



September 13, 2023

ORANGE COUNTY RESCUE MISSION

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SUBJECT: Biological Resources Assessment for the R & R Ranch Located at 19292 El Toro Road in the Silverado Community, Orange County, California.

Introduction

This report contains the findings of ELMT Consulting’s (ELMT) biological resources assessment for the proposed R & R Ranch project (project, project site), located at 19292 El Toro Road in the unincorporated community of Silverado, Orange County, California. The field investigation was conducted by biologist Rachael A. Lyons on August 16, 2023, to document baseline conditions and assess the potential for special-status¹ 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. Additionally, the report also addresses resources protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (FGC), federal Clean Water Act (CWA) regulated by the United States Army Corps of Engineers (Corps) and Regional Water Quality Control Board (Regional Board), respectively, and Section 1602 of the FGC administered by CDFW.

Project Location

The project site is generally located north and east of State Route 241, south of State Route 91, and west of Interstate 15 in the unincorporated community of Silverado, Orange County, California. The site is depicted on the Santiago Peak quadrangle of the United States Geological Survey’s (USGS) 7.5-minute map series within Section 4 of Township 6 South, Range 7 West. Specifically, the site is located to the east of El Toro Road, to the south and west of Live Oak Canyon Road, and to the north of Melinda Road within Assessor Parcel Number (APN) 856-011-23. Refer to Exhibits in Attachment A.

Methodology

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

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

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 (1985-2023);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey²;
- 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.

Field Investigation

Following the literature review, biologist Rachael A. Lyons inventoried and evaluated the condition of the habitat within a 200-foot buffer around the project site, where applicable, on August 16, 2023. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking meandering transects throughout the project site. In addition, aerial photography was reviewed prior to the site investigation to locate potential natural corridors and linkages that may support the movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

Soil Series Assessment

On-site and adjoining soils were researched prior to the field investigation using the USDA NRCS Soil

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

Survey for Orange 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 has undergone.

Plant Communities

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

Plants

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

Wildlife

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

Jurisdictional Drainages and Wetlands

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

Existing Site Conditions

The project site is located in an area of the community of Silverado that largely supports undeveloped, land in the vicinity of Trabuco Canyon and in the foothills of Santiago Peak. The project site is bounded to the west by El Toro Road, with residential development beyond; to the north by undeveloped, vacant land, with Live Oak Canyon beyond; and to the east and south by undeveloped land and scattered residential development. The project site is comprised of disturbed and undeveloped land, which is currently being used for outdoor recreational purposes and staging associated with planned development.

Topography and Soils

Onsite topography is relatively flat with no areas of topographic relief and lies at approximately 1,097 to 1,131 feet above mean sea level. Based on the NRCS USDA Web Soil Survey, the project site is historically underlain by Alo Clay (9 to 15 percent slopes), Bosanko clay (30 to 50 percent slopes), Calleguas clay (50 to 75 percent slopes, eroded), and Myford sandy loam (2 to 9 percent slopes). Soils onsite have been disturbed and compacted by historic land uses, grading, and onsite and surrounding development.

Vegetation

Due to existing land uses, no native plant communities or natural communities of special concern were observed within the boundaries of the project site.

The project site supports one (1) land cover type that would be classified as disturbed. Disturbed areas occur throughout the project site in association with the staging and outdoor recreational use activities, and along the eastern boundary in association with an unpaved access road and trenching activities. Vegetation supported in the disturbed areas is minimal and limited to several non-native/ruderal, and early successional species. Plant species observed within the non-native grassland include Mediterranean mustard (*Hirschfeldia incana*), prickly lettuce (*Lactuca seriola*), prostrate knotweed (*Polygonum aviculare*), telegraph weed (*Heterotheca grandiflora*), field bindweed (*Convolvulus arvensis*), Russian thistle (*Salsola tragus*), doveweed (*Croton setigerus*), slender oat (*Avena barbata*), tocalote (*Centaurea melitensis*), canary grass (*Phalaris canariensis*), fennel (*Foeniculum vulgare*), goosefoot (*Chenopodium* sp.), crabgrass (*Digitaria* sp.), and cockle bur (*Xanthium strumarium*).

Land adjacent to the eastern and northern site boundaries supports landscaping and installed ornamental vegetation. Plant species observed in the landscaped areas adjacent to the project site boundaries include Peruvian peppertree (*Schinus molle*), jacaranda (*Jacaranda* sp.), ivy (*Hedera* sp.), and cedar (*Cedrus* spp.).

Additionally, the western boundary of the project site lies adjacent to Aliso Creek. According to the NWI website, the portion of Aliso Creek that lies adjacent to the western boundary of the project site, supports a forested shrub wetland habitat. This area was densely vegetated with valley oak (*Quercus lobata*), laurel sumac (*Malosma laurina*), ivy, pine (*Pinus* sp.), Chinese elm (*Ulmus parvifolia*), toyon (*Heteromeles arbutifolia*), and dwarf sugar palm (*Arenga engleri*).

Wildlife

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

Fish

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

Amphibians

While inundated with water at the time of the investigation, the portion of Aliso Creek running adjacent to the western boundary of the project site, did not appear to support any amphibious species, and none were observed on or within the vicinity of the project site. Therefore, no amphibians are expected to occur on the project site and are presumed absent.

Reptiles

The survey area provides marginal habitat for local reptile species adapted to routine disturbance and development. The only reptilian species observed at the time of the investigation was western fence lizard (*Sceloporus occidentalis*). Additional common reptilian species that may occur on-site include western side-blotched lizard (*Uta stansburiana elegans*), and San Diego alligator lizard (*Elgaria multicarinata webbii*).

Birds

The project site provides minimal foraging habitat and no suitable nesting habitat for bird species adapted to a high degree of anthropogenic disturbance. However, the vegetation immediately adjacent to the project site has the potential to provide nesting and perching opportunities for a variety of bird species. Bird species detected during the field investigation include red-tailed hawk (*Buteo jamaicensis*), acorn woodpecker (*Melanerpes formicivorus*), house finch (*Haemorhous mexicanus*), mourning dove (*Zenaida macroura*), lesser goldfinch (*Spinus psaltria*).

Mammals

The survey area provides limited foraging and cover habitat for mammalian species adapted to routine disturbance and development. Mammalian species observed during the field investigation include pocket gopher (*Geomyidae* sp.) and horse (*Equus caballus*). Additional mammalian species that could be expected to occur onsite include coyote (*Canis latrans*), opossum (*Didelphis virginiana*), and raccoon (*Procyon lotor*). Due to the nature and frequency of routine anthropogenic disturbances associated with on-site activities and adjacent roadways and development, no bat species are expected to roost on-site.

Nesting Birds

No active nests or breeding/nesting behavior were observed during the field investigation. Although subjected to routine disturbance, the ornamental vegetation supported on-site, and the vegetation adjacent to the project site, has the potential to provide suitable nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area that are adapted to a high degree of disturbance.

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

Migratory Corridors and Linkages

Habitat linkages provide connections between larger habitat areas that are separated by development.

