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LILBURN CORPORATION
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SUBJECT: **Biological Resources Assessment for Tentative Tract Map No. 20527 Located within Assessor Parcel Numbers 3096-341-04 and -09 in the City of Victorville, San Bernardino County, California**

Introduction

This report contains the findings of ELMT Consulting's (ELMT) biological resources assessment for Tentative Tract Map No. 20527 (project site, site) located within Assessor Parcel Numbers 3096-341-04 and -07 in the City of Victorville, San Bernardino County, California. The field investigation was conducted by biologist Jacob H. Lloyd Davies on May 31, 2022, 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 burrowing owl (*Athene cunicularia*), desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Xerospermophilus mohavensis*), Western Joshua Tree (*Yucca brevifolia*), and other 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 generally located north of Interstate 15, west of United States Route 395, south of State Route 18, and east of State Route 138 in the City of Victorville, San Bernardino County, California. The site is depicted on the Baldy Mesa quadrangle of the United States Geological Survey's (USGS) 7.5-minute map series within Section 28 of Township 5 North, Range 5 West. Specifically, the project site is located at the southwest corner of the intersection of Fremontia Road and Luna Road within Assessor's Parcel Numbers 3096-341-04 and -09. Refer to Exhibits 1-3 in Attachment A.

Project Description

The project proposes the development of Tentative Tract Map No. 20527. Refer to Attachment B, *Site Plan*.

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.

Methodology

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

Literature Review

Prior to conducting the field investigation, a literature review and records search was conducted for special-status biological resources potentially occurring on or within the vicinity of the project site. Previously recorded occurrences of special-status plant and wildlife species and their proximity to the project site were determined through a query of the CDFW's QuickView Tool in the Biogeographic Information and Observation System (BIOS), 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 (1985-2023);
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey[2];
- 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.

Field Investigation

Following the literature review, biologist Jacob H. Lloyd Davies inventoried and evaluated the condition of the habitat within a 200-foot buffer around the project site, where applicable, on May 31, 2022. 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

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.

movement of wildlife through the area. These areas identified on aerial photography were then walked during the field investigation.

Soil Series Assessment

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

Plant Communities

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

Plants

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

Wildlife

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

Jurisdictional Drainages and Wetlands

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

Existing Site Conditions

The proposed project site is located in an area that supports a combination of developed and undeveloped land in the City of Victorville. The site occurs in the western limits of an area that has gradually become urbanized in recent decades. As such, land to the east of the site is generally developed while land to the west is generally undeveloped. Development near the site is primarily composed of residential tracts and commercial development. The site is bounded to the north, west, and south by undeveloped, vacant land and to the east by residential development. The site itself supports undeveloped land that has been impacted by light grading, off-highway recreational vehicle use, illicit dumping, and adjacent development.

Topography and Soils

On-site elevation ranges from approximately 3,226 to 3,248 feet above mean sea level and generally slopes from south to north, with marginal areas of topographic relief where access roads have been installed and a drainage transects the site. Based on the NRCS USDA Web Soil Survey, the project site is historically underlain by Cajon sand (0 to 2 percent slopes). Soils on-site have been compacted and disturbed by anthropogenic disturbances.

Vegetation

The project site supports one (1) plant community: creosote bush scrub. In addition, the site supports one (1) land cover type that would be classified as disturbed (refer to Exhibit 4, *Vegetation* in Attachment A). Refer to Attachment C, *Site Photographs*, for representative site photographs. The creosote bush scrub plant community supported on-site is dominated by creosote (*Larrea tridentata*) and supports open vegetative cover consisting mainly of small-to-moderate shrubs with some tall perennials present and barren soils common. Common species observed in this plant community include annual bursage (*Ambrosia acanthicarpa*), cheesebush (*Ambrosia salsola*), checker fiddleneck (*Amsinckia tessellata*), cattle saltbush (*Atriplex polycarpa*), slender buckwheat (*Eriogonum gracillimum*), redstem stork's bill (*Erodium cicutarum*), spiny hopsage (*Grayia spinosa*), Anderson's desert-thorn (*Lycium andersonii*), combseed (*Pectocarya penicillata*), Thurber's sandpaper-plant (*Petalonyx thurberi*), Mexican skullcap (*Scutellaria mexicana*), small wirelettuce (*Stephanomeria exigua*), toothed spurge (*Stillingia paucidentata*), and Joshua tree (*Yucca brevifolia*).

Disturbed land is present along site boundaries and along unofficial access roads where regular impacts from foot and vehicle traffic prevent the establishment of a vegetation community. These areas are often barren but support occasional weedy/early successional species.

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

The survey area provides limited foraging and cover habitat for local reptile species adapted to conditions within the Mojave Desert. The only reptiles observed during the field investigation were western side-blotched lizard (*Uta stansburiana elegans*) and Great Basin fence lizard (*Sceloporus occidentalis longipes*). Other common reptilian species that could be expected to occur include yellow-backed spiny lizard (*Sceloporus uniformis*), Great Basin whiptail (*Aspidoscelis tigris tigris*), and Great basin gopher snake (*Pituophis catenifer deserticola*).

Birds

The project site and surrounding area provide suitable foraging and nesting habitat for bird species adapted to conditions within the Mojave Desert, especially those that are also adapted to urban environments. Bird species detected during the field investigation include house finch (*Haemorhous mexicanus*), common raven (*Corvus corax*), red-tailed hawk (*Buteo jamaicensis*), northern mockingbird (*Mimus polyglottos*), rock pigeon (*Columba liva*), and verdin (*Auriparus flaviceps*).

Mammals

The survey area provides suitable foraging and cover habitat for mammalian species adapted to conditions within the Mojave Desert. The only mammalian species detected during the field investigation was desert cottontail (*Sylvilagus audubonii*). Additional common mammalian species that could be expected to occur include white-tailed antelope ground squirrel (*Ammospermophilus leucurus*), kangaroo rat (*Dipodomys* sp.), California ground squirrel (*Otospermophilus beecheyi*), coyote (*Canis latrans*), and domestic cat (*Felis catus*), which was observed near residential development off-site to the east.

Nesting Birds

No active nests or birds displaying nesting behavior were observed during the field survey. The project site and surrounding area, including structures, provide suitable 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. No raptors are expected to nest on-site due to lack of suitable nesting opportunities.

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

Migratory Corridors and Linkages

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

According to the San Bernardino Conty Open Space Overlay Map, the nearest major open space area to the site is located approximately 7.5 miles to the east along the Mojave River. The site is separated from this identified regional wildlife corridors and linkages by existing development and roadways, and undeveloped land, and there are no riparian corridors or creeks connecting the project site to these areas.

The undeveloped land in the immediate vicinity of the project site provides local wildlife movement opportunities for wildlife species moving through the immediate area; however, the project site does not function as a major wildlife movement corridor or linkage. As such, implementation of the proposed project is not expected to have a significant impact to wildlife movement opportunities or prevent local wildlife movement through the area since there is ample habitat adjacent to the project site to support wildlife movement opportunities.

Jurisdictional Areas

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

The USGS National Hydrography Dataset and the USFWS NWI were reviewed to determine if any blueline streams or riverine resources have been documented on the project site. Based on this review, one (1) blueline stream and one (1) riverine resource are mapped as occurring in the same location.

The project site supports one (1) drainage feature (Drainage 1) that enters the southern boundary near the southwest corner and exits near the middle of the western boundary. This feature corresponds to the aforementioned mapped blueline stream and riverine resource. The drainage feature supported on-site is ephemeral in nature and only receives flows during and immediately following storm events.

The on-site ephemeral drainage features are not relatively permanent, standing, or continuously flowing bodies of water and, therefore, will not qualify as waters of the United States under the regulatory authority of the Corps (*Sackett v. EPA* (2022) 143 S. Ct. 1322, 1336). However, both features will qualify as waters of the State and fall under the regulatory authority of the Regional Board and CDFW.

Special-Status Biological Resources

The 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 Baldy Mesa and Adelanto USGS 7.5-minute quadrangle. These two quadrangles were queried due to the proximity of the site to quadrangle boundaries, regional topography, and conditions surrounding the site. 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 and seventeen (17) special-status wildlife species as having potential to occur within the Baldy Mesa and Adelanto USGS 7.5-minute quadrangles. No special-status plant communities were identified as having potential to occur within these quadrangles. Special-status plant and wildlife species were evaluated for their potential to occur within the project site based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity of the project site is presented in Attachment D*: Potentially Occurring Special-Status Biological Resources*.

Special-Status Plants

According to the CNDDB and CNPS, nine (9) special-status plant species have been recorded in the Baldy Mesa and Adelanto quadrangles (refer to Attachment D). One special-status plant species was observed on-site during the field investigation: Western Joshua Tree. Based on habitat requirements for specific special-status plant species and the availability and quality of habitats needed by each species, it was determined that the project site has a low potential to support white pygmy-poppy (*Canbya candida*; CNPS 4.2), Mojave spineflower (*Chorizanthe spinosa*; CNPS 4.2), crowned muilla (*Muilla coronata*; CNPS 4.2), short-joint beavertail (*Opuntia basilaris* var. *brachyclada*; CNPS 1B.2), Beaver dam breadroot (*Pediomelum castoreum*; CNPS 1B.2), and Latimer's woodland-gilia (*Saltugilia latimeri*; CNPS 1B.2). It was further determined that the site does not have potential to support any of the other special-status plant species known to occur in the area and all are presumed to be absent.

None of the aforementioned special-status plant species are federally or state listed as endangered or threatened. They are listed as CNPS Rare Plant Rank 1B.2 or 4.2 species, referring to species that the CNPS considers to be rare, threatened, or endangered in California and elsewhere, or are of limited or infrequent distribution in California. No focused surveys are recommended.

