



August 9, 2019

**MARANGTON MAS LLC**

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**SUBJECT: Habitat and Jurisdictional Assessment for Tentative Parcel Map No. 20121 Located in the City of Rancho Cucamonga, San Bernardino County, California**

**Introduction**

This report contains the findings of ELMT Consulting’s (ELMT) habitat and jurisdictional assessment for the Marangton Mas, LLC Project – Tentative Parcel Map No. 20121 (project site or site) located in the City of Rancho Cucamonga, San Bernardino County, California. The habitat and jurisdictional assessment was conducted by biologists Thomas J. McGill, Ph.D., Travis J. McGill, and Jacob H. Lloyd Davies on July 25, 2019 to document baseline conditions and assess the potential for special-status<sup>1</sup> plant and wildlife species to occur within the project site that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the project site to support special-status plant and wildlife species identified by the California Department of Fish and Wildlife’s (CDFW) California Natural Diversity Database (CNDDDB), and other electronic databases as potentially occurring in the general vicinity of the project site.

**Project Location**

The project site is generally located north of State Route 210, west of Interstate 15, and east of State Route 83, on the southern foothills of the San Gabriel Mountains in the City of Rancho Cucamonga, San Bernardino County, California. The project site is depicted on the Cucamonga Peak quadrangle of the United States Geological Survey’s (USGS) 7.5-minute map series within section 14 of Township 1 North, Range 7 West. Specifically, the site is located at 4552 Haven Road on the southwest corner of the intersection of Snowdrop Road and Haven Road. Refer to Exhibits 1-3 in Attachment A.

**Project Description**

The proposed project will subdivide the approximately 4.30-acre lot into four parcels ranging from 1.00 to 1.24 acres (refer to Exhibit 4, *Depiction of Proposed Project*, in Attachment A). Each parcel will undergo grading associated with residential development and pads will be constructed to accommodate residential structures.

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

## **Methodology**

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

### *Literature Review*

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

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

- Google Earth Pro historic aerial imagery (1995-2018);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey<sup>2</sup>;
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS Endangered Species Profiles.

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

### *Habitat Assessment/Field Investigation*

Following the literature review, biologist Travis J. McGill inventoried and evaluated the condition of the habitat within the project site on July 25, 2019. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking meandering transects throughout the project site. In addition, aerial photography was reviewed prior to the site investigation to locate potential

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<sup>2</sup> 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.

natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

All plant and wildlife species observed, as well as dominant plant species within each plant community, were recorded. Plant species observed during the field investigation were identified by visual characteristics and morphology in the field. Unusual and less familiar plant species were photographed during the field investigation and identified in the laboratory using taxonomical guides. 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 land cover types, and presence of potential jurisdictional drainage and/or wetland features were noted.

### Soil Series Assessment

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

### Plant Communities

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

### Plants

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

### Wildlife

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

### Jurisdictional Drainages and Wetlands

Aerial photography was reviewed prior to conducting a field investigation in order to locate and inspect any potential natural drainage features, ponded areas, or water bodies that may fall under the jurisdiction

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

### **Existing Site Conditions**

The proposed project site is located in a primarily undeveloped area on the southern foothills of the San Gabriel Mountains. The site is bordered entirely by undeveloped, vacant land with residential developments to the northwest and flood control structures to the northeast. The nearest residence occurs approximately 550-feet from the parcel edge to the northwest and an above-ground water tank occurs approximately 710-feet from the parcel edge to the northeast.

Elevation ranges from approximately 2,510 to 2,600 feet above mean sea level and generally slopes from the northeast corner to the southwest corner of the site. Based on the NRCS USDA Web Soil Survey, the project site is underlain by the following soil units: Cieneba sandy loam (9 to 15 percent slopes) and Cieneba-Rock outcrop complex (30 to 50 percent slopes). Refer to Exhibit 5, *Soils*, in Attachment A. Soils onsite have been mechanically disturbed and compacted from grading and weed abatement activities, and onsite development.

### **Vegetation**

The majority of the project site has been subject to anthropogenic disturbances from grading, weed abatement, and development activities (i.e., development of a helicopter pad). These disturbances have greatly disturbed the natural plant communities that once occurred within the boundaries of the project site, reducing their ability to provide suitable habitat for special-status plant and wildlife species. Refer to Attachment B, *Site Photographs*, for representative site photographs.

Two (2) plant communities were observed within the project site: Riversidean sage scrub (RSS), and riparian scrub (refer to Exhibit 6, *Vegetation*, in Attachment A). The site also contains two land cover types that would be classified as disturbed and developed. The RSS plant community found onsite has been subject to existing anthropogenic disturbances and is dominated by California sagebrush (*Artemisia californica*) and California buckwheat (*Eriogonum fasciculatum*). This plant community could also classify as a California sagebrush/California buckwheat scrub plant community. Other plant species observed within this plant community include deerweed (*Acmispon glaber*), black sage (*Salvia mellifera*), chaparral yucca (*Hesperoyucca whipplei*), scrub oak (*Quercus berberidifolia*), chamise (*Adenostoma fasciculatum*), red brome (*Bromus laevipes*), wild oat (*Avena sp.*), tocalote (*Centaurea melitensis*), saw-toothed goldenbush (*Hazardia squarrosa*), smilo grass (*Stip amiliacea*), short-podded mustard (*Hirschfeldia incana*), Spanish lotus (*Acmispon americanus*), yellow star thistle (*Centaurea solstitialis*), Pomona locoweed (*Astragalus pomonensis*), wild oat (*Avena fatua*), and ripgut brome (*Bromus diandrus*).

A strip of riparian scrub habitat was observed along the eastern boundary of the project site, outside of the proposed limits of disturbance. Plant species observed within the riparian scrub plant community include sycamore (*Platanus racemosa*), arroyo willow (*Salix lasiolepis*), California mugwort (*Artemisia douglasiana*), mulefat (*Baccharis salicifolia*), coast live oak (*Quercus agrifolia*), poison oak (*Toxicodendron diversilobum*), and tamarisk (*Tamarix sp.*).

Disturbed areas refer to unpaved or dirt areas that have been exposed to anthropogenic disturbances and do not comprise a plant community. It should be noted several eucalyptus (*Eucalyptus sp.*) trees were observed on the northern boundary of the project site. Surface soils within these areas are generally devoid of vegetation or support non-native and ruderal/weedy plant species, and have been heavily disturbed/compacted from anthropogenic disturbances. Disturbed areas on-site generally encompass areas that are subject to grading and weed abatement activities.

Developed areas encompass all paved/impervious surfaces. The developed areas within the project site consists of the paved helicopter pad in the middle of the eastern portion 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 a general reference and is limited by the season, time of day, and weather conditions in which the field investigation was conducted. Wildlife detections were based on calls, songs, scat, tracks, burrows, and direct observation. The project site provides limited habitat for wildlife species except those adapted to a high degree of anthropogenic disturbances and development.

### **Fish**

No fish or hydrogeomorphic features (e.g., creeks, ponds, lakes, reservoirs) with frequent sources of water that would support populations of 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 project site.

### **Amphibians**

No amphibians were observed within the ponds during the field investigation. Common amphibian species that could be supported within the riparian scrub riparian scrub habitat on the western boundary of the project site include western toad (*Anaxyrus boreas*) and Pacific tree frog (*Pseudacris hypochondriaca*).

### **Reptiles**

The project site provides foraging and cover habitat for a variety of reptile species. The only reptile species observed during the field investigation was western side-blotched lizard (*Uta stansburiana elegans*). Other reptilian species that could be expected to occur include California whiptail (*Aspidoscelis tigris*), gopher snake (*Pituophis catenifer*), and California kingsnake (*Lampropeltis californiae*).

### Birds

The project site provides foraging and cover habitat for a variety of bird species. Bird species detected during the field investigation include acorn woodpecker (*Melanerpes formicivorus*), house finch (*Haemorhouse mexicanus*), lesser goldfinch (*Spinus psaltria*), California towhee (*Melozone crissalis*), wrenit (*Chamaea fasciata*), and Anna's hummingbird (*Calypte anna*).

