

human-induced wetland area resulting from upstream and adjacent irrigated orchards and is small and isolated from other wetland areas, has negligible biological functions, is not a vernal pool, and does not support wetland-dependent sensitive species. As such, this area does not meet RPO wetland criteria. In addition, the connecting channel is an unvegetated dirt channel that does not support hydrophytic vegetation, does not have hydric soil, and does not have a non-soil substrate. Thus, the channel is not RPO wetland.

A total of 0.02 acre of southern willow scrub occurring in the northern portion of the site in Neighborhood 4 (Area C on Figures 10a and 14a) is a human-induced wetland area resulting from adjacent orchard runoff and is small and isolated from other wetland areas, is not associated with a spring or a channel, has negligible biological functions, is not a vernal pool, and does not support wetland-dependent sensitive species. As such, this area does not meet RPO wetland criteria.

1.4.8 Habitat Connectivity and Wildlife Corridors

There are 2 types of wildlife corridors: local and regional. Local corridors provide animals with access to resources such as food, water, and shelter. Animals can use these corridors to travel from riparian to upland habitats and back. Regional corridors allow for animal movement between large core areas of habitat that are regionally important. They include major creeks and rivers, ridges, valleys, and large swaths of undeveloped land.

The Project site does not function as a regional wildlife corridor. The Project site is situated at the western edge of existing development with little opportunity for wildlife movement to the east and north due to urban sprawl within the Cities of San Marcos and Escondido, and further impeded by SR 78 and Mission Road. Construction of the Harmony Grove Village development further limits wildlife connectivity to the south of the site. Although the Project site is used by a variety of wildlife species it is not considered a regional corridor as connectivity to the north, south, and east is limited and the site does not provide connection to open space in these areas. Wildlife movement occurs locally within the site and connects to offsite habitat along the western site boundary, which abuts existing rural residential development interspersed with chaparral-covered hillsides. This off-site habitat is not within the future NCMSCP proposed PAMA. The Project site does not contain biological resources that are critical for regional movement of wildlife. There is evidence (tracks, beds, and observations) that the site provides habitat for local wildlife coming onto the site from the west.

1.5 APPLICABLE REGULATIONS

Biological resources within the Project site are subject to regulatory review by the federal government, State of California, and County. The federal government administers non-marine plant- and wildlife-related issues through the USFWS, while the USACE administers WUS (including wetland and non-wetland) issues. California law relating to wetland, water-related, and wildlife issues is administered by CDFW. The County is the lead agency for the CEQA environmental review process in accordance with state law and local ordinances.

Coordination efforts for the proposed Project to date consist of a pre-application meeting with staff from the County Department of Planning and Development Services (PDS) on August 13, 2012, a site visit with County PDS staff on June 6, 2013, a batching meeting with staff from USFWS, CDFW, and County PDS on November 26, 2013, as well as additional meetings with County PDS staff.

Laws and regulations that apply include federal Endangered Species Act (ESA), CWA, CEQA, California Fish and Game Code, and County RPO. Under CEQA, impacts associated with a proposed Project or program are assessed with regard to significance criteria determined by the CEQA Lead Agency (in this case, the County) and pursuant to CEQA and State CEQA Guidelines.

1.5.1 Federal Government

Administered by the USFWS, the federal ESA provides the legal framework for the listing and protection of species (and their habitats) that are identified as being endangered or threatened with extinction. Actions that jeopardize endangered or threatened species and the habitats upon which they rely are considered a ‘take’ under the ESA. Section 9(a) of the ESA defines take as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” ‘Harm’ and ‘harass’ are further defined in federal regulations and case law to include actions that adversely impair or disrupt a listed species’ behavioral patterns.

The USFWS identifies critical habitat for endangered and threatened species. Critical habitat is defined as areas of land that are considered necessary for endangered or threatened species to recover. The ultimate goal is to restore healthy populations of listed species within their native habitat so they can be removed from the list of threatened or endangered species. Once an area is designated as critical habitat pursuant to the federal ESA, all federal agencies must consult with the USFWS to ensure that any action they authorize, fund, or carry out is not likely to result in destruction or adverse modification of the critical habitat. None of the Project site is located within designated critical habitat (Figure 7) and the Project would therefore not impact critical habitat.

