

APPENDIX C. NHPA SECTION 106 CONSULTATION

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The Bakersfield Californian Legal Notice

Proof of Publication

THE BAKERSFIELD CALIFORNIAN
3700 PEGASUS DR STE 100
BAKERSFIELD, CA 93308

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ROW 10 HPS, LLC
8215 SYCAMORE STREET
NEW ORLEANS LA 70118

Billing Lines 36.00 Inches 3.6274991
Total Cost \$ 333.84 Account 332097
Billing ROW 10 HPS, LLC
Address 8215 SYCAMORE STREET
NEW ORLEANS LA 70118

STATE OF CALIFORNIA
COUNTY OF KERN

Solicitor I.D.: 0

I AM A CITIZEN OF THE UNITED STATES AND A RESIDENT
OF THE COUNTY AFORESAID: I AM OVER THE AGE OF
EIGHTEEN YEARS, AND NOT A PARTY OR INTERESTED
IN THE ABOVE ENTITLED MATTER. I AM THE ASSISTANT
PRINCIPAL CLERK OF THE PRINTER OF THE
BAKERSFIELD CALIFORNIAN, A NEWSPAPER OF
GENERAL CIRCULATION, PRINTED AND PUBLISHED
DAILY IN THE CITY OF BAKERSFIELD COUNTY OF KERN,

First Text
PUBLIC NOTICE: NATIONAL H

Ad Number 263519

AND WHICH NEWSPAPER HAS BEEN ADJUDGED A
NEWSPAPER OF GENERAL CIRCULATION BY THE SUPERIOR
COURT OF THE COUNTY OF KERN, STATE OF CALIFORNIA,
UNDER DATE OF FEBRUARY 5, 1952, CASE NUMBER 57610;
THAT THE NOTICE, OF WHICH THE ANNEXED IS A PRINTED
COPY, HAS BEEN PUBLISHED IN EACH REGULAR AND
ENTIRE ISSUE OF SAID NEWSPAPER
AND NOT IN ANY SUPPLEMENT THEREOF ON THE
FOLLOWING DATES, TO WIT:

**PUBLIC NOTICE: National Historic Preservation Act Public Comment
Solicitation for the Proposed Bakersfield Community-Based Outpatient Clinic**

The U.S. Department of Veterans Affairs (VA) proposes to construct and operate, under a long-term build-to-suit lease, a new community-based outpatient clinic (CBOC) southeast of the intersection of Olive Drive and Knudsen Drive (approximately 0.15 mile west of State Route 99 (SR-99) and 250 feet southeast of the intersection of Olive Drive and Knudsen Drive) and would no longer operate the existing leased VA clinic at 1801 Westwind Drive in Bakersfield, California. The new CBOC is proposed to be constructed on an approximately 10-acre site that is currently undeveloped and will consist of an approximately 40,000-gross-square-foot building with associated parking and other site improvements. The purpose of this Project is to provide a modern, state-of-the-art medical facility to serve Veterans in Bakersfield and surrounding communities.

In accordance with 36 CFR § 800.3(a), VA has determined that the Project is a federal action that meets the definition of an undertaking per 36 CFR § 800.16(g), and is the type of activity that has the potential to cause effects on historic properties, and therefore subject to review under 54 USC § 306108 of the National Historic Preservation Act (NHPA), as amended, and its implementing regulations (36 CFR Part 800 - Protection of Historic Properties), collectively "Section 106."

Through this notice, VA is providing the public with information about the undertaking and seeking public comment and input about the undertakings effects on historic properties pursuant to 36 CFR § 800.2(d). This notice does not serve as an invitation to consult under Section 106, it is solely to seek and consider the views of the public. VA is initiating its Section 106 review and inviting consulting parties to participate via a separate communication.

If you would like to comment on the proposed project at this time, please contact Angela McArdle at Angela.McArdle@va.gov and reference "Bakersfield CBOC." VA greatly appreciates your participation in this matter and asks that you provide comments on the proposed project by November 29, 2023.

October 30, 2023
263519

10/30/2023

ALL IN YEAR 2023

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY
THAT THE FOREGOING IS TRUE AND CORRECT.

Briesta Fisher

DATED AT BAKERSFIELD CALIFORNIA

10/30/23



DEPARTMENT OF VETERANS AFFAIRS
Greater Los Angeles Healthcare System
11301 Wilshire Boulevard
Los Angeles, CA 90073

November 21, 2023

Mariza Sullivan
Chairperson
Coastal Band of the Chumash Nation
P. O. Box 4464
Santa Barbara, CA, 93140
cbctribalchair@gmail.com

West Los Angeles
Healthcare Center
11301 Wilshire Boulevard
Los Angeles, CA 90073
(310) 478-3711

Reference: VA_2018_0629_001

**Re: Continuation of Consultation on the Bakersfield, CA Community Based
Outpatient Clinic in Bakersfield, CA**

Dear Chairperson Sullivan,

The U.S. Department of Veterans Affairs (VA) Greater Los Angeles Healthcare System (GLAHS) is continuing consultation on a project to construct and operate a new community-based outpatient clinic (CBOC), under a long-term build-to-suit lease in Bakersfield, California (Figure 1). VA originally initiated consultation in 2018. However, due to the passage of time, the elimination of one potential site initially included in the undertaking, and the reorganization of the project, with this letter VA is reinitiating that consultation. The new CBOC is proposed to be constructed on an approximately 10-acre site that is currently undeveloped and will consist of an approximately 40,000-gross-square-foot building with associated parking, landscaping, and utilities. The location of the proposed new CBOC is approximately 0.15-mile west of State Route 99 (SR-99) and 250 feet southeast of the intersection of Olive Drive and Knudsen Drive (Figure 2). The purpose of this proposed project is to provide a modern, state-of-the-art medical facility to serve Veterans in Bakersfield and surrounding communities.

VA currently leases a CBOC located at 1801 Westwind Drive, Bakersfield. Because VA currently leases another facility in the city, the project also includes the deactivation of the existing VA clinic. However, future use of the existing facility is not part of this project, as VA is not the property owner. The existing facility was built in 1992 and is located in an office park area.

Undertaking

In accordance with 36 CFR § 800.3(a), VA has determined that the undertaking is the construction and operation of a build-to-suit facility on previously undeveloped land, located at 5252 Knudsen Drive, Bakersfield, CA 93307-2907. The undertaking also would include the deactivation of an existing VA medical clinic in the city, located at 1801 Westwind Drive, which would no longer operate at that location. The existing facility is smaller in size (it totals approximately 34,560 s.f.) and offers some similar services, but it is a dated facility not capable of providing the full breadth of services that the city's

Veteran community currently needs. As evidenced by testimony from local Veterans in public hearings from previous versions of this project, many Veterans currently drive to Los Angeles to obtain the full range of services they need (2022 Draft Environmental Impact Report. P. 3-1). The new facility is designed to meet all those needs.

VA has determined that this proposed action is a federal action that meets the definition of an undertaking per 36 CFR § 800.16(y), and is the type of activity that has the potential to cause effects on historic properties, and therefore subject to review under Section 106 of the National Historic Preservation Act (NHPA), as amended, (54 USC § 306108), and its implementing regulations (36 CFR Part 800 – Protection of Historic Properties).

Area of Potential Effects (APE)

In accordance with 36 CFR § 800.4(a)(1) and § 800.16(d), the APE is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties. Because the Undertaking includes both new construction and the closure of an existing CBOC, VA has determined that the APE includes two non-contiguous areas: the existing CBOC site, and the proposed new CBOC site. The APE for the existing clinic includes the footprint of the existing facility, including parking (Figure 3). The APE for the proposed CBOC is the existing ca. 10-acre site, plus a 250-ft buffer, as delineated in Figure 4, to address any potential effects due to the construction of above-ground features. However, ground disturbance is limited to the area within the parcel.

Previous Investigations

Existing CBOC Site

Because no ground disturbance and no new construction will result from VA deactivating its clinic at the existing location, no previous investigations were examined.

Proposed CBOC Site

VA consulted with SHPO and other consulting parties on this project in 2018, and found that no historic properties would be affected. Subsequently, in 2022, the City of Bakersfield conducted a Cultural Resources Assessment (CRA) as part of an Environmental Impact Report (EIR). This CRA included a record search at the Southern San Joaquin Valley Information Center (SSJVIC) and the Native American Heritage Commission (NAHC). The records search included a review of all recorded cultural resources and reports within a ½ -mile radius of the project; there were no previously identified sites or loci identified in the APE. The NAHC conducted a record search of the Sacred Lands File (SLF) submitted for the project; the results were negative. However, the NAHC identified ten Native American tribes who may also have knowledge of cultural resources in the project area. Finally, the CRA documented negative results of an intensive pedestrian survey conducted in March 2022. The Cultural Resources Assessment for the Veterans Affairs Bakersfield Community Based Outpatient Clinic project, City of Bakersfield, County of Kern, California is appended to this letter as Appendix C, for your review.

As part of the current study, VA has renewed requests to both the SSJVIC and the NAHC, to ensure that the most up-to-date information regarding historic or sacred sites has been identified. The SSJVIC did not identify any historic properties within the APE (see Results Letter below) and coordination with the NAHC is ongoing. VA is contacting your tribe to invite you to consult on this undertaking. All the invited parties to the consultation are included in Appendix D.

Historic Properties Including Buildings, Districts, Sites, Landscapes, and Objects

In October 2023, Katy Coyle, a Cultural Resource Management professional meeting the *Secretary of the Interior's Professional Qualification Standards* for History and Architectural History (36 CFR part 61) conducted a survey and historic research to evaluate the appropriate APE(s), and to identify properties within both the APEs that are more than fifty years of age and that retain sufficient integrity to warrant listing in the National Register of Historic Places (NRHP).

Existing CBOC Site

The existing CBOC building was constructed in 1992 (Kern County Assessor, available online.¹ It is located in an office park area and is surrounded by one- to three-story buildings developed in the late 1980s and early 1990s. The area is generally bounded by the Golden State Highway to the west (7 lanes, elevated), Truxtun Avenue to the south (5 lanes, divided), Oak Street to the east (4 lanes, divided), and 21st Street (2 lanes).

There are no listed or NRHP-eligible properties in the APE.

Proposed CBOC Site

The proposed CBOC site consists of approximately 10-acres of undeveloped land bounded roughly by Knudsen Drive on the west, a modern mattress store and self-storage facility on the south, Olive Drive on the north, and a gated dirt road identified on some maps as Hageman Road on the east. A review of aerial photography and historic USGS quadrangle maps did not show evidence of any development in the project area in the past 100 years.

Within the APE, but outside the area of proposed ground disturbance, are several modern buildings. A small area including a Chevron gas station, a Taco Bell restaurant, and a 7-Eleven convenience store are located north of the project area; these were built between 1994-2003 (Google Earth). Just west of the project area, across Knudsen Drive, is a complex with a fire department facility, a warehouse, administration building, auto shop, and training buildings, built ca. 1984. A commercial car wash facility just north of the fire department facility was built at roughly the same time. The storage facility to the south was built in 2003. Aerial photography and cartographic information for the APE outside the area of proposed ground disturbance to the east of the CBOC parcel shows no evidence of development in the past century (Google Earth; www.historicaerials.com).

There are no NRHP-listed or eligible properties in the APE.

Assessment of Effects

Therefore, in accordance with 36 CFR § 800.4(d)(1), VA finds that there will be **no historic properties affected** by the undertaking. VA requests your review and comment on the delineation of the APE, the identification of historic properties, and the assessment of adverse effects within the statutory review period established in 36 CFR Part 800. This timeframe will ensure that we can consider any concerns and can move forward with this important project serving our Veterans.

¹<https://assessorapps.kerncounty.com/PropertySearch/Parcels/PropertyDetails.aspx?srctext=33244007&srctype=apn>.

Thank you, as always, for your cooperation in this important project for our Veterans. If you have any questions regarding this VA undertaking, please contact VA's Senior Historic Preservation Specialist, Angela McArdle, at Angela.McArdle@va.gov.

Sincerely,

Alan Trinh
Acting Executive Director, Ambulatory Care Services
VA Greater Los Angeles Healthcare System

Appendix A: Photographs of the Project Areas
Appendix B: Previous Consultation Documentation
Appendix C: Cultural Resources Assessment (dated 11/23/22)
Appendix D: List of Consulting Parties

Appendices not
included in EA

Results Letter

South San Joaquin Valley Information System

California
Historical
Resources
Information
System



Fresno
Kern
Kings
Madera
Tulare

Southern San Joaquin Valley Information Center
California State University, Bakersfield
Mail Stop: 72 DOB
9001 Stockdale Highway
Bakersfield, California 93311-1022
(661) 654-2289
E-mail: ssjvic@csub.edu
Website: www.csub.edu/ssjvic

10/23/2023

Kelly Sellers Wittie
Row 10 Historic Preservation Solutions, LLC
8215 Sycamore Place
New Orleans, LA 70118

Re: VA Bakersfield
Records Search File No.: 23-438

The Southern San Joaquin Valley Information Center received your record search request for the project area referenced above, located on the Oildale USGS 7.5' quad. The following reflects the results of the records search for the project area and the 0.5 mile radius:

As indicated on the data request form, the locations of resources and reports are provided in the following format: ☐ custom GIS maps ☒ GIS data

Resources within project area:	None
Resources within 0.5 mile radius:	No radius requested
Reports within project area:	KE-05498
Reports within 0.5 mile radius:	No radius requested

Resource Database Printout (list):

☐ enclosed ☐ not requested ☒ nothing listed

Resource Database Printout (details):

☐ enclosed ☐ not requested ☒ nothing listed

Resource Digital Database Records:

☐ enclosed ☐ not requested ☒ nothing listed

Report Database Printout (list):

☒ enclosed ☐ not requested ☐ nothing listed

Report Database Printout (details):

☒ enclosed ☐ not requested ☐ nothing listed

Report Digital Database Records:

☒ enclosed ☐ not requested ☐ nothing listed

Resource Record Copies:

☐ enclosed ☐ not requested ☒ nothing listed

Report Copies:

☒ enclosed ☐ not requested ☐ nothing listed

OHP Built Environment Resources Directory:

☐ enclosed ☒ not requested ☐ nothing listed

Archaeological Determinations of Eligibility:

☐ enclosed ☒ not requested ☐ nothing listed

CA Inventory of Historic Resources (1976):

☐ enclosed ☒ not requested ☐ nothing listed

Figures



Figure 1

Veteran's Affairs Community-Based Outpatient Medical Clinic

Vicinity Map

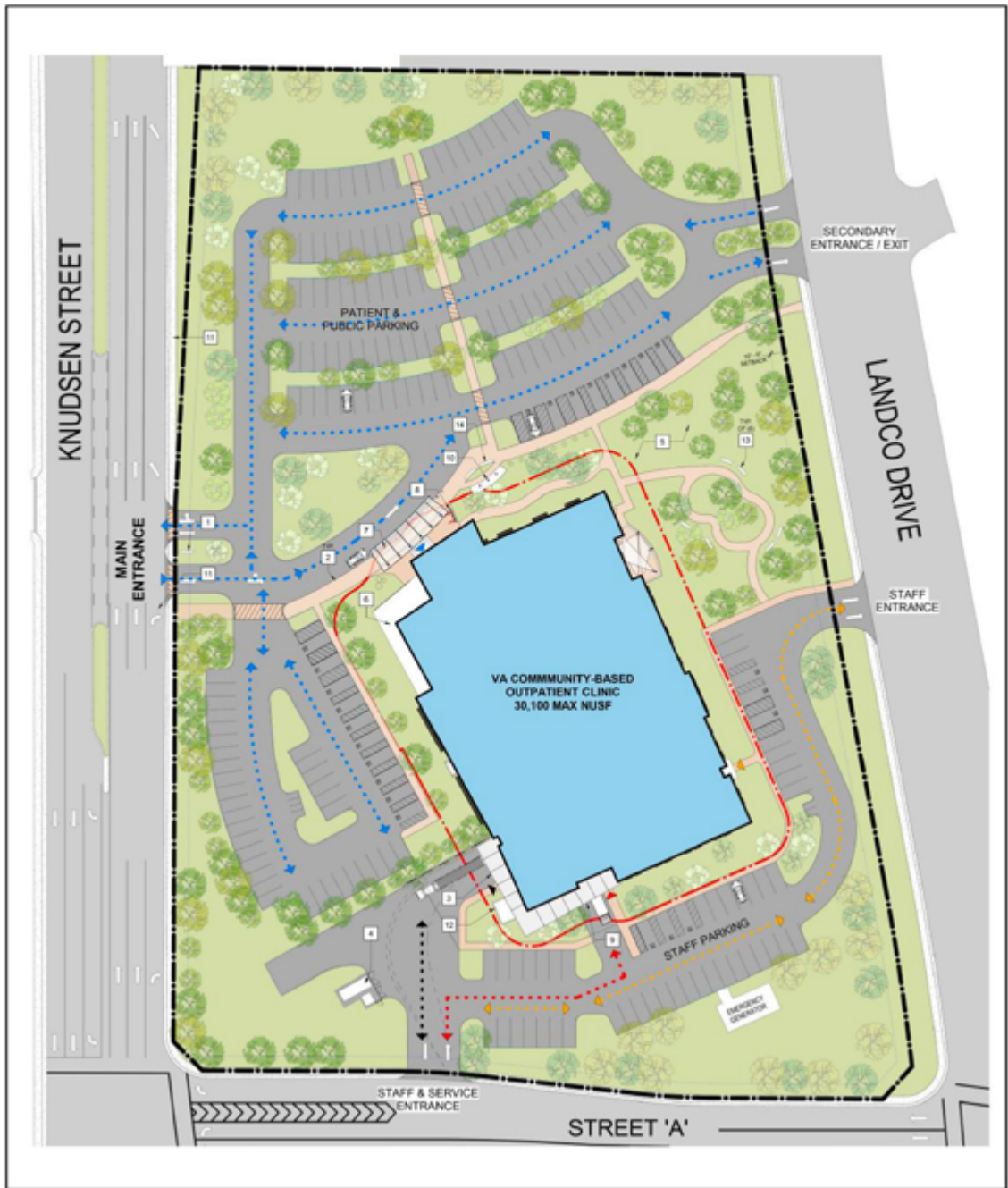


Figure 2 Proposed Development



Figure 3 Existing CBOC (1801 Westwind Drive, Bakersfield, CA) APE



Figure 4 Proposed CBOC Site (approximately 5512 Knudsen Drive) APE

Consulting Party Distribution List

AGENCY/ORGANIZATION	CONTACT INFO	EMAIL	ADDRESS
Native American Organizations (*federally recognized tribes indicated with asterisk)			
Big Pine Paiute Tribe of the Owens Valley	Danelle Gutierrez, Tribal Historic Preservation Officer Sally Manning, Environmental Director	d.gutierrez@bigpinepaiute.org s.manning@bigpinepaiute.org	P. O. Box 700 Big Pine, CA, 93513
Coastal Band of the Chumash Nation	Mariza Sullivan, Chairperson	cbcntribalchair@gmail.com	P. O. Box 4464 Santa Barbara, CA 93140
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California*	Carl Dahlberg, Chairperson Sean Scruggs, Interim THPO	carl@fortindependence.com falconkeeper22@gmail.com	131 North Highway 395, Independence CA 93526
Kern Valley Indian Community	Robert Robinson, Chairperson Brandy Kendricks	bbutterbredt@gmail.com krazykendricks@hotmail.com	P.O. Box 1010 Lake Isabella, CA 93240 30741 Foxridge Court Tehachapi, CA 93561
Kitanemuk & Yowlumne Tejon Indians	Delia Dominguez, Chairperson	2deedominguez@gmail.com	115 Radio Street Bakersfield, CA 93305
Santa Rosa Rancheria Tachi Yokut Tribe	Leo Sisco, Chairperson Shana Powers, THPO	lcisco@tachi-yokut-nsn.gov spowers@tachi-yokut-nsn.gov	P.O. Box 8 Lemoore, CA 93245
Te-Moak Tribe of Western Shoshone Indians of Nevada*	David Gonzales, Chairperson	tmkchairman@elko-nv.com tmkadmin@elko-nv.com temoakenvironmental@gmail.com	525 Sunset Street Elko, NV 89801
Tejon Indian Tribe*	Octavio Escobedo, Chairperson	oescobedo@tejonindiantribe-nsn.gov	P.O. Box 640 Arvin, CA 93203
Tubatulabals of Kern Valley	Robert Gomez, Chairperson	rgomez@tubatulabal.org	P.O. Box 833 Weldon, CA 93283
Tule River Indian Tribe of the Tule River Reservation, California*	Neil Peyron, Chairperson Kerri Vera, Environmental Department Joey Garfield, Tribal Archaeologist	neil.peyron@tulerivertribe-nsn.gov kerri.vera@tulerivertribe-nsn.gov tuleriverenv@yahoo.com joey.garfield@tulerivertribe-nsn.gov	P.O. Box 589 Porterville, CA 93258 340 North Reservation Road Porterville CA 93257

AGENCY/ORGANIZATION	CONTACT INFO	EMAIL	ADDRESS
Wuksache Indian Tribe/Eshom Valley Band	Kenneth Woodrow, Chairperson	Kwood8934@aol.com	1179 Rock Haven Court Salinas, CA 93906
State			
California Office of Historic Preservation, Department of Parks & Recreation	Julianne Polanco State Historic Preservation Officer	info.calshpo@parks.ca.gov	1725 23rd Street, Suite 100 Sacramento, CA 95816
Local			
Bakersfield Historic Preservation Commission Economic Development Department	--	hpcbakersfield@bakersfieldcity.us	1715 Chester Avenue Bakersfield, CA 93301
City of Bakersfield Development Services Department, Planning Division	Paul Johnson, Planning Director	Devpln@bakersfieldcity.us	1715 Chester Avenue, 2nd Floor Bakersfield, CA 93301
Kern County Historical Society	--	KCHS1931@gmail.com	P.O. Box 141 Bakersfield, CA 93302-0141

**DEPARTMENT OF PARKS AND RECREATION
OFFICE OF HISTORIC PRESERVATION**Armando Quintero, *Director*

Julianne Polanco, State Historic Preservation Officer

1725 23rd Street, Suite 100, Sacramento, CA 95816-7100

Telephone: (916) 445-7000

FAX: (916) 445-7053

calshpo.ohp@parks.ca.gov

www.ohp.parks.ca.gov

December 18, 2023

Reply in Reference to: VA_2018_0629_001

Alan Trinh
Chief, Office of Strategic, Facility & Master Planning
Department of Veterans Affairs
Greater Los Angeles Healthcare System
11301 Wilshire Boulevard
Los Angeles, CA 90037

VIA ELECTRONIC MAIL

Re: Section 106 Consultation for Community Based Outpatient Clinic Construction,
5252 Knudsen Drive, Bakersfield, Kern County

Dear Mr. Trinh:

The Department of Veterans Affairs (VA) is continuing consultation in compliance with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. §306108), as amended, and its implementing regulation found at 36 CFR Part 800.

Having previously received the SHPO's concurrence with a finding of no historic properties affected, the VA modified the undertaking's definition to include the deactivation of a medical clinic at 1801 Westwind Drive, Bakersfield. The VA's letter explains that "due to the passage of time, the elimination of one potential site initially included in the undertaking, and the reorganization of the project, with this letter VA is reinitiating that consultation. The new CBOC is proposed to be constructed on an approximately 10-acre site that is currently undeveloped and will consist of an approximately 40,000-gross-square-foot building with associated parking, landscaping, and utilities."