Western Joshua Tree

The California Fish and Game Commission (Commission) designated the Western Joshua Tree as a candidate for listing under the California Endangered Species Act (CESA) in October 2020. This action afforded the Western Joshua Tree the same CESA protections as listed species, which means that removal of the desert trees was subject to fines and criminal penalties unless authorized by a "take" permit issued by the CDFW.

The new law, the Western Joshua Tree Conservation Act (WJTCA) via approval of Senate Bill No. 122, which became effective July 2023, streamlines the Western Joshua Tree take permit process and broadens the purposes for which a permit may be issued. A Western Joshua Tree may now be removed for any purpose, so long as a permit is obtained and the removal is fully mitigated, or alternatively, an in-lieu

mitigation fee is paid. The table below summarizes the new rules for the area in which the project site is located.

Location	Mitigation Fees
Project is located outside of the "reduced fee" area.	Full mitigation, or in-lieu fee as follows: • $2,500 per tree > 5 meters tall • $500 per tree 1 to 5 meters tall • $340 per tree < 1 meter tall

A total of forty-one (41) Western Joshua Trees were observed within the project boundaries including seventeen (17) individuals measuring less than one meter in height, twenty-two (22) individuals measuring between one and five meters in height, and two (2) individuals measuring greater than 5 meters in height. The table below provides a summary of the Joshua trees documented onsite and their associated mitigation fee.

Size Classification	Count	Fee per Tree	Fees
1 (<1 meter)	17	$340.00	$5,780.00
2 (1 to 5 meters)	22	$500.00	$11,000.00
3 (> 5 meters)	2	$2,500.00	$5,000.00
TOTALS	**41**		**$ 21,780.00**

In total, there are seventeen (17) Western Joshua Trees under 1 meter in height, totaling $5,780; twenty-two (22) Western Joshua Trees 1 to 5 meters in height, totaling $11,000; and two (2) Western Joshua Trees over 5 meters tall, totaling $5,000. Impacts to the on-site Joshua trees will require a mitigation fee of $21,780 to be paid into the Western Joshua Tree Mitigation Tree fund.

Special-Status Wildlife

According to the CNDDB, seventeen (17) special-status wildlife species have been reported in the Baldy Mesa and Adelanto quadrangles (refer to Attachment D). No special-status wildlife species were observed during the field investigation. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that the proposed project site has a high potential to support California horned lark (*Eremophila alpestris actia*) and loggerhead shrike (*Lanius ludovicianus*); and a low potential to support coast horned lizard (*Phrynosoma blainvillii*) and prairie falcon (*Falco mexicanus*). It was further determined that the site does not have potential to support any of the other special-status wildlife species known to occur in the area and all are presumed to be absent.

None of the aforementioned special-status wildlife species are state or federally listed as threatened or endangered. In order to ensure impacts to special-status avian species do not occur from implementation of the proposed project, a pre-construction nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of the pre-construction nesting bird clearance survey, impacts to special-

status avian species will be less than significant and no mitigation will be required.

Due to regional significance and/or listing status, the potential occurrence of burrowing owl (*Athene cunicularia*), desert tortoise (*Gopherus agassizii*), and Mohave ground squirrel (*Xerospermophilus mohavensis*), are discussed in further detail below.

Burrowing Owl

The burrowing owl is currently listed as a California Species of Special Concern. It is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with well-drained, level to gently-sloping areas characterized by sparse vegetation and bare ground (Haug and Didiuk 1993; Dechant et al. 1999). Burrowing owls are dependent upon the presence of burrowing mammals (such as ground squirrels) whose burrows are used for roosting and nesting (Haug and Didiuk 1993). The presence or absence of colonial mammal burrows is often a major factor that limits the presence or absence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drain pipes, stand-pipes, and dry culverts. Burrowing mammals may burrow beneath rocks and debris or large, heavy objects such as abandoned cars, concrete blocks, or concrete pads. They also require open vegetation allowing line-of-sight observation of the surrounding habitat to forage as well as watch for predators.

No burrowing owls or recent sign (i.e., pellets, feathers, castings, or whitewash) was observed during the field investigation. Portions of the project site are unvegetated and/or vegetated with a variety of low-growing plant species that allow for line-of-sight observation favored by burrowing owls. However, no suitable burrows (>4 inches) for roosting and nesting were observed within or near site boundaries. In addition, the presence of free-roaming domestic cats discourages burrowing owl from establishing as domestic cats will harass burrowing owls. Therefore, the project site was determined not to have potential to support burrowing owl. No further surveys are recommended.

Desert Tortoise

The Mojave population of the desert tortoise inhabits areas north and west of the Colorado River in the Mojave Desert of California, Nevada, Arizona, and southwestern Utah, and in the Sonoran Desert in California. Throughout the majority of the Mojave Desert, desert tortoises occur most commonly on gentle sloping soils characterized by an even mix of sand and gravel and sparsely vegetated low-growing vegetation where there is abundant inter-shrub space. Typical habitat for the Mojave desert tortoise has been characterized as Mojavean desert scrub below 5,500 feet in elevation with a high diversity of perennial and ephemeral plants. The dominant shrub commonly associated with desert tortoise habitat is creosote bush; however, other shrubs including burrobush (*Ambrosia dumosa*), Mojave yucca, cheesebush (*Ambrosia salsola*), and Mojave prickly pear (*Opuntia mojavensis*) also provide suitable habitat. The desert tortoise spends 95 percent of its life underground and will opportunistically utilize burrows of various lengths, deep caves, rock and caliche crevices, or overhangs for cover. Therefore, a moderately friable soil is required to allow for burrow construction and ensure that burrows do not collapse.

No live desert tortoises, suitable burrows, or other sign were observed during the field investigation. The creosote bush scrub plant community supported by the project site provide suitable foraging and burrowing habitat for desert tortoise; however, routine anthropogenic disturbance from adjacent development and

noted off-highway recreational vehicle use likely preclude this species from occurring. Further, the contiguous open space surrounding the site is fragmented and the position of the site on the outskirts of a densely developed urban landscape further reduces the likelihood that desert tortoise will occur. As such, the project site was determined to not have potential to support desert tortoise and focused surveys are not recommended.

Mohave Ground Squirrel

The Mohave ground squirrel is endemic to the western Mojave Desert, California. It occupies portions of Inyo, Kern, Los Angeles, and San Bernardino counties in the western Mojave Desert. In general, the species ranges from near Palmdale on the southwest to Lucerne Valley on the southeast, Olancha on the northwest and the Avawatz Mountains on the northeast (Gustafson 1993). The historical range of suitable habitat for this species has decreased by 10 to 16% due to urbanization and range-wide declines in trapping success over the last few decades suggesting that their populations are declining. This species was listed as threatened under the California Endangered Species Act in 1985.

The Mohave ground squirrel is a medium-sized ground squirrel that measures 8.3 to 9.1 inches (in; 21 to 23 centimeters; cm) in total length, 2.2 to 2.8 in (5.7 to 7.2 cm) in tail length, and 1.3 to 1.5 in (3.2 to 3.8 cm) in hind foot length (Hall 1981). The Mohave ground squirrel occupies all major desert scrub habitats in the western Mojave Desert. It has been observed in the following habitats described by Holland (1986) as:

- Mojave creosote scrub, dominated by creosote bush and burrobush,
- Desert saltbush scrub, dominated by various species of saltbush (*Atriplex*),
- Desert sink scrub, which is similar in composition to saltbush scrub, but is sparser and grows on poorly drained soils with high alkalinity,
- Desert greasewood scrub, with very sparse vegetation generally located on valley bottoms and dry lake beds,
- Shadscale scrub, which is dominated by *Atriplex confertifolia* and/or *A. spinescens,* and
- Joshua tree woodland, which includes Joshua trees widely scattered over a variety of shrub species (Gutafson 1993).

Mohave ground squirrel was not observed during the field investigation. Although a focused trapping survey was not performed, the habitat assessment conducted for this report and review of available information provided, allowed ELMT to offer its professional opinion as to the presence or absence of this species within the proposed project footprint.

Three criteria are typically used in assessing potential impacts to the Mohave ground squirrel:

Criteria 1: Is the site within the range of the species?

Per the *Current Status of the Mohave Ground Squirrel: an update covering the period 2013-2020* (Leitner 2021) the project site is within the historic range of Mohave ground squirrel. Although the project site is located within the historic range for Mohave ground squirrel, the site is near the western boundary of the range. Further, the site is not located within any core areas, nor is it located within or immediately adjacent to any corridors or other known populations identified by Leitner.

Based on the data provided in *Current Status of the Mohave Ground Squirrel: an update covering the period 2013-2020* MGS have not been detected in the immediate vicinity of the project site during protocol grid and regional surveys. Several areas in the vicinity of the project site have been surveyed to protocol level and regionally on several occasions, yet all of the surveys have been negative for Mohave ground squirrel in the vicinity of the project site. Per the *Current Status of the Mohave Ground Squirrel* Report trapping data, which provides more current data than the CNDDB, no MGS have been trapped in the areas surrounding the project site.

Criteria 2: Is there native habitat with a relatively diverse shrub component?

There is native habitat with a relatively low diversity in shrub components within the project site. The project site supports a creosote bush scrub plant community that is not favored by Mohave ground squirrel.

annual bursage (*Ambrosia acanthicarpa*), cheesebush (*Ambrosia salsola*), checker fiddleneck (*Amsinckia tessellata*), cattle saltbush (*Atriplex polycarpa*), slender buckwheat (*Eriogonum gracillimum*), redstem stork's bill (*Erodium cicutarum*), spiny hopsage (*Grayia spinosa*), Anderson's desert-thorn (*Lycium andersonii*), combseed (*Pectocarya penicillata*), Thurber's sandpaper-plant (*Petalonyx thurberi*), Mexican skullcap (*Scutellaria mexicana*), small wirelettuce (*Stephanomeria exigua*), toothed spurge (*Stillingia paucidentata*), and Joshua tree (*Yucca brevifolia*).

