Response to Comments on the Recirculated Draft Environmental Impact Report

State Clearinghouse Number 2005051055

City of Bakersfield
West Ming Specific Plan

June 11, 2007

Prepared for:

City of Bakersfield
Development Services Department
1715 Chester Avenue
Bakersfield, CA 93301
Contact: Ms. Jennie Eng, Principal Planner

Prepared by:

Michael Brandman Associates
220 Commerce, Suite 200
Irvine, CA 92602
Contact: Michael E. Houlihan, AICP, Project Director

B A K E R S F I E L D

Development Services Department
Stanley C. Grady, Director

Phil Burns, Building Director
Building Division
Phone: (661) 326-3720
FAX: (661) 325-0266

James D. Movius, Planning Director
Planning Division
Phone: (661) 326-3733
FAX: (661) 852-2135

DATE: June 11, 2007

TO: Commenting Agencies and Individuals

FROM: Jennie Eng
City of Bakersfield
1715 Chester Avenue
Bakersfield, California 93301

SUBJECT: Response to Comments for the West Ming Specific Plan RECIRCULATED Environmental Impact Report

In compliance with the California Environmental Quality Act (CEQA) Section 21092.5(a), the City of Bakersfield is providing a written response to each individual that submitted comments on the West Ming Specific Plan Recirculated Draft Environmental Impact Report (EIR).

The City of Bakersfield Planning Commission will hold a public hearing on the West Ming Specific Plan EIR on June 21, 2007 at 5:30 p.m. at City Hall, 1501 Truxtun Avenue, Bakersfield. The Bakersfield City Council will also hold a public hearing for deliberation of the certification of the West Ming Specific Plan Recirculated EIR. The City Council hearing has not been scheduled yet.

If you have any questions, please contact me at (661) 326-3733

Response to Comments to
Recirculated Environmental Impact Report
for
West Ming Specific Plan

State Clearinghouse No. 2005051055

Prepared for:

City of Bakersfield
Development Services Department
1715 Chester Avenue
Bakersfield, CA 93301
661.326.3733

Contact: Ms. Jennie Eng, Principal Planner

Prepared by:

Michael Brandman Associates
220 Commerce, Suite 200
Irvine, CA 92602
714.508.4100

Contact: Michael E. Houlihan, AICP, Project Director

June 11, 2007

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SECTION 1: HISTORY AND PURPOSE

1.1 - Purpose

On August 31, 2006, the draft environmental impact report (Draft EIR) for the West Ming Specific Plan (State Clearinghouse Number 2005051055) was circulated by the Lead Agency, the City of Bakersfield, for public comments. The comment review period ended on October 14, 2006. Substantive comments were received on several issues addressed in the Draft EIR. A Response to Comments Document was prepared and distributed to the public on December 8, 2006 that included responses to the various comments that were raised on the environmental information in the Draft EIR. Subsequent to the distribution, additional comments were received on the environmental documentation and additional information has been included in the EIR. The City of Bakersfield Planning Commission held a public hearing on December 21, 2006 and on January 4, 2007 recommended certification of the EIR and approval of the project to the Bakersfield City Council. Prior to the City Council taking action on the EIR and the project, the City decided to recirculate the EIR. Although the City does not consider the new information that has been presented as part of the EIR subsequent to the public distribution of the Draft EIR on August 31, 2006 as "significant", the City decided to provide the public additional review of the environmental information in the EIR in accordance with Section 15088.5 of the California Environmental Quality Act Guidelines.

The Recirculated Draft Environmental Impact Report (EIR) (State Clearing house No. 2005051055) for the West Ming Specific Plan project was circulated for public review and comment beginning on April 4, 2007 and ending on May 21, 2007. In accordance with Section 15088 of the California Environmental Quality Act (CEQA) Guidelines, the City of Bakersfield, as the lead agency, has evaluated the comments received on the Recirculated Draft EIR for West Ming Specific Plan project and has prepared written responses to the comments received. The responses to the comments and other documents, including technical appendices and other information contained within the environmental record, together with the Recirculated Draft EIR, constitute the Final EIR for use by the Bakersfield City Council and other decision makers in their review of the West Ming Specific Plan project.

This Response to Comments document is organized as follows:

- **Section 1 -** History and Purpose.
- **Section 2 -** Project Description.
- **Section 3 -** List of Commentors. Provides a list of the agencies, organizations, and individuals that commented on the Recirculated Draft EIR.
- **Section 4 -** Responses to Comments on the Recirculated Draft EIR. Includes a copy of all of the letters received. This section also provides Response to Comments on environmental

issues describing the disposition of the issues, explaining the EIR analysis, supporting the EIR conclusions, and/or providing information or correction as appropriate. This section is organized with the responses to each comment letter following the corresponding letter.

- **Section 5 -** Errata. Includes a list of all of the revisions to the Recirculated Draft EIR and new information to be included as part of the administrative record.
- **Attachment 1** - Biota Report.

SECTION 2: PROJECT DESCRIPTION

The project site is located in and adjacent to the southwest portion of the City of Bakersfield. It encompasses approximately 2,182 acres generally located west of Buena Vista Road, north of Pacheco Road, south of Ming Avenue, and east of the proposed West Beltway alignment. Approximately 640 acres of the project are located within the Bakersfield city limits and the remainder of the project site (1,542 acres) is located in unincorporated Kern County.

The proposed project includes the development of a new community with residential, commercial, recreational, schools, and light industrial uses. The project includes a maximum of 7,450 residential units, 478,880 square feet of commercial (including office, service, and retail), 1,135,000 square feet of special uses (light industrial, mineral and petroleum, public facilities, open space, parks, public transportation, office, and other uses permitted by the Specific Plan). The proposed schools will be located within the residential neighborhoods of the project site.

The proposed project includes a phasing plan that will be implemented over a 20-year period. The development will be phased so that adequate utilities are provided for each area of development. The existing agriculture and oil production activities will continue and be located adjacent to new developed areas of the Specific Plan until each area of the project site is developed.

The project will require approval of annexation, General Plan amendments, adoption of the West Ming Specific Plan, Zone Changes, Development Agreement, Federal Emergency Management Agency conditional and final letters of map revision, annexation to the City of Bakersfield for a portion of the project site, and a State Reclamation Board encroachment permit. In addition to these approvals, the project will require approval of parcel maps, tentative and final tract maps, conditional use permits, permits related to oil wells, and approvals for the proposed elementary and middle schools.

The following objectives have been identified for the proposed project:

- Provide a master planned community with residential, commercial, and industrial development of sufficient scale to permit master-planning of infrastructure, parks, open space, and public services to achieve the greatest possible efficiencies and synergies;
- Establish a new mixed use center as defined in the Metropolitan Bakersfield General Plan;
- Provide a development in southwest Bakersfield that is a focal point of activity and includes a mix of land uses as identified in the Metropolitan Bakersfield General Plan;
- Provide a full mix of land uses to support the project's population;
- Provide employment opportunities to assist in meeting the Kern COG employment growth projections for the City;

- Provide residential uses to meet the housing demand specified in the Metropolitan Bakersfield General Plan Land Use Element;
- Provide development similar to and consistent with the existing or approved development in southwest Bakersfield to maintain and enhance property values and enhance compatibility of neighborhood character;
- Provide a range of housing types on the project site;
- Provide a master plan development so that land uses are phased in a programmed manner and coordinated with the provision of infrastructure and public improvements necessary to accommodate such growth;
- Locate development to meet anticipated growth areas of relatively lesser environmental sensitivity, accommodating growth while balancing environmental conditions;
- Provide parks which satisfy park dedication requirements and meet recreational needs of local residents including both active and passive recreational facilities;
- Locate a master planned community adjacent to major highway arterials to better promote efficient traffic flow and minimize traffic demand on local and collector streets;
- Cluster as much housing as possible near major traffic arterials to minimize congestion, air quality, noise, and safety impact on collector and neighborhood streets; and
- Promote growth in areas directed by the Metropolitan Bakersfield General Plan.

SECTION 3: LIST OF COMMENTORS

A list of public agencies, organizations, and individuals that provided comments on the Recirculated Draft EIR is presented below. Each comment letter has been assigned an alphabetical designation. Each comment within each letter has been assigned a numerical designation so that each comment could be crossed-referenced with an individual response. Responses follow each comment letter.

Commentor	Author Code
State Agencies	
State of California, Governor's Office of Planning and Research, State Clearinghouse and Planning Unit - May 22, 2007	A
State of California, Department of Transportation - May 10, 2007	B
State of California, Public Utilities Commission - May 16, 2007	C
State of California, Department of Water Resources - May 7, 2007	D
State of California, Native American Heritage Commission - May 8, 2007	E
State of California, Department of Fish and Game - May 18, 2007	F
Regional Agencies	
San Joaquin Valley Air Pollution Control District - May 18, 2007	G
County Agencies	
Kern County Roads Department, Resource Management Agency - May 17, 2007	H
Kern County Superintendent of Schools - April 13, 2007	I
City Agencies	
City of Shafter - May 17, 2007	J
Private Organizations and Persons	
Tejon Indian Tribe - May 21, 2007	K
North of the River Recreation and Park District - April 17, 2007	L
Foothill Energy LLC - May 21, 2007	M
Harry Love - June 3, 2007	N
Planning Commission Hearing - May 3, 2007	
Commissioner Tkac	O

SECTION 4: RESPONSES TO COMMENTS ON THE RECIRCULATED DRAFT EIR

4.1 - Introduction

In accordance with Section 15088 of the California Environmental Quality Act (CEQA) Guidelines, the City of Bakersfield as the lead agency evaluated the comments received on the Recirculated Draft EIR (State Clearinghouse No. 2005051055) for the West Ming Specific Plan Project and has prepared the following responses to the comments received. This Response to Comments document is part of the Final EIR for the project in accordance with Section 15132 of the CEQA Guidelines.

4.2 - Comment Letters and Responses

The comment letters and responses are provided on the following pages. The letters follow the same organization as used in Section 3, List of Commentors.

STATE OF CALIFORNIA

GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT

ARNOLD SCHWARZENEGGER
GOVERNOR

CYNTHIA BRYANT
DIRECTOR

May 22, 2007

A
Page 1 of 2

Jennie Eng
City of Bakersfield
1715 Chester Avenue
Bakersfield, CA 93301

Subject: West Ming Specific Plan
SCH#: 2005051055

Dear Jennie Eng:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on May 21, 2007, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

> "A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

A-1

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts

Terry Roberts
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Document Details Report
State Clearinghouse Data Base

SCH# 2005051055
Project Title West Ming Specific Plan
Lead Agency Bakersfield, City of

Type EIR Draft EIR

Description The proposed project includes the development of a new community with residential, commercial, recreational, schools, and light industrial uses. The project includes a maximum of 7,450 residential units, 478,880 square feet of commercial (including office, service, and retail), 331,200 square feet of town center commercial and mixed use (including office, service, and retail), 1,135,000 square feet of special uses (light industrial, mineral and petroleum, public facilities, open space, parks, public transportation, office, and other uses permitted by the Specific Plan). The proposed schools will be located within the residential neighborhoods of the project site.

Lead Agency Contact

Name Jennie Eng
Agency City of Bakersfield
Phone (661) 326-3733 **Fax**
email
Address 1715 Chester Avenue
City Bakersfield **State** CA **Zip** 93301

Project Location

County Kern
City Bakersfield
Region
Cross Streets Buena Vista Road and White Lane
Parcel No.
Township 30S **Range** 26E **Section** 10,11, **Base**

Proximity to:

Highways
Airports
Railways San Joaquin Valley RR Buttonwill
Waterways Kern River, Kern River Canal
Schools
Land Use Current land uses consist of agriculture and oil production.
Z: A-20A (Intensive Agriculture, 20-acre minimum) and A (Exclusive Agricultural District)
GP: FPP (Floodplain Primary District) and A-GH (Exclusive Agriculture - Geologic Hazard Combining District)

Project Issues Agricultural Land; Air Quality; Archaeologic-Historic; Flood Plain/Flooding; Geologic/Seismic; Minerals; Noise; Public Services; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Cumulative Effects; Recreation/Parks

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Game, Region 4; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Office of Emergency Services; California Highway Patrol; Caltrans, District 6; Department of Housing and Community Development; Air Resources Board, Major Industrial Projects; State Water Resources Control Board, Clean Water Program; Regional Water Quality Control Bd., Region 5 (Fresno); Department of Toxic Substances Control; Native American Heritage Commission

Date Received 04/04/2007 **Start of Review** 04/04/2007 **End of Review** 05/21/2007

Note: Blanks in data fields result from insufficient information provided by lead agency.

4.3 - State Agencies

A. State of California, Governor's Office of Planning and Research, State Clearinghouse and Planning Unit - May 22, 2007

Response to Comment A-1

This comment is noted, and it is acknowledged that the Recirculated Draft EIR was distributed to selected state agencies for review. No specific comments on the Recirculated Draft EIR were provided; therefore, no further response is necessary.

DEPARTMENT OF TRANSPORTATION
1352 WEST OLIVE AVENUE
P.O. BOX 12616
FRESNO, CA 93778-2616
PHONE (559) 488-7306
FAX (559) 488-4088
TTY (559) 488-4066

Flex your power!
Be energy efficient!

May 10, 2007

2135-IGR/CEQA
06-KER-119-25.26
WEST MING SPECIFIC PLAN
DRAFT EIR
SCH #2005051055

Ms. Jennie Eng
Principal Planner
City of Bakersfield
Dev. Serv. Dept. – Planning Div.
1715 Chester Avenue
Bakersfield, CA 93301

B

Dear Ms. Eng:

Thank you for the opportunity to review the draft EIR for the West Ming Specific Plan. This proposal is for the development of a new community. The site is located north of State Route (SR) 119, bounded by Pacheco Road, White Lane, Buena Vista Road, and Ming Avenue. Caltrans offers the following comment:

B-1

Please refer to our letter previously sent, dated December 21, 2006.

Please send a response to our comments prior to staff's recommendations to the Planning Commission and the City Council.

If you have any questions, please call me at (559) 445-5232.

Sincerely,

LISA ZITO
Office of Transportation Planning
District 6

c: Mr. Scott Morgan, Senior Planner, State Clearinghouse

DEPARTMENT OF TRANSPORTATI
1352 WEST OLIVE AVENUE
P.O. BOX 12616
FRESNO, CA 93778-2616
PHONE (559) 488-7306
FAX (559) 488-4088
TTY (559) 488-4066

Post-it® Fax Note 7671 | Date 6/6/07 | # of pages ▶ 2
To KRISTEN GARCIA | From L. ZITO
Co./Dept. M. BRANDMAN ASSOC | Co. CT-6
Phone # 714 508 5100 | Phone # 559 445 5232
Fax # 714 508 4110 | Fax # 559 488 4088

your power!
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December 21, 2006

2135-IGR/CEQA
06-KER-119-25.26
WEST MING SPECIFIC PLAN DRAFT EIR
FINAL REPLY TO COMMENTS
SCH #2005051055

Ms. Jenny Eng
Principal Planner
City of Bakersfield
Dev. Serv. Dept. – Current Planning
1715 Chester Avenue
Bakersfield, CA 93301

B

Dear Ms. Eng:

Thank you for the opportunity to review the Response to Comments, dated December 15, 2006, on the Draft Environmental Impact Report (EIR) for the West Ming Specific Plan. Please enter this letter into the administrative record. In our telephone conversation with Mr. Steve Walker this morning, we were given the assurance that the proposed mitigations in the draft EIR would be reassessed as the project progresses through its phases, the improvements recommended in the Traffic Study of the draft EIR would be advanced if necessary. Caltrans recommends that the City of Bakersfield condition this project to include the following:

1. An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under, or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State. Encroachment permits will be issued in accordance with Streets and Highway Codes, Section 671.5, "Time Limitations." B-2

2. Caltrans requests the mitigation monitoring section be amended to include all recommended improvements within the State right-of-way, monitoring of impacts per phases of project, and also to indicate Caltrans as a permitting agency. B-3

3. Please complete the Mitigation Monitoring Form (attached) and return it once the entitlement process is completed. B-4

We understand that the Regional Transportation Impact Fee (RTIF) includes State facilities in the program. We appreciate the opportunity to continue this coordination and look forward to working with you.

Please forward to us the conditions of approval for this project based on our recommendations.

If you have any questions, please call me at (559) 445-5232.

Sincerely,

LISA ZITO
Office of Transportation Planning
District 6

Attachment

c: Mr. Scott Morgan, Project Analyst, State Clearinghouse
Ms. Marian Shaw, Civil Engineer, City of Bakersfield
Mr. Steve Walker, City Engineer, City of Bakersfield

B. State of California, Department of Transportation - May 10, 2007

Response to Comment B-1

The comment referencing the Caltrans December 21, 2006 comment letter is noted. Responses to this letter follow and responses will be forwarded prior to City Council certification of the EIR as required in Section 21092.5 (a) of the CEQA Guidelines.

Response to Comment B-2

As required by Caltrans, it is understood that an encroachment permit shall be obtained from Caltrans for any work proposed within existing State Rights-of-way. In order to obtain said permit, all work proposed within the existing State Rights-of-way shall be designed in accordance with State standards and specifications current at time of the future proposed development.

Response to Comment B-3

This comment is noted, and it is understood that the City of Bakersfield will amend the mitigation monitoring plan to address Caltrans' comment.

Response to Comment B-4

This comment is noted, and it is understood that the City of Bakersfield will complete the Caltrans' Mitigation Monitoring Form upon completion of the entitlement process.

STATE OF CALIFORNIA
Arnold Schwarzenegger, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

C

May 16, 2007

Jennie Eng
City of Bakersfield
1715 Chester Avenue
Bakersfield, CA 93301

RE: West Ming Specific Plan, SCH# 2005051055

Dear Ms. Eng:

As the state agency responsible for rail safety within California, we recommend that any development projects planned adjacent to or near the rail corridor in the County be planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade highway-rail crossings. This includes considering pedestrian circulation patterns/destinations with respect to railroad right-of-way (ROW).

Safety factors to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade highway-rail crossings due to increase in traffic volumes and appropriate fencing to limit the access of trespassers onto the railroad right-of-way. Any project that includes a modification to an exiting crossing or proposes a new crossing is legally required to obtain authority to construct from the Commission. If the project includes a proposed new crossing, the Commission will be a responsible party under CEQA and the impacts of the crossing must be discussed within the environmental documents. C-1

Of specific concern is that continuous vandal resistant fencing along the railroad ROW be a requirement of approval for the project to deter trespassing onto the tracks. All new driveways associated with the development should be located as far from existing at-grade highway-rail crossings as possible. Before any construction begins, the improvements proposed at the existing at-grade highway-rail crossing on Buena Vista Road should be completed.

The above-mentioned safety improvements should be considered when approval is sought for the new development. Working with Commission staff early in the conceptual design phase will help improve the safety to motorists and pedestrians in the County.

If you have any questions in this matter, please call me at (415) 703-2795.

Very truly yours,

Kevin Boles
Environmental Specialist
Rail Crossings Engineering Section
Consumer Protection and Safety Division

cc: Jack Gautier, San Joaquin Valley Railroad

C. State of California, Public Utilities Commission - May 16, 2007

Response to Comment C-1

Work to improve the at-grade crossing at Buena Vista Road will require approval by the City of Bakersfield Public Works Department, approval by the Union Pacific Railroad, and consultation with the Public Utilities Commission (PUC) for widening or improving the roadway. An encroachment permit will be required to perform work within the Union Pacific Railroad right-of-way as well as City of Bakersfield street right-of-way. Street improvements will be reviewed by the City of Bakersfield, the Railroad, and the National Transportation Safety Board to address safety and design of Buena Vista railroad crossing. This review and approval will reduce potential safety issues for both vehicular and pedestrian traffic when improvements are constructed. No new grade crossings are proposed with this project. Any new grade crossings will require consultation with the PUC for the processing of a CEQA document and identifying impacts any crossing and potential mitigation measures for the safety of vehicular and pedestrian public.

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791

May 7, 2007

Jennie Eng
City of Bakersfield
1715 Chester Avenue
Bakersfield, California 93301

West Ming Specific Plan – Recirculated Draft EIR
State Clearinghouse (SCH) Number: 2005051055

The project corresponding to the subject SCH identification number has come to our attention. The limited project description suggests your project may be an encroachment on the State Adopted Plan of Flood Control. You may refer to the California Code of Regulations, Title 23 and Designated Floodway maps at http://recbd.ca.gov/. Please be advised that your county office also has copies of the Board's designated floodways for your review. If indeed your project encroaches on an adopted food control plan, you will need to obtain an encroachment permit from the Reclamation Board prior to initiating any activities. The attached Fact Sheet explains the permitting process. Please note that the permitting process may take as much as 45 to 60 days to process. Also note that a condition of the permit requires the securing all of the appropriate additional permits before initiating work. This information is provided so that you may plan accordingly. D-1

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact me at (916) 574-1249.

Sincerely,

Christopher Huitt
Staff Environmental Scientist
Floodway Protection Section

cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791

September 20, 2006

Jenny Eng
City of Bakersfield
1715 Chester Avenue
Bakersfield, California 93301

West Ming Specific Plan
State Clearinghouse (SCH) Number: 2005051055

The project corresponding to the subject SCH identification number has come to our attention. The limited project description suggests a potential encroachment on an Adopted Plan of Flood Control. If indeed your project encroaches on an adopted food control plan, you will need to obtain an encroachment permit from the Reclamation Board prior to initiating any activities. The attached Fact Sheet explains the permitting process. Please note that the permitting process may take as much as 45 to 60 days to process. Also note that a condition of the permit requires the securing all of the appropriate additional permits before initiating work. This information is provided so that you may plan accordingly.

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact Sam Brandon of my staff at (916) 574-0651.

Sincerely,

Mike Mirmazaheri, Chief
Floodway Protection Section

cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

Encroachment Permits Fact Sheet

Basis for Authority

State law (Water Code Sections 8534, 8608, 8609, and 8710 – 8723) tasks the Reclamation Board with enforcing appropriate standards for the construction, maintenance, and protection of adopted flood control plans. Regulations implementing these directives are found in California Code of Regulations (CCR) Title 23, Division 1.

Area of Reclamation Board Jurisdiction

The adopted plan of flood control under the jurisdiction and authority of the Reclamation Board includes the Sacramento and San Joaquin Rivers and their tributaries and distributaries and the designated floodways.

Streams regulated by the Reclamation Board can be found in Title 23 Section 112. Information on designated floodways can be found on the Reclamation Board's website at http://recbd.ca.gov/designated_floodway/ and CCR Title 23 Sections 101 - 107.

Regulatory Process

The Reclamation Board ensures the integrity of the flood control system through a permit process (Water Code Section 8710). A permit must be obtained prior to initiating any activity, including excavation and construction, removal or planting of landscaping within floodways, levees, and 10 feet landward of the landside levee toes. Additionally, activities located outside of the adopted plan of flood control but which may foreseeable interfere with the functioning or operation of the plan of flood control is also subject to a permit of the Reclamation Board.

Details regarding the permitting process and the regulations can be found on the Reclamation Board's website at http://recbd.ca.gov/ under "Frequently Asked Questions" and "Regulations," respectively. The application form and the accompanying environmental questionnaire can be found on the Reclamation Board's website at http://recbd.ca.gov/forms.cfm.

Application Review Process

Applications when deemed complete will undergo technical and environmental review by Reclamation Board and/or Department of Water Resources staff.

Technical Review

A technical review is conducted of the application to ensure consistency with the regulatory standards designed to ensure the function and structural integrity of the adopted plan of flood control for the protection of public welfare and safety. Standards and permitted uses of designated floodways are found in CCR Title 23 Sections 107 and Article 8 (Sections 111 to 137). The permit contains 12 standard conditions and additional special conditions may be placed on the permit as the situation warrants. Special conditions, for example, may include mitigation for the hydraulic impacts of the project by reducing or eliminating the additional flood risk to third parties that may caused by the project.

Additional information may be requested in support of the technical review of

your application pursuant to CCR Title 23 Section 8(b)(4). This information may include but not limited to geotechnical exploration, soil testing, hydraulic or sediment transport studies, and other analyses may be required at any time prior to a determination on the application.

Environmental Review

A determination on an encroachment application is a discretionary action by the Reclamation Board and its staff and subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq.). Additional environmental considerations are placed on the issuance of the encroachment permit by Water Code Section 8608 and the corresponding implementing regulations (California Code of Regulations – CCR Title 23 Sections 10 and 16).

In most cases, the Reclamation Board will be assuming the role of a "responsible agency" within the meaning of CEQA. In these situations, the application must include a certified CEQA document by the "lead agency" [CCR Title 23 Section 8(b)(2)]. We emphasize that such a document must include within its project description and environmental assessment of the activities for which are being considered under the permit.

Encroachment applications will also undergo a review by an interagency Environmental Review Committee (ERC) pursuant to CCR Title 23 Section 10. Review of your application will be facilitated by providing as much additional environmental information as pertinent and available to the applicant at the time of submission of the encroachment application.

These additional documentations may include the following documentation:

- California Department of Fish and Game Streambed Alteration Notification (http://www.dfg.ca.gov/1600/),
- Clean Water Act Section 404 applications, and Rivers and Harbors Section 10 application (US Army Corp of Engineers),
- Clean Water Act Section 401 Water Quality Certification, and
- corresponding determinations by the respective regulatory agencies to the aforementioned applications, including Biological Opinions, if available at the time of submission of your application.

The submission of this information, if pertinent to your application, will expedite review and prevent overlapping requirements. This information should be made available as a supplement to your application as it becomes available. Transmittal information should reference the application number provided by the Reclamation Board.