The VA are requesting the SHPO's concurrence that a finding of no historic properties affected remains appropriate. After reviewing the information provided, the SHPO concurs with this finding of effect. Be advised that under certain circumstances, such as an unanticipated discovery or a change in project description, the VA may have future responsibilities for this undertaking under 36 CFR Part 800.

December 18, 2023

VA_2018_0629_001

Mr. Trinh

Page 2

This letter is being sent in electronic format only. Please confirm receipt of this letter and notify Ed Carroll, Historian II, at Ed.Carroll@parks.ca.gov or (916) 503-8466 if there are any questions or to request a hard copy of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to be 'JP' followed by a horizontal line.

Julianne Polanco
State Historic Preservation Officer

APPENDIX D. ENDANGERED SPECIES ACT CONSULTATION

Section 7 consultation package submitted to USFWS (with biological study attached)	D-2
USFWS Biological Opinion	D-84



U.S. DEPARTMENT OF VETERANS AFFAIRS
Office of Construction & Facilities Management
Washington DC 20420

July 11, 2024

Michael Fris, Field Supervisor (by email to Michael_Fris@fws.gov)
U.S. Fish & Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way
Sacramento, California 95825

Subject: Request for Reinitiation of Formal Consultation under Section 7 of the
Endangered Species Act
Project Name: Bakersfield Outpatient Clinic
Project Code 2024-0011302

Dear Mr. Fris:

This letter requests reinitiation of formal consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act for a proposed project to construct and operate a U.S. Department of Veterans Affairs (VA) outpatient clinic in Bakersfield (Kern County), California. The purpose of this reinitiation package is to review the proposed project in sufficient detail to determine to what extent the proposed action may affect any threatened, endangered, proposed, or sensitive species and designated or proposed critical habitats. This package is prepared in accordance with legal requirements set forth under regulations implementing Section 7 of the Endangered Species Act (50 CFR 402; 16 U.S.C. 1536 (c)).

Description of the Proposed Action

VA is proposing to construct and operate, under a long-term lease, an approximately 40,000-gross-square-foot (GSF) outpatient clinic with associated surface parking and other site improvements in Bakersfield, Kern County, California. The project area is located on the east side of Knudsen Drive and south of Olive Drive (Figure 1). The site corresponds to portions of Section 15 of Township 29 south, Range 27 east, Mt. Diablo Meridian and Baseline, of the Oildale, CA 7.5-minute quadrangle. For reference, the approximate center of the project is located at latitude 35.410299° and longitude -119.057907. Landscaping would be installed along the perimeter of the project site, around the building, and throughout the parking areas. Traffic improvements and road construction would be implemented along all project site's frontages (Figure 2).

Previous Consultation

In June 2020, VA initiated formal consultation with the USFWS on this project. VA had determined that the project was likely to adversely affect the federally listed endangered San Joaquin kit fox (SJKF) (*Vulpes macrotis mutica*). The developer was going to obtain third-party coverage under the Metropolitan Bakersfield Habitat Conservation Plan (MBHCP) for the project's effects to the kit fox when acquiring development permits from the City of Bakersfield. This included paying the required habitat mitigation fee and implementation of all measures included in the MBHCP to reduce impacts to the kit fox. The USFWS reviewed the proposed

project and in June 2020, responded to VA's formal consultation request as follows (Ref. No. 08ESMF00- 2020-F-2169) (Attachment 1, USFWS response letter):

The Service has reviewed the proposed project and has determined that it is consistent with the development activities covered in the MBHCP and associated intra-Service biological opinion. As such, as long as the required habitat mitigation fees needed to obtain third party coverage under the MBHCP are paid, no further action is required from the VA, and the VA may consider its obligations under section 7 of the Act with regard to the proposed project to be complete. However, if the developer does not pay the necessary fees for the project to be covered under the MBHCP, additional formal consultation under section 7 of the Act would be necessary.

However, project execution has been delayed and the MBHCP has since expired; therefore, that mitigation measure is no longer available.

Status of the Species and Critical Habitat in the Action Area

VA requested an official species list from USFWS Information, Planning and Conservation (IPaC) system on October 31, 2023, which identified 12 federally listed and proposed threatened and endangered species in the project area. No designated critical habitats were identified. VA obtained an updated list on June 27, 2024 (Attachment 2), which identified one additional federally listed species potentially present in the area. The western spadefoot (*Spea hammondi*) was evaluated in the new biological study that is described below. VA notes a species list that was obtained on May 22, 2024, also identified the lassics lupine (*Lupinus constancei*), although this species was not included in the more recent list; this species was also evaluated in the new biological study that is described below. Thus, VA has determined the study findings were not affected by subsequent updates to the IPaC species list.

A reconnaissance-level survey was conducted on December 15, 2023, by a qualified biologist to evaluate occurrences and presence of suitable habitat for these species within or near the project area. The biologist walked 100-foot spaced transects in a north-south direction within the project site and 500-foot buffer to the south and east of the project. In addition to the reconnaissance survey, a highly trained ecological scent-detection dog team (handler and dog) surveyed for SJKF scat on December 15, 2023. The detection dog chosen for this survey had been trained using industry-accepted methods (Smith et al. 2001, Wasser et al. 2004) to recognize the scent of SJKF scat, and to alert the handler to the location of the scat.

No direct observations of special status species were observed at the project site or 500-foot buffer during the reconnaissance and scent-detection dog surveys. Potential burrows suitable for SJKF were observed within the project site and 500-foot buffer. There was no evidence that the burrows were used by SJKF. The scent-detection dog team detected SJKF scat at two separate locations within the 500-foot buffer, which indicates the occurrence of SJKF within the project vicinity (Figure 3). The biological study report is provided as Attachment 3.

Effects of the Action

Based on the results of the biological study, VA has determined that the proposed project “may affect, and is likely to adversely affect” the SJKF.

To address these potential adverse effects, VA is incorporating all of the measures relevant to this federally listed species and under federal authority that were identified in the August 2023 Final Environmental Impact Report (EIR) for the project (SCH No. 2022080337) to monitor for and exclude the SJKF from the project site during construction. In addition, VA proposes to include four additional measures. These measures are listed in Attachment 4.

Through implementation of these measures, in particular the installation and maintenance of artificial dens, the action is not expected to have negative consequences on the Bakersfield SJKF population and may have positive effects by adding safe and dependable denning resources.

Suitable habitat was not found during the onsite survey for the remaining listed species identified on the IPaC Official Species List for this location; therefore, we have concluded “no effect” to those species.

Request to Reinitiate Formal Consultation

At this time, VA is requesting to reinitiate formal consultation with USFWS on project impacts to the San Joaquin kit fox.

We look forward to receiving your response. If you need additional information, please contact me at (202) 894-0988 or by email at christine.modovsky@va.gov.

Sincerely,

CHRISTINE MODOVSKY Digitally signed by CHRISTINE MODOVSKY
Date: 2024.07.11 13:55:16 -07'00'

Christine Modovsky
Environmental Engineer
VA Office of Construction & Facilities Management

cc: Justin Sloan, USFWS San Joaquin Valley Division Supervisor

Attachments:

1. USFWS June 2020 response to previous formal consultation (Ref. No. 08ESMF00-2020-F-2169)
2. IPaC list (6/27/2024)
3. Biological Study, April 2024
4. Federal species mitigation measures



Figure 1. Project Location

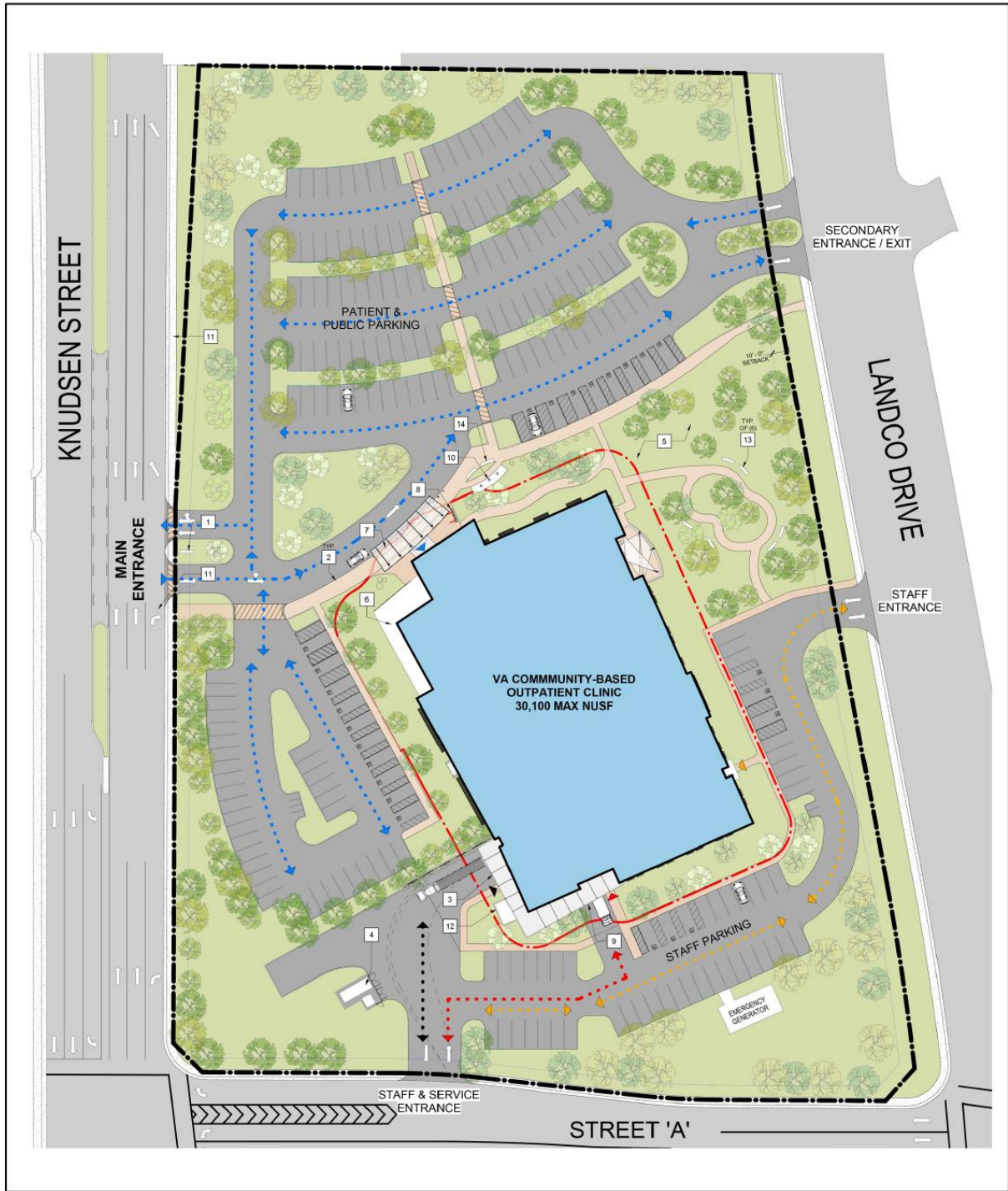


Figure 2. Proposed Development

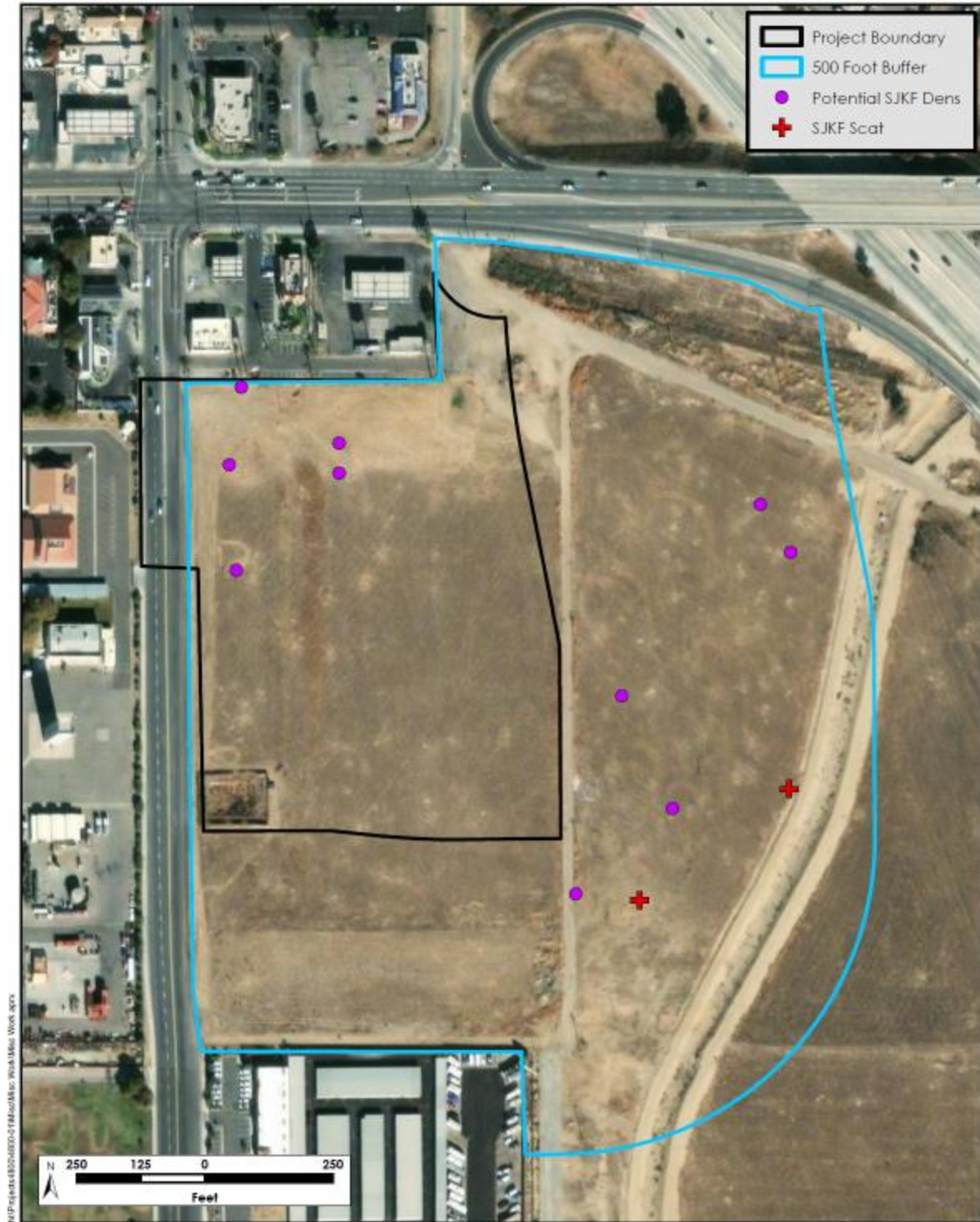


Figure 3. December 2023 Survey Results



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Suite W-2605
Sacramento, California 95825-1846
SFWO_mail@fws.gov



In Reply Refer to:
08ESMF00-
2020-F-2169

June 2020

Christine Modovsky
U.S. Department of Veteran Affairs
Office of Construction and Facilities Management
Facilities Planning (003C2)
810 Vermont Street NW
Washington DC 20420
christine.modovsky@va.gov

Subject: Formal Consultation on the Bakersfield Outpatient Clinic, Kern County, California

Dear Ms. Modovsky:

This letter is in response to the U.S. Department of Veterans Affairs' (VA) June 11, 2020, request for initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Bakersfield Outpatient Clinic in Kern County, California. At issue are the proposed project's effects on the federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) (kit fox). This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The federal action on which we are consulting is the construction and operation under a long-term lease of a VA outpatient clinic and associated parking on 6.92 acres in Bakersfield, California. Pursuant to 50 CFR 402.12(j), you submitted a biological assessment for our review and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, and is likely to adversely affect the kit fox.

In considering your request, we based our evaluation on the following:

- 1) The June 11, 2020, letter from VA initiating consultation
- 2) The June 10, 2020, biological study conducted by ECORP Consulting, Inc
- 3) Other information available to the Service

As stated in the consultation initiation letter, the developer will obtain third party coverage under the Metro Bakersfield Habitat Conservation Plan (MBHCP) for the project's effects to the kit fox when acquiring development permits from the City of Bakersfield. This includes paying the required habitat mitigation fee and implementation of all measures included in the MBHCP to reduce impacts to the kit fox.

The Service issued an Incidental Take Permit (Permit Number PRT-786634) to the City of Bakersfield and Kern County on August 24, 1994, pursuant to section 10 of the Act. This permit authorized the incidental taking of kit fox "in the course of otherwise lawful development and conservation activities..." During issuance of the permit to the City of Bakersfield and Kern County the Service analyzed the effects of permitted activities on federally listed species, including the kit fox, within the permit area in an intra-Service biological opinion issued on August 23, 1994.

The Service has reviewed the proposed project and has determined that it is consistent with the development activities covered in the MBHCP and associated intra-Service biological opinion. As such, as long as the required habitat mitigation fees needed to obtain third party coverage under the MBHCP are paid, no further action is required from the VA, and the VA may consider its obligations under section 7 of the Act with regard to the proposed project to be complete. However, if the developer does not pay the necessary fees for the project to be covered under the MBHCP, additional formal consultation under section 7 of the Act would be necessary.

If you have any questions regarding this biological opinion, please contact Justin Sloan, Senior Fish and Wildlife Biologist, at (559) 221-1828 or the letterhead address.

Sincerely



,

Patricia Cole
Chief, San Joaquin Valley Division



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish And Wildlife Office

Federal Building

2800 Cottage Way, Room W-2605

Sacramento, CA 95825-1846

Phone: (916) 414-6600 Fax: (916) 414-6713



In Reply Refer To:

06/27/2024 20:26:58 UTC

Project Code: 2024-0011302

Project Name: Bakersfield Outpatient Clinic

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through IPaC by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)).

(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see [Migratory Bird Permit | What We Do | U.S. Fish & Wildlife Service \(fws.gov\)](#).

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Sacramento Fish And Wildlife Office

Federal Building

2800 Cottage Way, Room W-2605

Sacramento, CA 95825-1846

(916) 414-6600

PROJECT SUMMARY

Project Code: 2024-0011302
Project Name: Bakersfield Outpatient Clinic
Project Type: New Constr - Above Ground
Project Description: VA proposes to construct and operate under a long-term lease a 39,648-gross-square-foot outpatient clinic on one floor with 214 surface parking spaces. The approximately 10-acre site is extensively disturbed but undeveloped.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.410084850000004,-119.05767581758906,14z>



Counties: Kern County, California

ENDANGERED SPECIES ACT SPECIES

There is a total of 13 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Buena Vista Lake Ornate Shrew <i>Sorex ornatus relictus</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/1610	Endangered
San Joaquin Kit Fox <i>Vulpes macrotis mutica</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2873	Endangered
Tipton Kangaroo Rat <i>Dipodomys nitratoides nitratoides</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7247	Endangered

BIRDS

NAME	STATUS
California Condor <i>Gymnogyps californianus</i> Population: Wherever found, except where listed as an experimental population There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/8193	Endangered
Southwestern Willow Flycatcher <i>Empidonax traillii extimus</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6749	Endangered
Yellow-billed Cuckoo <i>Coccyzus americanus</i> Population: Western U.S. DPS There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/3911	Threatened

REPTILES

NAME	STATUS
Blunt-nosed Leopard Lizard <i>Gambelia silus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/625	Endangered
Northwestern Pond Turtle <i>Actinemys marmorata</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1111	Proposed Threatened

AMPHIBIANS

NAME	STATUS
Western Spadefoot <i>Spea hammondi</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5425	Proposed Threatened

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRUSTACEANS

NAME	STATUS
Vernal Pool Fairy Shrimp <i>Branchinecta lynchi</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/498	Threatened

FLOWERING PLANTS

NAME	STATUS
Bakersfield Cactus <i>Opuntia treleasei</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7799	Endangered
San Joaquin Woolly-threads <i>Monolopia (=Lembertia) congdonii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/3746	Endangered

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: Department of Veterans Affairs
Name: Christine Modovsky
Address: c/o 810 Vermont Ave. NW (003C)
City: Washington
State: DC
Zip: 20420
Email: christine.modovsky@va.gov
Phone: 2028940988



H. T. HARVEY & ASSOCIATES

Ecological Consultants

50 years of field notes, exploration, and excellence

**U.S. Department of Veterans Affairs
Bakersfield Veterans Affairs
Community-Based Outpatient Clinic**

Biological Study

Project #4800-01

Prepared for:

U.S. Department of Veterans Affairs

through subcontract to:

Kevin Esposito

Concourse Federal Group

13840 Booker T. Washington Highway, Suite C3
Moneta, VA 24121

Prepared by:

H. T. Harvey & Associates

April 2024

Executive Summary

This biological study report has been prepared for the U.S. Department of Veterans Affairs (VA) proposed Bakersfield VA Community-based Outpatient Clinic project location (Project). The primary purpose of this survey is to determine the potential presence of federally or state-protected animal and plant species on the proposed Project site. For purposes of this study report, these species are identified as ‘special-status species’. This study report also describes potential construction and operational activities and analyzes the Project’s potential direct and indirect impacts on special-status species in the project area.