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

The project site does not occur within a recognized wildlife migratory corridor or linkage. The nearest wildlife corridor, Whiting Ranch Reserve, is located immediately west of the project site, west of El Toro Road. The western portion of the Whiting Ranch Reserve is associated with Aliso Creek and is separated from the larger portion of the Whiting Ranch Reserve by existing residential developments. Aliso Creek lies adjacent to the western boundary of the project site and continues southwest into the Whiting Ranch Reserve.

Project activities will be confined to existing disturbed areas that do not provide wildlife movement opportunities. Therefore, impacts to wildlife movement opportunities, corridors, or linkages are not expected to occur.

Jurisdictional Areas

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

The USFWS NWI and the USGS National Hydrography Dataset were reviewed to determine if any blueline streams or riverine resources have been documented within or immediately surrounding the project site. Based on this review, no riverine resources were identified on the project site. However, Aliso Creek occurs adjacent to the western boundary of the project site and several blueline streams occur adjacent to the southern and eastern boundary in association with Aliso Creek. Aliso Creek has been identified by the NWI as a forested wetland habitat. Aliso Creek flows beyond the project site to the southwest, where it meets the Pacific Ocean at its terminus.

No jurisdictional drainage and/or wetland features were observed on the project site during the field investigation. The scope of the proposed project is restricted to previously disturbed areas within the project site, and no impacts to Aliso Creek or jurisdictional drainage features will occur. However, if impacts to Aliso Creek are expected to occur from proposed project implementation, regulatory approvals from the Corps, Regional Board, or CDFW jurisdiction will be required.

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 El Toro and Santiago Peak USGS 7.5-minute quadrangles. Two

quadrangles were queried due to the proximity of the project site to quadrangle boundaries. 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-four (34) special-status plant species, sixty-nine (69) special-status wildlife species, and six (6) special-status plant communities as having potential to occur within the El Toro and Santiago Peak USGS 7.5-minute quadrangles. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site is presented in Attachment D: *Potentially Occurring Special-Status Biological Resources*.

Special-Status Plants

According to the CNDDDB and CNPS, thirty-four (34) special-status plant species have been recorded in the El Toro and Santiago Peak quadrangles (refer to Attachment D). No special-status plant species were observed on-site during the habitat assessment. The project site has been subject to anthropogenic disturbances from historic agricultural land uses and on-site development. These 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 has a low potential to support small-flowered morning glory (*Convolvulus simulans*). However, frequent disturbance within the boundaries of the project site likely precludes the establishment of small-flowered morning glory onsite. Further, it was determined that the project site does not provide suitable habitat for any additional special-status plant species known to occur in the area and all are presumed to be absent from the project site. No focused surveys are recommended.

Special-Status Wildlife

According to the CNDDDB, sixty-nine (69) special-status wildlife species have been reported in the El Toro and Santiago Peak quadrangles (refer to Attachment D). No special-status wildlife species observed on-site during the habitat assessment. The project site and surrounding area have been subject to anthropogenic disturbances from historic agricultural land uses and on-site development. These disturbances have eliminated the natural plant communities that once occurred on-site which has reduced potential foraging and nesting/denning opportunities for wildlife species.

Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that the proposed project site has a high potential to support Cooper's hawk (*Accipiter cooperii*) and sharp-shinned hawk (*Accipiter striatus*), California horned lark (*Eremophila alpestris actia*), and rufous hummingbird (*Selasphorus rufus*); a moderate potential to support grasshopper sparrow (*Ammodramus savannarum*); and a low potential to support golden eagle (*Aquila chrysaetos*), red-diamond rattlesnake (*Crotalus ruber*), willow flycatcher (*Empidonax traillii*), prairie falcon (*Falco mexicanus*), and least Bell's vireo (*Vireo bellii pusillus*). It was further determined that the project site does not provide suitable habitat for the remaining special-status wildlife species known to occur in the vicinity of the site and all are presumed to be absent.

Of the aforementioned special-status wildlife species, golden eagle is federally protected, willow flycatcher is classified as a California Endangered species, and least Bell's vireo is classified as both federally and in the state of California as an Endangered species. None of these species are expected occur onsite due to the lack of nesting opportunities and minimal foraging opportunities. Any observations of these species within the boundaries of the project site would be incidental to the available habitat adjacent to the project site. Because implementation of the proposed project is confined to existing disturbed areas within site boundaries, impacts to the aforementioned species are not expected to occur and no focused surveys are recommended.

In order to ensure impacts to special-status avian species do not occur from implementation of the proposed project, a pre-construction nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of the pre-construction nesting bird clearance survey, impacts to special-status avian species will be less than significant and no mitigation will be required.

Special-Status Plant Communities

According to the CNDDDB, six (6) special-status plant communities have been reported in the El Toro and Santiago Peak USGS 7.5-minute quadrangles: Southern Sycamore Alder Riparian Woodland, Southern Coast Live Oak Riparian Forest, Southern Cottonwood Willow Riparian Forest, Southern Riparian Scrub, Canyon Live Oak Ravine Forest, and Valley Needlegrass Grassland. No special-status plant communities were observed during the field investigation. Therefore, no special-status plant communities will be impacted by implementation of the proposed project.

Critical Habitats

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

Therefore, no impacts to coastal California gnatcatcher or associated habitat(s) are expected to occur from implementation of the proposed project.

Orange County Natural Community Conservation Plan/Habitat Conservation Plan

Orange County's NCCP/HCP was approved in 1996 under the State of California's NCCP program. It encompasses a total area of 208,000 acres, with 37,380 acres within its Reserve System, split into Coastal and Central subregions. The reserves additionally contain special linkages, existing use areas, and other open space areas. The primary goal of the NCCP/HCP is to protect and preserve coastal sage scrub (CSS) in the Reserve System, as well as associated habitats and species. This includes three (3) "Target Species," an additional thirty-six (36) "Identified Species," and four (4) habitat types. The NCCP/HCP specifies that the populations of the Target Species shall be subject to long-term monitoring and that these taxa shall be treated as if they were listed under the California Endangered Species Act (CESA) and federal Endangered Species Act (ESA).

The project site is located within the boundaries of the Central/Coastal Subregion NCCP/HCP; however, it is not located within the Reserve System or any identified special linkages. The closest portion of the Reserve System is located approximately 237 feet to the west of the project site in association with Whiting Ranch Wilderness Park. The project site is separated from the Reserve by existing development. Since the proposed project will be limited to existing disturbed areas and will not impact any native plant communities (i.e., coastal sage scrub, riparian plant communities) implementation of the proposed project will be consistent with the rules and regulations of the NCCP/HCP.

Orange County Natural Community Conservation Plan/Habitat Conservation Plan

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The project site is located within the boundaries of the Central Subregion NCCP/HCP; however, it is not located within the Reserve System or any identified special linkages. The closest portion of the Reserve System is located approximately 1 mile northwest of the project site and is separated from the project site by existing development. Since the proposed project will be limited to existing developed areas and will not impact any native plant communities (i.e., coastal sage scrub, riparian plant communities) implementation of the proposed project will be consistent with the rules and regulations of the NCCP/HCP.

