APPENDIX B

BIOLOGICAL RESOURCES REPORT

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BLACK CREEK GROUP
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SUBJECT: Biological Resources Report for the Proposed Project Located at 26200 Enterprise Way, Lake Forest, Orange County, California

Introduction

This report contains the findings of ELMT Consulting's (ELMT) habitat assessment for the proposed project located at 26200 Enterprise Way (project site or site) located in the City of Lake Forest, Orange County, California. The field investigation was conducted by biologist Travis J. McGill on May 21, 2021, to document baseline conditions and assess the potential for special-status[1] 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 (CNDDB), 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 5, east of State Route 133, and south and west of State Route 241 in the City of Lake Forest, Orange County, California. The site is depicted on the El Toro quadrangle of the United States Geological Survey's (USGS) 7.5-minute map series within an unsectioned portion of Township 6 South, Range 8 West. Specifically, the project site is located at 26200 Enterprise Way within Assessor's Parcel Number (APN) 610-401-06. 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.

Literature Review

Prior to conducting the field investigation, a literature review and records search was conducted for special-

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.

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), CNDDB Rarefind 5, the California Native Plant Society's (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California, Calflora Database, compendia of special-status species published by CDFW, and the United States Fish and Wildlife Service (USFWS) species listings.

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 (1985-2020);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey[2];
- USFWS National Wetland Inventory;
- 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 CNDDB database was used, in conjunction with ArcGIS software, to locate the nearest recorded occurrences of special-status species and determine the distance from the project site.

Habitat Assessment/Field Investigation

Following the literature review, biologist Travis J. McGill inventoried and evaluated the condition of the habitat within the project site on May 21, 2021. Plant communities and land cover types identified on aerial photographs during the literature review were verified by walking transects throughout the project site, where accessible. 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,

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.

site characteristics such as soil condition, topography, hydrology, anthropogenic disturbances, indicator species, condition of on-site plant communities and land cover types, and presence of potential jurisdictional drainage and/or wetland features were noted.

Soil Series Assessment

Onsite and adjoining soils were researched prior to the field investigation using the USDA NRCS Soil Survey for 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 have undergone.

Plant Communities

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

Plants

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

Wildlife

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

Jurisdictional Drainages and Wetlands

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

Topography and Soils

The project site is located at an approximate elevation of 700 feet above mean sea level, and is generally flat with no areas of significant topographic relief. Based on the NRCS USDA Web Soil Survey, the project site is only underlain by Cropley clay (2 to 9 percent slopes), Cieneba sandy loam (30 to 75 percent slopes), Myford sandy loam (2 to 9 percent slopes), Capistrano sandy loam (2 to 9 percent slopes), and Sorrento loam (2 to 9 percent slopes). Soils on-site have been mechanically disturbed and heavily compacted from previous site development. As a result, no native soils occur onsite.

Existing Site Conditions

The proposed project site is located in an area that supports industrial, commercial, and residential developments. The Project site is bordered to the north, south, and west by existing multi-tenant office and warehouse buildings, and the northeast/east by a new residential (the Meadows Residential Development) and school development.

Due to existing and historical land uses, no native plant communities or natural communities of special concern were observed onsite. The site supports one land-cover type that would be classified as developed. The entire project site is developed and supports an existing commercial building and supporting infrastructure (i.e., parking lot, landscaped medians). There are landscaped areas within the project site that supported non-native/ornamental plant species. Refer to Attachment B, *Site Photographs*, for representative photographs of the project site. No native plant communities will be impacted from implementation of the proposed project.

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. Wildlife detections were based on calls, songs, scat, tracks, burrows, and direct observation. The project site provides limited habitat for wildlife species except those adapted to a high degree of anthropogenic disturbances and development.

Fish

No fish or hydrogeomorphic features (e.g., creeks, ponds, lakes, reservoirs) with frequent sources of water that would support populations of fish were observed on or within the vicinity of the project site. Therefore, no fish are expected to occur and are presumed absent from the project site.

Amphibians

No amphibians or hydrogeomorphic features (e.g., creeks, ponds, lakes, reservoirs) with frequent sources of water that would support populations of amphibians were observed on or within the vicinity of the project site. Therefore, no amphibians are expected to occur and are presumed absent from the project site.

