonly.
Agelaius phoeniceus aciculatus Kern red-winged blackbird	Fed: None CA: SSC	Endemic to east-central Kern County, California, primarily inhabiting the Kern River Valley and the Walker Basin. It breeds in freshwater marshes dominated by cattails (*Typha spp.*) and tules (*Scirpus spp.*), as well as marsh vegetation around natural and artificial ponds, and willow thickets at the eastern end of Lake Isabella. Open areas, such as irrigated alfalfa fields, historically provided additional foraging habitat. The subspecies relies heavily on marsh and riparian habitats.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Agelaius tricolor tricolored blackbird	Fed: None CA: **THR**	Prefers wetland and grassland habitats. Nests in cattails bulrushes, and willows. Due to habitat loss, most native populations now found in rice-growing regions and flooded agricultural areas.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Aimophila ruficeps canescens southern California rufous-crowned sparrow	Fed: None CA: WL	Typically found between 3,000 and 6,000 feet in elevation. Breed in sparsely vegetated shrublands on hillsides and canyons. Prefers coastal sage scrub dominated by California sagebrush (*Artemisia californica*) but can also be found breeding in coastal bluff scrub, low-growing serpentine chaparral, and along the edges of tall chaparral habitats.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Anniella stebbinsi southern California legless lizard	Fed: None CA: SSC	Occurs primarily in areas with sandy or loose loamy soils under sparse vegetation of beaches, chaparral, or pine-oak woodland; or near sycamores, oaks, or cottonwoods that grow on stream terraces. Often found under or in the close vicinity of logs, rocks, old boards, and the compacted debris of woodrat nests.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Antrozous pallidus pallid bat	Fed: None CA: SSC	Found in arid and semi-arid regions, often in mountainous or rocky areas near water. Can also by found over open, sparsely vegetated grasslands. Roosts in cracks, crevices, and rocky outcrops.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Aquila chrysaetos golden eagle	Fed: None CA: FP; WL	Occupies nearly all terrestrial habitats of the western states except densely forested areas. Favors secluded cliffs with overhanging ledges and large trees for nesting and cover. Hilly or mountainous country where takeoff and soaring are supported by updrafts is generally preferred to flat habitats. Deeply cut canyons rising to open mountain slopes and crags are ideal habitat.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Ardea alba great egret	Fed: None CA: None	Found among marshes, ponds, shores, and mud flats. Forages in open areas like along rivers, lake edges, large marshes, shallow coastal lagoons, and estuaries.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Ardea herodias great blue heron	Fed: None CA: None	Found in both salt and freshwater habitats. Common around open coasts, marshes, sloughs, riverbanks, and lakes, but can also be found in along urban ponds. Forages in grasslands and agricultural fields. Nests in trees high off the ground.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Arizona elegans occidentalis California glossy snake	Fed: None CA: SSC	Occurs in a wide variety of habitat types including open desert, grasslands, shrublands, chaparral, and woodlands. Prefers areas where the soil is loose and sandy which allows for burrowing.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Artemisiospiza belli belli Bell's sparrow	Fed: None CA: WL	Occurs in chaparral dominated by fairly dense stands of chamise. Also found in coastal sage scrub in south of range.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Aspidoscelis hyperythra orangethroat whiptail	Fed: None CA: SSC	Inhabits low-elevations coastal scrub, chamise-redshank chaparral, mixed chaparral, and valley-foothill hardwood habitats. Semi-arid brushy areas typically with loose soil and rocks, including washes, stream sides, rocky hillsides, and coastal chaparral.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Aspidoscelis tigris stejnegeri coastal whiptail	Fed: None CA: SSC	Found in a variety of ecosystems, primarily hot and dry open areas with sparse foliage such as chaparral, woodland, and riparian areas.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Athene cunicularia burrowing owl	Fed: None CA: **CE**	Inhabits open, dry, sparsely vegetated land with available burrows abandoned by small rodents. Found in grasslands, deserts, and along the slopes of drainages, but can also be found in more urban areas like airport runways and golf courses.	No	**Low** No suitable burrows observed within the project site but the site provides line of site opportunities. Site is subject to routine weed abatement activities.
Bombus crotchii Crotch bumble bee	Fed: None CA: **CE**	Exclusive to coastal California east towards the Sierra-Cascade Crest; less common in western Nevada.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Bombus pensylvanicus American bumble bee	Fed: None CA: None	Prefers farmlands, meadows, grasslands, and open fields. Nests below grass or underground. Feeds on pollen of a wide variety of flowering plants including vetches, clovers, goldenrods, and many crop species.	No	**Presumed Absent** There is no suitable habitat present within or near the project site.