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 jurisdictional drainage features, designated Critical Habitats or regional wildlife movement corridors/linkages. The proposed project will be consistent with the OC NCCP/HCP.

Recommendations

Migratory Bird Treaty Act and Fish and Game Code

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

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

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

Sincerely,



Thomas J. McGill, Ph.D.
Managing Director



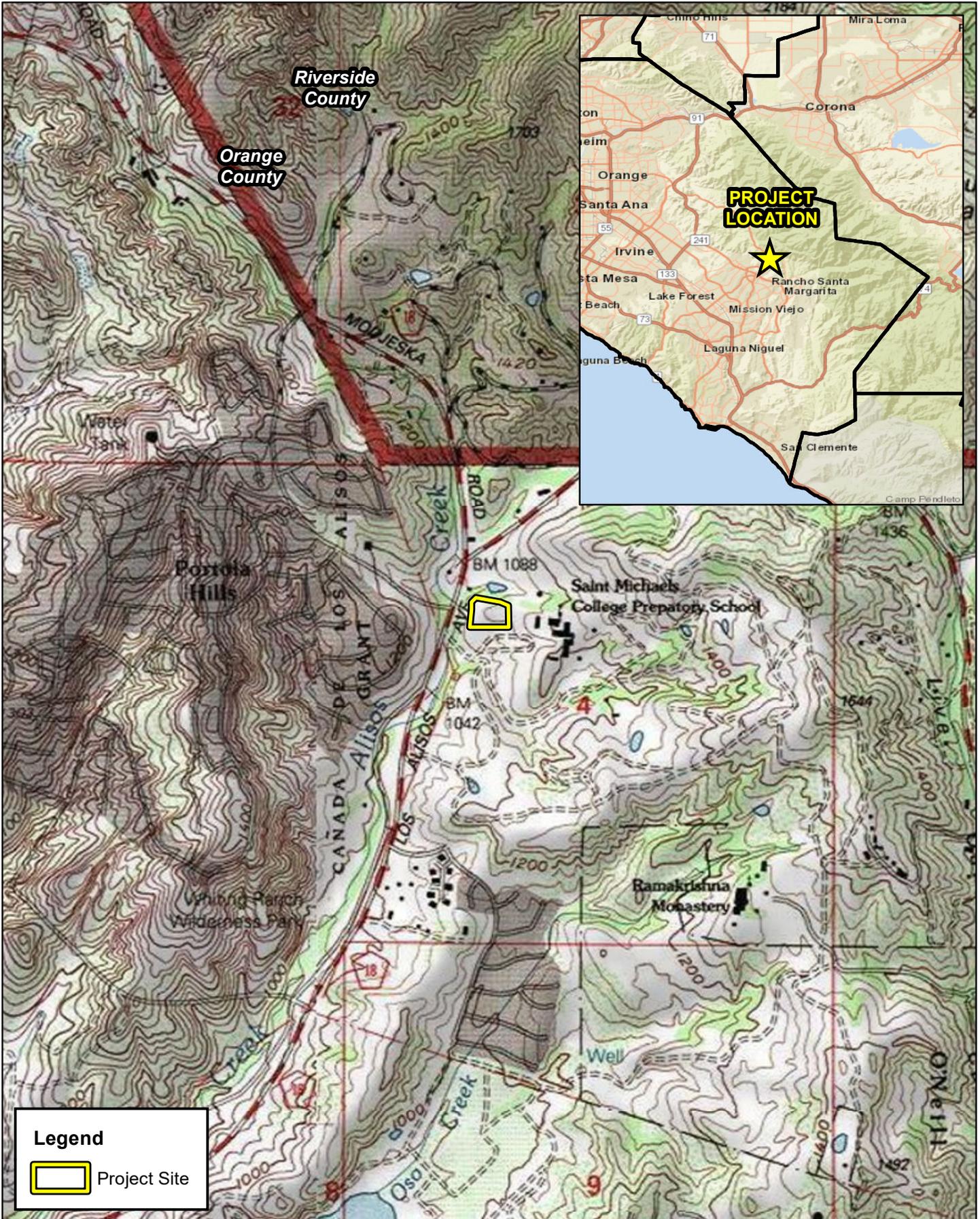
Travis J. McGill
Director

Attachments:

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

Attachment A

Project Exhibits



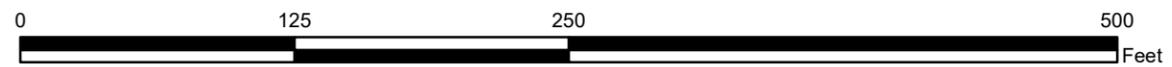
Source: USA Topographic Map, Orange County