In some limited situations, such as for minor projects, there may be no other agency with approval authority over the project, other than the encroachment permit by Reclamation Board. In these limited instances, the Reclamation Board

may choose to serve as the "lead agency" within the meaning of CEQA and in most cases the projects are of such a nature that a categorical or statutory exemption will apply. The Reclamation Board cannot invest staff resources to prepare complex environmental documentation.

Additional information may be requested in support of the environmental review of your application pursuant to CCR Title 23 Section 8(b)(4). This information may include biological surveys or other environmental surveys and may be required at anytime prior to a determination on the application.

D. State of California, Department of Water Resources - May 7, 2007

Response to Comment D-1

As identified on page 4-13 of the Response to Comments dated December 8, 2006 (see Chapter 2 of the Recirculated Draft EIR), the proposed project will be required to obtain an encroachment permit on an Adopted Plan of Flood Control from the State Board of Reclamation. An encroachment permit will be obtained prior to any construction activities that affect the Flood Plain Primary in accordance with the adopted flood control plan. This will be in addition to the Conditional Letter of Map Revisions (CLOMR) that was obtained through the Federal Emergency Management Agency dated July 7, 2006 for the construction of a flood control levee. A copy of the (CLOMR) Conditional Letter of Map Revisions is located in Exhibit A.

Exhibit A

Federal Emergency Management Agency

Washington, D.C. 20472

JUL 07 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:
Case No.: 05-09-A320R
(Formerly Case No. 05-09-2100320R)

Ms. Barbara Patrick
Chairman, Kern County
Board of Supervisors
1115 Truxtun Avenue
Bakersfield, CA 93301

Community: Kern County, CA
Community No.: 060075

104

Dear Ms. Patrick:

This responds to a request that the Department of Homeland Security's Federal Emergency Management Agency (FEMA) comment on the effects that a proposed project would have on the effective Flood Insurance Rate Map (FIRM) for your community, in accordance with Part 65 of the National Flood Insurance Program (NFIP) regulations. In a letter dated August 17, 2005, Mr. Justin B. Golliher, Design Engineer, McIntosh & Associates, requested that FEMA evaluate the effects that the levee improvements along the Kern River from approximately 15,400 feet downstream to approximately 10,200 feet downstream of Stockton Highway would have on the flood hazard information shown on the effective FIRM. The proposed project will consist of extending the existing levee along the south bank of the Kern River.

All data required to complete our review of this request for a Conditional Letter of Map Revision (CLOMR) were submitted with letters from Mr. Golliher.

We reviewed the submitted data and the data used to prepare the effective FIRM for your community and determined that the proposed project meets the minimum floodplain management criteria of the NFIP. The submitted existing conditions HEC-RAS hydraulic computer model, dated March 7, 2006, based on updated topographic information, was used as the base conditions model in our review of the proposed conditions model for this CLOMR request. We believe that, if the proposed project is constructed as shown on the work map entitled "Castle & Cook California, Inc., West Ming Specific Plan – Kern River Levee, Revised Firm," prepared by McIntosh & Associates, dated April 10, 2006, and the data listed below are received, a revision to the FIRM would be warranted.

As a result of the proposed project, the water-surface elevations (WSELs) of the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood) will neither increase nor decrease compared to the existing conditions base flood WSELs for the Kern River.

As a result of the proposed project, the width of the Special Flood Hazard Area (SFHA), the area that would be inundated by the base flood, will decrease compared to the effective SFHA width throughout the revised reach of the Kern River. The maximum decrease in SFHA width, approximately 4,000 feet, will occur approximately 13,600 feet downstream of Stockton Highway.

Upon completion of the project, your community may submit the data listed below and request that we make a final determination on revising the effective FIRM.

- Detailed application and certification forms, which were used in processing this request, must be used for requesting final revisions to the maps. Therefore, when the map revision request for the area covered by this letter is submitted, Form 1, entitled "Overview & Concurrence Form," must be included. (A copy of this form is enclosed.)

- The detailed application and certification forms listed below may be required if as-built conditions differ from the preliminary plans. If required, please submit new forms (copies of which are enclosed) or annotated copies of the previously submitted forms showing the revised information.

  Form 2, entitled "Riverine Hydrology & Hydraulics Form"

  Form 3, entitled "Riverine Structures Form"

  Hydraulic analyses, for as-built conditions, of the base flood, together with a topographic work map showing the revised floodplain boundaries, must be submitted with Form 2.

- Effective October 30, 2005, FEMA revised the fee schedule for reviewing and processing requests for conditional and final modifications to published flood information and maps. In accordance with this schedule, the current fee for this map revision request is $4,000 and must be received before we can begin processing the request. Please note, however, that the fee schedule is subject to change, and requesters are required to submit the fee in effect at the time of the submittal. Payment of this fee shall be made in the form of a check or money order, made payable in U.S. funds to the National Flood Insurance Program, or by credit card. The payment must be forwarded to the following address:

  Federal Emergency Management Agency
  Fee-Charge System Administrator
  P.O. Box 22787
  Alexandria, VA 22304

- As-built plans, certified by a registered professional engineer, of all proposed project elements

- Community acknowledgment of the map revision request from all affected communities, along with all annexation documentation if, at the time of the submittal of a Letter of Map Revision request for this project, the area to be revised has been annexed by the City of Bakersfield

- An officially adopted maintenance and operation plan for the Kern River Levee improvements. This plan, which may be in the form of a written statement from the community Chief Executive Officer, an ordinance, or other legislation, must describe the nature of the maintenance activities, the frequency with which they will be performed, and the title of the local community official who will be responsible for ensuring that the maintenance activities are accomplished.

After receiving appropriate documentation to show that the project has been completed, FEMA will initiate a revision to the FIRM.

This CLOMR is based on minimum floodplain management criteria established under the NFIP. Your community is responsible for approving all floodplain development and for ensuring all necessary permits required by Federal or State law have been received. State, county, and community officials, based on knowledge of local conditions and in the interest of safety, may set higher standards for construction in the SFHA. If the State, county, or community has adopted more restrictive or comprehensive floodplain management criteria, these criteria take precedence over the minimum NFIP criteria.

If you have any questions regarding floodplain management regulations for your community or the NFIP in general, please contact the Consultation Coordination Officer (CCO) for your community. Information on the CCO for your community may be obtained by calling the Director, Federal Insurance and Mitigation Division of FEMA in Oakland, California, at (510) 627-7175. If you have any questions regarding this CLOMR, please call our Map Assistance Center, toll free, at 1-877-FEMA MAP (1-877-336-2627).

Sincerely,

Michael B. Godesky, Project Engineer
Engineering Management Section
Mitigation Division

For: William R. Blanton Jr., CFM, Acting Chief
Engineering Management Section
Mitigation Division

Enclosures

cc: Mr. Charles Lackey, P.E.
Director
Engineering and Surveying Services
Kern County

Mr. Phil Burns
Assistant Building Director
Development Services Department
City of Bakersfield

Mr. Stephen J. DeBranch
Vice President
Castle & Cooke California, Inc.

Mr. Justin B. Golliher
Design Engineer
McIntosh & Associates

STATE OF CALIFORNIA Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: ds_nahc@pacbell.net

May 8, 2007

Ms. Jennie Eng, Principal Planner
City of Bakersfield
1715 Chester Avenue
Bakersfield, CA 93301

FAX to: 661-852-2136
Number of pages: 2

Re: Tribal Consultation Per Government Code 65352.3 (SB 18) for SCH#2005051055, West Ming Specific Plan; City of Bakersfield; Kern County, California

Dear Ms. Eng:

The Native American Heritage Commission is responding to the Recirculated Draft Environmental Impact Report by treating as an SB 18 project requiring Tribal Consultation because a Specific Plan triggers government Code §65352.3.

Government Code §65352.3 requires local governments to consult with California Native American tribes identified by the Native American Heritage Commission (NAHC) for the purpose of protecting, and/or mitigating impacts to cultural places. The Native American Heritage Commission is the state's Trustee Agency for Native American Cultural Resources. Attached is a consultation list of tribes with traditional lands or cultural places located within the Project Area of Potential Effect (APE). E-1

As a part of consultation, the NAHC recommends that local governments conduct record searches through the NAHC and California Historic Resources Information System (CHRIS) to determine if any cultural places are located within the area(s) affected by the proposed action. NAHC Sacred Lands File requests must be made in writing. All requests must include county, USGS quad map name, township, range and section. Local governments should be aware, however, that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place. A tribe may be the only source of information regarding the existence of a cultural place.

The Native American Heritage Commission works with Native American tribal governments regarding its identification of 'Areas of Traditional Use,' The Commission may adjust the submitted data defining the 'Area of Traditional Use' in accordance with generally accepted ethnographic, anthropological, archeological research and oral history. Also, the Area of Traditional Use is an issue appropriate for the government-to-government consultation process.

If you have any questions, please contact me at (916) 653-6251.

Sincerely,

Dave Singleton
Program Analyst

Attachment: Tribal Consultation List

Native American Tribal Consultation List
Kern County
May 8, 2007

Tejon Indian Tribe
Kathy Morgan, Chairperson
2234 4th Street
Wasco , CA 93280
(661) 868-6434 (Work)

Yowlumne
Kitanemuk

Chumash Council of Bakersfield
James R. Leon, Chairperson
P.O. Box 902
Bakersfield , CA 93302
chumashtribe@sbcgloba.net
(661) 836-0486

Chumash

Kern Valley Indian Council
Robert Robinson, Historic Preservtion Officer
P.O. Box 401
Weldon , CA 93283
brobinson@mchsi.com
(760) 378-4575 (Home)
(760) 549-2131 (Work)

Tubatulabal
Kawaiisu
Koso
Yokuts

Tubatulabals of Kern Valley
Donna Begay, Tribal Chairwoman
P.O. Box 226
Lake Isabella , CA 93240
(760) 379-4590

Tubatulabal

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable only for consultation with Native American tribes under Government Code Section 65352.3.

E. State of California, Native American Heritage Commission - May 8, 2007

Response to Comment E-1

The City of Bakersfield sent a letter to California Native American tribes identified by the Native American Heritage Commission on July 25, 2006 requesting consultation in accordance with Senate Bill 18. The Tejon Indian Tribe is the only California Native American tribe that responded and requested to be on the project site during future archaeological surveys and any ground disturbance. Section 5.4 in the Draft EIR (see Chapter 1 of the Recirculated Draft EIR) included Mitigation Measure 5.4.A.1 which states that a Native American monitor be present during construction excavation activities at the location of the 10 cultural sites and 26 isolates that were previously recorded on the site.

State of California - The Resources Agency
DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4014

Clear
5/21/07
LATE
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May 17, 2007

Jennie Eng, Principal Planner
City of Bakersfield
Development Services Department – Planning Division
1715 Chester Avenue
Bakersfield, California 93301

Dear Ms. Eng:

West Ming Specific Plan
SCH #2005051055

The California Department of Fish and Game has reviewed the Re-circulated Program Environmental Impact Report (EIR) prepared for actions necessary to consider development of a new 2,182-acre community with residential, commercial, recreational, schools, and light industrial uses (Project). The Project includes adoption of the West Ming Specific Plan with a maximum of 7,450 residential units, 478,880 square feet of commercial (including office, service, and retail), 331,200 square feet of town center commercial and mixed use (including office, service, and retail), 1,135,000 square feet of special uses (light industrial, mineral and petroleum, public facilities, open space, parks, public transportation, office, and other uses permitted by the Specific Plan). Implementation of the Project includes General Plan Land Use Element Amendment, General Plan Circulation Element Amendment, General Plan Kern River Plan Element Amendment, adoption of the West Ming Specific Plan, Zone Change, Development Agreement, Federal Emergency Management Agency Map Revisions, annexation to the City of Bakersfield for a portion of the Project site, and a State Reclamation Board Encroachment Permit.

The Project is located west of Buena Vista Road, north of Pacheco Road, South of Ming Avenue, and east of the proposed West Beltway alignment in southwest Metropolitan Bakersfield, Kern County (all or portions of Sections 10, 11, 13, 14, and 15 of Township 30 South, Range 26 East, MDB&M). A portion of the Project site is located adjacent to the Kern River and within the Kern River Primary Floodplain.

Metropolitan Bakersfield Habitat Conservation Plan (MBHCP): The EIR states that the proposed Project is located south of the primary floodplain of the Kern River. The Department has reviewed aerial photos prepared by the Department of Water Resources

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delineating the Kern River primary floodplain. The Kern River primary floodplain includes the Kern River channel and a portion of the adjacent floodplain. The Department is concerned that a portion of the Project site appears to overlap with the Kern River primary floodplain. The Kern River primary floodplain, as adopted by the State Reclamation Board, is excluded from the MBHCP because of the need to assure a dispersal corridor for the San Joaquin kit fox and other wildlife through the MBHCP permit area. Any portion of the Project proposed within the Kern River primary floodplain could be subject to separate State incidental take authorization and permitting according to Fish and Game Code Section 2081(b). Additional Federal Incidental Take Authorization under a separate USFWS 10(a)1(b) Incidental Take Permit and Habitat Conservation Plan may be necessary. The applicant should be advised that the mitigation requirements of the MBHCP do not meet the Department's current fully mitigated standard for issuance of a State Incidental Take Permit. Therefore, additional avoidance, minimization, and mitigation will be required if separate State incidental take authorization is necessary. The EIR should be updated with aerial photographs delineating both the Kern River primary flood plain as defined in the MBHCP and the Project boundary.

F-1 CONT.

Kern River Setbacks: Should the Project boundary include the Kern River primary floodplain, we recommend that the Project is designed to avoid the floodplain and the need for a separate State Incidental Take Permit pursuant to Fish and Game Code Section 2081(b). Regardless, the Department recommends the EIR include measures requiring a minimum 200-foot no-construction setback from the upper bank of the Kern River. The Department also recommends a minimum 200-foot no-construction setback from the outer edge of any riparian habitat located adjacent to portions of the Project boundary. These measures are meant to reduce impacts to the Kern River and associated riparian zone, and maintain a continuous wildlife corridor adjacent to the Kern River.

Stream Alteration Notification and Responsible Agency Authority: The Kern River and associated riparian habitat are located adjacent to the Project site. The Department has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. For any activity that will divert or obstruct the natural flow, or change the bed, bank, or channel of a river or stream, or use material from a streambed, the Department may require a Stream Alteration Agreement (SAA), pursuant to Section 1600 et seq. of the Fish and Game Code. The issuance of a SAA is subject to the California Environmental Quality Act (CEQA) review. The Department, as a Responsible Agency under CEQA, would consider the CEQA document prepared for the Project. The CEQA document should fully identify the existing and potential impacts to streams and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the SAA. We recommend contacting Annette Jennings, Staff Services Analyst, at (559) 243-4593, or Brian Erlandsen,

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Environmental Scientist, at (559) 243-4014 extension 231, for further information regarding notification requirements.

Swainson's hawk: Incidental take of the State-listed threatened Swainson's hawk (*Buteo swainsoni*) is not authorized under the MBHCP, since it is not a covered species in either the MBHCP or the associated State Incidental Take Permit. Swainson's hawk nest sites have been documented within two miles of the Project site, and Project development will result in the loss of 2,182 acres of foraging habitat for Swainson's hawk. Impacts to potential Swainson's hawk foraging habitat should be mitigated regardless of whether or not "take" will occur. Mitigation for impacts to Swainson's hawk foraging habitat should occur within 10 miles from nest trees. In addition to fee title acquisition of grassland habitat, mitigation could occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.

The Project is located adjacent to riparian habitat along the Kern River. Construction activities adjacent to active Swainson's hawk nest trees can disturb nesting adults, resulting in the loss of reproductive effort and nest abandonment. The Biota Report prepared by Pruett and Associates and dated August 13, 2006, states that several large trees suitable for raptor nesting occur within the Project site. Removal of mature trees and other riparian vegetation is another potentially significant impact. The Department considers disturbance during the nesting season, and removal of known raptor nest trees even outside of the nesting season, to be significant impacts under CEQA, and in the case of Swainson's hawk could also result in take under the California Endangered Species Act (CESA). This is especially true with species such as Swainson's hawk that exhibit high site fidelity to their nest and nest trees year after year. F-3

To avoid such impacts, surveys for nesting raptors should be conducted following the survey methodology developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to any disturbance within 5 miles of a potential nest tree (DFG, 1994). These surveys, the parameters of which were designed to optimize detectability, must be conducted to reasonably assure the Department that take of this species will not occur as a result of disturbance associated with Project implementation. In the event that this species is detected during protocol-level surveys, consultation with the Department is warranted to discuss how to implement the Project and avoid take.

Tipton Kangaroo Rat: The Department does not concur with the conclusion stated in the EIR that the potential for occurrence of the State and Federally-listed endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) within the Project site is unlikely F-4

because the burrow openings of the kangaroo rats on the Project site are typical of Heerman's kangaroo rat (*Dipodomys heermanni*). The Biota Report prepared for this Project site by Pruett and Associates documents that active kangaroo rat burrows occur within the Project site. The Biota Report correctly states that only trapping would identify which species of kangaroo rat occupy the site. Comparing the burrow entrance size of a kangaroo rat is not considered a reliable method of verifying species presence or absence; species experts are unable to make a determination as to which *Dipodomys* species is using a burrow based on burrow size or shape alone. Trapping to identify the species of kangaroo rat occupying the site should be required. Depending upon the trapping results, additional take avoidance and minimization measures may need to be incorporated into the EIR in order to minimize direct impacts. F-4 CONT.

Burrowing Owl: Burrowing Owl: Burrowing owl burrows and burrowing owls (*Athene cunicularia)* have been observed in the Project boundary and surrounding vicinity. If any ground disturbing activities will occur during the burrowing owl nesting season (approximately February 1 through August 31), implementation of avoidance measures is required. The Department's Staff Report on Burrowing Owl Mitigation (CDFG, 1995) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone of a minimum distance of 250 feet, unless a qualified biologist approved by the Department 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. Failure to implement this buffer zone could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure. Impacts of this nature are violations of Fish and Game Code Sections 3503, 3503.5, 3513, and the Federal Migratory Bird Treaty Act (MBTA). The Department's Staff Report on Burrowing Owl Mitigation {CDFG, 1995 #478} also recommends that a minimum of 6.4 acres of foraging habitat per pair or unpaired resident burrowing owl should be acquired and permanently protected to offset the loss of foraging and burrow habitat. F-5

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. The Kern River floodplain occurs within and adjacent to the Project site. The Regional Water Quality Control Board has jurisdiction regarding discharge and pollution to "Waters of the State" and should be consulted regarding a National Pollutant Discharge Elimination System (NPDES) permit. F-6

Federal Jurisdiction: The Project is within the known range of Federally-listed species including the Federally-listed endangered and State-listed threatened San Joaquin kit fox (*Vulpes macrotis mutica*), Federally-listed endangered Buena Vista Lake shrew (*Sorex* F-7

ornatus relictus), and Tipton kangaroo rat. The applicant and/or the Lead Agency should consult well in advance of Project implementation with the United State Fish and Wildlife Service (USFWS) regarding their jurisdiction over Federally-listed species and critical habitat. The USFWS may require additional biological surveys; and additional avoidance, minimization, and compensation for potential impacts to Federally-listed species or their habitat, migratory birds, and wetland habitats. The USFWS will likely take into account that the Project site encroaches into the Kern River floodplain which is considered an important movement corridor for San Joaquin kit fox and other wildlife between the northeast and southwest conceptual areas of the MBHCP. Portions of the Project site are located within areas considered for critical habitat designation for the Buena Vista Lake shrew. It appears that water retention basins within the Project site may contain suitable habitat for the Buena Vista Lake shrew, and appropriate protocol surveys may be necessary to determine presence. The Buena Vista Lake shrew is not a covered species under the MBHCP. The appropriate contact person with the USFWS is currently Susan Jones, Branch Chief, at (916) 414-6600.

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CONT.

If you have any questions regarding these issues, please contact Annette Tenneboe, Environmental Scientist, at the address or telephone number (extension 220) provided on this letterhead.

Sincerely,

W. E. Loudermilk
Regional Manager

cc: See Page Six

cc: Susan Jones, Branch Chief
United States Fish and
Wildlife Service
2800 Cottage Way, W-2605
Sacramento, California 95825

Scott Morgan, Project Analyst
State Clearinghouse
Post Office Box 3044
Sacramento, California 95812-3044

Ted James
Kern County AICP, Director
Public Services Building
2700 M Street, Suite 100
Bakersfield, California 93301-2370

Jim Movius
City of Bakersfield
1715 Chester Avenue
Bakersfield, California 93301

ec: Annette Tenneboe, DFG
Julie Vance, DFG

F. State of California, Department of Fish and Game - May 18, 2007

Response to Comment F-1

The potential impacts to plant and animal species and habitat located on the project site are addressed in the Biota Report located in Appendix D of the Draft EIR (Chapter 1 of the Recirculated Draft EIR). Section 5.3 of the Draft EIR states that the San Joaquin kit fox and burrowing owl are special status wildlife species that may be significantly impacted from implementation of the proposed project. Potential impacts to the federal endangered San Joaquin kit fox are covered under the Metropolitan Bakersfield Habitat Conservation Plan (MBHCP). Given that the majority of the project site is located within the MBHCP, Mitigation Measures 5.3.A.1 through 5.3.A.3 in Section 5.3 in Chapter 1 of the Recirculated Draft EIR are adequate to reduce potential impacts to the San Joaquin kit fox to less than significant.

As stated by the California Department of Fish and Game (CDFG), areas within the primary floodplain of the Kern River are not within the MBHCP. Based on further review, the primary floodplain of the Kern River as adopted by the State Reclamation Board extends through the northwest corner and encompasses approximately 2.5 acres of the project site. Therefore, the approximately 2.5 acres in the northwest corner of the project site is not covered by the MBHCP.

Based on field surveys conducted by Paul Pruett and Associates (PPA), no special status plant species are located on the project site. The field surveys also confirmed that potential kit fox dens were not observed on the project site, including the area of the site currently within the primary floodplain of the Kern River. Although the approximate 2.5 acres in the northwest corner of the site are not covered by the MBHCP, the take avoidance measures for the San Joaquin Kit Fox that are identified in Mitigation Measure 5.3.A.2 as well as the construction personnel instruction identified in Mitigation Measure 5.3.A.3 would be required for the approximate 2.5 acres not covered by the current MBHCP so that the potential impacts to the kit fox would be reduce to less than significant.

Based on the findings in the Recirculated Draft EIR (see Section 5.3 in Chapter 1), impacts to the San Joaquin kit fox, burrowing owl, and raptors could be significant with the implementation of the proposed project. Mitigation measures are provided in Section 5.3.4, Impacts and Mitigation Measures, in Chapter 1 of the Recirculated Draft EIR to reduce potential impacts to less than significant. Although the potential special status species were evaluated and mitigation measures were provided to reduce potential impacts to less than significant, the CDFG recommends that a minimum 200-foot no construction setback from the upper bank of the Kern River and outer edge of any riparian habitat located adjacent to portions of the project site be implemented. Although no new significant impact on special status plant or wildlife species or habitat have been identified, the applicant has agreed to a condition of approval that would require the applicant to consult with CDFG for any construction within 200 feet of the upper bank of the Kern River and outer edge of any riparian habitat located adjacent to the project site. This consultation is to ensure that the findings in the EIR are still applicable and no new measures are required. However, if new information is found

that identifies a potential significant impact, additional CEQA documentation would be required as outlined in Section 15162 of the CEQA Guidelines. This additional CEQA documentation may involve obtaining a State Incidental Take Permit pursuant to Section 2181(b) of the Fish and Game Code.

Response to Comment F-2

Based on a review of the project site and the proposed West Ming Specific Plan, the implementation of the project is not anticipated to require a CDFG Streambed Alteration Agreement (SAA), pursuant to Section 1600 et seq. of the Fish and Game Code. However, if due to unforeseen circumstances a SAA is required, additional environmental documentation would be required as outlined in Section 15162 of the State CEQA Guidelines. This additional CEQA documentation may involve obtaining a SAA prior to any activity necessitating streambed alteration, pursuant to Section 1600 et seq. of the Fish and Game Code.

Response to Comment F-3

According to the Biota Report prepared by PPA (see Appendix D of the Draft EIR in Chapter 1 of the Recirculated Draft EIR), Swainson's hawks were not observed during the field surveys on the project site and the closest reported occurrence of the Swainson's hawk is on the Kern River near the project site in 1992, approximately 15 years ago. If this species was to be sited, no significant effect would occur because the project site is located adjacent to the Kern River Fan Area that includes substantial available foraging habitat for this species. Several large trees suitable for nesting sites exist on the project site and Mitigation Measure 5.3.A.4 in Section 5.3.4, Project Impacts and Mitigation Measures, in the Draft EIR, would reduce the potential impact on the Swainson's hawks as well as other raptor species to less than significant. Since the closest reported occurrence of the Swainson's hawk is known to have occurred approximately 15 years ago and no Swainson's hawk were observed during the field survey, no indirect impact on the Swainson's hawk due to the loss of potential onsite foraging habitat is anticipated. Although no new significant impact on the Swainson's hawk has been identified, the applicant has agreed to a condition of approval that would require the applicant to survey for nesting raptors following the survey methodology developed by the Swainson's hawk Technical Advisory Committee (SWHA TAC, 2000), prior to any disturbance on the project site that is within 5 miles of a potential nest tree (CDFG, 1994) to ensure that the findings in the EIR are still applicable and no new measures are required. However, if new information is found that detects an active nest of a Swainson's hawk within 5 miles of the project site and a potential significant impact could occur, additional CEQA documentation would be required as outlined in Section 15162 of the CEQA Guidelines. This additional environmental documentation may involve consultation with CDFG.

Response to Comment F-4

Based on field surveys and review of the MBHCP Baseline Map for Animal Species, dated October 23, 1997, the implementation of the proposed project is unlikely to affect the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*). This species is covered under the current MBHCP take permit.

