4.3 BIOLOGICAL RESOURCES

This Subsection assesses the Project's potential to impact sensitive biological resources. The analysis in this Subsection is based primarily on information contained in a site-specific technical report prepared by Alden Environmental, Inc. (hereafter, "Alden") titled, "Biological Technical Report for the Nichols Mine Project" and dated November 9, 2015. The technical report is included as *Technical Appendix D* to this EIR (Alden, 2015).

Because the Project evaluated in this EIR and as described in EIR Section 3.0, *Project Description*, involves a proposed 24-acre expansion of the Nichols Canyon Mine physical disturbance area, which is the only area of the site that could be affected by biological impacts, the information and analyses presented herein and in *Technical Appendix D* are focused on the 24-acre EDA and a 100-foot buffer surrounding the EDA to the north and northeast (hereafter, the "Study Area"). Because the Project would not authorize any new physical disturbances within the remaining portions of the Project site as compared to the Mine's existing entitlements, this Subsection and the Project's Biological Technical Report are focused on new impacts that could occur as a result of the Project. The biological resources evaluation included the review of relevant literature, field surveys, and mapping of vegetation communities. (Alden, 2015, pp. 1-2) The field study performed by Alden included the following field surveys within the Study Area: 1) vegetation mapping; 2) a spring rare plant survey; 3) a jurisdictional delineation; 4) Quino checkerspot butterfly (QCB), and coastal California gnatcatcher (CAGN) protocol surveys; and 5) habitat assessment for the Stephen's kangaroo rat (SKR) and the Burrowing Owl (BUOW). (Alden, 2015, p. 2) Refer to *Technical Appendix D* for detailed descriptions of the survey dates, scope of study, and research and survey methodologies used for the biological resources assessment. Additionally, delineation of jurisdictional areas within the Study Area was performed on August 7, 2015, by VCS Environmental (VCS), the results of which are documented in the Project's Biological Technical Report (*Technical Appendix D* to this EIR). (Alden, 2015, p. 4)

4.3.1 SCOPE OF REVIEW

The Nichols Canyon Mine, as discussed in Section 2.0, Environmental Setting, is an existing, ongoing surface mining operation operating pursuant to vested mining rights and an approved reclamation plan (RP 2006-01A1), which was analyzed in a prior MND. Although the City has chosen to prepare an EIR for the Project here, the scope of review addresses those impacts resulting from the Project as described in Section 3.0, *Project Description*, and not impacts related to existing, approved operations, which form the environmental baseline, as discussed in Section 2.7, *Existing Physical Site Condition*. Accordingly, this Subsection analyzes biological impacts related to the Project specifically. This Subsection does not analyze biological impacts related to existing, approved operations.

4.3.2 EXISTING CONDITIONS

The Project site consists of a large hill in the northeast portion of the Nichols Canyon Mine property that transitions down to lower, flatter areas to the west and south. Elevations of the existing Mine range from about 1,320 to 1,840 feet above mean sea level (amsl), while elevations in the Study Area range from about 1,345 amsl to 1,840 amsl. The soil types within the Study Area consist of Cieneba rocky sandy loam (15 to 50 percent slopes) and Hanford coarse sandy loam (two to eight percent slopes). Much of the western portion of the Nichols North site is an active mine area. The remainder of the Mine (both north and south of Nichols Road) contains some scattered mining activity.

Temescal Canyon High School borders the Mine property to the south, residential areas are located to the east, undeveloped land is located to the north, and I-15 is located to the west. (Alden, 2015, p. 8)

A. Vegetation Communities

1. Vegetation Communities Present within the Study Area

Alden conducted a spring rare plant survey and vegetation mapping within the Study Area on April 7, 2015. Three vegetation communities were identified within the Study Area, each of which is described below. The vegetation communities observed within the Study Area are illustrated on Figure 4.3-1, *Biological Resources,* and are summarized in Table 4.3-1, *Existing Vegetation Communities.*

Table 4.3-1 Existing Vegetation Communities

Vegetation Communities	Acreage
Upland Vegetation Communities[1]	
Brittlebush scrub	27.1
Non-native grassland	2.1
Other Areas	
Developed Land	< 0.1
Total	**29.2**

[1]Upland acreages rounded to 0.1 acre
[2]Table 4.3-1 depicts existing vegetation communities within the Project's biological Study Area, only. (Alden, 2015, Table 2)

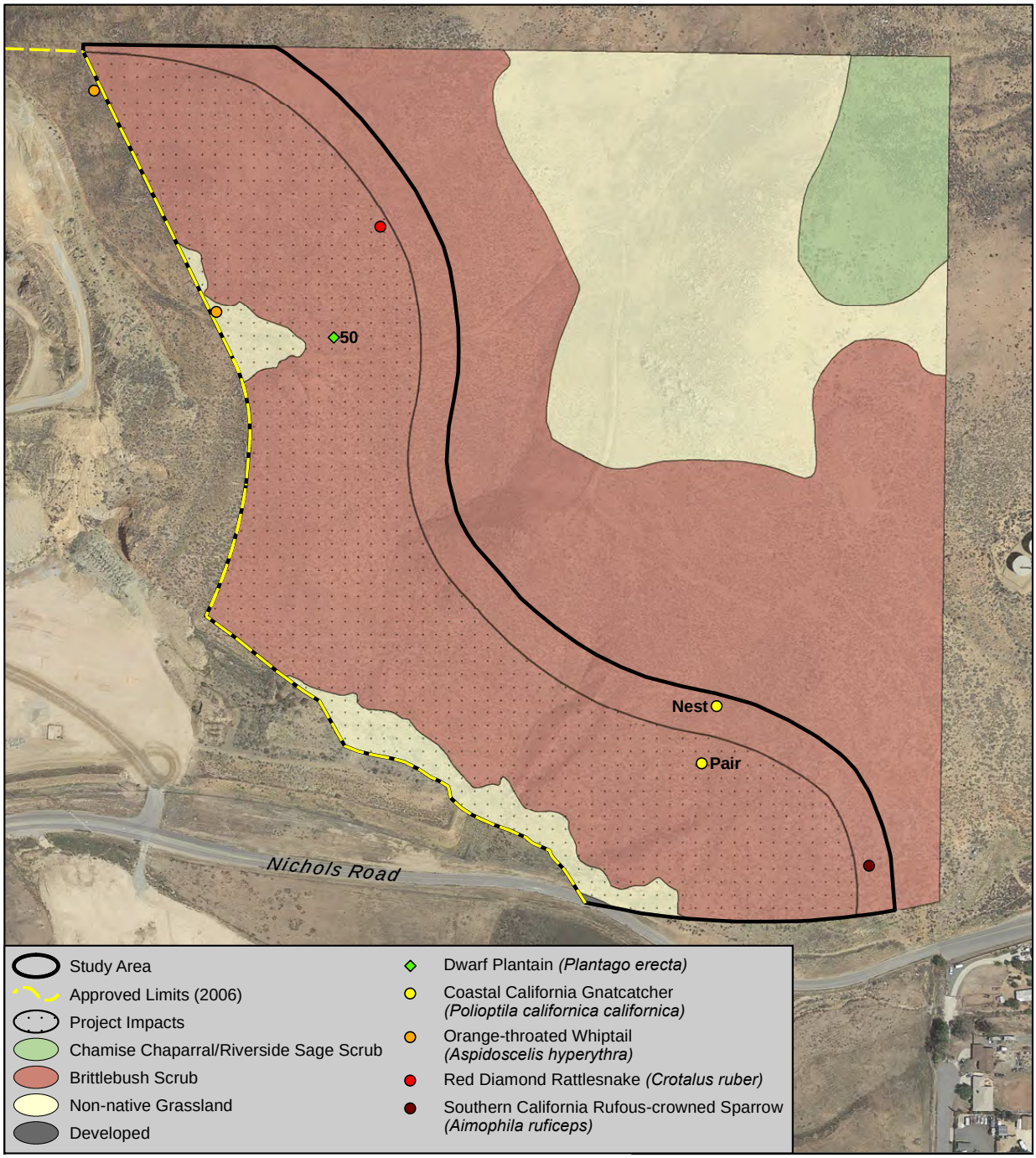
- Brittlebush Scrub. Brittlebush scrub occupies dry sites characterized by shallow soils. This habitat is dominated by brittlebush. Brittlebush scrub occurs throughout the majority of the Study Area, covering 27.1 acres. In addition to brittlebush, California sagebrush is common throughout this community in the Study Area. (Alden, 2015, p. 9)