In addition, while spiny hopsage was observed during the field investigation, hoary saltbush and winterfat were not observed. These are species that are considered important forage for Mohave ground squirrel. Dr. Leitner postulated, based on trapping surveys in the southern portion of the Mohave ground squirrel range, that densities of < 24/ha for spiny hopsage and < 100/ha of winterfat on a site was considered poor forage and may be related to the absence of Mohave ground squirrel. Further, no wildlife corridors are expected to exist between the closest core MGS population and the project site. The maximum documented movement of MGS is 3.9 miles (Harris and Leitner 2005). Therefore, while the site provides native habitat, the limited diversity shrub component and isolation from core populations reduces the potential for Mohave ground squirrel to occupy the project site.

Criteria 3: Is the site surrounded by development and therefore isolated from potentially occupied habitat?

Based on the results of the field investigation, the creosote bush scrub community supported within the project site occurs adjacent to surrounding development including residentially trafficked roadways and structures. Further, the site has been subject to routine disturbance from adjacent development, illegal dumping, and off-highway recreational vehicle use.

Based on habitat requirements for Mohave ground squirrel, known distributions, site conditions, and regional trapping studies, it was determined this species is presumed absent from the project site. No focused surveys are recommended.

Critical Habitats

Under the federal Endangered Species Act, “Critical Habitat” is designated at the time of listing of a species or within one year of listing. Critical Habitat refers to specific areas within the geographical range of a species at the time it is listed that include the physical or biological features that are essential to the survival and eventual recovery of that species. Maintenance of these physical and biological features requires special management considerations or protection, regardless of whether individuals or the species are present or

not. All federal agencies are required to consult with the USFWS regarding activities they authorize, fund, or permit which may affect a federally listed species or its designated Critical Habitat. The purpose of the consultation is to ensure that projects will not jeopardize the continued existence of the listed species or adversely modify or destroy its designated Critical Habitat. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing is on federal lands, uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highways Administration or a Clean Water Act Permit from the United States Army Corps of Engineers). If 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. Further, the nearest Critical Habitat designations is located approximately 6.9 miles to the east for southwestern willow flycatcher (*Empidonax traillii extimus*). Therefore, no impacts to federally designated Critical Habitat will occur from implementation of the proposed project.

City of Victorville Development Advisory

The City of Victorville's Development Advisory issued on July 19, 2023 references the State of California's WJTCA via SB 122. The provisions of the act, its requirements, and the applicability within the City of Victorville will be required prior to ground disturbances.

Conclusion

Based on the literature review and field survey, and existing site conditions discussed in this report, implementation of the project will have no significant impacts on federally or State listed species known to occur in the general vicinity of the project site. Additionally, the project will have no effect on designated Critical Habitat, or regional wildlife corridors/linkage because none exists within the area. A single drainage feature was observed on the project site during the field investigation. No wetland features were observed. No further surveys are recommended. With completion of the recommendations provided below, no impacts to year-round, seasonal, or special-status avian residents or special-status species will occur from implementation of the proposed project.

Recommendations

Migratory Bird Treaty Act and Fish and Game Code

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

If construction occurs between February 1st and August 31st, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance

buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

As part of the nesting bird clearance, it is recommended that a burrowing owl pre-construction clearance survey be conducted prior to any ground disturbance or vegetation removal activities to ensure that burrowing owls remain absent from the project site.

Western Joshua Tree

A WJTCA Incidental Take Permit will be prepared and processed through CDFW prior to any onsite improvements. Mitigation for impacts to the onsite Joshua trees, using mitigation fee structure for projects outside the "reduce fee" area, will include payment of $21,780 into the Western Joshua Tree Mitigation Fund. Processing of the WJTCA Incidental Take Permit and payment of the mitigation fee will reduce impacts to Western Joshua Tree to less than significant.

Desert Tortoise

A pre-construction clearance survey be conducted thirty (30) days prior to ground disturbing activities in undeveloped areas to confirm the absence of desert tortoise within the boundaries of the survey area. Survey transects should be spaced at 10-meter (33-foot) intervals throughout the undeveloped portions of the project area to provide 100 percent visual coverage and increase the likelihood of locating desert tortoise and/or sign. All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets.

Although not anticipated, if desert tortoise are found onsite during the pre-construction clearance survey, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures can be implemented to avoid any direct or indirect impacts to desert tortoise, or if "Take" permits will need to be obtained prepared and approved by the USFWS and CDFW.

Jurisdictional Waters

The on-site ephemeral drainage features are not relatively permanent, standing, or continuously flowing bodies of water and, therefore, will not qualify as waters of the United States under the regulatory authority of the Corps (*Sackett v. EPA* (2022) 143 S. Ct. 1322, 1336). Impacts to the onsite drainage feature will require an Approved Jurisdictional Determination (AJD) or waiver to be prepared and process through the Corps to confirm that Drainage 1 will not qualify as waters of the United States.

The onsite drainage feature exhibits characteristics consistent with the Regional Board's methodology and would be considered jurisdictional waters of the State. Impacts to on-site jurisdictional areas will likely require a Regional Board Report of Waste Discharge permit prior to project implementation, and a CDFW Section 1602 Lake or Streambed Alteration Agreement.

City of Victorville Development Advisory

In accordance with the City's Development Advisory, a WJTCA Incidental Take Permit will need to be prepared and processed through CDFW and the WJTCA in-lieu mitigation fees will need to be paid prior to ground disturbance.

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

Sincerely,

Thomas J. McGill, Ph.D.
Managing Director

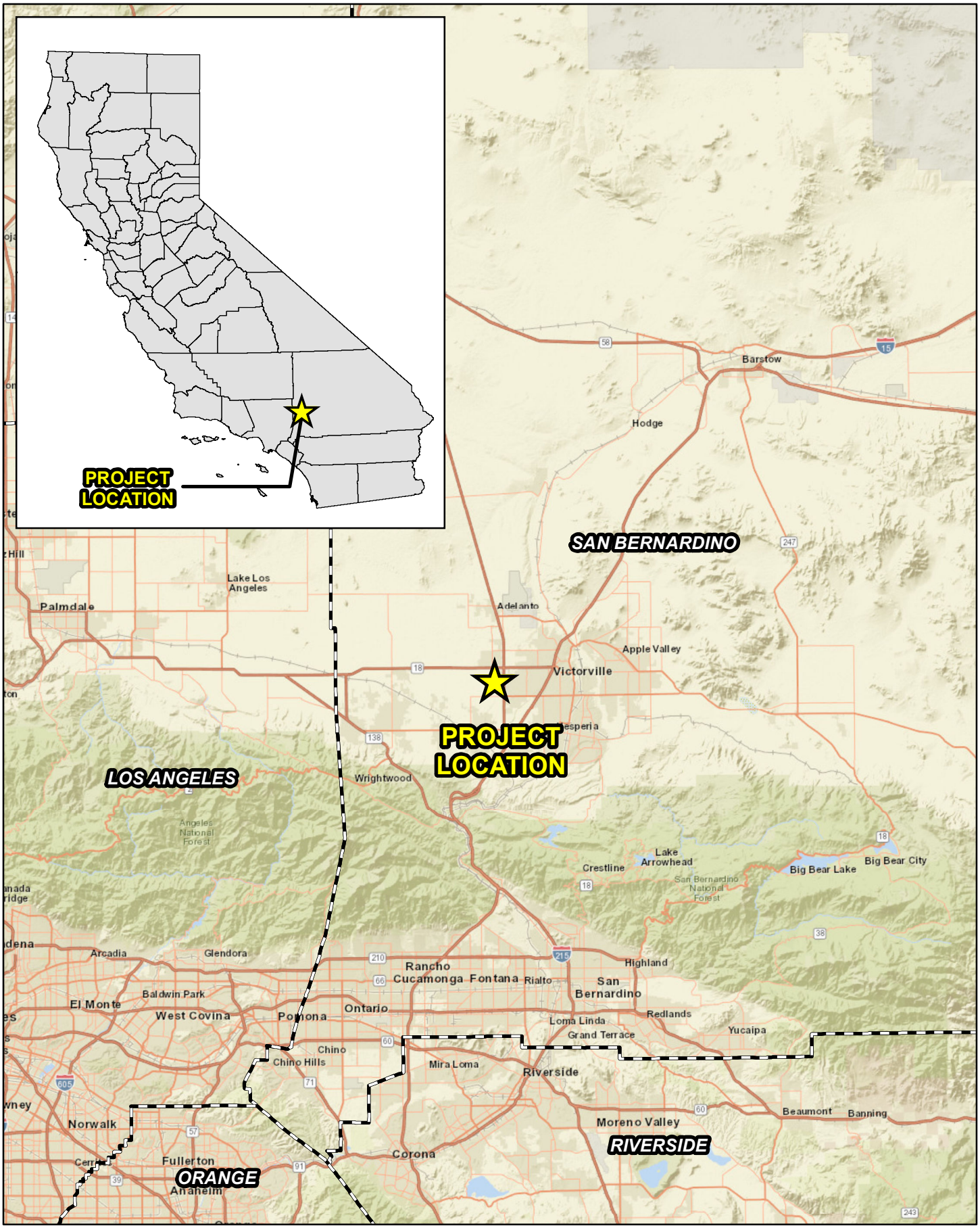
Travis J. McGill
Director

Attachments:

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

Attachment A

Project Exhibits



ELMT CONSULTING

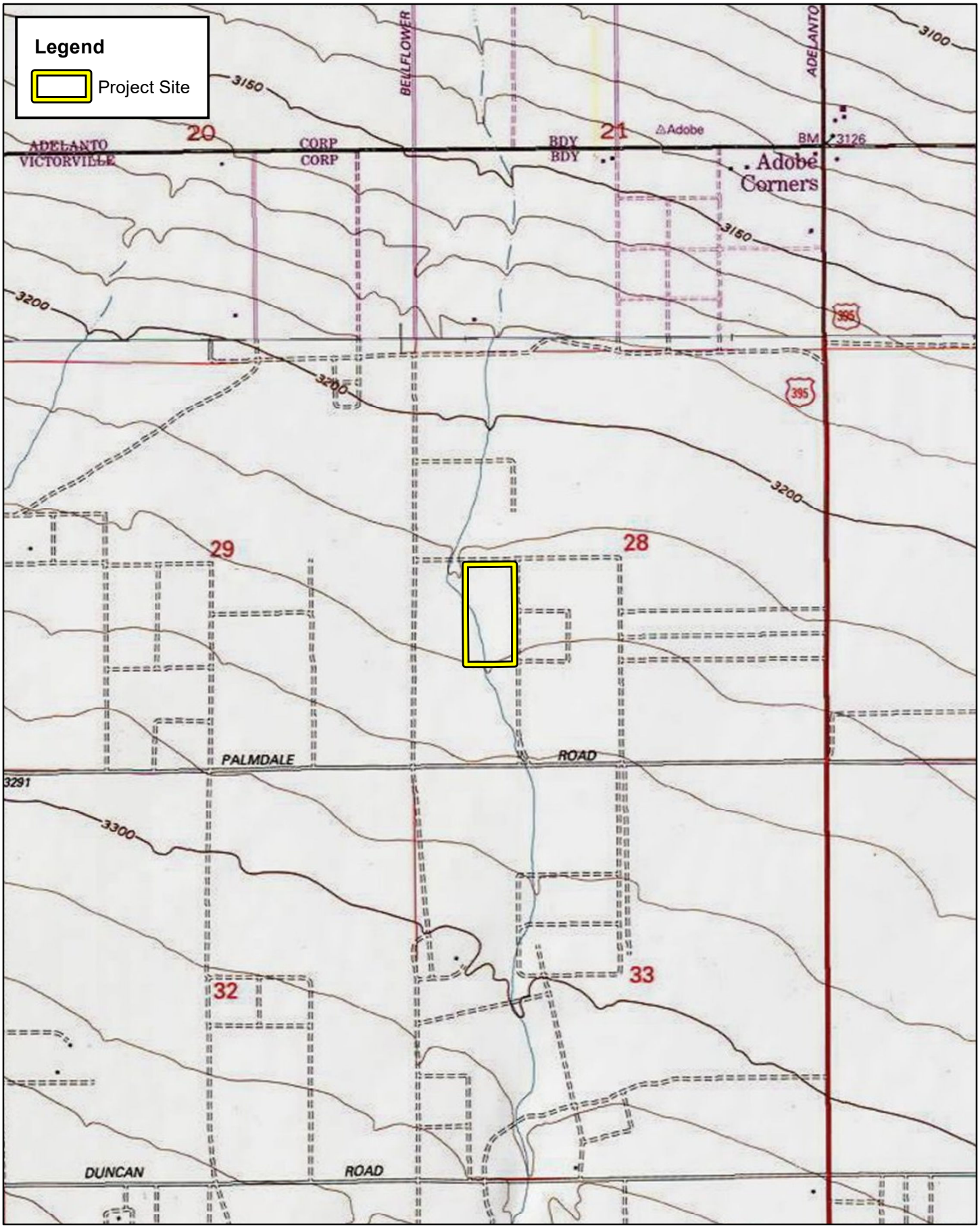
0 2.5 5 10 Miles

Source: World Street Map, San Bernardino County

TTM 20527

Regional Vicinity

Exhibit 1



ELMT CONSULTING

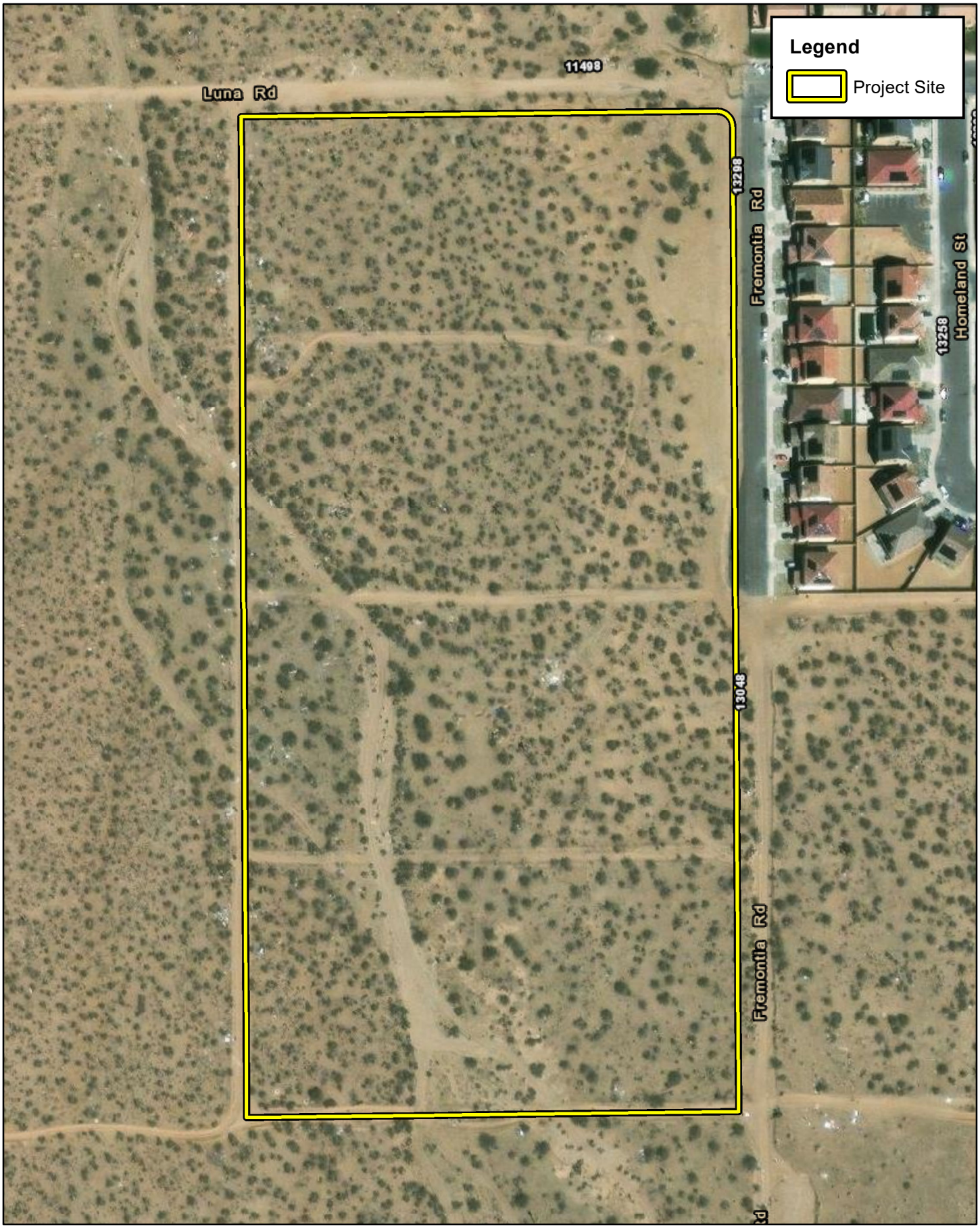
0 1,000 2,000 4,000 Feet

Source: USA Topographic Map, San Bernardino County

TTM 20527

Site Vicinity

Exhibit 2



ELMT CONSULTING

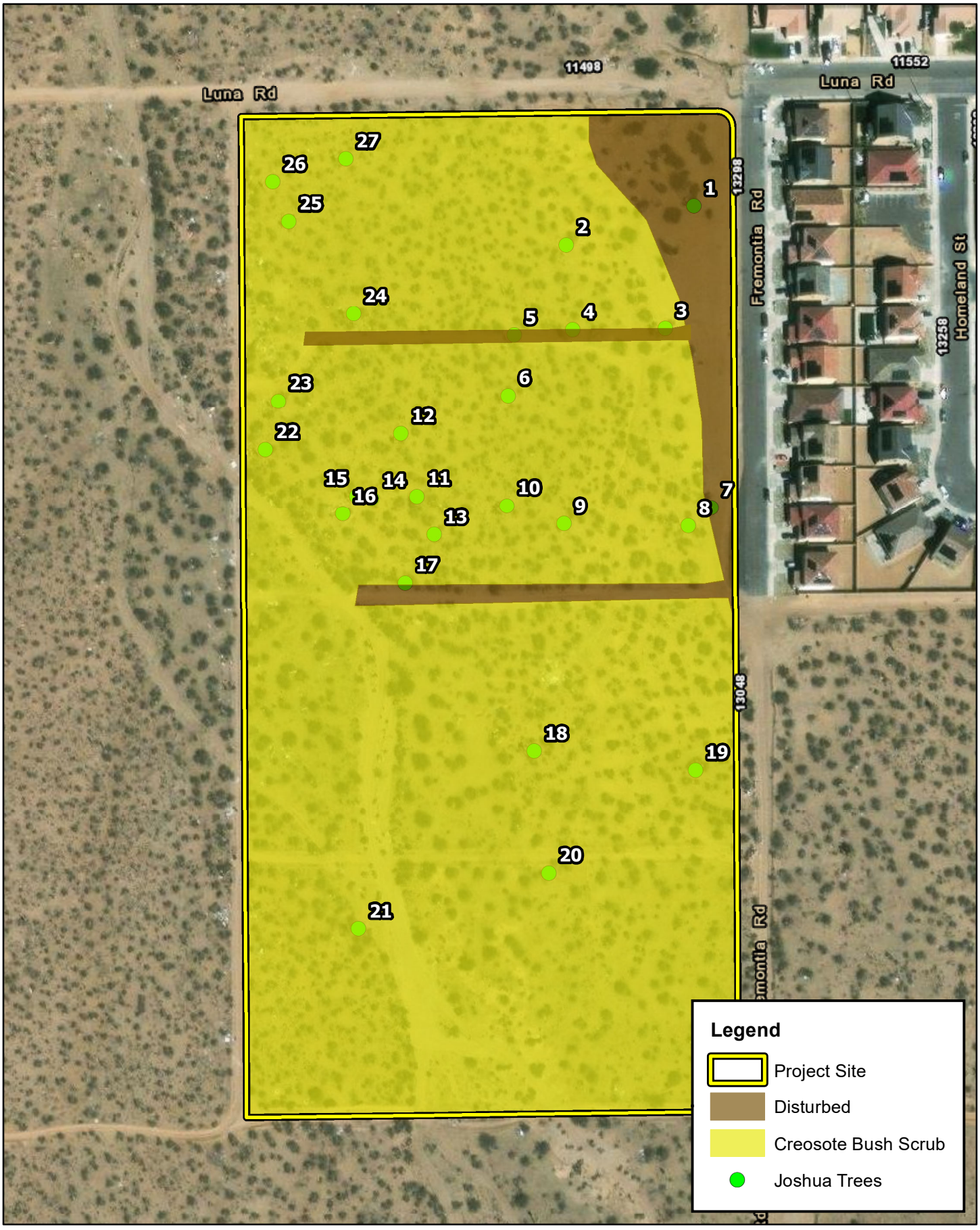
0 125 250 500 Feet

Source: ESRI Aerial Imagery, San Bernardino County

TTM 20527

Project Site

Exhibit 3



ELMT CONSULTING

0 125 250 500 Feet

Source: ESRI Aerial Imagery, San Bernardino County

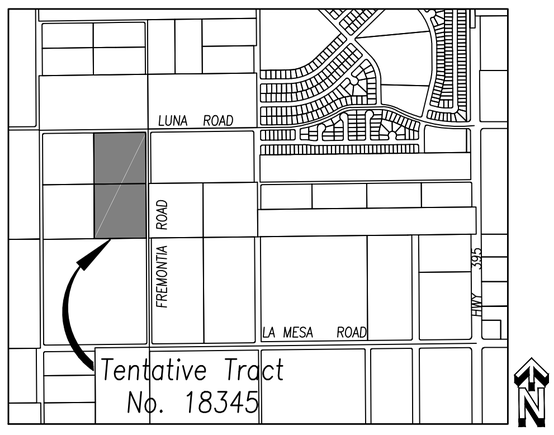
TTM 20527

Vegetation

Exhibit 4

Attachment B

Site Plan



VICINITY MAP
NOT TO SCALE

ALTERNATE STREET NAMES:

STREET	ALTERNATE 1	ALTERNATE 2
AXTOLL LANE	JAGUAR LANE	HIGHGROVE LANE
FELIX COURT	DELLORADO COURT	SOUTHFIELD COURT