Although no new significant impact has been identified, the project applicant has agreed to a condition of approval that would require the applicant to conduct trapping prior to ground disturbance activities to confirm that the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) is not located on the project site. However, if new information is found that detects the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) on the project site, potential significant impact could occur and additional CEQA documentation would be required as outlined in Section 15162 of the CEQA Guidelines. This additional environmental documentation may involve consultation with CDFG and United States Fish and Wildlife Service (USFWS).

Response to Comment F-5

Section 5.3 in the Draft EIR (Chapter 1 of the Recirculated Draft EIR) identified that the proposed project could result in a significant impact on the burrowing owl. Mitigation Measure 5.3.A.4 would reduce the potential impact on the burrowing owl to less than significant. Although no new significant impact has been identified, the project applicant has agreed to a condition of approval that would require the applicant to implement a no construction buffer zone of a minimum distance of 250 feet, unless a qualified biologist approved by CDFG 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, and that in the event burrowing owls are detected within the area of ground disturbance, passive and/or active relocation efforts may be undertaken subject to approval by CDFG and USFWS. Due to the location of the project site being east of and adjacent to the Kern Fan area which includes the 2,800-acre water recharge area and no future urban development is planned within the 2,800 acres, relocation of future burrowing owls to the Kern Fan area is a potential and would reduce potential impacts to less than significant, but would require approval by CDFG and USFWS as well as the City of Bakersfield because the 2,800 acres is within the City's jurisdiction.

Response to Comment F-6

As identified in Response to Comment F-2, the implementation of the project is not anticipated to require a CDFG Streambed Alteration Agreement (SAA), pursuant to Section 1600 et seq. of the Fish and Game Code. As described in Response to Comment F-1, the primary floodplain of the Kern River as adopted by the State Reclamation Board extends through the northwest corner and encompasses approximately 2.5 acres of the project site. The approximate 2.5 acres is separated from the existing Kern River by a berm. Based on a review of a 2006 aerial of the 2.5 acres, this area does not exhibit characteristics of "Waters of the State." However, if due to unforeseen circumstances a SAA is required and there becomes potential for discharge into "Waters of the State," additional environmental documentation would be required as outlined in Section 15162 of the CEQA Guidelines. This additional CEQA documentation may involve obtaining a SAA prior to any activity necessitating streambed alteration, pursuant to Section 1600 et seq. of the Fish and Game Code and a National Pollutant Discharge Elimination System (NPDES) permit.

Response to Comment F-7

The environmental analysis provided in the Recirculated Draft EIR is based on the current conditions. The analysis identified a potential significant impact to the San Joaquin kit fox and did not identify any significant impacts to the Buena Vista Lake shrew and Tipton kangaroo rat. Although no new significant impacts have been identified that have not already been addressed in the Recirculated Draft EIR, the applicant has agreed to a condition of approval that would require the applicant to consult with USFWS and CDFG, where applicable, prior to any ground disturbance activities. This consultation is to ensure that the findings in the EIR are still applicable and no new measures are required. However, if new information is found that identifies a potential significant impact, additional CEQA documentation would be required as outlined in Section 15162 of the State CEQA Guidelines. This additional CEQA documentation may involve obtaining a USFWS 10(a)1(b) Incidental Take Permit and/or a State Incidental Take Permit pursuant to Section 2181(b) of the Fish and Game Code.

San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

May 18, 2007

Jennie Eng, Principal Planner
City of Bakersfield
Planning Division
1715 Chester Avenue
Bakersfield, CA 93301

Subject: West Ming – Recirculated Draft Environmental Impact Report

Dear Ms. Eng:

The San Joaquin Valley Unified Air Pollution Control District (District) has previously commented on this project: June 17, 2005, October 17, 2006, and February 27, 2007. The Recirculated Draft Environmental Impact Report does not alter the District's previous determination that:

- The methodology used in preparation of the Air Quality Assessment (AQA) and Air Quality Analysis is correct;
- The types and quantities of net air quality impacts are correctly stated in the AQA;
- The mitigation measures proposed in the AQA are appropriate and adequate to mitigate the air quality impacts associated with the project; and
- The developer has identified emission reduction opportunities and provided funding to the District such that the air quality impacts will be fully mitigated.

G-1

If you have any questions or require further information, please call Daniel Barber, Ph.D., at (559) 230-5840.

Sincerely,

David Warner
Director of Permits Services

Arnaud Marjollet
Permit Services Manager

DW: db

cc: WZI

Seyed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
(209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
(559) 230-6000 FAX: (559) 230-6061
www.valleyair.org

Southern Region
2700 M Street, Suite 275
Bakersfield, CA 93301-2373
Tel: (661) 326-6900 FAX: (661) 326-6985

4.4 - Regional Agencies

G. San Joaquin Valley Air Pollution Control District – May 18, 2007

Response to Comment G-1

This comment regarding the adequacy of the air quality analysis in the Recirculated Draft EIR is noted.

ROADS DEPARTMENT
CRAIG M. POPE, P.E., Director
2700 "M" STREET, SUITE 400
BAKERSFIELD, CA 93301-2370
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RESOURCE MANAGEMENT AGENCY
DAVID PRICE III, RMA DIRECTOR
Community Development Program Department
Engineering & Survey Services Department
Environmental Health Services Department
Planning Department
Roads Department

May 17, 2007

Ref.: 8-4.2 West Ming Specific Plan

Jennie Eng
Development Services Department
Planning Division
1715 Chester Avenue
Bakersfield, CA 93301

H

Subject: Recirculated Draft Environmental Impact Report (DEIR) for West Ming Specific Plan

The following items need to be addressed prior to approval of the Specific Plan:

1. The Traffic Impact Study (TIS) contained on the CD, as part of the subject DEIR, is the original study with incorrect fee schedules as previously noted (see Kern County Roads Department letter dated September 21, 2006) which does not reflect the conclusions of the subsequent revised TIS. In Chapter 2, of the DEIR, pages 5-12, Table 6 contains fee schedules for both studies; please clarify the information to be used in the documents. In addition, will this project be required to pay the current Phase III - Metropolitan Transportation Impact Fees? H-1

2. TIS page 21, dated March 2006 – States an assumption that full build out of the Westside Parkway and West Beltway would be by Year 2015. This Department does not believe this is an accurate assumption and the TIS should be revised accordingly. H-2

3. TIS page 98, Table 8 – Please explain why the project share for the roadway segment of Ming Avenue from the West Beltway to the Ming Avenue project entrance is only 29.9%. It would seem that this project would contribute a higher percentage for this roadway segment. Re-evaluate trip distribution and revise accordingly. H-3

4. DEIR, Sections 5.11.A and 6.311 – Who is responsible for building the necessary off-site mitigation? It is our understanding that when the project is developed, the developer would be required to construct arterials and collectors along their project frontage. They should also be required to build off-site street improvements identified as being impacted by this development. There is an assumption that these facilities may be constructed by the City or various other projects adjacent to those affected facilities even though made necessary by this development, which may not be the case. Provide a list of facilities to be constructed, a specified timeline and the entity responsible for ensuring that these facilities are constructed in a timely manner. H-4

5. DEIR, Chapter 1, pages 3-16 and 3-38 discuss the need for amendments to General Plan Circulation element. Provide the proposed amendments for our review prior to acceptance so we can obtain a better understanding how the revised trip distribution will occur and what effects in may have on the surrounding roadway network. H-5

6. DEIR, Chapter 1, Section 5.11-8 – Shows Intersection Capacity Utilization (ICU), which is inconsistent with the city's standard of practice. In addition, the ranges shown are volume/capacity ratios, not ICU, see Trafficware ICU book 2003 Edition page 62 for revision. H-6

7. DEIR, Chapter 1, page 5.11-9 – Explain the use of existing traffic counts from the Old River Ranch project dated June 2005. Was a growth factor applied to these counts, if not, how do they to correspond with the count taken for this project? The counts for Old River Ranch may have been taken a year prior to this project's counts which may not adequately reflect current conditions. H-7

8. DEIR, Chapter 6, Indicates that the developer will be required to construct a portion of the West Beltway lying within the project area. What is the extent of this requirement? Will the project be required to construct 1-lane or 2-lanes in each direction for the West Beltway and according to a specified timeline? H-8

Thank you for the opportunity to comment on this project. We look forward to your response to comments and ensuing dialogue. If you have any questions please contact Brian Blacklock at (661) 862-8881.

Very truly yours,

W. D. Maxwell

Warren D. Maxwell
Supervising Engineer

4.5 - County Agencies

H. Kern County Roads Department, Resource Management Agency - May 17, 2007

Response to Comment H-1

The Recirculated Draft EIR included a preface and various chapters. The preface included a discussion of the various changes and modification to the original Draft EIR dated August 31, 2006. Chapter 1 which included the original Draft EIR was intentionally and properly included and therefore the original Traffic Impact Study (TIS) that included the incorrect fee schedules were included in this chapter. Chapter 2 included the Responses to Comments to the Draft EIR. These comments were provided on the original Draft EIR. As noted by the County of Kern, Table 6 on pages 5 through 12 of Chapter 2 contains the fee calculations from the Revised TIS, which are correct. In accordance with Mitigation Measures 5.11.A.1 and 6.3.11.A.1 (see pages 5 and 6 in Chapter 5 of the Recirculated DEIR), and in accordance with City of Bakersfield ordinances regarding the Regional Transportation Impact Fee (RTIF) program, the project's share of the RTIF shall be the fixed rate fee established by the City unless it can be verified to the satisfaction of the Public Works Department by an acceptable study and empirical evidence that all project level and cumulative traffic impacts associated with the project can be mitigated to a level of less than significant by payment of a lesser amount, in which event such lesser amount would be paid. This approach is consistent with the City's current policy. Per City ordinance, the project share for a project of the magnitude of the West Ming Specific Plan is to be calculated in accordance with the current methodology for fee calculation of a Major Retail Project. This required fee calculation is provided on Table 10 of the Revised TIS which is located in Attachment 1 of the Responses to Comments on the Draft EIR in Chapter 2 of the Recirculated Draft EIR.

In addition to this fee calculation, based on the Kern Council of Governments (KernCOG) 2020 model as required, an impact analysis is performed at Year 2030. If the improvements identified in the RTIF are not sufficient to mitigate project impacts including cumulative project impacts at Year 2030, then additional mitigation measures are identified. Those additional mitigation measures along with the Project's pro-rata share of the costs of those additional measures are identified in Table 6 of the Revised TIS. The total impact fees identified on Page 36 of the Revised TIS are a combination of both the calculated regional fee and the project's pro-rata share of the costs to provide the additional improvements required to mitigate both the project and the cumulative project's impacts at year 2030 to less than significant.

Therefore, if the cost of mitigation of the Project's impacts is less than the fixed rate fee, as verified by the City Public Works Department, the project will be required to pay the regional impact fee calculated specifically for the project in accordance with the City of Bakersfield's "Methodology for Independent Assessment of Regional Impacts" In addition to payment of the regional impact fee, the project will be required to pay its pro-rata share of improvements required due to cumulative project impacts for facility improvements not identified in the regional fee program.

Response to Comment H-2

The Revised TIS (see Chapter 2 of the Recirculated Draft EIR) does not assume that full build out of the Westside Parkway and the West Beltway will occur by Year 2015. These facilities are included on KernCOG's cumulative model run for the Year 2030 which was used to analyze the project impact at full build out of the project. An additional analysis year scenario was preformed at Year 2015 to identify required improvements at an assumed "half buildout" of the project. With respect to these future facilities, this additional analysis scenario merely identifies the improvements that would be required at their interchanges with existing roadways at the time of construction of the interchanges.

These required improvements identified are not dictated solely by impacts of the West Ming Specific Plan project, but are required by cumulative regional impacts of all the proposed projects along with projected growth of the Metropolitan Bakersfield area. Because of the regional nature of these facilities and the regional cumulative impacts, construction of these facilities will be in accordance with the City of Bakersfield's current Capital Improvement Plan. The project will reduce its impacts to these future regional facilities as well as existing regional facilities by its contribution to the Metropolitan Bakersfield Regional Transportation Impact Fee Program to less than significant. In accordance with the City's RTIF Program, the City will construct the West Beltway and the identified required improvements as they are needed in order to serve the regional traffic needs of the City.

Response to Comment H-3

The total cumulative traffic volumes and project specific traffic volumes projected for Ming Avenue are based on the KernCOG cumulative traffic models. The model data reflects that the project contributes 29.9 percent of the total future volumes for this segment of roadway. Ming Avenue is a regional facility designated as an arterial roadway on the Metropolitan Bakersfield General Plan Circulation Element. When this roadway is extended from its current terminus to the proposed West Beltway it will provide access for a large portion of Southwest Bakersfield to the West Beltway. These existing areas of Southwest Bakersfield will be utilizing this segment of roadway regardless of whether or not the West Ming Project is developed. Due to the regional nature of this roadway segment with its connection to the proposed West Beltway, the Revised TIS concluded that the project's share of vehicles using this roadway will not be more than the 29.9 percent derived from the KernCOG model.

It should also be noted here that, as indicated in the Revised TIS, this portion of Ming Avenue is only required to be constructed as a two-lane, undivided roadway to accommodate the projected traffic volumes at the Year 2030 scenario. However, in accordance with City of Bakersfield policy, the project will be required to build the roadway to at least half of the six lanes required for a full width arterial even though the project's calculated share of traffic is only 29.9 percent and only two lanes are required to accommodate the projected cumulative volumes. These requirements will therefore result in the West Ming Specific Plan project providing substantially more mitigation than would be required to meet the needs of the project.

Response to Comment H-4

It is the City of Bakersfield's policy that all development projects must construct collector and arterial frontages of their respective projects to full half width improvements. Therefore the other projects contributing to the cumulative future impacts will be required to build their respective frontages as they develop, which will contribute to mitigation of the cumulative impacts. Consistent with this policy, the West Ming Specific Plan project will be required to construct frontage improvements as individual areas of the West Ming Specific Plan develop, regardless of whether or not these improvements are beyond minimum mitigation measures that may be identified in the study. In addition to the half-width improvements required for the frontage roadways, all collector and arterial roadways within the project will be required to be constructed by the development to full width standards regardless of whether or not those full width improvements are required to accommodate future project and non-project traffic. Improvements required for adjacent intersections, including signalization, will also be constructed as individual areas of the West Ming Specific Plan are developed.

As indicated, improvements to existing facilities and construction of future facilities adjacent to the project will be required as development of the project occurs. The required improvements to regional facilities not adjacent to the project are not dictated solely by impacts of the subject project and will be necessary even without development of the West Ming Project due to the cumulative impacts of other proposed projects as well as anticipated growth in the existing Metropolitan Bakersfield area. Timing of improvements to these regional facilities not adjacent to the project will be based on the City of Bakersfield's current Capital Improvement Plan. As future traffic volumes increase and service levels of various facilities decrease, those improvements included in the RTIF Program will be constructed as warranted to accommodate the increased traffic volumes. Those RTIF improvements will either be built by the City through implementation of the City's current Capital Improvement Plan or built by various projects adjacent to those affected facilities through development agreements between the City and the various developers.

Through its payment of both regional impact fees and those local impact fees identified in the RTIF, potential significant impacts on the transportation facilities would be reduced to the extent that it is feasible. At time of actual development, facility improvements that have not yet been accomplished through implementation of the City of Bakersfield's Capital Improvement Plan but are deemed necessary to reduce significant impacts from the project and actual background cumulative growth, will be required to be constructed.

Response to Comment H-5

The specific amendments to the General Plan Circulation Element are described on Page 3-38 of the Draft EIR (see Chapter 1 of the Recirculated Draft EIR). The proposed revisions to the Circulation Element were incorporated into the KernCOG cumulative model as far as they would affect trip distribution on the surrounding roadway network. The proposed revisions to arterial alignments were

incorporated into the KernCOG models. The minor collector revisions which are all internal to the project will not affect trip distribution on the surrounding roadway network.

Response to Comment H-6

Since there is no "Section 5.11-8" as referenced in this review comment, it is assumed that the comment is referring to page 5.11-8 of the Draft EIR, containing Table 5-11-1, titled "LOS [level of service] Criteria for Signalized and Unsignalized Intersections." To clarify, the Revised TIS as well as the original TIS evaluated the intersections based on the criteria shown in Tables 3 and 4 of the Revised TIS which is located in Attachment 1 of the Response to Comments to the Draft EIR which is in Chapter 2 of the Recirculated Draft EIR. The criteria used in the Revised TIS is consistent with those contained in the current Transportation Research Board National Research Council's Highway Capacity Manual. The ICU Range and Description columns in Table 5.11-8 of the Draft EIR (Chapter 1 of the Recirculated Draft EIR) are hereby deleted.

Response to Comment H-7

All traffic count volumes used in the Revised TIS are adjusted for future year scenario analyses utilizing growth factors derived from the KernCOG regional traffic models, including the Cumulative Projects 2030 model and the Base Year 1998 model, in order to ensure consistency with traffic impact studies for other proposed projects in the Metropolitan Bakersfield area.

Response to Comment H-8

In accordance with the proposed Conditions of Approval for the West Ming GPA/SPA/ZC, Exhibit "B-5," updated for January 4, 2007, Public Works Discretionary Condition Number 3, the developer will be required to install or fund the construction of the West Beltway. Specifically, the Condition of Approval states, "Developer shall install or fund two lanes of the West Beltway to Arterial standards from Ming Avenue to the Asphalto Railroad at no more than 80 percent buildout of the project or within 1 year of completion of Final Design of the West Beltway by the City of Bakersfield, whichever comes first, but no sooner than 4 years from the certification of the Final EIR for the West Ming Specific Plan Project."

KERN COUNTY SUPERINTENDENT OF SCHOOLS

LARRY E. REIDER, Superintendent

April 13, 2007

Jennie Eng, Planner
The City of Bakersfield
Development Services Department
1715 Chester Avenue
Bakersfield, CA 93301

Our File #: CI05-0140

I
Page 1 of 1

RE: DEVELOPER FEES FOR: West Ming Project (West of Buena Vista Rd., North of Pacheco Rd., South of Ming Ave., and East of the Proposed West Beltway Alignment, Bakersfield)

Dear Ms. Eng:

This office represents the Panama-Buena Vista Union and Kern High School Districts with regard to the imposition of developer fees, and appreciate the opportunity to respond on behalf of these districts regarding the proposed project. This letter is limited to addressing the possible effects which the project might have on school facilities created by students attributable to the project. It is not intended to address other possible environmental concerns which might be identified by the district(s) after reviewing it.

The districts have been advised that Government Code Sections 65995.5 et seq. now prohibits the City of Bakersfield from denying or refusing to approve a project such as this on the basis of the adequacy of school facilities. For this reason, although the above-mentioned project, proposing the development of a 2,182-acre community with residential, commercial, recreational, schools, and light industrial uses, will have significant effects on these districts' facilities, neither district expects the City to impose any condition related to the financing of public school facilities at this time. I-1

Pursuant to Government Code Sections 65995, 65996, and 65997, mitigation of this project's impacts on public school facilities will be limited to the collection of statutory fees authorized under Education Code Section 17620 and Government Code Sections 65995, 65995.5, 65995.6, and 65995.7 at the time that building permits are issued. Currently these fees are set at $2.63 per square foot, an amount subject to adjustment every two years. However, the Panama-Buena Vista Union School District has adopted the alternative fees authorized by Government Code Sections 65995.5 and/or 65995.7. The current fee of $3.20 per square foot will be levied on all new residential building permits. (This alternative fee under Government Code Section 65995.5 is nominally 50 percent of construction cost, while that under Government Code Section 65995.7--which can be levied when the State's school facilities program runs out of money--is nominally 100 percent of construction cost.)

Thank you for this opportunity to comment on this project. If you have any questions, or if we can be of any further assistance in this matter, please feel free to contact me at 636-4599, or through e-mail at mabaker@kern.org.

Sincerely,

Larry E. Reider
County Superintendent of Schools

Mary L. Baker, Manager
School District Facility Services

MLB/ner
cc: Districts
G:\DIVADMIN\SDFS\CORRES\2005\05-CITY\CI05-0140.2.PBVU.wpd

I. Kern County Superintendent of Schools - April 13, 2007

Response to Comment I-1

It is acknowledged that the Kern County Superintendent of schools has accurately set forth the school mitigation requirements which will be applicable to the West Ming Specific Plan project. The applicant fully supports the Panama-Buena Vista Union and Kern High School Districts in their efforts to provide quality schools for the future residents within the West Ming Specific Plan. It is also acknowledged that the Districts have a right to impose statutory school fees as stated in the Kern County Superintendent's letter, and the developer's obligation to pay such fees as the project develops is further acknowledged.

SHAFTER

336 Pacific Avenue Shafter, California 93263

May 17, 2007

Hand Delivered

Jennie Eng, Principal Planner
City of Bakersfield Planning Division
1715 Chester Avenue
Bakersfield, CA 93301

RE: Re-Circulated Draft Environmental Impact Report for the West Ming Project (Project File # 03-1544) SCH No. 2005051055

Dear Ms. Eng:

On February 27, 2007, the City of Bakersfield received the City of Shafter's comments for the West Ming project (Project File # 03-1544) and Final Environmental Impact Report (EIR). The letter focuses on introducing the City of Bakersfield's Buena Vista Lake Shrew (BVLS) Habitat Management Plan for the Kern Fan Water Recharge Site and requesting that the City of Bakersfield adequately analyze the potential significant impacts of the West Ming Project on the BVLS and BVLS Habitat Management Plan. A two page memo dated February 28, 2007, from Florn Core (City of Bakersfield Water Resources Department) responded to the letter. The EIR was then re-circulated for a 45-day public review period (April 4, 2007 to May 21, 2007). The City of Shafter's February 26th letter and the BVLS Habitat Management Plan were not included in the re-circulated Draft EIR. On May 4, 2007, the City of Bakersfield sent the February 26, 2007, letter and BVLS Habitat Management Plan to the State Clearinghouse for inclusion with the re-circulated Draft EIR.

TRANSPORTATION

The traffic impact study for the West Ming project indicates that the West Beltway must be constructed for the significant traffic impacts from the project. The report indicates that it must be built by 2015. Not only is the future construction of the West Beltway important to the West Ming project, but it is equally important for the future development within the City of Shafter, County of Kern, and the City of Bakersfield. The alignment of the West Beltway is planned within the incorporated area of the City of Shafter. The City of Shafter is very concerned that if certain environmental issues are not adequately analyzed and addressed within the re-circulated Draft Environmental Impact Report for the proposed West Ming project, the opportunity to ensure that the West Beltway can be constructed may be missed. J-1

Mr. Core states in his two page memo that the City of Bakersfield believes that whatever impacts the West Ming project may have on the BVLS and BVLS Habitat Management Plan, the City of Bakersfield will be able to successfully mitigate those impacts. However, Mr. Core does not identify the West Ming project's potential significant impacts on the BVLS or BVLS Habitat Management Plan, nor does he identify how the potential significant impacts would be mitigated.

To our knowledge, Mr. Core is not a biologist nor is he a recognized expert on the BVLS. His statement regarding the City of Bakersfield's ability to mitigate for impacts to the BVLS and BVLS Habitat Management Plan is not factually supported in the re-circulated Draft EIR. The statement is unsubstantiated and conclusionary and does not provide sufficient analysis of the West Ming project's potential significant impacts to the BVLS and BVLS Habitat Management Plan. The same is true of the responses provided by Paul Pruett and Associates and Jones and Beardsley dated February 16, 2007. Only a recognized expert on the BVLS could provide such an analysis for the re-circulated Draft EIR.

The City of Shafter is requesting that the City of Bakersfield adequately analyze the potential significant impacts of the West Ming project on the BVLS and BVLS Habitat Management Plan. Analyzing the potential significant impacts of the West Ming project on the BVLS and BVLS Habitat Management is critical because the West Ming project's traffic impact analysis is predicated upon the construction of the West Beltway through Basin 1 of the City of Bakersfield's 2,800 acre water recharge facility. Basin 1 of the City of Bakersfield's 2,800 acre water recharge facility contains nearly 100% suitable BVLS habitat as described in the Year 2 Monitoring Report of the BVLS Habitat Management Plan. Basin 1 is designated as a Priority 1 Area under the BVLS Habitat Management Plan for the maintenance, protection, and conservation of the BVLS and BVLS habitat. The BVLS Habitat Management Plan makes no concessions for the future construction of a freeway through the Kern Fan Water Recharge property. If the project's potential significant impacts on the BVLS and BVLS Habitat Management Plan are not adequately identified and addressed, the City of Bakersfield will not be able to determine if the West Beltway can in fact be constructed to address the West Ming project's significant traffic impacts.

J-1
CONT.

To accomplish the above, the City of Bakersfield must analyze the potential significant impacts of the West Ming Project on the BVLS and BVLS Habitat Management Plan under Section 5.3 of the re-circulated Draft EIR. The West Ming project site is located adjacent to the BVLS Habitat Management Plan Area. The alignment of the West Beltway traverses the West Ming project site and Basin 1 of the City of Bakersfield's water recharge facility. The analysis needs to be conducted by a recognized BVLS expert. The BVLS expert needs to utilize the primary constituent elements of critical habitat for the BVLS, as adopted by the U.S. Fish and Wildlife Service under 50 CFR Part 17, Section 17.95(a), to determine the potential significant impacts of the project on the BVLS. The same analysis needs to occur under Section 5.3.4 (Impact 5.3.F) of the re-circulated Draft EIR to address whether the project would conflict with the BVLS Habitat Management Plan. The BVLS Habitat Management Plan is not discussed or analyzed under Section 5.3.4 (Impact 5.3.F). The City of Shafter has not been able to determine if the BVLS Habitat Management Plan and Year 1 and Year 2 Monitoring Reports have been adopted by the City of Bakersfield. Adoption of the BVLS Habitat Management Plan and Monitoring Reports is necessary for the City of Bakersfield to make the findings required under Section 5.3.4 (Impact 5.3.E) of the re-circulated West Ming Project Draft EIR.