Buteo regalis ferruginous hawk	Fed: None CA: WL	Occurs primarily in open grasslands and fields, but may be found in sagebrush flats, desert scrub, low foothills, or along the edges of pinyon-juniper woodland. Feeds primarily on small mammals and typically found in agricultural or open fields.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Buteo swainsonii Swainson's hawk	Fed: None CA: THR	Lives in open areas like savannas, grasslands, steppes, and cultivated lands. Habitat is dependent on an abundance of small mammal prey. Nests in small thickets of trees and sometimes yuccas.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Calypte costae Costa's hummingbird	Fed: None CA: None	Desert and semi-desert, arid brushy foothills and chaparral. A desert hummingbird that breeds in the Sonoran and Mojave Deserts. Departs desert heat moving into chaparral, scrub, and woodland habitats.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Campylorhynchus brunneicapillus sandiegensis Coastal cactus wren	Fed: None CA: SSC	Found in a variety of low dry habitats. Most common in desert areas with thorny shrubs and cactus, especially where cholla cactus are common. Also found in mesquite brush and coastal chaparral where cactus are common.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Chaetodipus fallax fallax northwestern San Diego pocket mouse	Fed: None CA: SSC	Occurs in desert and coastal habitats in southern California, Mexico, and northern Baja California, from sea level to at least 1,400 meters above msl. Found in a variety of temperate habitats ranging from chaparral and grasslands to scrub forests and deserts. Requires low growing vegetation or rocky outcroppings, as well as sandy soils for burrowing.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Circus hudsonius northern harrier	Fed: None CA: SSC	Found in wide-open habitats in prairie grasslands, fields, and marshes. Nests are concealed on the ground in grasses or wetland vegetation.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Coccyzus americanus occidentalis western yellow-billed cuckoo	Fed: **THR** CA: **END**	Can be found in coastal scrub, second-growth forests and woodlands, hedgerows, forest edges, and in smaller riparian patches than those used for breeding. Wintering yellow-billed cuckoos generally reside in woody lowland vegetation near freshwater resources.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Crotalus ruber red-diamond rattlesnake	Fed: None CA: SSC	Inhabits arid scrub, coastal chaparral, oak and pine woodlands, rocky grassland, and cultivated areas from sea level to 3,000 feet in elevation. Common on desert slopes of mountains and rocky desert flats.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Diadophis punctatus modestus Sand Bernadino ringneck snake	Fed: None CA: None	Found in various moist habitats including woodland chaparral, forest and grassland. Can also be found in farmlands and gardens. Shelters under logs, stones or boards and is not an active burrower.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Dipodomys merriami parvus San Bernardino kangaroo rat	Fed: **END** CA: CE; SSC	Primarily found in Riversidian alluvial fan sage scrub and sandy loam soils, alluvial fans and flood plains, and along washes with nearby sage scrub. May occur at lower densities in Riversidian upland sage scrub, chaparral and grassland in uplands and tributaries in proximity to Riversidian alluvial fan sage scrub habitats. Tend to avoid rocky substrates and prefer sandy loam substrates for digging of shallow burrows.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Dipodomys simulans Dulzura kangaroo rat	Fed: None CA: None	Relatively common in chaparral, coastal sage scrub, Riversidean alluvial fan sage scrub, and peninsular juniper woodland habitats.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Dipdomys stephensi Stephen's kangaroo rat	Fed: **THR** CA: **THR**	Common in coastal sage scrub habitats and transition areas such as grasslands and mixed chaparral as well as agricultural areas. Prefers sparse, perennial vegetation and well-drained soils.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Egretta thula Snowy egret	Fed: None CA: None	Widespread in California along shores of coastal estuaries, fresh and saline emergent wetlands, ponds, slow-moving rivers, irrigation ditches, and wet fields. In southern California, common yearlong in the Imperial Valley and along the Colorado River.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Elanus leucurus white-tailed kite	Fed: None CA: FP	Found in open groves, river valleys, savannas, open woodlands, marshes, desert grasslands, partially cleared lands, and cultivated fields. Avoids heavily grazed areas. Requires some trees for perching and nesting, as well as open ground with an abundance of small mammals.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Empidonax traillii Willow flycatcher	Fed: None CA: **END**	Found in bushes, willows, thickets, brushy fields and upland copses. Breeds in thickets of deciduous trees and shrubs, especially willows or along woodland edges. Often near streams or marshes, especially in southern part of range, but may be found in drier habitats than Alder Flycatcher.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Empidonax traillii extimus Southwestern willow flycatcher	Fed: **END** CA: **END**	Requires dense riparian habitats for nesting. Breeds in thickets of deciduous trees and shrubs, especially willows or along woodland edges. Often near streams or marshes. Winters around clearings and second growth in the tropics, especially near water.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Eremophila alpestris actia California horned lark	Fed: None CA: WL	Generally found in shortgrass prairies, grasslands, disturbed fields, or similar habitat types along the coast or in deserts. Trees are shrubs are usually scarce or absent. Generally rare in montane, coniferous, or chaparral habitats. Forms large flocks outside of the breeding season.	No	**Low** Some suitable foraging and nesting habitat present within and adjacent to the project site.