### Mammals

No mammals were observed during the field investigation. Common mammalian species that could potentially occur on-site include coyote (*Canis latrans*), opossum (*Didelphis virginiana*), and raccoon (*Procyon lotor*).

### Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field investigation. The project site and surrounding area provides foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area. The project site has the potential to provide suitable nesting opportunities for birds that nest on the open ground and those acclimated to routine disturbances. Additionally, the trees that border the project site provide suitable nesting opportunities. A pre-construction nesting bird clearance survey should be conducted within three (3) days prior to ground disturbance to ensure no nesting birds will be impacted from site development.

### 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 San Bernardino County Land Use Plan Open Space Element depicts wildlife corridors within the Valley and Mountain Areas. According to the San Bernardino County Land Use Plan Open Space Element, the project site has not been identified as occurring within a Wildlife Corridor or Linkage. Although partially constrained by residential developments to the west and south and flood control facilities to the east, the open and natural habitats north of the project site have the ability to allow wildlife to move through the immediate area in search of food, shelter, or nesting habitat. Even though the project site is located on the southern foothills of the San Gabriel Mountains, implementation of the proposed project is not expected to disrupt or have any adverse effects on any migratory corridors or linkages that may occur in the general vicinity of the project site.

### **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.

Within the proposed limits of disturbance, no discernible drainage courses, inundated areas, wetland features, or hydric soils that would be considered jurisdictional by the Corps, Regional Board, or CDFW were observed (refer to Exhibit 7, *Jurisdictional Areas* in attachment A). Based on the proposed site plan, project activities will not result in impacts to Corps, Regional Board, or CDFW jurisdictional areas and regulatory approvals will not be required.

It should be noted, as depicted on the NWI, a riverine feature has been mapped along the western boundary of the site, and a freshwater emergent wetland feature has been mapped on the northwest corner of the site. These features will fall under the jurisdictional authority of the Corps, Regional Board, and CDFW. However, based on the proposed site plan, both features are located outside of the limits of disturbance, and will not be impacted from site development.

### **Special-Status Biological Resources**

The CNDDDB Rarefind 5 and the CNPS Electronic Inventory of Rare and Endangered Vascular Plants of California were queried for reported locations of special-status plant and wildlife species as well as special-status natural plant communities in the Cucamonga Peak USGS 7.5-minute quadrangle. The habitat assessment evaluated the conditions of the habitat(s) within the boundaries of the project site to determine if the existing plant communities, at the time of the survey, have the potential to provide suitable habitat(s) for special-status plant and wildlife species.

The literature search identified thirty-one (31) special-status plant species, forty-five (45) special-status wildlife species, and four (4) special-status plant communities as having the potential to occur within the Cucamonga Peak 7.5-minute quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site are presented in Attachment C: *Potentially Occurring Special-Status Biological Resources*.

### **Special-Status Plants**

According to the CNDDDB and CNPS, thirty-one (31) special-status plant species have been recorded in the Cucamonga Peak quadrangle (refer to Attachment C). No special-status plant species were observed onsite during the habitat assessment. The majority of the project site has been subject to anthropogenic disturbances from grading, weed abatement, and development activities. Onsite disturbances have reduced the suitability of the habitat to support special-status plant species known to occur in the general vicinity of the project site. Based on habitat requirements for specific special-status plant species and the availability

and quality of habitats needed by each species, it was determined that the project site does not provide suitable habitat for any of the special-status plant species known to occur in the area and are presumed to be absent from the project site. No focused surveys are recommended.

### Special-Status Wildlife

According to the CNDDDB, forty-five (45) special-status wildlife species have been reported in the Cucamonga Peak quadrangle (refer to Attachment C). No special-status wildlife species were observed onsite during the habitat assessment. Onsite disturbances have greatly reduced potential foraging and nesting/denning opportunities for wildlife species onsite. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that the proposed project site has a low potential to support Cooper's hawk (*Accipiter cooperii*), southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*), orange-throated whiptail (*Aspidoscelis hyperythra*), coastal whiptail (*Aspidoscelis tigris stejnegeri*), western mastiff bat (*Eumops peratis californicus*), loggerhead shrike (*Lanius ludovicianus*), and yellow warbler (*Setophaga peticia*). All remaining special-status wildlife species are presumed to be absent from the project site due to lack of quality habitat. No focused surveys are recommended.

None of the aforementioned species are federally or state listed as endangered or threatened. In order to ensure impacts to the aforementioned species do not occur from implementation of the proposed project, a pre-construction clearance survey shall be conducted prior to ground disturbance. With implementation of mitigation through the pre-construction clearance survey, impacts to the aforementioned species will be less than significant.

Based on regional significance, the potential occurrence of San Bernardino kangaroo rat and California gnatcatcher within the project site are described in further detail below.

#### 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, 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).

Even though the project site is abuts federally designated Critical Habitat for San Bernardino kangaroo rat, the project site no longer supports undisturbed, native habitats, in particular a Riversidian alluvial fan sage scrub plant communities, is no longer exposed to hydrological processes needed to maintain the openness of suitable San Bernardino kangaroo rat habitat, and does not contain upland areas proximal to flood plains that contain suitable refuge habitat for San Bernardino kangaroo rat. Based on these conditions, it was determined that the project site does not provide the requisite PCEs which are 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.

#### California Gnatcatcher

California gnatcatcher is a federally threatened species with restricted habitat requirements, being an obligate resident of sage scrub habitats that are dominated by California sagebrush. This species generally occurs below 750 feet elevation in coastal regions and below 1,500 feet inland. It ranges from Ventura County south to San Diego County and northern Baja California and is less common in sage scrub with a high percentage of tall shrubs. It prefers habitat with more low-growing vegetation. California gnatcatchers breed between mid-February and the end of August, with peak activity from mid-March to mid-May. Population estimates indicate that there are approximately 1,600 to 2,290 pairs of California gnatcatcher remaining. Declines are attributed to loss of sage scrub habitat due to development, as well as cowbird nest parasitism.

The PCEs essential to support the biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, or sheltering for California gnatcatcher are:

1. Dynamic and Successional sage scrub Habitats and Associated Vegetation (RAFSS, Coastal Sage-Chaparral Scrub, etc.) that provide space for individual and population growth, normal behavior, breeding, reproduction, nesting, dispersal and foraging; and
2. Non-sage scrub habitats such as chaparral, grassland, and riparian areas, in proximity to sage scrub habitats that provide linkages to help with dispersal, foraging and nesting.

Non-sage scrub habitats such as chaparral, grassland, and riparian areas, in proximity to sage scrub habitats have the potential to provide linkages to help with dispersal, foraging and nesting.

The RSS plant communities onsite has been degraded from existing anthropogenic disturbances, and the project site is generally located outside of the elevational range the species is known to occur in. Based on these conditions, it was determined that the project site does not provide the requisite PCEs which are needed by California gnatcatcher to be present. Therefore, it was determined that California gnatcatcher is presumed absent from the project site.

### Special-Status Plant Communities

According to the CNDDDB, one (4) special-status plant community has been reported in the Cucamonga Peak USGS 7.5-minute quadrangle: California Walnut Woodland, Coastal and Valley Freshwater Marsh, Riversidean Alluvial Fan Sage Scrub, and Southern Sycamore Alder Riparian Woodland. Based on the results of the field investigation, no special-status plant communities were observed onsite.

### Critical Habitat

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

The project site is not located within federally designated Critical Habitat. Refer to Exhibit 8, *Critical Habitat* in Attachment A. However, the nearest designated Critical Habitat is located immediately adjacent to the project site’s eastern boundary for San Bernardino kangaroo rat (*Dipodomys merriami parvus*). Following a review of onsite conditions, it was determined that the project site does not support PCE’s for San Bernardino kangaroo rat. Therefore, the loss or adverse modification of Critical Habitat from site development will not occur and consultation with the USFWS for impacts to Critical Habitat will not be required for 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 1<sup>st</sup> and August 31<sup>st</sup>, 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.

