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**LEWIS MANAGEMENT CORP.**

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**SUBJECT: Habitat Assessment for the Pioneer School Site Located in the City of West Covina, Los Angeles County, California**

**Introduction**

This report contains the findings of ELMT Consulting’s (ELMT) habitat assessment for the approximately 8.77-acre Pioneer School Site (project site or site) located in the City of West Covina, Los Angeles County, California. The habitat assessment was conducted by biologist Thomas J. McGill, Ph.D. on June 29, 2018 to document baseline conditions and assess the potential for special-status<sup>1</sup> plant and wildlife species to occur within the project site that could pose a constraint to implementation of the proposed project. Special attention was given to the suitability of the project site to support special-status plant and wildlife species identified by the California Department of Fish and Wildlife’s (CDFW) California Natural Diversity Database (CNDDDB), and other electronic databases as potentially occurring in the general vicinity of the project site.

**Project Location**

The project site is generally located north of Interstate 10, west of State Route 39, south of Interstate 201, and east of Interstate 605 in the City of West Covina, Los Angeles County, California. The project site is depicted on the Baldwin Park quadrangle of the United States Geological Survey’s (USGS) 7.5-minute topographic map series within Section 22 of Township 1 South, Range 10 West. Specifically, the project site is located at 1751 E. Rowland Avenue, West Covina, California. Refer to Exhibits 1 and 2 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 the project site.

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

### Literature Review

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

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

- Google Earth Pro historic aerial imagery (1995-2017);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey;
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS Endangered Species Profiles.

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

### Habitat Assessment/Field Investigation

Following the literature review, biologist Thomas J. McGill, Ph.D. inventoried and evaluated the condition of the habitat within the project site on June 29, 2018. 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.

All plant and wildlife species observed, as well as dominant plant species within each plant community, were recorded. Plant species observed during the field investigation were identified by visual characteristics and morphology in the field. Unusual and less familiar plant species were

photographed during the field investigation and identified in the laboratory using taxonomical guides. Wildlife detections were made through observation of scat, trails, tracks, burrows, nests, and/or visual and aural observation. In addition, site characteristics such as soil condition, topography, hydrology, anthropogenic disturbances, indicator species, condition of on-site plant communities and land cover types, and presence of potential jurisdictional drainage and/or wetland features were noted.

### **Vegetation**

The proposed project site consists of existing buildings, parking lots, playgrounds, and landscaped grass fields. As a result of urbanization, the entire project site and immediately surrounding areas have been developed and no longer support undeveloped land. Native plant communities were removed from the project site and surrounding area several decades ago from development. The project site contains a land cover type that would be classified as developed. Developed areas generally encompass all building/structures, parks, and paved, impervious surfaces. The only vegetation occurring on the project site consists of ornamental/landscaped plant species that have been planted in association with existing developments. However, it should be noted that several native oak trees (*Querus* sp.) are part of the onsite landscaping. No plant communities will be affected from implementation of the project. Refer to Attachment B, *Site Photographs*, for representative site photographs.

### **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**

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

### Reptiles

During the field investigation Great Basin fence lizard (*Sceloporus occidentalis longipes*) was the only reptilian species observed on-site. Common reptilian species adapted to a high degree of anthropogenic disturbances that have the potential to occur on-site include western side-blotched lizard (*Uta stansburiana elegans*), and alligator lizard (*Elgaria multicarinata*). Due to the high level of anthropogenic disturbances on-site, and surrounding development, no special-status reptilian species are expected to occur within project site.

### Birds

The project site provides minimal foraging habitat for bird species adapted to a high degree of human disturbance. Bird species detected during the field investigation included American kestrel (*Falco sparverius*), lesser goldfinch (*Spinus psaltria*), northern mockingbird (*Mimus polyglottos*), mourning dove (*Zenaida macroura*), house finch (*Haemorhouse mexicanus*), American crow (*Corvus brachyrhynchos*), and Anna's hummingbird (*Calypte anna*).

### Mammals

The project site and surrounding areas have the potential to support mammalian species adapted to human presence and disturbance. No mammals were observed during the habitat assessment. Common mammalian species expected to occur include Botta's pocket gopher (*Thomomys bottae*), opossum (*Didelphis virginiana*), and raccoon (*Procyon lotor*). No bat species are expected to occur due to a lack of suitable roosting habitat (i.e., suitable trees, crevices) on and surrounding the project site.

### Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field surveys. Although developed, the landscaped/ornamental trees associated with the surrounding developments have the potential to provide suitable foraging and nesting opportunities for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area that area adapted to urban environments.

### 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 proposed project will be confined to existing developed, which has removed natural plant communities from the project site and surrounding area. The project site is isolated from regional wildlife corridors and linkages, and there are no riparian corridors, creeks, or useful patches of stepping stone habitat (natural areas) within or connecting the project site to any identified wildlife corridors or linkages. As a result, implementation of the proposed project will not disrupt or have any adverse effects on any migratory corridors or linkages in the surrounding area.

### **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.

No jurisdictional drainage and/or wetland features were observed on the project site during the habitat assessment that would be considered jurisdictional by the Corps, Regional Board, or CDFW. However, it should be noted that a concrete-lined storm drain was observed along the western boundary of the project site. This concrete-lined storm drain was constructed in the uplands and does not have a surface hydrologic connection to downstream “waters of the United States.” Therefore, regulatory approvals from the Corps, Regional Board, and/or CDFW will not be required for implementation of the project.

### **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 Baldwin Park USGS 7.5-minute quadrangle. Only one quadrangle was queried since the project site is already developed, completely surrounded by existing development, and does not connect with any natural areas or native plant communities in the region. 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 Nine (9) special-status plant species, thirty-one (31) special-status wildlife species, and three (3) special-status plant communities as having potential to occur within the Baldwin Park USGS 7.5-minute quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements,

availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site are presented in *Table C-1: Potentially Occurring Special-Status Biological Resources*, provided in Attachment C.

### *Special-Status Plants*

According to the CNDDDB and CNPS, nine (9) special-status plant species have been recorded in the Guasti quadrangle (refer to Attachment C). No special-status plant species were observed on-site during the habitat assessment. The proposed project site consists of existing developed areas that have been subject to a high level of anthropogenic disturbances. These disturbances have eliminated the natural plant communities that once occurred in the area resulting in a majority of the project site consisting of ornamental landscaped plant species associated with existing developments. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that no special-status plant species are expected to occur within the proposed pipeline alignment since it will be installed within the existing paved road.

### *Special-Status Wildlife*

According to the CNDDDB, thirty-two (32) special-status wildlife species have been reported in the Guasti quadrangle (refer to Attachment C). No special-status wildlife species were observed on-site during the habitat assessment. The proposed project site consists of existing developed areas that have been subject to a high level of anthropogenic disturbances. These disturbances have eliminated the natural plant communities that once occurred on-site resulting in a majority of the project site consisting of ornamental landscaped plant species associated with existing developments. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that no special-status wildlife species are expected to occur within the proposed pipeline alignment since it will be installed within the existing paved road.

### *Special-Status Wildlife*

The CNDDDB lists three (3) special-status plant communities as being identified within the Baldwin Park quadrangle: California Walnut Woodland, Riversidean Alluvial Fan Sage Scrub, and Walnut Forest. No special-status plant communities occur on the project site.

## **Critical Habitat**

Under the federal Endangered Species Act, “Critical Habitat” is designated at the time of listing of a species or within one year of listing. Critical Habitat refers to specific areas within the geographical range of a species at the time it is listed that include the physical or biological features that are essential to the survival and eventual recovery of that species. Maintenance of these physical and biological features requires special management considerations or protection, regardless of whether individuals or the species are present or not. All federal agencies are required to consult with the United States Fish and Wildlife Service (USFWS) regarding activities they

authorize, fund, or permit which may affect a federally listed species or its designated Critical Habitat. The purpose of the consultation is to ensure that projects will not jeopardize the continued existence of the listed species or adversely modify or destroy its designated Critical Habitat. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing is on federal lands, uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highways Administration or a CWA Permit from the Corps). If there is a federal nexus, then the federal agency that is responsible for providing the funding or permit would consult with the USFWS.

The project site is not located with federally designated Critical Habitat. The nearest designated Critical Habitat is located approximately 3 miles northwest of the project site for southwestern willow flycatcher (*Empidonax traillii extimus*). Therefore, the loss or adverse modification of Critical Habitat from site development will not occur and consultation with the USFWS for impacts to Critical Habitat will not be required for implementation of the proposed project.