- Non-native Grassland. Approximately 2.1 acres of non-native grassland occurs within the Study Area. Characteristic species within this vegetation community include wild oats (*Avena* spp.), foxtail chess (*Bromus madritensis* ssp. *Rubens*), ripgut grass (*B. diandrus*), filaree (*Erodium* spp.), and mustard (*Brassica* sp.). These grasslands serve as valuable raptor foraging habitat. (Alden, 2015, p. 9)

- Developed Land. Developed land is where permanent structures and/or pavement have been placed, which prevents the growth of vegetation. Developed area includes a portion of Nichols Road in the southwestern corner of the Study Area. Less than 0.1 acre of developed area occurs within the Project site. (Alden, 2015, p. 9)

2. Sensitive Vegetation Communities

Sensitive vegetation communities are considered rare within the region or sensitive by the California Department of Fish and Wildlife (CDFW). These communities in any form are considered sensitive



Source(s): Alden Environmental (08-27-2015)

NOT TO SCALE

Figure 4.3-1

BIOLOGICAL RESOURCES

because they have been historically depleted, are naturally uncommon, or support sensitive species. The Study Area supports two sensitive vegetation communities: brittlebush scrub and non-native grassland. (Alden, 2015, p. 10)

B. Sensitive Plant Species

Sensitive plant species are considered rare, a characteristic that may be based on three distributional traits: geographic range, habitat specificity, or population size. A species that exhibits a small or restricted geographic range are geographically rare. A species may be more or less abundant but occur only in very specific habitats. Lastly, a species may be widespread but exist naturally in small populations. Alden observed 56 plant species during the rare plant survey conducted in 2015 within the Study Area, none of which are sensitive species. A list of plant species observed or with the potential to occur within the Study Area is included as Appendix D of the Project's Biological Technical Report (*Technical Appendix D* to this EIR). (Alden, 2015, pp 10-11)

C. Sensitive Animal Species

Alden observed or detected 46 animal species in the Study Area during the 2015 on-site surveys. A list of these animal species is presented in Appendix E of the Project's Biological Technical Report (*Technical Appendix D* to this EIR). Four of these species are considered sensitive and are described below (Alden, 2015, pp. 13-14).

- Coastal California Gnatcatcher (*Polioptila californica californica*). The coastal California gnatcatcher is Federally Listed as Threatened and is identified as a California Species of Special Concern. Coastal sage scrub provides habitat for the coastal California gnatcatcher within the Study Area. Two individual gnatcatchers were observed by Alden on separate occasions in the northwest portion of the Study Area. (Alden, 2015, p. 13)

- Orange-throated Whiptail (*Aspidoscelis hyperythra*). The orange-throated whiptail is a California Species of Special Concern. Habitat for this species includes Chaparral, sage scrub, and open edges of riparian areas. Two individuals were observed by Alden on separate occasions in the northwestern portion of the Study Area. (Alden, 2015, p. 13)

- Red Diamond Rattlesnake (*Crotalus ruber*). The red diamond rattlesnake is a California Species of Special Concern. Habitat for this species includes Chaparral, woodland, grassland, and desert areas, primarily in rocky areas and dense vegetation. One individual was spotted by Alden in the northwestern portion of the Study Area. (Alden, 2015, p. 14)

- Southern California Rufous-crowned Sparrow (*Aimophila ruficeps*). The southern California rufous-crowned sparrow is included on the State of California Watch List. Habitat for this species includes rocky slopes, especially where a relatively open shrub cover dominated by California sagebrush is interspersed with grassy areas. One individual of this species was identified by Alden during site surveys in the southeastern corner of the Study Area.

Additional sensitive animal species that were not observed or detected but have potential to occur in the Study Area are listed in Appendix E of the Project's Biological Technical Report (*Technical Appendix D* to this EIR). Of those animal species not observed but with the potential to occur and that are federally listed as endangered include the quino checkerspot butterfly and

Stephens' kangaroo rat. The sensitive (non-listed) western burrowing owl also has the potential to occur. The quino checkerspot butterfly was not observed during focused surveys. Habitat assessments for the Stephens' kangaroo rat and the burrowing owl were negative. The remaining sensitive animal species identified in *Technical Appendix D* as having the potential to occur are not federal- or state-listed and are not anticipated to occur in the Study Area due to unsuitable habitat conditions. (Alden, 2015, p. 22)

D. Jurisdictional Waters and Wetlands

No wetlands occur in the Study Area. (Alden, 2015, p. 10) Jurisdictional waters that occur in the Study Area include non-wetland Waters of the United States (WUS) and Waters of the State (WS). Each is discussed below.

1. Non-Wetland Waters of the United States (WUS)

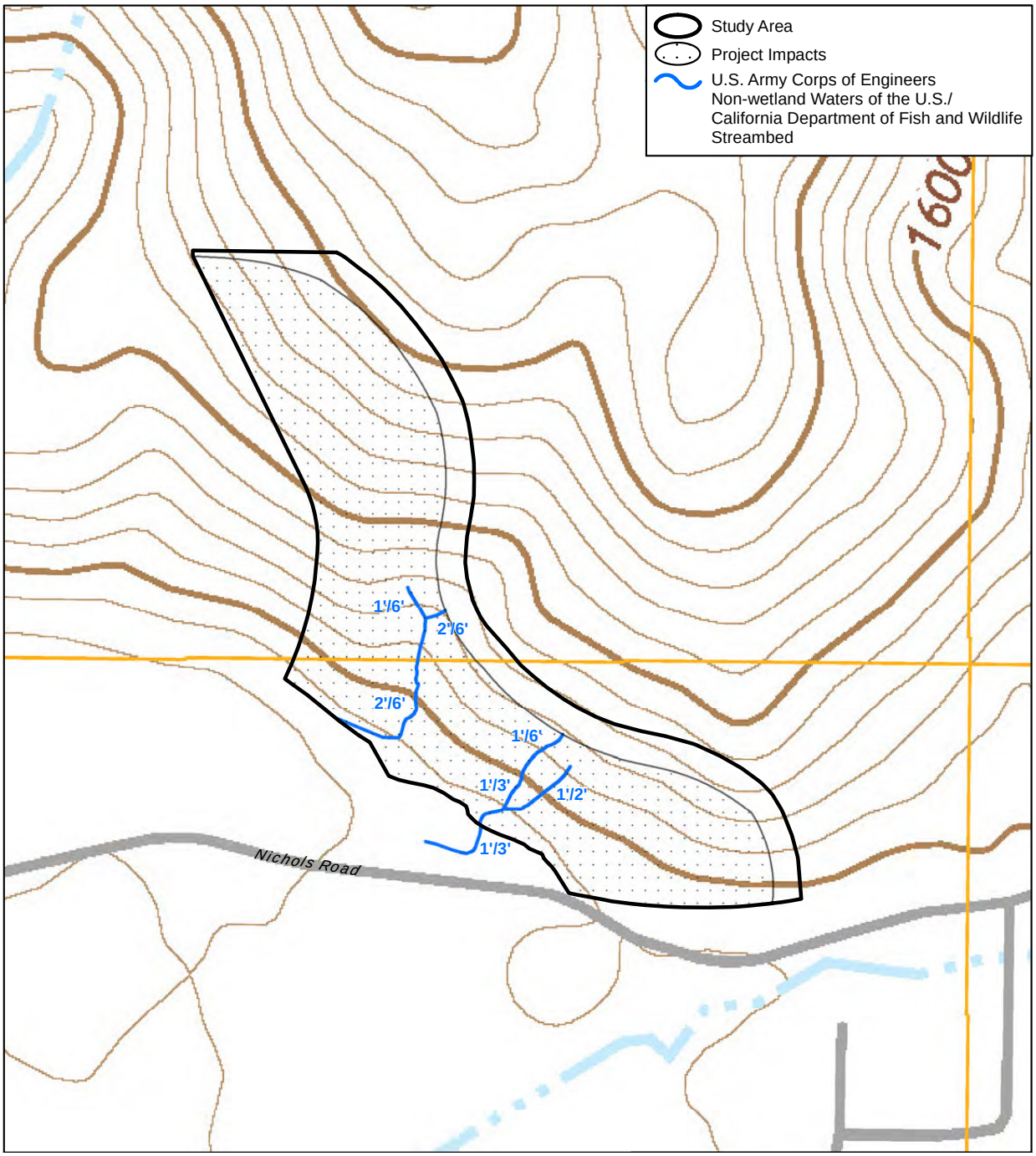
While not meeting the three necessary criteria to be considered wetlands under the federal Clean Water Act, non-wetland WUS protect the chemical and physical functions of the nation's wetlands, and for those reasons, are considered sensitive. Non-wetland WUS include 0.05 acre of ephemeral drainage in the central portion of the Study Area, which is considered jurisdictional by the U.S. Army Corps of Engineers (Corps). Refer to Figure 4.3-2, *Jurisdictional Features*, which depicts the location of the ephemeral drainage within the Study Area. (Alden, 2015, p. 10)