Reptiles

The project site provides limited foraging and refuge habitat for reptile species adapted to a significant degree of human disturbance. The only reptilian species observed during the field investigation was common side-blotched lizard (*Uta stansburiana elegans*). Additional reptile species adapted to significant

disturbance that may occur on-site include San Diego alligator lizard (*Elgaria multicarinata webbii*) and Great Basin fence lizard (*Sceloporus occidentalis longipes*). Due to the high level of onsite disturbances and elimination of the native habitats, plus the isolation of the site from surrounding development, no special-status reptilian species are expected to occur within project site.

Birds

The project site and surrounding area provides minimal foraging and nesting habitat for a variety of bird species adapted to a significant degree of human disturbance and urban environments. Bird species detected during the field investigation include black phoebe (*Sayornis nigricans*), bushtit (*Psaltriparus minimus*), house finch (*Passer domesticus*), and northern mockingbird (*Mimus polyglottos*).

Mammals

The project site provides limited foraging and cover habitat for a limited variety of mammal species adapted to a significant degree of human disturbance and urban environments. No mammalian species detected during the field investigation. Mammalian species that may be expected to occur include Botta's pocket gopher (*Thomomys bottae*), opossum (*Didelphis virginiana*), and raccoon (*Procyon lotor*).

Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field survey, which was conducted during the breeding season. Although developed, the landscaped areas on the project have the potential to provide minimal foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area that area adapted to urban environments.

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 prior to 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 proposed project will be confined to existing developed areas and is surrounded by development which have removed natural plant communities from the surrounding area. The project site is isolated from regional wildlife corridors and linkages and there are no riparian corridors, creeks, or useful patches of

steppingstone habitat (natural areas) within or connecting the project site to any identified wildlife corridors or linkages.

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.

A query of the USFWS National Wetland Inventory determined that no riverine or other freshwater resources are mapped within the boundaries of the project site. Within the proposed limits of the project site, no discernible drainage courses, inundated areas, or wetland features that would be considered jurisdictional by the Corps, Regional Board, or CDFW were observed. Based on the proposed site plan and limits of disturbance, project activities will not result in impacts to Corps, Regional Board, or CDFW jurisdictional areas and regulatory approvals will not be required.

Special-Status Biological Resources

CDFW's QuickView Tool in BIOS, CNDDB 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 USGS 7.5-minute quadrangle. The habitat assessment evaluated the conditions of the habitat(s) within the boundaries of the project site to determine if the existing plant communities, at the time of the survey, have the potential to provide suitable habitat(s) for special-status plant and wildlife species.

The literature search identified eighteen (18) special-status plant species, fifty-eight (58) special-status wildlife species, and four (4) special-status plant communities as having the potential to occur within the El Toro 7.5-minute quadrangle. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site are presented in Attachment C, *Potentially Occurring Special-Status Biological Resources*.

Special-Status Plants

According to the CNDDB and CNPS, eighteen (18) special-status plant species have been recorded in the El Toro quadrangle (refer to Attachment C). No special-status plant species were observed onsite during the habitat assessment. The project site has been completely developed eliminating the suitability of the habitat onsite to support special-status plant species known to occur in the general vicinity of the project site. Based on habitat requirements for specific special-status plant species and the availability and quality of habitats needed by each species, it was determined that the project site does not provide suitable habitat for any of the special-status plant species known to occur in the area and are presumed to be absent from the project site. No focused surveys are recommended.

Special-Status Wildlife

According to the CNDDB, fifty-eight (58) special-status wildlife species have been reported in the El Toro quadrangle (refer to Attachment C). Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that the proposed project site has a low potential to support minimal foraging and stop over habitat Cooper's hawk (*Accipiter cooperii*), sharp-shinned hawk (*Accipiter striatus*), and California gull (*Larus californicus*) within the landscaped trees onsite. All remaining special-status wildlife species are presumed to be absent from the project site due to lack of quality habitat. No focused surveys are recommended.

None of these aforementioned species are listed as endangered or threatened. In order to ensure impacts to these species do not occur from implementation of the proposed project, a pre-construction nesting bird clearance survey, as discussed in the recommendations section below, shall be conducted prior to removal of any landscaped vegetation. With implementation of mitigation through the pre-construction nesting bird clearance survey, impacts to these species will be less than significant.