### **Recommendations**

#### **Migratory Bird Treaty Act and Fish and Game Code**

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

If construction occurs between February 1<sup>st</sup> and August 31<sup>st</sup>, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer (generally 300 feet for migratory and non-migratory song birds and 500 feet raptors and special-status species) will be determined by the wildlife biologist, in coordination with the CDFW, and will depend on the level of noise and/or surrounding disturbances, line of sight between the nest and the construction activity, ambient noise, 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.

### Heritage Tree Ordinance

The removal of the mature native oak trees (*Quercus* spp.) from a project site is will likely require a permit from the City of West Covina’s Planning Department. According to Article VI, Division 9 of the West Covina Zoning Municipal Code, the preservation, protection and removal of trees on public and private property are regulated by the City. A heritage tree is any tree defined by the Planning Commission resolution as having historic or cultural value. Included in the list of heritage trees are oak tree native to California. Acquisition of a tree removal permit will require an inspection and inventory of the oak trees by a certified arborist.

### Conclusion

The project site has been developed and used continuously for several decades as a school facility. 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 project. With completion of the recommendations provided above, no impacts to year-round and seasonal avian residents will occur from implementation of the 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 project will not impact designated Critical Habitats or regional wildlife movement corridors/linkages.

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

Sincerely,



Thomas J. McGill, Ph.D.  
Managing Director



Travis J. McGill  
Director

Attachments:

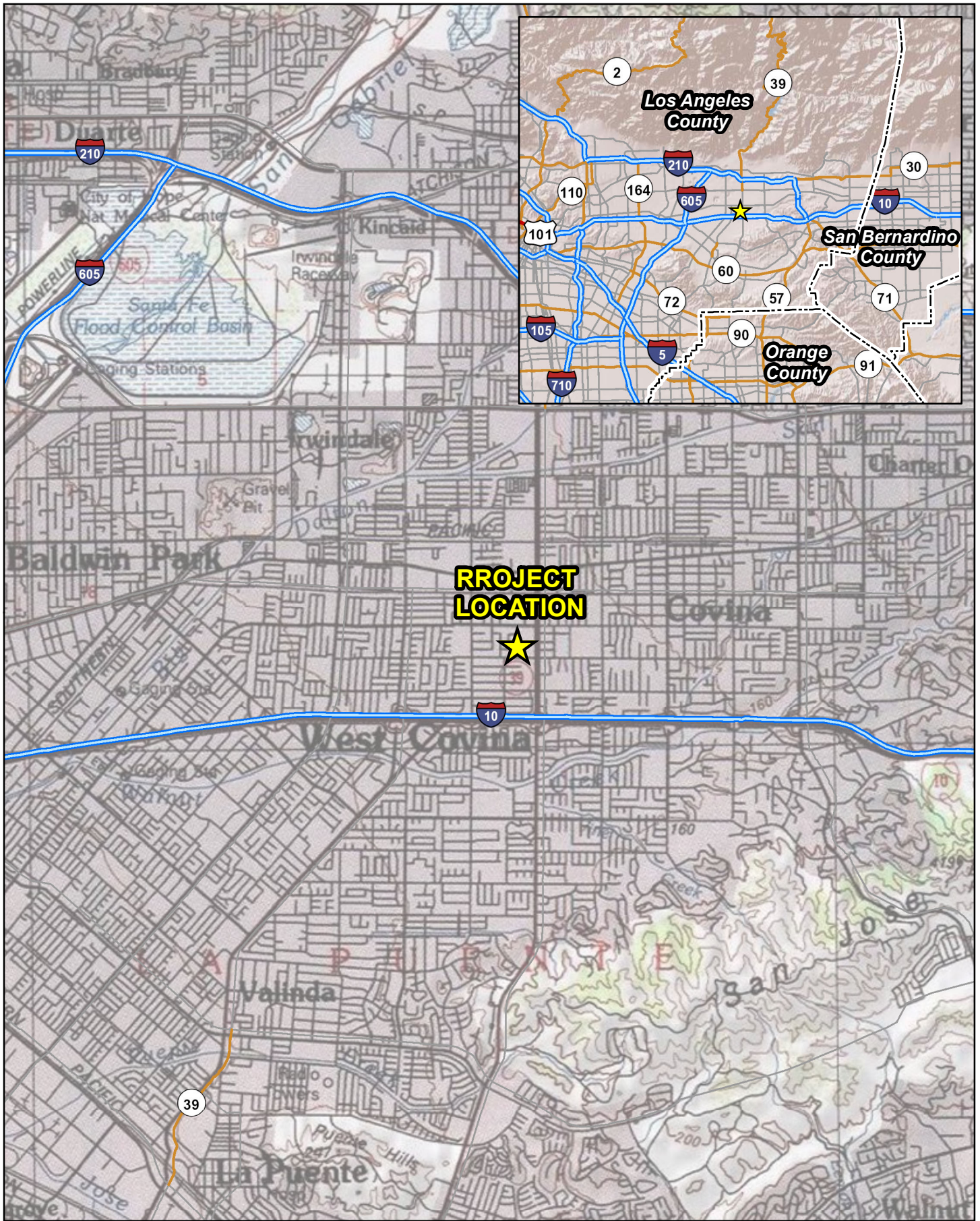
- A. *Project Exhibits*
- B. *Site Photographs*
- C. *Potentially Occurring Special-Status Biological Resources*
- D. *Regulations*