R&R RANCH
 BIOLOGICAL RESOURCES ASSESSMENT
Regional Vicinity



Legend

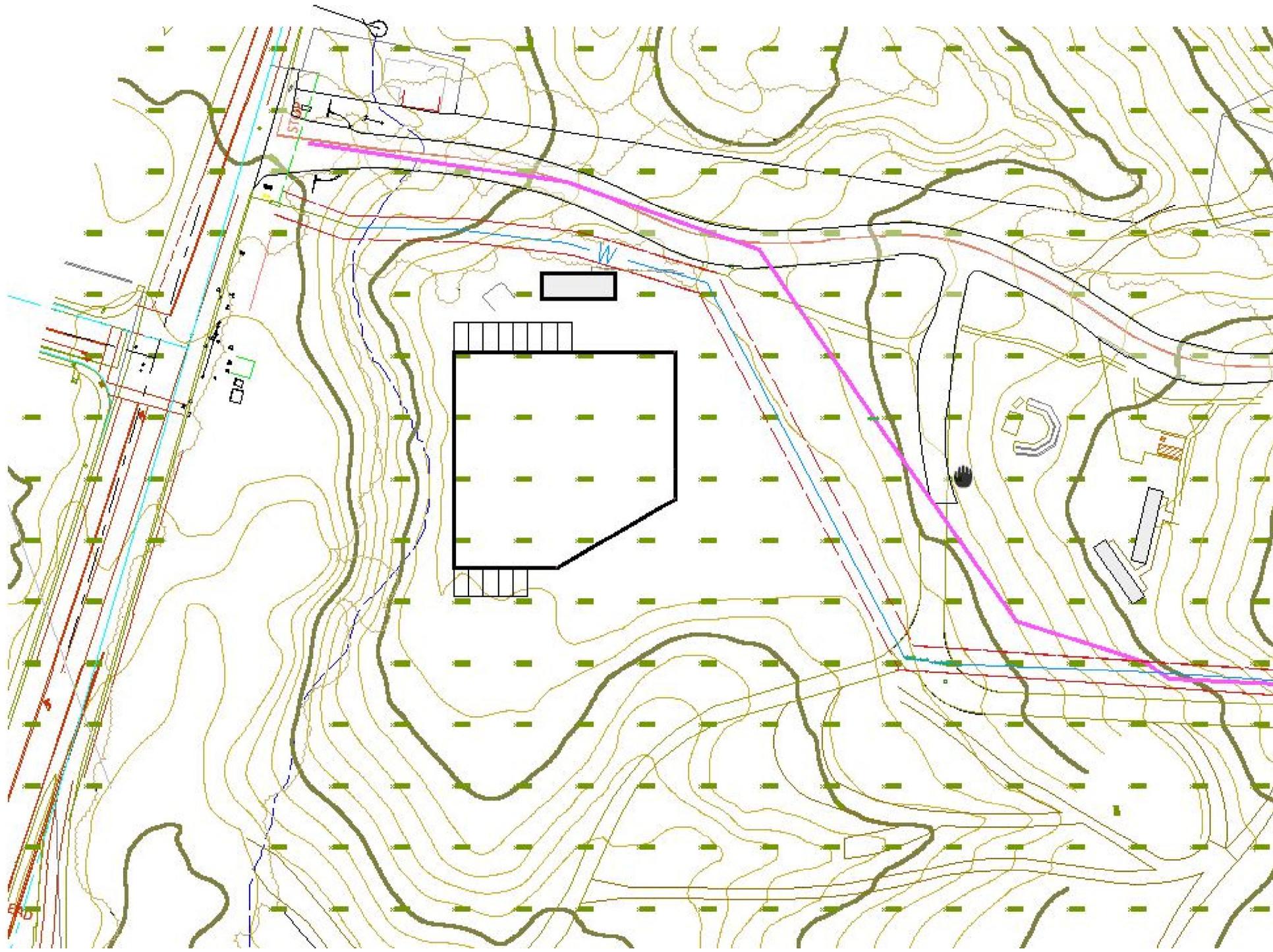
 Project Site



Source: ESRI Aerial Imagery, Orange County

Attachment B

Site Plan



Attachment C

Site Photographs



Photograph 1: From the northwest corner of the project site looking east along the southern boundary.



Photograph 2: From the southwest corner of the project site looking north along the western boundary.



Photograph 3: From the southeast corner of the project site looking west along the southern boundary.



Photograph 4: From the southeast corner of the project site looking north along the eastern boundary.



Photograph 5: Disturbed area onsite.



Photograph 6: Looking at the existing horse pin onsite.



Photograph 7: From the northwest corner of the project site looking east along the northern boundary.



Photograph 6: Looking at the disturbed areas onsite.