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Contributors

Brian Boroski, Ph.D.
Marianne Huizing, M.S.
Abra Kaiser, B.S

Acronym List

CDFW	California Department of Fish and Wildlife
CNDDDB	California Natural Diversity Database
CNPS	California Native Plant Society
FC	federal candidate
FE	federally listed as endangered
FPT	Federal proposed threatened
FT	federally proposed as threatened
IPaC	Information for Planning and Consultation
km ²	square kilometer
MBHCP	Metropolitan Bakersfield Habitat Conservation Plan
VA	U.S. Department of Veterans Affairs
USFWS	U.S. Fish and Wildlife Service

Section 1.0 Introduction

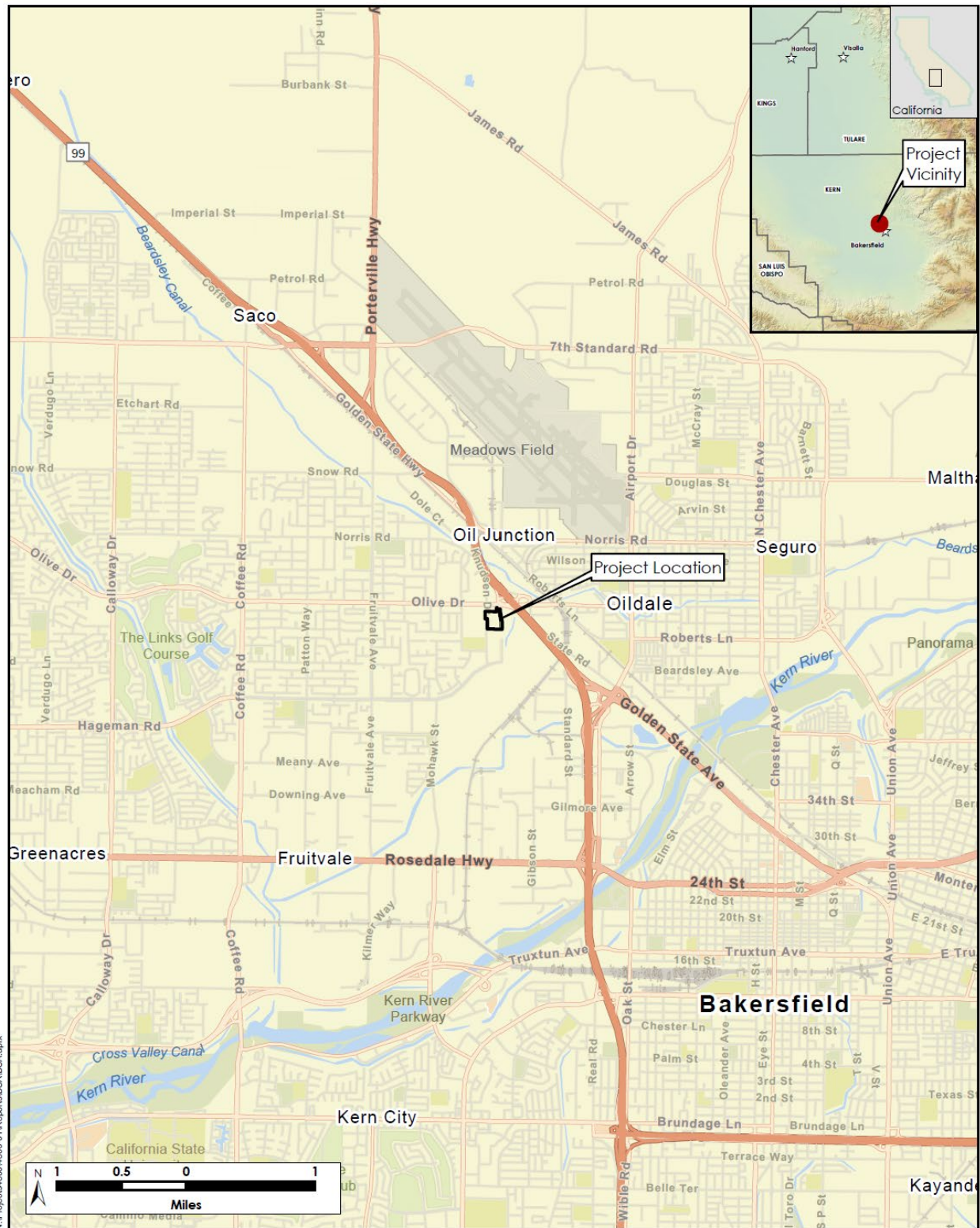
1.1 Proposed Action

The U.S. Department of Veterans Affairs (VA) proposes to construct an approximate 39,648 square foot outpatient facility on approximately 10.1 acres in the City of Bakersfield, California (Figure 1). The proposed location for the VA Community-based Outpatient Clinic (Project) is south of Olive Drive, east of Knudsen Drive, and west of State Route 99 (Figure 2). Commercial and residential areas are to the north, west, and south of the proposed Project site, and ruderal annual grassland is immediately adjacent east of the site. An unnamed canal that runs in a northeast-southwest direction occurs further east of the proposed Project site and beyond the canal is another vacant lot of ruderal annual grassland. Photos of the proposed Project site and vicinity are provided in Appendix A.

1.2 Special-Status Species and Critical Habitats Assessed

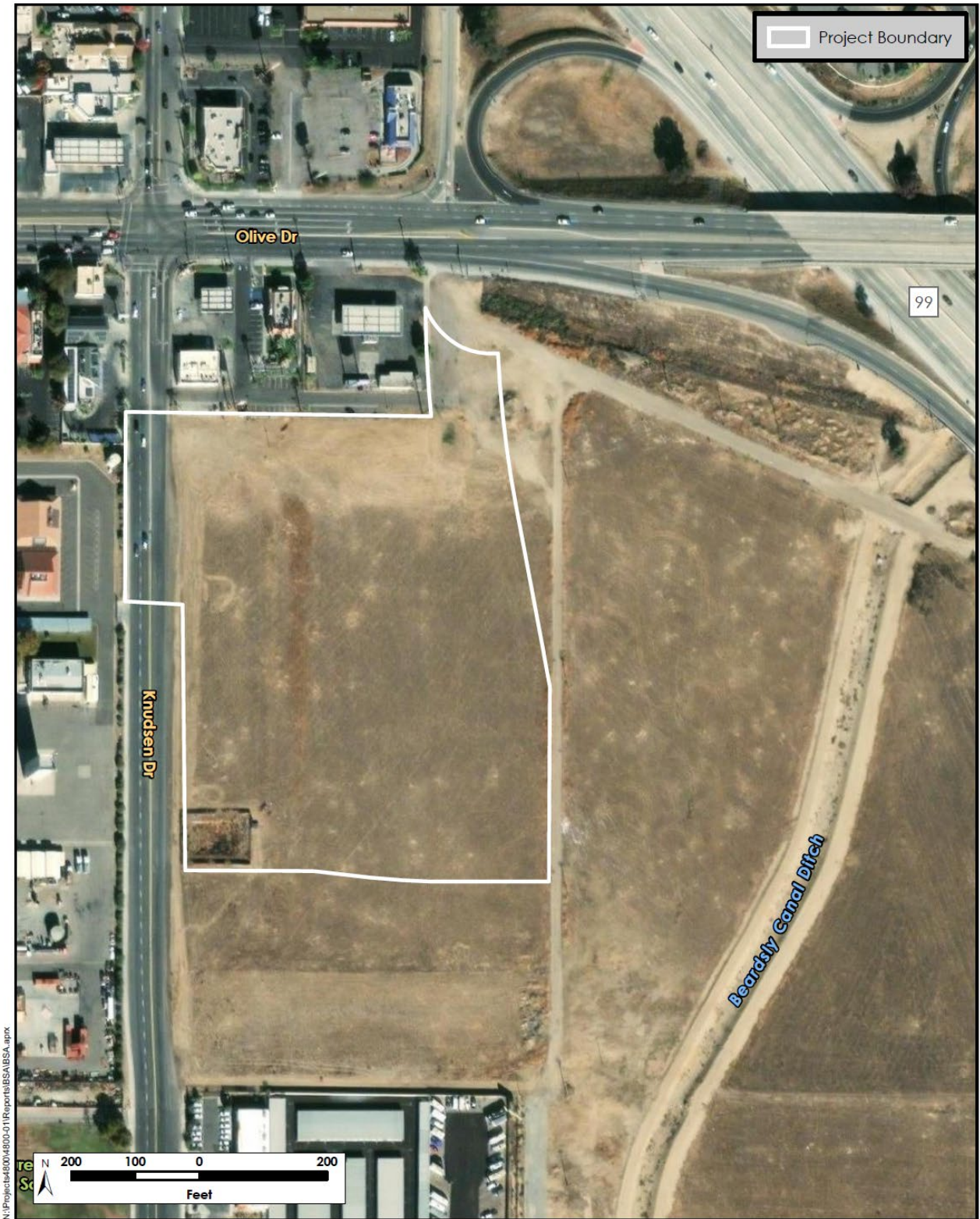
Special-status species assessed for the project were identified through the following means and include federally and state-listed species. A species list for the proposed Project area was obtained from the U. S. Fish and Wildlife Service (USFWS) (Appendix B). Federally listed plant and animal occurrences were generated from queries from the California Department of Fish and Wildlife's California Natural Diversity Database (CNDDB), and a query of California Native Plant Society (CNPS) database (Appendix A). The National Marine Fisheries Service website was queried, but no federally listed species populated for the proposed Project area, which is consistent with the upland nature of the action area. Migratory birds identified through the USFWS Information for Planning and Consultation (IPac) website are included in consideration of species to be impacted by the proposed Project. Designated critical habitat for federally listed species was also considered during this analysis.

State-listed species assessed for the project were obtained by conducting queries of the CNDDB (2024) for special-status animal and plant records within a 5-mile radius of the proposed Project site. A list of rare plants was obtained by conducting a query of the rare plant inventory from CNPS for records that occur within the Oildale quad (#3511941) (Appendix B).



H. T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 1. Vicinity Map
Bakersfield Veterans Affairs Community-based Outpatient Clinic
Biological Study (4800-01)
April 2024



H. T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 2. Project Site

Bakersfield Veterans Affairs Community-based Outpatient Clinic
Biological Study (4800-01)
April 2024

Special-status species identified through this process include the following:

1.2.1 Special-Status Species

Mammals

- American badger (*Taxidea taxus*), (state species of special concern, SSC)
- Buena Vista Lake ornate shrew (*Sorex ornatus relictus*), (federally listed as endangered, FE; SSC)
- San Joaquin kit fox (*Vulpes macrotis mutica*), (FE; state listed as endangered, SE)
- Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), (FE; SE)
- Western mastiff bat (*Ermops perotis californicus*), (SSC)

Birds

- Bald eagle (*Haliaeetus leucocephalus*), (Bald and Golden Eagle Protection Act, BGEPA; SE)
- Burrowing owl (*Athene cunicularia*), (SSC)
- California condor (*Gymnogyps californianus*), (FE; SE)
- Golden eagle (*Aquila chrysaetos*), (BGEPA; state fully protected, SFP)
- Southwestern willow flycatcher (*Empidonax traillii extimus*), (FE; SE)
- Swainson's hawk (*Buteo swainsoni*), (state listed as threatened, ST)
- Yellow-billed cuckoo (*Coccyzus americanus*), (federally listed as threatened, FT; SE)

Reptiles and Amphibians

- Bakersfield legless lizard (*Anniella grinnelli*), (SSC)
- Blunt-nosed leopard lizard (*Gambelia silus*), (FE; SE)
- California glossy snake (*Arizona elegans occidentalis*), (SSC)
- Northwestern pond turtle (*Actinemys marmorata*), (federally proposed as threatened, FPT)
- Western spadefoot (*Spea hammondi*), (FPT; SSC)

Invertebrates

- Crotch's bumble bee (*Bombus crotchii*), (state candidate, SC)
- Monarch butterfly (*Danaus plexippus*), (federal candidate, FC)
- Vernal pool fairy shrimp (*Branchinecta lynchi*), (FT)

Plants

- Bakersfield cactus (*Opuntia treleasei*), (FE; SE, 1B.1, S2)

- California jewelflower (*Caulanthus californicus*), (FE; SE, 1B.1, S1)
- California satintail (*Imperata brevifolia*), (2B.1, S3)
- Cottony buckwheat (*Eriogonum gossypinum*), (federally delisted, FD; 4.2, S3S4)
- Horn's milk-vetch (*Astragalus hornii* var. *hornii*), (1B.1, S1)
- Hispid salty bird's beak (*Chloropyron molle* ssp. *hispidum*), (1B.1, S1)
- Hoover's eriastrum (*Eriastrum hooveri*), (FD; 4.2, S3)
- Recurved larkspur (*Delphinium recurvatum*), (1B.2, S2)
- San Joaquin bluecurls (*Trichostema ovatum*), (4.3, S3)
- San Joaquin woollythreads (*Monolopia congdonii*), (FE; 1B.2, S2)
- Tejon poppy (*Eschscholzia lemmonii* ssp. *kernensis*), (1B.1, S2)

1.2.2 Critical Habitat

The proposed Project site does not fall within any designated critical habitat for federally and state-listed species.

1.3 Authorities and Discretion

As a federally funded project, VA must evaluate potential project impacts on the federally listed special-status species to meet the requirements pursuant to Section 7(a)(2) of the federal Endangered Species Act, as amended (16 U.S.C. § 1531 et seq.), and its implementing regulations (50 C.F.R. § 402.1 et seq.). To support review of the proposed Project under the National Environmental Policy Act, VA is evaluating potential Project impacts to both federally and state-listed special status species.

1.4 Consultation History and Resource Agency Coordination

Species lists were obtained from Sacramento USFWS office, USFWS IPaC, CNDDDB, and CNPS (Appendix A), to inform this assessment. The National Marine Fisheries Service website was queried, but no listed species populated for the action area. VA initiated formal consultation with USFWS on June 11, 2020. In response to the request, the USFWS reviewed the Project and deemed that the Project was consistent with the development activities covered in the Metropolitan Bakersfield Habitat Conservation Plan (MBHCP). However, the MBHCP expired in 2023, before Project construction was initiated and is no longer available. Thus, VA began informal discussions with the USFWS in mid-September 2023 to reinstate consultation pursuant to the Endangered Species Act and continuing with a follow-up discussion on January 18, 2024, seeking input on mitigating for loss of habitat for San Joaquin kit fox.

1.5 Study Methods

1.5.1 Prior Studies

1.5.1.1 ECORP Study

ECORP Consulting (ECORP) conducted a literature review of federally and state-listed species for the proposed Project site. Eleven federally and/or state-listed endangered and threatened species (Bakersfield cactus, San Joaquin woollythreads, vernal pool fairy shrimp, California red-legged frog, blunt-nosed leopard lizard, giant garter snake, delta smelt, southwestern willow flycatcher, western yellow-billed cuckoo, San Bernadino kangaroo rat, and San Joaquin kit fox) were identified in the USFWS IPaC system as potentially occurring in the area of the proposed Project site. On June 10, 2020, an ECORP biologist conduct a field survey of the proposed Project site by traversing on foot across the entire site. At the time of the survey, the site was described as highly disturbed and vegetation consisted of non-native grasses and weeds. None of the 11 special-status species or sign of the species were observed during the field survey. Based on the literature research and site conditions, ECORP determined the project would have “No Effect” for ten of the special-status species and determined a finding of “May Effect, Likely to Adversely Affect” for San Joaquin kit fox. Although San Joaquin kit fox was not observed and there was no evidence (i.e. scat, tracks, or prey remains) of kit fox occurring in the area, the biologist observed several occupied California ground squirrel (*Otospermophilus beecheyi*) burrow complexes that could be potential dens for kit fox. Based on the design of the proposed Project, these burrow complexes would not be avoidable.

1.5.1.2 Noel and McCormick Study

Noel and McCormick conducted a literature review for federally and state-listed species classified as endangered, threatened, rare, fully protected, and candidate species. The literature review also included state species of special concern and migratory birds. On October 26, 2021, biologist Erika Noel surveyed the proposed Project site by walking belt transects spaced at 50 to 75 feet in potential habitat for special-status species. A 100-foot buffer was walked where accessible and areas not accessible were visually scanned using binoculars. Field notes listed all observed plant and wildlife species observed. Supporting documentation regarding species findings included indirect observations (e.g., aurally) or direct observations and/or significant species *sign* (e.g., scat, tracks, feather/fur, prey remains, nests/burrows or any other indication of wildlife presence) deemed necessary to document potential occupation and habitat suitability. The literature review identified 9 special-status plant species (horn’s milk-vetch, California jewelflower, hispid salty bird’s-beak, hoover’s eriastrum, cottony buckwheat, California satintail, San Joaquin woollythreads, Bakersfield cactus, and San Joaquin bluecurls) and 11 special-status wildlife species (Crotch’s bumble bee, western spadefoot, Bakersfield legless lizard, California glossy snake, blunt-nosed leopard lizard, burrowing owl, Swainson’s hawk, Tipton kangaroo rat, western mastiff bat, American badger, and San Joaquin kit fox). At the time of the survey, the proposed Project site was almost devoid of vegetation. No special-status plants were observed during the survey, although the survey was not conducted during their blooming or phenological period. Even so, Noel and McCormick concluded that there is “no potential” for the special-status plants to occur at the proposed Project site because of the high level of historic and current disturbance of the site. Of the 11 special-status

wildlife species, they determine there was no potential for 6 of the species to occur because the proposed Project site lacked suitable habitat for the 6 species: western spadefoot, California glossy snake, blunt-nosed leopard lizard, Swainson's hawk (nesting), Tipton kangaroo rat, and western mastiff bat. They determined the potential for Bakersfield legless lizard to occur was low and it is not expected, because the site lacked suitable cover for the species and soils are dry. Burrowing owl and American badger were deemed to have a low potential to occur on the site. Although there were suitable burrows for burrowing owls, there was no sign of whitewash, and while American badgers use a variety of habitats, the site had been regularly disked making it unsuitable for badgers. They identified there was moderate potential for Crotch's bumble bee to occur on the site. The presence of burrows and annual grassland provide suitable habitat for Crotch's bumble bee, although suitable flowering resources were marginal. Occurrence of San Joaquin kit fox on the proposed Project site was determined to have moderate potential because habitat was suitable for kit fox denning and foraging. Even though San Joaquin kit fox and sign (i.e., scat, tracks) was not observed at the time of their field survey, they identified 27 ground squirrel burrows met the size criteria for potential kit fox dens.

1.5.2 Current Study

H. T. Harvey & Associates completed a concise, reconnaissance-level special-status biological resources study of the parcel. The study consisted of two components: a desk-based review of existing data sources and two field-based surveys. The desk-based assessment include a review of all readily available biological data sources for the parcel, including color aerial photography, the National Wetlands Inventory, and similar existing biological databases that catalogue known locations of sensitive natural communities (e.g., wetlands) along with sensitive species of plants, fish, and wildlife. The two field surveys occurred on December 15, 2023. H. T. Harvey & Associates biologist Colin Wilkinson conducted a reconnaissance-level pedestrian survey of the entire parcel and within 500 feet of the parcel to the north, south, and east. Concurrently, a highly trained scent detection dog team (one dog and handler) covered the proposed Project parcel and same 500-foot buffer area for San Joaquin kit fox scat. Additional information describing the survey methodologies and results can be found in Appendix B.

Section 2.0 Proposed Agency Action and Environmental Baseline

2.1 Description and Location of the Proposed Action Location

The proposed action is to construct an approximately 39,648-square foot medical outpatient facility on 10.1-acres to serve as a VA Community-based Outpatient Medical Clinic. There would be associated parking, an ambulatory pick-up area, a covered drop-off area, bicycle racks, an outdoor physical therapy area, an outdoor dining area, and an elevated loading dock. The proposed Project site would be landscaped along the boundary, around the building, and throughout the parking area. There is also a proposal for development of a healing garden with a path and benches on the east side of the building.

The proposed action is located in Kern County, California, at coordinates 35.41008 -119.05767 in Section 15, Township 29S, Range 27E in quadrangle Oildale (Figure 1). The proposed action is in an area of fragmented open space and development, and is situated south of Olive Drive, east of Knudsen Drive, and west of State Route 99.

2.2 Environmental Baseline

The proposed Project site is a parcel of approximately 10.1 acres of ruderal grassland, which had been recently tilled at the time of the field survey on December 15, 2023 and consequently limited vegetation was present. The area east of the unnamed canal was recently burned. The vacant parcel east of the Project and west of the canal was composed of ruderal grassland predominantly comprised of “wild oat and annual brome grassland – Herbaceous Semi-natural Alliance” (Sawyer et al. 2009) dominated by ripgut (*Bromus diandrus*) and red brome (*Bromus rubens*) grassland with scattered patches of upland mustard (*Brassica nigra*) and to a lesser extent Tournefort’s mustard (*Brassica tournefortii*) with patches of other species such as Russian thistle (*Salsola tragus*), London rocket (*Sisymbrium irio*) and oriental hedge mustard (*Sisymbrium orientale*), tumbleweed (*Amaranthus albus*), puncture vine (*Tribulus terrestris*), and Jimson weed (*Datura wrightii*).

Adjacent land uses include transportation corridors, residential and commercial development, and vacant parcels of ruderal grassland. Habitat conditions are highly disturbed. The level of disturbance (e.g., disked land) and surrounding land uses make the habitat highly unsuitable for all but one species on the USFWS species list (Appendix A) and contributes to their absence from the area. This exception is habitat for an urban population of San Joaquin kit fox that is known to occur, and is well studied, within the City of Bakersfield (Cypher 2010, Cypher et al. 2022).

Similarly, all but four state-listed species (Appendix A) are considered absent from the proposed Project area because the disturbed habitat conditions were unsuitable for the species and surrounding land uses prohibited species from using the area. The four exceptions for state-listed species includes American badger, burrowing owl, Swainson’s hawk, and Crotch’s bumble bee. Although there are no recorded occurrences of American

badger, burrowing owl, Swainson's hawk, and Crotch's bumble bee within the proposed Project site, the site has suitable habitat for American badger, burrowing owl, and Crotch's bumble bee; the site is also near suitable nesting habitat for Swainson's hawk and provides limited foraging habitat for Swainson's hawk.

2.3 Survey Results

Noel and McCormick (2022) determined that no special-status plant species listed in Section 1.5.1.2 were expected to occur on the proposed Project site because of historic and current disturbance. Based on habitat conditions they observed, they concluded that burrowing owl, American badger, Bakersfield legless lizard, Crotch's bumble bee, and San Joaquin kit fox have the potential to occur on the site. Noel's and McCormick's conclusion that there was potential for San Joaquin kit fox to occur on the site agreed with the previous finding by ECORP (2020), who also determined that potential habitat for kit fox existed on the site. Note ECORP only considered federally and state-listed endangered and threatened species in their study, so that they did not draw conclusions about burrowing owl, American badger, Bakersfield legless lizard, and Crotch's bumble bee. A recent letter (Lauer and Hall 2023) reported the presence of San Joaquin kit fox scat on or adjacent to the proposed Project site, consistent with findings of H. T. Harvey & Associates surveys in December 2023 (Appendix B). No active San Joaquin kit fox dens were observed on the Project site; however, the scent-detection dog detected San Joaquin kit fox scat in two separate locations within 500 feet of the Project site, nearer the Beardsley canal. In addition, 10 California ground squirrel burrows were observed on site of sufficient size (i.e., ≥ 4 inches) to be readily converted by San Joaquin kit fox into escape dens. H. T. Harvey & Associates also concluded that American badger, burrowing owl and Crotch's bumble bee could occur on the proposed Project site because there was suitable habitat for the species. Although there is no suitable nesting habitat for Swainson's hawk on the proposed Project site, there is suitable nesting habitat within 0.25 miles of the site. However, H. T. Harvey & Associates did not concur with Noel and McCormick (2022) that Bakersfield legless lizard could occur on the site because the proposed Project site was considered unsuitable for Bakersfield legless lizard as the site is regularly disked and lacked cover for the species. H. T. Harvey & Associates did conclude that rare plant species would likely not occur on the site, because of the level of past and current disturbance as Noel and McCormick (2022) had noted in their study.

Section 3.0 Effects of the Action

3.1 Potential Effects of the Proposed Project

The following species are absent from the Project site: American badger, Buena Vista Lake ornate shrew, Tipton kangaroo rat, western mastiff bat, bald eagle, California condor, southwestern willow flycatcher, Swainson's hawk (nesting), yellow-billed cuckoo, Bakersfield legless lizard, blunt-nosed leopard lizard, California glossy snake, northwestern pond turtle, western spadefoot, monarch butterfly, vernal pool fairy shrimp, Bakersfield cactus, California jewelflower, California satintail, cottony buckwheat, hispid salty bird's beak, hoover's eriastrium, horn's milk-vetch, San Joaquin bluecurls, San Joaquin woollythreads and Tejon poppy (Table 1). The Project site is either out the species range, or no suitable habitat is present on the Project because required habitat (i.e., vernal pools) does not exist or the upland conditions are too degraded and/ or isolated to support the species.

3.1.1 Crotch's Bumble Bee

Crotch's bumble bee is under state review as a candidate endangered species and has the potential to occur on the proposed Project site. No critical habitat has been designated for this species and there no recovery plan at this time.

Crotch's bumble bee has a relatively limited distribution; it primarily occurs in California, southwestern Nevada, and northern Baja California, Mexico (CDFW 2019). In California, the species historically occurred throughout most of the southern two-thirds of the state (Williams et al. 2014) and was most abundant in the Central Valley, however, current records are mostly from the southern coastal areas. The two CNDDDB records (2024) within 5 miles of the proposed Project site are from 45 or more years ago, but there are two recent records from a collaborative, crowd-sourced website of Crotch's bumble bee within the vicinity of the site (Bumble Bee Watch 2024).