2. Waters of the State

The California Fish and Game Code provides specific protection for WS (both wetlands and non-wetlands) when an activity would alter the flow or change or use any material from the bed, channel, or bank of any perennial, intermittent, or ephemeral river, stream, and/or lake as such an activity may substantially adversely affect fish and wildlife resources conserved, protected, and managed by CDFW. The Corps jurisdictional drainage in the center of the Study Area is also considered to be CDFW jurisdictional. A total of 0.17 acre of CDFW streambed occurs on the Project site, as depicted in Figure 4.3-2. (Alden, 2015, p. 10)

E. Regulatory Setting

The Study Area is subject to state and federal and City of Lake Elsinore regulations associated with a number of regulatory programs. These programs often overlap and were developed to protect natural resources, including: state and federally listed plants and animals; aquatic resources including rivers and creeks; ephemeral streambeds; wetlands and areas of riparian habitat; other special-status species which are not listed as threatened or endangered by the state or federal governments; and other special-status vegetation communities. The federal government administers non-marine plant and wildlife related regulations through the United States Fish and Wildlife Service (USFWS), while WUS are administered by the Corps. California law regarding wetland, water-related, and wildlife issues is administered by the CDFW. The City administers the regulations of CEQA through the Natural Community Conservation Planning (NCCP) program and guidelines of the Final Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), although the Project site is exempted from the MSHCP pursuant to a Memorandum of Understanding (MOU) and Settlement Agreement between the prior landowner and Riverside County Redevelopment Agency in 2004. The biological resources located in the Study Area are subject to regulatory administration by the federal government, State of California, and City of Lake Elsinore as detailed below.



Source(s): Alden Environmental (08-27-2015)

NOT TO SCALE

Figure 4.3-2

JURISDICTIONAL FEATURES

2. Federal Regulations

Federal Endangered Species Act

The Federal Endangered Species Act (FESA) of 1973 designates threatened and endangered animals and plants and provides measures for their protection and recovery. "Take" of listed animal species and of listed plant species in areas under federal jurisdiction is prohibited without obtaining a federal permit. Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Harm includes any act that actually kills or injures fish or wildlife, including significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife. Activities that damage the habitat of (i.e., harm) listed wildlife species require approval from the USFWS for terrestrial species. The FESA also generally requires determination of Critical Habitat for listed species. If a project involves a federal action potentially affecting Critical Habitat, the federal agency would be required to consult with USFWS. (Alden, 2015, p. 6)

FESA Section 7 and Section 10 provide two pathways for obtaining authority to take listed species. Under Section 7 of the FESA, a federal agency that authorizes, funds, or carries out a project that "may affect" a listed species or its Critical Habitat must consult with USFWS. Under Section 10 of the FESA, private parties with no federal nexus (i.e., no federal agency will authorize, fund, or carry out the project) may obtain an Incidental Take Permit to harm listed species incidental to the lawful operation of a project. (Alden, 2015, p. 6)

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA; 16 U.S. Code Sections 703-711) includes provisions for protection of migratory birds, including the non-permitted take of migratory birds. The MBTA regulates or prohibits taking, killing, possession of, or harm to migratory bird species listed in Title 50 Code of Federal Regulations § 10.13. Migratory birds include geese, ducks, shorebirds, raptors, songbirds, and many others. Disturbance that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a "take." The MBTA is an international treaty for the conservation and management of bird species that migrate through more than one country, and is enforced in the United States by the USFWS. The MBTA was amended in 1972 to include protection for migratory birds of prey (raptors). (Alden, 2015, p. 6)

Clean Water Act

Under § 404 of the Clean Water Act, the Corps is charged with regulating the discharge of dredge and fill materials into jurisdictional WUS. The terms "WUS" and "jurisdictional waters" have a broad meaning that includes special aquatic sites, such as wetlands. Corps wetland boundaries are determined using three criteria (vegetation, hydrology, and soils) established for wetland delineations, as described within the Wetlands Delineation Manual (Environmental Laboratory 1987) and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. (Alden, 2015, p. 6)

WUS, as defined by regulation and refined by case law include: (1) the territorial seas; (2) coastal and inland waters, lakes, rivers, and streams that are navigable WUS, including their adjacent wetlands; (3) tributaries to navigable WUS, including adjacent wetlands; and (4) interstate waters and their tributaries, including adjacent isolated wetlands and lakes, intermittent and ephemeral

streams, prairie potholes, and other waters that are not a part of a tributary system to interstate waters or navigable WUS, the degradation or destruction of which could affect interstate commerce. (Alden, 2015, p. 6)

Section 401 of the Clean Water Act requires that any applicant for a federal license or permit to conduct any activity that may result in a discharge to WUS must obtain a Water Quality Certification, or a waiver thereof, from the state in which the discharge originates. In California, the Regional Water Quality Control Board (RWQCB) issues Water Quality Certifications. (Alden, 2015, pp. 6-7)

❑ State Regulations

State of California Endangered Species Act

California's Endangered Species Act (CESA) established that it is State policy to conserve, protect, restore, and enhance endangered species and their habitats. Under State law, plant and animal species may be formally designated rare, threatened, or endangered by official listing by the California Fish and Game Commission. CESA authorizes that private entities may "take" plant or wildlife species listed as endangered or threatened under the federal ESA and CESA, pursuant to a federal Incidental Take Permit if the CDFW certifies that the incidental take is consistent with the CESA (Fish & Game Code § 2080.1[a]). For State-only listed species, § 2081 of the CESA authorizes the CDFW to issue an Incidental Take Permit for a State listed threatened or endangered species if specific criteria are met. (Alden, 2015, p. 7)