Attachment D

Potentially Occurring Special-Status Biological Resources

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

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
SPECIAL-STATUS WILDLIFE SPECIES				
<i>Accipiter cooperii</i> Cooper's hawk	Fed: None CA: WL	Found in mixed and deciduous forests, open woodlands, small woodlots, riparian woodlands, open and pinyon woodlands, and forested mountainous regions. Nests in more open areas with older, larger trees.	No	High Suitable foraging and nesting habitat are present within and surrounding the project site. This species is adapted to urban environments and occurs commonly.
<i>Accipiter striatus</i> sharp-shinned hawk	Fed: None CA: WL	Found in mixed or coniferous forests, open deciduous woodlands, thickets, and forest edges. Usually nests in groves of coniferous trees in mixed woods and sometimes in dense deciduous trees or in pure coniferous forests with brush or clearings nearby. Winters in most types of forests or brushy areas. Avoids open country.	No	High Suitable foraging habitat is present within and surrounding the project site. This species does not nest in the region.
<i>Agelaius tricolor</i> tricolored blackbird	Fed: THR CA: SSC	Prefers wetland and grassland habitats. Historically nested in cattails, bullrushes, and willows, but has adapted to more agricultural settings with habitat loss. Commonly found in pasturelands, foraging in fields and farms.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Aimophila ruficeps canescens</i> southern California rufous-crowned sparrow	Fed: None CA: WL	Widespread over the coastal lowlands and foothills in sage scrub, broken or burned chaparral, and grassland habitats with scattered shrubs.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Ammodramus savannarum</i> grasshopper sparrow	Fed: None CA: SSC	Occurs in grasslands, prairies, hayfields, and open pastures with little to no scrub cover and often with bare ground. Winters in grass-dominated fields. Nests in dense grass cover.	No	Moderate Marginal foraging habitat present within and adjacent to the project site. No nesting habitat present.
<i>Anaxyrus californicus</i> arroyo toad	Fed: END CA: SSC	Restricted to sandy or gravelly margins of large streams from San Luis Obispo County, south to Baja California. Occurs from sea level to 6,000 feet in elevation. Lives in riparian terraces with oaks, willows, or cottonwoods, and shallow, gravel-bottom pools in streams.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Anniella stebbinsi</i> southern California legless lizard	Fed: None CA: SSC	Mostly found in coastal sand dunes and a variety of interior habitats, including sandy washes and alluvial fans. They live mostly underground, burrowing in the loose sandy soils.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Antrozous pallidus</i> pallid bat	Fed: None CA: SSC	Locally common species of low elevation in California. Occurs in grasslands, shrublands, woodlands, and forests from sea level up through mixed conifer forests. Most common in open, dry habitats with rocky areas for roosting.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Aquila chrysaetos</i> golden eagle	Fed: None CA: FP; WL	Occupies nearly all terrestrial habitats of the western states except densely forested areas. Favors secluded cliffs with overhanging ledges and large trees for nesting and cover. Hilly or mountainous country where takeoff and soaring are supported by updrafts is generally preferred to flat habitats. Deeply cut canyons rising to open mountain slopes and crags are ideal habitat.	No	Low The project site and surrounding area provide marginal foraging and nesting habitat for the species.
<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	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Ardea herodias</i> great blue heron	Fed: None CA: None	Found in both saltwater and freshwater habitats along the open coast, marshes, sloughs, riverbanks, and lakes, to backyard ponds and flooded agricultural fields. Forage in grasslands and fields. Nests high off the ground, usually in tall trees.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Arizona elegans occidentalis</i> California glossy snake	Fed: None CA: SSC	Most common in desert habitats, but also occurs in chaparral, sagebrush, valley-foothill hardwood, pine-juniper, and annual grass. Occurs from sea level to 6,000 feet in elevation. Prefers open areas and loose soils for burrowing.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Artemisospiza belli belli</i> Bell's sage sparrow	Fed: None CA: WL	Lives in shrubby areas of California and Baja California, including coastal sagebrush and chaparral, as well as in the Mojave Desert and San Clemente Island.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Aspidoscelis hyperythra</i> orange-throated whiptail	Fed: None CA: WL	Inhabits low-elevation coastal scrub, chamise-redshank chaparral, mixed chaparral, and valley-foothill hardwood habitats. Forages actively on substrate surfaces, preferring coarse soils.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Aspidoscelis tigris stejnegeri</i> coastal whiptail	Fed: None CA: SSC	Found in valley-foothill hardwood, hardwood-conifer, riparian, mixed conifer, pine-juniper, chamise-redshank chaparral, mixed chaparral, desert scrub, desert wash, alkali scrub, and annual grasslands.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Athene cunicularia</i> burrowing owl	Fed: None CA: SSC	Occurs in dry, open areas such as grasslands, prairies, savannas, deserts, farmlands, golf courses and other urban areas. Usually nests in old burrow of ground squirrel, or other small mammal.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Bombus crotchii</i> Crotch bumble bee	Fed: None CA: CE	Exclusive to coastal California east towards the Sierra-Cascade Crest; less common in western Nevada.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Bombus pensylvanicus</i> American bumble bee	Fed: None CA: None	Ranges from the Eastern Great Plains to eastern and central US and southern Canada, and Mexico. Generally, nests in fields of long grass and sometimes underground. Prefers habitats offered by farmlands and open fields.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Botaurus lentiginosus</i> American bittern	Fed: None CA: None	Lives in marshes and reedy lakes. Breeds in freshwater marshes, mainly large, shallow wetlands with much tall marsh vegetation such as cattails, grasses, and sedges, and areas of open shallow water. Winters in similar areas, and brackish, coastal marshes. Sometimes feeds in dry, grassy fields.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Buteo regalis</i> ferruginous hawk	Fed: None CA: WL	Found in open spaces like grasslands, prairie, sagebrush steppe, scrubland, and pinyon-juniper woodland edges. Nests in cliffs, utility structures, outcrops, boulders, shrubs, knolls, or haystacks, but prefers to nest in lone tree.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Calyptrae costae</i> Costa's hummingbird	Fed: None CA: None	Found in desert scrub in the Sonoran and Mojave deserts and chaparral and sage scrub areas in coastal California. During non-breeding season, found mostly in similar dry habitats and well as parks, gardens, and higher elevation mountains.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Campylorhynchus brunneicapillus sandiegensis</i> coastal cactus wren	Fed: None CA: SSC	Obligate inhabitants of coastal sage scrub. Nests in large cactus or thick shrubs, trees, or thickets.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Chaetodipus californicus femoralis</i> Dulzura 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. Found in a variety of temperate habitats ranging from chaparral and grasslands to scrub forests and deserts. Requires low growing vegetation or rocky outcroppings, as well as sandy soils for burrowing.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Chaetodipus fallax fallax</i> northwestern San Diego pocket mouse	Fed: None CA: SSC	Occurs in habitats with stony soils, above sandy desert fans and rocky areas within shrub communities such as coastal sage scrub, chamise-redshank chaparral, mixed chaparral, sagebrush, desert wash, desert scrub, desert succulent scrub, pinyon-juniper, and annual grassland.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Chaetura vauxi</i> Vaux's swift	Fed: None CA: SSC	Nests and roosts in large hollow trees in mature and old-growth coniferous and mixed forests. Forages over forests, rivers, lakes, fields, and gaps in forests, such as burned areas.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Charadrius montanus</i> mountain plover	Fed: None CA: SSC	Found in short grasslands, freshly-plowed fields, newly-sprouting grain fields, and sometimes in sod farms. Prefers short vegetation or bare ground with flat topography, particularly grazed areas or areas with fossorial rodents.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Circus hudsonius</i> northern harrier	Fed: None CA: SSC	Found in both wet and dry habitats with good ground cover. Breed in wide open habitats within prairie grasslands and fields and marshes. Nests on the ground in dense grasses or wetland vegetation.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Coleonyx variegatus abbotti</i> San Diego banded gecko	Fed: None CA: SCC	Occurs in coastal and cismontane southern California from interior Ventura County south, although it is absent from the extreme outer coast. It is uncommon in coastal scrub and chaparral, most often occurring in granite or rocky outcrops in these habitats.	Yes	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Contopus cooperi</i> olive-sided flycatcher	Fed: None CA: SSC	Can be found in western coniferous forests from sea level to over 10,000 feet in elevation. Occurs commonly in burned forests and other open areas with many dead trees.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Crotalus ruber</i> red-diamond rattlesnake	Fed: None CA: SSC	Inhabits arid scrub, coastal chaparral, oak and pine woodlands, rocky grasslands, and cultivated areas. Prefers the desert slopes of mountains and rocky desert flats.	No	Low Marginal habitat present within and adjacent to the project site.
<i>Diadophis punctatus modestus</i> San Bernadino ringneck snake	Fed: None CA: SSC	Prefers moist habitats such as wet meadows, rocky hillsides, gardens, farmland, grassland, chaparral, mixed coniferous forests, and woodlands. Found under cover of rocks, wood bark, boards, and other surface debris.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Dipodomys stephensi</i> Stephens' kangaroo rat	Fed: THR CA: THR	Occur in arid and semi-arid habitats with some grass or brush. Prefer open habitats with less than 50% protective cover. Require soft, well-drained substrate for building burrows and are typically found in areas with sandy soil.	Yes	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Egretta thula</i> snowy egret	Fed: None CA: None	Found in marshes, swamps, ponds, and shores and widespread throughout many aquatic habitats in both fresh and saltwater. If along the coast, prefers sheltered bays and estuaries. If inland, prefers extensive marshes and other large wetlands. Can sometimes be found foraging in dry fields.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Elanus leucurus</i> white-tailed kite	Fed: None CA: FP	Common in savannahs, open woodlands, marshes, desert grasslands, partially cleared areas, and cultivated fields. Avoids heavily grazed areas. Breeds in lowland grasslands, agricultural wetlands, oak-woodland and savannah habitats, and riparian areas.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Empidonax traillii</i> willow flycatcher	Fed: None CA: END	Found near streams or marshes but may be found in drier habitats. Winters around clearings and second growth in the tropics, especially near water. Breeds in thickets of deciduous trees and shrubs, especially willows or along woodland edges.	No	Low Marginal suitable habitat present adjacent to the project site.