HUXLEY WAY	GISELE WAY	TREASURE WAY
HIXON PLACE	MANAGUA PLACE	ISLESIDE PLACE
~~HALO LANE~~	~~AQUA LANE~~	~~CEDRO LANE~~

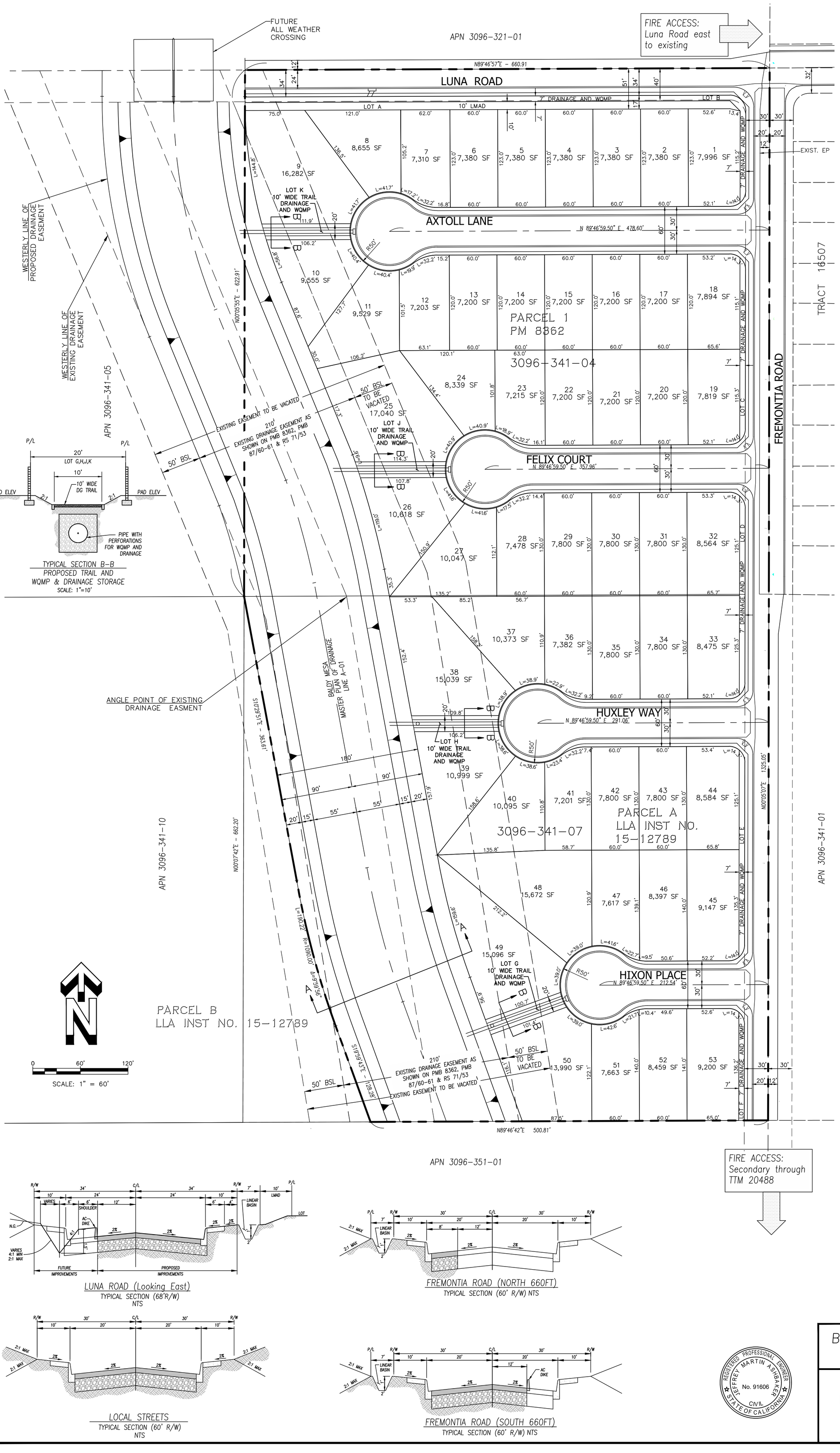
LUNA ROAD AND FREMONTIA ROAD WILL REMAIN AS NAMED

IN THE CITY OF VICTORVILLE,
COUNTY OF SAN BERNARDINO, CALIFORNIA

TENTATIVE TRACT MAP No. 20527

PARCEL 1 OF PARCEL MAP No. 8362, PER PLAT RECORDED IN BOOK 203 OF PARCEL MAPS, PAGES 59 AND 60, AND PARCEL A OF LLA, PER RECORDED INSTRUMENT No. 15-12789 IN THE CITY OF VICTORVILLE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, RECORDS OF SAID COUNTY.

LUDWIG ENGINEERING — APRIL 2022



TYPICAL SECTION B-B
PROPOSED TRAIL AND WQMP & DRAINAGE STORAGE
SCALE: 1"=10'

OWNER/DEVELOPER

SHERR DEVELOPMENT CORPORATION
31300 ORCHARD LAKE ROAD, SUITE 200
FARMINGTON HILLS, MI 48334
PH: (248) 626-9099

ENGINEER

LUDWIG ENGINEERING
109 E. THIRD STREET
SAN BERNARDINO, CA 92410
(909)884-8217

ASSESSOR'S PARCEL NO.