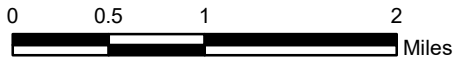
## **Attachment A**

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Project Exhibits




PIONEER SCHOOL SITE  
 HABITAT ASSESSMENT  
**Regional Vicinity**

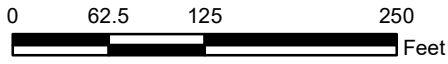


Source: Federal Highway Administration, US Department of Transportation, USA Topographic Map



**Legend**

 Project Site



Source: ESRI Aerial Imagery, Los Angeles County

PIONEER SCHOOL SITE  
HABITAT ASSESSMENT  
**Project Site**

## **Attachment B**

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Site Photographs



**Photograph 1:** Landscaped grass field and school buildings in the background.



**Photograph 2:** Landscaped grass field on the project site.



**Photograph 3:** Landscaped grass field and school buildings in the background.



**Photograph 4:** View of the existing buildings and landscaped vegetation.



**Photograph 5:** Picture of one of the planted oak trees onsite.



**Photograph 6:** Another oak tree on the project site.



**Photograph 7:** View of the concrete-lined storm drain on the project site.



## **Attachment C**

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Potentially Occurring Special-Status Biological Resources

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

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<b>SPECIAL-STATUS WILDLIFE SPECIES</b>				
<i>Accipiter cooperii</i> Cooper's hawk	Fed: None CA: WL	Common yearlong resident of California. Typically forages in broken woodland and habitat edges with dense stands of coast live oak ( <i>Quercus agrifolia</i> ), riparian deciduous, or other forest habitat near water. Usually nests in dense riparian areas, usually near streams.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Accipiter striatus</i> sharp-shinned hawk	Fed: None CA: WL	Found in pine, fir and aspen forests. They can be found hunting in forest interior and edges from sea level to near alpine areas. Can also be found in rural, suburban and agricultural areas, where they often hunt at bird feeders. Typically found in southern California in the winter months.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Aimophila ruficeps canescens</i> southern California rufous-crowned sparrow	Fed: None CA: WL	Typically found between 3,000 and 6,000 feet in elevation. Breed in sparsely vegetated scrubland on hillsides and canyons. Prefers coastal sage scrub dominated by California sagebrush ( <i>Artemisia californica</i> ), but they can also be found breeding in coastal bluff scrub, low-growing serpentine chaparral, and along the edges of tall chaparral habitats.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Antrozous pallidus</i> pallid bat	Fed: None CA: SSC	Forest, rocky areas (i.e., inland cliffs, mountain peaks), caves, and subterranean habitats (non-aquatic).		<b>Presumed Absent</b> There is no suitable habitat 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	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Ardea herodias</i> great blue heron	Fed: None CA: None	Fairly common all year throughout most of California, in shallow estuaries and fresh and saline emergent wetlands. Less common along riverine and rocky marine shores, in croplands, pastures, and in mountains about foothills.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Aspidoscelis tigris stejnegeri</i> coastal whiptail	Fed: None CA: SSC	Found in a variety of ecosystems, primarily hot and dry open areas with sparse foliage - chaparral, woodland, and riparian areas.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Bombus crotchii</i> Crotch bumble bee	Fed: None CA: None	Exclusive to coastal California east towards the Sierra-Cascade Crest; less common in western Nevada.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Calypte costae</i> Costa's hummingbird	Fed: None CA: None	Desert and semi-desert, arid brushy foothills and chaparral. A desert hummingbird that breeds in the Sonoran and Mojave Deserts. Departs desert heat moving into chaparral, scrub, and woodland habitats.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Catostomus santaanae</i> Santa Ana sucker	Fed: <b>THR</b> CA: <b>CSC</b>	Occur in the watersheds draining the San Gabriel and San Bernardino Mountains of southern California. Steams that Santa Ana Sucker inhabit are generally perennial streams with water ranging in depth from a few inches to several feet and with currents ranging from slight to swift.	Yes	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Coccyzus americanus occidentalis</i> western yellow-billed cuckoo	Fed: <b>THR</b> CA: <b>END</b>	Obligate riparian species with a primary habitat association of willow-cottonwood riparian forest. Nests are typically placed (72% of the time) in willows ( <i>Salix</i> spp.), particularly in black willow ( <i>S. gooddingii</i> ), red willow ( <i>S. laevigata</i> ), and sandbar willow ( <i>S. exigua</i> ). This species typically requires large blocks of intact riparian habitat, with anything less than 37 acres in size and 328 feet wide generally considered unsuitable. Breeding season home ranges can be as much as 100 acres per individual bird. Yellow-billed cuckoos are considered rare anywhere in southern California outside of the Colorado River.