Eugnosta busckana Busck's gallmoth	Fed: None CA: None	Little is known about the habitat and distribution of this species.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Eumops perotis californicus western mastiff bat	Fed: None CA: SSC	Occurs in many open spaces in semi-arid to arid habitats, including conifer and deciduous woodlands, coastal scrub, annual and perennial grasslands, palm oases, chaparral, desert scrub, and urban. Potential roost locations require vertical faces to drop off from to take flight.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Falco columbarius merlin	Fed: None CA: WL	Winters in open forests, grasslands and coastal areas. Breeds in forested openings, edges and along rivers. Habitat varies from coniferous forests to open conifer woodland, prairie groves, foothill marshes and open country.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Falco peregrinus anatum American peregrine falcon	Fed: None CA: FP	Found in a wide range of open habitats. Often along mountain ranges, or near water, especially along the coast. Adapted to urban environments and cities, often nesting on building ledges.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Gymnogyps californianus California condor	Fed: **END** CA: FP	Inhabits rugged canyons, gorges and forested mountains between 985 and 8,860 feet. Nests primarily between 2,000 and 4,500 feet in cliff caves.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Haliaeetus leucocephalus Bald eagle	Fed: DL CA: **END**	Found within a couple miles of the coast, bays, rivers, lakes, or other bodies of water. Breeds primarily in forested areas near large bodies of water. Typically nests in large, mature, easily accessible trees, but sometimes cliffs and man-made structures. Range extends from the Mexico border, through the U.S. and Canada.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Icteria virens yellow-breasted chat	Fed: None CA: SSC	Primarily found in tall, dense, relatively wide riparian woodlands and thickets of willows, vine tangles, and dense brush with well-developed understories. Nesting areas are associated with streams, swampy ground, and the borders of small ponds. Breeding habitat must be dense to provide shade and concealment. It winters south the Central America.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project 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	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Lasiurus xanthinus Western yellow bat	Fed: None CA: SSC	Roosts in palm trees in foothill riparian, desert wash, and palm oasis habitats with access to water for foraging.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Lepus californicus bennettii San Diego black-tailed jackrabbit	Fed: None CA: SSC	Occurs in diverse habitats, but primarily is found in arid regions supporting shortgrass habitats. Openness of open scrub habitat is preferred over dense chaparral.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Myotis yumanensis Yuma myotis	Fed: None CA: None	Resides in moist and dry forests, riparian areas, grasslands, shrubsteppe, and deserts. Closely associated with rivers, streams, lakes, and ponds. Generally found at lower elevations. Roosts in bridges, buildings, cliff crevices, caves, mines, and trees.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Nannopterum auritum Double-crested cormorant	Fed: None CA: WL	Fairly common, yearlong resident in lowlands and foothills throughout most of California, including the Salton Sea and Colorado River areas, and very common locally in large nesting colonies. Feeds along the margins of lacustrine, large riverine, and fresh and saline emergent habitats and rarely, on kelp beds in marine sub tidal habitats. Nests and roosts in dense-foliaged trees and dense emergent wetlands.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Neolarra alba white cuckoo bee	Fed: None CA: None	Found in dry, sandy areas (particularly deserts) in the American southwest near the host plants for *Perdita* bee species, of which it is a nest parasite.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Neotoma lepida intermedia San Diego desert woodrat	Fed: None CA: SSC	Occurs in coastal scrub communities between San Luis Obispo and San Diego Counties. Prefers moderate to dense canopies, and especially rocky outcrops.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Nycticorax nycticorax Black-crowned night heron	Fed: None CA: None	Fairly common, yearlong resident in lowlands and foothills throughout most of California, including the Salton Sea and Colorado River areas, and very common locally in large nesting colonies. Feeds along the margins of lacustrine, large riverine, and fresh and saline emergent habitats and rarely, on kelp beds in marine sub tidal habitats. Nests and roosts in dense-foliaged trees and dense emergent wetlands.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Nyctinomops femorosaccus pocketed free-tailed bat	Fed: None CA: SSC	Often found in pinyon-juniper woodlands, desert scrub, desert succulent shrub, desert riparian, desert wash, alkali desert scrub, Joshua tree, and palm oasis.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
***Oncorhynchus mykiss irideus* pop. 10** steelhead – southern california DPS	Fed: **END** CA: None	Found in permanent coastal streams from San Diego to the Smith River.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Pandion haliaetus Osprey	Fed: None CA: WL	Associated strictly with large, fish-bearing waters, primarily in ponderosa pine through mixed conifer habitats. Uses large trees, snags, and dead-topped trees in open forest habitats for cover and nesting. Requires open, clear waters for foraging and uses rivers, lakes, reservoirs, bays, estuaries, and surf zones.	No	**Presumed Absent** There is no suitable habitat present within or near the project site.
Pelecanus erythrorhynchos American white pelican	Fed: None CA: SSC	Locally common winter resident of southern California. Typically forage in shallow inland waters, such as open areas in marshes and along lake or river edges. Also occur in shallow coastal marine habitats.	No	**Presumed Absent** There is no suitable habitat present within or near the project site.