### **Conclusion**

Based on the proposed project footprint and existing site conditions discussed in this report, none of the special-status plant or wildlife species known to occur in the general vicinity of the project site are expected to be directly or indirectly impacted from implementation of the proposed project. With completion of the recommendations provided above, no impacts to year-round, seasonal, or special-status avian residents will occur from implementation of the proposed project. Therefore, it was determined that implementation of the project will have “no effect” on federally or State listed species known to occur in the general vicinity of the project site. Additionally, the development of the project will not impact designated Critical Habitats or regional wildlife movement corridors/linkages.

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

Sincerely,



Thomas J. McGill, Ph.D.  
Managing Director



Travis J. McGill  
Director

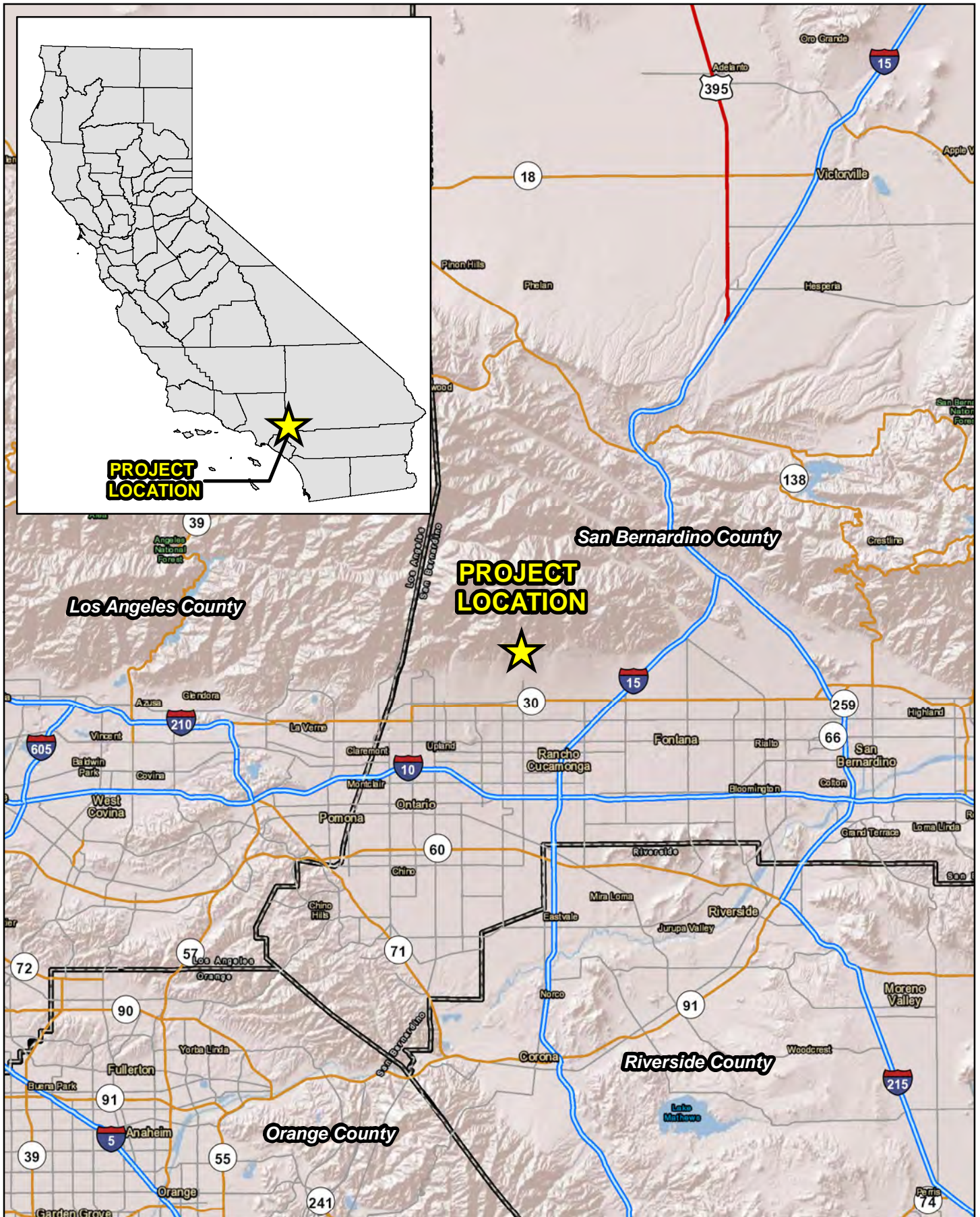
Attachments:

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

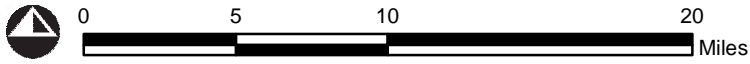
## **Attachment A**

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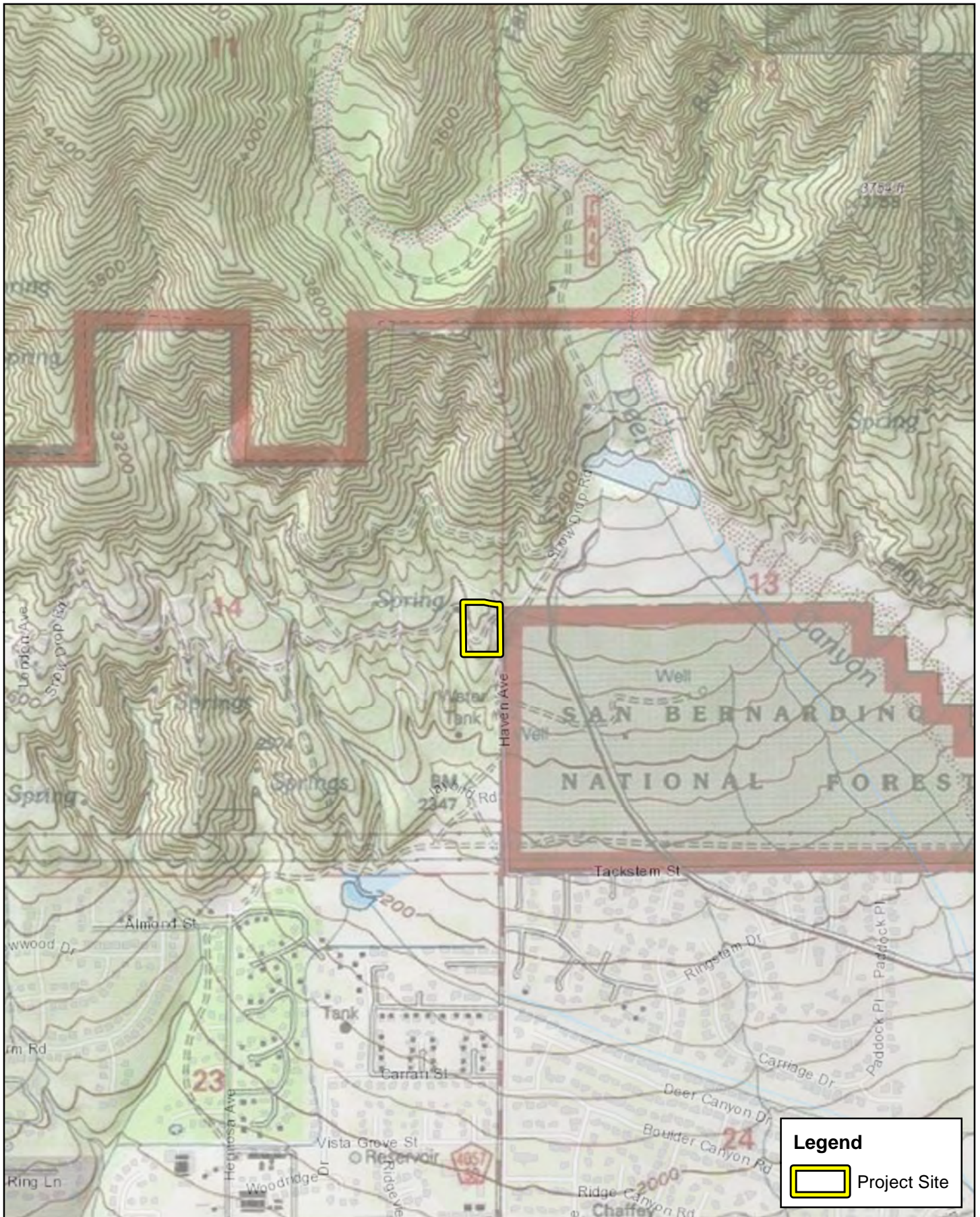
Project Exhibits