The three main habitat requirements for bumble bees are flowering plants with pollen and nectar, nest sites, and overwintering sites (Hatfield et al. 2012). Crotch's bumble bee occurs primarily in areas dominated by grassland and scrub habitats, although it also occurs in other habitats provided the three main habitat requirements are present. They typically nest underground, such as in ground squirrel burrows (Williams et al. 2014), but may also nest above ground in old bird nests or empty tree cavities. The queen bees overwinter in cavities below ground or in loose soil and leaf litter, or occasionally in other refugia such as wood piles or rock walls. Queen bees emerge from their nest between the months of February through June, with a peak in March. When the queen bees emerge, they search for new nest sites with resources to build their colony. Between March and September the worker bees are active; male reproductive are present between May and September with a peak in July (Williams et al. 2014, Thorpe et al. 1983). New queen bees are produced from July to September as the colony dies off (Williams et al. 2014). Ground disturbance and vegetation removal associated

with construction of the proposed Project has the potential to impact individuals or nests of Crotch's bumble bee.

Table 1. Special-Status Species and Potential to Occur

Species	Scientific Name	Listing Status ¹	Presence of Species in Action Area (Yes/No)	Presence of Critical Habitat in Action Area (Yes/No)	Potential to Occur
Mammals					
American badger	<i>Taxidea taxus</i>	-/SSC	No	No	May occur, site is highly disturbed by human presence and has been periodically disked.
Buena Vista Lake ornate shrew	<i>Sorex ornatus relictus</i>	FE/SSC	No	No	Absent. No suitable habitat present. The soil lacks soil moisture, leaf litter and debris.
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	FE/SE	Yes	No	Present. Suitable habitat for Bakersfield kit fox population is present and scat was detected. Prey base is present, as are potential burrows.
Tipton kangaroo rat	<i>Dipodomys nitratoides nitratoides</i>	FE/SE	No	No	Absent. No suitable habitat present. Site consists of ruderal grassland and has been periodically disked.
Western mastiff bat	<i>Ermops perotis californicus</i>	-/SSC	No	No	Absent. No suitable roosting habitat present. Foraging habitat limited.
Birds					
Bald eagle	<i>Haliaeetus leucocephalus</i>	BGEPA/SE	No	No	Absent. No suitable nesting or foraging habitat.
Burrowing owl	<i>Athene cunicularia</i>	-/SSC	No	No	May occur, suitable burrows are present.
California condor	<i>Gymnogyps californianus</i>	FE/SE, SFP	No	No	Absent. No suitable habitat present and outside of the species range.
Golden eagle	<i>Aquila chrysaetos</i>	BGEPA/SFP	No	No	Absent. No suitable nesting habitat or foraging habitat present. Site is too disturbed by human presence.
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	FE, SE	No	No	Absent. No suitable nesting or foraging habitat present.

Species	Scientific Name	Listing Status ¹	Presence of Species in Action Area (Yes/No)	Presence of Critical Habitat in Action Area (Yes/No)	Potential to Occur
Swainson's hawk	<i>Buteo swainsoni</i>	-/ST	No	No	May occur. No suitable nesting habitat on the proposed Project site, however, suitable nesting habitat is within 0.25 miles of the site. Although limited, foraging habitat is present.
Yellow-billed cuckoo	<i>Coccyzus americanus</i>	FE/SE	No	No	Absent. No suitable nesting or foraging habitat present.
Reptiles and Amphibians					
Bakersfield legless lizard	<i>Anniella grinnelli</i>	-/SSC	No	No	Absent. No suitable habitat present. The site lacks sandy soil and suitable cover (e.g., leave litter).
Blunt-nosed leopard lizard	<i>Gambelia sila</i>	FE/SE	No	No	Absent. Burrows are present, but the site has been periodically disked and too small to support a population of the species.
California glossy snake	<i>Arizona elegans occidentalis</i>	-/SSC	No	No	Absent. No suitable habitat present.
Northwestern pond turtle	<i>Actinemys marmorata</i>	FPT	No	No	Absent. No suitable habitat present.
Western spadefoot	<i>Spea hammondi</i>	FPT/SSC	No	No	Absent. No suitable habitat present.
Invertebrates					
Crotch's bumble bee	<i>Bombus crotchii</i>	-/SC	No	No	May occur. Although burrows are present, flowering plants are limited.
Monarch butterfly	<i>Danaus plexippus</i>	FC/-	No	No	Absent. No suitable habitat present. Site has been periodically disked and few flowering plants are present.
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	FT/-	No	No	Absent. No suitable habitat present.
Plants					
Bakersfield cactus	<i>Opuntia treleasei</i>	FE/SE, 1B.1, S1	No	No	Absent. No suitable habitat present. Site has been periodically disked.

Species	Scientific Name	Listing Status ¹	Presence of Species in Action Area (Yes/No)	Presence of Critical Habitat in Action Area (Yes/No)	Potential to Occur
California jewelflower	<i>Caulanthus californicus</i>	FE/SE, 1B.1, S1	No	No	Absent. No suitable habitat. Site has been periodically disked.
California satintail	<i>Imperata brevifolia</i>	-/2B.1, S3	No	No	Absent. No suitable habitat. Site has been periodically disked.
Cottony buckwheat	<i>Eriogonum gossypinum</i>	-/4.2, S3S4	No	No	Absent. No suitable habitat. Site has been periodically disked.
Hispid salty bird's-beak	<i>Chloropyron molle</i> ssp. <i>hispidum</i>	-/4.2, S3	No	No	Absent. No suitable habitat. Site has been periodically disked.
Hoover's eriastrum	<i>Eriastrum hooveri</i>	-/4.2, S3	No	No	Absent. No suitable habitat. Site has been periodically disked.
Horn's milk-vetch	<i>Astragalus hornii</i> var. <i>hornii</i>	-/1B.1, S1	No	No	Absent. No suitable habitat. Site has been periodically disked.
Recurved larkspur	<i>Delphinium recurvatum</i>	-/1B.2, S2?	No	No	Absent. No suitable habitat. Site has been periodically disked.
San Joaquin bluecurls	<i>Trichostema ovatum</i>	-/4.2, S3	No	No	Absent. No suitable habitat. Site has been periodically disked.
San Joaquin woollythreads	<i>Monolopia congdonii</i>	FE/1B.2, S2	No	No	Absent. No suitable habitat present. Site has been periodically disked.
Tejon poppy	<i>Eschscholzia lemmonii</i> ssp. <i>kernensis</i>	-/1B.1, S2	No	No	Absent. No suitable habitat present. Site has been periodically disked.

¹ Status definitions:

FC = federal candidate
FD = federally delisted
FE = federally listed as endangered.
FT = federally listed as threatened.
FPT = federal proposed as threatened
BGEPA =Bald and Golden Eagle Protection Act
SC = state candidate

California Rare Plant Rank definitions:

1B = rare, threatened, or endangered in California and elsewhere.
.1 = seriously threatened in California
.2 = fairly endangered in California
4.2 = limited distribution

State Rank

S1 = critically imperiled
S2 = imperiled
S3 = vulnerable

SE = state listed as endangered
SFP = state fully protected species
ST = state listed as threatened
SSC = state species of special concern

3.1.2 Burrowing Owl

Burrowing owls are designated as a species of special concern by CDFW. Campaigns against burrowing mammals that provide nest sites for burrowing owls and habitat loss to development by humans (Zarn 1974) are principal factors suspected in population declines. In California, the burrowing owl has been designated as a species of special concern, owing to diminishing habitats and associated population declines (CDFG 1995). Burrowing owls are partially dependent upon fossorial mammals for nesting and roosting burrows. In California, common mammalian commensals include badgers and, in particular, California ground squirrels. The species may also use man-made structures such as culverts; cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement (CDFG 1995). The breeding season extends from February 1 through August 31 (CBOC 1993, CDFG 1995, CDFG 2012). Burrowing owls are known to favor areas with short, sparse vegetation (Coulombe 1971, Haug and Oliphant 1990, Plumpton and Lutz 1993), which is the condition typically found in active ground squirrel colonies. Additionally, burrowing owls may select areas that have a high density of available burrows (Plumpton and Lutz 1993). Typical habitats are treeless, with minimal shrub cover and woody plant encroachment, with low vertical density of vegetation and low foliage height diversity. Ideal habitats are maintained in an early successional stage by squirrels or livestock grazing.

Burrowing owls are colonially-nesting raptors, and colony size is indicative of habitat quality. Philopatry and nest burrow reuse by burrowing owls have been well documented (Martin 1973, Gleason 1978, Plumpton and Lutz 1993). In fact, burrowing owls often return as breeding adults to the general area in which they were born, or to their actual natal burrows, and the maintenance of former nest sites may be more important to continued reproductive success than are mates from previous nest attempts (Plumpton and Lutz 1993).

Burrowing owl presence on the project site is possible. There are five CNDDDB (2024) records of the species within 5.0 miles of the project area between 1987 and 2004. The proposed Project site contains California ground squirrel burrows that burrowing owls might use for shelter or nesting. Although no burrowing owls were observed during the site surveys, the burrows on the site may be used temporarily or intermittently. Ground disturbance and destruction of the burrows associated with construction of the proposed Project has the potential to impact individual and breeding burrowing owls.

3.1.3 Swainson Hawk

Swainson's hawk is listed as threatened under the CESA. The species was listed by the State of California in 1983 due to population declines likely precipitated by significant losses of riparian habitat and conversion of open foraging habitats to developed lands (Woodbridge 1998, Bechard et al. 2020). Swainson's hawks are distributed throughout western North America during the breeding season, but in California they are primarily limited to the Central Valley and the southeastern Great Basin region (Woodbridge 1998). Swainson's hawks in California are strongly associated with riparian habitats, although they are also found in oak woodlands and other open habitats (Woodbridge 1998, Smallwood 1995, Bechard et al. 2020). Prime breeding habitat for Swainson's hawk encompasses riparian draws or clumps of trees surrounded by open grassland, agricultural areas (including alfalfa, wheat, and row crop fields), or oak savannah with a high density of rodents for foraging (England et al. 1997, Woodbridge 1998, Bechard et al. 2020). The species will also nest in areas with frequent

human use such as farm equipment lots, rural residences, wind rows, and urban areas in the Central Valley where suitable nest trees are available. The Central Valley populations breed and nest in the late spring through early summer before migrating to Central and South America for the winter (Shuford and Gardali 2008). Swainson's hawks build stick nests in willows, box elders (*Acer negundo*), oaks (*Quercus* spp.), black walnuts (*Juglans nigra*), or other trees, breeding from early March through July (Bechard et al. 2020). Swainson's hawks are neotropical migratory birds, flying south after the breeding season to spend their winter months on the Pampas of Argentina (Canavelli et al. 2003, Bechard et al. 2020). Stresses on winter populations, including pesticide poisoning, on the winter grounds have contributed to declines in North American breeding populations.

There is one CNDDB (2024) record from 1935 within a 5-mile radius of the site. There is no suitable nesting habitat for Swainson's hawk within the proposed Project site. Suitable foraging habitat, although limited is present. There is suitable nesting habitat for Swainson's hawk within 0.25 miles of the site; if Swainson's hawk nest at that location, there is a potential for the species to be negatively impacted during the construction phase as the species is susceptible to disturbance while nesting, which could result in nest abandonment. .

3.1.4 American Badger

The American badger is a CDFW species of special concern. The species is a stocky, burrowing mammal that occurs in grassland habitats throughout the western United States. Badgers can have large territories, up to 21,000 acres in size, with territory size varying by sex and by season. They are strong diggers and feed primarily on other burrowing mammals, such as ground squirrels. In central California, American badgers typically occur in annual grasslands, oak woodland savannas, semi-arid shrub/scrublands, and any habitats with stable ground squirrel populations or other fossorial rodents (i.e., ground squirrels, gophers, kangaroo rats (genus *Dipodomys*), and chipmunks [Zeiner et al. 1990]). They occur to a lesser extent in agricultural areas, where intensive cultivation inhibits den establishment and reduces prey abundance. Badgers are primarily nocturnal, although they are often active during the day. They breed during late summer, and females give birth to a litter of young the following spring.

There is a low potential for American badger to occur on the proposed Project site. The one CNDDB record of this species within 5.0 miles of the site is from 1900. No dens were not observed during field surveys, but the species occurs in a variety of habitats and can have very large home ranges; in the Central Coast of California home ranges were as large as 24.82 km² (Quinn 2008). Although American badger is unlikely to den at the site, construction has the potential to impact individual badgers foraging for prey should they occur onsite.

3.1.5 San Joaquin Kit Fox

The San Joaquin kit fox, which is federally listed as endangered and state listed as threatened, has been documented to use the site. No critical habitat has been designated for this species, but the species is addressed in the Recovery Plan for Upland Species of the San Joaquin Valley (USFWS 1998). In 2010, the USFWS issued the San Joaquin Kit Fox (*Vulpes macrotis mutica*) 5-Year Review: Summary and Evaluation (USFWS 2010). This

5-year review recommended no change to the federal status of the species. Descriptions of the species' physical characteristics can be found in the Recovery Plan for Upland Species of the San Joaquin Valley (USFWS 1998).

Currently, San Joaquin kit fox occurs in areas of suitable habitat on the floor of the San Joaquin Valley and in the surrounding foothills of the Coast Ranges, Sierra Nevada, and Tehachapi Mountains, from Kern County north to Contra Costa, Alameda, and San Joaquin counties (USFWS 1998, 2010). There are known occurrences in Alameda, Contra Costa, Fresno, Kern, Kings, Madera, Merced, Monterey, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, and Tulare counties (CDFW 2024).

San Joaquin kit fox commonly occur in the city of Bakersfield and to a lesser extent are present in Taft and Coalinga (Cypher 2010). San Joaquin kit fox use a diversity of land cover types within the urban environment of the City of Bakersfield, including school and church campuses, maintained open space such as parks and golf courses), low to medium density residential areas, and commercial areas (Cypher 2010, Cypher et al. 2022). While all of these areas may be used for foraging, denning, and rearing offspring (Cypher 2010, Deatherage et al. 2021), in general, San Joaquin kit fox use areas with campuses and other open spaces to a greater extent. Areas with high densities of paved roads, particularly larger roads with four or more lanes appear to be avoided due to increased disturbance and mortality risk (Bjurlin et al. 2005; Cypher et al. 2022, Deatherage et al. 2021).

The San Joaquin kit fox population within the City of Bakersfield exhibits high survival and reproductive rates, and does not appear to exhibit the dramatic fluctuations observed among populations in native habitats, likely due to more consistent and abundant food resources (Cypher 2010). Cypher et al. (2022) discussed that urban habitats appear to support higher densities of San Joaquin kit fox, and based upon the conceptual carrying capacity in Bakersfield, estimated that 561 foxes could be supported within the 357-square-kilometer (km²) area. Based upon the conceptual carrying capacity, Cypher et al. (2022) estimated the density of kit foxes in Bakersfield to be 1.57 adult San Joaquin kit fox per km² and density estimates could be as high as 2.56 adult foxes per km² based upon a mean home range size of 0.78 km². A higher density of San Joaquin kit fox may imply a greater likelihood of population persistence as larger populations generally have lower risk of extinction (Frankham et al. 2017).

Based upon these density estimates, construction and operation of the proposed Project could directly affect approximately five percent of an average home range for a San Joaquin kit fox in the City of Bakersfield. Since no active dens have been observed on the site, Project effects are most likely to result in an increased risk of vehicle collision due to increase traffic associated with the Medical Clinic and direct and cumulative impacts on foraging and escape cover, although prey abundance and escape den opportunities on the Project site have been limited by land management activities. Besides development of the VA Outpatient Clinic, the Hageman Flyover project that has been approved by the city and the Hageman Industrial Park that is currently undergoing a state-level the Environmental Impact Review are non-federal development projects within the vicinity of the VA Outpatient Clinic that will contribute to cumulative effects on San Joaquin kit fox. The cumulative effect from the proposed Project and other non-federal proposed project would cumulatively impact San Joaquin kit fox in loss of habitat for foraging and denning, as well as loss of a corridor to other areas within the city that provide suitable habitat for urban kit foxes.

Furthermore, during Project construction San Joaquin kit foxes could traverse the Project site and be harmed, injured, or killed by construction vehicles, personnel, or equipment. Kit foxes occur on and in the vicinity of the Project, so even though the species is largely nocturnal, kit foxes may move through the area while construction activities are actively occurring. Human-made structures such as culverts or pipes that are stored or built onsite may be used as dens (USFWS 1998), and there is a chance that an individual kit fox hiding under stored materials may be injured or killed if the materials are moved. Therefore, even though the Project site represents a fraction of the average area (i.e., home range) used by kit foxes, they are known to occur and may be present during the construction phase of the project.

Injury and death of San Joaquin kit fox may occur as a result of the following:

- Increased vehicular traffic in the Project vicinity and at the Project site by construction vehicles, increasing the chance of vehicle strikes. Most construction activities would occur during daylight hours, but nighttime work may be required to maintain the Project schedule and to complete activities that require extended continuous work periods. Anticipated nighttime activities could include security patrols, deliveries, extended construction activities, testing and commissioning, and emergency response.
- Operation of construction equipment.
- Destruction or disturbance of escape dens, should they be established, may disturb San Joaquin kit foxes. Further effects may occur as a result of the collapse of burrows from vehicular traffic or excavation of burrows with kit fox inside.
- Entrapment within trenches or holes dug during construction and that are left accessible overnight.
- Increased use of the site by predators (e.g., domestic dogs) attracted to the project site by trash discarded by construction personnel.
- Accidental spills of fuels, lubricants, and industrial chemicals that could directly poison kit foxes or their prey, resulting in indirect poisoning.

In addition to the effects listed above, San Joaquin kit foxes also could be disturbed by vehicle traffic, ground vibrations, noise, grading, soil compaction, or worker activity, and these activities could increase the potential for predation on the San Joaquin kit foxes. However, San Joaquin kit foxes show considerable tolerance to many types of construction activities, particularly urban kit fox populations acclimated to human activity.

There would be permanent habitat loss where associated buildings, parking lots, and access roads are developed; however, there would also be increased stability in the form of installed and managed landscaping and a drainage basin. Consequently, although habitat would be modified by construction, San Joaquin kit foxes are anticipated to use the site for foraging and possibly den at the site post construction.

During the operation life of the Project, building and landscape maintenance activities have the potential to disturb and therefore limit use of the site by San Joaquin kit fox. Vehicles or equipment could strike kit foxes

when foxes are moving through or foraging on the project site. The risk would be greatest when it is dark, when their movements are most likely to occur.

Implementation of the conservation measures described below are intended to offset the potential impact to the Bakersfield San Joaquin kit fox population by avoiding take of San Joaquin kit fox, providing more permanent and protective denning opportunities, and improving knowledge transfer about the Bakersfield San Joaquin kit fox population.

3.2 Conservation Measures to be Incorporated into the Proposed Action

The VA proposes to avoid or minimize effects on Crotch’s bumble bee, burrowing owl, American badger, and San Joaquin kit fox and their habitat through the implementation of mitigation measures. Mitigation measures (MM) for Crotch’s bumble bee (Table 2, BIO MM-3 and BIO MM-5) burrowing owl (Table 2, MM BIO-1), and American badger (Table 2, BIO MM-4) were identified in the Final Environmental Impact Report (EIR); no additional measures for Crotch’s bumble bee, burrowing owl, and American badger are identified as a result of the current survey and analysis; implementation of those measures would minimize the impact of the proposed Project on Crotch’s bumble bee burrowing owl, and American badger to be less than significant.

Mitigation measure BIO MM-2 in Table 2 provides recommendation for the protection of migratory birds and Swainson’s hawk. In column 2 of Table 2, this measure is further expounded on with additional specific details for conducting the measure provided in the Final EIR. Implementation of these measures will minimize the impact to migratory nesting birds and Swainson’s hawk to less than significant.

Column 2 of Table 2, lists additional mitigation measures (AMMs) or more detailed information for measures recommended in the final EIR (Table 2, column 1).

Table 2. Mitigation Measures

Final EIR Mitigation Measures	Proposed Additional Mitigation Measures (AMM) and Clarification on EIR Measures
BIO MM-1: Surveys to detect burrowing owls shall be conducted by a professional biologist in consultation with CDFW no more than 30 days prior to any ground disturbance activities on the Project site and can be conducted concurrently with the preactivity surveys required per BIO MM-2, BIO MM-3 and BIO MM-4. Occupied burrows shall not be disturbed during the nesting season (February 1 through September 15) unless a professional biologist verifies through non-invasive methods that either: (1) the birds have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. If burrowing owls are observe using burrows during the surveys, owls shall be excluded from all active burrows through the use of exclusion devices placed in occupied	

Final EIR Mitigation Measures

**Proposed Additional Mitigation Measures (AMM)
and Clarification on EIR Measures**

burrows in accordance with CDFW protocols, Staff Report on Burrowing Owl Mitigation, shall be implemented. In such case, exclusion devices shall not be placed until the young have fledged and are no longer dependent upon the burrow, as determined by a professional biologist. Specifically, exclusion devices, utilizing one-way doors, shall be installed in the entrance of all active burrows. The devices shall be left in the burrows for at least 48 hours to ensure that all owls have been excluded from the burrows. Each of the burrows shall then be excavated by hand and refilled to prevent reoccupation. Exclusion shall continue until the owls have been successfully excluded from the site, as determined by a professional biologist.

BIO MM-2: If vegetation clearing or initial ground disturbing construction activity occurs during the **migratory bird** nesting season (February 1 to September 15) a professional avian biologist shall conduct a nesting bird survey to identify any active nests present within the proposed work area. If active nests are found, initial ground disturbance shall be postponed or halted within a buffer area, established by the professional avian biologist, that is suitable to the particular bird species and location of the nest, until juveniles have fledged or the nest has been abandoned, as determined by the biologist. The construction avoidance area shall be clearly demarcated in the field with highly visible construction fencing or flagging, and construction personnel shall be instructed on the sensitivity of nest areas. Specific to Swainson's hawk, if the Project's vegetation clearing or initial ground-disturbance construction activity will commence during the migratory bird nesting season, the pre-construction nesting bird survey shall follow survey methodology developed by the species' SWHA Technical Advisory Committee (SWHA TAC 2000). If Swainson's hawk is nesting within one-half mile of the Project site, construction activities may not commence unless an ITP is obtained from the CDFW or until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Clarification on BIO MM-2:

- Pre-construction avian surveys will include both migratory birds and locally breeding raptor species
- Surveys will be conducted no more than 14 days prior to construction activities.
- The nesting bird survey will include a 300-foot buffer (where access is granted) to survey for common raptors that may be nesting within 300 feet of the site.

BIO MM-3: Prior to vegetation clearing or initial ground-disturbing construction activities, a professional biologist shall conduct a survey to determine the presence of suitable foraging, nesting, or over-wintering habitat for the **Crotch bumblebee (CBB)** within or immediately adjacent to the work limits. If suitable habitat is present, at least 2 visual surveys shall be conducted by a

Final EIR Mitigation Measures

**Proposed Additional Mitigation Measures (AMM)
and Clarification on EIR Measures**

professional biologist between April 1 and May 30 to detect CBB on or within 100 feet of the work limits prior to vegetation removal/initial ground disturbance. The surveys shall target the peak flowering period of CBB preferred nectar plants and shall be conducted by a professional biologist who is familiar with CBB behavior and life history to determine presence/absence of CBB within one year of vegetation removal/initial ground disturbance. CBB individuals shall only be handled for identification if appropriate authorizations are issued. Surveys shall be conducted under suitable conditions for observation of bumble bees. Methods shall be in accordance agency protocols if issued. If no agency protocols have been issued at the time of the surveys, the following survey parameters will be applied: the professional biologist will walk slow (≤ 2 mph) meandering transects covering all portions suitable habitat; surveys will be conducted no earlier than 2 hours after sunrise and 3 hours before sunset, on mostly sunny days with temperature between 65° and 90°F; surveys will not be conducted on cloudy days ($\geq 90\%$ cloud cover) or under wet or windy conditions (≥ 8 mph). Surveyors will search for bumble bees in flight and potential nest sites.