Perognathus longimembris brevinasus Los Angeles pocket mouse	Fed: None CA: SSC	Occurs in lower elevation grasslands and coastal sage scrub communities in and around the Los Angeles Basin. Prefers open ground with fine sandy soils. May not dig extensive burrows, but may instead seek refuge under weeds and dead leaves.	No	**Presumed Absent** There is no suitable habitat present within or near the project site.
Phrynosoma blainvillii coast horned lizard	Fed: None CA: SSC	Occurs in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. In inland areas, this species is restricted to areas with pockets of open microhabitat, created by disturbance (i.e. fire, floods, roads, grazing, fire breaks). The key elements of such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense shrubs for refuge.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Polioptila californica californica coastal California gnatcatcher	Fed: **THR** CA: SSC	Obligate resident of sage scrub habitats that are dominated by California sagebrush (*Artemisia californica*). This species generally occurs below 750 feet elevation in coastal regions and below 1,500 feet inland. Ranges from the Ventura County, south to San Diego County and northern Baja California and it is less common in sage scrub with a high percentage of tall shrubs. Prefers habitat with more low-growing vegetation.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Progne subis purple martin	Fed: None CA: SSC	Prefers open spaces that are located near water sources. Forages in meadows, grasslands, over lakes and ponds and flooded pastures. Also inhabits urban areas like farms, croplands, parks and gardens. Nests in cavities of trees, cactus, buildings, or cliffs.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Rana muscosa southern mountain yellow-legged frog	Fed: **END** CA: **END**; WL	Occurs in lower elevation habitats characterized by rocky streambeds and wet meadows, while higher elevation habitats include lakes, ponds, and streams. Occupy streams in narrow, rock-walled canyons. Often found along rock walls or vegetated banks and always within a few feet of the water.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
***Rhinichthys osculus* ssp. 3** Santa Ana speckled dace	Fed: None CA: SSC	Requires permanent flowing streams within summer water temperatures of 17 – 20 degrees Celsius. Inhabits shallow cobble and gravel riffles and small streams that flow through steep, rocky canyons with chaparral covered walls.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Salvadora hexalepis virgultea coast patch-nosed snake	Fed: None CA: SSC	Inhabits semi-arid brushy areas and chaparral in canyons, rocky hillsides, and plains. Requires friable soils for burrowing.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Setophaga petechia yellow warbler	Fed: None CA: SSC	Nests over all of California except the Central Valley, the Mojave Desert region, and high altitudes and the eastern side of the Sierra Nevada. Winters along the Colorado River and in parts of Imperial and Riverside Counties. Nests in riparian areas dominated by willows, cottonwoods, sycamores, or alders or in mature chaparral. May also use oaks, conifers, and urban areas near stream courses.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Spea hammondii Western spadefoot	Fed: None CA: SSC	Prefers open areas with sandy or gravelly soils, in a variety of habitats including mixed woodlands, grasslands, coastal sage scrub, chaparral, sandy washed, lowlands, river floodplains, alluvial fans, playas, alkali flats, foothills, and mountains. Rainpools which do not contain bullfrogs, fish, or crayfish are necessary for breeding.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Spinus lawrencei Lawrence's goldfinch	Fed: None CA: None	Open woodlands, chaparral, and weedy fields. Closely associated with oaks. Nests in open oak or other arid woodland and chaparral near water.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Taxidea taxus American badger	Fed: None CA: SSC	Primarily occupy grasslands, parklands, farms, tallgrass and shortgrass prairies, meadows, shrub-steppe communities and other treeless areas with sandy loam soils where it can dig more easily for its prey. Occasionally found in open chaparral (with less than 50% plant cover) and riparian zones.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Thamnophis hammondii Two-striped gartersnake	Fed: None CA: SSC	Occurs in or near permanent fresh water, often along streams with rocky beds and riparian growth up to 7,000 feet in elevation.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Vireo bellii pusillus least Bell's vireo	Fed: **END** CA: **END**	Primarily occupy Riverine riparian habitat that typically feature dense cover within 1-2 meters of the ground and a dense, stratified canopy. Typically it is associated with southern willow scrub, cottonwood-willow forest, mule fat scrub, sycamore alluvial woodlands, coast live oak riparian forest, arroyo willow riparian forest, or mesquite in desert localities. It uses habitat which is limited to the immediate vicinity of water courses, 2,000 feet elevation in the interior.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Xanthocephalus xanthocephalus yellow-headed blackbird	Fed: None CA: SSC	Winters in the western United States. Breeds in freshwater sloughs, marshy lake boarders, and tall cattails. Nests primarily in large wetlands, but also in mountain meadows and along the edges of ponds and rivers. Forages in fields and open country.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
SPECIAL-STATUS PLANT SPECIES				