Special-Status Plant Communities

According to the CNDDB, four (4) special-status plant communities has been reported in the El Toro USGS 7.5-minute quadrangle: Southern Coast Live Oak Riparian Forest, Southern Cottonwood Willow Riparian Forest, Southern Riparian Scrub, and Southern Sycamore Alder Riparian Woodland. No special-status plant communities were observed on-site during the field investigation.

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 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 a there is a federal nexus, then the federal agency that is responsible for providing the funding or permit would consult with the USFWS.

The project site is not located within federally designated Critical Habitat. The nearest designated Critical Habitat is located approximately 1 mile northwest of the project site for Coastal California gnatcatcher (*Polioptila californica californica*). The project site is separated from this designated Critical Habitat by existing development. Therefore, the loss or adverse modification of Critical Habitat will not occur as a result of the proposed project and consultation with the USFWS will not be required for impacts to Critical Habitat.

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 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.

Recommendations

Migratory Bird Treaty Act and Fish and Game Code (Pre-Construction Nesting Bird Clearance Survey)

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

Conclusion

Based on the proposed project footprint and existing site conditions discussed in this report, none of the

special-status plant or wildlife species known to occur in the general vicinity of the project site are expected to be directly or indirectly impacted from implementation of the proposed project. With completion of the recommendations provided above, no impacts to year-round, seasonal, or special-status avian residents will occur from implementation of the proposed project. Therefore, it was determined that implementation of the project will have "no effect" on federally or State listed species known to occur in the general vicinity of the project site. Additionally, the development of the project will not impact jurisdictional drainage features, 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 or Travis McGill at (909) 816-1646 or travismcgill@elmtconsulting.com should you have any questions.