APN: 3096-341-04,07

ZONING & LAND USE

PRESENT: RESIDENTIAL, LOW DENSITY
PROPOSED: RESIDENTIAL, LOW DENSITY

GENERAL PLAN DESIGNATION

PRESENT: R1 SINGLE FAMILY
PROPOSED: R1 SINGLE FAMILY

AREAS

TOTAL GROSS ACREAGE	20.07 AC
TOTAL NET ACREAGE	18.61 AC
TOTAL NUMBERED LOTS	53 LOTS
UNITS PER ACRE RES.	2.64 U.P.A.
MINIMUM LOT SIZE RES.	7,200 S.F.
TOTAL LETTERED LOTS	10 LOTS

NOTES

- THIS TRACT CONTAINS 3,320 L.F. OF NEW STREETS.
- CONTOUR SOURCE: LUDWIG ENGINEERING FIELD TOPO
- EARTHWORK WILL BE BALANCED ON SITE. ESTIMATED EARTHWORK QUANTITY: 5,864 C.Y.
- SETBACKS:
  FRONTYARD: 20'
  SIDE: 5'
  STREET SIDE YARD: 10'
  REAR YARD: 20'
  (ACCORDING TO CITY OF VICTORVILLE STDS.)
- THIS IS A CALCULATED MAP. LOT CLOSURES ARE AVAILABLE. THE DEVELOPER REQUESTS REVIEW FOR COMPLIANCE WITH CURRENT CODES AND POLICIES WITH REGARD TO GEOMETRICS.
- [00.00] INDICATES PAD ELEVATION.
- UNLESS OTHERWISE INDICATED THE SURROUNDING LAND USE IS "VACANT".
- DEVELOPMENT OF SITE WILL HAVE MINIMAL EFFECT ON EXISTING DRAINAGE PATTERNS. STORM WATER RUNOFF WILL FOLLOW EXISTING AND NATURAL DRAINAGE COURSES OR BE CARRIED IN PROPOSED STREETS AND DRAINAGE FACILITIES AS INDICATED ON THE MAP AND OUTLINED IN ACCOMPANYING DRAINAGE STUDY.
- BENCH MARK = CITY OF VICTORVILLE BENCH MARK V 211. LOCATED AT THE CORNER OF HWY 395 AND BEAR VALLEY RD ELEV. = 3319.31.

ELECTRIC: SOUTHERN CALIFORNIA EDISON CO.
12353 HESPERIA RD.
VICTORVILLE, CA. 92392
PH: (760) 951-3241

SEWER: CITY OF VICTORVILLE
14343 CIVIC DRIVE
VICTORVILLE, CA. 92393-5001
PH: (760)955-5087

WATER: CITY OF VICTORVILLE
14343 CIVIC DRIVE
VICTORVILLE, CA. 92393-5001
PH: (760)955-5087

GAS: SOUTHWEST GAS CORP.
13471 MARIPOSA RD.
VICTORVILLE, CA. 92393
PH: (760)951-4055

TELEPHONE: VERIZON
13911 PARK AVE.,SUITE 200
VICTORVILLE, CA. 92392
PH: (760)245-0894

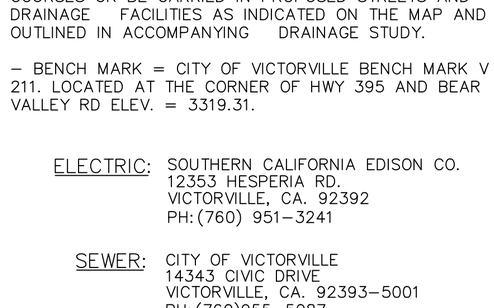
CABLE TV: CHARTER COMMUNICATIONS
9536 "C" AVE.
HESPERIA, CA. 92345
PH: (760)843-3000

LUNA ROAD (Looking East)
TYPICAL SECTION (68'R/W)
NTS

FREMONTIA ROAD (NORTH 66OFT)
TYPICAL SECTION (60' R/W) NTS

LOCAL STREETS
TYPICAL SECTION (60' R/W)
NTS

FREMONTIA ROAD (SOUTH 66OFT)
TYPICAL SECTION (60' R/W) NTS



TYPICAL SECTION A-A PROPOSED CHANNEL
NTS
BALDY MESA MASTER PLAN OF DRAINAGE
LINE A-01

REGISTERED PROFESSIONAL ENGINEER
JEFFREY MARTIN ASHBAKER
No. 91606
CIVIL
STATE OF CALIFORNIA

BOUNDARY & LOTTING
TTM NO. 20527

DATE: APRIL 2022

SHEET 1 OF 3

PROJECT NUMBER

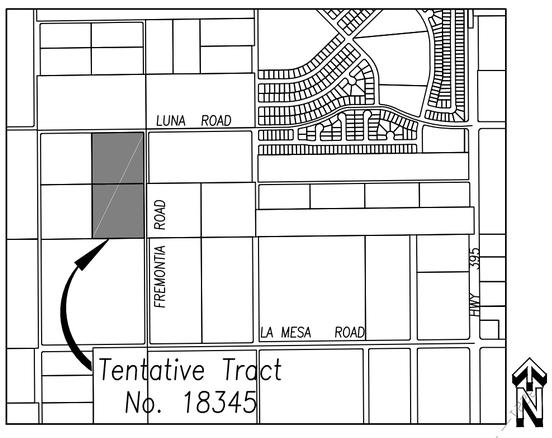
Ludwig Engineering ASSOCIATES, INC.
Civil Engineering • Surveying • Planning
109 East Third Street - San Bernardino, CA 92410
Phone: 909-884-8217 - Fax: 909-889-0153

IN THE CITY OF VICTORVILLE,
COUNTY OF SAN BERNARDINO, CALIFORNIA

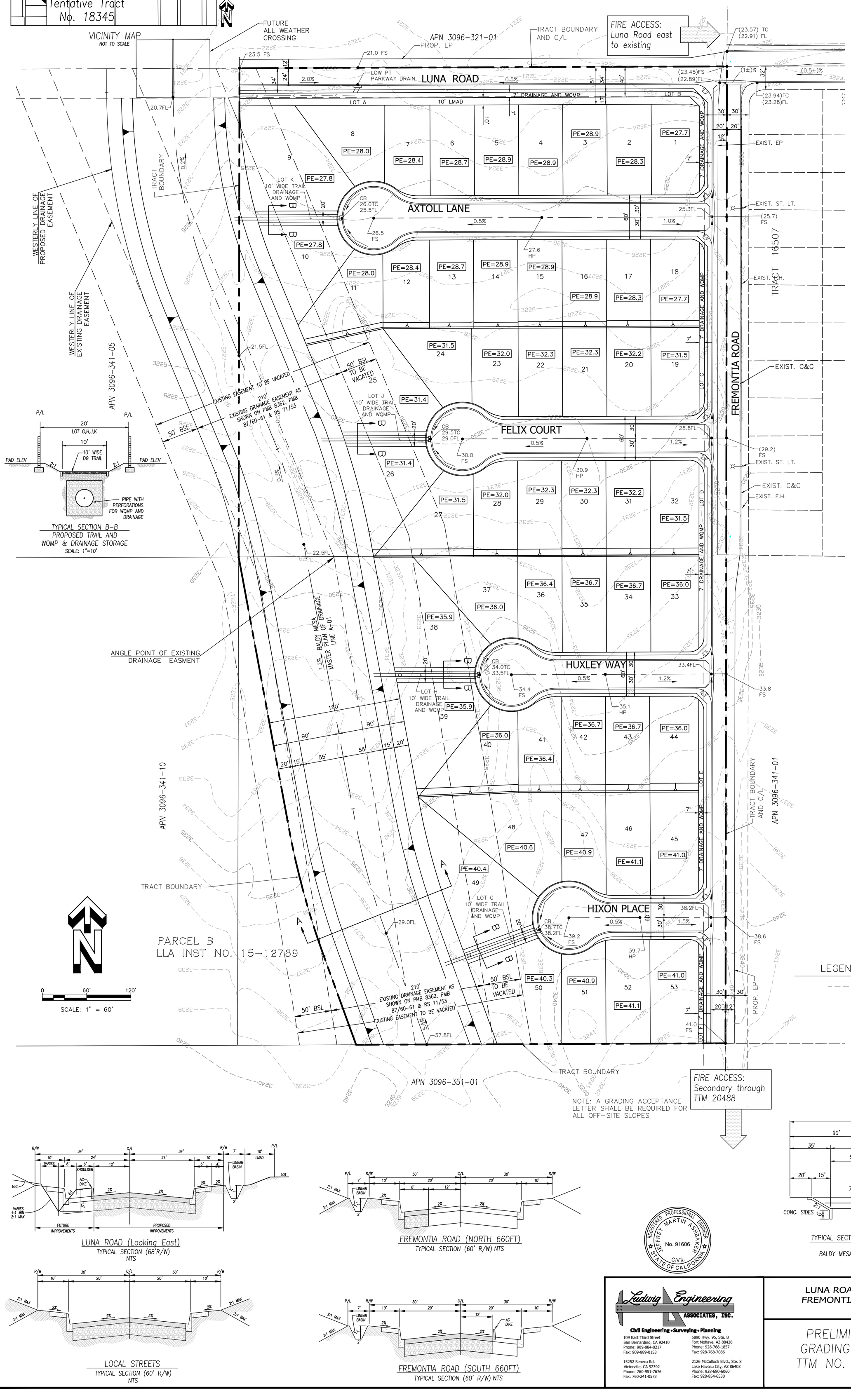
TENTATIVE TRACT MAP No. 20527

PARCEL 1 OF PARCEL MAP No. 8362, PER PLAT RECORDED IN BOOK 203 OF PARCEL MAPS, PAGES 59 AND 60, AND PARCEL A OF LLA, PER RECORDED INSTRUMENT No. 15–12789 IN THE CITY OF VICTORVILLE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, RECORDS OF SAID COUNTY.