WATER RESOURCES

For potential significant impacts to water resources, the Water Supply Assessment (WSA) describes a complex system of Municipal and Industrial (M&I) as well as agricultural water provision throughout the City of Bakersfield. Numerous public and private agencies are responsible for the provision of water through several contractual agreements to various areas of Bakersfield. The City of Shafter has the following comments:

1. The report takes a mass balance approach to describing water supply and demand without consideration for contractual restrictions which may exist on individual supplies and specific areas of demand. Tables 6, 7, and 8 are examples. Do restrictions exist on the locations where I.D. # 4 (State Water) water can be used. Do restrictions exist and what are the contractual terms for the use of the 24,000 acre feet of Kern River water that is reported to be recharged through various canals on page 4 and included in the various supply totals throughout the report. The WSA must consider the unique contractual restriction imposed on each water supply. As an example, if the 24,000 AF of Kern River water made available through canal losses can contractually only be used in certain areas it would be inaccurate and misleading to imply that water is available to all new developments in all areas of Bakersfield. J-2

2. The WSA should include all written contracts or other proof of valid rights to the identified water supplies that identify the terms and conditions under which the water is or, will be available for all supplies proposed. The WSA did not include any of these documents and should. J-3

3. The WSA is confusing in that it mentions an existing City of Bakersfield water system (Ashe, Fairhaven, and Riverlake) service area on page 9 and a larger service area within and possibly outside the city that is being provided water with the total supplies being reported. The larger area is being provided water service by Cal Water and others. In reading the report and various tables therein it is difficult to determine how the various supplies relate to the various water service areas and if each water purveyor within the City has an adequate supply. A simple table showing each water service area and purveyor's water supplied by the City versus demand is necessary. J-4

4. The report states the annual average Kern River water right for Bakersfield is 160,000 AF/Yr. Figure 5 shows the Kern River Water Entitlement for the past 50 years. On page 11 the report states "The 2,800 Acre facility has the capability to recharge more than 150,000 AF/Yr. Based on the WSA, the recharge capacity of the 2,800 acre facility is critical to meeting the 20 year water supply needs and being able to utilize the total Bakersfield entitlement. Figure 5 shows a number of historical years were Bakersfield's entitlement was well in excess of 300,000 AF. The report seems to state that the 2,800 acres does not have the capacity to recharge all of Bakersfield's entitlement during very wet years which would reduce the actual J-5

usable average entitlement. A number of issues must be addressed in the WSA to establish capacity of the 2,800 acres. What is the actual capacity and how was that determined? Do any other entities have entitlement to use the facility which would reduce capacity available to Bakersfield? Does other recharge activities in and vicinity of the 2,800 acre facility affect its capacity especially during wet years? Is it possible for the 2,800 acre facility to have differing capacities during dry, normal and wet years and if so how does that affect the overall capacity of the 2,800 acres.

5. Revision 9 of the WSA removed all mention and utilization of Reclaimed Water which was included as a water supply in previous versions of the West Ming WSA. However, a new water supply which was never previously discussed was included which is referred to as "Captured Precipitation". Bakersfield proposes 14,900 AF/Yr. of Captured Precipitation in Table 8 on page 36. Shafter agrees that Captured Precipitation is an important component to meeting water supply needs. However, the West Ming WSA proposes that Captured Precipitation is almost 17% of the non-banked water supply during a single dry year. This new supply is now proposed to be a critical component to meeting the water supply needs required by SB 610/221. Bakersfield did not present any studies or water modeling to assess if the amount of seepage of Captured Precipitation accurately reflects what is presented in the WSA. Such studies are necessary to determine the actual availability of the proposed quantity of Captured Precipitation. J-6

6. Table 5 on page 31 indicates a total Consumptive Use Change quantity of water for the West Ming Project being the Proposed Demand less the Existing Crop Demand. Table 6 on page 32 then uses this Consumptive Change amount to calculate the total City of Bakersfield Service Area Demands. The City of Shafter understands the West Ming Project area is outside of any water storage, irrigation or banking area and does not have a water supply available to it. If that is so then, taking credit for the existing crop demand would be taking credit for a non-existing supply. J-7

7. Water Code Section 10910(c)(4) states that if the city or county is required to comply with this part pursuant to subdivision (b), the water assessment for the project shall include a discussion with regard to whether the total projected water supplies determined to be available by the city or count for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses, including agricultural and manufacturing uses. Appendix D lists the City of Bakersfield Pending Development Projects without providing the anticipated water demands. Although many of the projects do not require a WSA or WSV this WSA must take into account all current and pending projects which will place a demand on available water supplies. Without these projected water supply demands the adequacy of the WSA cannot be determined. J-8

On behalf of the City of Shafter, I want to thank you for this opportunity to comment on the West Ming project and re-circulated Draft EIR. At this time, the re-circulated Draft EIR is substantially deficient and fails to comply with CEQA. If you have any questions, please do not hesitate to contact me at (661) 746-5001.

Sincerely,

John Guinn
City Manager

4.6 - City Agencies

J. City of Shafter - May 17, 2007

Response to Comment J-1

This comment is regarding the Buena Vista Lake shrew (BVLS), the BVLS Habitat Management Plan (HMP), and the future implementation of the West Beltway. Following is information from the City of Bakersfield Water Resources Department, Paul Pruett and Associates (PPA) who is the project biologist for the West Ming Specific Plan project, and Robert D. Thorton of Nossaman, Guthner, Knox & Elliot, LLP to address the City of Shafter's concerns identified in this comment.

City of Bakersfield Water Resources Department

Construction and operation of the West Beltway Project is consistent with the habitat management actions described in the HMP. The HMP was developed to describe the City's already-existing land use, water spreading, and management activities that created and maintained conditions beneficial to the BVLS, and to provide for additional management measures to further enhance the property's habitat function and value for BVLS. The HMP does not, however, place restrictions on the City's use of the property to develop infrastructure.

Current data shows that BVLS does not occupy and suitable habitat does not exist within the portion of the Kern Fan Water Recharge Area (KFWRA) that would be crossed by the West Beltway Project. As such, it is not anticipated that the West Beltway Project would have any adverse impacts on BVLS, its habitat, or the City's ability to continue to manage the KFWRA in a manner that maintains and enhances BVLS habitat.

However, if later studies and monitoring discover BVLS within the West Beltway right-of-way, or suitable habitat within that area, the HMP allows the City to direct water spreading and prioritize water delivery to other portions of the KFWRA to provide for other, if not better, habitat for BVLS. This is because not all of the KFWRA currently supports BVLS habitat; only approximately half of the 2,800-acre parcel has been determined to be BVLS suitable habitat. Through water management activities, the City can create new or enhance existing BVLS habitat within areas of the KFWRA outside of the West Beltway right-of-way and thus maintain, enhance, or enlarge BVLS habitat, off-setting any potential impacts to BVLS or its habitat.

Paul Pruett and Associates

PPA is a recognized biological consulting firm with over twenty years of consulting experience in California and is qualified to render a biological opinion with respect to the West Ming Specific Plan project satisfying CEQA review.

PPA conducted a comprehensive Biological Assessment of the West Ming Specific Plan project and the findings and conclusions were incorporated into the West Ming Specific Plan EIR. Letters prepared by PPA to the City of Bakersfield, dated December 29, 2006 (see Section 6.3 in Chapter 6 of

the Recirculated Draft EIR) and February 16, 2007 (see Section 6.5 in Chapter 6 of the Recirculated Draft EIR), provided detailed responses to each of Shafter's concerns, outlining the comprehensive analysis conducted with respect to BVLS and associated habitat. PPA is confident that the City of Shafter's comments have been fully and appropriately addressed.

PPA's initial report (see Appendix D of the Draft EIR in Chapter 1 of the Recirculated Draft EIR) and subsequent responses to comments have directly addressed the following:

1. Impacts to Critical Habitat.
2. Impacts to BVLS habitat and direct or indirect impacts to BVLS.
3. Impacts to Shafter described "Wetlands."
4. Focused surveys for BVLS.
5. Proposed lakes and ponds as attractants for BVLS.
6. Impacts on BVLS caused by proposed levees.
7. Trapping data for BVLS.
8. Service habitat designation rationale.
9. Adjacent water recharge areas.
10. Potential for "take" of BVLS.
11. Federal Register 70 FR 3449, January 24, 2006.
12. West Beltway alignment within project boundaries.

In preparing the Biota Report for the West Ming Specific Plan project, PPA employed generally accepted survey methods, established guidelines, adopted protocols, and applicable environmental law in development and support of their opinions.

It is noted that inaccurate citation is made by the City of Shafter to 50 CFR Part 17.95(a), dated October 1, 2002, as reference for Service Primary Constituent Elements (PCEs). As PPA has previously stated, this reference is superseded by 70 FR 3449, dated January 24, 2005; the Final Rule for Designation of Critical Habitat by Service for BVLS. Service established PCEs, as defined for the BVLS in 70 FR 3449, January 24, 2005, exist to evaluate potential BVLS habitat.

At no time was any portion of the West Ming Specific Plan project site included as a candidate property in the consideration of areas for BVLS Critical Habitat designation by Service. The project site does not possess the necessary PCEs as described in the 70 FR. Consequently, no part of the Project was included under the BVLS Habitat Management Plan (HMP) for initial or subsequent annual surveys conducted by Live Oak Associates (LOA) for site PCEs.

For the reasons stated above and in PPA's previous responses, it is PPA's opinion that the Project will not cause significant impacts to either BVLS, BVLS habitat, or the HMP. The HMP is based on the premise that the City's continued operation and management of water spreading within the Kern River Fan area would provide significant conservation benefits to the BVLS and its habitat. The

development of the Project would not significantly impact the City's operation or management of its water spreading activities within the Kern River Fan Area, and consequently would not significantly impact the HMP.

Shafter has commented that the potential impacts on the BVLS and/or its habitat may prevent the development of the West Beltway. It is PPA's understanding the West Beltway is and will be a City project separate and apart from the West Ming Project requiring a separate CEQA review requiring potential additional consultation.

Although the West Beltway is considered a separate project, PPA conducted an additional biological assessment of the area which lies in and about the West Beltway alignment. A copy of the Biota Report titled "A Biological Assessment of Vegetation and Wildlife: 77 +/- Acres, Sections 03, 10, 14, and 15, Township 30 South, Range 26 East, MDB&M Kern County, California" (Paul Pruett & Associates, May 15, 2007) (hereinafter referred to as 2007 Biota Report) is located in Attachment 1 of this Response to Comments document. Based upon the biological assessment, PPA has concluded that "…direct or indirect impacts to any endangered, threatened, candidate or sensitive species will not reach a nexus of significance if normal sensitive species avoidance techniques are observed, recommended mitigation measures are implemented, and any additional measures required by CDFG or FWS, adhered to."

At such time as the City of Bakersfield elects to proceed with construction of the West Beltway, further environmental review, and appropriate consultation with the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (USFWS), and the Army Corps of Engineers (USACE) will be required. PPA's opinion is that the potential for occurrence of the BVLS or suitable habitat as recognized by Service through existing PCEs, should not preclude the City of Bakersfield from completing its environmental consultation, and that if required, suitable mitigation can be provided in order to permit the construction of the West Beltway as contemplated.

Robert D. Thorton of Nossaman, Guthner, Knox & Elliot, LLP

STATEMENT OF QUALIFICATIONS

Based on City of Shafter's concerns regarding the effect on the BVLS and the BVLS HMP due to the future implementation of the West Beltway, Mr. Robert D. Thorton of Nossaman, Guthner, Knox & Elliot, LLP has provided the following information.

Based on his extensive experience in the practice of environmental law and expertise in the federal Endangered Species Act (ESA). Over the course of his approximately 30-year legal career, he has represented landowners, resource developers, and public agencies on a variety of environmental matters. He has worked for public agency clients to obtain entitlements for and defend large-scale infrastructure projects. He is recognized nationally as an expert on the Endangered Species Act and regional habitat conservation planning. He has been ranked as one the nation's top 10 environmental lawyers by United States Lawyer Rankings, is listed in "The Best Lawyers In America," was named

as one of "The Best Lawyers in America: Environmental Law" in the September 2004 issue of Corporate Counsel, and was recognized by Los Angeles magazine in 2005, 2006, and 2007 as one of the Southern California "Super Lawyers."

From 1977 to 1980, he served as Majority Counsel to the House of Representatives Subcommittee on Fisheries and Wildlife Conservation and the Environment. In that capacity, he drafted and negotiated the major amendments to the ESA enacted in 1978 and 1979. After entering private practice, he successfully advocated the enactment of the habitat conservation plan provisions of the 1982 amendments to the ESA. He served as counsel in the first habitat conservation plan (HCP) (San Bruno Mountain), one of the first habitat-based HCPs (Orange County Central Coastal Natural Community Conservation Plan), and one of the largest multi-species HCPs (Metropolitan Bakersfield).

He has worked on dozens of ESA regulatory matters during his career, including specifically the permitting of highway projects. He is counsel to two regional transportation agencies in Orange County that have successfully constructed 51 miles of new regional highways within the habitat of several endangered and threatened species. He is familiar with issues surrounding the Buena Vista Lake shrew having assisted Bakersfield in the development of the Buena Vista Lake Shrew Habitat Management Plan for the its 2,800-acre recharge area on the Kern River.

ENDANGERED SPECIES ACT COMPLIANCE FOR THE WEST BELTWAY PROJECT'S IMPACT TO BVLS

Regulatory Framework

The presence of federally listed species or designation of critical habitat for federally listed species can trigger the need for Section 7 Consultation under the ESA between a federal agency and the U.S. Fish and Wildlife Service (USFWS) to ensure that any actions authorized, funded or carried out by the federal agency are not likely to "jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of lands determined by the Service to be [critical] habitat" (16 USC Section 1536[a][2]). To comply with Section 7(a)(2), a federal agency considering action that may affect a listed species is required to engage in a consultation process with USFWS (*Id.*; *Natural Resources Defense Council v. Houston* [9th Cir. 1998] 146 F.3d 1118, 1125).

Section 7 Consultation requirements are most typically triggered via the application process for a Clean Water Act Section 404 Permit where the proposed project "may affect" a listed species or critical habitat (33 USC Section 1344; 50 CFR Section 402.14[a]).

Regulations implementing Section 7 Consultation procedures generally provide federal action agencies with two options: informal consultation and formal consultation (50 CFR Sections 402.13, 402.14). Informal consultation is an optional process that includes all discussions between USFWS

and the federal agency and the applicant (50 CFR Section 402.13). If during informal consultation the federal agency determines, and USFWS concurs, that the action is "not likely to adversely affect listed species or critical habitat," the consultation process ends (50 CFR Section 402.13[a]).

If, on the other hand, USFWS does not concur with the action agency's conclusion that the proposed action is not likely to adversely affect listed species or critical habitat, or if the action agency independently concludes that the proposed action may adversely affect listed species or critical habitat, the agency is required to initiate formal consultation (50 CFR Section 402.14[a], [b][1]) Formal consultation concludes when USFWS issues a biological opinion with a determination whether the proposed action is likely to jeopardize the continued existence of a species or destroy or adversely modify its critical habitat (50 CFR Section 402.02). USFWS regulations require a finding of "jeopardy" when an action "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 Section 402.02).

If USFWS determines that the proposed action is not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat but may result in "incidental take" of that species (i.e., take that is incidental to the carrying out of an otherwise lawful activity), USFWS must issue an incidental take statement detailing the amount of take allowed, reasonable and prudent measures that would minimize such take, and mandatory terms and conditions necessary to implement minimization measures (16 USC Section 1536[b][4]; 50 CFR Section 402.14 [i]). If, on the other hand, USFWS determines that the proposed action would jeopardize the continued existence of the species or adversely modify critical habitat, USFWS must suggest reasonable and prudent alternatives to avoid the adverse impact (16 USC Section 1536[b][3]; 50 CFR Section 402.14[h][3]). The regulations provide for a process whereby USFWS may recommend reasonable and prudent alternatives and may, when so formulating, take into account actions beneficial to the species (50 CFR Section 402.14[g][5], [8]).

Section 7 Consultation for The West Beltway Project Potential To Impact BLVS

1. The West Beltway Project "May Affect" BVLS

For the West Beltway Project, the Section 7 Consultation requirement would be triggered when Bakersfield applies to the Corps for a Section 404 Permit for bridge construction activities within the Kern River corridor.[1] A recent biological assessment evaluating potential impacts to, among other things, federally listed species from the construction of the West Beltway Project concludes, based on an assessment of the vegetation communities within the West Beltway Project site and wildlife survey

[1] The Section 10(a) permit under the Metropolitan Bakersfield HCP does not provide incidental take authority within the Kern Fan Water Recharge Area ("KFWRA"). Therefore, any incidental take within the KFWRA requires separate authorization. The USACE Section 404 Permit provides the federal "nexus" whereby incidental take authority may be obtained under Section 7.

results, (i) BVLS does not occur on the project site and (ii) the project site does not contain suitable BVLS habitat (2007 Biota Report, pp. 28-29).

Nonetheless, consultation for the BVLS would likely be required. The species has been found at a few locations within the KFWRA, a part of which would be crossed by the West Beltway Project, and some disturbed riparian habitat would be destroyed by the placement of the road. See 2007 Biota Report, pp. 2, 23. Based on these factors it is reasonable to expect that the Corps would conclude that the West Beltway Project "may affect" BVLS. *Cf.* Biological Opinion on the Allen Road Bridge Project, Kern County, California, # 1-1-06-F-0067, (Mar. 27, 2006) (hereinafter, "Allen Bridge BO"), p.1 (demonstrating "no effect" determination was not advanced even where no BVLS suitable habitat occurred within project area).

2. The Section 7 Consultation Requirement for BVLS Could be Completed Through Informal Consultation

As discussed above, the 2007 Biota Report concludes that BVLS does not occur on the West Beltway Project site and that habitat suitable for BVLS does not occur on the Project site. Based on these facts, the Corps could reasonably conclude, and USFWS concur, that the West Beltway Project is not likely to adversely affect BVLS.[2]

Bakersfield has obtained Section 404 Permit coverage and satisfied the Section 7 Consultation requirements for similar such road projects crossing the Kern River. For example, Bakersfield obtained coverage under Nationwide Permit 14 for impacts to 0.26 acres in the Kern River and the Cross Valley Canal for the Allen Road Bridge project, a bridge crossing project just east of the proposed West Beltway Project. *See* Letter Kevin Roukey to Ralph Braboy dated Dec. 21, 2005; Allen Road Bridge Over the Kern River FEIR (June 2004) (hereinafter, Allen Bridge FEIR). The Corps engaged in Section 7 Consultation and USFWS concurred that the project was not likely to adversely affect BVLS based on the absence of suitable habitat for BVLS within the project area.[3] Allen Bridge BO, p. 1.

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[2] Neither the regulations implementing ESA section 7 nor the Section 7 Consultation Handbook (USFWS 1993) offers a bright line test defining when formal consultation must be pursued. Courts have been unwilling to require formal consultation where the action agency consulted informally with USFWS, made a "not likely to adversely affect" determination, and obtained USFWS concurrence. *See Southern Utah Wilderness Alliance v. Smith*, 110 F.3d 724, 729 (10th Cir. 1997) (holding BLM not required to consult formally where USFWS concurrence obtained); *Fund for Animals v. Norton*, 365 F. Supp. 2d 394, 427 (S.D.N.Y. 2005) (holding where informal internal consultation between division of USFWS implementing cormorant depredation plan and USFWS Endangered Species Division resulted in concurrence with "not likely to adversely affect" determination formal consultation not required). The only basis for requiring formal consultation when informal consultation has resulted in a USFWS concurrence would occur only when the "not likely to adversely affect" determination and the concurrence are arbitrary, capricious, or not in accordance with law. *See Southern Utah Wilderness Alliance* at 728 ("… section 7(a)(2) does not require formal consultation if BLM has informally consulted with FWS, the FWS has issued a written concurrence in the action, and that concurrence is not arbitrary or capricious."); *Fund for Animals* at 427 (upholding informal consultation where "not likely to adversely affect" determination and concurrence are based on agencies' understanding of the best available data).)

[3] A biological opinion was prepared and incidental take statement issued for the Allen Road Bridge Project's impacts on San Joaquin kit fox and Tipton kangaroo rat.

If the Corps were to make, and USFWS to concur with, a "not likely to adversely affect" determination for BVLS, the West Beltway Project could proceed without further analysis or imposition of regulatory requirements under the ESA to avoid or mitigate for impacts to BVLS.

3. The BVLS Habitat Management Plan is Compatible with Section 7 Consultation for the West Beltway Project

The Buena Vista Lake Shrew Habitat Management Plan (HMP) was developed for the KFWRA to provide for management activities targeting the conservation and enhancement of BVLS habitat on the site. HMP, p. 20. Much of the KFWRA had been proposed for designation as critical habitat for the BVLS (69 Fed. Reg. 51417 [August 19, 2004]); the HMP was developed as an alternative to the proposed critical habitat designation. Bakersfield committed through the HMP to conduct activities within and manage the KFWRA for the benefit of BVLS, particularly through the management of water-spreading and prioritization of delivery flows (HMP, pp. 22-3). USFWS found that the HMP would provide a superior habitat management tool with greater conservation benefits to BVLS than would the designation of critical habitat, and thus excluded the KFWRA from its final designation of critical habitat (70 Fed. Reg. 3438, 3455 [January 24, 2005]).

The HMP was not intended to nor did it foreclose or preclude use of the KFWRA for activities other than BVLS habitat management purposes. The HMP identified 1,344 acres of the 2,800-acre site suitable habitat for BVLS (HMP, p. 12). Subsequent vegetation survey efforts have found that the portion of the KFWRA within the West Beltway Project site is not suitable habitat for BVLS (2007 Biota Report, pp. 28-29). The conclusions of the 2007 Biota Report and the HMP are compatible and activities within the KFWRA that are compatible with the HMP's commitments are not barred.

Informal consultation for BVLS concluding that the West Beltway Project is not likely to adversely affect BVLS is not preempted simply by virtue of the HMP.

4. Formal Consultation for BVLS May be Conducted

Notwithstanding the conclusions in the 2007 Biota Report, formal consultation for BVLS may be found to be appropriate for the West Beltway Project. The Corps and/or USFWS may require formal consultation for BVLS for any number of reasons, including disagreements about survey methods or conclusions, or concerns about riparian habitat loss. Sometimes project applicants, in an abundance of caution, will push for formal consultation so that an incidental take statement providing safe harbor from Section 9 Take Prohibitions can be obtained. Whatever the reason, the West Beltway Project may undergo formal consultation for BVLS.

As described above under Regulatory Framework, formal consultation concludes with issuance of a biological opinion in which a "jeopardy" determination is made. If USFWS concludes that the project is not likely to jeopardize the continued existence of BVLS, USFWS must issue an incidental take statement detailing the amount of take allowed, reasonable and prudent measures that would

minimize such take, and mandatory terms and conditions necessary to implement these minimization measures (16 USC Section 1536[b][4]; 50 CFR Section 402.14 [i]). Minimization measures may include such measures as those outlined in the 2007 Biota Report such as focused surveys prior to ground-disturbing activities, education sessions for construction personnel, and restrictions to the extent feasible of construction activities during natal/nesting periods (2007 Biota Report, pp. 32-33).

Even if USFWS were to consider a "jeopardy" determination based on destruction of BVLS suitable habitat, the HMP provides an effective mitigation mechanism that would benefit BVLS and thus obviate a "jeopardy" determination. As discussed above, not all of the KFWRA is suitable habitat for BVLS. Indeed, not all of the KFWRA is currently wetted (pers. comm. F. Core, May 25, 2007). By moving water to currently unwetted areas within the KFWRA, Bakersfield can create and manage for conditions in which BVLS primary constituent elements can develop, thus replacing any lost suitable habitat (see 50 CFR Sections 402.02, 402.14). The HMP contemplates such management actions:

> [A]pproximately 50 percent of the site, or 1,344 acres, currently appears to support the [primary constituent elements] for the species [and] the City's current management activities for the site appear sufficient to sustain habitat for BVLS. However, through their control of available water flows *to the different areas of the site* and an adaptive management plan toward enhancing habitat for BVLS, the City may be able to even further benefit the species. HMP, p. 22 (emphasis added).

Were mitigation requirements necessary for lost BVLS habitat within the KFWRA, Bakersfield can move and manage water within the KFWRA as described in the HMP to provide equal or better or more habitat for BVLS within the KFWRA.

It is worth noting that the Allen Bridge Project underwent Section 7 Consultation for San Joaquin kit fox and Tipton kangaroo rat. It is our understanding that formal consultation was completed within less than six months for this project (pers. comm. N. Hosseinion, May 29, 2007). In addition to avoidance and minimization measures, the project applicant, City of Bakersfield, was required to provide mitigation for impacts to these species (Allen Bridge BO, p. 29). Following approval by the MBHCP Implementation Trust Group, Bakersfield was able to purchase mitigation habitat through the MBHCP (Allen Bridge FEIR, pp. 5.6-3 to 5.-6.4). In the case of the Allen Bridge Project, City of Bakersfield was required to go to a third party, the MBHCP Implementation Trust Group, to obtain mitigation habitat for project impacts outside of the MBHCP permit area. For the West Beltway Project, Bakersfield is the sole implementing agency of the HMP and the HMP specifically allows for water movement and management activities to benefit BVLS within the KFWRA. Thus, it is entirely possible that even were the West Beltway Project to undergo formal consultation, mitigation opportunities would be readily available and consultation could be completed within a timeframe similar to that for the Allen Bridge Project.