Sincerely,

Thomas J. McGill, Ph.D.
Managing Director

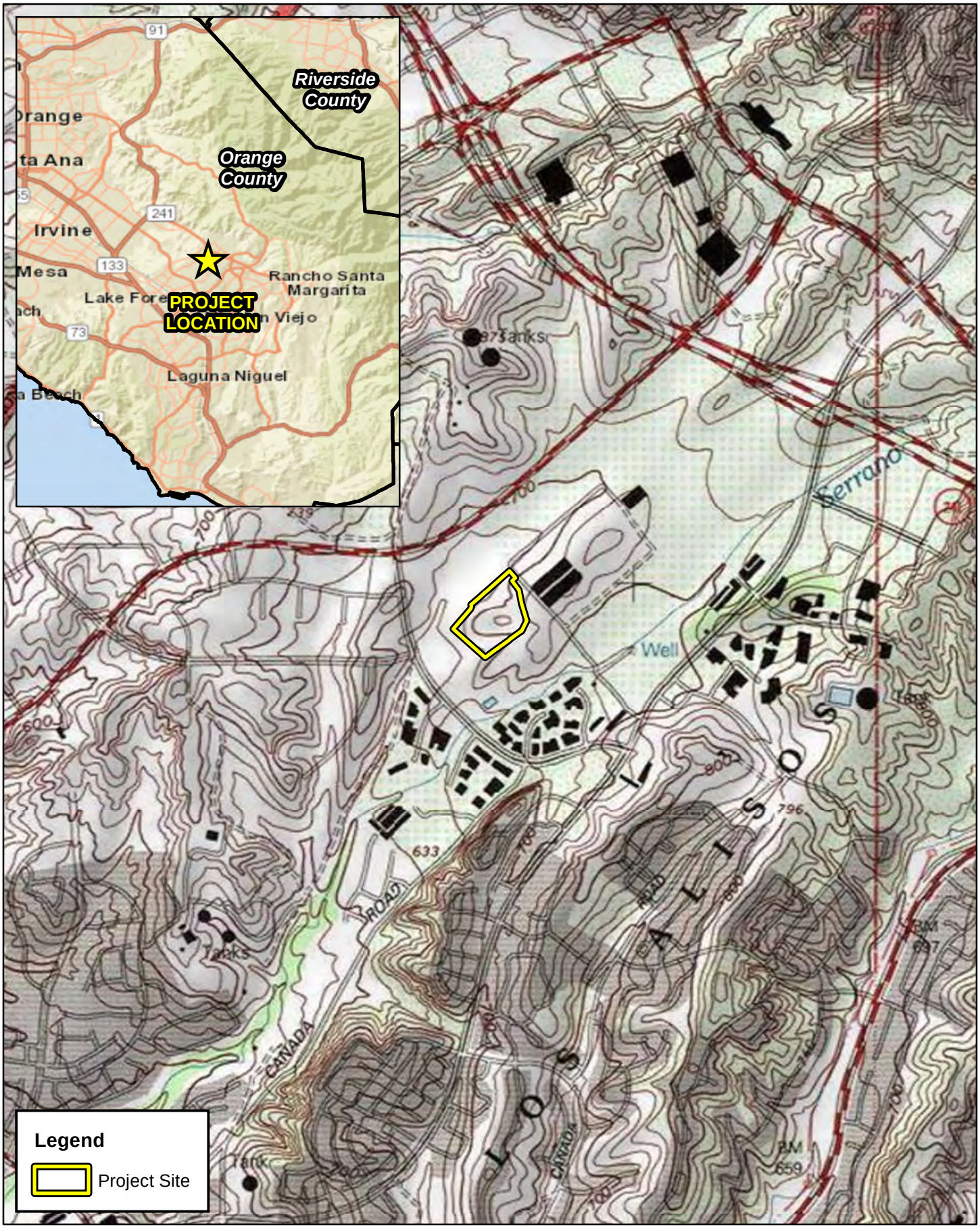
Travis J. McGill
Director

Attachments:

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

Attachment A

Project Exhibits



26200 ENTERPRISE WAY
BIOLOGICAL RESOURCES REPORT

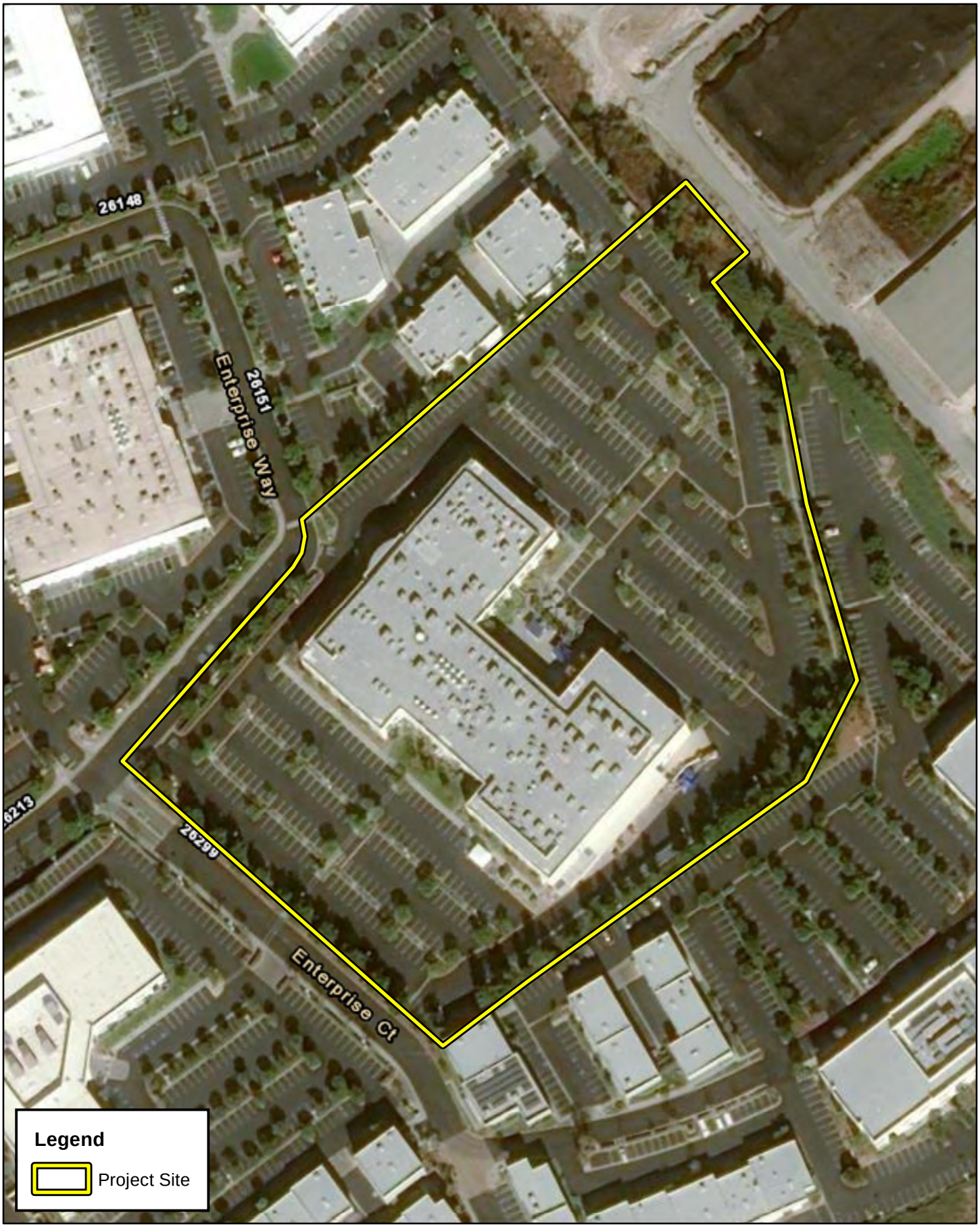
Regional Vicinity

ELMT CONSULTING

0 0.25 0.5 1 Miles

Source: USA Topographic Map, Orange County

Exhibit 1



26200 ENTERPRISE WAY
BIOLOGICAL RESOURCES REPORT

ELMT CONSULTING

0 62.5 125 250 Feet

Source: ESRI Aerial Imagery, Orange County

Project Site

Exhibit 2

Attachment B

Site Photographs

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

Photograph 2: From the northwest corner of the project site looking south along the western boundary.

Photograph 3: View of the existing building from the northwest corner.

Photograph 4: From the southwest corner of the project site looking east along the eastern boundary.

Photograph 5: View of the east side of the existing building.

Photograph 6: Looking north from the southeast corner of the site along the eastern boundary.

Photograph 7: From the northeast corner of the site looking west along the northern boundary.

Photograph 8: From the northeast corner of the project site looking southwest across the site.

Attachment C

Potentially Occurring Special-Status Biological Resources

Scientific Name	Common Name	Federal Status	State Status	CDFW Listing	CNPS Rare Plant Rank	Potential to Occur
Special-Status Wildlife Species						
Accipiter cooperii	Cooper's hawk	None	None	WL	-	Low (common in urban areas)
Accipiter striatus	sharp-shinned hawk	None	None	WL	-	Low (common in urban areas)
Agelaius tricolor	tricolored blackbird	None	Threatened	SSC	-	Presumed Absent
Aimophila ruficeps canescens	southern California rufous-crowned sparrow	None	None	WL	-	Presumed Absent
Ammodramus savannarum	grasshopper sparrow	None	None	SSC	-	Presumed Absent
Anaxyrus californicus	arroyo toad	Endangered	None	SSC	-	Presumed Absent
Anniella stebbinsi	Southern California legless lizard	None	None	SSC	-	Presumed Absent
Aphelocoma californica cana	Eagle Mountain scrub-jay	None	None	WL	-	Presumed Absent
Ardea alba	great egret	None	None	-	-	Presumed Absent
Ardea herodias	great blue heron	None	None	-	-	Presumed Absent
Arizona elegans occidentalis	California glossy snake	None	None	SSC	-	Presumed Absent
Artemisiospiza belli belli	Bell's sage sparrow	None	None	WL	-	Presumed Absent
Aspidoscelis hyperythra	orange-throated whiptail	None	None	WL	-	Presumed Absent
Aspidoscelis tigris stejnegeri	coastal whiptail	None	None	SSC	-	Presumed Absent
Athene cunicularia	burrowing owl	None	None	SSC	-	Presumed Absent
Bombus crotchii	Crotch bumble bee	None	Candidate Endangered	-	-	Presumed Absent
Botaurus lentiginosus	American bittern	None	None	-	-	Presumed Absent
Buteo regalis	ferruginous hawk	None	None	WL	-	Presumed Absent
Calypte costae	Costa's hummingbird	None	None	-	-	Presumed Absent
Campylorhynchus brunneicapillus sandiegensis	coastal cactus wren	None	None	SSC	-	Presumed Absent
Chaetodipus fallax fallax	northwestern San Diego pocket mouse	None	None	SSC	-	Presumed Absent
Chaetura vauxi	Vaux's swift	None	None	SSC	-	Presumed Absent
Charadrius montanus	mountain plover	None	None	SSC	-	Presumed Absent
Circus hudsonius	northern harrier	None	None	SSC	-	Presumed Absent
Contopus cooperi	olive-sided flycatcher	None	None	SSC	-	Presumed Absent
Crotalus ruber	red-diamond rattlesnake	None	None	SSC	-	Presumed Absent
Diadophis punctatus modestus	San Bernardino ringneck snake	None	None	-	-	Presumed Absent
Egretta thula	snowy egret	None	None	-	-	Presumed Absent
Elanus leucurus	white-tailed kite	None	None	FP	-	Presumed Absent
Empidonax traillii	willow flycatcher	None	Endangered	-	-	Presumed Absent
Empidonax traillii extimus	southwestern willow flycatcher	Endangered	Endangered	-	-	Presumed Absent
Emys marmorata	western pond turtle	None	None	SSC	-	Presumed Absent
Eremophila alpestris actia	California horned lark	None	None	WL	-	Presumed Absent
Eumops perotis californicus	western mastiff bat	None	None	SSC	-	Presumed Absent
Falco peregrinus anatum	American peregrine falcon	Delisted	Delisted	FP	-	Presumed Absent
Haliaeetus leucocephalus	bald eagle	Delisted	Endangered	FP	-	Presumed Absent
Icteria virens	yellow-breasted chat	None	None	SSC	-	Presumed Absent
Lanius ludovicianus	loggerhead shrike	None	None	SSC	-	Presumed Absent
Larus californicus	California gull	None	None	WL	-	Low (common in urban areas)
Lepus californicus bennettii	San Diego black-tailed jackrabbit	None	None	SSC	-	Presumed Absent
Neotoma lepida intermedia	San Diego desert woodrat	None	None	SSC	-	Presumed Absent
Nycticorax nycticorax	black-crowned night heron	None	None	-	-	Presumed Absent
Oncorhynchus mykiss irideus pop. 10	steelhead - southern California DPS	Endangered	None	-	-	Presumed Absent
Onychomys torridus ramona	southern grasshopper mouse	None	None	SSC	-	Presumed Absent
Phalacrocorax auritus	double-crested cormorant	None	None	WL	-	Presumed Absent