LUDWIG ENGINEERING — APRIL 2022



VICINITY MAP
NOT TO SCALE



TYPICAL SECTION B–B
PROPOSED TRAIL AND WQMP & DRAINAGE STORAGE
SCALE: 1"=10'

0 60' 120'
SCALE: 1" = 60'

NOTE: A GRADING ACCEPTANCE LETTER SHALL BE REQUIRED FOR ALL OFF–SITE SLOPES

FIRE ACCESS: Secondary through TTM 20488

LEGEND

----3200----	EXIST. CONTOURS
FS	FINISH SURFACE
FL	FLOW LINE
GB	GRADE BREAK
EP	EDGE OF PAVEMENT
PE	PAD ELEVATION
HP	HIGH POINT

LUNA ROAD (Looking East)
TYPICAL SECTION (68'R/W)
NTS

FREMONTIA ROAD (NORTH 66OFT)
TYPICAL SECTION (60' R/W) NTS

LOCAL STREETS
TYPICAL SECTION (60' R/W)
NTS

FREMONTIA ROAD (SOUTH 66OFT)
TYPICAL SECTION (60' R/W) NTS

TYPICAL SECTION A–A PROPOSED CHANNEL
NTS
BALDY MESA MASTER PLAN OF DRAINAGE
LINE A–01

REGISTERED PROFESSIONAL ENGINEER
JEFFREY MARTIN ASHBAKER
No. 91606
CIVIL
STATE OF CALIFORNIA

Ludwig Engineering ASSOCIATES, INC.
Civil Engineering • Surveying • Planning
109 East Third Street
San Bernardino, CA 92410
Phone: 909-884-8217
Fax: 909-889-0153

5890 Hwy. 95, Ste. B
Fort Mohave, AZ 88426
Phone: 928-768-1857
Fax: 928-768-7086

15252 Seneca Rd.
Victorville, CA 92392
Phone: 760-951-7676
Fax: 760-241-0573

2126 McCulloch Blvd., Ste. 8
Lake Havasu City, AZ 86403
Phone: 928-680-6060
Fax: 928-854-6530

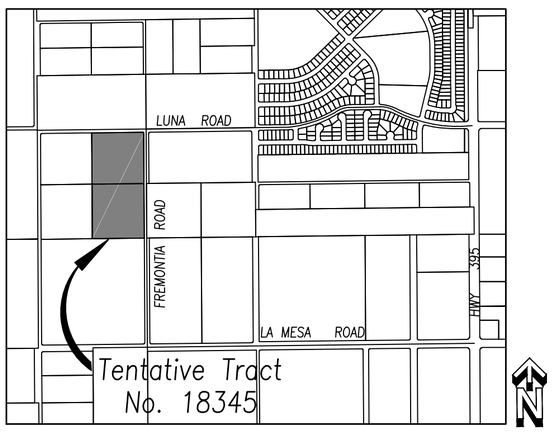
LUNA ROAD AND FREMONTIA ROAD

DATE: APRIL 2022

SHEET 2 OF 3

PRELIMINARY GRADING PLAN TTM NO. 20527

PROJECT NUMBER



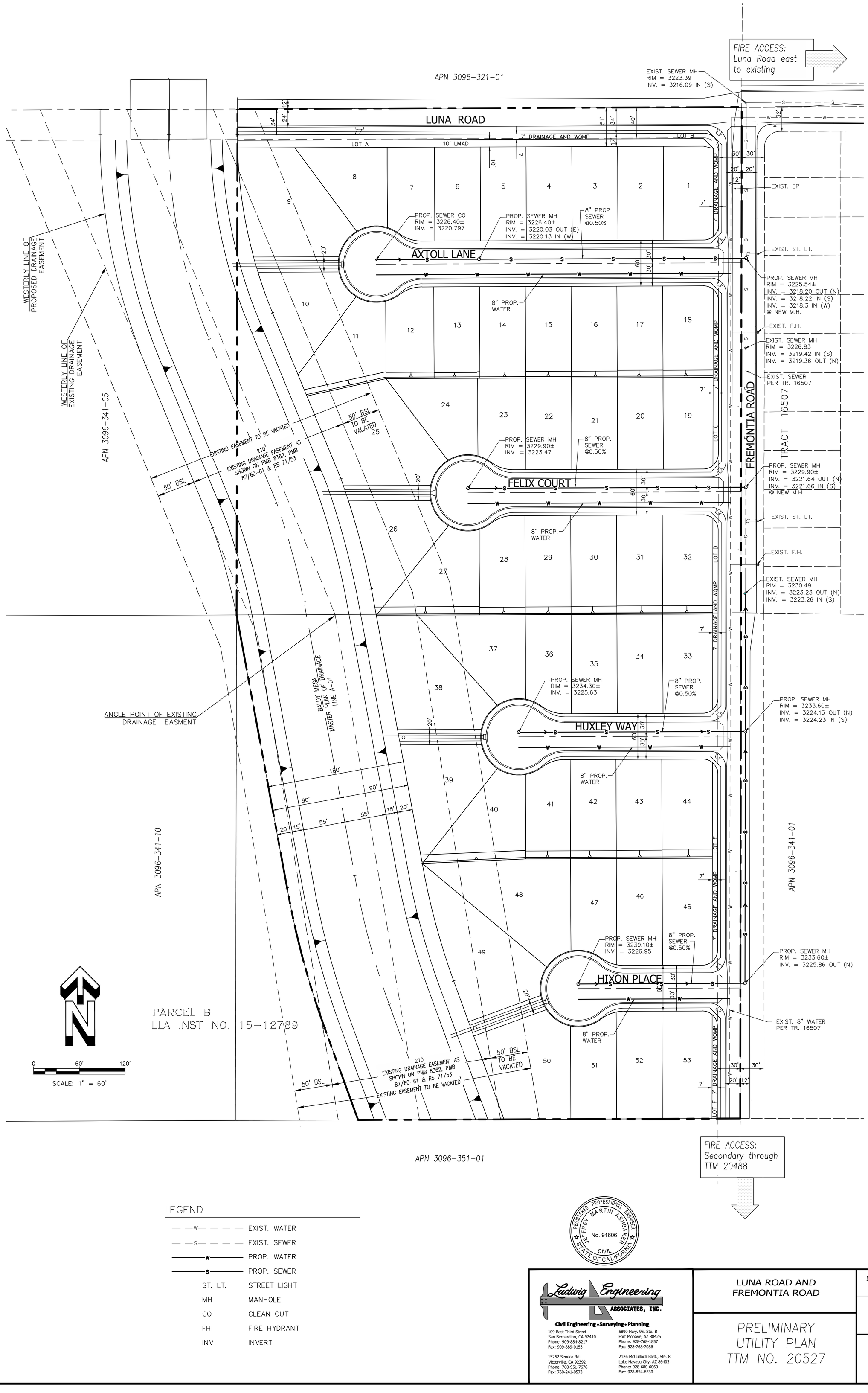
VICINITY MAP
NOT TO SCALE

IN THE CITY OF VICTORVILLE,
COUNTY OF SAN BERNARDINO, CALIFORNIA

TENTATIVE TRACT MAP
No. 20527

PARCEL 1 OF PARCEL MAP No. 8362, PER PLAT RECORDED IN BOOK 203 OF PARCEL MAPS, PAGES 59 AND 60, AND PARCEL A OF LLA, PER RECORDED INSTRUMENT No. 15–12789 IN THE CITY OF VICTORVILLE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, RECORDS OF SAID COUNTY.

LUDWIG ENGINEERING — APRIL 2022



LEGEND

— —W— — — —	EXIST. WATER
— —S— — — —	EXIST. SEWER
——W——	PROP. WATER
——S——	PROP. SEWER
ST. LT.	STREET LIGHT
MH	MANHOLE
CO	CLEAN OUT
FH	FIRE HYDRANT
INV	INVERT

REGISTERED PROFESSIONAL ENGINEER
JEFFREY MARTIN ASHBAKER
No. 91606
CIVIL
STATE OF CALIFORNIA

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Lake Havasu City, AZ 86403
Phone: 928-680-6060
Fax: 928-854-6530

LUNA ROAD AND
FREMONTIA ROAD

PRELIMINARY
UTILITY PLAN
TTM NO. 20527

DATE:
APRIL 2022

SHEET 3 OF 3

PROJECT NUMBER

Attachment C

Site Photographs

Photograph 1: From the northwest corner of the project site looking east across the site.

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

Photograph 3: From the northeast corner of the project site looking west along the northern boundary.

Photograph 4: From the northeast corner of the project site looking south along the eastern boundary.

Photograph 5: From the southeast corner of the project site looking north along the eastern boundary.

Photograph 6: From the southeast corner of the project site looking west along the southern boundary.

Photograph 7: From the southwest corner of the project site looking east along the southern boundary.

Photograph 8: From the southwest corner of the project site looking north along the western boundary.