Abronia villosa* var. *aurita chaparral sand-verbena	Fed: None CA: None CNPS: 1B.1	Associated with creosote-bush scrub and coastal sage scrub communities. Grows in well-drained sandy soils in desert habitats and flood plains within the southwestern United States and northern Mexico. Occurs at elevations up to 4,500 feet. Blooms from February to May.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Arenaria paludicola marsh sandwort	Fed: **END** CA: **END** CNPS: 1B.1	Grows mainly in wetlands and freshwater marshes in arid climates. The plant can grow in saturated acidic bog soils and soils that are sandy with a high organic content. Found at elevations ranging from 33 to 558 feet. Blooming period is from May to August.	No	**Presumed Absent** No suitable habitat is present within the project site.
Artemisia palmeri San Diego sagewort	Fed: None CA: None CNPS: 4.2	Grows along coastal creeks and drainages and other small pockets with residual moisture in coastal sage scrub and chaparral communities. Prefers sandy soils. Occurs in areas below 2,000 feet in elevation. Blooms from June to July.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Berberis nevinii Nevin's barrberry	Fed: **END** CA: **END** CNPS: 1B.1	Prefers a riparian and alluvial scrub habitat and can be found in foothill woodlands, coastal sage scrub, and chaparral communities. Grows on sandy soils in washes, alluvial terraces and canyon bottoms.	No	**Presumed Absent** No suitable habitat is present within the project site.
Calochortus plummerae Plummer's mariposa-lily	Fed: None CA: None CNPS: 4.2	Prefers openings in chaparral, foothill woodland, coastal sage scrub, valley foothill grasslands, cismontane woodland, lower montane coniferous forest and yellow pine forest. Often found on dry, rocky slopes and soils and brushy areas. Can be very common after a fire. Found at elevations ranging from 459 to 6,299 feet. Blooming period is from May to July.	No	**Presumed Absent** No suitable habitat is present within the project site.
Centromadia pungens* ssp. *Laevis Smooth tarplant	Fed: None CA: None CNPS: 1B.1	Occurs in alkaline soils within chenopod scrub, meadows and seeps, playas, riparian woodland, and valley and foothill grassland habitats. Grows in elevation from 0 to 2,100 feet. Blooming period ranges from April to September.	No	**Presumed Absent** No suitable habitat is present within the project site.
Chloropyron maritimum* ssp. *Maritimum Salt marsh bird's-beak	Fed: **END** CA: **END** CNPS: 1B.2	Upper terraces and higher edges of coastal salt marshes where tidal inundation is periodic. Found at elevations ranging from 0 to 98 feet. Blooming period is from May to October.	No	**Presumed Absent** No suitable habitat is present within the project site. The project site occurs outside of the known elevation range for this species.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Chorizanthe leptotheca Penninsular spineflower	Fed: None CA: None CNPS: 4.2	Grows in chaparral and forest habitats in sandy or gravelly soils from sea level to 5,000 feet in elevation. Blooms from May to August.	No	**Presumed Absent** No suitable habitat is present within the project site.
Chorizanthe parryi* var. *parryi Parry's spineflower	Fed: None CA: None CNPS: 1B.1	Occurs on sandy and/or rocky soils in chaparral, coastal sage scrub, and sandy openings within alluvial washes and margins. Found at elevations ranging from 951 to 3,773 feet. Blooming period is from April to June.	No	**Presumed Absent** No suitable habitat is present within the project site.
Chorizanthe xanti* var. *leucotheca white-bracted spineflower	Fed: None CA: None CNPS: 1B.2	Grows in sandy to gravelly places in saltbush communities, coastal scrub, Mojavean desert scrub, pinyon-juniper and pine-oak woodlands. Blooms from April to June.	No	**Presumed Absent** No suitable habitat is present within the project site.
Convolvus simulans small-flowered morning-glory	Fed: None CA: None CNPS: 4.2	Found in northern coastal scrub, coastal sage scrub, and valley grassland communities. Blooms from March to July.	No	**Presumed Absent** No suitable habitat is present within the project site.
Cuscuta obtusiflora* var. *glandulosa Peruvian dodder	Fed: None CA: None CNPS: 2B.2	Grows in marshes and freshwater swamps. Often seen parasitizing other host plants by clinging to groundcover-type plants or climbing up other vines and tall vegetation. Blooms from July to October.	No	**Presumed Absent** No suitable habitat is present within the project site.
Deinandra paniculate paniculate tarplant	Fed: None CA: None CNPS: 4.2	Found in vernal pool margins, grasslands, open areas such as roadsides and in other disturbed soils inland from the coast. Blooms from May to November. Elevation range is sea level to 1,000 feet.	No	**Presumed Absent** No suitable habitat is present within the project site.
Dodecahema leptoceras slender-horned spineflower	Fed: **END** CA: **END** CNPS: 1B.1	Chaparral, coastal scrub (alluvial fan sage scrub). Flood deposited terraces and washes. Found at elevations ranging from 1,181 to 2,690 feet. Blooming period is from April to June.	No	**Presumed Absent** No suitable habitat is present within the project site.
Eriastrum densifolium* ssp. *sanctorum Santa Ana River woollystar	Fed: **END** CA: **END** CNPS: 1B.1	Found in sandy soil in association with mature alluvial scrub. Ideal habitat appears to be a terrace or bench that receives overbank deposits every 50 to 100 years. Cryptogamic crusts are frequently present in occupied areas. Found at elevations ranging from 299 to 2,001 feet. Blooming period is from April to September.	No	**Presumed Absent** No suitable habitat is present within the project site. The project site occurs outside of the known elevation range for this species.
Imperata brevifolia California satintail	Fed: None CA: None CNPS: 2B.1	Grows primarily in riparian habitats and has an affinity for moist soils, but can be found in chaparral, coastal scrub, Mojavean desert scrub, meadows and seeps. Found at elevations ranging from 0 to 3,986 feet. Blooming period is from September to May.	No	**Presumed Absent** No suitable habitat is present within the project site.