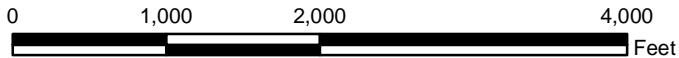
TENTATIVE PARCEL MAP NO. 20121  
 HABITAT AND JURISDICTIONAL ASSESSMENT  
**Regional Vicinity**



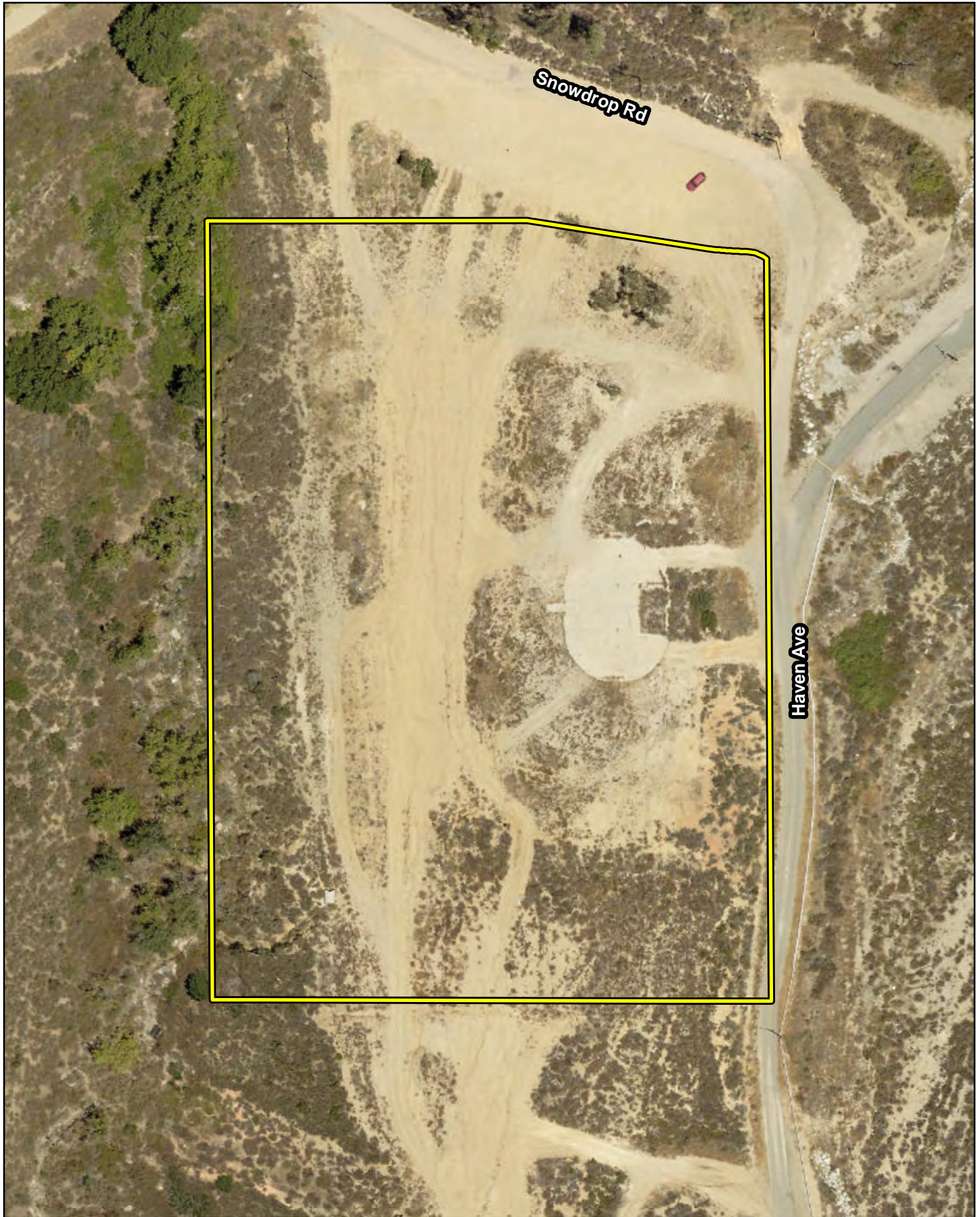
Source: Federal Highway Administration, US Department of Transportation