Native Plant Protection Act

§ 1900-1913 of the California Fish and Game Code (Native Plant Protection Act) direct the CDFW to carry out the Legislature's intent to "…preserve, protect, and enhance endangered or rare native plants of this state." The Native Plant Protection Act gives the California Fish and Game Commission the power to designate native plants as "endangered" or "rare" and protect endangered and rare plants from take. (Alden, 2015, p. 7)

California Fish and Game Code

The California Fish and Game Code provides specific protection and listing for several types of biological resources. § 1600 of California Fish and Game Code requires a Streambed Alteration Agreement for any activity that would alter the flow, change or use any material from the bed, channel, or bank of any perennial, intermittent, or ephemeral river, stream, and/or lake. Typical activities that require a Streambed Alteration Agreement include excavation or fill placed within a channel, vegetation clearing, structures for diversion of water, installation of culverts and bridge supports, cofferdams for construction dewatering, and bank reinforcement. Notification is required prior to any such activities, and CDFW will issue a Streambed Alteration Agreement with any necessary mitigation to ensure protection of State fish and wildlife resources. (Alden, 2015, p. 7)

Pursuant to California Fish and Game Code Section 3503, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto. Raptors and owls and their active nests are protected by California Fish and Game Code § 3503.5, which states that it is unlawful to take, possess, or destroy any birds of prey or to take, possess, or destroy the nest or eggs of any such bird unless authorized by the

CDFW. § 3513 states that it is unlawful to take or possess any migratory non-game bird as designated in the MBTA. These regulations could require that construction activities (particularly vegetation removal or construction near nests) be reduced or eliminated during critical phases of the nesting cycle unless surveys by a qualified biologist demonstrate that nests, eggs, or nesting birds will not be disturbed, subject to approval by CDFW and/or USFWS. (Alden, 2015, p. 8)

Porter-Cologne Water Quality Control Act of 1970

The Porter-Cologne Water Quality Control Act of 1970 grants the State Water Resource Control Board and its regional offices power to protect water quality and is the primary vehicle for implementation of the State's responsibilities under § 401 of the Clean Water Act. The Porter-Cologne Act grants the State Water Resource Control Board authority and responsibility to adopt plans and policies, regulate discharges to surface and groundwater, regulate waste disposal sites, and require cleanup of discharges of hazardous materials and other pollutants. (Alden, 2015, p. 8)

❑ Local and Regional Regulations

Stephens' Kangaroo Rat Habitat Conservation Plan (SKR HCP)

The Stephens' Kangaroo Rat Habitat Conservation Plan (SKR HCP) was prepared under the direction of the Riverside County Habitat Conservation Agency (RCHCA) Board of Directors, in consultation with USFWS and CDFW. The City of Lake Elsinore is a member agency of the RCHCA. The 30-year SKR HCP was designed to acquire and permanently conserve, maintain and fund the conservation, preservation, restoration, and enhancement of Stephens' kangaroo rat-occupied habitat. The SKR HCP covers approximately 534,000 acres within the member jurisdictions and includes an estimated 30,000 acres of occupied Stephens' kangaroo rat habitat. The SKR HCP requires members to preserve and manage 15,000 acres of occupied habitat in seven Core Reserves encompassing over 41,000 acres.

On May 3, 1996, the USFWS issued a permit to the Riverside County Habitat Conservation Agency to incidentally take the federally endangered Stephens' kangaroo rat (*Dipodomys stephensi*). Similarly, the CDFW issued a California Endangered Species Act Management Authorization for Implementation of the Stephens' kangaroo rat on May 6, 1996. To date, more than $50 million has been dedicated to the establishment and management of a system of regional preserves designed to ensure the survival of SKR in the plan area. This effort resulted in the permanent conservation of approximately 50% of the SKR-occupied habitat remaining in the HCP area. Through direct funding and in-kind contributions, SKR habitat in the regional reserve system is managed to ensure its continuing ability to support the species. Core reserves were deemed complete in December of 2003.

City of Lake Elsinore Tree Preservation and Palm Tree Preservation Ordinances

The City of Lake Elsinore Municipal Code Chapter 5.120, *Tree Preservation*, creates and establishes a City Tree Committee that has the responsibility to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks and in the public right-of-way. Additionally, City Municipal Code Chapter 5.116, *Significant Palm Trees*, provides a mechanism to regulate the removal, destruction, and relocation of significant palms within the City limits. (Lake Elsinore, 2015)

4.3.3 BASIS FOR DETERMINING SIGNIFICANCE

Environmental impacts to biological resources are assessed using impact significance thresholds criteria, which reflect the policy statement contained in CEQA § 21001(c) of the Public Resources Code. Accordingly, the State Legislature has established it to be the policy of the State of California to:

> *"Prevent the elimination of fish or wildlife species due to man's activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities..."*

In the development of thresholds of significance for impacts to biological resources, CEQA provides guidance primarily in § 15065, Mandatory Findings of Significance, and the CEQA Guidelines, Appendix G, Environmental Checklist Form. CEQA Guidelines § 15065(a) states that a project may have a significant effect where:

> *"The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or wildlife community, reduce the number or restrict the range of an endangered, rare, or threatened species ..."*

Therefore, for the purpose of analysis in this EIR, the Project would result in a significant impact to biological resources if the Project or any Project-related component would:

a. *Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.*

b. *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.*

c. *Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.*

d. *Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites*

e. *Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.*

f. *Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.*

4.3.4 IMPACT ANALYSIS

Threshold a.	***Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?***

A. Direct Impacts to Biological Resources

Implementation of the Project would result in the expansion of approved mining limits by approximately 24 acres, while also reducing the allowable annual tonnage and adjusting the allowed hours of operation (as discussed in further detail in EIR Section 3.0, *Project Description*). Within the EDA, existing vegetation would be removed, the area would be mined, and all existing biological resources would be directly impacted. Provided below is a discussion of the Project's direct and indirect impacts to species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS.

1. Impacts to Sensitive Plant Species

Implementation of the Project would not impact any sensitive plant species because no sensitive species were observed in the Study Area during field surveys and the potential for additional sensitive plant species to occur in the Study Area is low. (Alden, 2015, p. 21). The potential for additional federal- or state-listed plants to occur in the Study Area is very low because suitable habitat/soils are not present. The loss of other non-listed plant species would be considered less than significant due to their low levels of sensitivity. (Alden, 2015, p. 22)

2. Impacts to Sensitive Animal Species

Implementation of the Project would impact the habitat of the federally listed threatened coastal California gnatcatcher. Additionally, there is a potential for direct impacts to the coastal California gnatcatcher if any individuals were to be present during blasting activities within the EDA. Impacts to this species are considered significant before mitigation. Given that the Project site is not subject to the Western Riverside County MSHCP, there is no USFWS take authorization for impacts to the listed coastal California gnatcatcher. As such, take authorization would require a Section 7 Consultation between the Corps and the USFWS. The Corps would request the consultation with the USFWS as part of the permitting process for the jurisdictional impacts on-site. The USFWS would analyze the Project per the FESA and issue a Biological Opinion (BO) for the Project. The BO would be required to provide the authorization to impact ("Take") the occupied CAGN habitat. No other federal- or state-listed animal species would be directly impacted by the Project. Impacts to the orangethroat whiptail, red-diamond rattlesnake, Southern California rufous-crowned sparrow are considered less than significant because of these species' low sensitivity. (Alden, 2015, pp. 21-22)