All potential CBB nests found in small mammal burrows, under thatched grasses, brush piles or other suitable ground locations shall be further examined based on observations of entering or exiting CBB. Observations of potential CBB nest sites shall be conducted for no less than 15 minutes per location where CBB are possibly entering/exiting, or a longer period as determined by the professional biologist. If no CBB or their nests are detected, no further measures will be necessary provided that vegetation removal/initial ground disturbance occurs prior to March 1 of the year following the negative survey. If vegetation/initial ground disturbance does not occur before March 1 of the year following the negative survey, the survey shall be repeated following the above procedure. If CBB is found to be present, BIO MM-5 shall apply.

BIO MM-4: No more than 30 days prior to vegetation clearing or initial ground-disturbing construction activities, pre-construction surveys for **San Joaquin kit fox and American badger** shall be conducted by a professional biologist. The purpose of the preconstruction survey is to provide current biological information in order to implement all avoidance and minimization measures that are required based on any previous observations of special-status species and to update observations

Clarification on BIO MM-4

- Preconstruction survey will include a 250-foot buffer during the San Joaquin kit fox pupping season (February through May) or a 100-foot buffer during all other months (where access is permitted).
 - All San Joaquin kit fox dens observed during the preconstruction survey will be mapped and characterized as to type.
-

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shall any new site occupation by special-status species occur. If any known San Joaquin kit fox dens are detected, implementation of the most recent USFWS protocols (Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance (2011)) is required per BIO MM-5 unless protocols are issued by either CDFW or USFWS that supersede these protocols. If American badger is present, BIO MM-5 shall apply.

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- Den types are defined as:
 - Potential Den: a suitable subterranean den or burrow within the range of San Joaquin kit fox that has an opening of at least 4 inches and for which available evidence is insufficient to conclude whether or not it is currently being used or has been used by San Joaquin kit fox.
 - Known Den: A known den is any existing natural den structure that is in use by San Joaquin kit fox or has historically been used at any time in the past by San Joaquin kit fox.
 - Atypical Den: a manmade structure which is being occupied by San Joaquin kit fox. Atypical dens may include pipes, culverts, and diggings beneath stored materials and structures
 - Natal (or Pupping) Den: A natal den is any den that has historically been used or is currently being used by San Joaquin kit fox to whelp and/or rear pups.
 - All San Joaquin kit fox dens (i.e., potential, known, atypical, and natal) will be mapped and photo documented and described in the preconstruction survey report, which also will include the results of any camera or track medium monitoring. The qualified Biologist will prepare a survey findings report documenting compliance with this measure for submittal to VA to forward to USFWS prior to start of ground-disturbing activities.
 - If potential dens are present, the dens will be monitored for a minimum of four consecutive nights with a trail camera or tracking medium to evaluate den status and determine the presence/absence of San Joaquin kit fox. If there is a risk that cameras may be stolen or vandalized at a site, monitoring may be conducted using tracking medium only with prior concurrence from the USFWS.
 - Minimize Disturbance of Known, Atypical, and Natal Dens during construction. If a known, atypical, or natal den is present within or adjacent to the work area, the following measures will be implemented to minimize disturbance of the den(s) and disruption of San Joaquin kit fox activities:
 - Establish No-Work Exclusion Zone. A non-disturbance exclusion zone will be established around known and atypical dens and a no-work exclusion zone will be established around natal dens. Exclusion
-

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	zones around known and atypical dens will be clearly marked by Environmentally Sensitive Area fencing. Exclusion zone widths may be adjusted based on the conditions of the site with the USFWS' concurrence. ○ Avoid No-work Exclusion Zones. No construction activities will be conducted in the no-work exclusion zones without USFWS concurrence. ○ Conduct Monitoring of Construction Activities. A qualified biologist will be present in the work area to verify compliance with avoidance and minimization measures, including during ground- or vegetation-disturbing activities in or adjacent to Environmentally Sensitive Areas (e.g., occupied or potentially occupied habitat), wildlife exclusion fencing, construction exclusion fencing (exclusion fencing), and no-work zones. Monitoring will be required when trenches or holes are present and when materials stored on site provide potential dens for San Joaquin kit fox.
BIO MM-5: If California or Federal listed threatened or endangered species are found occupying burrows, dens, or nests on the Project site or any such species could be injured or killed due to Project-related activities, the CDFW and/or USFWS (as appropriate) shall be contacted for further guidance. Should either agency determine that incidental take authorization is required prior to construction, the appropriate CESA/FESA authorization shall be obtained by the Project Applicant. CESA and FESA authorizations shall include measures addressing the respective state and/or federal listed species and shall include the following at a minimum: a) Implementation of standardized biological resource protective measures included in BIO MM-4; b) Biological preconstruction surveys conducted by qualified biologists approved by each applicable agency no more than 30 days prior to conducting work on the Project site; c) If any known San Joaquin kit fox dens are detected, implementation of the most recent USFWS protocols (Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance (2011)) unless	Clarification on BIO MM-5: • Implement Passive Deterrence. If construction activities cannot avoid an active known or atypical den or the no-work exclusion zone around it, the project implementation team may initiate passive, non-injurious measures that result in minor alterations in behavior after receiving concurrence from the USFWS. • Implement Den Excavation. Dens in the Project footprint may be excavated under the direct supervision of a qualified biologist the next day after no San Joaquin kit fox are detected for a minimum of four consecutive nights of den monitoring using trail cameras. If there is a risk that cameras may be stolen or vandalized at a site, monitoring may be conducted using tracking medium only with prior concurrence from the USFWS. If a San Joaquin kit fox is observed at the den during the monitoring period, the den will continue to be monitored until at least four consecutive nights have passed without San Joaquin kit fox detection at the den. If the San Joaquin kit fox does not leave the den, the Project may initiate passive harassment measures. After a den is determined to be unoccupied as confirmed through four consecutive nights of den monitoring or one night of monitoring after the initiation of passive harassment, it may be

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protocols are issued by either CDFW or USFWS that supersede these protocols. d) Destruction of San Joaquin kit fox dens shall follow the monitoring and excavation procedures in USFWS (2011). e) If CBB individuals or nests are detected during any surveys conducted per BIO MM-3, and the CBB remains a state candidate species or is listed under CESA, the Project Applicant shall obtain take authorization from CDFW prior to vegetation removal/initial ground disturbance. A CBB Mortality Reduction Plan shall be submitted for CDFW approval no less than 30 days prior to initial vegetation removal or ground disturbance and the Plan shall contain the following information at a minimum: • Active CBB nests shall be avoided by 50 feet. If CBB nests cannot be avoided, the Plan shall include seasonal restrictions for disturbance within 50 feet of any nest and procedures for determining when nest impacts will be minimized. • Vegetation removal/initial ground disturbance shall be limited to the period when impacts to individual CBB that may be underground will be minimized (e.g., after nests have become inactive). • Prior to vegetation removal/initial ground disturbance, small mammal burrows that may harbor overwintering CBB queens shall be excavated by hand. The Plan shall include timing and excavation methods. In addition, the Plan shall include procedures for handling and disposition of CBB if encountered during burrow excavations. • The Plan shall include procedures for handling and disposition of individual CBB if they are encountered in the work limits or on construction equipment during construction activities. f) Biological monitoring of initial ground disturbance during each phase of grading; g) Provision for compliance reporting to be provided to each agency as required in respective take authorizations; h) Compensation for habitat disturbance acceptable to CDFW (state listed species) and/or USFWS (federal listed species) at a ratio of no less than 3:1 for permanent impacts and 1:1:1 for temporary impacts to listed species habitat. The only existing approved conservation bank for impacts to San Joaquin kit fox habitat in Kern County is the Kern Water	excavated under the direction and supervision of a San Joaquin kit fox qualified biologist. Dens will be fully excavated to the end of all tunnels, and then backfilled with dirt and compacted to ensure that San Joaquin kit fox cannot reenter or use the den site during construction activities.

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Bank Authority Conservation Bank. Lands used to mitigate for San Joaquin kit fox must be contiguous with other potentially occupied lands, provide suitable foraging and denning habitat for San Joaquin kit fox, and be located in the southern San Joaquin Valley portion of Kern County below 1,500' in elevation; i) Compensation land shall be funded for maintenance, protection, and management through establishment of a long-term funding mechanism such as an endowment. The endowment must be a non-wasting account that is acceptable to both CDFW and USFWS.	AMM-1: Establish and Maintain Environmentally Sensitive Areas, and No-Work and Wildlife Exclusion Zones. Fencing or stakes, flags, and rope will be used to establish non-disturbance exclusion zones to restrict construction equipment and personnel from environmentally sensitive areas or restrict San Joaquin kit fox from entering construction areas, where feasible based on site-specific constraints. Two types of fencing, high-visibility environmentally sensitive area fence and wildlife exclusion fence, will be used for these purposes. a) Delineation and Marking Environmentally Sensitive Areas, No-Work and Wildlife Exclusion Zones, and Wildlife Exclusion Fences. The location of environmentally sensitive areas, wildlife exclusion fence, and exclusionary zones will be delineated by a qualified biologist based on the results of any preconstruction surveys. Also prior to construction activities, the contractor will mark environmentally sensitive areas with posted signs, posting stakes, flags, or rope or cord, and will place high visibility fencing as necessary to minimize the disturbance of sensitive areas per avoidance and minimization measures. A qualified biologist will also direct the installation of WEF to prevent San Joaquin kit fox from entering work areas. The WEF will have one-way escape points installed by the contractor under the supervision of a qualified biologist along the boundary of the Project footprint for the length of the adjoining suitable habitat to allow animals that may be inside the work area to leave the area. A qualified biologist will also direct the installation of construction exclusionary zone fencing, as appropriate, to avoid and minimize impacts to San Joaquin kit fox. Fencing installation will be monitored by a qualified biologist or Biological Monitor

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	to ensure that San Joaquin kit fox are not injured or killed during installation. The environmentally sensitive area, wildlife exclusion fence, and exclusionary zone locations will be identified and depicted on an exclusion fencing exhibit. The purpose of the environmentally sensitive areas and wildlife exclusion fence will be explained at WEAP training and the locations of the environmentally sensitive areas and wildlife exclusion fence areas will be noted during worker tailgate sessions. b) Construction Activity Avoidance in Environmentally Sensitive Areas/No-Work Exclusion Zones. The contractor will enforce exclusion of construction personnel and equipment from all environmentally sensitive areas. These areas will be monitored by a qualified biologist during all site preparation and subsequent construction activities. c) Maintenance of Environmentally Sensitive Area Markings. The contractor will maintain all fencing, stakes, flags, and signage until the completion of construction. The environmentally sensitive area, wildlife exclusion fence, and exclusionary zones will be regularly inspected by a qualified biologist to ensure its integrity and that wildlife are not trapped. Environmentally sensitive area fences, wildlife exclusion fence, stakes, flags, and signage will be removed by the contractor when construction is complete, or the resource has been cleared.
BIO MM-6: All biological monitors working on the Project site shall be required by their contract to notify the USFWS and CDFW of the discovery of any protected species identified on the site other than nesting birds, Crotch bumblebee, San Joaquin kit fox and American badger which are addressed by BIO MM-1, BIO MM-2, BIO MM-3, BIO MM-4, and BIO MM-5. Any take of protected wildlife shall be reported immediately to USFWS and CDFW.	
BIO MM-7: The Project Applicant shall ensure that the Project's construction contractors adhere to the following best management practices. Construction contractors shall be required by their contracts to comply with these best practices and permit periodic inspection of the construction site by City of Bakersfield staff or its designee to confirm compliance. A note that requires compliance is required on all grading and building plans approved by the City of Bakersfield. a) Traffic restraints and signs shall be established to minimize temporary disturbances during	Clarification on BIO MM-7: • Dogs recognized as service animals under titles II and III of the Americans with Disabilities Act are exempted from this rule. • At end of each workday, all excavated, steep-walled holes or trenches that are more than eight inches deep with sidewalls steeper than a 1:1 (45 degree) slope will be inspected for trapped animals and, at the close of each day, will be covered with plywood or similar materials or provided a minimum of one

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construction beyond the construction site boundaries. All construction traffic shall be restricted to designated access roads and routes, Project site, storage areas, and staging and parking areas. Off-road traffic outside designated Project boundaries shall be prohibited. A 15 mile-per-hour (24 kilometer per-hour) speed limit shall be observed in all Project construction areas, except as otherwise posted on county roads and state and federal highways. b) All construction personnel involved in ground disturbing construction activities shall attend a worker orientation program. The worker orientation program shall present measures required to avoid, minimize, and mitigate impacts to biological resources and shall include, at a minimum, the following subjects: A summary of the Federal Endangered Species Act (FESA), California Endangered Species Act (CESA), and the Migratory Bird Treaty Act current construction area; life history information for the species of concern; biological resource avoidance, minimization, and mitigation requirements; consequences for failure to successfully implement requirements; and procedures to be followed if dead or injured wildlife are located during Project activities. Upon completion of the orientation, employees shall sign a form stating that they attended the program and understand all biological resource mitigation measures. Forms verifying worker attendance shall be filed at the Project Applicant's office and be accessible to the City of Bakersfield, USFWS and CDFW staff. No untrained personnel shall be allowed to work onsite with the exception of delivery trucks that are only onsite for 1 day or less and are under the supervision of a trained employee. c) All equipment storage and parking during construction activities shall be confined to the designated construction area or to previously disturbed offsite areas that are not habitat for listed species. d) All Project construction activities involving initial surface disturbance shall occur during daylight hours. e) Trenches shall be inspected for entrapped wildlife each morning prior to the onset of construction. Before such holes or trenches are filled, they shall be thoroughly inspected for entrapped animals. Any wildlife so discovered shall be allowed to escape voluntarily, without	escape ramp constructed of fill earth per 100 feet of trenching. • Prior to construction requiring nighttime lighting, the Contractor will prepare a Lighting Plan verifying how the Contractor will shield nighttime construction lighting and direct it downward in such a manner to minimize the light that falls outside the work area. The Lighting Plan will be submitted to VA for review and approval prior to any work requiring nighttime lighting. • All nightwork will occur within the boundaries of previously disturbed, cleared and grubbed areas. ○ Within nightwork construction areas immediately adjacent to areas where San Joaquin kit fox or their dens are present or may be present, at least one qualified biologist, will be continuously present from one-half hour after sunset to one-half hour before sunrise. ○ iii. Prior to working at night, all construction personnel shall receive San Joaquin kit fox awareness information regarding measures to be implemented at night. Upon completion of the program, employees will sign a form stating they attended the program and understand all protection measures. ○ The Contractor will use highly reflective markers to demarcate the boundaries of nightwork areas, if necessary. ○ Construction vehicles will be driven no more than 10 mph within the Project footprint from one-half hour after sunset to one-half hour before sunrise

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harassment, before construction activities resume. A professional biologist may remove wildlife from a trench, hole or other entrapment out of harm's way if the immediate welfare of the individual is in jeopardy. State or federal listed species may not be handled. Should any state or federal listed species become entrapped, CDFW and USFWS shall be contacted as appropriate. f) All food-related trash items such as wrappers, cans, bottles and food scraps generated by Project construction activities shall be disposed of in closed containers and removed at least once each week from the site. Deliberate feeding of wildlife shall be prohibited. g) To prevent harassment of special-status species, construction personnel shall not be allowed to have firearms or pets on the Project site. h) All equipment and work-related materials shall be contained in closed containers either in the work area or on vehicles. Loose items (e.g., rags, hose, etc.) shall be stored within closed containers or enclosed in vehicles when on the work site. i) All liquids shall be in closed, covered containers. Any spills of hazardous liquids shall not be left unattended until clean-up has been completed. j) Use of rodenticides and herbicides on the Project shall be prohibited unless approved by the USFWS and the CDFW. This is necessary to prevent primary or secondary poisoning of special-status species using adjacent habitats, and to avoid the depletion of prey upon which they depend. If rodent control must be conducted, zinc phosphide shall be used because of its proven lower risk to SJKF. k) Any employee who inadvertently kills or injures a listed species, or who finds any such wildlife dead, injured, or entrapped on the Project site, shall be required to report the incident immediately to a designated site representative (e.g., foreman, project manager, environmental inspector, etc.). l) In the case of entrapped wildlife that are listed species, escape ramps or structures shall be installed immediately, if possible, to allow the subject wildlife to escape unimpeded. m) In the case of injured special-status wildlife, the CDFW shall be notified immediately. During business hours Monday through Friday, the phone number is (559) 243-4017. For	

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nonbusiness hours, report to (800) 952-5400. Notification shall include the date, time, location, and circumstances of the incident. Instructions provided by the CDFW for the care of the injured animal shall be followed by the contractor onsite. n) In the case of dead wildlife that are listed as threatened or endangered, the USFWS and the CDFW shall be immediately (within 24 hours) notified by phone or in person, and shall document the initial notification in writing within 2 working days of the findings of any such wildlife. Notification shall include the date, time, location, and circumstances of the incident. o) Prior to commencement of construction, work areas not adjacent to public streets shall be clearly marked with fencing, stakes with rope or cord, or other means of delineating the work area boundaries. p) If any suspected federally or State protected plant or animal species is found to be present during Project-related construction activities, occupied areas shall be avoided and the construction contractor shall be required by its contract to call a CDFW-approved biologist to the site to identify the species. If the species is protected, the qualified biologist shall notify the USFWS and CDFW of any previously unreported protected species. Any take of protected wildlife shall be reported immediately to USFWS and CDFW.	
	AMM-2: Inspect Pipes. All construction pipes, culverts, or similar structures with a diameter of 4 inches or greater that are stored at a construction site for one or more overnight periods will be inspected for San Joaquin kit fox before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a San Joaquin kit fox is discovered inside these structures, the structure will be treated as an atypical den until San Joaquin kit fox leaves on its own accord.
	AMM-3: Provide Artificial San Joaquin Kit Fox Dens. Prior to construction activities, the VA will prepare designs and specifications, and identify specific locations of at least one artificial natal den and one artificial escape den to be permanently installed and maintained within landscaped or drainage features within the Project footprint. Maintenance of the artificial dens will be the responsibility of the Bakersfield VA Outpatient Clinic. The design of the artificial dens will be

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	consistent with the description of artificial den design recommended by Cypher et al. (2012) and Cypher et al. (2021). The den locations and plan will be developed in consultation with and approved by USFWS.
	AMM-4: Work Stoppage. During construction activities, an onsite biologist or biological monitor will have stop work authority to protect San Joaquin kit fox in the Project footprint. This work stoppage will be coordinated with VA or its designee. The project developer will suspend vegetation- or ground-disturbing activities in the work area(s) where the potential construction activity could result in injury or mortality of San Joaquin kit fox; work may continue in other areas. The suspension will continue until the individual leaves voluntarily or is moved to an approved release area using USFWS-approved handling techniques and methods, or as required by the USFWS.

Section 4.0 References

- Bechard, M. J., C. S. Houston, J. H. Sarasola, and A. S. England. 2020. Swainson's Hawk (*Buteo swainsoni*), version 1.0. In A. Poole, editor, The Birds of the World. Cornell Lab of Ornithology, Ithaca, New York. <<https://doi.org/10.2173/bow.swahaw.01>>.
- Bjurlin, C. D., B. L. Cypher, C. M. Wingert, and C. L. Van Horn Job. 2005. Urban Roads and the Endangered San Joaquin Kit Fox. California Department of Transportation, Endangered Species Recovery Program Final Report, Contract Number 65A0136, Fresno, California.
- Bumble Bee Watch. 2024. Bumble Bee Sightings Map. <https://www.bumblebeewatch.org/app/#/bees/map>.
- Canavelli, S. B., M. J. Bechard, B. Woodbridge, M. N. Kochert, J. J. Maceda, and M. E. Zaccagnini. 2003. Habitat use by Swainson's hawks on their austral wintering grounds in Argentina. Journal of Raptor Research 37:125-134.
- [CBOC] California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. April 1993.
- [CDFG] California Department of Fish and Game. 1995. Staff Report on Burrowing Owl Mitigation. October 17, 1995.
- [CDFG] California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. March 7, 2012.
- [CDFW] California Department of Fish and Wildlife. 2019. Report to the Fish and Game Commission, Evaluation of the Petition from the Xerxes Society, Defenders of Wildlife, and Center for Food Safety to list four species of bumble bees as endangered under the California Endangered Species Act. 50pp. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=166804&inline>.
- [CNDDB] California Natural Diversity Data Base. 2024. Rarefind 5.0. California Department of Fish and Wildlife. <<https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data/>>. Accessed 2024.
- Coulombe, H. N. 1971. Behavior and population ecology of the burrowing owl, *Speotyto cunicularia*, in the Imperial Valley of California. Condor 73:162-176.
- Cypher, B. L. 2010. Kit foxes. In: S. D. Gehrt, S. P. D. Riley, and B. L. Cypher, editors. Urban carnivores: ecology, conflict, and conservation. Johns Hopkins University Press, Baltimore, pp 49–60
- Cypher, B. L., C. Van Horn Job, and S. Phillips. 2012. Conservation Strategies for San Joaquin Kit Foxes in Urban Environments. Prepared for the U.S. Bureau of Reclamation. Agreement No. R11AP20502.

- Cypher, B. L., J. D. Murdoch, and A. D. Brown. 2021. Artificial dens for the conservation of San Joaquin kit foxes. *California Fish and Wildlife Special CESA Issue*: 416-437. www.doi.org/10.51492/cfwj.cesasi.25.
- Cypher, B. L., N. A. Deatherage, T. L. Westall, E. C. Kelly, and S. E. Phillips. 2022. Potential habitat and carrying capacity of endangered San Joaquin kit foxes in an urban environment: implications for conservation and recovery. *Urban Ecosystems*. <https://doi.org/10.1007/s11252-022-01287-8>
- Deatherage, N. A., B. L. Cypher, J. Murdoch, T. L. Westall, E. C. Kelly, and D. J. Germano. 2021. Urban landscape attributes affect occupancy patterns of the San Joaquin kit fox during an epizootic. *Pacific Conservation Biology* 27:256–266.
- [ECORP] ECORP Consultants. 2020. Biological Resources Documentation for a Community-Based Outpatient Clinic (Solicitation #36C10F19Q0134), City of Bakersfield, California. Memo dated June 10.
- England, A. S., M. J. Bechard, and C. S. Houston. 1997. Swainson's Hawk (*Buteo swainsoni*). In *The Birds of North America*, No. 265. A. Poole and F. Gill, editors. The Academy of Natural Sciences, Philadelphia, Pennsylvania, and The American Ornithologists' Union, Washington, D.C
- Frankham, R., J. D. Ballou, K. Ralls, M. D. B. Eldridge, M. R. Dudash, C. B. Fenster, R. C. Lacy, and P. Sunnucks. 2017. Genetic management of fragmented animal and plant populations. Oxford Academic. <https://doi.org/10.1093/oso/9780198783398.001.0001>
- Gleason, R. S. 1978. Aspects of the breeding biology of Burrowing Owls in Southeastern Idaho: Moscow, Idaho, University of Idaho, Master's Thesis, 47 p
- Hatfield, R., S. Jepsen, E. Mader, S. H. Black, and M. Shepherd. 2012. Conserving Bumble Bees. Guidelines for Creating and Managing Habitat for America's Declining Pollinators. Xerces Society for Invertebrate Conservation.
- Haug, E. A., and L. W. Oliphant. 1990. Movements, activity patterns, and habitat use of burrowing owls in Saskatchewan. *Journal of Wildlife Management* 54:27-35.
- Lauer, A., and L. Hall. 2023. Planned Construction on Empty Lot at Intersection of Knudsen Dr./Olive Dr. – Update. Letter to U.S. Department of Veterans Affairs. School of Natural Sciences, Mathematics and Engineering. California State University, Bakersfield. Bakersfield, California.
- Martin, D. J. 1973. Selected aspects of burrowing owl ecology and behavior. *Condor* 75:446-456.
- Noel, E., and McCormick Biological. 2022. Biological Evaluation for VA Community-Based Outpatient Clinic, City of Bakersfield, Kern County, California. December 2022 (Revision-3). Prepared for SASD Development Group, LLC, San Diego, California.