TENTATIVE PARCEL MAP NO. 20121  
 HABITAT AND JURISDICTIONAL ASSESSMENT  
**Site Vicinity**



Source: USA Topographic Map, San Bernardino County

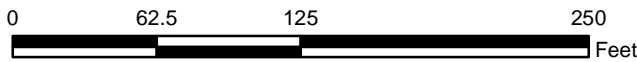


Snowdrop Rd

Haven Ave

TENTATIVE PARCEL MAP NO. 20121  
HABITAT AND JURISDICTIONAL ASSESSMENT

**Project Site**

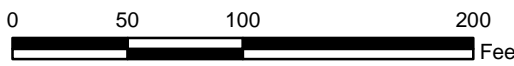


Source: ESRI Aerial Imagery, San Bernardino County



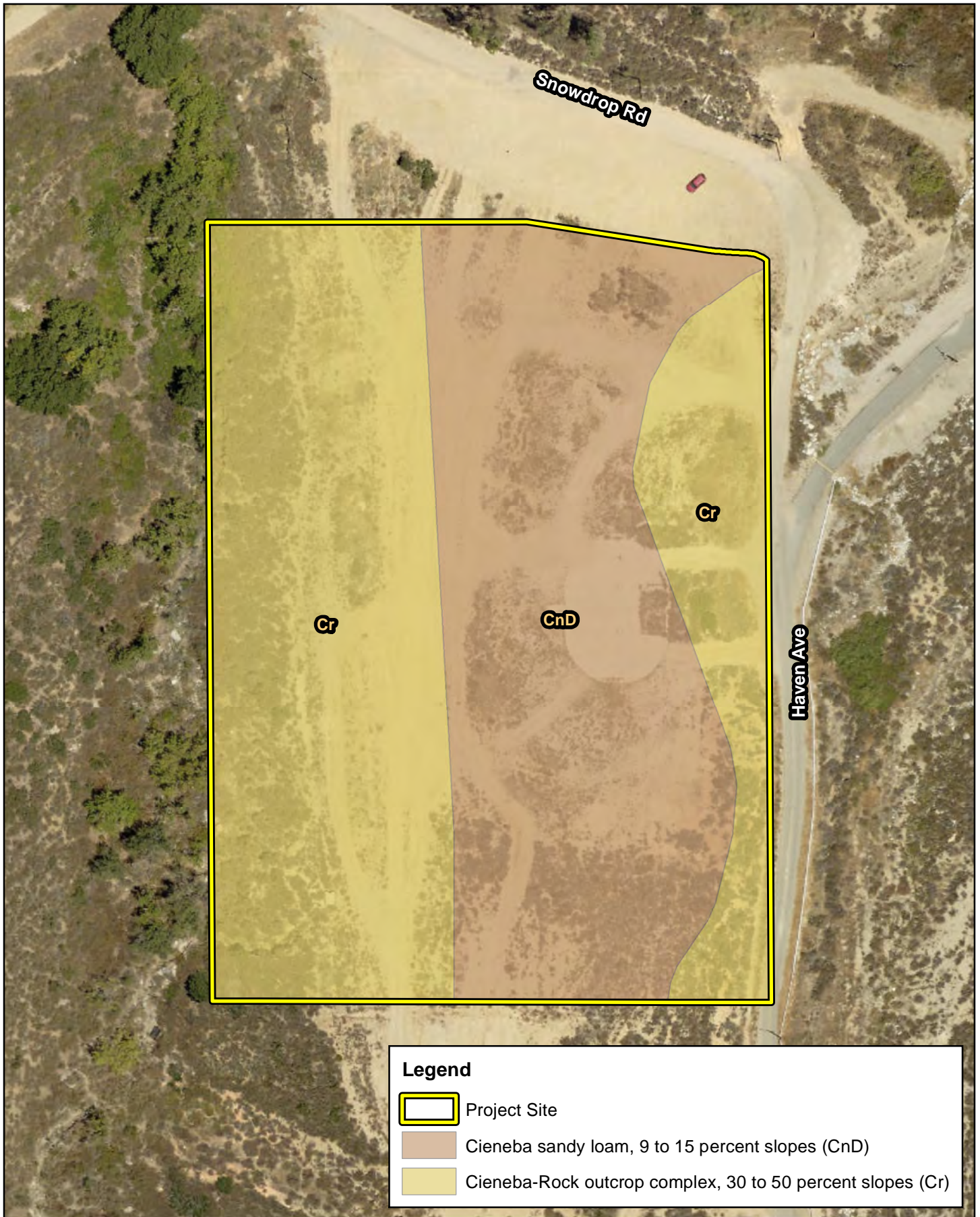
TENTATIVE PARCEL MAP NO. 20121  
HABITAT AND JURISDICTIONAL ASSESSMENT

# Depiction of Proposed Project

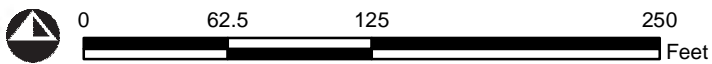


Source: ESRI Aerial Imagery, San Bernardino County





TENTATIVE PARCEL MAP NO. 20121  
 HABITAT AND JURISDICTIONAL ASSESSMENT









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

**Soils**



**Legend**

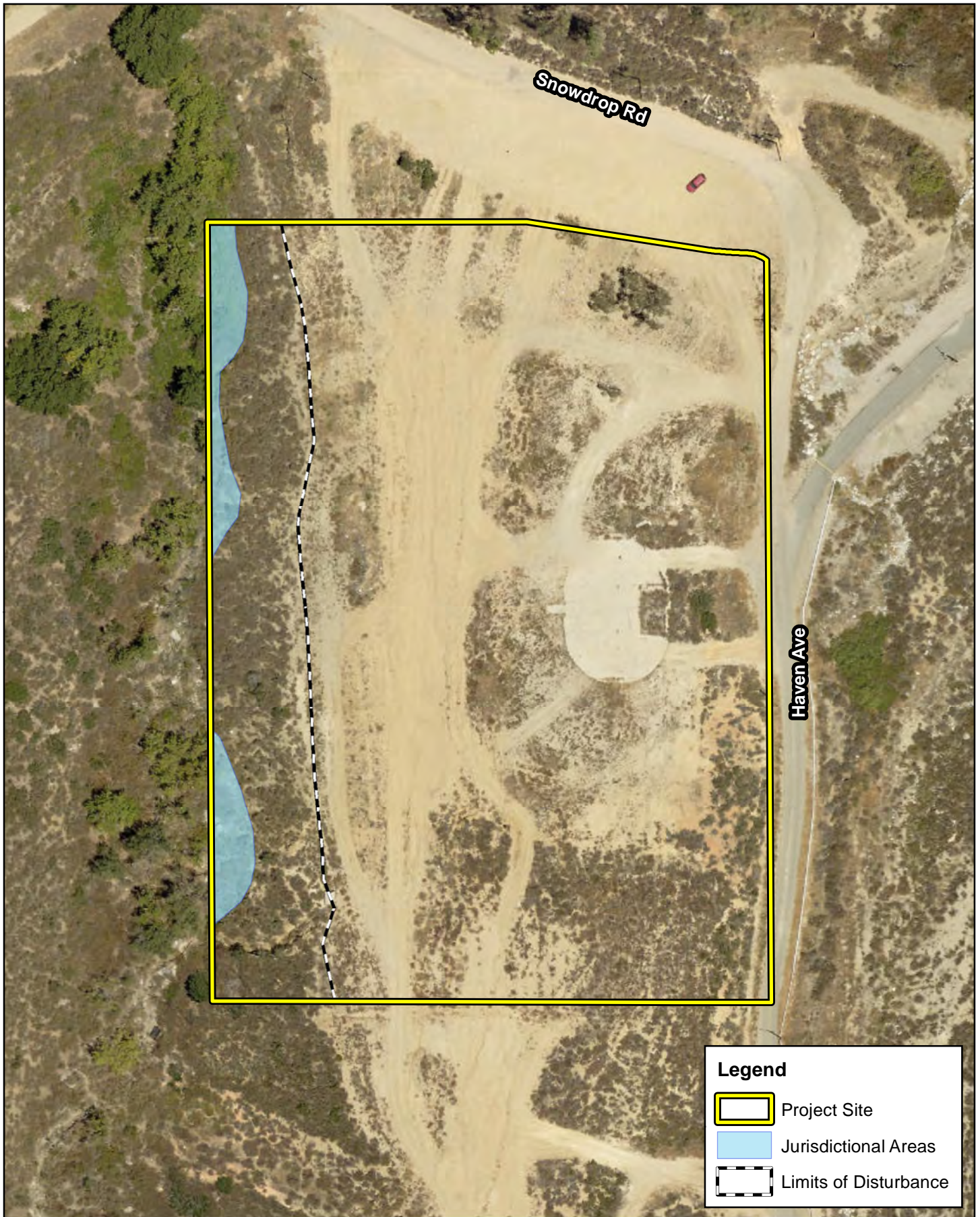
-  Project Site
-  Limit of Disturbance
-  Riversidean Sage Scrub
-  Riparian Scrub
-  Disturbed
-  Developed

TENTATIVE PARCEL MAP NO. 20121  
 HABITAT AND JURISDICTIONAL ASSESSMENT






Source: ESRI Aerial Imagery, San Bernardino County

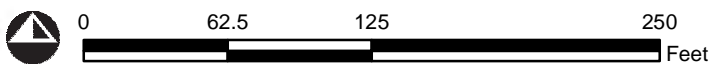
# Vegetation



**Legend**

-  Project Site
-  Jurisdictional Areas
-  Limits of Disturbance

TENTATIVE PARCEL MAP NO. 20121  
 HABITAT AND JURISDICTIONAL ASSESSMENT  
**Jurisdictional Areas**



Source: ESRI Aerial Imagery, San Bernardino County



## **Attachment B**

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Site Photographs



**Photograph 1:** Looking south from the northeast corner along the eastern boundary of the project site.



**Photograph 2:** Looking west from the northeast corner along the northern boundary of the project site.



**Photograph 3:** Looking south from the middle of the northern boundary of the project site.



**Photograph 4:** Looking south from the northwest corner along the western boundary of the project site.



**Photograph 5:** Looking north from the southeast corner along the eastern boundary of the project site.



**Photograph 6:** Looking northeast from the southwest corner of the project site.





**Photograph 7:** Looking east from the middle of the southern boundary of the project site.



**Photograph 8:** Representative photograph of the RSS plant community onsite. Photo faces south from the center of the project site.



**Photograph 9:** Representative photograph of the disturbed areas on the project site. Photo faces north near the center of the eastern half of project site.



**Photograph 10:** Representative photograph of the developed portion (existing helicopter pad) on the project site. Photo faces southeast from the center of the southern half of the project site.