Of those animal species not observed but with the potential to occur in the Study Area, potential impacts to the federal-listed endangered quino checkerspot butterfly, Stephens' kangaroo rat, and the sensitive (non-listed) burrowing owl, should they be present at the time that mining activities in the EDA commence, would be considered significant. The quino checkerspot butterfly was not observed during focused surveys and habitat assessments for the Stephens' kangaroo rat and the burrowing owl were negative. The chance that the EDA could become occupied by Quino checkerspot butterfly, Stephens' kangaroo rat, or the burrowing owl is considered "very low" in particular due to the ongoing nearby surface mining operations; thus, Project impacts to sensitive animal species with

the potential to occur on-site but that were not observed on-site during field surveys would be less than significant requiring no mitigation. The remaining sensitive animal species with the potential to occur are not federal- or state-listed and are very unlikely to occur in the Study Area due to unsuitable habitat conditions. Because of their low level of sensitivity, impacts to other potentially occurring species would be considered less than significant if present in the Study Area. (Alden, 2015, p. 22)

3. Vegetation Communities

As depicted in Table 4.3-2, *Project Impacts to Vegetation Communities*, approximately 23.5 acres of the Study Area would be impacted with implementation of the Project. The impacted areas include 21.4 acres of brittlebush scrub, 2.1 acres of non-native grassland, and less than 0.1 acre of developed land. The less than 0.1 acre of developed land would be a less-than-significant direct impact, because this habitat type does not provide habitat for candidate, sensitive, or special status species. However, impacts to 21.4 acres of brittlebush scrub would reduce habitat for sensitive species, including, but not limited to, the coastal California gnatcatcher; this is a significant impact for which mitigation would be required. Although non-native grassland does not provide habitat for candidate, sensitive, or special status species, impacts to 2.1 acres of non-native grassland would be considered a significant impact on a cumulatively considerable basis if it were to occur during the breeding season for MBTA-protected birds and raptors (February 1 to September 15), as such disturbance would indirectly impact the habitat of raptor and bird species protected by the MBTA. (Alden, 2015, pp. 21-22)

Table 4.3-2 Project Impacts to Vegetation Communities

Vegetation Communities[1]	Acreage
Brittlebush scrub	21.4
Non-native grassland	2.1
Developed	< 0.1
Total Impacts:	**23.5**

[1]Upland acreages rounded to 0.1 acre
(Alden, 2015, Table 5)

B. Indirect Impacts to Biological Resources

Potential indirect impacts consist of secondary effects of the Project, including habitat insularization, drainage/water quality, lighting, noise, exotic plant species, raptor foraging/nesting, and nuisance animal species. The magnitude of an indirect impact can be the same as a direct impact, but the effect usually takes a longer time to become apparent. Many of these potential indirect impacts are associated with urban development and would not be significant for the Nichols Canyon Mine Project. Potential indirect impacts to sensitive plant and animal species and their habitats are discussed below. (Alden, 2015, p. 22)

1. Habitat Insularization

As discussed in *Technical Appendix D*, the Project was assessed by Alden for its potential to cause indirect impacts regarding habitat insularization, which is the fragmentation of large habitat areas into smaller "islands" effectively isolated from one another. Such fragmentation presents barriers to wildlife movement and breeding, splits animal and plant populations, and increases edge effects.

Often, habitat insularization is associated with local species extirpation, since smaller habitat areas support relatively fewer species than larger ones. The proposed Project would result in the expansion of an existing Mine's permitted disturbance area by approximately 24 acres. Brittlebush scrub and non-native grassland within the areas of the Mine that would not be impacted by the Project would continue to be connected to open space areas to the east and north, and no "island" effect would occur as a result of the proposed Project. Accordingly, indirect impacts due to habitat insularization would be less than significant. (Alden, 2015, p. 22)

2. Drainage/Water Quality

Water runoff is often associated with increased erosion, sedimentation, and pollution, which could significantly impact water quality in adjacent sensitive habitats. The use of structural and non-structural Best Management Practices (BMPs) and Best Available Control Technology (BACT), as required by the Project's proposed Surface Mining Permit (SMP) No. 2015-01, would reduce potential impacts associated with water runoff associated with expanded mining activities. The operation of the Mine complies with the Standard Urban Stormwater Management Plan and Municipal Stormwater Permit criteria of the RWQCB and City of Lake Elsinore, and as such, erosion and water quality pollution would be minimized and would not cause indirect impacts to biological resources. Refer to EIR Section 4.7, *Hydrology and Water Quality*, for a complete discussion of the Project's potential impacts associated with drainage/water quality. (Alden, 2015, p. 23)

3. Lighting

Night lighting can expose adjacent wildlife species to an unnatural light regime, may alter their behavior patterns, and consequently result in a loss of species diversity. No additional sources of light would occur with the Project; however, the existing lighting associated with the Mine's operation would occur over longer hours each day per the proposed changes to the Mine's operating hours. Because no new lighting elements would be introduced as a result of the Project, and because lighting already occurs under existing conditions adjacent to open space areas during evening and early morning operations, the extended time period of existing lighting would have a less-than-significant indirect impact on adjacent wildlife communities. (Alden, 2015, p. 23)

4. Noise

Mining-related noise has the potential to indirectly impact wildlife. Noise-related impacts would be considered significant if sensitive species were displaced from their nests or territories and failed to breed. Indirect noise impacts to breeding gnatcatchers could occur if mining activities create noise in excess of 60 decibels (dB) hourly average in occupied brittlebush scrub during the gnatcatcher breeding season (March 1 to August 15). There is also a potential for noise impacts during blasting activities. Based on the positive gnatcatcher survey results, there is potential for a significant indirect noise impact to breeding. (Alden, 2015, p. 23) Thus, mitigation for potential indirect impacts to gnatcatchers is warranted.

5. Exotic Plant Species

Non-native plants could colonize areas disturbed by mining and could potentially spread into the adjacent vegetation communities, particularly following disturbances such as fire. Such invasions could displace native plant species, reducing diversity, increasing flammability and fire frequency, change ground and surface water levels, and adversely affect the native wildlife that are dependent

on native vegetation. Invasion of exotic plant species would not occur from the Project because the landscaping associated with the Mine's Reclamation Plan revegetation plan does not include any of non-native species. Rather, it includes a seed mix of native annual and perennial herbaceous and shrub species found in the Mine's vicinity and/or in similar scrub communities in southwestern California. (Alden, 2015, p. 23)

6. Raptor Foraging/Nesting

Loss of non-native grassland in western Riverside County represents a cumulative loss of raptor foraging habitat. The loss of 2.1 acres of non-native grassland in the EDA would contribute to this cumulative loss, and is considered a cumulatively considerable Project-related impact. Indirect impacts to nesting raptor habitat also may occur if clearing of non-native grassland in the EDA occurs during the nesting season of birds protected by the MBTA (February 1 to September 15), which is a potentially significant impact of the Project for which mitigation is required. (Alden, 2015, p. 24)

7. Nuisance Animal Species

Because the Project does not involve residential development, the potential for domestic animals to enter the site vicinity as a result of the Project is low to none. Therefore, potential indirect impacts to sensitive wildlife in the area as a result of nuisance animals (pets) would not occur. (Alden, 2015, p. 24)

Threshold b.	***Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?***

As indicated under the discussion and analysis of Threshold a., the Project would result in significant impacts associated with the loss of 21.4 acres of brittlebush scrub and 2.1 acres of non-native grassland. The loss of Brittlebush scrub is considered significant because this vegetation community provides habitat for sensitive wildlife, including the coastal California gnatcatcher. The loss of 2.1 acres of non-native grassland is cumulatively considerable in association with the cumulative loss of habitat for raptors in western Riverside County, and also would be significant if the removal of non-native grassland were to occur during the breeding season for MBTA-protected birds and raptors (February 1 to September 15). The loss of 21.4 acres of brittlebush scrub represent a significant direct Project impact, while the loss of 2.1 acres of non-native grassland represent a cumulatively considerable impact as well as a significant indirect impact if removed during the nesting season for MBTA-protected birds and raptors.