CONCLUSION

For all of the reasons above, neither the potential for the occurrence of BVLS or its habitat within the West Beltway Project site, nor the commitments within the HMP should preclude the City of Bakersfield from completing Section 7 Consultation for BVLS. The Allen Bridge Project completed informal consultation for BVLS on the basis of no suitable habitat within the Project area. Even if mitigation were required for loss of BVLS habitat within the KFWRA, the HMP provides a mechanism whereby such impacts can be mitigated.

Response to Comment J-2

Local water purveyors in the City of Bakersfield utilize their own water sources for demands that occur within their geographic boundary; however, these supplies are not sufficient and must be supplemented with other water sources, including water from State Water Project and the City's Kern River water. The City does not export water from ID4. A graphic illustrating the boundaries of these agencies is located in Exhibit B.

The City closely monitors all local water purveyors to ensure that all contractual limitations are complied with. For example, as stated in the Water Supply Assessment (WSA) (see Section 6.6 in Chapter 6 of the Recirculated Draft EIR), waters made available to the City of Bakersfield from the ID #4 District are only permitted for use within the boundaries of the District (WSA, pp 4, 13). The supply and demand calculations set forth in the WSA properly allocate water rights to the areas within which such rights apply. The City Water Resources Department closely monitors the use of such waters to ensure that these restrictions are complied with, and that water demand, supply and use are in balance for each and all service areas.

Response to Comment J-3

The City of Bakersfield has agreements with various local agencies, which allows the City and the other agencies in the area to improve management of their water resources for their mutual benefit. Of the water sources available to the City, Kern River water makes up the major portion of the City's water budget and cannot be used to its fullest extent if it were not allocated to other uses. It is this allocation that enables the City to put its entire Kern River entitlement to beneficial use.

In 1976 the City acquired all Kern River water, water rights, waterworks and water facilities of Tenneco West, Inc., Kern Island Water Company and Kern River Canal and Irrigating Company as described in the Acquisition Agreement (No. 76-36).

Exhibit B

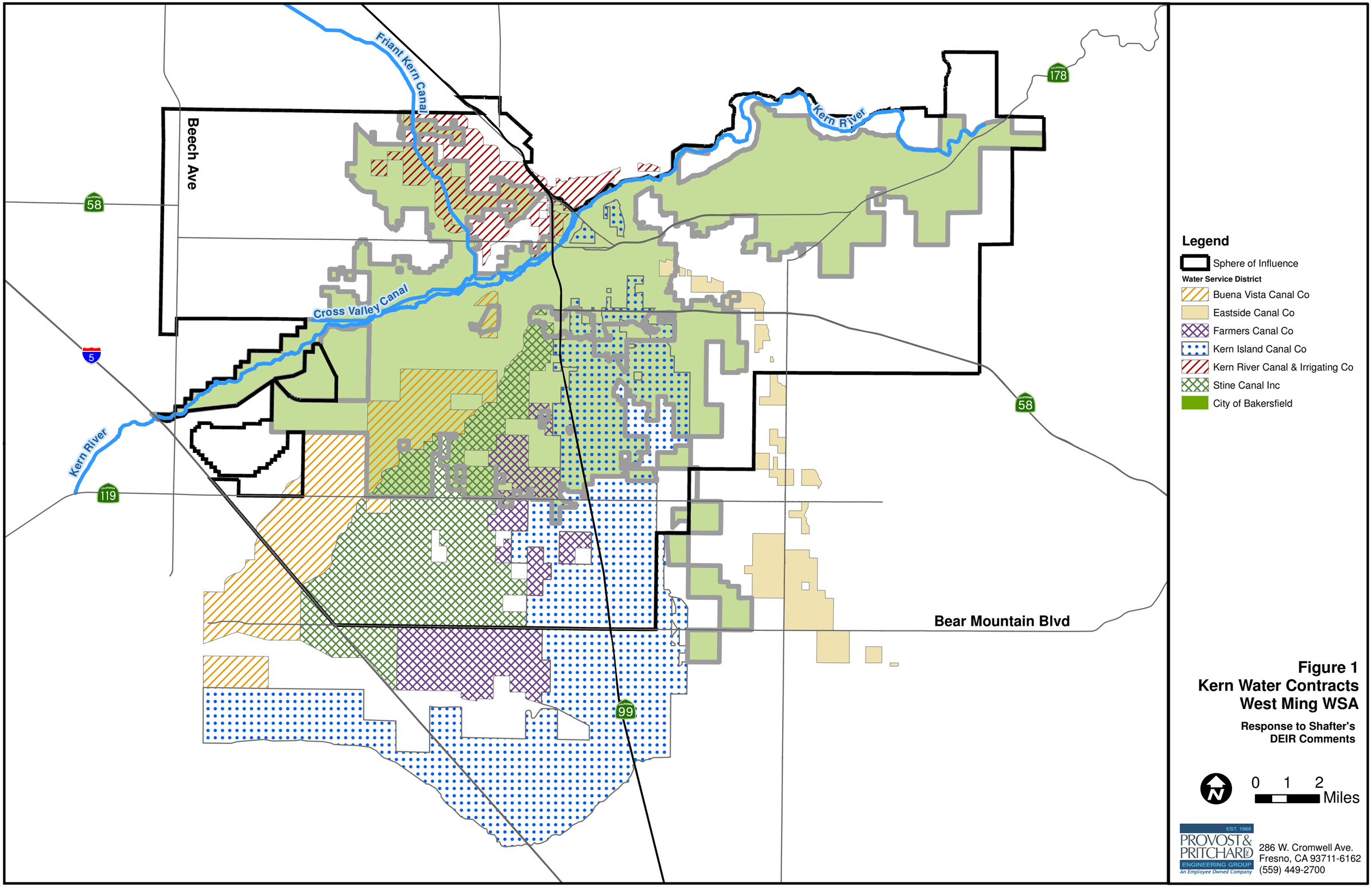

Figure 1
Kern Water Contracts
West Ming WSA

Response to Shafter's DEIR Comments

0 1 2 Miles

EST. 1968
PROVOST & PRITCHARD
ENGINEERING GROUP
An Employee Owned Company
286 W. Cromwell Ave.
Fresno, CA 93711-6162
(559) 449-2700

Since the City does not need their entire Kern River entitlement to serve existing customers, approximately half, or 70,000 acre-feet annually, is allocated to other agencies (North Kern Water Storage District, Cawelo Water District, Kern Tulare Water District, and Rag Gulch Water District) under contracts expiring in 2011. See the table below for a detailed breakdown of the City's 70,000 acre-feet of Kern River water contracted to those agencies.

Agricultural Water Contracts
Entered Into by the City of Bakersfield

Agency	Agreement No.	Annual Volume (af)
North Kern Water Storage District	76-89	20,000
Cawelo Water District	76-62	27,000
Kern-Tulare Water District	76-61	20,000
Rag Gulch Water District	76-63	3,000
Subtotal		**70,000**

Note: Contracts expire in 2011.
Source: City of Bakersfield, 2007.

Along with the City, the Kern County Water Agency (KCWA), created in 1961 by Act 9098 of the State legislature, is an agency vital to water resource management in Kern County. KCWA did not acquire State Water Project (SWP) water until November 15, 1963, when it entered into a contract with the State of California Department of Water Resources.

On December 21, 1971, KCWA adopted Resolution No. 17-71, which created Improvement District No. 4 (ID4). This resolution provided the framework for financing, constructing, operating, and maintaining a supplemental water supply for the urban area. This resolution also determined that groundwater in ID4 would be replenished with one-half of its maximum annual entitlement of water from the SWP.

ID4's SWP allocation is over 82,000 acre-feet annually. The City and its domestic water service areas encompass 65 percent and 28 percent of ID4, respectively. Currently, City residents pay over 80 percent of ID4's *ad valorem* taxes, which are used to pay for water from the SWTP.

The City has also entered into agreements with Kern Delta Water District (KDWD) for sale, use, and conveyance of Kern River Water and with Rosedale-Rio Bravo Water District (RRBWD) for the application of SWP and Federal waters to lands within the City. Agreement No. 76-70 (see Section 3.6) with KDWD dictates how water will be used once undeveloped lands are converted to urban use. In order to make water available under Agreement No. 76-70, the City entered into Agreement No. 03-316, also with KDWD, to provide a temporary mechanism for percolating Kern River water from Kern Delta.

The City's agreement (No. 06-235) with RRWSD allows for this district to receive delivery of the City's Kern River water to lands within the City limit. This agreement also requires RRWD to use their SWP and Federal waters on City lands first and then use the City's Kern River water.

All of the above contracts are on file at the City Water Department located at 1000 Buena Vista Road, Bakersfield, California 93311.

Response to Comment J-4

Kern County Water Agency (KCWA) and the City will directly or indirectly provide most of the surface water for the future users in the metropolitan Bakersfield area. Since KCWA covers a significant portion of the City's Sphere Of Influence, this water source will be used to meet demands associated of those lands.

Currently, KCWA delivers water to the California Water Service Company (Cal Water), the largest water purveyor in the metropolitan area, to meet 20 percent of their water demands. Cal Water uses a combination of groundwater (187 wells) and treated surface water to meet the demands of customers within their service area.

KCWA also delivers 8,500 acre-feet annually to the North of the River Municipal Water District, located inside the KCWA service area, and will deliver 6,500 acre-feet annually to portions of the City within KCWA once the Northwest Feeder pipeline is complete. As the metropolitan area continues to expand, the City will use the various water supplies in its portfolio to satisfy demands of future users.

Please see also the Response to Comment J-2 above, regarding the City's monitoring of local water purveyors to ensure that all contractual limitations are complied with.

Response to Comment J-5

The recharge capability of the 2,800-acre facility is based on historic recharge records. It is from these records that the City was able to determine recharge potential.

The City of Bakersfield is not the only agency that operates a recharge facility in this region, according to other published reports; there are five other agencies that have recharge operations in the area.

Wet water years generally do not hinder recharge operations because these events are typically preceded by multiple dry years that require local agencies to extract water from their recharge facilities in order to meet demands of their users, thereby lowering groundwater levels and making storage space available for additional recharge. This process of storing and removing water from recharge facilities increases the reliability of water sources that vary with the hydrologic cycle and ensures storage space for water that will accompany the next wet hydrologic period.

Further, the City of Bakersfield does not need to rely solely on recharge or groundwater to meet the demands of their users and use of excess water associated with a wet period in the hydrologic cycle on the Kern River will be sent to multiple water system facilities including: the 2,800 acre facility; storage in Lake Isabella; groundwater recharge in canals, river channels, and at recreational facilities; and surface water treatment plants (SWTP). Water that is not directly recharged will be diverted to SWTP for treatment and then delivered directly to urban customers. With the recharge potential of the 2,800 acre facility and the treatment capacity of the SWTP, the City has many options for using high runoff flows from the Kern River and thus has, and will in the future have, the ability to utilize its entire water right.

Response to Comment J-6

The captured precipitation value used throughout the WSA was determined from the annual rainfall of 6.49 inches (National Weather Service), and a weighted average runoff coefficient. The coefficient was developed from runoff coefficients that were applied to typical land use classifications (commercial, residential, public, etc.) for three separate study regions within defined drainage areas in Bakersfield. The City routinely measures stormwater runoff from these study areas. It should also be noted that the land-use-specific runoff coefficient values used in the WSA are comparable to typical runoff coefficient values used by the National Urban Runoff Program (NURP). Average runoff coefficients values used by NURP for typical land use classifications are as follows: residential, 0.22; mixed, 0.26; commercial, 0.60, open space, 0.06; and industrial, 0.33.

Response to Comment J-7

First, the West Ming Specific Plan project is not required to be within the boundaries of an irrigation, water storage, or water district to claim, or take credit for, groundwater that is used on overlying lands to satisfy existing crop demands. The San Joaquin Valley portion of the Kern County subbasin is not adjudicated, so an overlying landowner is allowed to use groundwater located beneath their property.

Although Tables 5 and 6 do take credit for the groundwater that was used to meet demand of existing crops, this methodology was not used for the purpose of determining whether the City has an adequate water supply to meet the needs of the West Ming Specific Plan project or to determine future (Year 2025) water balances for the City's service or metropolitan areas. The intent of Tables 5 and 6 were to compare existing crop and future urban water demands and evaluate how West Ming Specific Plan would affect the City's current (Year 2005) water budget.

Response to Comment J-8

The adequacy of the WSA is not contingent upon providing a detailed water demand breakdown for pending development project because buildout water balance evaluations within the WSA are based upon population forecasts developed by the Kern Council of Governments (KernCOG) and cross checked with population projections adopted by the State Department of Finance. These growth projections include all growth projected for the metropolitan Bakersfield area, including but not limited to the future development projects listed in Appendix D. Thus, the population projections

account for those projects listed in Appendix D along with all other reasonable and foreseeable growth within the metropolitan Bakersfield area. Nevertheless, to error on the side of conservatism, water demands were also quantified by the City of Bakersfield for those projects in Appendix D and included as an attachment in a response to comments letter dated February 14, 2007 (see Section 6.5 in Chapter 6 of the Recirculated Draft EIR).

Tejon Indian Tribe

James Movius
Planning Director
City of Bakersfield Planning Department
1715 Chester Avenue
Bakersfield, CA 93301

Re: West Ming Project- File # 03-1544

Dear Mr. James Movius:

Thank you for your recent letter, dated April 4, 2007. This letter is to inform you the Tejon Indian Tribe is very much interested in the information you have sent us.

K-1

Knowing that the proposed area is within our native boundaries, we would like to be present during any archeological survey and any surface disturbance.

.

Please contact me for more information.

Kathy Van Meter
TEJON Indian Tribe CRM
661-565-5208
www.kathyvanmeter@aol.com
or
Kathy Morgan
kmorgan@bak.rr.com

Sincerely,

Kathy VanMeter
Tejon Indian Tribe CRMT
2234 4th Street Wasco Ca. 93280

BAKERSFIELD

NOTICE OF AVAILABILITY OF A RECIRCULATED DRAFT ENVIRONMENTAL IMPACT REPORT AND NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION OF THE CITY OF BAKERSFIELD

NOTICE IS HEREBY GIVEN that a hearing accepting testimony will be held before the Planning Commission of the City of Bakersfield regarding the adequacy of the Recirculated Draft Environmental Impact Report (DEIR) for the project described below on THURSDAY, MAY 3, 2007, at 5:30 p.m., or as soon thereafter as the matter may be heard, in the Council Chambers of City Hall, 1501 Truxtun Avenue, Bakersfield, California, 93301.

1. **Project Name:** West Ming Project – File # 03-1544

2. **Project Description:** Recirculated Program Environmental Impact Report (EIR) prepared for actions necessary to consider development of a new community on 2,182 acres with residential, commercial, recreational, schools, and light industrial uses. The project includes adoption of the West Ming Specific Plan with a maximum of 7,450 residential units, 478,880 square feet of commercial (including office, service, and retail), 331,200 square feet of town center commercial and mixed use (including office, service, and retail), 1,135,000 square feet of special uses (light industrial, mineral and petroleum, public facilities, open space, parks, public transportation, office, and other uses permitted by the Specific Plan.). Implementation of the project includes General Plan Land Use Element Amendment, General Plan Circulation Element Amendment, General Plan Kern River Plan Element Amendment, adoption of the West Ming Specific Plan, Zone Change, Development Agreement, Federal Emergency Management Agency Map Revisions, annexation to the City of Bakersfield for a portion of the project site, and a State Reclamation Board encroachment permit.

3. **Project Location:** Generally located west of Buena Vista Road, north of Pacheco Road, south of Ming Avenue, and east of the proposed West Beltway alignment. (All or Portions of Sections 10, 11, 13, 14, and 15, T30S, R26E,MDBM.)

4. **Lead Agency:** City of Bakersfield, Development Services Department – Planning Division, 1715 Chester Avenue, Bakersfield, CA 93301; Phone (661) 326-3733

5. **Applicant:** Castle and Cooke CA, PO Box 11165, Bakersfield CA 93389

NOTICE IS ALSO HEREBY GIVEN that the City of Bakersfield Planning Division has completed an assessment of the possible environmental effects of the following-described project and has determined that an Environmental Impact Report (EIR) is appropriate. This determination has been made according to the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Bakersfield's CEQA Implementation Procedures. The Recirculated DEIR has identified significant unavoidable traffic, noise, and agricultural resources impacts associated with the proposed project. In addition, the proposed project is not located on a hazardous waste site enumerated under Section 65962.5 of the Government Code. Copies of the Recirculated DEIR are on file and available to the public through the Development Services Department - Planning Division or by contacting **Jennie Eng** at (661) 326-3733, or by e-mailing the department at devpln@bakersfieldcity.us. The Recirculated DEIR may also be viewed at the Beale Library, 701 Truxtun Avenue, Bakersfield, CA 93301, and the Kern County Law Library, 1415 Truxtun Avenue, Bakersfield, CA 93301, and may be accessed on the City's website at www.bakersfieldcity.us. If your property is rented or leased, we request that you provide your tenant(s) notice of this public hearing.

PUBLIC COMMENT regarding the proposed project and/or adequacy of the EIR, including requests for additional environmental review, will be accepted in writing on or before the later of the hearing dates indicated above at the Planning Division. **We would appreciate your comments between April 4, 2007 and May 21, 2007.** If you challenge the action taken on this proposal in court, you may be limited to raising only those issues raised at the public hearing, or in written correspondence delivered to the City of Bakersfield prior to the close of the hearing.

DATED: April 3, 2007

POSTED: April 4, 2007

James D. Movius
Planning Director

S:\West Ming Specific Plan\recirc\NOArev 4_2_1.doc

4.7 - Private Organizations and Persons

K. Tejon Indian Tribe - May 21, 2007

Response to Comment K-1

The comment is noted that the Tejon Indian Tribe would like to be on the project site during any future archeological survey and any surface disturbance. In accordance with Mitigation Measure 5.4.A.1, a Native American monitor will be onsite during construction activities at the location of the 10 cultural sites and 26 isolates that were previously recorded on the site.

North of the River
recreation and park district

April 17, 2007

Ms. Jennie Eng
City of Bakersfield Planning Department
1715 Chester Avenue
Bakersfield, California 93301

SUBJECT: West Ming Project – File #03-1544

Dear Jennie:

North of the River Recreation and Park District (NOR) will not be impacted by the West Ming Project. Even though it is adjacent to NOR's boundary, the fact that parks are being provided as part of the project should reduce any impact to less than significant levels. L-1

Sincerely,

Colon G. Bywater

Colon G. Bywater
Planning and Construction Director

CGB:bc

L. North of the River Recreation and Park District - April 17, 2007

Response to Comment L-1

This comment acknowledges that the North of the River Recreation and Park District will not be impacted by the West Ming Specific Plan project.

Anthony J. Klein
Thomas V. DeNatale, Jr.
Barry L. Goldner
Jay L. Rosenlieb
David J. Cooper
Claude P. Kimball, LL.M (Ret.)
William A. Bruce
Ned E. Dunphy
Leonard K. Welsh
Kevin C. Findley, LL.M
T. Scott Belden
Timothy G. Scanlon
Kenneth A. Holland
Nancy L. Ochler, LL.M **
Jennifer A. Adams
Suellen H. Anderson
Catherine E. Bennett
David D. Blaine
Craig D. Braun
James M. Duncan*
Thomas C. Fallgatter
Jose A. Guerrero
Joseph D. Hughes
Krystyna L. Jamieson
Paul Lafranchise, LL.M
Gary Logan

KLEIN·DENATALE·GOLDNER
COOPER·ROSENLIEB & KIMBALL·LLP

ATTORNEYS AT LAW

Dennis Mullins
Jean M. Pledger
Ryan D. Bright
Lynne Johnson Carrithers
Tenielle E. Cooper
Dustin S. Dodgin
Jacob L. Eaton
Terrence T. Egland
Elizabeth Estrada
Andrew Heglund
Lisa Holder
Herrin Hopper
Steven J. Lee
Joshua D. Meier
Alyssa Nieto
Jeffrey W. Noe
Laura Olivier
Katy C. Raytis
T. Alan Rogers
Heather J. C. Stanley***
L. Richard Walton, LL.M †
Lewis R. Walton, LL.M
Laura M. Williams
OF COUNSEL
Bruce F. Bunker (Ret.)
Mel Ehrlich

May 21, 2007

VIA E-MAIL

Jennie Eng
Principal Planner
City of Bakersfield
Development Services Department
1715 Chester Avenue
Bakersfield, CA 93301

M

Re: West Ming Specific Plan
Recirculated Draft EIR

Dear Ms. Eng:

I am writing on behalf of my client, Foothill Energy LLC ("Foothill"). Foothill has recently become the operator for certain oil and gas leases in the "East Gosford Area" of the Canfield Ranch Oil Field located within the pending West Ming Specific Plan. The leases are held by Foothill Energy Partners, LP, to which Foothill Energy LLC is the General Partner. This region is a major oil-producing area. We are writing to comment on the recirculated Draft Environmental Impact Report on the West Ming Specific Plan ("Draft EIR"). These comments are intended to supplement Foothill's October 16, 2006, letter on the original Draft EIR.

Founded in 2004, Foothill is an oil and gas exploration and production company with production in California and Texas. Foothill and its predecessor, Stream Energy, Inc., have negotiated extensively with the applicant to preserve oil and gas activity on the project site, and

*Registered Patent Attorney
** Certified Specialist - Estate Planning, Trust & Probate Law
***Certified Specialist - Family Law
The State Bar of California Board of Legal Specialization
† Certified Public Accountant (Ret.)

we appreciate the design features incorporated into the project thus far to accommodate continued exploration and production.

Hazardous Materials Evaluation

In his letter dated February 27, 2007, included in Section 6.8, Roger McIntosh of McIntosh & Associates corrects an error in the Hazardous Materials Evaluation for the West Ming Project which incorrectly identified a 1,000-foot setback requirement for petroleum wells or storage tanks. As Mr. McIntosh points out, the Bakersfield Municipal Code sections governing the drilling for and production of petroleum do not contain such a requirement. Section 15.66.040 of the Code contains the following setback requirements: 75 feet from a right-of-way of any dedicated public street, highway, railroad or private street or adopted specific plan line of any street or highway; 100 feet from any building, including dwellings, except buildings incidental to the operation of a well; and 300 feet from any public assembly. Mr. McIntosh has requested that Mitigation Measure 5.6.F.3 be revised accordingly, and Foothill supports this revision. M-1

Natural Resources Impact Report

The Natural Resources Impact Report included as Appendix H to the recirculated Draft EIR estimates the worth of the fifteen active wells in Sections 13 and 14 at $4,082,862. The report also states that the economic lives of these wells will extend only until 2012. However, in a third-party report recently prepared for Foothill, the value of the wells in Section 13 alone is estimated at over $36 million, with most wells continuing to produce for 9 to 24 years. In addition, the Natural Resources Impact Report fails to consider any future wells that could be drilled. Due to the prospective nature of this area, Foothill intends to drill new wells in the future, the value of which is currently estimated at up to $15 million. We ask the City to take this information into consideration in evaluating the provisions made for current and future oil and gas production in this area.

Foothilll appreciates the opportunity to comment on the recirculated Draft EIR for this project. We reserve the right to submit additional comments on the Draft EIR and other aspects of the West Ming Specific Plan in the future.

Very truly yours,

KLEIN, DeNATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP

Lynne Johnson Carrithers

M. Foothill Energy LLC - May 21, 2007

Response to Comment M-1

This comment regarding the Hazardous Materials Evaluation and the Natural Resources Impact Report are noted, and no new environmental issues that have not been addressed in the Recirculated Draft EIR have been raised. Therefore, no further response is required.

June 3, 2007

Bakersfield Planning Commission
City Hall
1301 Truxtun Ave.
Bakersfield, CA 93314

RE: West Ming Development Proposal by Castle & Cooke

To the Planning Commission:

The proposed housing/commercial development by Castle & Cooke located west of the current development (approximately Allen Road) marks a serious encroachment into the area set aside for groundwater recharge. It threatens the aesthetics of a very important recreational asset of the city: the bike path. By allowing development to border the bike path it removes the essential buffer needed to make the parkway a true parkway.

N-1

An example of housing the border a riverside park can be found in the development next to the Stockdale bridge. By not having housing and walls back up to the river, it allows for a clear view of the river and the bike path.

Therefore, please require that the developer not allow housing the in the area adjacent to the bike path and to retain the current area for water recharge.

Sincerely,

Harry Love
13500 Powder River Ave.
Bakersfield, CA 93314

N. Harry Love - June 3, 2007

Response to Comment N-1

The area adjacent to the bike path will be within the West Beltway/Ming Avenue interchange. There will be no houses built adjacent to the river, the bike path nor the West Beltway/Ming Avenue interchange.

Furthermore, the West Ming Specific Plan project will not result in a loss of water recharge area because the project applicant entered into an agreement with the Kern County Water Agency (KCWA) under the terms of which the KCWA agreed to exchange the lands within the West Ming Specific Plan area which were formally used by KCWA as water recharge areas, for equivalent lands located approximately one mile northwest of those former recharge areas. A further discussion of this exchange is provided in a letter prepared by the Kern County Water Agency on October 16, 2006 and is located in Section 4.5 in Chapter 2 of the Recirculated Draft EIR and in a letter prepared by McIntosh & Associates on December 28, 2006 and is located in Section 6.3 in Chapter 6 of the Recirculated Draft EIR.

4.8 - Planning Commission Hearing

Planning Commission Hearing May 3, 2007
Commissioner Tkac - May 3, 2007

Comment O-1

Commissioner Tkac requested additional information regarding the water source that will be utilized to provide water to the project site.

Response to Comment O-1

The water for the West Ming Specific Plan project will be provided by wells owned and operated by the City of Bakersfield, which will be dispersed around the development. This type of operation is consistent with how the City presently supplies water to existing users. In addition to these wells, another key facility in this area is the 2,800-acre recharge basin that is located along the banks of the Kern River, immediately north of the West Ming Specific Plan project. This recharge facility allows the City to bank/recharge surface water (Kern River water), which has and will continue to benefit groundwater levels in the southwestern portion of the City.