Sections 7 and 10(a) of the federal ESA regulate actions that could jeopardize endangered or threatened species. Section 7 describes a process of federal interagency consultation for use when federal actions may adversely affect listed species. A biological assessment is required for any major construction activity if it may affect listed species. In this case, take can be authorized via a letter of biological opinion issued by the USFWS for non-marine related listed species issues. A Section 7 consultation (formal or informal) is required when there is a nexus between endangered species’ use of the site and impacts to USACE jurisdictional areas. Section 10(a) allows issuance of permits for incidental take of endangered or threatened species with preparation of a Habitat Conservation Plan (HCP). The term “incidental” applies if the taking of a listed species is incidental to, and not the purpose of, an otherwise lawful activity. An HCP demonstrating how the taking would be minimized and how steps taken would ensure the species’ survival must be submitted for issuance of Section 10(a) permits. A Section 7 or 10(a) permit would not be required for the proposed Project, as no federally listed species or critical habitat occur on site.

All migratory bird species that are native to the United States or its territories are protected under the federal Migratory Bird Treaty Act (MBTA), as amended under the Migratory Bird Treaty Reform Act of 2004 (FR Doc. 05-5127). The MBTA is generally protective of migratory birds but does not actually stipulate the type of protection required. In common practice, the MBTA is now used to place restrictions on disturbance of active bird nests during the nesting season (generally February 1 to September 1). In addition, the USFWS commonly places restrictions on disturbances allowed near active raptor nests.

Federal wetland regulation (non-marine issues) is guided by the Rivers and Harbors Act of 1899 and the CWA. The Rivers and Harbors Act deals primarily with discharges into navigable waters, while the purpose of the CWA is to restore and maintain the chemical, physical, and biological integrity of all WUS. Permitting for projects filling WUS (including wetlands) is overseen by the USACE under Section 404 of the CWA. Projects could be permitted on an individual basis or be covered under one of several approved Nationwide Permits. Individual Permits are assessed individually based on the type of action, amount of fill, etc. and typically require substantial time (often longer than 6 months) to review and approve, while Nationwide Permits are pre-approved if a project meets appropriate conditions.

1.5.2 State of California

Primary environmental legislation in California is found in CEQA and its implementing guidelines (State CEQA Guidelines), which require that projects with potential adverse effects (or impacts) on the environment undergo environmental review. Adverse environmental impacts are typically mitigated as a result of the environmental review process in accordance with existing laws and regulations.

The California ESA is similar to the federal ESA in that it contains a process for listing of species and regulating potential impacts to listed species. California ESA Section 2081 authorizes the CDFW to enter into a memorandum of agreement for the take of listed species for scientific, educational, or management purposes.

The Native Plant Protection Act (NPPA) enacted a process by which plants are listed as rare or endangered. The NPPA regulates collection, transport, and commerce in listed plants. The California ESA follows the NPPA and covers both plants and animals designated as endangered or threatened with extinction. Plants listed as rare under NPPA were also designated rare under the California ESA.

The California Fish and Game Code (Sections 1600 through 1603) requires a CDFW agreement for projects affecting riparian and wetland habitats through issuance of a Streambed Alteration Agreement (SAA).

The California Natural Communities Conservation Planning (NCCP) Act of 1991 (Section 2835) allows the CDFW to authorize interim take of species covered by plans in agreement with NCCP guidelines. A Natural Communities Conservation Program initiated by the State of California focuses on conserving coastal sage scrub, and in concert with the USFWS and the federal ESA, is intended to avoid the need for future federal and state listing of coastal sage scrub dependent

species. The County of San Diego became a participant in the NCCP in 1993 for projects located within the planning area for the Coastal Sage Scrub NCCP with the intent to "...provide for regional protection and perpetuation of natural wildlife diversity while allowing compatible land use and appropriate development and growth." The NCCP process guidelines were established as interim guidelines until formal subregional plans were approved. An NCCP 4(d) take permit is required for the project to demonstrate compliance with the NCCP Act. The draft NCMSCP would be the subregional plan for this portion of the County of San Diego when adopted. The project area is not within the proposed PAMA and, therefore, any conserved areas on site would not become part of the NCMSCP Preserve.