Threshold c.	***Would the Project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?***

The Project would impact approximately 0.05 acre of Corps non-wetland WUS and 0.17 acre of CDFW streambed, as depicted in Figure 4.3-2. The impact would occur within ephemeral channels in the central portion of the Study Area. Impacts to this jurisdictional feature would require permits from the Corps, RWQCB, and the CDFW. (Alden, 2015, p. 21). As indicated in Table 4.3-1, there

are no wetland plant communities within the Study Area. The Project's impacts to 0.05 acre of Corps non-wetland WUS and 0.17 acre of CDFW streambed are significant impacts of the proposed Project for which mitigation would be required.

The Study Area does not contain any wetlands (Alden, 2015, p. 10). Therefore, the Project would not result in a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act through direct removal, filling, hydrological interruption, or other means. No impact to wetlands would occur and mitigation is not required.

Threshold d. Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

There are no water bodies on or adjacent to the Project site that could support fish; therefore, there is no potential for the Project to interfere with the movement of native resident migratory fish. In addition, implementation of the Project would not have the ability to interfere with an established migratory wildlife corridor, because the Project site does not serve as a wildlife corridor or is it connected to an established corridor. Additionally, and although the Mine is not subject to the MSHCP, the MSHCP nonetheless identifies corridors and linkages that are intended to provide for regional wildlife corridors in western Riverside County. The MSHCP does not identify the Project site as being part of any proposed linkages (RCA, 2003, Figure 3-2). Movement within the Project area already is constrained by I-15 to the west and existing residential development to the east. No native wildlife nurseries were identified in the Biological Technical Report contained in *Technical Appendix D* as being located on or adjacent to the Project site; therefore, there is no potential for the Project to impede the use of a native wildlife nursery site. Accordingly, no impact would occur to any native resident or migratory fish, established wildlife corridor, or native wildlife nursery sites.

Although the Project would not directly affect wildlife movement corridors, mining activities on the Project site have the potential to impact native, migratory, and nesting birds protected by the MBTA. The Project's potential to impact birds protected by the MBTA is a significant impact for which mitigation is required.

Threshold e. Would the Project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

As detailed in the Biological Technical Report contained in *Technical Appendix D*, there are no tall trees located in the Study Area (Alden, 2015, p. 15). Three vegetation communities occur in the Study Area: brittlebush scrub, non-native grassland, and other upland (developed land) (Alden, 2015, pp. 8-9). The scrub and non-native grassland do not contain large stands of trees. The Project would not conflict with City Municipal Code Chapter 5.120, Tree Preservation, because there are no trees located in the Study Area and no trees are located within the public right-of-way. Additionally, no palm trees are located on the Project site. The City has not adopted an Oak Tree Preservation ordinance to extend protection to native oaks located outside of MSHCP Criteria Cells and Conservation Areas, and the Project site also does not contain any oak trees (Lake Elsinore, 2011b, p. 3.8-53). Thus, the Project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance, and no impact would occur.

Threshold f. ***Would the Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?***

Although the Nichols Canyon Mine is located within the Western Riverside County MSHCP area, pursuant to a March 2004 Settlement Agreement and MOU signed between Riverside County and the former landowner, the 199-acre Nichols Canyon Mine site is fully exempt from the provisions and requirements of the MSHCP. As discussed below in Section 4.3.6, the Project would be subject to mitigation for site-specific impacts to brittlebush scrub, non-native grassland, and jurisdictional areas as part of a Section 404 Permit from the Corps, Section 1602 Streambed Alteration Agreement from CDFW, a Section 401 Water Quality Certification from the RWQCB, and a Biological Opinion from the USFWS.

Additionally, the Study Area also is located within the SKR HCP. According to Figure 21 of the SKR HCP, the Project site is not located within any "Core Reserve" areas that are being assembled to provide for the long-term conservation of the SKR. The nearest "Core Reserve" is the Lake Mathews Core Reserve area, located approximately 4.1 miles northwest of the Mine. Although the Study Area is not targeted for conservation under the SKR HCP, the Project would be subject to the payment of fees towards the SKR HCP conservation efforts, as required by City of Lake Elsinore Municipal Code Chapter 19.04, *Conservation*. Chapter 19.04 requires the payment of an impact and mitigation fee. With mandatory payment of impact fees pursuant to Chapter 19.04, the proposed Project would be fully consistent with the SKR HCP; accordingly, no impact would occur.

There are no other adopted Habitat Conservation Plans, Natural Community Conservation Plans, or other approved local, regional, or state habitat conservation plans, applicable to the Project area. Therefore, the Project would not conflict with an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan, and no impact would occur. (Alden, 2015, p. 21).

4.3.5 CUMULATIVE IMPACT ANALYSIS

Although the Project site is not subject to the MSHCP, the cumulative study area for biological resources is the Western Riverside County MSHCP. This study area is appropriate because the MSHCP encompasses a large area surrounding the Project site, and provides for the long-term protection of sensitive plant, animal, and plant communities throughout the MSHCP area. Additionally, most cumulative development projects within the Project vicinity would be subject to the provisions of the MSHCP.

As indicated under the discussion and analysis of Threshold a., the Project would not impact any sensitive plant species, so the Project has no potential to contribute cumulatively considerable impacts to the loss of sensitive plant species in the region; no impact would occur. The Project would result in direct impacts to habitat for the coastal California gnatcatcher through the elimination of approximately 21.4 acres of brittlebush scrub habitat in the Study Area, and has the potential to directly impact coastal California gnatcatchers during blasting activities within the EDA. As other developments occur in the region, it is likely that additional loss of coastal California gnatcatcher habitat would occur. Thus, the loss of approximately 21.4 acres of brittlebush scrub in the Study Area would be a significant cumulatively considerable impact. Additionally, loss of 2.1 acres of non-native grassland in the Study Area has the potential to impact nesting birds, including raptors

and other birds protected by the MTBA, if the clearing of this vegetation occurs within the raptor breeding season (February 1 to September 15). As other developments occur in the region, it is likely that MBTA-protected species could be cumulatively impacted during the breeding season. As such, the loss of 2.1 acres of non-native grassland in the Study Area would be a significant cumulatively considerable impact if habitat clearing occurs during the breeding season. Furthermore, impacts to non-native grassland would reduce areas suitable as raptor foraging habitat. Other developments in the region also may result in impacts to non-native grassland. Thus, the Project's impacts to non-native grassland and potential impacts to birds protected by the MBTA during the breeding season represents cumulatively considerable impacts of the proposed Project for which mitigation would be required. (Alden, 2015, p. 24).

The Project also has the potential to cause indirect impacts to sensitive plant and animal species. However, the Project would not result in cumulatively considerable effects due to habitat insularization, given the urban nature of areas to the west, south, and east. Additionally, the Project's drainage plan incorporates water quality measures that would preclude potential cumulatively considerable impacts associated with drainage and water quality. Because there are no new sources of lighting proposed on-site, and no other sources of nighttime lighting substantially affecting proposed open space areas to the east and north of mining activities, cumulatively considerable effects due to lighting would not occur. Although proposed mining activities have the potential to affect nearby habitat with noise, particularly during the nesting season, and based on the information provided in the Project's Noise Impact Analysis (*EIR Technical Appendix I*), other sources of noise in the Project vicinity do not reach levels that would cumulatively contribute to the Project's potential indirect noise impacts, as the slight increase with the addition of background ambient noise sources would not result in a perceptible change in noise levels associated with the Project within the EDA; as such, the Project's indirect impacts due to noise would not be cumulatively considerable. Indirect cumulatively considerable impacts associated with non-native species and nuisance animals would not occur, as the Project's reclamation landscape plan includes only native species and no residences are proposed that could result in the introduction of nuisance animal species (domestic pets). As noted above, indirect impacts to raptor foraging/nesting habitat during the breeding season (February 1 through September 15) would be a significant cumulatively considerable impact.