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Empidonax traillii</i> willow flycatcher	Fed: <b>None</b> CA: <b>END</b>	A rare to locally uncommon, summer resident in wet meadow and montane riparian habitats (2,000 to 8,000 ft) in the Sierra Nevada and Cascade Range. Most often occurs in broad, open river valleys or large mountain meadows with lush growth of shrubby willows.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Eumops perotis californicus</i> western mastiff bat	Fed: <b>None</b> CA: <b>SSC</b>	Primarily a cliff-dwelling species, roost generally under exfoliating rock slabs. Roosts are generally high above the ground, usually allowing a clear vertical drop of at least 3 meters below the entrance for flight. In California, it is most frequently encountered in broad open areas including dry desert washes, flood plains, chaparral, oak woodland, open ponderosa pine forest, grassland, and agricultural areas.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Gila orcuttii</i> arroyo chub	Fed: <b>None</b> CA: <b>SSC</b>	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	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Icteria virens</i> yellow-breasted chat	Fed: <b>None</b> CA: <b>SSC</b>	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	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Lanius ludovicianus</i> loggerhead shrike	Fed: <b>None</b> CA: <b>SSC</b>	Common yearlong resident of California. Prefers open habitats with bare ground, scattered shrubs, and areas with low or sparse herbaceous cover. Requires suitable perches including trees, posts, fences, utility lines, or other perches.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Larus californicus</i> California gull	Fed: <b>None</b> CA: <b>WL</b>	Require isolated islands in rivers, reservoirs and natural lakes for nesting, where predations pressures from terrestrial mammals are diminished. Uses both fresh and saline aquatic habitats at variable elevations and degrees of aridity for nesting and for opportunistic foraging.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Lasiurus cinereus</i> hoary bat	Fed: None CA: None	Artificial/terrestrial, forest, caves, and subterranean habitats (non-aquatic).		<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Lasiurus xanthinus</i> western yellow bat	Fed: None CA: SSC	Occurs in valley/foothill riparian, desert riparian, desert wash, and palm oasis habitats. Roosts under palm trees and feeds in, and near, palm oases and riparian habitats.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Lepus californicus bennettii</i> San Diego black-tailed jackrabbit	Fed: None CA: SSC	Occupies many diverse habitats, but primarily is found in arid regions supporting short-grass habitats, agricultural fields, or sparse coastal scrub.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Nycticorax nycticorax</i> black-crowned night heron	Fed: None CA: None	Common in wetlands across North America, including saltmarshes, freshwater marshes, swamps, streams, rivers, lakes, ponds, lagoons, tidal mudflats, and wet agricultural fields. They require aquatic habitat for foraging and terrestrial vegetation for cover.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Nyctinomops femorosaccus</i> pocketed free-tailed bat	Fed: None CA: SSC	Often found in pinyon-juniper woodlands, desert scrub, desert succulent shrub, desert riparian, desert wash, alkali desert scrub, Joshua tree, and palm oasis.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Nyctinomops macrotis</i> big free-tailed bat	Fed: None CA: SSC	Found in rugged and rocky terrain.		<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Phalacrocorax auritus</i> double-crested cormorant	Fed: None CA: WL	Common yearlong resident in southern California. Occurs widely in freshwater and marine habitats along coastlines. Require open water where they can forage for schooling fish.	No	<b>Presumed Absent</b> There is no suitable habitat 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	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Polioptila californica californica</i> coastal California gnatcatcher	Fed: THR CA: SSC	Common yearlong resident of southern California in sage scrub habitats that are dominated by California sagebrush ( <i>Artemisia californica</i> ). Prefers scrub habitat with more low-growing vegetation. Species generally occurs below 750 feet above mean sea level (msl) along the coast and below 1,500 feet above msl within inland regions.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Rhinichthys osculus ssp. 3</i> Santa Ana speckled dace	Fed: None CA: SSC	Occurs in the headwaters of the Santa Ana and San Gabriel Rivers, usually in areas with shallow cobble and gravel riffles. Requires permanent water flow with summer water temperatures between 17 and 20° Celsius.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Riparia riparia</i> bank swallow	Fed: None CA: THR	Live in low areas along rivers, streams, ocean coasts and reservoirs. Needs vertical banks and cliffs to form their colonies of nests.		<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<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	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Taxidea taxus</i> American badger	Fed: None CA: SSC	Primarily occupy grasslands, parklands, farms, tallgrass and shortgrass prairies, meadows, shrub-steppe communities and other treeless areas with sandy loam soils where it can dig more easily for its prey. Occasionally found in open chaparral (with less than 50% plant cover) and riparian zones.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Vireo bellii pusillus</i> least Bell's vireo	Fed: <b>END</b> CA: <b>END</b>	Primarily occupy Riverine riparian habitat that typically feature dense cover within 1 -2 meters of the ground and a dense, stratified canopy. Typically it is associated with southern willow scrub, cottonwood-willow forest, mule fat scrub, sycamore alluvial woodlands, coast live oak riparian forest, arroyo willow riparian forest, or mesquite in desert localities. It uses habitat which is limited to the immediate vicinity of water courses, 2,000 feet elevation in the interior.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<b>SPECIAL-STATUS PLANT SPECIES</b>				