Attachment D

Potentially Occurring Special-Status Biological Resources

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

Scientific Name Common Name	**Status**	**Habitat Description**	**Observed On-site**	**Potential to Occur**
SPECIAL-STATUS WILDLIFE SPECIES				
Artemisiospiza belli belli Bell's sparrow	Fed: None CA: WL	Generally prefers semi-open habitats with evenly spaced shrubs 1 – 2 meters in height. Dry chaparral and coastal sage scrub. Less common in tall dense, old chaparral.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Athene cunicularia burrowing owl	Fed: None CA: SSC	Prefers habitat with short, sparse vegetation with few shrubs and well-drained soils in grassland, shrub steppe, and desert habitats. Primarily a grassland species, but it persists and even thrives in some landscapes highly altered by human activity. Occurs in open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. The overriding characteristics of suitable habitat appear to be burrows for roosting and nesting and relatively short vegetation with only sparse shrubs and taller vegetation.	No	**Presumed Absent** The project site supports line-of-sight opportunities favored by burrowing owls; however, no suitable burrows (>4 inches in diameter) are present.
Buteo swainsoni Swainson's hawk	Fed: None CA: **THR**	Typical habitat is open desert, grassland, or cropland containing scattered, large trees or small groves. Breeds in stands with few trees in juniper-sage flats, riparian areas, and in oak savannah in the Central Valley. Forages in adjacent grassland or suitable grain or alfalfa fields or livestock pastures.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Circus hudsonius northern harrier	Fed: None CA: SSC	Frequents meadows, grasslands, open rangelands, desert sinks, fresh and saltwater emergent wetlands; seldom found in wooded areas. Mostly found in flat, or hummocky, open areas of tall, dense grasses moist or dry shrubs, and edges for nesting, cover, and feeding.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Eremophila alpestris actia California horned lark	Fed: None CA: WL	Occurs in meadows, grasslands, open fields, prairie, and alkali flats. This subspecies is typically found in coastal regions.	No	**High** Suitable foraging and nesting habitat are present within and surrounding the project site. This species is adapted to urban environments and occurs commonly.
Falco mexicanus prairie falcon	Fed: None CA: WL	Commonly occur in arid and semiarid shrubland and grassland community types. Also occasionally found in open parklands within coniferous forests. During the breeding season, they are found commonly in foothills and mountains which provide cliffs and escarpments suitable for nest sites.	No	**Low** Suitable foraging habitat is present on-site; no suitable nesting habitat is present within or adjacent to the site.
Gopherus agassizii Mojave desert tortoise	Fed: **THR** CA: **THR**	Occurs in desert scrub, desert wash, and Joshua tree habitats with friable, sandy, well-drained soils for nest and burrow construction. Highest densities occur in creosote bush scrub with extensive annual wildflower blooms and succulents with little to no non-native plant species.	No	**Presumed Absent** No desert tortoises, sign, or burrows were observed during the habitat assessment. Suitable habitat is present within the project site; however, adjacency to dense development and fragmentation of surrounding habitats likely precludes this species from occurring.

Scientific Name Common Name	**Status**	**Habitat Description**	**Observed On-site**	**Potential to Occur**
Lanius ludovicianus loggerhead shrike	Fed: None CA: SSC	Prefers open habitats with bare ground, scattered shrubs, and areas with low or sparse herbaceous cover including open-canopied valley foothill hardwood, riparian, pinyon-juniper, desert riparian, creosote bush scrub, and Joshua tree woodland. Requires suitable perches including trees, posts, fences, utility lines, or other perches.	No	**High** Suitable foraging and nesting habitat are present within the project site.
Lepus californicus bennettii San Diego black-tailed jackrabbit	Fed: None CA: None	Occupies many diverse habitats, but primarily is found in arid regions supporting short-grass habitats, agricultural fields, or sparse coastal scrub.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Microtus californicus mohavensis Mojave river vole	Fed: None CA: SSC	Prefers habitat that is moist, including meadows, freshwater marshes, and irrigated pastures in locations surrounding the Mojave River between elevations of 2,460 to 2,700 feet.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Phrynosoma blainvillii coast horned lizard	Fed: None CA: SSC	Occurs in a wide variety of vegetation types including coastal sage scrub, annual grassland, chaparral, oak woodland, riparian woodland and coniferous forest. In inland areas, this species is restricted to areas with pockets of open microhabitat, created by disturbance (i.e. fire, floods, roads, grazing, fire breaks). The key elements of such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense shrubs for refuge.	No	**Low** Limited foraging and cover habitat are present within the project site.
Setophaga petechia yellow warbler	Fed: None CA: SSC	Nests over all of California except the Central Valley, the Mojave Desert region, and high altitudes and the eastern side of the Sierra Nevada. Winters along the Colorado River and in parts of Imperial and Riverside Counties. Nests in riparian areas dominated by willows, cottonwoods, sycamores, or alders or in mature chaparral. May also use oaks, conifers, and urban areas near stream courses.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Spinus lawrencei Lawrence's goldfinch	Fed: None CA: None	Open woodlands, chaparral, and weedy fields. Closely associated with oaks. Nests in open oak or other arid woodland and chaparral near water.	No	**Presumed Absent** There is no suitable habitat present within or adjacent to the project site.
Spizella breweri Brewer's sparrow	Fed: None CA: None	Habitats include sagebrush and brushy plains.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.
Taxidea taxus American badger	Fed: None CA: SSC	Primarily occupy grasslands, parklands, farms, tallgrass and shortgrass prairies, meadows, shrub-steppe communities and other treeless areas with sandy loam soils where it can dig more easily for its prey. Occasionally found in open chaparral (with less than 50% plant cover) and riparian zones.	No	**Presumed Absent** Suitable habitat is present within the project site, but surrounding land uses and fragmentation likely preclude this species from occurring on-site.
Toxostoma lecontei Le Conte's thrasher	Fed: None CA: SSC	An uncommon to rare, local resident in southern California deserts from southern Mono Co. south to the Mexican border, and in western and southern San Joaquin Valley. Occurs primarily in open desert wash, desert scrub, alkali desert scrub, and desert succulent shrub habitats; also occurs in Joshua tree habitat with scattered shrubs.	No	**Presumed Absent** No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	**Status**	**Habitat Description**	**Observed On-site**	**Potential to Occur**
Xerospermophilus mohavensis Mohave ground squirrel	Fed: None CA: **THR**	Restricted to the Mojave Desert in open desert scrub, alkali desert scrub, annual grassland, and Joshua tree woodland. Prefers sandy to gravelly soils and tends to avoid rocky areas. Occurs sympatrically with the white-tailed antelope squirrel.	No	**Presumed Absent** Suitable habitat is present within the project site, but surrounding land uses, fragmentation, and the presence of free-roaming domestic cats likely preclude this species from occurring on-site.
SPECIAL-STATUS PLANT SPECIES				
Canbya candida white pygmy-poppy	Fed: None CA: None CNPS: 4.2	Occurs on gravelly, sandy, granitic soils in Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland. Found at elevations ranging from 2,297 to 5,249 feet above mean sea level (msl). Blooming period is from March to June.	No	**Low** Suitable habitat is present within and adjacent to the project site.
Castilleja plagiotoma Mojave paintbrush	Fed: None CA: None CNPS: 4.3	Found in Great Basin scrub (alluvial), Joshua tree woodland, lower montane coniferous forest, and pinyon and juniper woodland habitats. Found at elevations ranging from 985 to 8,205 feet above msl. Blooming period is from April to June.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Chorizanthe spinosa Mojave spineflower	Fed: None CA: None CNPS: 4.2	Grows in alkaline or non-alkaline soils in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, and playas. Found at elevations ranging from 20 to 4,265 feet. Blooming period is from March to July.	No	**Low** Suitable habitat is present within and adjacent to the project site.
Loeflingia squarrosa* var. *artemisiarum sagebrush loeflingia	Fed: None CA: None CNPS: 2B.2	Grows in sandy soils within desert dunes, Great Basin scrub, and Sonoran desert scrub habitats. Blooming period is from April to May. Grows in elevation from 2,297 to 5,299 feet.	No	**Presumed Absent** There is no suitable habitat within or adjacent to the project site.
Muilla coronata crowned muilla	Fed: None CA: None CNPS: 4.2	Found in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland habitats. Blooming period is from May to April. Grows in elevation from 2,198 to 6,430 feet.	No	**Low** Suitable habitat is present within and adjacent to the project site.
Opuntia basilaris* var. *brachyclada short-joint beavertail	Fed: None CA: None CNPS: 1B.2	Habitats include chaparral, Joshua tree woodland, Mojavean desert scrub, pinyon and juniper woodlands. Found at elevations ranging from 1,394 to 5,906 feet above msl. Blooming period is from April to August.	No	**Low** Suitable habitat is present within and adjacent to the project site.
Pediomelum castoreum Beaver dam breadroot	Fed: None CA: None CNPS: 1B.2	Occurs in sandy soils, washes, and roadcuts within Joshua tree woodland and Mojavean desert scrub. Found at elevations ranging from 2,000 to 5,000 feet. Blooming period is from April to May.	No	**Low** Suitable habitat is present within and adjacent to the project site.
Saltugilia latimeri Latimer's woodland-gilia	Fed: None CA: None CNPS: 1B.2	Habitats include chaparral, Mojavean desert scrub, pinyon and juniper woodland. Prefers rocky or sandy, often granitic soils. Found at elevations ranging from 1,312 to 6,234 feet. Blooming period is from March to June.	No	**Low** Suitable habitat is present within and adjacent to the project site.
Yucca brevifolia western Joshua tree	Fed: None CA: CE CNPS: N/A	Occurs in a variety of arid habitats within the Mojave Desert. Found at elevations ranging from 1,600 to 6,600 feet. Blooming period is from March to June.	Yes	**Present** Suitable habitat is present within and surrounding the project site.

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
CTHR – California Candidate Threatened
DL - Delisted
FP – California Fully Protected
SSC – California Species of Special Concern
WL – California 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
4 Plants of Limited Distribution – A Watch List

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

Attachment E

Regulations

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

Federal Regulations

Endangered Species Act of 1973

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

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

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

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

Migratory Bird Treaty Act

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

Local Regulations

City of Victorville Municipal Code

The City of Victorville's Municipal Code (Chapter 13.33) requires preservation of Joshua trees, to the greatest extent possible, given their importance in the desert community. It is unlawful for any person to cut, damage, destroy, dig up, or harvest any Joshua tree without the prior written consent of the director of parks and recreation or his designee. A violation of this section is a misdemeanor punishable by up to six months in jail and/or a five-hundred-dollar fine.

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

Federal Regulations

Section 404 of the Clean Water Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 401 of the Clean Water Act

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

State Regulations

Fish and Game Code

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

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

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

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

Porter Cologne Act

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