The aquifer underlying the City can be thought of as a large reservoir that can provide a nearly constant water source every year as long as it is well managed. This aquifer provides the City with a storage area for one of its main water sources, the Kern River; the yield of which varies from year to year, and turns it into near-constant groundwater source by actively managing the volume of water stored in the aquifer. Another item to note about the groundwater basin underlying the City is that the California Department of Water Resources has not classified this sub-basin as an adjudicated basin; therefore, the only legal limitations on groundwater use are those stipulated in contractual arrangements and other state laws such as the California Environmental Quality Act.

In summary, although water demands from West Ming Specific Plan project will be directly supplied from groundwater wells adjacent to the proposed development, it is the conjunctive use of surface and groundwater supplies to manage that groundwater basin that allows the City to sustain existing users and to provide for those users yet to come.

SECTION 5: ERRATA

The following are revisions to the Recirculated Draft EIR for the West Ming Specific Plan. These revisions are minor modifications and clarifications to the Recirculated Draft EIR and the revisions do not change the significance of any of the environmental findings within the Recirculated Draft EIR. The revisions are listed by page number.

5.1 - Revisions to Recirculated Draft EIR

Following are revisions to Recirculated Draft EIR based on comments received during the public review period. All of the revisions are minor modifications and clarifications to the Recirculated Draft EIR and do not change the significance of any of the environmental issue findings within the Recirculated Draft EIR. The revisions are listed by page number.

1. Table 5.11-1 on Page 5.11-8 of the Draft EIR in Chapter 1 of the Recirculated Draft EIR is revised as follows.

   The ICU Range and Description columns in Table 5.11-8 of the Draft EIR are hereby deleted.

2. The paragraph under General Plan Kern River Plan Element Amendment on Page 3-39 of the Draft EIR in Chapter 1 of the Recirculated Draft EIR is revised as follows to more closely follow the density proposed in the West Ming Specific Plan.

   Delete: The project will require an amendment to the existing Kern River Plan Element land use designation for the portion of the project site north of the Kern River Canal from 8.1 (Intensive Agriculture) to 5.3(maximum 10 units per net acre).

   Add: The project will require an amendment to the existing Kern River Plan Element land use designation for the portion of the project site north of the Kern River Canal from 8.1 (Intensive Agriculture) to 5.35 (maximum 7.25 units per net acre).

Attachment 1: Biota Report - Portion of the West Beltway

BIOTA REPORT

77± ACRES
SECTIONS 03, 10 14, AND 15, T30S, R26E, MDB&M
KERN COUNTY, CALIFORNIA

PAUL PRUETT & ASSOCIATES

A BIOLOGICAL ASSESSMENT OF VEGETATION AND WILDLIFE 77± ACRES, SECTIONS 03, 10, 14, AND 15, T30S, R26E, MDB&M. KERN COUNTY, CALIFORNIA

by

PAUL PRUETT & ASSOCIATES

for

Jones and Beardsley, P.C.
10000 Stockdale Highway, Suite 350
Bakersfield, CA 93311
661-664-2900
(Contact: Mr. Mark Jones)

15 May 2007

Paul E. Pruett, MS, CWB
3616 View Street
Bakersfield, CA 93306
(661) 872-5662

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1.0 SUMMARY OF FINDINGS AND CONCLUSIONS: 77± ACRES, SECTIONS 03, 10, 14, AND 15, T30S, R26E, MDB&M.

This biological assessment and report covers a two-hundred foot wide easement, approximately three linear miles (77± acres), generally south of Stockdale Highway and north of Pacheco Road, in Sections 03, 10, 14, and 15, T30S, R26E, MDB&M, in southwest metropolitan Bakersfield, California, hereafter referred to as the West Beltway Alignment.

The proposed project generally includes three distinct habitat types. Twenty-seven acres (35%) of the proposed project has been farmed since approximately 1940. The original plant community of this area of the project probably consisted of Non-Native Valley Grassland, element code 4220, and Valley Saltbush Scrub, element code 36220 (Holland 1986). None of this original plant community now exists undisturbed within the proposed project boundaries. Approximately 1.17 miles of the site, or roughly 30 acres (39%), is land previously under intensive agriculture, similar to the surrounding, and currently operated by the Kern County Water Agency (KCWA) for water recharge. This part of the project is within the Metropolitan Bakersfield Habitat Conservation Plan (Plan) boundaries. As such, any loss of habitat or "incidental take" of a sensitive species other than *Athene cunicularia*, burrowing owl, *Gambelia sila*, blunt-nosed leopard lizard, or *Sorex ornatus relictus*, Buena Vista Lake shrew, is covered under previously established mitigation.

Approximately three-quarters of a mile, or roughly 20 acres (26%), of the project site consists of Great Valley Cottonwood Riparian Habitat, element code 61410 (Holland 1986), within the Kern River floodplain. The Kern River floodplain was excluded from the Plan and associated 10(a) and 2081 permits because of its value as a wildlife corridor for all animal species' within the Plan study area. Projects occurring within the Plan boundaries, but not directly covered, may request coverage through Metropolitan Bakersfield Habitat Conservation Plan Trust Group (Group). Approval by the Group would allow the project to be subject to the terms and conditions established by the Plan.

Twenty-four (24) sensitive plant and animal species were listed on the California Natural Diversity Data Base (CNDDB) report, RareFind3, Conner, Gosford, Rosedale, Stevens Quadrangle, information dated 03 April 2007, or are known to occur in the vicinity of the project site (Table 1).

Six plant species were listed in the California Natural Diversity Database (CNDDB) printout or are known to exist in the vicinity of the project: *Atriplex tularensis*, Bakersfield smallscale; *Caulanthus californicus*, California jewel-flower; *Delphinium recurvatum*, recurved larkspur; *Monolopia congdonii*, San Joaquin woollythreads; *Pterygoneurum californicum*, California chalk-moss; and *Stylocline masonii*, Mason's neststraw.

None of these sensitive plant species were found on the project site. No evidence of any other sensitive plant was found on the project site.

Eighteen (18) sensitive animal species were listed on the CNDDB report or were known to exist near the project site: *Agelaius tricolor*, tricolored blackbird; *Ammospermophilus nelsoni*, Nelson's antelope squirrel; *Athene cunicularia*, burrowing owl; *Buteo swainsoni*, Swainson's hawk; *Dipodomys nitratoides nitratoides*, Tipton kangaroo rat; *Elanus leucurus*, white-tailed kite; *Emys (Clemmys) marmorata pallida; Eremophila alpestris actia*, California horned lark;

Eumops perotis californicus, western mastiff bat; southwestern pond turtle; *Gambelia sila*, blunt-nosed leopard lizard; *Helminthoglypta callistoderma*, Kern shoulderband; *Masticophis flagellum ruddocki*, San Joaquin whipsnake; *Onychomys torridus tularensis*, Tulare grasshopper mouse; *Perognathus inornatus inornatus*, San Joaquin pocket mouse; *Sorex ornatus relictus*, Buena Vista Lake shrew; *Spea (=Scaphiopus) hammondii*, western spadefoot; *Taxidea taxus*, the American badger; and *Vulpes macrotis mutica*, San Joaquin kit fox.

Evidence of four of these sensitive species, *Athene cunicularia*, burrowing owl; *Elanus leucurus*, white-tailed kite; *Eremophila alpestris actia*, California horned lark; and *Vulpes macrotis mutica*, San Joaquin kit fox, was observed within the project boundaries during field reconnaissance. No evidence of the remaining fourteen sensitive animal species was found on the project site.

The Buena Vista Lake shrew (BVLS) was not a listed species at the time of application of the Metropolitan Habitat Conservation Plan, and therefore could not be included in the current 10(a) permit. BVLS was addressed by the Plan as one of the "Other Species of Concern." BVLS directly benefit through protection of habitat associated with all special status species'. BVLS is not afforded "full protection" by any regulating authority. As such, issuance of a permit for the "incidental take" of the species and habitat is at the discretion of the permitting authority.

Riparian habitat exists on the proposed project within the Kern River floodplain. Trees suitable for raptor nests exist within the identified riparian area of the Kern River. No raptor nests were observed during field reconnaissance conducted for the preparation of this biota report. The Kern River riparian area is a recognized wildlife migration corridor.

No wetlands habitat exists on the project site. No wildlife nursery sites were identified on the project site. Wildlife nursery sites likely exist within the Kern River riparian habitat of the proposed project boundaries as seasonal/annual water availability, vegetative cover, and prey abundance dictate.

Because approximately 20 acres of the proposed project is within the riparian area of the Kern Riverbed, it is our opinion that development of this project will result in the loss of some disturbed, riparian habitat.

Because the Kern Riverbed is an accepted wildlife migration corridor, it is our opinion that the development of this project will result in some degree of impact to a known wildlife migration corridor and potential wildlife nursery sites.

We conclude that direct or indirect impacts to any endangered, threatened, candidate or sensitive species will not reach a nexus of significance if normal sensitive species avoidance techniques are observed, recommended mitigation measures are implemented, and any additional measures required by DFG or FWS, adhered to.

2.0 THE PROJECT SITE:

2.1 Legal Description: This project encompasses approximately 77 acres located in Sections 03, 10, 14, and 15, T30S, R26E, MDB&M, generally located south of the Stockdale Highway and north of Southern Pacific Railroad tracks along Pacheco Road, in southwestern metropolitan Bakersfield, California (Figures 1-3).

2.2 Physical Description: The proposed project site is located in the middle of the southern end of the San Joaquin Valley in Kern County. Stockdale Highway and the Southern Pacific Railroad are the north and south terminating points of the alignment, respectively. The majority of the site, along with the surrounding vicinity, has been farmed since approximately 1940 (Figures 4-11). No undisturbed native habitat now exists within the alignment. Disturbed riparian habitat exists on the proposed project within the Kern Riverbed. No wetlands habitat exists on the project.

The project lies in the Lower Sonoran Life Zone of the San Joaquin Valley which is characterized by hot, dry summers with daytime temperatures frequently above 100 degrees Fahrenheit. Winters are cool and foggy with temperatures seldom below freezing. On average there are between 250 and 300 frost-free days per year (USDA 1988). Rainfall averages about 5.70 inches per year with the heaviest rainfall between January and March (Munz and Keck 1973). Rainfall between 01 July 2005 and 30 June 2006 was slightly above average at 6.85 inches, as reported by the National Weather Service, San Joaquin Valley/Hanford office. Seasonal precipitation as recorded through March 2007 is well below average at 2.55 inches. Consequently, annual growth to date has been well below average.

2.3 Land Use: Historically, land in the vicinity of the project has been used for farming, grazing, and some crude oil production. About twenty-seven acres (35%) of the project site is either currently under agriculture or between crops. Approximately twenty acres (26%) of the site is a part of the Kern River riparian habitat. The remaining roughly thirty acres (39%) is degraded and disturbed non-native habitat managed by KCWA for water recharge.

2.4 Soils: The soils of the project site as described in the United States Department of Agriculture (USDA), Soil Survey of Kern County, California, Northwestern Part, 1988, are Cajon loamy sand, 0 to 2 percent slopes, Cajon sandy loam, overblown, 0 to 2 percent slopes, Excelsior sandy loam, Kimberlina fine sandy loam 0 to 2 percent slopes, and Riverwash.

Cajon loamy sand is a deep, somewhat excessively drained soil of alluvial fans and plains, formed dominantly from granitic rock. Typically the surface is comprised of nine inches of a brown, loamy sand. The next 35 inches is light gray sand and the lower part to about 60 inches, a brownish gray sandy loam. Permeability of this soil is rapid and available water capacity high. Runoff is slow and the hazard of erosion slight.

Cajon sandy loam, overblown, 0 to 2 percent slope, is found on alluvial fans. It is a deep, somewhat excessively drained soil formed primarily from granitic rock. The surface layer is about 10 inches of pale brown sandy loam with the underlying material of about 30 inches, light brownish gray loamy sand. The subsoil, to about 60 inches, is a light gray sand. Permeability is rapid and available water capacity low to moderate with very slow runoff and the hazard of erosion slight.

Excelsior sandy loam is a deep, well-drained soil of alluvial fans, derived from mixed rock sources. The vegetation in areas not cultivated is mainly annual grasses and forbs. The surface layer, to about 7 inches, is grayish brown sandy loam. The upper 25 inches of subsoil is gray sandy loam with the lower part a light gray sandy loam and silt loam to about 60 inches. Permeability of this soil is slow and available water capacity low to moderate.

Kimberlina fine sandy loam, 0 to 2 percent slopes, is a deep, well-drained soil on alluvial fans and plains derived from granitic and sedimentary rock. The original vegetation is primarily grasses and forbs and a few scattered shrubs. The surface layer is brown fine sandy loam about 9 inches thick and the upper sub layer to about 36 inches is a pale brown fine sandy loam. The lower part, to about 71 inches, is a pale brown silt loam. Permeability is moderate, available water capacity high, runoff slow, and hazard of erosion slight. Effective rooting depth is about 60 inches.

Riverwash is comprised of sand and gravel within the riverbed and associated shoulders or islands of the Kern River.

2.5 Vegetation: No undisturbed native habitat exists on the site. About twenty-seven acres (35%) of the project site is either currently under agriculture or between crops. Approximately twenty acres (26%) of the site is disturbed riparian habitat of the Kern River. The remaining roughly thirty acres (39%) is degraded and disturbed non-native habitat managed by KCWA for water recharge.

The existing plant community before farming operations began was likely Non-Native Grassland, Element Code 42200 and Valley Saltbush Scrub, Element Code 36220 (Holland, 1986). None of this plant community remains on the site (Figures 4-7). The Non-Native Grassland is dominated by introduced species, such as *Avena barbata, Bromus sp.*, and *Erodium sp.* It is a sparse to dense cover of annual grasses and forbs with flowering culms to 1 meter high. In years of favorable rainfall there may be numerous species of showy, native annual forbs (wildflowers). The Valley Saltbush Scrub is low to dense succulent scrubland dominated by *Atriplex sp*.

Disturbed riparian habitat exists on the proposed project within the Kern Riverbed. Great Valley Cottonwood Riparian Habitat, element code 61410 (Holland 1986) is dominated by *Populus* sp., cottonwood trees and *Salix* sp., willows, often with a dense understory of *Vitis californicus,* grapes, *Baccharis* sp., and *Elymus triticoides,* alkali ryegrass.

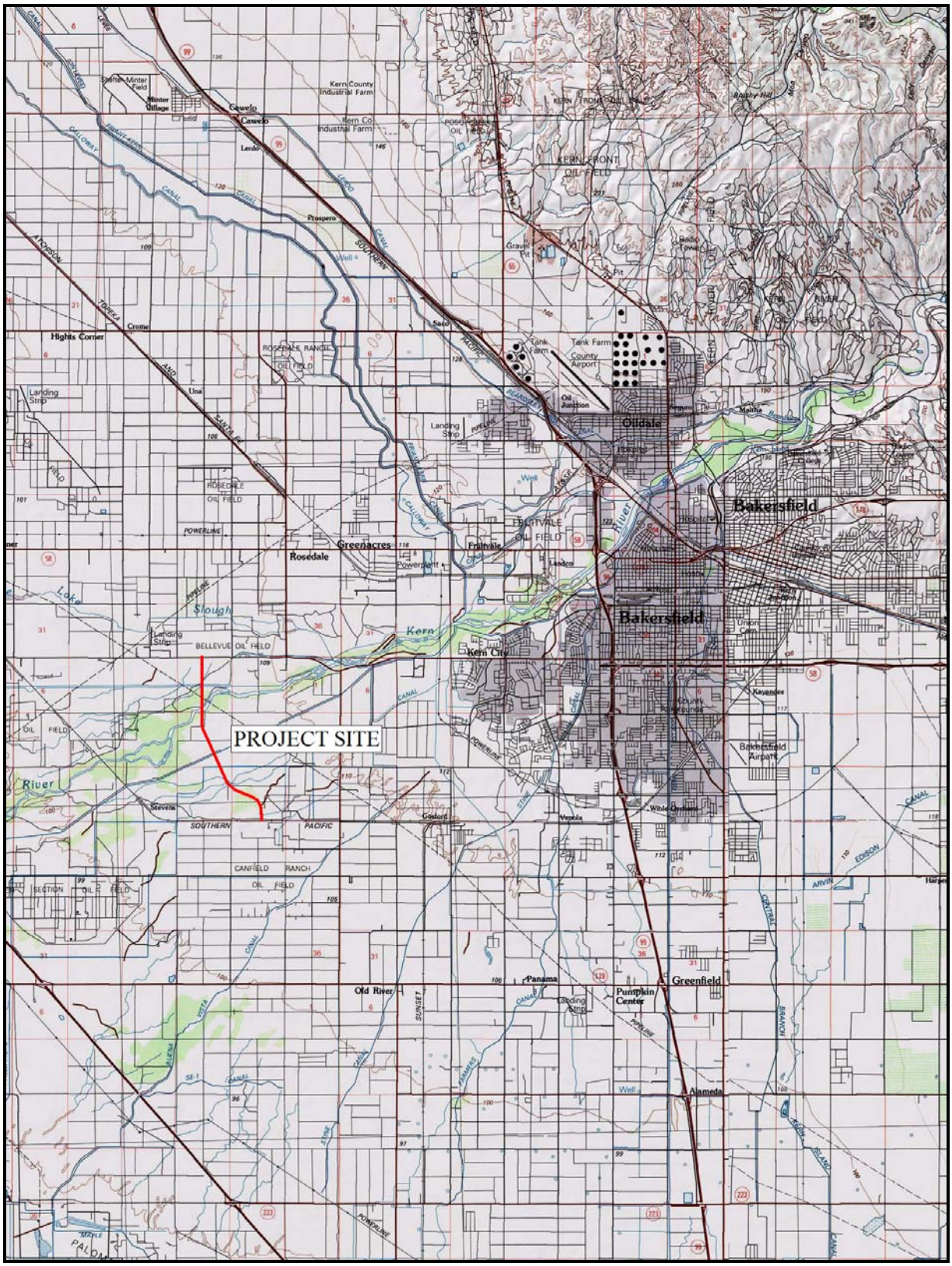

Figure 1. Project site vicinity map. Printed from TOPO! 2001 National Geographic.

Figure 2. Project site aerial photograph (http://www.co.kern.ca.us/gis/).

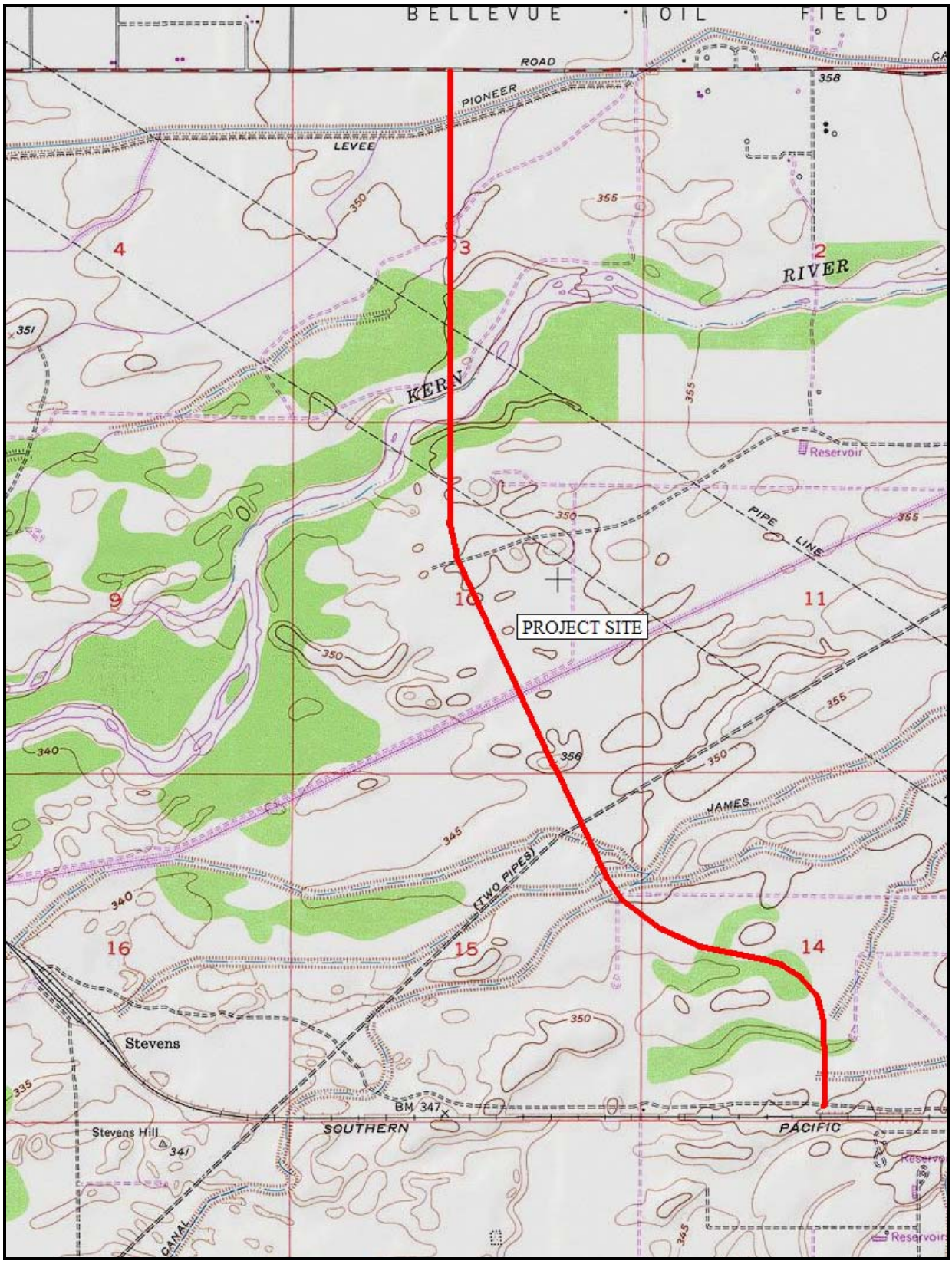

Figure 3. Project site topographical map. Printed from TOPO! 2006 National Geographic.

Figure 4. Photograph of the proposed project taken from the south end of the project, along Pacheco Road, facing north and farmland (27Apr07).

Figure 5. Photograph of the alignment showing typical habitat of the Kern River riparian area (27Apr07).

Figure 6. Photograph of the alignment showing the location where the project is proposed to cross the Kern River primary floodplain (27Apr07).

Figure 7. Photograph of the proposed project taken south of the Kern River riparian area. The Kern River Bike Path shows in the photograph (27Apr07).

Figure 8. Photograph showing grazing on land managed by the Kern County Water Agency for water recharge (27Apr07).

Figure 9. Photograph of the survey area taken in the southeast quarter of Section 10 where the alignment will cross the James Canal, facing north/northwest (27Apr07).

Figure 10. Photograph showing agricultural operations in the north half of the proposed project, south of Stockdale Highway (13Jan06).

Figure 11. Photograph of the proposed project taken from the north terminus of the alignment, facing south. Recently disced farmland shows in the photograph (27Apr07).

3. BIOTIC INVENTORY METHODS:

3.1 Purpose: The primary purpose of this biota inventory was to determine if any plants or animals that are listed by state or federal agencies as endangered, rare, threatened, or depleted and of special concern occur within the project site. Throughout the remainder of this report the term "sensitive" will be used to mean any species considered by state or federal agencies to be endangered, rare, threatened, or depleted and of special concern.

3.2 Studies Required to Satisfy Endangered Species Law and Assist in CEQA Analysis: This study is a biological assessment of the status of twenty-four federally or state listed, proposed, or sensitive plant and animal species listed in Table 1. The study also sought to determine if any sensitive species not known to the CNDDB is presently using or exists on the property and if any critical habitat exists on the property.

3.3 Literature Review: Both the scientific literature and the California Natural Diversity Data Base (CNDDB), RareFind3 information dated 03 April 2007, were consulted to determine which sensitive species occur in this habitat and near the project site. Twenty-four sensitive plant and animal species were reported in the CNDDB reports, or were known to our staff. Table 1 lists these species. Table 2 specifically addresses the habitats and flowering times of the known sensitive plant species and Figure 12, the Sensitive Species Location Map, reflects the nearest known occurrences of both the sensitive plants and animals.

3.4 Consultations: Mr. Dan Williams, Department of Biological Sciences, California State University, Stanislaus has been contacted in the past concerning kangaroo rat location and identification. Dr. David Germano, Department of Biological Sciences, California State University, Bakersfield has also been contacted concerning location and identification of *Dipodomys sp*.

3.5 Vegetation Survey Methods: Paul Pruett and Associates used two methods to survey the plant community: random search and line transects. The entire project was surveyed by qualified biologists walking the perimeter and internal roads and by walking the western fallow land on approximately 50 to 100 foot intervals. Surveys were conducted on 28 August, 26 and 31 October, 2003, 14 January 2004, 30 June and 26 July 2006, and 01 and 27 April 2007.

3.6 Animal Survey Methods: The project was surveyed for animals on 28 August, 26 and 31 October, 2003, 14 January 2004, 30 June and 26 July 2006, and 01 and 27 April 2007. All fieldwork followed the general guidelines established by the California Department of Fish and Game, Region 4, dated 08 May 90. Special attention was given to the location of potential kit fox den sites, owl burrows, and possible kangaroo rat precincts. No small mammal live trapping was conducted.

A list of individuals who worked on the project and their responsibilities is shown in Appendix A. Appendix B is a list of the survey dates. Original field notes are available upon request from the office of Paul Pruett and Associates. Field notes were used to record habitat features and animal activity during the survey period. A photographic record was made of specific on-site features and wildlife.