<i>Calochortus plummerae</i> Plummer's mariposa-lily	Fed: None CA: None CNPS: 4.2	Prefers openings in chaparral, foothill woodland, coastal sage scrub, valley and foothill grasslands, cismontane woodland, lower montane coniferous forest and yellow pine forest. Often found on dry, rocky slopes and soils and brushy areas. Can be very common after a fire. From 328 to 5,577 feet in elevation. Blooming period is from May to July.	No	<b>Presumed Absent</b> There is no suitable habitat 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	Prefers rocky, calcareous soils in chaparral, valley and foothill grassland, and coastal sage scrub habitats. From 360 to 2,265 feet in elevation. Blooming period is from May to July.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Centromadia parryi</i> ssp. <i>australis</i> southern tarplant	Fed: None CA: None CNPS: 1B.1	Prefers marshes and swamps (margins), valley and foothill grasslands (vernally mesic), and vernal pools. From 0 to 1,410 feet in elevation. Blooming period is from May to November.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Dudleya multicaulis</i> many-stemmed dudleya	Fed: None CA: None CNPS: 1B.2	Often occurs on clay soils and around granitic outcrops in chaparral, coastal sage scrub, and grasslands. From 0 to 2,592 feet in elevation. Blooming period is from April to July.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Horkelia cuneata</i> var. <i>puberula</i> mesa horkelia	Fed: None CA: None CNPS: 1B.1	Occurs on sandy or gravelly soils in chaparral, woodlands, and coastal scrub plant communities. Found at elevations ranging from 230 to 2,657 feet. Blooming period is from February to September.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Juglas californica</i> southern California black walnut	Fed: None CA: None CNPS: 4.2	Found in chaparral, cismontane woodland, coastal scrub, and riparian woodland habitats. Found at elevations ranging from 164 to 2,953 feet. Blooming period is from March to August.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Phacelia stellaris</i> Brand's star phacelia	Fed: None CA: None CNPS: 1B.1	Occurs in coastal dunes and coastal sage scrub habitats. Grows in elevations ranging from 3 to 1,312 feet. Blooming period is from March to June.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed Onsite	Potential to Occur
<i>Pseudognaphalium leucocephalum</i> white rabbit-tobacco	Fed: None CA: None CNPS: 2B.2	Chaparral, cismontane woodland, coastal scrub, riparian woodlands in sandy gravelly soils. Grows in elevation from 3 to 6,890 feet in elevation. Blooming period ranges from July to December.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<i>Symphytotrichum defoliatum</i> San Bernardino aster	Fed: None CA: None CNPS: 1B.2	Grows in cismontane woodland, coastal scrub, montane/coniferous forest, meadows, seeps, marshes, swamps, and valley/foothill grassland (vernally mesic). Can be found growing near ditches, streams, and springs within these habitats. Found at elevations ranging from 7 to 6,693 feet. Blooming period is from July to November.	No	<b>Presumed Absent</b> There is no suitable habitat within or adjacent to the project site.
<b>SPECIAL-STATUS PLANT COMMUNITIES</b>				
California Walnut Woodland	CDFW Sensitive Habitat	Occurs on valley slopes and in valley bottoms, as well as around rocky outcrops. This habitat usually occurs in areas with relatively moist, fine soils. It can intergrade with coast live oak woodland and coast live oak forest in more mesic areas. The canopy is relatively open and is dominated by California walnut with a grassy understory.	No	<b>Absent</b>
Riversidean Alluvial Fan Sage Scrub	CDFW Sensitive Habitat	Occur within broad washes of sandy alluvial drainages that carry rainfall runoff sporadically in winter and spring, but remain relatively dry through the remainder of the year. Is restricted to drainages and floodplains with very sandy substrates that have a dearth of decomposed plant material. These areas do not develop into riparian woodland or scrub due to the limited water resources and scouring by occasional floods.	No	<b>Absent</b>
Walnut Forest	CDFW Sensitive Habitat	Southern California walnut woodland may be monospecific or mixed. Coast live oak ( <i>Quercus agrifolia</i> ) frequently codominants in the walnut woodland. Between Santa Barbara and Orange counties, southern California walnut is locally dominant or codominant in the coast live oak phase of oak woodland. Narrow, isolated stands of southern California walnut sometimes occur in chaparral. Occasionally, southern California walnut is found in coastal sage scrub.	No	<b>Absent</b>