## **Attachment C**

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Potentially Occurring Special-Status Biological Resources

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

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<b>SPECIAL-STATUS WILDLIFE SPECIES</b>				
<i>Accipiter cooperii</i> Cooper's hawk	Fed: None CA: WL	Common yearlong resident of California. Typically forages in broken woodland and habitat edges with dense stands of coast live oak ( <i>Quercus agrifolia</i> ), riparian deciduous, or other forest habitat near water. Usually nests in dense riparian areas, usually near streams.	No	<b>Low.</b> There is limited foraging habitat on-site and no suitable nesting habitat on-site.
<i>Aimophila ruficeps canescens</i> southern California rufous-crowned sparrow	Fed: None CA: WL	Typically found between 3,000 and 6,000 feet in elevation. Breed in sparsely vegetated scrubland on hillsides and canyons. Prefers coastal sage scrub dominated by California sagebrush ( <i>Artemisia californica</i> ), but they can also be found breeding in coastal bluff scrub, low-growing serpentine chaparral, and along the edges of tall chaparral habitats.	No	<b>Low.</b> The RSS plant community provides minimal suitable habitat on-site.
<i>Anniella stebbinsi</i> southern California legless lizard	Fed: None CA: SSC	Occurs in sparsely vegetated habitat types including coastal sand dunes, chaparral, pine-oak woodland, desert scrub, open grassland, and riparian areas. Requires sandy or loose loamy substrates conducive to burrowing.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Ardea alba</i> great egret	Fed: None CA: None	Yearlong resident throughout California, except for the high mountains and deserts. Feeds and rests in fresh, and saline emergent wetlands, along the margins of estuaries, lakes, and slow-moving streams, on mudflats and salt ponds, and in irrigated croplands and pastures.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Ardea herodias</i> great blue heron	Fed: None CA: None	Fairly common all year throughout most of California, in shallow estuaries and fresh and saline emergent wetlands. Less common along riverine and rocky marine shores, in croplands, pastures, and in mountains about foothills.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Arizona elegans occidentalis</i> 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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Artemisiospiza belli belli</i> Bell's sage sparrow	Fed: None CA: WL	Occurs in chaparral dominated by fairly dense stands of chamise. Also found in coastal sage scrub in south of range.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Asio otus</i> long-eared owl	Fed: None CA: SSC	Requires riparian or other thickets with small, densely canopied trees for roosting and nesting. Also occurs in dense conifer stands at higher elevations.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Aspidoscelis hyperythra</i> orange-throated whiptail	Fed: None CA: WL	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	<b>Low.</b> The RSS plant community provides minimal suitable habitat on-site.
<i>Aspidoscelis tigris stejnegeri</i> coastal whiptail	Fed: None CA: SSC	Found in a variety of ecosystems, primarily hot and dry open areas with sparse foliage - chaparral, woodland, and riparian areas.	No	<b>Low.</b> The RSS plant community provides minimal suitable habitat on-site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Batrachoseps gabrieli</i> San Gabriel slender salamander	Fed: None CA: None	Known from select localities in the San Gabriel Mountains and the Mt. Baldy area of Los Angeles County and the western end of the San Bernardino Mountains in San Bernardino Co., with an elevation range of 1,200- 5,085 feet. Occurs on talus slopes surrounded by a variety of conifer and montane hardwood species, including bigcone spruce, pine, white fir, incense cedar, canyon live oak, black oak, and California laurel.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Bombus crotchii</i> Crotch bumble bee	Fed: None CA: None	Exclusive to coastal California east towards the Sierra-Cascade Crest; less common in western Nevada.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Calypte costae</i> 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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Chaetodipus fallax fallax</i> 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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Circus cyaneus</i> northern harrier	Fed: None CA: SSC	Frequents meadows, grasslands, open rangelands, desert sinks, fresh and saltwater emergent wetlands; seldom found in wooded areas. Mostly found in flat, or hummocky, open areas of tall, dense grasses moist or dry shrubs, and edges for nesting, cover, and feeding.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Coleonyx variegatus abbotti</i> San Diego banded gecko	Fed: None CA: None	Prefers rocky areas in coastal sage and chaparral within granite or rocky outcrops. Occurs in coastal and cismontane southern California from interior Ventura Co. south.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Diadophis punctatus modestus</i> San Bernardino ringneck snake	Fed: None CA: None	Common in open, relatively rocky areas within valley-foothill, mixed chaparral, and annual grass habitats.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Dipodomys merriami parvus</i> San Bernardino kangaroo rat	Fed: <b>END</b> CA: SSC	Primarily found in Riversidean alluvial fan sage scrub (RAFSS) and sandy loam soils, alluvial fans and flood plains, and along washes with nearby sage scrub. May also occur at lower densities in Riversidean upland sage scrub, chaparral and grassland in uplands and tributaries in proximity to RAFSS habitat. Tends to avoid rocky substrates.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Dipodomys simulans</i> 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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Empidonax traillii</i> willow flycatcher	Fed: None CA: <b>END</b>	A rare to locally uncommon, summer resident in wet meadow and montane riparian habitats (2,000 to 8,000 ft) in the Sierra Nevada and Cascade Range. Most often occurs in broad, open river valleys or large mountain meadows with lush growth of shrubby willows.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Empidonax traillii extimus</i> southwestern willow flycatcher	Fed: <b>END</b> CA: <b>END</b>	Occurs in riparian woodlands in southern California. Typically requires large areas of willow thickets in broad valleys, canyon bottoms, or around ponds and lakes. These areas typically have standing or running water, or are at least moist.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Eumops perotis californicus</i> western mastiff bat	Fed: None CA: SSC	Primarily a cliff-dwelling species, roost generally under exfoliating rock slabs. Roosts are generally high above the ground, usually allowing a clear vertical drop of at least 3 meters below the entrance for flight. In California, it is most frequently encountered in broad open areas including dry desert washes, flood plains, chaparral, oak woodland, open ponderosa pine forest, grassland, and agricultural areas.	No	<b>Low.</b> There is limited foraging habitat on-site and no suitable nesting habitat on-site.
<i>Gymnogyps californianus</i> California condor	Fed: <b>END</b> CA: <b>END; FP</b>	Permanent resident of the semi-arid, rugged mountain ranges surrounding the southern San Joaquin Valley, including the Coast Ranges from Santa Clara Co. south to Los Angeles Co., the Transverse Ranges, Tehachapi Mts., and southern Sierra Nevada. Forages over wide areas of open rangelands, roosts on cliffs and in large trees and snags.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Lampropeltis zonata (parvirubra)</i> California mountain kingsnake (San Bernardino population)	Fed: None CA: CSC	Found in diverse habitats including coniferous forest, oak-pine woodlands, riparian woodland, chaparral, Manzanita, and coastal sage scrub. Wooded areas near a stream with rock outcrops, talus or rotting logs that are exposed to the sun.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Lanius ludovicianus</i> loggerhead shrike	Fed: None CA: SSC	Common yearlong resident of California. Prefers open habitats with bare ground, scattered shrubs, and areas with low or sparse herbaceous cover. Requires suitable perches including trees, posts, fences, utility lines, or other perches.	No	<b>Low.</b> The RSS plant community provides minimal suitable habitat on-site.
<i>Lasiurus xanthinus</i> western yellow bat	Fed: None CA: SSC	Occurs in valley/foothill riparian, desert riparian, desert wash, and palm oasis habitats. Roosts under palm trees and feeds in, and near, palm oases and riparian habitats.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Lepus californicus bennettii</i> San Diego black-tailed jackrabbit	Fed: None CA: SSC	Occupies many diverse habitats, but primarily is found in arid regions supporting short-grass habitats, agricultural fields, or sparse coastal scrub.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Neotoma lepida intermedia</i> 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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Nycticorax nycticorax</i> black-crowned night heron	Fed: None CA: None	Common in wetlands across North America, including saltmarshes, freshwater marshes, swamps, streams, rivers, lakes, ponds, lagoons, tidal mudflats, and wet agricultural fields. They require aquatic habitat for foraging and terrestrial vegetation for cover.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Onychomys torridus ramona</i> southern grasshopper mouse	Fed: None CA: SSC	Inhabits alkali desert scrub and other desert scrub habitats, and to a lesser extent succulent shrubs, desert washes, desert riparian, coastal scrub, mixed chaparral, and sagebrush habitats. Generally rare in valley foothill and montane riparian habitats. Prefers low to moderate shrub cover and requires friable soils.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Ovis canadensis nelsoni</i> desert bighorn sheep	Fed: None CA: FP	Require a variety of habitat characteristics related to topography, visibility, forage quality and quantity, and water availability (USFWS 2000). Prefer areas on or near mountainous terrain that are visually open, as well as steep and rocky. Alluvial fans and washed in flatter terrain is also used for foraging, water, and connectivity between mountainous areas. Tend to avoid dense vegetation and higher elevations that support chaparral.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Perognathus longimembris brevinasus</i> 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 instead will seek refuge under weeds and dead leaves instead.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Phalacrocorax auritus</i> double-crested cormorant	Fed: None CA: WL	Prefers water less than 30 feet deep with rocky or gravel bottom. Rests in daytime and roosts overnight beside water on offshore rocks, islands, cliffs, dead branches of trees, wharfs, jetties, or even transmission lines.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Phrynosoma blainvillii</i> coast horned lizard	Fed: None CA: SSC	Found in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. The key elements of such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense shrubs for refuge.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Polioptila californica californica</i> coastal California gnatcatcher	Fed: <b>THR</b> CA: SSC	Common yearlong resident of southern California in sage scrub habitats that are dominated by California sagebrush ( <i>Artemisia californica</i> ). Prefers scrub habitat with more low-growing vegetation. Species generally occurs below 750 feet above mean sea level (msl) along the coast and below 1,500 feet above msl within inland regions.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Rana muscosa</i> southern mountain yellow-legged frog	Fed: <b>END</b> CA: <b>END ;</b> WL	Prefers high-altitude mountain streams, typically those with boulders in them. Always found in the water, on rocks, or within a foot or two of the water's edge.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Salvadora hexalepis virgultea</i> 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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Selasphorus rufus</i> rufous hummingbird	Fed: None CA: None	Breed in open or shrubby areas, forest openings, yards, and parks. During migration they are commonly found in disturbed areas where its food flowers are in bloom.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Setophaga petichia</i> 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	<b>Low.</b> The riparian plant community on the western portion of the project site provides minimal suitable habitat on-site.
<i>Spea hammondi</i> 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 washes, lowlands, river floodplains, alluvial fans, playas, alkali flats, foothills, and mountains. Rain pools which do not contain bullfrogs, fish, or crayfish are necessary for breeding.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Spinus lawrencei</i> 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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Spizella breweri</i> Brewer's sparrow	Fed: None CA: None	Habitats include sagebrush and brushy plains.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Thamnophis hammondi</i> two-striped garter snake	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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Vireo bellii pusillus</i> least Bell's vireo	Fed: <b>END</b> CA: <b>END</b>	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	<b>Presumed absent.</b> No suitable habitat is present on-site.
<i>Xanthocephalus xanthocephalus</i> yellow-headed blackbird	Fed: None CA: SSC	Occurs in freshwater emergent wetlands, and moist, open areas along croplands and mud flats of lacustrine habitats. Prefers to nest in dense wetland vegetation characterized by tules, cattails, or other similar plant species along the border of lakes and ponds.	No	<b>Presumed absent.</b> No suitable habitat is present on-site.
<b>SPECIAL-STATUS PLANT SPECIES</b>				
<i>Acanthoscyphus parishii</i> var. <i>parishii</i> Parish's oxytheca	Fed: None CA: None CNPS: 4.2	Habitats include sandy or shale chaparral. Found at elevations ranging from 3,750 to 6,748 feet above mean sea level (msl). Blooming period is from June to August.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Arctostaphylos glandulosa</i> ssp. <i>gabrielensis</i> San Gabriel manzanita	Fed: None CA: None CNPS: 1B.2	Habitat includes rocky chaparral. Found at elevations ranging from 1,952 to 4,921 feet above msl. Blooming period is March.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Asplenium vespertinum</i> western spleenwort	Fed: None CA: None CNPS: 4.2	Occurs on rocky soils in chaparral, cismontane woodland, and coastal scrub habitats. Found at elevations ranging from 590 to 3,280 feet above msl. Blooming period is from February to June.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Astragalus brauntonii</i> Braunton's milk vetch	Fed: <b>END</b> CA: None CNPS: 1B.1	Occurs in coastal prairie grasslands, coastal sage scrub, and chaparral plant communities of the region. Often found growing in disturbed areas, especially in carbonate soils areas. Found at elevations ranging from 18 to 3,026 feet above msl. Blooming period is from January to August.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Calochortus catalinae</i> Catalina mariposa-lily	Fed: None CA: None CNPS: 4.2	Grows in chaparral, cismontane woodland, coastal scrub, and valley and foothill grassland habitats. Found at elevations ranging from 49 to 2,297 feet. Blooming period is from March to June.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Calochortus plummerae</i> Plummer's mariposa-lily	Fed: None CA: None CNPS: 4.2	Prefers openings in chaparral, foothill woodland, coastal sage scrub, valley and 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. From 328 to 5,577 feet in elevation. Blooming period is from May to July.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Cladium californicum</i> California saw-grass	Fed: None CA: None CNPS: 2B.2	Found in meadows and seeps, marshes and alkaline swamps or freshwater habitats. Found at elevations ranging from 197 to 5,249 feet. Blooming period is from June to September.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Diplacus johnstonii</i> Johnston's monkeyflower	Fed: None CA: None CNPS: 4.3	Occurs in lower montane coniferous forest (scree, disturbed areas, rocky or gravelly roadside) habitat. Found at elevations ranging from 3,199 to 9,580 feet above msl. Blooming period is from May to August.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.



Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Eriogonum microthecum</i> var. <i>alpinum</i> alpine slender buckwheat	Fed: None CA: None CNPS: 4.3	Associated with alpine dwarf scrub and great basin scrub. Found at elevations ranging from 8,202 to 10,862 feet above msl. Blooming period is from July to September.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Eriogonum microthecum</i> var. <i>johnstonii</i> Johnston's buckwheat	Fed: None CA: None CNPS: 1B.3	Grows in rocky soils within subalpine coniferous forest and upper montane coniferous forest. Found at elevations ranging from 6,000 to 9,600 feet above msl. Blooming period is from July to September.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Eriogonum umbellatum</i> var. <i>minus</i> alpine sulphur-flowered buckwheat	Fed: None CA: None CNPS: 4.3	Occurs in gravelly soils within subalpine coniferous forest and upper montane coniferous forests. Found at elevations ranging from 5,906 to 10,066 feet above msl. Blooming period is from June to September.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Eriophyllum lanatum</i> var. <i>obovatum</i> southern Sierra woolly sunflower	Fed: None CA: None CNPS: 4.3	Found in sandy loam soils within lower and upper montane coniferous forests. Found at elevations ranging from 3,655 to 8,202 feet above msl. Blooming period is from June to July.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Fritillaria pinetorum</i> pine fritillary	Fed: None CA: None CNPS: 4.3	Associated with granitic and metamorphic soils within chaparral, lower montane coniferous forest, upper montane coniferous forest, subalpine coniferous forest, pinyon and juniper woodland. Found at elevations ranging from 5,692 to 10,826 feet above msl. Blooming period is from May to September.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Galium angustifolium</i> ssp. <i>gabrielense</i> San Antonio Canyon bedstraw	Fed: None CA: None CNPS: 4.3	Grows in granitic, sandy or rocky soils within chaparral and lower montane coniferous forests. Found at elevations ranging from 3,937 to 8,694 feet above msl. Blooming period is from April to August.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Galium jepsonii</i> Jepson's bedstraw	Fed: None CA: None CNPS: 4.3	Found in granitic, rocky or gravelly soils within lower montane coniferous forest and upper montane coniferous forest habitats. Found at elevations ranging from 5,052 to 8,202 feet above msl. Blooming period is from July to August.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Galium johnstonii</i> Johnston's bedstraw	Fed: None CA: None CNPS: 4.3	Preferred habitats include chaparral, riparian woodland, lower montane coniferous forest, pinyon and juniper woodland. Found at elevations ranging from 4,003 to 7,546 feet above msl. Blooming period is from June to July.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Heuchera caespitosa</i> urn-flowered alumroot	Fed: None CA: None CNPS: 4.3	Grows in rocky soils within cismontane woodland, lower montane coniferous forest, riparian forest, and upper montane coniferous forest. Found at elevations ranging from 3,789 to 8,694 feet above msl. Blooming period is from May to August.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Horkelia cuneata</i> var. <i>puberula</i> mesa horkelia	Fed: None CA: None CNPS: 1B.1	Occurs on sandy or gravelly soils in chaparral, woodlands, and coastal scrub plant communities. Found at elevations ranging from 230 to 2,657 feet. Blooming period is from February to September.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Juglas californica</i> 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	<b>Presumed absent.</b> No suitable habitat is present.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Juncus duranii</i> Duran's rush	Fed: None CA: None CNPS: 4.3	Habitats include lower and upper montane coniferous forests, meadows and seeps. Found at elevations ranging from 5,801 to 9,199 feet above msl. Blooming period is from July to August.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Lepechinia fragrans</i> fragrant pitcher sage	Fed: None CA: None CNPS: 4.2	Occurs in chaparral habitat. Found at elevations ranging from 66 to 4,298 feet above msl. Blooming period is from March to October.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Lilium humboldtii</i> ssp. <i>ocellatum</i> ocellated humboldt lily	Fed: None CA: None CNPS: 4.2	Found in openings within chaparral, cismontane woodland, coastal scrub, lower montane coniferous forest, and riparian woodland habitats. Found at elevations ranging from 98 to 5,906 feet in elevation above msl. Blooming period is from March to August.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Lilium parryi</i> lemon lily	Fed: None CA: None CNPS: 1B.2	Prefers lower montane coniferous forest, riparian forests, upper montane coniferous forests, meadows and seeps. Found at elevations ranging from 4,003 to 9,006 feet above msl. Blooming period is from July to August.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Linanthus concinnus</i> San Gabriel linanthus	Fed: None CA: None CNPS: 1B.2	Occurs in rocky, openings within chaparral, lower montane and upper montane coniferous forests. Found at elevations ranging from 4,987 to 9,186 feet above msl. Blooming period is from April to July.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Monardella australis</i> ssp. <i>jokerstii</i> Jokerst's monardella	Fed: None CA: None CNPS: 1B.1	Habitat includes chaparral and lower montane coniferous forest. Found on steep or talus slopes between breccia, secondary alluvial benches along drainages and washes. Found at elevations ranging from 4,429 to 5,741 feet above msl. Blooming period is from July to September.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Muhlenbergia californica</i> California muhly	Fed: None CA: None CNPS: 4.3	Found in mesic, seeps, and streambanks within chaparral, coastal scrub, lower montane coniferous forest, and meadows and seeps. Found at elevations ranging from 328 to 6,562 feet. Blooming period is from June to September.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Oreonana vestita</i> woolly mountain-parsley	Fed: None CA: None CNPS: 1B.3	Associated with gravel and talus soils within lower montane coniferous forest, subalpine coniferous forest, and upper montane coniferous forest. Found at elevations ranging from 5,299 to 11,483 feet above msl. Blooming period is from March to September.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Phacelia mohavensis</i> Mojave phacelia	Fed: None CA: None CNPS: 4.3	Occurs in sandy or gravelly soils within cismontane woodland, lower montane coniferous forest, meadows and seeps, pinyon and juniper woodland. Found at elevations ranging from 4,593 to 8,202 feet above msl. Blooming period is from April to August.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<i>Sagittaria sanfordii</i> Sanford's arrowhead	Fed: None CA: None CNPS: 1B.2	Grows in freshwater marshes and swamps. Found at elevations ranging from 0 to 2,132 feet above msl. Blooming period is from May to November.	No	<b>Presumed absent.</b> No suitable habitat is present.
<i>Streptanthus bernardinus</i> Laguna Mountains jewelflower	Fed: None CA: None CNPS: 4.3	Associated with chaparral and lower montane coniferous forest. Found at elevations ranging from 2,198 to 8,202 feet above msl. Blooming period is from May to August.	No	<b>Presumed absent.</b> No suitable habitat is present.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Viola pinetorum</i> var. <i>grisea</i> grey-leaved violet	Fed: None CA: None CNPS: 1B.3	Associated with upper montane coniferous forest, subalpine coniferous forest, meadows and seeps. Found at elevations ranging from 4,921 to 11,155 feet above msl. Blooming period is from April to July.	No	<b>Presumed Absent.</b> No suitable habitat. The project site is out of this species elevation range.
<b>SPECIAL-STATUS PLANT COMMUNITIES</b>				
California Walnut Woodland	CDFW Sensitive Habitat	Occurs on valley slopes and in valley bottoms, as well as around rocky outcrops. This habitat usually occurs in areas with relatively moist, fine soils. It can intergrade with coast live oak woodland and coast live oak forest in more mesic areas. The canopy is relatively open and is dominated by California walnut with a grassy understory.	No	<b>Absent</b>
Coastal and Valley Freshwater Marsh	CDFW Sensitive Habitat	Found along the coast and in coastal valleys near river mouths and around the margins of lakes and springs. Site lacks significant current and is permanently flooded by fresh water. Prolonged saturation permits accumulations of deep, peaty soils.	No	<b>Absent</b>
Riversidian Alluvial Fan Sage Scrub	CDFW Sensitive Habitat	Occur within broad washes of sandy alluvial drainages that carry rainfall runoff sporadically in winter and spring, but remain relatively dry through the remainder of the year. Is restricted to drainages and floodplains with very sandy substrates that have a dearth of decomposed plant material. These areas do not develop into riparian woodland or scrub due to the limited water resources and scouring by occasional floods.	No	<b>Absent</b>
Southern Sycamore Alder Riparian Woodland	CDFW Sensitive Habitat	Below 2,000 meters in elevation, sycamore and alder often occur along seasonally-flooded banks; cottonwoods and willows also are often present. Poison-oak, mugwort, elderberry and wild raspberry may be present in the understory.	No	<b>Absent</b>