- Plumpton, D. L., and R. S. Lutz. 1993. Nesting habitat use by burrowing owls in Colorado. *Journal of Raptor Research* 27:175-179.
- Quinn, J. 2008. The ecology of the American badger (*Taxidea taxus*) in California: assessing conservation status on multiple scales. Ph.D. Dissertation. The University of California Davis, Davis, CA. 200pp.
- Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A Manual of California Vegetation. Second Edition. California Native Plant Society, Sacramento.
- Shuford, W. D., and T. Gardali, editors. 2008. California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- Smallwood, K. S. 1995. Scaling Swainson's hawk population density for assessing habitat use across an agricultural landscape. *Journal of Raptor Research* 29:172-178.
- Thorp, R. W., D. S. Horning, Jr., and L. L. Dunning. 1983. Bumble bees and cuckoo bumble bees of California. *Bulletin of the California Insect Survey* 23: 1-79.
- [USFWS] U.S. Fish and Wildlife Service. 1998. Recovery Plan for Upland Species of the San Joaquin Valley, California. Region 1, Portland, Oregon.
- [USFWS] U.S. Fish and Wildlife Service. 2010. San Joaquin Kit Fox (*Vulpes macrotis mutica*) 5-Year Review Summary and Evaluation. U.S. Fish and Wildlife Service. Sacramento Fish and Wildlife Office. Sacramento, California.
- [USFWS] U.S. Fish and Wildlife Service. 2011. Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance Activities. Sacramento CA.
- Williams, P. H., R. W. Thorp, L. L. Richardson, and S. R. Colla. 2014. Bumble Bees of North America: an Identification Guide. Princeton University Press, Princeton, New Jersey.
- Woodbridge, B. 1998. Swainson's hawk (*Buteo swainsoni*). In *The Riparian Bird Conservation Plan: a strategy for reversing the decline of riparian-associated birds in California*. California Partners in Flight. <http://www.prbo.org/calpif/htmldocs/riparian_v-2.html>.
- Zarn, M. 1974. Burrowing Owl (*Speotyto cunicularia hypugea*). Habitat Management Series for Unique or Endangered Species, U.S. Bureau of Land Management. Technical Note 242. Denver, Colorado. 25 pp.
- Zeiner, D. C., W. F. Laudenslayer Jr., K. E. Mayer, and M. White, editors. 1990. California's Wildlife. Volume III: Mammals. California Department of Fish and Game, Sacramento.

Appendix A Proposed Project Site and Vicinity Photos



Photo 1. Proposed project site facing north.



Photo 2. Proposed project site facing east.



Photo 3. Adjacent ruderal grassland.



Photo 4. Adjacent ruderal grassland.



Photo 5. Adjacent ruderal grassland.



Photo 6. Adjacent ruderal grassland.



Photo 7. California ground squirrels in adjacent ruderal grassland.



Photo 8. Potential kit fox den in adjacent ruderal grassland.



Photo 9. Ruderal grassland by unnamed canal.



Photo 10. Ruderal grassland and suitable raptor nesting habitat.

Appendix B Compiled Special-Status Species Lists and Queries



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish And Wildlife Office

Federal Building

2800 Cottage Way, Room W-2605

Sacramento, CA 95825-1846

Phone: (916) 414-6600 Fax: (916) 414-6713



In Reply Refer To:

November 17, 2023

Project Code: 2024-0011302

Project Name: Bakersfield Outpatient Clinic

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)).

(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see <https://www.fws.gov/program/migratory-bird-permit/what-we-do>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Sacramento Fish And Wildlife Office

Federal Building

2800 Cottage Way, Room W-2605

Sacramento, CA 95825-1846

(916) 414-6600

PROJECT SUMMARY

Project Code: 2024-0011302
Project Name: Bakersfield Outpatient Clinic
Project Type: New Constr - Above Ground
Project Description: VA proposes to construct and operate under a long-term lease a 39,648-gross-square-foot outpatient clinic on one floor with 214 surface parking spaces. The approximately 10-acre site is extensively disturbed but undeveloped.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.410084850000004,-119.05767581758906,14z>



Counties: Kern County, California

ENDANGERED SPECIES ACT SPECIES

There is a total of 12 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Buena Vista Lake Ornate Shrew <i>Sorex ornatus relictus</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/1610	Endangered
San Joaquin Kit Fox <i>Vulpes macrotis mutica</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2873	Endangered
Tipton Kangaroo Rat <i>Dipodomys nitratoide nitratoide</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7247	Endangered

BIRDS

NAME	STATUS
California Condor <i>Gymnogyps californianus</i> Population: U.S.A. only, except where listed as an experimental population There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/8193	Endangered
Southwestern Willow Flycatcher <i>Empidonax traillii extimus</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6749	Endangered
Yellow-billed Cuckoo <i>Coccyzus americanus</i> Population: Western U.S. DPS There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/3911	Threatened

REPTILES

NAME	STATUS
Blunt-nosed Leopard Lizard <i>Gambelia silus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/625	Endangered
Northwestern Pond Turtle <i>Actinemys marmorata</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1111	Proposed Threatened

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRUSTACEANS

NAME	STATUS
Vernal Pool Fairy Shrimp <i>Branchinecta lynchi</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/498	Threatened

FLOWERING PLANTS

NAME	STATUS
Bakersfield Cactus <i>Opuntia treleasei</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7799	Endangered
San Joaquin Woolly-threads <i>Monolopia (=Lembertia) congdonii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/3746	Endangered

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: Department of Veterans Affairs
Name: Christine Modovsky
Address: c/o 810 Vermont Ave. NW (003C)
City: Washington
State: DC
Zip: 20420
Email: christine.modovsky@va.gov
Phone: 2028940988



CNPS Rare Plant Inventory

Search Results

8 matches found. Click on scientific name for details

Search Criteria: Quad is one of [3511941]

▲ SCIENTIFIC NAME	COMMON NAME	FAMILY	LIFEFORM	BLOOMING PERIOD	FED LIST	STATE LIST	GLOBAL RANK	STATE RANK	CA RARE PLANT RANK	CA ENDEMIC	DATE ADDED	PHOTO
Astragalus hornii var. <i>hornii</i>	Horn's milk-vetch	Fabaceae	annual herb	May-Oct	None	None	GUT1	S1	1B.1		2006-12-01	No Photo Available
Chloropyron molle ssp. <i>hispidum</i>	hispid salty bird's-beak	Orobanchaceae	annual herb (hemiparasitic)	Jun-Sep	None	None	G2T1	S1	1B.1	Yes	1974-01-01	No Photo Available
Eriastrum hooveri	Hoover's eriastrum	Polemoniaceae	annual herb	Mar-Jul	FD	None	G3	S3	4.2	Yes	1974-01-01	 © 2011 Chris Winchell
Eriogonum gossypinum	cottony buckwheat	Polygonaceae	annual herb	Mar-Sep	None	None	G3G4	S3S4	4.2	Yes	1974-01-01	No Photo Available
Imperata brevifolia	California satintail	Poaceae	perennial rhizomatous herb	Sep-May	None	None	G3	S3	2B.1		2006-12-26	 © 2020 Matt C. Berger
Monolopia congdonii	San Joaquin woollythreads	Asteraceae	annual herb	Feb-May	FE	None	G2	S2	1B.2	Yes	1988-01-01	No Photo Available
Opuntia basilaris var. <i>treleasei</i>	Bakersfield cactus	Cactaceae	perennial stem	Apr-May	FE	CE	G5T1	S1	1B.1	Yes	1974-01-01	No Photo Available
Trichostema ovatum	San Joaquin bluecurls	Lamiaceae	annual herb	(Apr-Jun)Jul-Oct	None	None	G3	S3	4.2	Yes	1974-01-01	No Photo Available

Showing 1 to 8 of 8 entries

Suggested Citation:

California Native Plant Society, Rare Plant Program. 2024. Rare Plant Inventory (online edition, v9.5). Website <https://www.rareplants.cnps.org> [accessed 29 January 2024].

Appendix C H.T. Harvey & Associates Memo (2023)



H. T. HARVEY & ASSOCIATES

Ecological Consultants

50 years of field notes, exploration, and excellence

Memorandum

February 13, 2024

To: Christine Modovsky, U.S. Department of Veterans Affairs

From: Marianne Huizing and Brian Boroski, H. T. Harvey & Associates

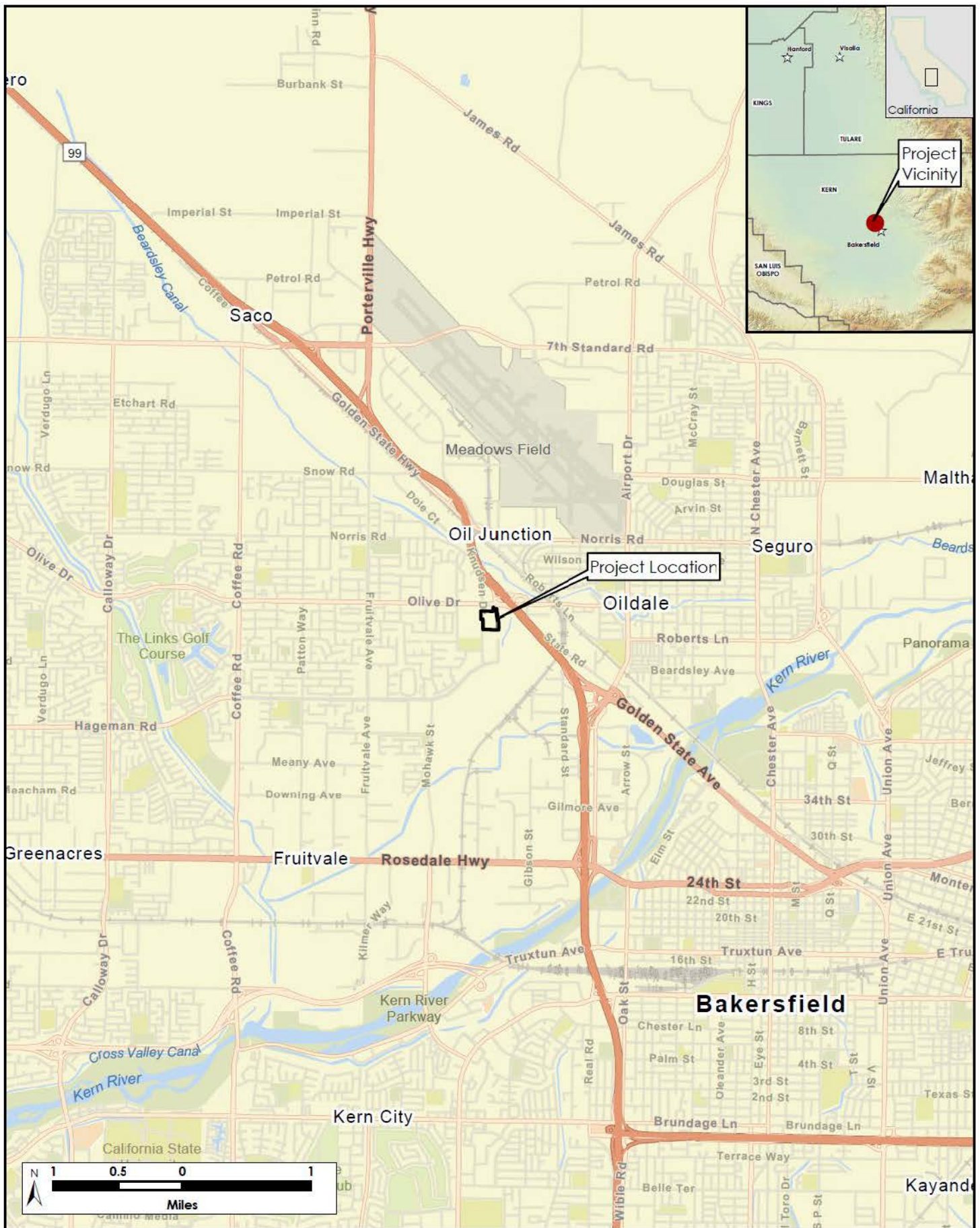
Subject: Reconnaissance and Scent-detection Dog Surveys for Bakersfield Veterans Affairs Community-based Outpatient Clinic, Kern County, California

Introduction

The U.S. Department of Veterans Affairs (VA) proposes to construct and operate an approximate 39,648 square foot (s.f.) community-based medical outpatient facility on approximately 10.1 acres in the City of Bakersfield, California. The VA Community-based Outpatient Medical Clinic (Project) would provide a diverse range of outpatient medical services that would reduce out of area trips for veterans in the Bakersfield area and surrounding communities. Associated with the clinic is parking, an ambulatory pick-up area, a covered drop-off area, bicycle racks, an outdoor physical therapy area, an outdoor dining area, and an elevated loading dock. There is also a proposal for development of a healing garden with a path and benches on the east side of the building. The Project is located south of Olive Drive, east of Knudsen Drive, and west of State Route (SR) 99 (Figure 1). Commercial and residential areas occur to the north, west, and south of the Project site; ruderal nonnative annual grassland is immediately adjacent to the east of the site. Beardsley canal runs in a northeast-southwest direction occurs further east of the vacant lot adjacent to the Project and beyond the canal is another vacant lot of ruderal nonnative annual grassland.

Methods

Prior to conducting the field surveys, we completed a review of the Project site; background information, including relevant reports provided by the client, California Native Plant Society (CNPS) database, and the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDDB 2023). The purpose of the surveys was to inform an assessment of the effects of implementing the proposed Project on federally listed species and determine if special-status species or their sign occur within or in the vicinity of the Project site.



H. T. HARVEY & ASSOCIATES

Ecological Consultants

Figure 1. Vicinity Map

CocBakersfield Veterans Affairs Community-based Outpatient Clinic
Reconnaissance and Scent-detection Dog Survey Results (4800-01)
February 2024

Reconnaissance-level Survey. A reconnaissance-level survey of the Project site was conducted by H. T. Harvey & Associates' ecologist Colin Wilkinson on December 15, 2023. The survey was conducted to (1) assess existing plant and animal species, and biotic habitats on the Project site, and (2) assess the Project site for its potential to support special-status species and their habitats. Prior to entering the Project site and 500-foot buffer area, the ecologist used 8x40 binoculars to scan the area for wildlife. The ecologist walked 100-foot spaced transects in a north-south direction within the Project site and 500-foot buffer to the south and east of the Project were accessible. Field data was collected using a GIS-based app called Field Maps and representative photos were taken of the Project. The ecologist collected location data of California ground squirrel (*Otospermophilus beecheyi*) burrows and complexes, and assessed the suitability of the burrows for use by San Joaquin kit fox (*Vulpes macrotis mutica*).

Scent-detection Dog Team Survey. In addition to the reconnaissance survey, a highly trained ecological scent-detection dog team (handler and dog) also surveyed for San Joaquin kit fox scat on December 15, 2023. The detection dog chosen for this survey had been trained using industry-accepted methods (Smith et al. 2001, Wasser et al. 2004) to recognize the scent of San Joaquin kit fox scat, and to alert her handler to the location of the scat. The detection dog was trained on scat from multiple kit fox individuals and from each sex, to encourage the dog to find every variety of kit fox scat encountered during the surveys. In addition, the dog is trained to ignore the scent of non-targeted sympatric canids, such as coyotes (*Canis latrans*) and red fox (*Vulpes vulpes*), so that the dog is unlikely to alert the handler to these species, thereby increasing efficiency.

The same 100-foot spaced transects were used by the scent-detection dog team. When surveying, the dog was on a long line and was allowed to range ahead of the handler, searching for the target scent. The handler carried a data recorder with a Global Positioning System (GPS) unit to record the survey effort of the Project site. The scent detection dog followed the odor to kit fox scat and alerted the handler to the location. Qualitative and quantitative data, such as the Universal Transverse Mercator coordinates, the amount of scat, a description of the specific location, and the estimated age of the scat, was collected at each scat location.

Results

At the time of the surveys, the Project footprint was recently tilled and there was limited vegetation within the footprint. The site is highly disturbed at the north end of the Project footprint where it is adjacent to a commercial area and is used by unhoused people. To the east of the Project site and west of Beardsley canal, within the 500-foot buffer, the area was ruderal grassland that was predominantly “wild oat and annual brome grassland – Herbaceous Semi-natural Alliance” (Sawyer et al. 2009) dominated by ripgut (*Bromus diandrus*) and red brome (*B. rubens*) grassland with scattered patches of upland mustard (*Brassica nigra*) and to a lesser extent Tournefort's mustard (*B. tournefortii*), tumbleweed (*Amaranthus albus*), puncture vine (*Tribulus terrestris*), and Jimson weed (*Datura wrightii*).

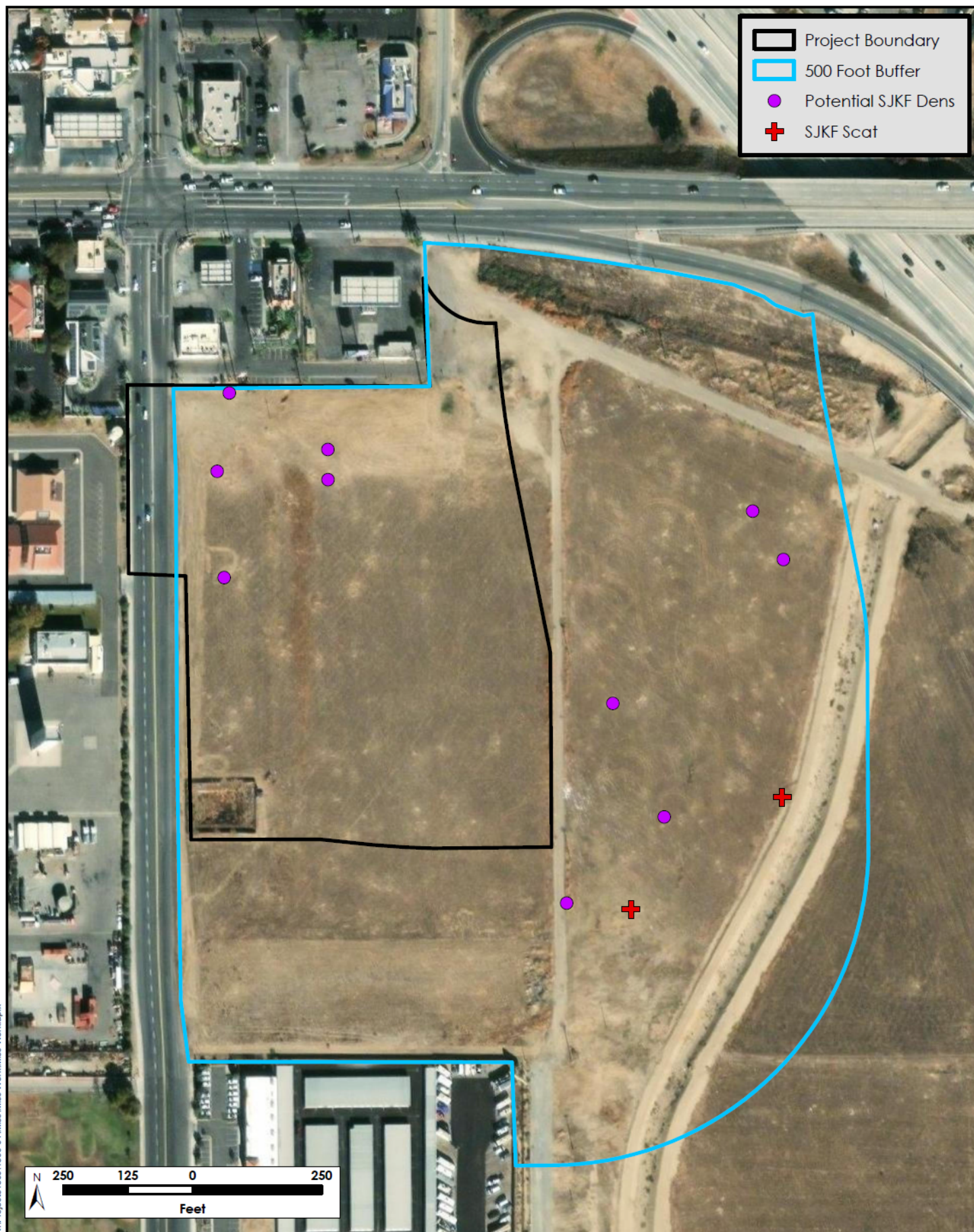
During the reconnaissance-level survey, there were 79 California ground squirrel burrows-complexes recorded on Field Maps. Of these burrows-complexes, 10 burrows were identified as potential for use as San Joaquin kit fox dens, based on size and shape of the burrow entrances (Figure 2). No San Joaquin kit foxes were observed during the survey; however, approximately 125 California ground squirrels were observed when the ecologists performed a quick scan of the area with the binoculars. Other sign of wildlife included small mammal burrows, such as those belonging of mice, Heermann's kangaroo rat (*Dipodomys heermanni*), and pocket gophers (*Thomomys*

ssp.). A black-tailed jackrabbit (*Lepus californicus*), several side-blotched lizards (*Uta stansburiana*), and 14 bird species (Appendix A, Table 1) were also observed during the survey.

The scent-detection dog alerted on two San Joaquin kit fox scats in the 500-foot buffer to the east of the Project site (Figure 2). No San Joaquin kit fox scats were detected within the Project footprint. In each case, both scats consisted of two pieces and were relatively fresh, in that they were still pigmented brown. One of the scats was found on bare ground near the Beardsley canal east of the Project site and the other scat was found on top of grass between the Project site and the Beardsley canal (Figure 2).

Conclusion

No direct observations of special-status species were observed at the Project site or 500-foot buffer during the reconnaissance and scent-detection dog surveys. Potential burrows suitable for San Joaquin kit fox occur within the Project site and 500-foot buffer; however, at the time of the survey, there was no evidence that the burrows were used by San Joaquin kit fox. The scent-detection dog team detected San Joaquin kit fox scat at two separate locations within the 500-foot buffer, which indicates the occurrence of San Joaquin kit fox within the Project vicinity.