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

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

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

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

## **Attachment D**

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Regulations

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

## **Federal Regulations**

### ***Endangered Species Act of 1973***

As defined within the Federal Endangered Species Act (FESA) of 1973, an endangered species is any animal or plant listed by regulation as being in danger of extinction throughout all or a significant portion of its geographical range. A threatened species is any animal or plant that is likely to become endangered within the foreseeable future throughout all or a significant portion of its geographical range. Without a special permit, federal law prohibits the “take” of any individuals or habitat of federally listed species. Under Section 9 of the FESA, take is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” The term “harm” has been clarified to include “any act which actually kills or injures fish or wildlife, and emphasizes that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.” The presence of any federally threatened or endangered species within 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 FESA, 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 FESA 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 the 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***

Pursuant to the Migratory Bird Treaty Act (MBTA) (16 U.S. Government Code [USC] 703) of 1918, as amended in 1972, federal law prohibits the taking of migratory birds or their nests or eggs (16 USC 703; 50 CFR 10, 21). The statute states:

*Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill...any migratory bird, any part, nest, or egg of any such bird...included in the terms of the [Migratory Bird] conventions...*

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.

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

### ***Fish and Game Code***

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

### ***Native Plant Protection Act***

Sections 1900–1913 of the Fish and Game Code were developed to preserve, protect, and enhance Rare and Endangered plants in the state of California. The act requires all state agencies to use their authority to carry out programs to conserve Endangered and Rare native plants. Provisions of the Native Plant Protection Act prohibit the taking of listed plants from the wild and require notification of the CDFW at

least ten days in advance of any change in land use which would adversely impact listed plants. This allows the CDFW to salvage listed plant species that would otherwise be destroyed.

***California Native Plant Society Rare and Endangered Plant Species***

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

California Rare Plant Rank

- 1A- Plants Presumed Extirpated in California and either Rare or Extinct Elsewhere
- 1B- Plants Rare, Threatened, or Endangered in California and Elsewhere
- 2A- Plants Presumed Extirpated in California, But More Common Elsewhere
- 2B- Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere
- 3- Plants about Which More Information is Needed - A Review List
- 4- Plants of Limited Distribution - A Watch List

Threat Ranks

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

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

## **Federal Regulations**

### ***Section 404 of the Clean Water Act***

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

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

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

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

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

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

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

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

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

### ***Section 401 of the Clean Water Act***

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

### **State Regulations**

#### ***Fish and Game Code***

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

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

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

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

***Porter Cologne Act***

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