Scientific Name Common Name	**Status**	**Habitat**	**Observed On-site**	**Potential to Occur**
Juglans californica southern California black walnut	Fed: None CA: None CNPS: 4.2	Found in chaparral, cismontane woodland, coastal scrub, and riparian woodland habitats. Found at elevations ranging from 164 to 2,953 feet. Blooming period is from March to August.	No	**Presumed Absent** No suitable habitat is present within the project site.
Lepidium virginicum* var. *robinsonii Robinson's pepper-grass	Fed: None CA: None CNPS: 4.3	Found in chaparral and coastal sage scrub communities. Grows along roadsides, in bottomlands, gravelly and sandy shores, in waste grounds, stream banks, grassy meadows, dry flats, and stream beds. Blooms from January to July.	No	**Presumed Absent** No suitable habitat is present within the project site.
Malacothamnus parishii Parish's bush-mallow	Fed: None CA: None CNPS: 1A	Found only in and around San Bernadino. Thought to be extirpated from native habitat. Historically found in chaparral and coastal sage scrub communities. Grows at elevations ranging from 1,000 to 1,500 feet. Blooms from March to May.	No	**Presumed Absent** No suitable habitat is present within the project site.
Ribes divaricatum* var. *parishii Parish's gooseberry	Fed: None CA: None CNPS: 1A	Grows in forests, woodlands, and in willow swales, riparian habitats, and coastal scrub communities along the West coast. Blooms from February to April.	No	**Presumed Absent** No suitable habitat is present within the project site.