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

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

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

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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***

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

- (i) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- (ii) All interstate waters, including interstate wetlands<sup>1</sup>.
- (iii) The territorial seas.
- (iv) All impoundments of waters otherwise defined as waters of the United States under the definition.
- (v) All tributaries<sup>2</sup> of waters identified in paragraphs (i) through (iii) mentioned above.
- (vi) All waters adjacent<sup>3</sup> to a water identified in paragraphs (i) through (v) mentioned above, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

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

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

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

- (vii) All prairie potholes, Carolina bays and Delmarva bays, Pocosins, western vernal pools, Texas coastal prairie wetlands, where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (i) through (iii) mentioned above.
- (viii) All waters located within the 100-year floodplain of a water identified in paragraphs (i) through (iii) mentioned above and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (i) through (v) mentioned above, where they are determined on a case-specific basis to have a significant nexus to a waters identified in paragraphs (i) through (iii) mentioned above.

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

- (i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act.
- (ii) Prior converted cropland.
- (iii) The following ditches:
  - (A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
  - (B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
  - (C) Ditches that do not flow, either directly or through another water, into a water of the United States as identified in paragraphs (i) through (iii) of the previous section.
- (iv) The following features:
  - (A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;
  - (B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;
  - (C) Artificial reflecting pools or swimming pools created in dry land;
  - (D) Small ornamental waters created in dry land;
  - (E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;
  - (F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of a tributary, non-wetland swales, and lawfully constructed grassed waterways; and
  - (G) Puddles.
- (v) Groundwater, including groundwater drained through subsurface drainage systems.
- (vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

- (vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

### ***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.