Phrynosoma blainvillii	coast horned lizard	None	None	SSC	-	Presumed Absent
Polioptila californica californica	coastal California gnatcatcher	Threatened	None	SSC	-	Presumed Absent
Rana draytonii	California red-legged frog	Threatened	None	SSC	-	Presumed Absent
Rhinichthys osculus ssp. 3	Santa Ana speckled dace	None	None	SSC	-	Presumed Absent
Salvadora hexalepis virgultea	coast patch-nosed snake	None	None	SSC	-	Presumed Absent
Setophaga petechia	yellow warbler	None	None	SSC	-	Presumed Absent
Spea hammondii	western spadefoot	None	None	SSC	-	Presumed Absent
Spinus lawrencei	Lawrence's goldfinch	None	None	-	-	Presumed Absent
Streptocephalus woottoni	Riverside fairy shrimp	Endangered	None	-	-	Presumed Absent
Taricha torosa	Coast Range newt	None	None	SSC	-	Presumed Absent
Thamnophis hammondii	two-striped gartersnake	None	None	SSC	-	Presumed Absent
Toxostoma crissale	Crissal thrasher	None	None	SSC	-	Presumed Absent
Vireo bellii pusillus	least Bell's vireo	Endangered	Endangered	-	-	Presumed Absent
Special-Status Plant Species						
Astragalus brauntonii	Braunton's milk-vetch	Endangered	None	-	1B.1	Presumed Absent
Brodiaea filifolia	thread-leaved brodiaea	Threatened	Endangered	-	1B.1	Presumed Absent
Calochortus catalinae	Catalina mariposa-lily	None	None	-	4.2	Presumed Absent
Calochortus plummerae	Plummer's mariposa-lily	None	None	-	4.2	Presumed Absent
Calochortus weedii var. intermedius	intermediate mariposa-lily	None	None	-	1B.2	Presumed Absent
Deinandra paniculata	paniculate tarplant	None	None	-	4.2	Presumed Absent
Diplacus clevelandii	Cleveland's bush monkeyflower	None	None	-	4.2	Presumed Absent
Dudleya multicaulis	many-stemmed dudleya	None	None	-	1B.2	Presumed Absent
Juglans californica	southern California black walnut	None	None	-	4.2	Presumed Absent
Lepidium virginicum var. robinsonii	Robinson's pepper-grass	None	None	-	4.3	Presumed Absent
Monardella hypoleuca ssp. intermedia	intermediate monardella	None	None	-	1B.3	Presumed Absent
Nama stenocarpa	mud nama	None	None	-	2B.2	Presumed Absent
Nolina cismontana	chaparral nolina	None	None	-	1B.2	Presumed Absent
Pentachaeta aurea ssp. allenii	Allen's pentachaeta	None	None	-	1B.1	Presumed Absent
Phacelia hubbyi	Hubby's phacelia	None	None	-	4.2	Presumed Absent
Romneya coulteri	Coulter's matilija poppy	None	None	-	4.2	Presumed Absent
Senecio aphanactis	chaparral ragwort	None	None	-	2B.2	Presumed Absent
Viguiera laciniata	San Diego County viguiera	None	None	-	4.3	Presumed Absent
Special-Status Plant Communities						
Southern Coast Live Oak Riparian Forest		None	None	-	-	Absent
Southern Cottonwood Willow Riparian Forest		None	None	-	-	Absent
Southern Riparian Scrub		None	None	-	-	Absent
Southern Sycamore Alder Riparian Woodland		None	None	-	-	Absent