3.7 Factors Limiting or Influencing Results: Rainfall between 01 July 2005 and 30 June 2006 was slightly above average at 6.85 inches, as reported by the National Weather Service, San Joaquin Valley/Hanford office. Seasonal precipitation as recorded through March 2007 is well below average at 2.55 inches. Consequently, annual growth to date has been below average. No live trapping was conducted. Additional spring surveys would likely identify additional annual plants and birds.

TABLE 1: SENSITIVE SPECIES OCCURRING IN THE VICINITY OF THE PROPOSED PROJECT: The following are lists of sensitive plant and animal species known to occur in the vicinity of the proposed project site. The lists are drawn from the CNDDB, Conner, Gosford, Rosedale, and Stevens Quadrangles, information dated 03 April 2007, scientific literature, and personal knowledge of Paul Pruett and Associates staff.

SENSITIVE PLANTS	COMMON NAME	FED/CA LEGAL STATUS
Atriplex tularensis	Bakersfield smallscale	None/Endangered; CNPS 1B.1
Caulanthus californicus	California Jewel-Flower	Endangered/Endangered; CNPS List 1B.1
Delphinium recurvatum	recurved larkspur	None/None; CNPS List 1B.2
Monolopia congdonii	San Joaquin woollythreads	Endangered/None; CNPS List 1B.2
Pterygoneurum californicum	California chalk-moss	None/None; CNPS List 1B.1
Stylocline masonii	Mason's neststraw	None/None; CNPS List 1B.1

SENSITIVE ANIMALS	COMMON NAME	FED/CA LEGAL STATUS
Agelaius tricolor	tricolored blackbird	None/None; CDFG:SC
Ammospermophilus nelsoni	Nelson's antelope squirrel	None/Threatened
Athene cunicularia	burrowing owl	None/None; CDFG:SC
Buteo swainsoni	Swainson's hawk	None/Threatened
Dipodomys nitratoides nitratoides	Tipton kangaroo rat	Endangered/Endangered
Elanus leucurus	white-tailed kite	None/None
Emys (Clemmys) marmorata Pallida	southwestern pond turtle	None/None; CDFG:SC
Eremophila alpestris actia	California horned lark	None/None; CDFG:SC
Eumops perotis californicus	western mastiff bat	None/None; CDFG:SC
Gambelia sila	blunt-nosed leopard lizard	Endangered/Endangered; CDFG:Fully Protected
Helminthoglypta callistoderma	Kern shoulderband	None/None
Masticophis flagellum ruddocki	San Joaquin whipsnake	None/None; CDFG:SC
Onychomys torridus tularensis	Tulare Valley grasshopper mouse	None/None; CDFG:SC
Perognathus inornatus inornatus	San Joaquin pocket mouse	None/None
Sorex ornatus relictus	Buena Vista Lake shrew	Endangered/None; CDFG:SC
Spea (Scaphiopus) hammondii	western spadefoot	None/None; CDFG:SC
Taxidea taxus	American badger	None/None; CDFG:SC
Vulpes macrotis mutica	San Joaquin kit fox	Endangered/Threatened

Listing Codes:

CNPS: California Native Plant Society.
CDFG: SC California Department of Fish and Game Special Concern.

TABLE 2. HABITATS AND FLOWERING TIMES, (JEPSON 1993, MUNZ AND KECK 1973):

SCIENTIFIC NAME	FLOWERING	HABITAT
Atriplex tularensis	Jun-Oct	Alkali plains, edge of alkali sinks, <200 m.
Caulanthus californicus	Mar-Apr	<900 m., Chenopod Scrub, Valley & Foothill Grassland, Pinyon Juniper Woodland
Delphinium recurvatum	Apr-Jun	Alkaline soils, Atriplex scrub, 30-600 m.
Monolopia congdonii	Mar-Apr	Alkali plains, < 360 m.
Pterygoneurum californicum	None	Alkaline soils, 10-100 m.
Stylocline masonii	Apr-May	Flats, Clay soils in oil areas, 50-300 m.

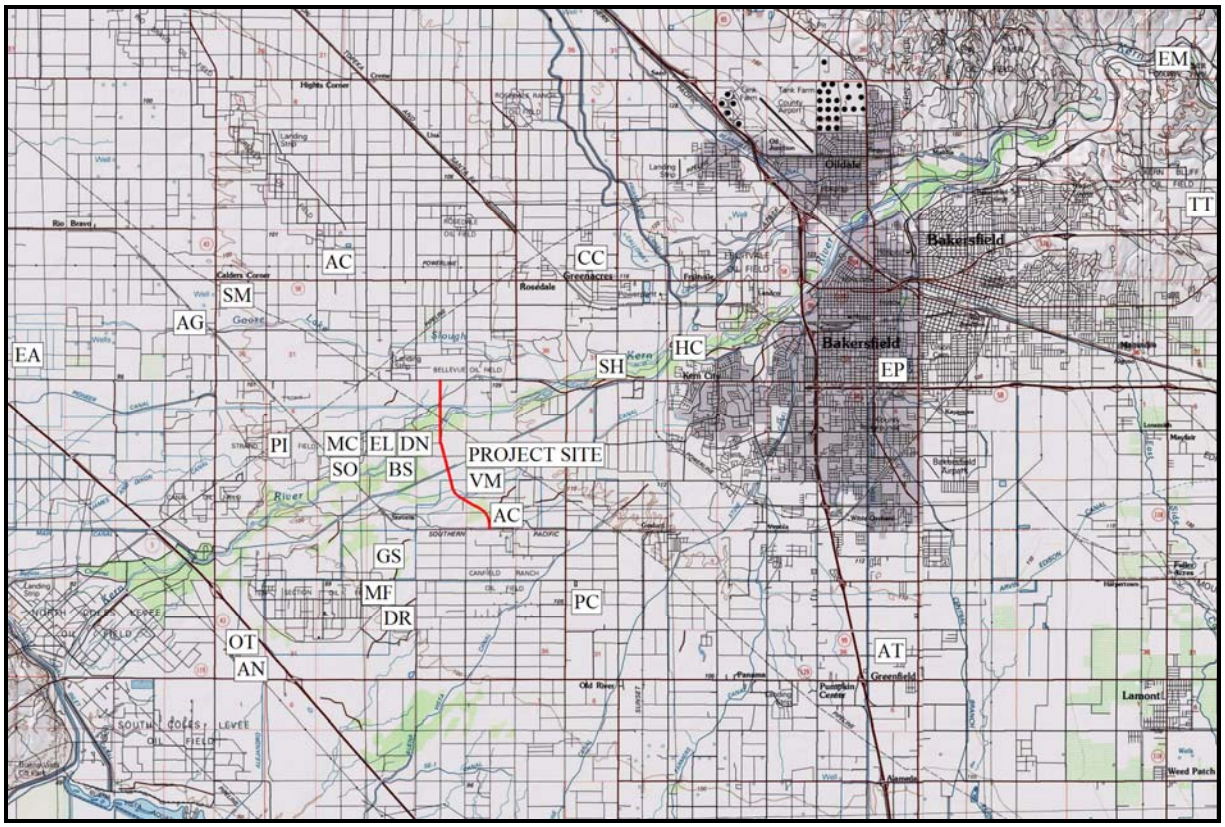

Figure 12. Distribution of threatened, endangered, or sensitive species in the vicinity of the proposed project. Sources: CNDDB Reports Conner, Gosford, Rosedale, and Stevens Quadrangles, information dtd 03Apr07; scientific literature, personal observations, and communications. Printed from TOPO! 2001 National Geographic.

ANIMALS

AG = *Agelaius tricolor*
tricolored blackbird
AN = *Ammospermophilus nelsoni*
Nelson's antelope squirrel
AC = *Athene cunicularia*
burrowing owl
BS = *Buteo swainsoni*
Swainson's Hawk
DN = *Dipodomys nitratoides nitratoides*
Tipton kangaroo rat
EA = *Eremophila alpestris actia*
California horned lark
EL = *Elanus leucurus*
white-tailed kite
EM = *Emys (Clemmys) marmorata pallida*
southwestern pond turtle
EP = *Eumops perotis californicus*
western mastiff bat
GS = *Gambelia sila*
blunt-nosed leopard lizard
HC = *Helminthoglypta callistoderma*
Kern shoulderband
MF = *Masticophis flagellum ruddocki*
San Joaquin whipsnake
OT = *Onychomys torridus tularensis*
Tulare grasshopper mouse
PI = *Perognathus inornatus inornatus*
San Joaquin pocket mouse
SO = *Sorex ornatus relictus*
Buena Vista Lake shrew
SH = *Spea (Scaphiopus) hammondii*
western spadefoot
TT = *Taxidea Taxus*
American badger
VM= *Vulpes macrotis mutica*
San Joaquin kit fox

PLANTS

AT = *Atriplex tularensis*
Bakersfield smallscale
CC = *Caulanthus californicus*
California jewel-flower
DR = *Delphinium recurvatum*
recurved larkspur
MC = *Monolopia congdonii*
San Joaquin woollythreads
PC = *Pteryogeurum californicum*
California chalk-moss
SC = *Stylocline masonii*
Mason's neststraw

*Location information on *Emys (=Clemmys) marmorata pallida,* surpressed by CDFG.

4. BIOTIC SURVEY RESULTS:

4.1 Vegetation: The project site is located in southwest metropolitan Bakersfield, California. The area is characterized by hot, dry summers with daytime temperatures occasionally above 100 degrees Fahrenheit, and cool winters, occasional snow, with temperatures sometimes below freezing. Rainfall averages about six inches a year and has been well below average through March 2007, as recorded by the National Weather Service, San Joaquin/Hanford Office. Sections 03, 10, and 14 have been farmed border to border since 1970 and are currently either under agriculture or between crops. A portion of the subject property in Sections 10 and 15 consists of degraded and disturbed non-native habitat currently utilized for water recharge.

No wetlands habitat exists on the project site. Disturbed riparian habitat exists on the project site. Some trees suitable for raptor nesting sites exist on the project site. All trees within the alignment were inspected and yielded no evidence of current raptor nesting.

The original plant community of the project site before farming operations began was probably Non-Native Grassland, Element Code 42200, and Valley Saltbush Scrub, Element Code 36220 (Holland, 1986). No undisturbed, native habitat now exists on the project site. The Non-Native Grassland is dominated by introduced species such as *Bromus sp*., and *Erodium sp*., which, to a large extent, have replaced the native vegetation. The Valley Saltbush Scrub is low to dense succulent scrubland dominated by *Atriplex sp*.

Six plant species were listed in the CNDDB printout or are known to exist in the vicinity of the project: *Atriplex tularensis*, Bakersfield smallscale; *Caulanthus californicus*, California jewel-flower; *Delphinium recurvatum*, recurved larkspur; *Monolopia congdonii*, San Joaquin woollythreads; *Pterygoneurum californicum*, California chalk-moss; and *Stylocline masonii*, Mason's neststraw. No evidence of any of these three sensitive plants was found on the project site.

Fifty-seven (57) plant species were found on the site. Twenty-seven (27) plant species, forty-seven (47) percent, were introduced, non-native species. Thirty (30) plants, fifty-three (53) percent, were native species. A complete listing of all plants found on the project site is contained in Table 3.

No evidence of any sensitive plant species was found on the project site. Additional annual plant species probably would be identified during spring surveys, but it is doubtful that any sensitive species would be identified.

4.2 Animals: A total of thirty-eight (38) vertebrate species were observed on the project site. Twelve (12) mammals, twenty-five (25) birds, one (1) reptile, and no (0) amphibians were identified on the project site. A complete listing of animals is found in Table 4.

Eighteen (18) sensitive animal species were listed on the CNDDB report or were known to exist near the project site: *Agelaius tricolor*, tricolored blackbird; *Ammospermophilus nelsoni*, Nelson's antelope squirrel; *Athene cunicularia*, burrowing owl; *Buteo swainsoni*, Swainson's hawk; *Dipodomys nitratoides nitratoides*, Tipton kangaroo rat; *Elanus leucurus*, white-tailed kite; *Emys (Clemmys) marmorata pallida; Eremophila alpestris actia*, California horned lark; *Eumops perotis californicus*, western mastiff bat; southwestern pond turtle; *Gambelia sila*,

blunt-nosed leopard lizard; *Helminthoglypta callistoderma*, Kern shoulderband; *Masticophis flagellum ruddocki*, San Joaquin whipsnake; *Onychomys torridus tularensis*, Tulare grasshopper mouse; *Perognathus inornatus inornatus*, San Joaquin pocket mouse; *Sorex ornatus relictus*, Buena Vista Lake shrew; *Spea (=Scaphiopus) hammondii*, western spadefoot; *Taxidea taxus*, the American badger; and *Vulpes macrotis mutica*, San Joaquin kit fox.

Evidence of four of these sensitive species, *Athene cunicularia*, burrowing owl; *Elanus leucurus*, white-tailed kite; *Eremophila alpestris actia*, California horned lark; and *Vulpes macrotis mutica*, San Joaquin kit fox, was observed within the project boundaries during field reconnaissance. No evidence of the remaining fourteen sensitive animal species was found on the project site.

4.2.1 Migration Corridors and Nursery Sites: The Kern River riparian area is a universally recognized wildlife migration corridor. Wildlife nursery sites may exist within the Kern River riparian habitat of the proposed project boundaries as seasonal/annual water availability, vegetative cover, and prey abundance dictate.

4.2.2 Raptors: Trees suitable for raptor nests exist within the identified riparian area of the Kern River. No raptor nests were observed during field reconnaissance conducted for the preparation of this biota report.

4.3 Habitat Modification: Historically, land in the vicinity of the project has been used for farming, grazing, and some crude oil production. About twenty-seven acres (35%) of the project site is either currently under agriculture or between crops. Approximately twenty acres (26%) of the site is a part of the Kern River riparian habitat. The remaining roughly thirty acres (39%) is degraded and disturbed non-native habitat managed by KCWA for water recharge.

TABLE 3. VASCULAR PLANTS:
77 ± ACRES, SECTIONS 03, 10, 14, AND 15, T30S, R26E, MDB&M.

SCIENTIFIC NAME	COMMON NAME	SOURCE
Ailanthus altissima	Tree-of-Heaven	Asia
Amaranthus retroflexus	Redroot Pigweed	Nat.
Ambrosia acanthicarpa	Annnual Bur-Seed	Nat.
Amsinckia intermedia	Fiddleneck	Nat.
Artemisia douglasiana	California Mugwort	Nat.
Asclepias fascicularis	Mexican Whorled Milkweed	Nat.
Astragalus sp.	Milkvetch	Nat.
Atriplex polycarpa	Common Saltbush	Nat.
Aveena barbata	Slender Wild Oat	Eur.
Aveena fatua	Wild Oat	Eur.
Baccharis pilularis	Coyote Bush	Nat.
Brassica nigra	Black Mustard	Eur.

TABLE 3. VASCULAR PLANTS (CONT'D):
77 ± ACRES, SECTIONS 03, 10, 14, AND 15, T30S, R26E, MDB&M.

SCIENTIFIC NAME	COMMON NAME	SOURCE
Bromus diadrus	Ripgut Brome	Eur.
Bromus hordeaceous	Soft Cheat	Eur.
Bromus madritensis ssp. *Rubens*	Foxtail Chess	Eur.
Centaurea solstitialis	Yellow-Star Thistle	Eur.
Conyza canadensis	Horsetail	Nat.
Croton setigerus	Doveweed	Nat.
Cucurbita palmata	Coyote Melon	Nat.
Cynodon dactylon	Bermuda Grass	Cen. Am.
Cyperus esculentus	Yellow Nutgrass	So. Am.
Datura meteloides	Jimson Weed	Mex.
Daucus carota	Domestic Carrot	Eur.
Descurania pinnata	Tansy Mustard	Eur.
Digitaria sanguinalis	Crabgrass	Eur.
Distichlis spicata	Inland Saltgrass	Nat
Eichornia crassipes	Water Hyacinth	Trop. Am.
Elymus glaucus	Blue Wild Rye	Nat.
Eriogonum gracile	Slender Buckwheat	Nat.
Erodium cicutarium	Red-Stemmed Filaree	Eur.
Helianthus annuus	Common Sunflower	Nat.
Heliotropium curassavicum	Salt Heliotrope	Nat.
Hemizonia pallida	Kern Tarweed	Nat.
Heterotheca grandiflora	Telegraph Weed	Nat.
Isocoma menziesii	Menzies' Golden Bush	Nat.
Lactuca serriola	Prickly Lettuce	Eur.
Lotus humistratus	Hill Lotus	Nat.
Malva parviflora	Cheeseweed	Eur.
Marrubium vulgare	Horehound	Eur.
Mimulus guttatus	Yellow Monkeyflower	Nat.
Nicotiana glauca	Tree Tobacco	So. Am.
Nicotiana obtusifolia	Indian Tobacco	So. Am.
Poa annua	Annual Bluegrass	Eur.
Polypogon monspeliensis	Rabbit's Foot	Eur.
Populus fremontii	Fremont Cottonwood	Nat.
Prosopis glanulosa ssp. *Torreyana*	Mesquite	Nat.
Rumix crispus	Curly Dock	Eurasia
Salix laevigata	Red Willow	Nat.
Salsola tragus	Russian Thistle	Eurasia
Sambucus mexicana	Blue Elderberry	Nat.
Scirpus acutis	Bullrush	Nat.
Sisymbrium orientale	Indian Hedgemustard	Eur.

TABLE 3. VASCULAR PLANTS (CONT'D):
77 ± ACRES, SECTIONS 03, 10, 14, AND 15, T30S, R26E, MDB&M.

SCIENTIFIC NAME	COMMON NAME	SOURCE
Stephanomeria pauciflora var. *pauciflora*	Wire Lettuce	Nat.
Tamarix ramosissma	Salt Cedar	Eurasia
Typha latifolia	Cattail	Nat.
Urtica dioica ssp. *holosericea*	Hoary Nettle	Nat.
Xanthium strunarium	Cocklebur	Nat.

Source Codes:

Cen. Am. - Central America
Eur. - European
Med - Mediterranean
Mex. - Mexico
Nat. - Native
So. Am. - South America
Trop. Am. - Tropical America

TABLE 4. VERTEBRATE ANIMALS:
77 ± ACRES, SECTIONS 03, 10, 14, AND 15, T30S, R26E, MDB&M.

SCIENTIFIC NAME	COMMON NAME	EVIDENCE
MAMMALS		
Canis latrans	coyote	sighted
Canis vulgaris	domestic dog	scat / track
Citellus beecheyi	beechey ground squirrel	sighted
Dipodomys sp.	kangaroo rat	burrow
Equus caballus	domestic horse	track
Felis domesticus	domestic cat	track
Lepus californicus	black-tailed jackrabbit	sighted
Lynx canadensis	bobcat	sighted
Procyon lotor	raccoon	track
Thomomys bottae	pocket gopher	burrow
Sylvilagus audubonii	cottontail	sighted
Vulpes macrotis mutica	San Joaquin kit fox	sighted
BIRDS		
Amazona sp.	parrot	sighted
Aphelocoma californica	western scrub-jay	sighted
Ardea herodias	great blue heron	sighted
Athene cunicularia	burrowing owl	sighted
Bubulcus ibis	egret	sighted
Buteo jamaicensis	red-tailed hawk	sighted

TABLE 4. VERTEBRATE ANIMALS (CONT'D):
77 ± ACRES, SECTIONS 03, 10, 14, AND 15, T30S, R26E, MDB&M.

SCIENTIFIC NAME	COMMON NAME	EVIDENCE
BIRDS (CONT'D)		
Callipepla californica	California quail	sighted
Carpodacus mexicanus	house finch	sighted
Cathartes aura	turkey vulture	sighted
Charadrius vociferous	killdeer	sighted
Columba livia	rock dove	sighted
Corvus corax	common raven	sighted
Elanus leucurus	white-tailed kite	sighted
Eremophila alpestris	horned lark	sighted
Euphagus cyanocephalus	Brewer's blackbird	sighted
Falco sparverius	American kestrel	sighted
Geococcyx californianus	greater roadrunner	sighted
Lanius ludovicianus	loggerhead shrike	sighted
Mimus polyglottis	mockingbird	sighted
Sturnella neglecta	western meadowlark	sighted
Sturnus vulgaris	European starling	sighted
Tyrannus verticalis	western kingbird	sighted
Tyto alba	barn owl	sighted
Zenaida macroura	mourning dove	sighted
Zonotrichia leucophyrs	white-crowned sparrow	sighted
REPTILES		
Uta stansburiana	side-blotched lizard	sighted
AMPHIBIANS		
None Identified		

5. DISCUSSION OF SENSITIVE SPECIES:

5.1 Sensitive Plants: Six (06) plant species were listed in the California Natural Diversity Database (CNDDB) printout or are known to exist in the vicinity of the project: *Atriplex tularensis*, Bakersfield smallscale; *Caulanthus californicus*, California jewel-flower; *Delphinium recurvatum*, recurved larkspur; *Monolopia congdonii*, San Joaquin woollythreads; *Pterygoneurum californicum*, California chalk-moss; and *Stylocline masonii*, Mason's neststraw.

5.1.1 *Atriplex tularensis*, the Bakersfield smallscale, has no federal listing and is listed as endangered by the state. It is a CNPS 1B.1 plant. The Bakersfield smallscale is an annual 1 to 8 decimeters tall with few branched, erect, rigid and brittle, white-scaly, overlapping stems

with reddish tips. The leaf blades are lanceolate to ovate, opposite and sessile with a rounded base. The pistillate has bracts in the fruit 2.5 to 3.5 mm, fused to middle or above and ovate to diamond shaped with an acute tip, toothed with thin margins. It is differentiated from *A. cordulata* by its rounded base of the lower leaves and its smaller fruit bracts.

The Bakersfield smallscale is found in alkali soils below 200 meters in southwest Kern County and near the old Kern Lake bed. The closest reported occurrence is near Highway 99 at Greenfield, about eleven miles southeast of the project. It was reported in 1921 and has since been extirpated from the site.

No *Atriplex* was identified on the project site during the field surveys.

5.1.2 *Caulanthus californicus*, the California jewel-flower is listed as endangered by both the USFWS and the CDFG. The closest reported occurrence is about four miles south, reported in 1900. Taylor visited this site in 1986 and reported it extirpated. No uncultivated land still exists at this site. This unique flower is reported in the Paine Preserve northwest of the project. It was transplanted there about 1975 by Jack Zaninovich. Thirteen (13) plants were counted in 1986.

The California jewel-flower is a decumbent to erect annual with leaves less than 11 cm that are wavy-dentate to shallowly cut with a winged petiole. The flowers are white with purple veins, wavy margins, and petals 6 to 11 mm. It is thought to exist originally in non-alkaline grasslands below 3000 feet.

No evidence of the California jewel-flower was found on the site.

5.1.3 *Delphinium recurvatum*, the recurved larkspur, is not listed as threatened or endangered by either state or federal agencies but is a species of concern and is tracked by the CNDDB as a CNPS 1B.2 plant. The closest reported site is about four and a half miles south of the project. It grows on alkaline soils below about 2000 feet.

This beautiful member of the Ranunculaceae with light blue sepals and white petals grows to 85 cm and is easily recognizable. It blooms during April and May. No evidence of the Recurved Larkspur was found on the site.

5.1.4 *Monolopia congdonii,* the San Joaquin woollythreads, is not listed by the state but is listed as endangered by the federal government and is a CNPS 1B.2 plant. This is a rather inconspicuous composite that grows to 30 cm and has yellow ray and disk flowers and is loosely woolly. The leaves are linear to oblanceolate with the lower leaves lobed. It is found on alkaline or loamy plains and blooms in March and April.

The closest reported occurence is in Section 08 about one mile southwest of the site. The San Joaquin woollythreads were observed by botanist Ray Draper, botanist Randi McCormick, and Paul Pruett in the spring of 2000 east of Highway 43 at the site reported in 1954 by Bacigalupi and Gillett. The occurrence is listed by the CNDDB as possibly extirpated due to agriculture. This occurrence is reflected in the City of Shafter General Plan Update EIR and is also listed as possibly extirpated due to agricultural development.

No evidence of the San Joaquin woollythreads was found on the project site.

5.1.5 *Pterygoneurum californicum*, the California chalk-moss, is not listed as threatened or endangered by state or federal agencies but is a CNPS 1B.1 plant. It is an abundant moss in the arid west forming a dense, low turf in exposed soils. The hyaline awns and short setae are distinctive in the field. The California chalk-moss was reported in 1952 along Panama Lane about six miles southeast of the project site.

These moss plants are bulbiform, gregarious or forming a thin turf, green above and light brown below. The stems are buried and usually 0.5 to 5 mm with a single strand present and distinct. The cauline leaves are appressed when dry and spread weakly when moist. The leaves are ovate to lingulate and the adaxial surface is broadly concave. The seta supporting the capsule is 0.4 to 3.5 mm and the capsule is immersed to somewhat exerted. Specialized asexual reproduction is absent. The leaves are flat and smooth distally with a smooth or sharply serrulate awn. The capsules ridged but often burst irregularly. According to Zander, the characteristics associated with the California Chalk-Moss are poor with finely papillose spores, weak thickenings in the leaf cells, and long miter-like calyptra.

No moss was identified on the site.

5.1.6 *Stylocline masonii*, Mason's neststraw, has no federal or state listing, but is tracked by the CNDDB and is a CNPS 1B.1 plant.

It is a grayish, cobwebby to tomentose annual plant which grows to about 11 cm and has spreading to ascending forked stems which have narrowly obtuse leaves below and is usually leafless between the upper forks. The inflorescence heads are 2 to 5 mm and no phillaries are present or they are vestigial. Pistallate flowers are in three to several series and the disk flowers are 2 to 6 and staminate. It is differentiated from *S. psilocarphoides* in having smaller heads (1.5 2.5 mm wide) and shorter chaff scale (2 – 2.7 mm).