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

California Department of Fish and Wildlife (CDFW) - California
END- California Endangered
THR- California Threatened
CE - Candidate Endangered
FP- California Fully Protected
SSC- California Species of Concern
WL- Watch List

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

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

Attachment 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).

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

Federal Regulations

Section 404 of the Clean Water Act

In accordance with the Revised Definition of "Waters of the United States"; Conforming (September 8, 2023), "waters of the United Sates" are defined as follows:

(a) ***Waters of the United States*** means:

(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) Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5) of this section;

(3) 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) Wetlands adjacent to the following waters:
(i) Waters identified in paragraph (a)(1) of this section; or
(ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3) of this section and with a continuous surface connection to those waters;

(5) Intrastate lakes and ponds not identified in paragraphs (a)(1) through (4) of this section that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3) of this section

(b) The following are not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5) of this section:

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

(2) Prior converted cropland designated by the Secretary of Agriculture. The exclusion would cease upon a change of use, which means that the area is no longer available for the production of agricultural commodities. Notwithstanding the determination of an area's status as prior converted

cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA;

(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water;

(4) Artificially irrigated areas that would revert to dry land if the irrigation ceased;
(5) Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;
(6) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking dry land to retain water for primarily aesthetic reasons;

(7) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States; and

(8) Swales and erosional features (*e.g.,* gullies, small washes) characterized by low volume, infrequent, or short duration flow.

(c) In this section, the following definitions apply:

(1) ***Wetlands*** means 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. Wetlands generally include swamps, marshes, bogs, and similar areas.

(2) ***Adjacent*** means having a continuous surface connection

(3) ***High tide line*** means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(4) ***Ordinary high water mark*** means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(5) ***Tidal waters*** means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

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.