<i>Empidonax traillii extimus</i> southwestern willow flycatcher	Fed: END CA: END	Found throughout the southwest in wide, wet floodplains with shrubs. Winters in Mexico, Central America, and northern South America. Nests in low shrubs and bushes, often near habitat edges. Most nests are in willows, but also box elder, dogwood, hawthorn, bracken fern, and tamarisk roughly 2 to 5 feet above the ground.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Emys marmorata</i> western pond turtle	Fed: None CA: SSC	Resides in permanent and intermittent waters of rivers, creeks, small lakes and ponds, marshes, irrigations ditches, and reservoirs. Basks on land or near water on logs, branches, or boulders.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Eremophila alpestris actia</i> California horned lark	Fed: None CA: WL	Inhabits open ground, generally avoiding areas with trees and bushes. Found in short-grass prairies, extensive lawns, plowed fields, stubble fields, beaches, lake flats, or high mountains.	No	High Suitable foraging habitat present within and adjacent to the project site.
<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 three meters below the entrance for flight. In California, it is most frequently encountered in broad open areas. Its foraging habitat includes dry desert washes, flood plains, chaparral, oak woodland, open ponderosa pine forest, grassland, and agricultural areas.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Falco mexicanus</i> prairie falcon	Fed: None CA: WL	Commonly occur in arid and semiarid shrubland and grassland community types. Also occasionally found in open parklands within coniferous forests. During the breeding season, they are found commonly in foothills and mountains which provide cliffs and escarpments suitable for nest sites.	Yes	Low Limited foraging and nesting habitat are present in adjacent land to the west.
<i>Falco peregrinus anatum</i> American peregrine falcon	Fed: None CA: FP	Lives in a wide variety of habitats, from tundra to desert mountains. Found mostly along mountain ranges, river valleys, and coastlines, and generally near water. Often moves into cities and nests on building ledges.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Gasterosteus aculeatus microcephalus</i> resident threespine stickleback	Fed: None CA: None	Found in marine, brackish and coastal freshwater habitats in temperate regions of the northern hemisphere and in marine waters and lowland freshwater habitats in the Atlantic and Pacific basins.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Gila orcuttii</i> arroyo chub	Fed: None CA: SSC	Warm streams of the Los Angeles Plain, which are typically muddy torrents during the winter, and clear quiet brooks in the summer, possibly drying up in places. They are found both in slow-moving and fast-moving sections, but generally deeper than 40 cm.	No	Presumed Absent: No suitable habitat is present within the project site.
<i>Haliaeetus leucocephalus</i> bald eagle	Fed: DL CA: FP	Lives within 2.5 miles of the coasts, bays, rivers, lakes, or other bodies of water. Typically nest in large, mature, accessible trees, as well as cliffs and tall man-made structures such as utility poles.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Icteria virens</i> yellow-breasted chat	Fed: None CA: SSC	Primarily found in tall, dense, relatively wide riparian woodlands and thickets of willows, vine tangles, and dense brush with well-developed understories. Nesting areas are associated with streams, swampy ground, and the borders of small ponds. Breeding habitat must be dense to provide shade and concealment. It winters south the Central America.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Lanius ludovicianus</i> loggerhead shrike	Fed: None CA: SSC	Inhabits open country with short vegetation and well-spaced shrubs or low trees, particularly those with spines or thorns. Common in agricultural fields, pastures, old orchards, riparian areas, desert scrublands, savannahs, prairies, golf courses, and cemeteries.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Larus californicus</i> California gull	Fed: None CA: WL	Found in any open area where food can be found. Common in garbage dumps, pastures, scrublands, orchards, meadows, and farms. Winters along the Pacific coast, mostly in marine areas including mudflats, estuaries, deltas, and beaches.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Lasiurus cinereus</i> hoary bat	Fed: None CA: SSC	Lives in an array of habitat types nationwide, but most common in arid desert regions in the Southwest. Winters along the coast. Roosts in tree foliage near the ends of branches.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Lepus californicus bennettii</i> San Diego black-tailed jackrabbit	Fed: None CA: None	Prefers open grasslands, agricultural fields, and sparse coastal scrub communities. Not typical in high grass or dense brush environments. Nesting sites are generally under bushes or shrubs that have shallow depressions and are occasionally lined with fur.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Myotis yumanensis</i> Yuma myotis	Fed: None CA: None	Found in forests and woodlands near water. Roosts in caves, buildings, mines, and crevices.	No	Presumed Absent: No suitable habitat is present within the project site.
<i>Nannopterum auritum</i> double-crested cormorant	Fed: None CA: WL	Found along coasts, in bays, lakes, rivers, and estuaries, along with most aquatic habitats. Nests in trees near or over water, on sea cliffs, or on the ground on islands.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Neotoma lepida intermedia</i> San Diego desert woodrat	Fed: None CA: SSC	Found in a variety of shrub and desert habitats. Prefers large cactus patches and rock outcroppings. Common in sagebrush scrub areas, chaparral, desert, and within rocky sloped areas. Occurs at elevations up to 9,500 feet.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Nycticorax nycticorax</i> black-crowned night heron	Fed: None CA: None	Found in a variety of aquatic habitats around both fresh and salt water including marshes, rivers, ponds, mangrove swamps, tidal flats, canals, and rice fields. Nests in groves of trees, in thickets, or on the ground, usually on islands or above the water.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Oncorhynchus mykiss irideus</i> pop. 10 steelhead – southern California DPS	Fed: END CA: None	Found in permanent coastal streams from San Diego to the Smith River.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Onychomys torridus ramona</i> southern grasshopper mouse	Fed: None CA: SSC	Prefers alkali desert scrub habitats, but also found in succulent shrub, wash, coastal scrub, mixed chaparral, sagebrush, low sage, bitterbrush, and riparian areas. Nests in small burrows that have often been previously occupied by other small mammals.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project 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	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Polioptila californica californica</i> coastal California gnatcatcher	Fed: THR CA: SSC	Obligate resident of sage scrub habitats that are dominated by California sagebrush (<i>Artemisia californica</i>). This species generally occurs below 750 feet elevation in coastal regions and below 1,500 feet inland. It prefers habitat with more low-growing vegetation.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Rhinichthys osculus ssp. 8</i> Santa Ana speckled dace	Fed: None CA: SSC	Inhabits the Santa Ana, San Jacinto, San Gabriel, and Los Angeles River systems. Prefers perennial streams fed by cool springs with overhanging riparian vegetation and shallow gravel riffles for spawning.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Salvadora hexalepis virgultea</i> coast patch-nosed snake	Fed: None CA: SSC	Found in desert scrub, grassland chaparral, sagebrush plains, and pinyon-juniper woodlands in the southwestern United States south into Baja California and Mexico. Occurs from below sea level to 7,000 feet in elevation.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Selasphorus rufus</i> rufous hummingbird	USF WS: None CDF W: None CVM SHC P: Not Covered	During breeding, they are found in forests, on seed-tree harvest units, riparian shrub, and spruce-fir habitats. During the winter, it migrates to lowland stream bottoms, foothill brush land, seacoast and high mountain meadows.	No	High Suitable nesting and foraging habitat present adjacent to the project site.
<i>Setophaga petechia</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	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Spea hamondii</i> western spadefoot	Fed: None CA: SSC	Occurs in 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. Requires rainpools free of bullfrogs, fish, or crayfish for breeding.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Spinus lawrencei</i> Lawrence's goldfinch	Fed: None CA: None	Found in oak-pine woods and chaparral communities. Breeds locally in a variety of habitats including streamside trees, oak woodland, open pine woods, pinyon-juniper woods, and chaparral. Often found close to water in fairly dry country. In migration and winter, occurs in weedy fields, farmland, brushy areas, and along streamsides.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Streptocephalus woottoni</i> Riverside fairy shrimp	Fed: END CA: None	Habitat includes deep long-lived vernal pools, ephemeral ponds and human derived depressions such as roadside ditches.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Strix occidentalis occidentalis</i> California spotted owl	Fed: None CA: SSC	Primarily associated with oak and oak-conifer habitats and uses dense, multi-layered canopy cover for roost seclusion. Requires mature forest with permanent water and suitable nesting trees and snags.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Taricha torosa</i> Coast Range newt	Fed: None CA: SSC	Found in coastal areas and coastal range mountains in oak forests, woodlands, or rolling grasslands. In the terrestrial phase they live in moist to dry habitats under woody or leafy debris, in rock crevices, and in animal burrows.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Thamnophis hammondi</i> two-striped gartersnake	Fed: None CA: SSC	Generally found in or near permanent fresh water, often along streams with rocky beds bordered by willows and other riparian vegetation, including mountain slopes and desert oases. Sometimes found near manmade ponds, and cattle tanks.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Toxostoma crissale</i> Crissal thrasher	Fed: None CA: SSC	Habitat varies from Sonoran Desert, found only in the densest mesquite thickets along washes, to Chihuahuan desert in sparse brush in open areas. Also occurs in dense chaparral, among manzanita and other scrub in the southwestern mountains. Forages within thorny vegetation, usually on the ground.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Vireo bellii pusillus</i> least Bell's vireo	Fed: END CA: END	Inhabits low-elevation riparian habitats with a dense shrub understory near water. Prefers an area with both a canopy and shrub layer. Prefers to nest in willows, but will use other shrubs, trees, and vines. Found below 2,000 feet elevation.	No	Low Marginal suitable nesting habitat adjacent to the project site.