As indicated above under the discussion and analysis of Threshold c, the Project would impact approximately 0.05 acre of Corps non-wetland WUS and 0.17 acre of CDFW streambed, as depicted in Figure 4.3-2. The impact would occur within ephemeral channels in the central portion of the Study Area. Impacts to this jurisdictional feature would require permits from the Corps, RWQCB, and the CDFW. (Alden, 2015, p. 21). As other developments in the region occur, it is likely that additional impacts to jurisdictional features protected by the Corps, RWQCB, and/or the CDFW. Accordingly, the Project's impacts to non-wetland waters and CDFW streambed are cumulatively considerable.

As indicated above under the discussion and analysis of Threshold d, the Project would not significantly impact wildlife movement corridors because none exist within the EDA. In addition, there are no native wildlife nursery sites within the Project vicinity. However, the Project has the potential to impact native, migratory, and nesting birds protected by the MBTA. Other projects within the region also have the potential to impact protected nesting birds and be subject to compliance with applicable federal and State regulations. The Project's potential impact to nesting birds during the breeding season would be cumulatively considerable.

As indicated above under the discussion and analysis of Threshold e, the Project would not conflict with any local policies or ordinances protecting biological resources. Accordingly, cumulatively considerable impacts associated with compliance to local policies or ordinances protecting biological resources would not occur.

As indicated above under the discussion and analysis of Threshold f, the Project site is not subject to compliance with the MSHCP, and the Project would be required to pay fees in conformance with the SKR HCP. Other projects subject to the SKR HCP similarly would be required to contribute impact fees for impacts to habitat located within the SKR HCP but outside of the "Core Reserve" areas. There are no other adopted Habitat Conservation Plans, Natural Community Conservation Plans, or other approved local, regional, or state habitat conservation plans. Therefore, the Project would result in a less-than-cumulatively considerable impact due to a conflict with an applicable conservation plan.

4.3.6 SIGNIFICANCE OF IMPACTS BEFORE MITIGATION

Threshold a: Significant Direct and Cumulatively Considerable Impact. Implementation of the Project would not impact any sensitive plant species. The Project would impact the habitat of the federally-listed threatened coastal California gnatcatcher and could potentially directly impact the coastal California gnatcatcher during blasting activities. Impacts to coastal California gnatcatcher habitat would be significant. Impacts to other sensitive plant or animal species not identified on-site during biological field surveys would be less than significant due to the very low likelihood that these species occur on-site. Cumulatively considerable impacts to nesting raptors may occur if construction occurs within the raptor breeding season (February 1 to September 15), and impacts to 2.1 acre of raptor foraging habitat (non-native grassland) also represent a cumulatively considerable impact. Also, based on the positive gnatcatcher survey results, there is potential for significant indirect noise impact to breeding gnatcatchers that may be located within the open space areas located east and north of the EDA. Mining operational noise and blasting activities also would indirectly impact coastal California gnatcatchers, prior to mitigation.

Threshold b: Significant Direct and Cumulatively Considerable Impact. The Project would result in the loss of 21.4 acres of brittlebush scrub and 2.1 acres of non-native grassland. The loss of Brittlebush scrub is considered significant on a direct and cumulatively considerable basis because this vegetation community provides habitat for sensitive wildlife, including the coastal California gnatcatcher. Impacts to 2.1 acres of non-native grassland would be significant on a cumulatively considerable basis because it would cumulatively affect foraging habitat for raptors. Additionally, the clearing of non-native grassland areas on-site during the breeding season for MBTA-protected birds and raptors (February 1 to September 15) represents a potential significant direct and cumulatively considerable impact.

Threshold c: Significant Direct and Cumulatively Considerable Impact. The Project would impact approximately 0.05 acre of Corps non-wetland WUS and 0.17 acre of CDFW streambed. Impacts to this jurisdictional feature would be significant on a direct and cumulatively considerable basis and require permits from the Corps, RWQCB, and the CDFW.

Threshold d: Significant Cumulatively Considerable Impact. There is no potential for the Project to interfere with the movement of fish or impede the use of a native wildlife nursery site. The Project

has the potential to impact nesting birds protected by federal and State regulations on a cumulatively considerable basis, if clearing of 2.1 acres of non-native grassland were to occur during the nesting season (February 1 to September 15).

Threshold e: No Impact. The Project would not conflict with any local policies or ordinances protecting biological resources.

Threshold f: No Impact. The Project site is not subject to the Western Riverside County MSHCP, and would contribute impact and mitigation fees pursuant to the SKR HCP; thus, the Project would not conflict with the MSHCP and would be consistent with the SKR HCP. The proposed Project is not subject to any additional Habitat Conservation Plans, Natural Community Conservation Plans, or other approved local, regional, or state habitat conservation plans. Therefore, no impact would occur.

4.3.7 MITIGATION

MM 4.3-1 Prior to any mining activities affecting jurisdictional waters on-site, the Project Applicant shall obtain the necessary authorizations from the Corps, CDFW, and RWQCB for impacts to 0.17 acre of jurisdictional waters. Authorizations may include a Section 404 Permit from the Corps, Section 1602 Streambed Alteration Agreement from the CDFW, and a Section 401 Water Quality Certification from the RWQCB. Evidence of all required authorizations shall be provided to the City of Lake Elsinore.

MM 4.3-2 Prior to any mining activities affecting jurisdictional waters on-site, impacts to 0.17 acres of jurisdictional waters shall be mitigated at a minimum 1:1 ratio. The 0.17 acre jurisdictional mitigation requirement shall be met by the Project Applicant through one of the following two options:

a) In Lieu Fee Option: Mitigation can be fully or partially satisfied via an in-lieu fee payment to a mitigation bank pursuant to California Fish and Game Code Section 1797-1799.1, which establishes a system of conservation and mitigation banks in order to provide a means of mitigating impacts to wetlands, endangered/threatened species, and otherwise sensitive resources. The Project Applicant would contribute funds to such a bank that would in turn be used to create, restore, protect or enhance streambed habitats, either at the source of the impact or elsewhere at a larger, more functional and longer-lasting ecological system.

b) Habitat Restoration Option or Equivalent: Mitigation can be fully or partially satisfied by creation, restoration, and/or enhancement. Plant species used for any of these mitigation methods must be locally native (seeds, container, and/or cuttings) and mitigation by any of these methods must be accompanied by a three-year mitigation monitoring plan prepared by a professional restoration ecologist. The mitigation monitoring plan is required to identify performance, schedule, monitoring, and maintenance criteria. Mitigation for impacts to State streambeds shall be considered complete only when monitoring is complete and the following success criteria is met: (1) At least

50% of the vegetation present is dominated by locally native species, (2) there is evidence of natural recruitment of multiple locally native species, (3) no more than 15% cover by California Invasive Plant Council (Cal-IPC) List A and B species, and (4) no more than 15% cover by other weedy species.

Alternative equivalent mitigation may be determined through consultation with regulatory agencies during the permitting process required by state and federal law as indicated in Mitigation Measure MM 4.3-1. In such a case, mitigation required by the consultation process shall supersede the identified jurisdictional mitigation measure identified in this Mitigation Measure MM 4.3-2.