The closest reported occurrence was about three and a half miles northwest in 1937. J. Morefield reported finding no plants at this site in 1992. No uncultivated land exists on this site today.

No neststraw-like plants were found on the project site.

5.2 Sensitive Animals: Eighteen (18) sensitive animal species were listed on the CNDDB report or were known to exist near the project site: *Agelaius tricolor*, tricolored blackbird; *Ammospermophilus nelsoni*, Nelson's antelope squirrel; *Athene cunicularia*, burrowing owl; *Buteo swainsoni*, Swainson's hawk; *Dipodomys nitratoides nitratoides*, Tipton kangaroo rat; *Elanus leucurus*, white-tailed kite; *Emys (Clemmys) marmorata pallida; Eremophila alpestris actia*, California horned lark; *Eumops perotis californicus*, western mastiff bat; southwestern pond turtle; *Gambelia sila*, blunt-nosed leopard lizard; *Helminthoglypta callistoderma*, Kern shoulderband; *Masticophis flagellum ruddocki*, San Joaquin whipsnake; *Onychomys torridus tularensis*, Tulare grasshopper mouse; *Perognathus inornatus inornatus*, San Joaquin pocket mouse; *Sorex ornatus relictus*, Buena Vista Lake shrew; *Spea (=Scaphiopus) hammondii*, western spadefoot; *Taxidea taxus*, the American badger; and *Vulpes macrotis mutica*, San Joaquin kit fox.

Evidence of four of these sensitive species, *Athene cunicularia*, burrowing owl; *Elanus*

leucurus, white-tailed kite; *Eremophila alpestris actia*, California horned lark; and *Vulpes macrotis mutica*, San Joaquin kit fox, was observed within the project boundaries during field reconnaissance. No evidence of the remaining fourteen sensitive animal species was found on the project site.

5.2.1 *Agelaius tricolor*, the tricolored blackbird, has no federal or state listing but is a CDFG Species of Concern and is tracked by the CNDDB. It is a medium sized blackbird with a total length of 8 ½ to 9 inches and resembles the Red-Winged Blackbird but the red wing patch of the male is bordered with a white bar.

This blackbird is restricted to California and is gregarious at all seasons and nests in dense colonies, usually in fresh water marshes. Suitable habitat exists south of the project within the riparian habitat of the Kern River. The closest reported observation is about five miles northwest of the project along Goose Lake slough. The nearest suitable nesting habitat is south of the project within the riparian area of the Kern River.

No tricolored blackbird was seen on the project site. No suitable nesting habitat for the tricolored blackbird exists on the project site. Consequently, the potential for occurrence of the tricolored blackbird is low.

5.2.2 *Ammospermophilus nelsoni*, Nelson's antelope squirrel has no federal listing. It is listed by the state as threatened. It is an easily identified small rodent often mistaken for a chipmunk. This small squirrel of the western and southern areas of the Tulare Basin and San Joaquin Valley is easily distinguished from the California ground squirrel by it's much smaller size, about 220 – 240 mm., smaller, flatter tail, and light colored stripes along the sides of its body. When running, it will carry its' tail over the back, showing a white to grayish underside. Its current range and distribution are considered greatly reduced as a result of agriculture. The only listed occurrence by the CNDDB is southwest of the proposed project in section 36, T30S, R25E, MDB&M, from a 1990 observation.

As a result of continued farming operations, no suitable habitat exists within the proposed project boundaries. Consequently, the potential for occurrence is unlikely, given intensive farming operations and lack of suitable habitat. Because the site is within the MBHCP boundaries, no live trapping was conducted as a part of this biota report.

5.2.3 *Athene cunicularia*, the burrowing owl, is an easily identifiable, small owl, active both night and day, which lives in the ground in abandoned holes of other animals such as the California ground squirrel. Burrowing owls are neither endangered nor threatened by either state or federal agencies but have CDFG Special Concern status (SC) and are protected by the Migratory Bird Treaty Act. The closest reported location is about four miles east of the site.

Burrowing owls were observed on the project. No burrowing owl nest sites were identified on the during field reconnaissance. Periphery of the project site provides suitable habitat, including ground squirrel burrows, for use by burrowing owls. Burrowing owls are known to exist, and have been observed by Paul Pruett & Associates staff, in the vicinity of the proposed project.

5.2.4 *Buteo swainsoni*, the Swainson's hawk is not federally listed, but is listed as threatened by the state. It is protected also by the Migratory Bird Treaty Act and raptor laws. This large hawk, 19 – 22 inches, is recognized by its black bill and yellow cere, uniformly dark brown upper parts, white wing linings and throat, wide chestnut band on the chest, pale buff to white belly, and narrowly gray tail with a wide, dark, sub-terminal band.

These birds sometimes travel in huge flocks and migrate from North America to Argentina but are monogamous and solitary nesters. They nest in stands with few trees in juniper- sage flats, riparian areas, and in oak savannahs. They require suitable adjacent foraging areas such as grasslands or alfalfa and grain fields which support rodent populations.

The closest reported occurrence is on the north side of the Kern River in 1992, about one mile south of the project. A large kettle of Swainson's hawks was observed by the author in 2001 in an alfalfa field west of Old River Road about 10 miles southeast of the project site.

No Swainson's hawks were observed on the project site. Large trees suitable for raptor nesting exist on the project. The potential for species occurrence on site is unlikely given no potential nesting sites and the migratory nature of this species. However, Swainson's hawks may forage on site during migratory periods. Consequently, indirect impacts through "take" of potential foraging habitat of a sensitive species may result in the development of this project.

5.2.5 *Dipodomys nitratoides nitratoides*, the Tipton kangaroo rat, is listed as endangered by both the state and federal government. The *D. n. nitratoides* is diagnostically differentiated from other Dipodomys by the absence of a fifth hind toe. Currently *D. n. nitratoides* cannot be differentiated from *D. n. brevinasus* either physically, or by DNA comparison. Personal communication with Dr. Dan Williams, California State University, Stanislaus, and Dr. David Germano, California State University, Bakersfield, further concludes that individuals found east of the California Aqueduct in Valley Sink Scrub conditions are generally accepted to be *D. n. nitratoides* while populations west of the Aqueduct along the foothills are generally accepted to be *D. n. brevinasus*.

The closest reported Tipton kangaroo rat occurrence is about eight miles southwest of the project between Panama Lane and State Route 119.

Kangaroo rats undoubtedly exist in the vicinity of the project. It is likely this species is the common *Dipodomys heermanni*. As a result of continued farming operations, no suitable habitat for the Tipton Kangaroo exists within the proposed project boundaries. Consequently, the potential for occurrence is unlikely given intensive farming operations and lack of suitable habitat. Because the site is within the MBHCP boundaries, no live trapping was conducted as a part of this biota report.

5.2.6 *Elanus leucurus*, white-tailed kite, has no federal or state listing. This member of the hawk family is falcon-shaped, with pointed wings and tail and a spread of about 3 1/3 ft. It is generally pale gray with white underparts and head. A large black patch along the fore edge of the upper wing is evident whether perched or flying. They are widespread from California south to Texas. The closest reported occurrence is about a mile south of the project in section 9. The occurrence is cited from a 1992 observation on the north side of the Kern River.

White-tailed kites were observed during field reconnaissance. Suitable nesting sites exist on the proposed project. When present, kites may forage on the subject property.

5.2.7 *Emys(Clemmys) marmorata pallida*, the southwestern pond turtle, has no federal or state listing but is considered a Species of Concern by the CDFG. This small turtle inhabits permanent or nearly permanent bodies of water below 6000 ft. Location of the southwestern pond turtle is suppressed by the CDFG. Paul Pruett and Associates staff are aware of a reported occurrence near Hart Memorial Park about 17 miles northeast of the project. The closest suitable habitat exists south of the project within the riparian area of the Kern River. The Cross Valley Canal, immediately south of the project, would prohibit movement onto the site.

No suitable habitat for the southwestern pond turtle exists on the project. Potential for occurrence of the southwestern pond turtle is unlikely.

5.2.8 *Eremophila alpestris actia*, California horned lark, has no federal or state listing but is considered a Species of Concern by the CDFG. California horned lark were observed during field reconnaissance of the proposed project.

5.2.9 *Eumops perotis californicus*, western mastiff bat, has no federal or state listing but is considered a Species of Concern by the CDFG. No focused surveys for the western mastiff bat were conducted for the preparation of this report.

5.2.10 *Gambelia sila*, blunt-nosed leopard lizard, is listed as endangered by both the state and federal agencies. It is also fully protected by the CDFG. The blunt-nosed leopard lizard is a large, easily identifiable reptile found throughout the southern San Joaquin Valley and the surrounding foothills. Urbanization and agriculture development have greatly reduced the best habitat for the species. This large lizard, 12-15 inches long including the tail, has prominent leopard-like spots and lighter colored cross bands or bars on its back and tail. It is often observed running bipedal. The closest reported location is about six miles south of the project.

No blunt-nosed leopard lizards were seen on the project site. Field reconnaissance yielded no suitable habitat for the BNLL within the proposed project boundaries. Because the site is not listed as potential BNLL habitat by the MBHCP Baseline Map for Animal Species and no suitable habitat was determined to exist on the site, searches for the BNLL were not conducted for the preparation of this report.

The potential for occurrence is unlikely considering the extensive agricultural operations and lack of suitable habitat.

5.2.11 *Helminthoglypta callistoderma*, the Kern shoulderband, has no federal or state listing. It has no CDFG status. This small snail is known only from Tulare and Kern counties along the lower Kern River canyon where it has been collected from dead vegetation at the waters edge. The closest reported occurrence is about five and a half miles east of the project site in Section 33, found on an island formed by an irrigation ditch and the Kern River.

No Kern shoulderband were found during the field surveys. No suitable habitat for the Kern

shoulderband exists on the project.

5.2.12 *Masticophis flagellum ruddocki*, San Joaquin whipsnake, has no federal or state listing. It is a CDFG Species of Concern. Coachwhips are smooth-scaled snakes ranging in size from about 90 – 225 cm. They are known to occur in deserts, prairies, juniper-grasslands, woodland, thorn-forests, and farmland. The San Joaquin whip is light yellow to olive brown, sometimes reddish, with faint or no neckbands. The closest reported occurrence is about six miles south of the project in section 28, T30S, R26E, MDB&M, along Panama Lane between Highway 43 and Buena Vista Road. The listing is from a 2000 observation.

No snakes were observed during field reconnaissance. Although these snakes have been known to occur on farmland, intensive crop rotation border to border reduces to unlikely, the potential for occurrence.

5.2.13 *Onychomys torridus tularensis*, the Tulare grasshopper mouse, has no state or federal listing. It is tracked by the CNDDB as a CDFG Species of Concern. This mouse is described as stout bodied, with a body length of about 119 to 163 mm. Typically the coat is pale-brown to gray or pinkish cinnamon with white underparts characteristically different. The Tulare grasshopper mouse can be distinguished from coexisting white-footed mice by its shorter, club-like tail, 33 -62 mm, and larger forefeet. Some small mammal burrows were observed, generally in banks along raised roads within the project site. The nearest reported occurrence is about six and a half miles southwest of the project, about 0.8 miles north and west of where Highway 199 crosses Interstate 5. The occurrence is presumed extant.

No mice were observed during the survey period. As a result of continued farming operations, no suitable habitat for the Tulare grasshopper mouse exists within the proposed project boundaries. Consequently, the potential for occurrence is unlikely given extensive farming operations and lack of suitable habitat. Because the site is within the MBHCP boundaries, no live trapping was conducted as a part of this biota report.

5.2.14 *Perognathus inornatus inornatus*, San Joaquin pocket mouse, has neither federal nor state listing. This member of the pocket mouse family is about 15 – 18 gr. It is buff-orange with a sprinkling of dark guard hairs, and no spiny hairs on the dorsum. The body has an indistinct lateral line and the hind foot, hairs on the sole. It occurs in grasslands and scrub between about 350 – 600 m. Trapping would be required to determine its presence. The closest reported occurrence is about three miles west of the proposed in section 7.

No mice were observed during the survey period. As a result of continued farming operations, no suitable habitat for the San Joaquin pocket mouse exists within the proposed project boundaries. Consequently, the potential for occurrence is unlikely given extensive farming operations and lack of suitable habitat. Because the site is within the MBHCP boundaries, no live trapping was conducted as a part of this biota report.

5.2.15 *Sorex ornatus relictus*, the Buena Vista Lake shrew (BVLS) is federally listed as endangered but has no state listing. It is a DFG Species of Concern. BVLS was not a listed species at the time of application for the Plan, and therefore could not be included on the current 10(a) permit. BVLS was however addressed by the Plan as one of the "Other Species' of Concern." BVLS directly benefit from the Plan through protection of habitat associated with all special status species'. BVLS is not afforded "full protection" by any regulating

authority and, as such, issuance of a permit for "incidental take" of the species and habitat is at the discretion of the permitting authority.

A subspecies of *Sorex ornatus*, this small shrew grows to about four inches with a tail of about 1.5 inches and weighing between 0.14 and 0.27 ounce. The Buena Vista Lake shrew is largely black above with a brown speckling pattern, and grey below with buffy-brown sides.

Generalized shrew habitat consists of a variety of possible habitat types with central tendencies consistent with those found in association with "moist vegetative communities surrounding permanent and semi-permanent wetlands"; however, the constituent elements of BVLS habitat includes several other factors. A more complete citation directly from FR 70 3449 states:

> "Maldonado (1992) found shrews in areas of moist ground covered with leaf litter near other low-lying vegetation, branches, tree roots, and fallen logs, or in areas with cool, moist soil beneath dense mats of vegetation kept moist by its proximity to the water line. He described specific habitat features that would make them suitable for the shrew: (1) Dense vegetative cover; (2) a thick, three-dimensional understory layer of vegetation and felled logs, branches, and detritus/debris; (3) heavy understory of leaf litter with duff overlying soils; (4) proximity to suitable moisture; and (5) a year-round supply of invertebrate prey. Williams and Harpster (2001) concluded that the best habitat for the shrew was found in ''riparian and wetland communities with an abundance of leaf litter (humus) or dense herbaceous cover.'' They also determined that ''although moist soil in areas with an overstory of willows or cotton woods appears to be favored,'' they doubted that such overstory was essential. Based on changes in the native habitat composition and structure and information on habitat descriptions of where the shrew has been found, we include the moist vegetative communities surrounding permanent and semipermanent wetlands in our description of shrew critical habitat because they are the habitat requirements needed by the shrew."

A thorough and prudent review of applicable literature, combined with direct field observations by trained and qualified biologists indicates the project site does not contain habitat which meets the basic biotic and abiotic characteristics required for BVLS habitat, as described in the 70 FR by Service as the Primary Constituent Elements.

Relevant trapping data on BVLS for the Project comes from the most recent field studies performed between 02 February 1999 and 13 April 2000 (Williams 2001). Six sites were included in the field studies. Those sites were the Pixley National Wildlife Refuge (Pixley NWR), Lake Woollomes, Kern National Wildlife Refuge (Kern NWR), Kern Fan Water Recharge Area (KFWRA), Coles Levee Ecosystem Preserve, and the Buena Vista Lake Aquatic Recreation area. Of the included sites, the KFWRA is the only trapping site in the vicinity of the Project.

In the KFWRA, identified as Unit 3 in the FR 70, there exists land which possesses the characteristics for shrew habitat as described by the FWS PCE's. During an analysis of site suitability and in an effort to determine extant populations of BVLS, trapping was conducted along the north bank of the Kern River within Unit 3. Unit 3 is the area about 6 miles long along the Kern River and adjacent floodplains, generally located east of Enos Lane (Hwy 43) and Interstate 5, south of Stockdale Highway, and north of the Kern River Canal. During the

trapping period, between 28-30 March 2000, over 315 trapping nights, one shrew was captured, released, and later recaptured. The recapture occurred about a mile and a half southwest of the project in Section 08, within the KFWRA.

No historical records or captures exist within the boundaries of the proposed project. No known captures or historical records on adjacent properties are known to exist prior to 1999. Citations of other captures and collections exist in the literature, but are not relevant to the geographic region in question.

We conclude that any potential impacts to BVLS will not meet the threshold of significance if normal avoidance techniques are adhered to and the mitigation measures presented in the Recommended Mitigation Measures of this document are implemented.

5.2.16 *Spea (Scaphiopus) hammondii*, the western spadefoot, has no federal or state listing, but is a CDFG Special Concerns animal and is tracked by the CNDDB. Members of the genus *Scaphiopus* are found only in the Western Hemisphere and are distinguished from true toads by their catlike eyes (vertical pupils), and a single black, sharp-edged "spade" on each hind foot, teeth in the upper jaw and a relatively smooth skin.

The closest reported occurrence is about one mile east of the project site along South Renfro Road in 1996 in an irrigation ditch in Section 02, adjacent to fallow agriculture land. This species normally requires vernal-like pools for breeding and egg laying.

The western spadefoot is a 1 ½ to 2 ½ inch animal, dusky gray or green above with four irregular light stripes down the back and no cranial boss between the eyes. It ranges throughout the Central Valley and adjacent foothills, below 4500 feet. It occurs primarily in grasslands but has been known to persist for a few years in orchards. They are active at night during rains or high humidity. Adults stay in underground burrows during most of the year. Breeding occurs in March. Tadpoles transform in late spring and disperse after spending a few hours or days near the pond margins.

Because no suitable breeding ground for the western spadefoot occurs on the project site and the project site is comprised entirely of land continuously farmed border to border, the potential for occurrence of the western spadefoot is unlikely.

5.2.17 *Taxidea taxus*, the American badger, has no state or federal listing but is tracked by the NDDB as a CDFG Special Concerns animal. The American badger is a heavy-bodied (13 to 25 lb.), short-legged mammal, yellowish-gray with a median white stripe from the nose over the top of its head. With a body length of about 18 to 22 inches, it has white cheeks with a black spot in front of each ear. The nearest known location is a personal observation by the author in 2005, in about the middle of Section 18, T29S, R29E, north of Highway 178.

No evidence of badger was identified on the project site. The potential for occurrence of the American badger is unlikely considering the extensive agricultural operations and lack of suitable habitat.

5.2.18 *Vulpes macrotis mutica*, the San Joaquin kit fox, is listed as endangered by the federal agencies and as threatened by the state. This small dog relative is known to inhabit the general area and is easily identified by its small size (cat size), bushy black tipped tail, and

extremely large ears. It is a nocturnal predator and can be identified by the typical green eye shine at night. The closest known occurrence is about three miles southwest of the project.

Scat from the kit fox is typically 10-15 mm in diameter, of varying lengths, and almost always contains hair, and usually small fragments of prey bones and insect parts. The most recent "Kit Fox Known Dens Map" of the Metropolitan Bakersfield Habitat Conservation Plan, dated 01 November 2004," shows the closest dens about two miles southeast of the project. Kit fox are known to exist in the surrounding area. No kit fox den was identified on the project site.

6. PROJECT POTENTIAL IMPACTS:

Based on a detailed analysis by the authors of the biological resources present on the project site, it is their professional judgment that the following potential impacts may result from the proposed development of the project site:

6.1. Because riparian habitat exists on the project site, development of the project will result in the loss of some disturbed riparian habitat.

6.2. Because wildlife migration corridors exist on the project site, development of this project may result in some adverse impact to wildlife migration corridors.

6.3. Because wildlife nursery sites may exist within the Kern River riparian habitat of the proposed project boundaries as seasonal/annual water availability, vegetative cover, and prey abundance dictate, development of this project site may result in some adverse impact to potential wildlife nursery sites.

6.4. Because no wetlands habitat exists on the project site, in the form of a freshwater marsh, development of this project will not result in the loss of any wetlands habitat.

6.6. Although no raptor nesting sites were identified within the proposed project boundaries, because raptors were identified during field reconnaissance and are known to forage on the site, development of this project may result in the "take" of foraging habitat associated with animal species occurring in the vicinity of the project.

6.7. Because evidence of, *Athene cunicularia*, the burrowing owl, was noted during field reconnaissance, development of this project could result in adverse impact or "take" of a threatened or endangered animal species or habitat associated with a threatened or endangered species.

6.8. Because evidence of the San Joaquin kit fox in the form of scat and track was found on the project site, and since San Joaquin kit fox are known to exist in the general area it is concluded that development of the project could result in adverse impact or "take" of a threatened or endangered animal species or habitat associated with a threatened or endangered species.

7. RECOMMENDED MITIGATION MEASURES

Mitigation measures are used when it is impossible or unfeasible to avoid adverse impact to the biological resources. Mitigation measures should reduce, offset, or compensate for adverse impacts. The authors believe that the following measures will avoid, or reduce to less than significant, adverse impact to the biological resources found on the project site. These recommendations are not binding but represent the best biological judgment of the authors. The final decisions on avoidance and mitigation measures rest with the permitting and reviewing agencies: City of Bakersfield, Kern County, California Department of Fish and Game, and the United States Fish and Wildlife Service.

7.1. It is recommended that the applicant comply with all provisions, terms, conditions, and fees associated with the Metropolitan Bakersfield Habitat Conservation Plan.

7.2. It is recommended that a request for coverage be made to the Metropolitan Habitat Conservation Plan Trust Group for the approximately twenty acres of the project within the Kern River floodplain.

7.3. It is recommended that a preconstruction clearance survey be conducted within 30 days of initial ground disturbance in accordance with the provisions of the Plan. It is recommended that any potential, inactive, or active kit fox dens or burrowing owl sites identified as unavoidable, be monitored, excavated, and backfilled in accordance with all guidelines, protocols, and other provisions of the Plan, DFG, FWS, Migratory Bird Treaty Act, Endangered Species Act, and California Endangered Species Act.

7.4. It is recommended that prior to any tree removal, an inspection for potential raptor nests be conducted by a qualified biologist. Any potential raptor nests identified during the survey shall be monitored for activity according to applicable DFG, FWS, and Migratory Bird Treaty Act regulations and guidelines.

7.5. It is recommended that a “tailgate” session for all construction personnel be conducted by a qualified biologist, prior to initial ground disturbance, relative to all environmental federal, state, and local law. It is recommended that all construction personnel be trained in sensitive species identification and avoidance techniques and be instructed to be on the lookout for sensitive species sign during earth disturbance phases of construction. A report summarizing the date, time, and topics of the “tailgate” session, list of attendees and identification of the qualified biologist conducting the session shall be prepared and submitted to the Planning Director within 10 days of the “tailgate” session.

7.6. Any evidence, such as dens, burrows, or potential raptor nests, observed at any time during construction, shall be promptly reported to the reviewing agencies for resolution.

7.7. It is recommended that all pipes, culverts, or similar structures with a diameter of four inches or greater shall be kept capped to prevent entry of kit fox. All structures not capped or otherwise covered, shall be inspected prior to burial or closure to ensure no kit fox, or other protected species, become entrapped.

7. RECOMMENDED MITIGATION MEASURES (CONT'D):

7.8. Because a portion of the proposed project is within the riparian area of the Kern River, it is recommended that construction activities be limited during the year to periods outside natal/nesting periods, to minimize the collective impact to any and all species occurring in the vicinity of the project site.

7.9. Because a portion of the proposed project is within the riparian area of the Kern River, it is recommended that focused surveys for *Sorex ornatus relictus,* Buena Vista Lake shrew, be conducted prior to initial ground disturbance, within the riparian area of the easement for the West Beltway crossing. It is recommended that any shrew captures be relocated per CDFG and USFWS recommendations.

7.10. Because a portion of the proposed project is within the riparian area of the Kern River, it is recommended that a temporary exclusion fence for small mammals be constructed along the outermost boundaries of the easement and construction traffic thruway.

7.11. Because a portion of the proposed project is within the riparian area of the Kern River, it is recommended that any and all equipment and materials staging be established outside of the Kern River riparian area.

7.12. Because a portion of the proposed project is within the riparian area of the Kern River, it is recommended that the US Army Corps of Engineers, DFG, and FWS be contacted for opinion relative to any other environmental requirements.

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APPENDIX A. PROJECT PARTICIPANTS
77 ± ACRES, SECTIONS 03, 10, 14, AND 15, T30S, R26E, MDB&M.

BIOLOGIST	EDUCATION	PROJECT RESPONSIBILITY
Chapman, William J.	BS, Gen Sci Adams State College M.Ed. University of LaVerne	Field Biologist
Cluff, Greg	BS, Botany, UNLV MS, Crop Science UN Reno PhD, NM St. University, Agronomy	Plant Taxonomy Field Biologist
McFaddin, Joe	BS, Biology CSU Bakersfield	Field Biologist
Pruett, Paul E.	BA, UC Berkeley MS, NC State LLB, LaSalle Univ. CWB, TWS	Project Manager Wildlife Biologist
Pruett, Steven P.	BS, Business/Finance CSU Bakersfield MEd, University of La Verne	Field Biologist Office Manager

APPENDIX B. FIELD SURVEY DATES

DATE	BIOLOGISTS	SURVEYS
28 AUG 03	Steven Pruett William Chapman	Plant and Animal Surveys
26 OCT 03	William Chapman Gregory Cluff Paul Pruett Steven Pruett	Plant and Animal Surveys
31 OCT 03	William Chapman Gregory Cluff Paul Pruett Steven Pruett	Plant and Animal Surveys
14 JAN 04	Paul Pruett	Plant and Animal Surveys
30 JUN 06	Steven Pruett	Land Use Change Confirmation
26 JUL 06	Joe McFaddin Steven Pruett	Land Use Change Confirmation
01 APR 07	Greg Cluff Joe McFaddin Steven Pruett	Plant and Animal Surveys
27 APR 07	Joe McFaddin Steven Pruett	Plant and Animal Surveys