H. T. HARVEY & ASSOCIATES

Ecological Consultants

Figure 2. Survey Results

Bakersfield Veterans Affairs Community-based Outpatient Clinic
Reconnaissance and Scent-detection Dog Survey Results (4800-01)
February 2024

References

- Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A Manual of California Vegetation. Second Edition. California Native Plant Society, Sacramento.
- Smith, D. A., K. Ralls, B. Davenport, B. Adams, and J. E. Maldonado. 2001. Canine assistants for conservationists. *Science* 291:435.
- Wasser, S. K., B. Davenport, E. R. Ramage, K. E. Hunt, M. Parker, C. Clarke, and G. Stenhouse. 2004. Scat detection dogs in wildlife research and management: application to grizzly and black bears in the Yellowhead ecosystem, Alberta, Canada. *Canadian Journal of Zoology—Revue Canadienne De Zoologie* 82:475–492.

Attachment 4

Endangered Species Act Section 7 Consultation: Mitigation Measures for Federal Species Protection

The measures labeled “BIO MM-n” are the measures or parts of measures identified in the CEQA EIR that are relevant to federal species protection and under federal authority, clarified and supplemented as noted below. Measures labeled “AMM-n” are additional measures not previously included in the CEQA EIR.

BIO MM-2: If vegetation clearing or initial ground disturbing construction activity occurs during the **migratory bird** nesting season (February 1 to September 15) a professional avian biologist shall conduct a nesting bird survey to identify any active nests present within the proposed work area. If active nests are found, initial ground disturbance shall be postponed or halted within a buffer area, established by the professional avian biologist, that is suitable to the particular bird species and location of the nest, until juveniles have fledged or the nest has been abandoned, as determined by the biologist. The construction avoidance area shall be clearly demarcated in the field with highly visible construction fencing or flagging, and construction personnel shall be instructed on the sensitivity of nest areas.

Clarification on BIO MM-2:

- Surveys will be conducted no more than 14 days prior to construction activities.

BIO MM-4: No more than 30 days prior to vegetation clearing or initial ground-disturbing construction activities, pre-construction surveys for **San Joaquin kit fox** shall be conducted by a professional biologist. The purpose of the preconstruction survey is to provide current biological information in order to implement all avoidance and minimization measures that are required based on any previous observations of special-status species and to update observations shall any new site occupation by special-status species occur. If any known San Joaquin kit fox dens are detected, implementation of the most recent USFWS protocols (Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance (2011)) is required per BIO MM-5 unless protocols are issued by either CDFW or USFWS that supersede these protocols.

Clarification on BIO MM-4

- Preconstruction survey will include a 250-foot buffer during the San Joaquin kit fox pupping season (February through May) or a 100-foot buffer during all other months (where access is permitted).
- All San Joaquin kit fox dens observed during the preconstruction survey will be mapped and characterized as to type.
- Den types are defined as:
 - Potential Den: a suitable subterranean den or burrow within the range of San Joaquin kit fox that has an opening of at least 4 inches and for which available evidence is insufficient to conclude whether it is currently being used or has been used by San Joaquin kit fox.
 - Known Den: A known den is any existing natural den structure that is in use by San Joaquin kit fox or has historically been used at any time in the past by San Joaquin kit fox.
 - Atypical Den: a manmade structure which is being occupied by San Joaquin kit fox. Atypical dens may include pipes, culverts, and diggings beneath stored materials and structures

- Natal (or Pupping) Den: A natal den is any den that has historically been used or is currently being used by San Joaquin kit fox to whelp and/or rear pups.
- All San Joaquin kit fox dens (i.e., potential, known, atypical, and natal) will be mapped and photo documented and described in the preconstruction survey report, which also will include the results of any camera or track medium monitoring. The qualified Biologist will prepare a survey findings report documenting compliance with this measure for submittal to VA to forward to USFWS prior to start of ground-disturbing activities.
- If potential dens are present, the dens will be monitored for a minimum of four consecutive nights with a trail camera or tracking medium to evaluate den status and determine the presence/absence of San Joaquin kit fox. If there is a risk that cameras may be stolen or vandalized at a site, monitoring may be conducted using tracking medium only with prior concurrence from the USFWS.
- Minimize Disturbance of Known, Atypical, and Natal Dens during construction. If a known, atypical, or natal den is present within or adjacent to the work area, the following measures will be implemented to minimize disturbance of the den(s) and disruption of San Joaquin kit fox activities:
 - Establish No-Work Exclusion Zone. A non-disturbance exclusion zone will be established around known and atypical dens and a no-work exclusion zone will be established around natal dens. Exclusion zones around known and atypical dens will be clearly marked by Environmentally Sensitive Area fencing. Exclusion zone widths may be adjusted based on the conditions of the site with the USFWS' concurrence.
 - Avoid No-work Exclusion Zones. No construction activities will be conducted in the no-work exclusion zones without USFWS concurrence.
- Conduct Monitoring of Construction Activities. A qualified biologist will be present in the work area to verify compliance with avoidance and minimization measures, including during ground- or vegetation-disturbing activities in or adjacent to Environmentally Sensitive Areas (e.g., occupied or potentially occupied habitat), wildlife exclusion fencing, construction exclusion fencing (exclusion fencing), and no-work zones. Monitoring will be required when trenches or holes are present and when materials stored on site provide potential dens for San Joaquin kit fox.

BIO MM-5: If Federal listed threatened or endangered species are found occupying burrows, dens, or nests on the Project site or any such species could be injured or killed due to Project-related activities, USFWS (as appropriate) shall be contacted for further guidance. Should [the] agency determine that incidental take authorization is required prior to construction, the appropriate FESA [Federal Endangered Species Act] authorization shall be obtained by the Project Applicant. FESA authorization shall include measures addressing the federal listed species and shall include the following at a minimum:

- a) Implementation of standardized biological resource protective measures included in BIO MM-4;
- b) Biological preconstruction surveys conducted by qualified biologists approved by [the] agency no more than 30 days prior to conducting work on the Project site;
- c) If any known San Joaquin kit fox dens are detected, implementation of the most recent USFWS protocols (Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance (2011)) unless protocols are issued by USFWS that supersede these protocols.
- d) Destruction of San Joaquin kit fox dens shall follow the monitoring and excavation procedures in USFWS (2011).
- f) Biological monitoring of initial ground disturbance during each phase of grading;

- g) Provision for compliance reporting to be provided to [the] agency as required in take authorizations;

Clarification on BIO MM-5:

- Implement Passive Deterrence. If construction activities cannot avoid an active known or atypical den or the no-work exclusion zone around it, the project implementation team may initiate passive, non-injurious measures that result in minor alterations in behavior after receiving concurrence from the USFWS.
- Implement Den Excavation. Dens in the Project footprint may be excavated under the direct supervision of a qualified biologist the next day after no San Joaquin kit fox are detected for a minimum of four consecutive nights of den monitoring using trail cameras. If there is a risk that cameras may be stolen or vandalized at a site, monitoring may be conducted using tracking medium only with prior concurrence from the USFWS. If a San Joaquin kit fox is observed at the den during the monitoring period, the den will continue to be monitored until at least four consecutive nights have passed without San Joaquin kit fox detection at the den. If the San Joaquin kit fox does not leave the den, the Project may initiate passive harassment measures. After a den is determined to be unoccupied as confirmed through four consecutive nights of den monitoring or one night of monitoring after the initiation of passive harassment, it may be excavated under the direction and supervision of a San Joaquin kit fox qualified biologist. Dens will be fully excavated to the end of all tunnels, and then backfilled with dirt and compacted to ensure that San Joaquin kit fox cannot reenter or use the den site during construction activities.

AMM-1: Establish and Maintain Environmentally Sensitive Areas, and No-Work and Wildlife Exclusion Zones. Fencing or stakes, flags, and rope will be used to establish non-disturbance exclusion zones to restrict construction equipment and personnel from environmentally sensitive areas or restrict San Joaquin kit fox from entering construction areas, where feasible based on site-specific constraints. Two types of fencing, high-visibility environmentally sensitive area fence and wildlife exclusion fence, will be used for these purposes.

- a) **Delineation and Marking Environmentally Sensitive Areas, No-Work and Wildlife Exclusion Zones, and Wildlife Exclusion Fences.** The location of environmentally sensitive areas, wildlife exclusion fence, and exclusionary zones will be delineated by a qualified biologist based on the results of any preconstruction surveys. Also prior to construction activities, the contractor will mark environmentally sensitive areas with posted signs, posting stakes, flags, or rope or cord, and will place high visibility fencing as necessary to minimize the disturbance of sensitive areas per avoidance and minimization measures. A qualified biologist will also direct the installation of WEF to prevent San Joaquin kit fox from entering work areas. The WEF will have one-way escape points installed by the contractor under the supervision of a qualified biologist along the boundary of the Project footprint for the length of the adjoining suitable habitat to allow animals that may be inside the work area to leave the area. A qualified biologist will also direct the installation of construction exclusionary zone fencing, as appropriate, to avoid and minimize impacts to San Joaquin kit fox. Fencing installation will be monitored by a qualified biologist or Biological Monitor to ensure that San Joaquin kit fox are not injured or killed during installation. The environmentally sensitive area, wildlife exclusion fence, and exclusionary zone locations will be identified and depicted on an exclusion fencing exhibit. The purpose of the environmentally sensitive areas and wildlife exclusion fence will be explained at WEAP training, and the locations of the environmentally sensitive areas and wildlife exclusion fence areas will be noted during worker tailgate sessions.

- b) **Construction Activity Avoidance in Environmentally Sensitive Areas/No-Work Exclusion Zones.** The contractor will enforce exclusion of construction personnel and equipment from all environmentally sensitive areas. These areas will be monitored by a qualified biologist during all site preparation and subsequent construction activities.
- c) **Maintenance of Environmentally Sensitive Area Markings.** The contractor will maintain all fencing, stakes, flags, and signage until the completion of construction. The environmentally sensitive area, wildlife exclusion fence, and exclusionary zones will be regularly inspected by a qualified biologist to ensure its integrity and that wildlife are not trapped. Environmentally sensitive area fences, wildlife exclusion fence, stakes, flags, and signage will be removed by the contractor when construction is complete, or the resource has been cleared.

BIO MM-6: All biological monitors working on the Project site shall be required by their contract to notify the USFWS of the discovery of any protected species identified on the site other than nesting birds, San Joaquin kit fox which are addressed by BIO MM-2, BIO MM-4, and BIO MM-5. Any take of protected wildlife shall be reported immediately to USFWS.

BIO MM-7: The Project Applicant shall ensure that the Project's construction contractors adhere to the following best management practices. Construction contractors shall be required by their contracts to comply with these best practices

- a) Traffic restraints and signs shall be established to minimize temporary disturbances during construction beyond the construction site boundaries. All construction traffic shall be restricted to designated access roads and routes, Project site, storage areas, and staging and parking areas. Off-road traffic outside designated Project boundaries shall be prohibited. A 15 mile-per-hour (24 kilometer per-hour) speed limit shall be observed in all Project construction areas, except as otherwise posted on county roads and state and federal highways.
- b) All construction personnel involved in ground disturbing construction activities shall attend a worker orientation program. The worker orientation program shall present measures required to avoid, minimize, and mitigate impacts to biological resources and shall include, at a minimum, the following subjects: A summary of the Federal Endangered Species Act (FESA) and the Migratory Bird Treaty Act current construction area; life history information for the species of concern; biological resource avoidance, minimization, and mitigation requirements; consequences for failure to successfully implement requirements; and procedures to be followed if dead or injured wildlife are located during Project activities. Upon completion of the orientation, employees shall sign a form stating that they attended the program and understand all biological resource mitigation measures. Forms verifying worker attendance shall be filed at the Project Applicant's office and be accessible to USFWS staff. No untrained personnel shall be allowed to work onsite with the exception of delivery trucks that are only onsite for 1 day or less and are under the supervision of a trained employee.
- c) All equipment storage and parking during construction activities shall be confined to the designated construction area or to previously disturbed offsite areas that are not habitat for listed species.
- d) All Project construction activities involving initial surface disturbance shall occur during daylight hours.
- e) Trenches shall be inspected for entrapped wildlife each morning prior to the onset of construction. Before such holes or trenches are filled, they shall be thoroughly inspected for entrapped animals. Any wildlife so discovered shall be allowed to escape voluntarily, without

harassment, before construction activities resume. A professional biologist may remove wildlife from a trench, hole or other entrapment out of harm's way if the immediate welfare of the individual is in jeopardy. State or federal listed species may not be handled. Should any federal listed species become entrapped, USFWS shall be contacted.

- f) All food-related trash items such as wrappers, cans, bottles and food scraps generated by Project construction activities shall be disposed of in closed containers and removed at least once each week from the site. Deliberate feeding of wildlife shall be prohibited.
- g) To prevent harassment of special-status species, construction personnel shall not be allowed to have firearms or pets on the Project site.
- h) All equipment and work-related materials shall be contained in closed containers either in the work area or on vehicles. Loose items (e.g., rags, hose, etc.) shall be stored within closed containers or enclosed in vehicles when on the work site.
- i) All liquids shall be in closed, covered containers. Any spills of hazardous liquids shall not be left unattended until clean-up has been completed.
- j) Use of rodenticides and herbicides on the Project shall be prohibited unless approved by the USFWS. This is necessary to prevent primary or secondary poisoning of special-status species using adjacent habitats, and to avoid the depletion of prey upon which they depend. If rodent control must be conducted, zinc phosphide shall be used because of its proven lower risk to SJKF [San Joaquin kit fox].
- k) Any employee who inadvertently kills or injures a listed species, or who finds any such wildlife dead, injured, or entrapped on the Project site, shall be required to report the incident immediately to a designated site representative (e.g., foreman, project manager, environmental inspector, etc.).
- l) In the case of entrapped wildlife that are listed species, escape ramps or structures shall be installed immediately, if possible, to allow the subject wildlife to escape unimpeded.
- n) In the case of dead wildlife that are listed as threatened or endangered, the USFWS shall be immediately (within 24 hours) notified by phone or in person, and shall document the initial notification in writing within 2 working days of the findings of any such wildlife. Notification shall include the date, time, location, and circumstances of the incident.
- o) Prior to commencement of construction, work areas not adjacent to public streets shall be clearly marked with fencing, stakes with rope or cord, or other means of delineating the work area boundaries.
- p) If any suspected federally protected plant or animal species is found to be present during Project-related construction activities, occupied areas shall be avoided and the construction contractor shall be required by its contract to call a biologist to the site to identify the species. If the species is protected, the qualified biologist shall notify the USFWS of any previously unreported protected species. Any take of protected wildlife shall be reported immediately to USFWS.

Clarification on BIO MM-7:

- Dogs recognized as service animals under titles II and III of the Americans with Disabilities Act are exempted from this rule.
- At end of each workday, all excavated, steep-walled holes or trenches that are more than eight inches deep with sidewalls steeper than a 1:1 (45 degree) slope will be inspected for trapped animals and, at the close of each day, will be covered with plywood or similar materials or provided a minimum of one escape ramp constructed of fill earth per 100 feet of trenching.

- Prior to construction requiring nighttime lighting, the Contractor will prepare a Lighting Plan verifying how the Contractor will shield nighttime construction lighting and direct it downward in such a manner to minimize the light that falls outside the work area. The Lighting Plan will be submitted to VA for review and approval prior to any work requiring nighttime lighting.
- All nightwork will occur within the boundaries of previously disturbed, cleared, and grubbed areas.
 - Within nightwork construction areas immediately adjacent to areas where San Joaquin kit fox or their dens are present or may be present, at least one qualified biologist, will be continuously present from one-half hour after sunset to one-half hour before sunrise.
 - iii. Prior to working at night, all construction personnel shall receive San Joaquin kit fox awareness information regarding measures to be implemented at night. Upon completion of the program, employees will sign a form stating they attended the program and understand all protection measures.
 - The Contractor will use highly reflective markers to demarcate the boundaries of nightwork areas, if necessary.
 - Construction vehicles will be driven no more than 10 mph within the Project footprint from one-half hour after sunset to one-half hour before sunrise

AMM-2: Inspect Pipes. All construction pipes, culverts, or similar structures with a diameter of 4 inches or greater that are stored at a construction site for one or more overnight periods will be inspected for San Joaquin kit fox before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a San Joaquin kit fox is discovered inside these structures, the structure will be treated as an atypical den until San Joaquin kit fox leaves on its own accord.

AMM-3: Provide Artificial San Joaquin Kit Fox Dens. Prior to construction activities, the VA will prepare designs and specifications, and identify specific locations of at least one artificial natal den and one artificial escape den to be permanently installed and maintained within landscaped or drainage features within the Project footprint. Maintenance of the artificial dens will be the responsibility of the Bakersfield VA Outpatient Clinic. The design of the artificial dens will be consistent with the description of artificial den design recommended by Cypher et al. (2012) and Cypher et al. (2021). The den locations and plan will be developed in consultation with and approved by USFWS.

AMM-4: Work Stoppage. During construction activities, an onsite biologist or biological monitor will have stop work authority to protect San Joaquin kit fox in the Project footprint. This work stoppage will be coordinated with VA or its designee. The project developer will suspend vegetation- or ground-disturbing activities in the work area(s) where the potential construction activity could result in injury or mortality of San Joaquin kit fox; work may continue in other areas. The suspension will continue until the individual leaves voluntarily or is moved to an approved release area using USFWS-approved handling techniques and methods, or as required by the USFWS.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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In Reply Refer to
08ESMF00-
2024-0011302-S7

March 13, 2025
Sent Electronically

Christine Modovsky
U.S. Department of Veterans Affairs
Office of Construction and Facilities Management
Facilities Planning (003C2)
810 Vermont Street NW
Washington DC 20420
christine.modovsky@va.gov

Subject: Reinitiation of Formal Consultation on the Bakersfield Outpatient Clinic, Kern County, California (Project Code 2024-0011302)

Dear Christine Modovsky:

This letter is in response to the U.S. Department of Veterans Affairs' (Veterans Affairs) request to reinitiate formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Bakersfield Outpatient Clinic (project) in Bakersfield, California. At issue are the project's effects on the federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) (kit fox). This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

Veterans Affairs initially consulted with the Service in June 2020, when this project was proposed to be covered under the Metro Bakersfield Habitat Conservation Plan (Plan). The Service responded to the consultation request stating that with payment of the required fees and coverage under the Plan, additional consultation with the Service was not necessary. However, the City of Bakersfield stopped implementing the Plan prior to fee payment and project implementation. As such, the project can no longer be covered under the now non-existent Plan and reinitiation of formal consultation under section 7 of the Act is necessary.

The federal action on which we are consulting is the construction and operation of a Veterans Affairs outpatient clinic in Bakersfield, California. Pursuant to 50 CFR 402.12(j), you submitted a biological assessment for our review and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, and is likely to adversely affect the kit fox.

In considering your request, we based our evaluation on the following:

1. Reinitiation request letter dated July 11, 2024;

2. Biological study dated April 2024 created by H. T. Harvey and Associates;
3. “Attachment 4” which included federal species mitigation measures;
4. Supplemental Draft Environmental Assessment prepared by Veterans Affairs dated October 2024; and
5. Other information available to the Service.

Consultation History

June 11, 2020:	The Service received a request for formal consultation on the project from Veterans Affairs.
June 2020:	The Service issued a letter stating that the proposed project is consistent with the intra-Service biological opinion issued for the Metro Bakersfield Habitat Conservation Plan and no additional consultation under section 7 is necessary.
July 11, 2024:	Veterans Affairs reinitiated formal consultation because the project could no longer use the Metro Bakersfield Habitat Conservation Plan.
December 10, 2024:	The Service received clarification on the proposed mitigation measures and a copy of the supplemental draft environmental assessment.

BIOLOGICAL OPINION

Description of the Proposed Action

Veterans Affairs will establish and operate a new community-based outpatient clinic in Bakersfield, California. The facility would be constructed on a build-to-suit basis and then leased to Veterans Affairs for up to 20 years. The proposed project site is approximately 10 acres of vacant, undeveloped land in the northern portion of the City of Bakersfield, east of Knudsen Street, west of Landco Drive, north of Hageman Road, and south of Olive Drive. The proposed clinic building would have a gross building floor area of approximately 40,000 square feet with a net usable area of 30,100 square feet, and associated surface parking and other site improvements. Landscaping would be installed along the perimeter of the project site, around the building, and throughout the parking areas. Traffic improvements would be implemented along the project site’s frontage with Knudsen Drive. Along the project site’s eastern boundary, Landco Drive would be extended to run adjacent to the east side of the project. Along the project site’s southern boundary, new Street A would be constructed to connect Knudsen Drive and Landco Drive. The developer would design and construct the facility in compliance with Veterans Affairs design requirements and applicable federal, state, and local regulations. Veterans Affairs anticipates design and construction of the proposed clinic to take approximately two years once initiated.

Conservation Measures

Veterans Affairs has proposed the following conservation measures that include measures from the Environmental Impact Report with clarification from Veterans Affairs in addition to other measures. The Service has renumbered the proposed measures for clarity as they relate to this biological opinion.

1. No more than 30 days prior to vegetation clearing or initial ground-disturbing construction activities, pre-construction surveys for kit fox will be conducted by a professional biologist. The purpose of the preconstruction survey is to provide current biological information in order to implement all avoidance and minimization measures that are required based on any previous observations of special-status species and to update observations should any new site occupation by special-status species occur. If any known kit fox dens are detected, implementation of the most recent Service protocols (2011 Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance) is required per Measure 2 unless protocols are issued that supersede these protocols.
 - Preconstruction survey will include a 250-foot buffer during the kit fox pupping season (February through May) or a 100-foot buffer during all other months (where access is permitted).
 - All kit fox dens observed during the preconstruction survey will be mapped and characterized as to type:
 - Potential Den: a suitable subterranean den or burrow within the range of kit fox that has an opening of at least 4 inches and for which available evidence is insufficient to conclude whether it is currently being used or has been used by kit fox.
 - Known Den: A known den is any existing natural den structure that is in use by kit fox or has historically been used at any time in the past by kit fox.
 - Atypical Den: a manmade structure which is being occupied by kit fox. Atypical dens may include pipes, culverts, and diggings beneath stored materials and structures
 - Natal (or Pupping) Den: A natal den is any den that has historically been used or is currently being used by kit fox to whelp and/or rear pups.
 - All kit fox dens (i.e., potential, known, atypical, and natal) will be mapped and photo documented and described in the preconstruction survey report, which also will include the results of any camera or track medium monitoring. The qualified biologist will prepare a survey findings report documenting compliance with this measure for submittal to Veterans Affairs to forward to the Service prior to start of ground-disturbing activities.
 - If potential dens are present, the dens will be monitored for a minimum of 4 consecutive nights with a trail camera or tracking medium to evaluate den status and determine the presence/absence of kit fox. If there is a risk that cameras may be stolen or vandalized at a site, monitoring may be conducted using tracking medium only with prior concurrence from the Service.
 - If a known, atypical, or natal den is present within or adjacent to the work area, the following measures will be implemented to minimize disturbance of the den(s) and disruption of kit fox activities:
 - Establish No-Work Exclusion Zone. A non-disturbance exclusion zone will be established around known and atypical dens and a no-work exclusion zone will be established around natal dens. Exclusion zones around known and atypical dens will be clearly marked by Environmentally Sensitive Area fencing. Exclusion zone widths may be adjusted based on the conditions of the site with the Service concurrence.
 - Avoid No-work Exclusion Zones. No construction activities will be conducted in the no-work exclusion zones without Service concurrence.