SPECIAL-STATUS PLANT SPECIES				
<i>Astragalus brauntonii</i> Braunton's milk-vetch	Fed: END CA: None CNPS: 1B.1	Restricted to carbonate soils of the foothills of the southern California mountains. It occurs in disturbed chaparral, coastal sage scrub, and closed-cone forests and generally occurs along the tops of knolls.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Brodiaea filifolia</i> thread-leaved brodiaea	Fed: THR CA: END CNPS: 1B.1	Typically grows in herbaceous plant communities such as grassland communities, alkali playa, and in vernal pools. In some locations, species grows in open areas associated with coastal sage scrub.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Calochortus catalinae</i> Catalina mariposa-lily	Fed: None CA: None CNPS: 4.2	Most often found in chaparral or coastal scrub ecosystems and sometimes in grasslands and oak or pine woodlands. Blooms from April to June.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Calochortus plummerae</i> Plummer's mariposa-lily	Fed: None CA: None CNPS: 4.2	Found in chaparral or coastal scrub ecosystems, and sometimes in grasslands and oak or pine woodlands. Blooms from May to July. Found at elevations of up to 5,580 feet.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Calochortus weedii</i> var. <i>intermedius</i> intermediate mariposa-lily	Fed: None CA: None CNPS: 1B.2	Found in coastal and peninsular ranges, Grows in heavy rocky soils from sea level to 6,200 feet. Blooms from June to July.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Clinopodium chandleri</i> San Miguel savory	Fed: None CA: None CNPS: 1B.2	Known to grow in shady areas of riparian habitat, but can also be found in coastal sage scrub, foothill woodland, chaparral, and valley grassland communities. Blooms from May to July.	N	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Comarostaphylis diversifolia</i> ssp. <i>diversifolia</i> summer holly	Fed: None CA: None CNPS: 1B.2	Grows on chaparral hillsides, especially around Quercus species. Very fire tolerant. Found at elevations from 100 to 2,590 feet. Blooming period is from May to June.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Convolvulus simulans</i> small-flowered morning glory	Fed: None CA: None CNPS: 4.2	Grows in clay soils within serpentinite seeps, chaparral, coastal scrub, valley and foothill grassland habitats. Found at elevations ranging from 98 to 2,297 feet. Blooming period is from March to July.	No	Low Marginal habitat present within the project site. High degree of disturbance likely precludes establishment of species.
<i>Deinandra paniculata</i> paniculate tarplant	Fed: None CA: None CNPS: 4.2	Grows in dry hills and mesas at low elevations in valley grassland communities within western Riverside County to San Diego County. Blooms from May to November.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Diplacus clevelandii</i> Cleveland's bush monkeyflower	Fed: None CA: None CNPS: 4.2	Endemic to the Peninsular Ranges of southern California and northern Baja California, where it grows in chaparral and oak woodland habitats, including in disturbed areas.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Dudleya cymose ssp. ovatifolia</i> Santa Monica dudleya	Fed: THR CA: None CNPS: 1B.2	Endemic to southern California. Often found on steep, shady hillsides of exposed volcanic rock and shares this habitat with mosses, lichens, and ferns.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Dudleya multicaulis</i> many-stemmed dudleya	Fed: None CA: None CNPS: 1B.2	Found on dry stony outcrops, coastal sage scrub, and chaparral habitats at up to 2,000 feet. Most common in Orange County along coastal plains in heavy clay soils.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Dudleya viscida</i> sticky dudleya	Fed: None CA: None CNPS: 1B.2	Grows in rocky areas within chaparral, cismontane woodland, coastal bluff scrub, and coastal scrub habitats. Found at elevations ranging from 35 to 1,805 feet. Blooming period is from May to June.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Erythranthe diffusa</i> Palomar monkeyflower	Fed: None CA: None CNPS: 4.3	Grows in sandy or gravelly soils in chaparral and lower montane coniferous forest habitats. Found at elevations ranging from 4,003 to 6,004 feet. Blooming period ranges from April to June.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Hesperocyparis forbesii</i> Tecate cypress	Fed: None CA: None CNPS: 1B.1	Native to a few isolated locations within the coastal and inland foothills of Southern California where it grows on dry slopes within the chaparral plant community from 1,500-5,000 ft. in elevation. It is found in rocky well-drained soils and can tolerate many months of moisture stress.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Juglans californica</i> southern California black walnut	Fed: None CA: None CNPS: 4.2	Occurs in alluvial soils in chaparral, cismontane woodland, coastal scrub, and riparian woodlands. From 15 to 5,875 feet in elevation. Blooming period is from May to June.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Lepechinia cardiophylla</i> heart-leaved pitcher sage	Fed: None CA: None CNPS: 1B.2	Primarily found growing in chaparral and cismontane woodland. In Orange County it is associated with Exchequer soils	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Lepidium virginicum var. robinsonii</i> Robinson's pepper-grass	Fed: None CA: None CNPS: 4.3	Grows along roadsides, bottomlands, gravelly and sandy shores, waste grounds, stream banks, grassy meadows, dry flats and stream beds, abandoned fields, woods, cliffs, plains, pastures, sagebrush, and other desert shrub communities. Blooms from January to July.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Lilium humboldtii ssp. ocellatum</i> ocellated Humboldt lily	Fed: None CA: None CNPS: 4.2	Native to the South High Cascade Range, High Sierra Nevada, south Outer South Coast Ranges, and the Santa Monica Mountains and others in Southern California, growing at elevations from 2,000 ft to 3,900 ft.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Monardella hypoleuca ssp. intermedia</i> intermediate monardella	Fed: None CA: None CNPS: 1B.3	Grows in chaparral, oak woodland, occasionally conifer forest communities, and dry slopes from 650 to 4100 feet in elevation. Blooms from June to August.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Monardella macrantha ssp. hallii</i> Halls monardella	Fed: None CA: None CNPS: 1B.3	Native to coastal mountain ranges of southern California and Baja California, where it grows in several habitat types, including chaparral, woodlands, and forest.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Nama stenocarpa</i> mud nama	Fed: None CA: None CNPS: 2B.2	Occurs in wetlands, riparian areas, lake-margins, streambanks, and along the edges of water. Blooms from January to July.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Nolina cismontane</i> chaparral nolina	Fed: None CA: None CNPS: 1B.2	Found primarily in central-to-northern San Diego County in gabbro soils along the San Diego/Riverside County border. Grows mostly in chamise chaparral and nolina scrub communities. Blooms from May to July.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Pentachaeta aurea ssp. allenii</i> Allen's pentachaeta	Fed: None CA: None CNPS: 1B.1	Occurs in grassland vegetation communities on rocky clay soils of volcanic origin from sea level to 1500 feet in elevation. Blooms from March to May.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Phacelia hubbyi</i> Hubby's phacelia	Fed: None CA: None CNPS: 4.2	Grows on gravelly or rocky slopes, chaparral, and coastal sage scrub mostly away from the immediate coast. Blooms from April to July.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Phacelia keckii</i> Santiago Peak phacelia	Fed: None CA: None CNPS: 1B.3	Grows in chaparral, woodland, grassland, and other local habitat. Blooms from May to June.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Piperia cooperi</i> chaparral rein orchid	Fed: None CA: None CNPS: 1B.3	Native to western North America from British Columbia and Montana to southern California, where it grows in mountain forests and scrub habitat.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Piperia leptopetala</i> narrow-petaled rein orchid	Fed: None CA: None CNPS: 4.2	Occurs in dry woodlands and chaparral ecosystems on fairly steep hillsides and relatively flat terrain.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Polygala cornuta var. fishiae</i> Fish's milkwort	Fed: None CA: None CNPS: 4.3	Occurs in chaparral, cismontane woodland, and riparian woodland. Found at elevations ranging from 328 to 3,281 feet. Blooming period is from May to August.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Romneya coulteri</i> Coulter's matilija poppy	Fed: None CA: None CNPS: 1B.1	Grows in dry canyons in chaparral and coastal sage scrub plant communities, sometimes in areas recently burned. It is a popular ornamental plant and can be found commonly in parks and gardens. Blooms from March to August.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Senecio aphanactis</i> chaparral ragwort	Fed: None CA: None CNPS: 1B.1	Occurs in dry coastal areas, particularly coastal sage scrub, foothill oak woodland, and alkali flats. Blooms from February to May.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Sidalcea neomexicana</i> salt spring checkerbloom	Fed: None CA: None CNPS: 2B.2	Found in wet meadows, stream banks, and alkaline seeps from 5,000 to 9,500 feet in elevation. Blooms from March to August.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
<i>Viguiera laciniata</i> San Diego County viguiera	Fed: None CA: None CNPS: 1B.1	Native to the deserts and dry mountain slopes of northwestern Mexico, its distribution extending north into San Diego County, California. Its habitat includes chaparral and coastal sage scrub communities. Blooms most of the year from January to September.	No	Presumed Absent. There is no suitable habitat present within or adjacent to the project site.
SPECIAL-STATUS PLANT COMMUNITIES				
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	Absent
Southern Coast Live Oak Riparian Forest	CDFW Sensitive Habitat	Open to locally dense evergreen riparian woodlands dominated by <i>Quercus agrifolia</i> . This type appears to be richer in herbs and poorer in understory shrubs than other riparian communities. Bottomlands and outer floodplains along larger streams, on fine-grained, rich alluvium. Canyons and valleys of coastal southern California.	No	Absent
Southern Cottonwood Willow Riparian Forest	CDFW Sensitive Habitat	Dominated by cottonwood (<i>Populus</i> spp.) and willow (<i>Salix</i> spp.) trees and shrubs. Considered to be an early successional stage as both species are known to germinate almost exclusively on recently deposited or exposed alluvial soils.	No	Absent