MM 4.3-3 Prior to any mining activities within the EDA, the Project Applicant shall mitigate impacts to 21.4 acres of brittlebush scrub at a ratio of 1.5:1, and shall mitigate impacts to 2.1 acres of non-native grassland at a 0.5:1 ratio. The 32.1-acre mitigation requirement for brittlebush scrub and the 1.1-acre mitigation requirement for non-native grassland shall be met through one of the following two options:

a) In Lieu Fee Option: Mitigation can be fully or partially satisfied via an in-lieu fee payment to a mitigation bank pursuant to California Fish and Game Code Section 1797-1799.1, which establishes a system of conservation and mitigation banks in order to provide a means of mitigating impacts to wetlands, endangered/threatened species, and otherwise sensitive resources. The Project Applicant would contribute funds to such a bank that would in turn be used to create, restore, protect, or enhance streambed habitats, either at the source of the impact or elsewhere at a larger, more functional and longer-lasting ecological system.

b) Preservation of Habitat: Mitigation can be fully or partially satisfied by preservation of suitable habitat. Habitat proposed to be preserved as brittlebush scrub mitigation must meet the general criteria for coastal sage scrub habitat (Holland 1986) and be of high quality. Habitat preserved for nonnative grassland impacts must meet the criteria for non-native grassland habitat (Holland 1986). Non-native grassland impacts also may be mitigated through preservation of coastal sage scrub habitat as it is considered to be a higher quality habitat.

MM 4.3-4 Prior to any mining activities within the +/- 24-acre EDA, the Project applicant shall provide a completed Biological Opinion/Incidental Take Permit (ITP) to the Director of the City of Lake Elsinore Planning Division (or his/her designee).

MM 4.3-5 Prior to approval of the Project's Surface Mining Permit or Amendment No. 2 to Reclamation Plan No. 2006-01A1, the Director of the City of Lake Elsinore Planning Division (or his/her designee) shall verify that the plans incorporate a prohibition against the removal of non-native grassland in the +/- 24-acre EDA during the general avian breeding season (February 15 to September 15). If vegetation must be removed during this season, the Project Applicant shall direct a qualified biologist to conduct a nesting bird survey of potentially suitable nesting vegetation prior to removal. Surveys shall be conducted no more than three (3) days prior to scheduled removals.

If active nests are identified, the biologist shall establish buffers around the vegetation containing the active nest (300 feet for the California gnatcatcher and raptors; 100 feet for other non-raptors). The vegetation containing the active nest shall not be removed, and no grading shall occur within the established buffer, until a qualified biologist has determined that the nest is no longer active (i.e., the juveniles are surviving independent from the nest). If clearing is not conducted within three days of a negative survey, the nesting survey shall be repeated to confirm the absence of nesting birds. The Project Applicant shall maintain records of: a) all new clearing activities that occur during the general avian breeding season; b) the results of all pre-construction nesting surveys; c) mitigation or avoidance measures that were undertaken during the breeding season; and d) areas within the EDA that have been disturbed outside of the general avian breeding season. These records shall be maintained on-site at all times and made available for City inspection upon request.

MM 4.3-6 Prior to any mining activities within the EDA, the Project Applicant shall provide evidence to the City of Lake Elsinore Planning Division that a qualified biologist has met with the mine operator to explain the Project's biological mitigation requirements and techniques to minimize indirect effects. The biologist shall be contracted by the Project Applicant to perform any necessary follow up to ensure that mine personnel are informed and minimizing indirect effects to areas outside of the approved limits of mine disturbance.

MM 4.3-7 Mining activities located more than 315 feet away from the open space area east of the EDA can occur without limitations. If between February 15 and August 30 (the breeding season of the coastal California gnatcatcher) mining activities will move within 315 feet of the open space, or if mining activities are already occurring within 315 feet of the open space and will move closer to the open space, then a qualified biologist shall conduct a nesting survey for the coastal California gnatcatcher in the open space area that falls within 315 feet of the planned mining activity. The survey shall be conducted no more than seven days before the mining activity moves closer to the open space. If the nesting survey is negative, then mining activities may move closer to the open space within seven days of the nesting survey. In the event that a nesting survey is positive, then mining activities shall not be allowed to move within 315 feet of the bird's nest (or any closer to the nest if mining is already occurring within 315 feet) until the nesting period ends (August 30) or until a qualified biologist has determined that the young have fledged or the nest is no longer active. Areas subject to avoidance shall be marked with orange construction fencing. Compliance with these requirements will be assured through the annual mining inspections, as required and reviewed by the Office of Mine Reclamation and Department of Conservation.

MM 4.3-8 Within three days prior to any blasting activities within the proposed EDA from February 15 through August 30, a nesting survey shall be conducted by a qualified biologist within 1,250 feet of the blasting site. If any are nests located within 1,250 feet and within line-of-sight of the blasting site, no blasting shall occur until August 30 or until a qualified biologist has determined that the young have fledged or the nest is no longer active. If any active nests are located within 500 feet but not within

line-of-sight of the blasting site, blasting may proceed after verification by the biologist that the nest is not in the line of sight. All vegetation within areas that would be subject to mining during the next nesting season (February 15 through August 30) must be cleared outside the nesting season at least 2 weeks prior to blasting and no more than 1 year prior to blasting.

MM 4.3-9 Blasting activities outside the nesting season (September 1 through February 14) shall not have vegetation present within 50 feet of the actual blast site. This vegetation must be cleared at least 2 weeks and no more than 1 year prior to blasting.

4.3.8 SIGNIFICANCE OF IMPACTS AFTER MITIGATION

Thresholds a. and b.: Less-than-Significant Impact with Mitigation. Implementation of Mitigation Measure MM 4.3-3 would ensure that the Project's impacts to 21.4 acres of brittlebush scrub, which provides habitat for the coastal California gnatcatcher, and impacts to 2.1 acres of non-native grassland, which provides foraging habitat for raptors, are mitigated to below a level of significance. Additionally, implementation of Mitigation Measure MM 4.3-4 would ensure that impacts to coastal California gnatcatcher habitat are addressed through a BO with the USFWS, along with any supplemental mitigation that may be required pursuant to the BO. With implementation of the required mitigation, the Project's impacts to coastal California gnatcatcher habitat would be reduced to less-than-significant levels.

Implementation of Mitigation Measure MM 4.3-5 would ensure that indirect impacts to nesting birds or raptors, including birds protected by the MBTA, are protected during the nesting season (February 15 to September 15). With implementation of the required mitigation, the Project's cumulatively considerable impacts to nesting birds and raptors would be less than significant. Furthermore, implementation of Mitigation Measure MM 4.3-6 would ensure that potential inadvertent impacts to biological resources located outside of the proposed EDA would be precluded through education of construction personnel, thereby reducing impacts to less than significant. Additionally, implementation of Mitigation Measure MM 4.3-7 would reduce potential indirect mining operational noise impacts to the coastal California gnatcatcher during the nesting season (between February 15 and August 30) to below a level of significant. Mitigation Measures MM 4.3-8 and MM 4.3-9 also would ensure that blasting activities and noise do not impact nesting birds during the breeding season, thereby reducing impacts to less-than-significant levels.

Threshold c: Less-than-Significant Impact with Mitigation. Implementation of Mitigation Measure MM 4.3-2 would ensure the Project impacts to 0.05 acre of Corps non-wetland WUS and 0.17 acre of CDFW streambed are mitigated at a minimum 1:1 ratio. Additionally, implementation of Mitigation Measure MM 4.3-1 would ensure that impacts to WUS and CDFW streambed are properly permitted by the Corps, CDFW, and RWQCB. With implementation of the required mitigation, impacts to jurisdictional areas would be reduced to less than significant.

Threshold d: Less-than-Significant Impact with Mitigation. Implementation of Mitigation Measure MM 4.3-5 would ensure that impacts to nesting birds or raptors, including birds protected by the MBTA, are protected during the nesting season (February 15 to September 15), thereby reducing impacts to less than significant. Additionally, implementation of Mitigation Measure MM 4.3-2 would ensure that the Project's cumulatively considerable impacts to raptor foraging habitat are reduced to less-than-significant levels. Moreover, Mitigation Measures MM 4.3-8 and MM 4.3-9

also would ensure that blasting activities and noise do not impact nesting birds during the breeding season. With implementation of the required mitigation, the Project's cumulatively considerable impacts to non-native grassland habitat that can support nesting birds and raptors would be less than significant.