- Conduct Monitoring of Construction Activities. A qualified biologist will be present in the work area to verify compliance with avoidance and minimization measures, including during ground- or vegetation-disturbing activities in or adjacent to Environmentally Sensitive Areas (e.g., occupied or potentially occupied habitat), wildlife exclusion fencing, construction exclusion fencing (exclusion fencing), and no-work zones. Monitoring will be required when trenches or holes are present and when materials stored on site provide potential dens for kit fox.
2. If federal listed threatened or endangered species are found occupying burrows, dens, or nests on the project site or any such species could be injured or killed due to project-related activities, the Service (as appropriate) shall be contacted for further guidance. Should [the] agency determine that incidental take authorization is required prior to construction, the appropriate Federal Endangered Species Act authorization will be obtained by the project Applicant. Authorization will include measures addressing the federal listed species and will include the following at a minimum:
- Implementation of standardized biological resource protective measures included in Measure 1;
 - Biological preconstruction surveys conducted by qualified biologists approved by [the] agency no more than 30 days prior to conducting work on the project site;
 - If any known kit fox dens are detected, implementation of the most recent USFWS protocols (*Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance* (2011)) unless protocols are issued by the Service that supersede these protocols.
 - Destruction of kit fox dens shall follow the monitoring and excavation procedures in USFWS (2011).
 - Biological monitoring of initial ground disturbance during each phase of grading;
 - Provision for compliance reporting to be provided to [the] agency as required in take authorizations;
 - Implement Passive Deterrence. If construction activities cannot avoid an active known or atypical kit fox den or the no-work exclusion zone around it, the project implementation team may initiate passive, non-injurious measures that result in minor alterations in behavior after receiving concurrence from the Service.
 - Implement Den Excavation. Dens in the project footprint may be excavated under the direct supervision of a qualified biologist the next day after no kit fox are detected for a minimum of four consecutive nights of den monitoring using trail cameras. If there is a risk that cameras may be stolen or vandalized at a site, monitoring may be conducted using tracking medium only with prior concurrence from the Service. If a kit fox is observed at the den during the monitoring period, the den will continue to be monitored until at least four consecutive nights have passed without kit fox detection at the den. If the kit fox does not leave the den, the project may initiate passive harassment measures. After a den is determined to be unoccupied as confirmed through four consecutive nights of den monitoring or one night of monitoring after the initiation of passive harassment, it may be excavated under the direction and supervision of a kit fox qualified biologist. Dens will be fully excavated to the end of all tunnels, and then backfilled with dirt and compacted to ensure that kit fox cannot reenter or use the den site during construction activities.

3. Establish and Maintain Environmentally Sensitive Areas, and No-Work and Wildlife Exclusion Zones. Fencing or stakes, flags, and rope will be used to establish non-disturbance exclusion zones to restrict construction equipment and personnel from environmentally sensitive areas or restrict kit fox from entering construction areas, where feasible based on site-specific constraints. Two types of fencing, high-visibility environmentally sensitive area fence and wildlife exclusion fence, will be used for these purposes.
 - Delineation and Marking Environmentally Sensitive Areas, No-Work and Wildlife Exclusion Zones, and Wildlife Exclusion Fences (WEF). The location of environmentally sensitive areas, wildlife exclusion fence, and exclusionary zones will be delineated by a qualified biologist based on the results of any preconstruction surveys. Also prior to construction activities, the contractor will mark environmentally sensitive areas with posted signs, posting stakes, flags, or rope or cord, and will place high visibility fencing as necessary to minimize the disturbance of sensitive areas per avoidance and minimization measures. A qualified biologist will also direct the installation of WEF to prevent kit fox from entering work areas. The WEF will have one-way escape points installed by the contractor under the supervision of a qualified biologist along the boundary of the project footprint for the length of the adjoining suitable habitat to allow animals that may be inside the work area to leave the area. A qualified biologist will also direct the installation of construction exclusionary zone fencing, as appropriate, to avoid and minimize impacts to kit fox. Fencing installation will be monitored by a qualified biologist or biological monitor to ensure that kit fox are not injured or killed during installation. The environmentally sensitive area, wildlife exclusion fence, and exclusionary zone locations will be identified and depicted on an exclusion fencing exhibit. The purpose of the environmentally sensitive areas and wildlife exclusion fence will be explained at the worker orientation training, and the locations of the environmentally sensitive areas and wildlife exclusion fence areas will be noted during worker tailgate sessions.
 - Construction Activity Avoidance in Environmentally Sensitive Areas/No-Work Exclusion Zones. The contractor will enforce exclusion of construction personnel and equipment from all environmentally sensitive areas. These areas will be monitored by a qualified biologist during all site preparation and subsequent construction activities.
 - Maintenance of Environmentally Sensitive Area Markings. The contractor will maintain all fencing, stakes, flags, and signage until the completion of construction. The environmentally sensitive area, wildlife exclusion fence, and exclusionary zones will be regularly inspected by a qualified biologist to ensure its integrity and that wildlife are not trapped. Environmentally sensitive area fences, wildlife exclusion fence, stakes, flags, and signage will be removed by the contractor when construction is complete, or the resource has been cleared.
4. All biological monitors working on the project site shall be required by their contract to notify the Service of the discovery of any protected species identified on the site. Any take of protected wildlife shall be reported immediately to the Service.

5. The project developer will ensure that the project's construction contractors adhere to the following best management practices. Construction contractors will be required by their contracts to comply with these best practices
 - Traffic restraints and signs will be established to minimize temporary disturbances during construction beyond the construction site boundaries. All construction traffic will be restricted to designated access roads and routes, project site, storage areas, and staging and parking areas. Off-road traffic outside designated Project boundaries will be prohibited. A 15 mile-per-hour (24 kilometer per-hour) speed limit will be observed in all project construction areas, except as otherwise posted on county roads and state and federal highways.
 - All construction personnel involved in ground disturbing construction activities will attend a worker orientation program. The worker orientation program will present measures required to avoid, minimize, and mitigate impacts to biological resources and will include, at a minimum, the following subjects: A summary of the Federal Endangered Species Act and the Migratory Bird Treaty Act current construction area; life history information for the species of concern; biological resource avoidance, minimization, and mitigation requirements; consequences for failure to successfully implement requirements; and procedures to be followed if dead or injured wildlife are located during project activities. Upon completion of the orientation, employees will sign a form stating that they attended the program and understand all biological resource mitigation measures. Forms verifying worker attendance will be filed at the project developer's office and be accessible to Service staff. No untrained personnel will be allowed to work onsite with the exception of delivery trucks that are only onsite for 1 day or less and are under the supervision of a trained employee.
 - All equipment storage and parking during construction activities will be confined to the designated construction area or to previously disturbed offsite areas that are not habitat for listed species.
 - All project construction activities involving initial surface disturbance will occur during daylight hours.
 - Trenches will be inspected for entrapped wildlife each morning prior to the onset of construction. Before such holes or trenches are filled, they will be thoroughly inspected for entrapped animals. Any wildlife discovered will be allowed to escape voluntarily, without harassment, before construction activities resume. A professional biologist may remove wildlife from a trench, hole or other entrapment out of harm's way if the immediate welfare of the individual is in jeopardy. State or federal listed species may not be handled. Should any federal listed species become entrapped, the Service will be contacted.
 - All food-related trash items such as wrappers, cans, bottles and food scraps generated by project construction activities will be disposed of in closed containers and removed at least once each week from the site. Deliberate feeding of wildlife will be prohibited.
 - To prevent harassment of special-status species, construction personnel will not be allowed to have firearms or pets on the project site.
 - All equipment and work-related materials will be contained in closed containers either in the work area or on vehicles. Loose items (e.g., rags, hose, etc.) will be stored within closed containers or enclosed in vehicles when on the work site.

- All liquids will be in closed, covered containers. Any spills of hazardous liquids will not be left unattended until clean-up has been completed.
- Use of rodenticides and herbicides on the project will be prohibited. This is necessary to prevent primary or secondary poisoning of special-status species using adjacent habitats, and to avoid the depletion of prey upon which they depend.
- Any employee who inadvertently kills or injures a listed species, or who finds any such wildlife dead, injured, or entrapped on the project site, will be required to report the incident immediately to a designated site representative (e.g., foreman, project manager, environmental inspector, etc.).
- In the case of entrapped wildlife that are listed species, escape ramps or structures will be installed immediately, if possible, to allow the subject wildlife to escape unimpeded.
- In the case of dead wildlife that are listed as threatened or endangered, the Service will be immediately (within 24 hours) notified by phone or in person and will document the initial notification in writing within 2 working days of the findings of any such wildlife. Notification will include the date, time, location, and circumstances of the incident.
- Prior to commencement of construction, work areas not adjacent to public streets will be clearly marked with fencing, stakes with rope or cord, or other means of delineating the work area boundaries.
- If any suspected federally protected plant or animal species is found to be present during project-related construction activities, occupied areas will be avoided and the construction contractor will be required by its contract to call a biologist to the site to identify the species. If the species is protected, the qualified biologist shall notify the Service of any previously unreported protected species. Any take of protected wildlife shall be reported immediately to the Service.
- At end of each workday, all excavated, steep-walled holes or trenches that are more than eight inches deep with sidewalls steeper than a 1:1 (45 degree) slope will be inspected for trapped animals and, at the close of each day, will be covered with plywood or similar materials or provided a minimum of one escape ramp constructed of fill earth per 100 feet of trenching.
- Prior to construction requiring nighttime lighting, the developer will prepare a Lighting Plan verifying how the developer will shield nighttime construction lighting and direct it downward in such a manner to minimize the light that falls outside the work area. The Lighting Plan will be submitted to Veterans Affairs for review and approval prior to any work requiring nighttime lighting.
- All nightwork will occur within the boundaries of previously disturbed, cleared, and grubbed areas.
 - Within nightwork construction areas immediately adjacent to areas where kit fox or their dens are present or may be present, at least one qualified biologist will be continuously present from one-half hour after sunset to one-half hour before sunrise.
 - Prior to working at night, all construction personnel will receive kit fox awareness information regarding measures to be implemented at night. Upon completion of the program, employees will sign a form stating they attended the program and understand all protection measures.

- The developer will use highly reflective markers to demarcate the boundaries of nightwork areas, if necessary.
 - Construction vehicles will be driven no more than 10 mph within the project footprint from one-half hour after sunset to one-half hour before sunrise.
6. Inspect Pipes. All construction pipes, culverts, or similar structures with a diameter of 4 inches or greater that are stored at a construction site for one or more overnight periods will be inspected for kit fox before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a kit fox is discovered inside these structures, the structure will be treated as an atypical den until the kit fox leaves on its own accord.
7. Provide Artificial San Joaquin Kit Fox Dens. Prior to construction activities, Veterans Affairs will prepare designs and specifications and identify specific locations of at least one artificial natal den and one artificial escape den to be permanently installed and maintained within landscaped or drainage features within the project footprint. Maintenance of the artificial dens will be the responsibility of the Bakersfield Veterans Affairs Outpatient Clinic. The design of the artificial dens will be consistent with the description of artificial den design recommended by Cypher et al. (2012) and Cypher et al. (2021). The den locations and plan will be developed in consultation with and approved by the Service.
8. Work Stoppage. During construction activities, an onsite biologist or biological monitor will have stop work authority to protect kit fox in the project footprint. This work stoppage will be coordinated with Veterans Affairs or its designee. The project developer will suspend vegetation- or ground-disturbing activities in the work area(s) where the potential construction activity could result in injury or mortality of kit fox; work may continue in other areas. The suspension will continue until the individual leaves voluntarily.

Action Area

The action area is defined in 50 CFR 402.02, as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.” For the proposed project, the action area includes the 10-acre lot and the area of street development and improvements surrounding the lot in Bakersfield, California.

Analytical Framework for the Jeopardy Determination

Section 7(a)(2) of the Act requires that federal agencies ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species. “Jeopardize the continued existence of” means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02).

The jeopardy analysis in this biological opinion considers the effects of the proposed federal action, and any cumulative effects, on the range-wide survival and recovery of the listed species. It relies on four components: (1) the *Status of the Species*, which describes the range-wide

condition of the species, the factors responsible for that condition, and its survival and recovery needs; (2) the *Environmental Baseline*, which analyzes the condition of the species in the action area without the consequences to the listed species caused by the proposed action, the factors responsible for that condition, and the relationship of the action area to the survival and recovery of the species; (3) the *Effects of the Action*, which determines all consequences to listed species that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action; and (4) the *Cumulative Effects*, which evaluates the effects of future, non-federal activities in the action area on the species. The *Effects of the Action* and *Cumulative Effects* are added to the *Environmental Baseline* and considering the *Status of the Species*, the Service formulates its opinion as to whether the proposed action is likely to jeopardize the continued existence of the listed species.

Status of the Species

Please refer to the *Species Status Assessment Report for the San Joaquin Kit Fox* (*Vulpes macrotis mutica*) *Version 1.0* (Service 2020a) for the current status of the species. No change in the species' listing status was recommended in the Service's most recent 5-year review (Service 2020b). Threats evaluated during that review have continued to act on the species since the review was published. To date no project has proposed a level of effect for which the Service has issued a biological opinion of jeopardy for the species.

Environmental Baseline

As defined in 50 CFR 402.02, *environmental baseline* refers to the condition of the listed species and/or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present impacts of all federal, state, or private actions and other human activities in the action area, the anticipated impacts of all proposed federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of state or private actions that are contemporaneous with the consultation in process. The impacts to listed species or designated critical habitat from federal agency activities or from existing federal agency facilities that are not within the agency's discretion to modify are part of the environmental baseline.

The population of kit fox within the urban boundary of Bakersfield is well established. Urban kit foxes in Bakersfield are highly adaptable and have thrived in much of the city where there is no natural habitat remaining. The action area is currently a vacant lot with limited vegetation depending on discing frequency. The site has been surveyed multiple times for kit fox presence from 2020-2024. No foxes or sign of foxes (tracks, scat, active burrows) have been documented within the 10-acre project area during any of the surveys. Students and faculty from California State University Bakersfield collected scat from the project site and surrounding area in 2023 and using genetic analysis determined the presence of kit fox in areas adjacent to the project site. Scent detection dogs used during surveys conducted in 2024 by H.T. Harvey did not result in positive detections of kit fox on the project site but did result in kit fox scat detection within 500 feet of the project site consistent with the results from the scat collection and analysis.

While no kit foxes have been documented on the project site through individual sightings or species sign, it is reasonable to determine that kit fox use the project site as a dispersal area or possibly for foraging due to the documented presence of foxes adjacent to the site and the widespread use of the urban landscape of Bakersfield by kit fox.

Effects of the Action

Effects of the action refer to all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action.

Effects to kit fox from project development are most likely to occur during construction when individuals might be passing through the site. Individuals could be injured or killed by vehicle strikes during construction and exposed trenches or holes could result in individuals becoming trapped. To reduce the likelihood of impacts from construction activities, conservation measures including, but not limited to, speed limits, biological monitors, exclusion fencing, and escape ramps will be implemented throughout construction. Movement of foxes through the project site could be impacted post construction as part of the site will be impermeable to movement once the building is constructed. No kit fox have been documented denning on the project site, therefore, impacts to denning individuals are not anticipated. However, should kit fox den on the site prior to or during construction, conservation measures will be implemented, including passive deterrence, den monitoring, and work exclusion zones, to reduce impacts to denning individuals.

The project will install an artificial kit fox den as well as an escape den on the project site after construction. These structures will provide denning opportunity and predator escape options for kit fox in the area. The installation of these structures and the highly adaptable nature of urban kit foxes will likely mean that the project site will be used by kit foxes after project construction. There is very little native habitat available to kit fox within the city limits and the urban population of foxes use a variety of developed, semi-developed, and undeveloped but disturbed habitat. Development of urban areas in Bakersfield outside of dense residential development or large impermeable structures generally results in habitat modification, meaning habitat is still available in some form, rather than complete habitat loss as would be likely in non-urban areas within the species' range. Kit foxes are known to use vegetated or open areas within otherwise developed urban habitat as is proposed in by this project and the presence of artificial dens could increase the likelihood of species use post construction.

Cumulative Effects

Cumulative effects include the effects of future non-federal actions (e.g., state, tribal, local, or private) that are reasonably certain to occur in the action area considered in this biological opinion. Future federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. During this consultation, the Service did not identify any future non-federal actions that are reasonably certain to occur in the action area of the proposed project.

Conclusion

After reviewing the current status of the kit fox, the environmental baseline for the species within the action area, the effects of the project on the species, and the cumulative effects to the species, it is the Service's biological opinion that the project is not likely to jeopardize the continued existence of the kit fox. The Service reached this conclusion because the project-related effects

to the species, when added to the environmental baseline and analyzed in consideration of all potential cumulative effects, will not rise to the level of precluding recovery or reducing the likelihood of survival of this species. This conclusion is based on the following reasons:

- 1) The effects to kit fox from construction will be small-scale relative to the amount of suitable habitat that exists for it outside of the action area within the urban environment of Bakersfield and throughout the full range of the species.
- 2) The site still has potential to be used by urban kit foxes after construction.
- 3) The conservation measures proposed by Veterans Affairs will minimize adverse effects to the species. The proposed measures will reduce impacts to the species during construction and the installation of artificial burrows will provide for the use of the site by kit fox after construction.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by Service regulations at 50 CFR 17.3 as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the same regulations as an act which actually kills or injures wildlife. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary and must be undertaken by Veterans Affairs so that they become binding conditions of any grant or permit issued, as appropriate, or of any contract developed with the contractor, for the exemption in section 7(o)(2) to apply. Veterans Affairs has a continuing duty to regulate the activity covered by this incidental take statement. If Veterans Affairs (1) fails to assume and implement the terms and conditions or (2) fails to require the developer or its contractor to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the grant document, permit, or contract, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, Veterans Affairs must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement [50 CFR 402.14(i)(3)].

Amount or Extent of Take

The Service anticipates that incidental take of the kit fox will be difficult to detect due to their shy nature which may cause harmed individuals to avoid human activity. Also, the species is mostly nocturnal, which may result in some harm being unobservable. There is a risk of harm, injury, or mortality as a result of the proposed construction activities and conversion of habitat.

While kit fox have not been documented using the project site, they do use the surrounding area and occur throughout the Bakersfield urban area. The Service anticipates that one (1) individual kit fox could be injured or killed during project implementation. This number is based on current information related to kit fox use of the site, the potential for use of the site during and after construction, and the implementation of conservation measures which will reduce impacts to kit fox should they be encountered.

Upon implementation of the proposed conservation measures as well as the following reasonable and prudent measure and terms and conditions, incidental take of the kit fox associated with the project will become exempt from the prohibitions described in section 9 of the Act.

Reasonable and Prudent Measure

All necessary and appropriate measures to avoid or minimize effects on the kit fox resulting from this project have been incorporated into the proposed conservation measures. Therefore, the following reasonable and prudent measure is necessary and appropriate to minimize incidental take of the kit fox:

- 1) All conservation measures, as described in the *Description of the Proposed Action* section of this biological opinion, shall be fully implemented, and adhered to. Further, this reasonable and prudent measure shall be supplemented by the terms and conditions below.

Terms and Conditions

To be exempt from the prohibitions of section 9 of the Act, Veterans Affairs, as well as any contractor acting on Veterans Affairs' behalf, must ensure compliance with the following terms and conditions, which implement the reasonable and prudent measure described above. These terms and conditions are nondiscretionary.

- 1) Veterans Affairs will include full implementation and adherence to the conservation measures as a condition of any contract or permit issued for the project.
- 2) To monitor whether the amount or extent of incidental take anticipated from implementation of the project is approached or exceeded, Veterans Affairs shall adhere to the following monitoring and reporting requirements. Should this anticipated amount or extent of incidental take be exceeded, Veterans Affairs must reinitiate consultation per 50 CFR 402.16(a).
 - a) Veterans Affairs shall contact the Sacramento Fish and Wildlife Office (Sacramento Office) immediately by phone or email to report encounters between kit fox and project workers and their equipment/activities whereby incidental take in the form of harm, injury, or mortality occurs. If the encounter occurs after normal working hours, Veterans Affairs shall contact the Sacramento Office at the earliest possible opportunity the next workday.
 - b) If injured or dead kit fox are found (regardless of whether incidental take has been exceeded), Veterans Affairs shall follow the steps outlined in the *Salvage and Disposition of Individuals* section below.

- c) Within 90 calendar days of completion of the project, Veterans Affairs shall provide to the Service a final post-construction report detailing compliance with the project design elements and proposed conservation measures described under the *Description of the Proposed Action* section of this biological opinion. The report shall include: (i) dates of project groundbreaking and completion; (ii) pertinent information concerning the success of the project in meeting the conservation measures; (iii) an explanation of failure to meet such measures, if any; (iv) known project effects on the species, if any; (v) observed incidents of harm to, injury to, or death of the species, if any; and (vi) any other pertinent information.

Salvage and Disposition of Individuals

Injured kit fox must be cared for by a licensed veterinarian or other qualified person or by an approved wildlife rehabilitation facility. If dead individuals are found, the Service should be immediately contacted to determine disposition of the carcass. In some cases, dead individuals should be sealed in a re-sealable plastic bag containing a paper with the date and time when the animal was found, the location where it was found, and the name of the person who found it. The bag containing the specimen must be frozen in a freezer located in a secure location until instructions are received from the Service regarding the disposition of the dead specimen. In other cases, the carcass should be kept unfrozen to allow for biological sampling. The Service contact person is the San Joaquin Valley Division Supervisor in the Sacramento Office at (916) 414-6544.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The Service recommends the following action:

- 1) Veterans Affairs should assist the Service in implementing recovery actions identified in the latest 5-Year Review by reviewing the document's recovery criteria and identifying activities that could be incorporated into Veterans Affairs' proposed projects, and successfully implemented.

The Service requests notification of the implementation of any conservation recommendations to be kept informed of actions avoiding or minimizing adverse effects or benefiting listed species or their habitats.

REINITIATION--CLOSING STATEMENT

This concludes formal consultation on the Bakersfield Outpatient Clinic. As provided in 50 CFR 402.16(a), reinitiation of consultation is required and shall be requested by the federal agency where discretionary federal involvement or control over the action has been retained or is authorized by law and:

- 1) If the amount or extent of taking specified in the incidental take statement is exceeded;

- 2) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- 3) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or
- 4) If a new species is listed or critical habitat designated that may be affected by the identified action.

If you have any questions regarding this biological opinion, please contact Justin Sloan, San Joaquin Valley Division Supervisor, at (916) 414-6544 or justin_sloan@fws.gov.

Sincerely,

KIM TURNER-
OLAH

Digitally signed by
KIM TURNER-OLAH
Date: 2025.03.13
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Kim S. Turner
Acting Field Supervisor

LITERATURE CITED

- Cypher, B. L., C. Van Horn Job, and S. Phillips. 2012. Conservation Strategies for San Joaquin Kit Foxes in Urban Environments. Prepared for the U.S. Bureau of Reclamation. Agreement No. R11AP20502.
- Cypher, B. L., J. D. Murdoch, and A. D. Brown. 2021. Artificial dens for the conservation of San Joaquin kit foxes. California Fish and Wildlife Special CESA Issue: 416-437.
- [Service] U.S. Fish and Wildlife Service. 2020a. Species Status Assessment Report for the San Joaquin Kit Fox (*Vulpes macrotis mutica*) Version 1.0. Sacramento, CA: Sacramento Fish and Wildlife Office.
- . 2020b. San Joaquin Kit Fox (*Vulpes macrotis mutica*) 5-year Review. Sacramento, CA. Sacramento Fish and Wildlife Office. September 2020.