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
Southern Riparian Scrub	CDFW Sensitive Habitat	Riparian zones dominated by small trees or shrubs, lacking taller riparian trees.	No	Absent
Canyon Live Oak Ravine Forest	CDFW Sensitive Habitat	Found in riparian areas with sheltered coves, and deep, moist, shady ravines and canyons. Dominated by <i>Quercus chrysolepis</i> and other oak species.	No	Absent
Valley Needlegrass Grassland	CDFW Sensitive Habitat	Characterized by continuous vegetative cover of common needlegrass species (<i>Nasella</i> spp.). Occurs over a wide variety of topographies, in deep soils with high clay content, loamy, sandy, or silty derived mudstone, sandstone, or serpentine substrates.	No	Absent

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

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

California Native Plant Society (CNPS) California Rare Plant Rank
 1B Plants Rare, Threatened, or Endangered in California and Elsewhere
 2B Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere
 3 Plants About Which More Information is Needed – A Review List
 4 Plants of Limited Distribution – A Watch List

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

Western Riverside County MSHCP
 Yes- Fully covered
 No- Not covered
 Yes (a)- May require surveys under MSHCP Section 6.1.2
 Yes (b)- May require surveys under MSHCP Section 6.1.3
 Yes (c)- May require surveys under MSHCP Section 6.3.2
 Yes (d)- May require surveys under MSHCP Section 6.3.2
 Yes (e)- Conditionally covered pending the achievement of species-specific conservation measures

Attachment E

Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

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

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

State Regulations

California Environmental Quality Act (CEQA)

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

California Endangered Species Act (CESA)

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

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

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

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

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

Fish and Game Code

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

Native Plant Protection Act

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

California Native Plant Society Rare and Endangered Plant Species

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

California Rare Plant Rank

- 1A- Plants Presumed Extirpated in California and either Rare or Extinct Elsewhere
- 1B- Plants Rare, Threatened, or Endangered in California and Elsewhere

- 2A- Plants Presumed Extirpated in California, But More Common Elsewhere
- 2B- Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere
- 3- Plants about Which More Information is Needed - A Review List
- 4- Plants of Limited Distribution - A Watch List

Threat Ranks

- .1- Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)
- .2- Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)
- .3- Not very threatened in California (<20% of occurrences threatened / low degree and immediacy of threat or no current threats known).

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

Federal Regulations

Section 404 of the Clean Water Act

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

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

(1) Waters which are:

- (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (ii) The territorial seas; or
- (iii) Interstate waters;

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

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

(4) Wetlands adjacent to the following waters:

- (i) Waters identified in [paragraph \(a\)\(1\)](#) of this section; or
- (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3) of this section and with a continuous surface connection to those waters;

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

(b) The following are not “waters of the United States” even where they otherwise meet the terms of [paragraphs \(a\)\(2\)](#) through [\(5\)](#) of this section:

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

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

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

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

(4) Artificially irrigated areas that would revert to dry land if the irrigation ceased;

(5) Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;

(6) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking dry land to retain water for primarily aesthetic reasons;

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

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

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

(1) **Wetlands** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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

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

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

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

Section 401 of the Clean Water Act

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

State Regulations

Fish and Game Code

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

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

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

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

Porter Cologne Act

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