U.S. Fish and Wildlife Service (Fed) - Federal

END- Federal Endangered
THR- Federal Threatened
DL- Delisted

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
CE- Candidate Endangered

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

CNPS Threat Ranks

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

Attachment D

Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

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

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

State Regulations

California Environmental Quality Act (CEQA)

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

California Endangered Species Act (CESA)

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

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

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

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

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

Fish and Game Code

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

Native Plant Protection Act

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

California Native Plant Society Rare and Endangered Plant Species

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

California Rare Plant Rank

1A- Plants Presumed Extirpated in California and either Rare or Extinct Elsewhere

1B- Plants Rare, Threatened, or Endangered in California and Elsewhere

2A- Plants Presumed Extirpated in California, But More Common Elsewhere

2B- Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere

3- Plants about Which More Information is Needed - A Review List

4- Plants of Limited Distribution - A Watch List

Threat Ranks

.1- Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)

.2- Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)

.3- Not very threatened in California (<20% of occurrences threatened / low degree and immediacy of threat or no current threats known).

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

Federal Regulations

Section 404 of the Clean Water Act

Since 1972, the Corps and EPA have jointly regulated the filling of waters of the United States, including wetlands, pursuant to Section 404 of the 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, the placement of sand, rock, clay, construction debris, wood chips, and "materials used to create any structure or infrastructure in the waters of the United States."

In April of 2020, the Corps and the EPA provided a new definition for *waters of the United States* [Federal Register, Vol. 85, No. 77 (April 21, 2020)] which encompass:

- The territorial seas and traditional navigable waters;
- Perennial and intermittent tributaries that contribute surface water flow to such waters;
- Certain lakes, ponds, and impoundments of jurisdictional waters; and
- Wetlands adjacent to other jurisdictional waters.

Additionally, the new definition identifies 12 categories of those waters and features that are excluded from the definition of ''waters of the United State, such as features that only contain water in direct response to rainfall (e.g., ephemeral features), groundwater, many ditches, prior converted cropland, and waste treatment systems. The final rule excludes from the definition of ''waters of the United States'' all waters or features not mentioned above. In addition to this general exclusion, the final rule specifically clarifies that waters of the United States do not include the following:

- Groundwater, including groundwater drained through subsurface drainage systems;
- Ephemeral features that flow only indirect response to precipitation, including ephemeral streams, swales, gullies, rills, and pools;
- Diffuse stormwater runoff and directional sheet flow over upland;
- Ditches that are not traditional navigable waters, tributaries, or that are not constructed in adjacent wetlands, subject to certain limitations;
- Prior converted cropland;
- Artificially irrigated areas that would revert to upland if artificial irrigation ceases;
- Artificial lakes and ponds that are not jurisdictional impoundments and that are constructed or excavated in upland or non-jurisdictional waters;

- Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non jurisdictional waters for the purpose of obtaining fill, sand, or gravel;
- Stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff;
- Groundwater recharge, water reuse, and wastewater recycling structures constructed or excavated in upland or in non-jurisdictional waters; and
- Waste treatment systems.

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.