1.5.3 County of San Diego

Habitat Loss Permit Ordinance

The NCCP Act (Section 2835) allows CDFW to authorize take of species covered by plans in agreement with NCCP guidelines. An NCCP initiated by the State of California under Section 4(d) of the federal ESA focuses on conserving coastal sage scrub in order to avoid the need for future federal and state listing of coastal sage scrub-dependent species. Findings in support of issuance of a habitat loss permit under Section 4(d) of the federal ESA would need to be made if Section 4(d) is relied upon for this proposed Project (Section 86.104 of the County of San Diego Code 8365 (N.S.) and Section 4.2.g of the Coastal Sage Scrub Natural Communities Conservation Plan Process Guidelines). These findings need to show that the proposed Project's loss of Diegan coastal sage scrub would not exceed the County's 5 percent loss limit. It would also have to demonstrate that the habitat loss would not preclude connectivity between areas of high habitat values, or preclude or prevent the preparation of a subregional NCCP. Additionally, the findings must show that the habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines, and that the habitat loss would not appreciably reduce the likelihood of survival and recovery of listed species in the wild. Finally, the habitat loss must be incidental to otherwise lawful activities. The County regulates coastal sage scrub habitat loss through the Habitat Loss Permit (HLP) Ordinance (October 22, 1997). An HLP application must be filed with the County if the Draft NCMSCP plan has not been adopted. An HLP requires concurrence from USFWS and CDFW. Approval is based on Findings made pursuant to the County's HLP Ordinance (County 1993b), as required by the NCCP Process Guidelines.

Resource Protection Ordinance

The County regulates natural resources (among other resources) via the RPO, the regulations of which cover wetlands, wetland buffers, sensitive plants and animals, sensitive habitats, and habitats containing sensitive animals or plants as sensitive biological resources. Wetland habitats are defined per the RPO, as described in Section 1.3.4, above. Sensitive habitat lands are identified by the RPO as lands that "support unique vegetation communities, or habitats of rare or endangered species or sub-species of animals or plants as defined by Section 15380 of the CEQA Guidelines." It is the intent of the RPO to increase the preservation and protection of the County's unique topography, natural beauty, biological diversity, and natural and cultural resources.

RPO wetlands are defined according to the RPO as lands having one or more of the following attributes:

- At least periodically, the land supports a predominance of hydrophytes (plants whose habitat is water or very wet places);
- The substratum is predominantly undrained hydric soil; or
- An ephemeral or perennial stream is present, whose substratum is predominately non-soil and such lands contribute substantially to the biological functions or values of wetlands in the drainage system.

According to the RPO, the following are not considered RPO wetlands:

- Lands which have attribute(s) specified above, solely due to man-made structures (e.g., culverts, ditches, road crossings, or agricultural ponds), provided that the Director of PDS determines that they:
 - Have negligible biological function or value as wetlands;
 - Are small and geographically isolated from other wetland systems;
 - Are not vernal pools; and
 - Do not have substantial or locally important populations of wetland dependent sensitive species.
- Lands that have been degraded by past legal land disturbance activities, to the point that they meet the following criteria as determined by the Director of PDS:
 - Have negligible biological function or value as wetlands even if restored to the extent feasible; and,
 - Do not have substantial or locally important populations of wetland dependent sensitive species.

The site contains 3.99 acres of RPO wetlands (Table 5) as freshwater marsh, herbaceous wetland, mule fat scrub, disturbed wetland, open water/pond, southern riparian forest, southern riparian woodland (including disturbed), and southern willow scrub.

2.0 PROJECT EFFECTS

Direct impacts are immediate impacts resulting from permanent habitat removal. Direct impacts were quantified by overlaying the limits of all project-related impacts on the biological resources map of the site. Indirect impacts are all actions that are not direct removal of habitat, but affect the surrounding biological resources either as a secondary effect of the direct impacts or as the cause of degradation of a biological resource over time. Projects can have a wide variety of indirect impacts, depending on the nature of the project. These are called edge effects and can be temporary during construction or part of the operation of the project during the life of the

residential development. Edge effects can result from increased noise, unauthorized trampling of habitat, introduction of pets and pest plants to open space areas, and effects of irrigation and lighting. Cumulative impacts are those caused by numerous projects in the region and their additive effect of multiple direct and indirect impacts to biological resources over time.

2.1 SPECIAL STATUS PLANT SPECIES

As previously stated, no sensitive plant species were observed on site during surveys. The potential for sensitive plant species to occur on site is included in Appendix C. An explanation of status codes is provided in Appendix E.

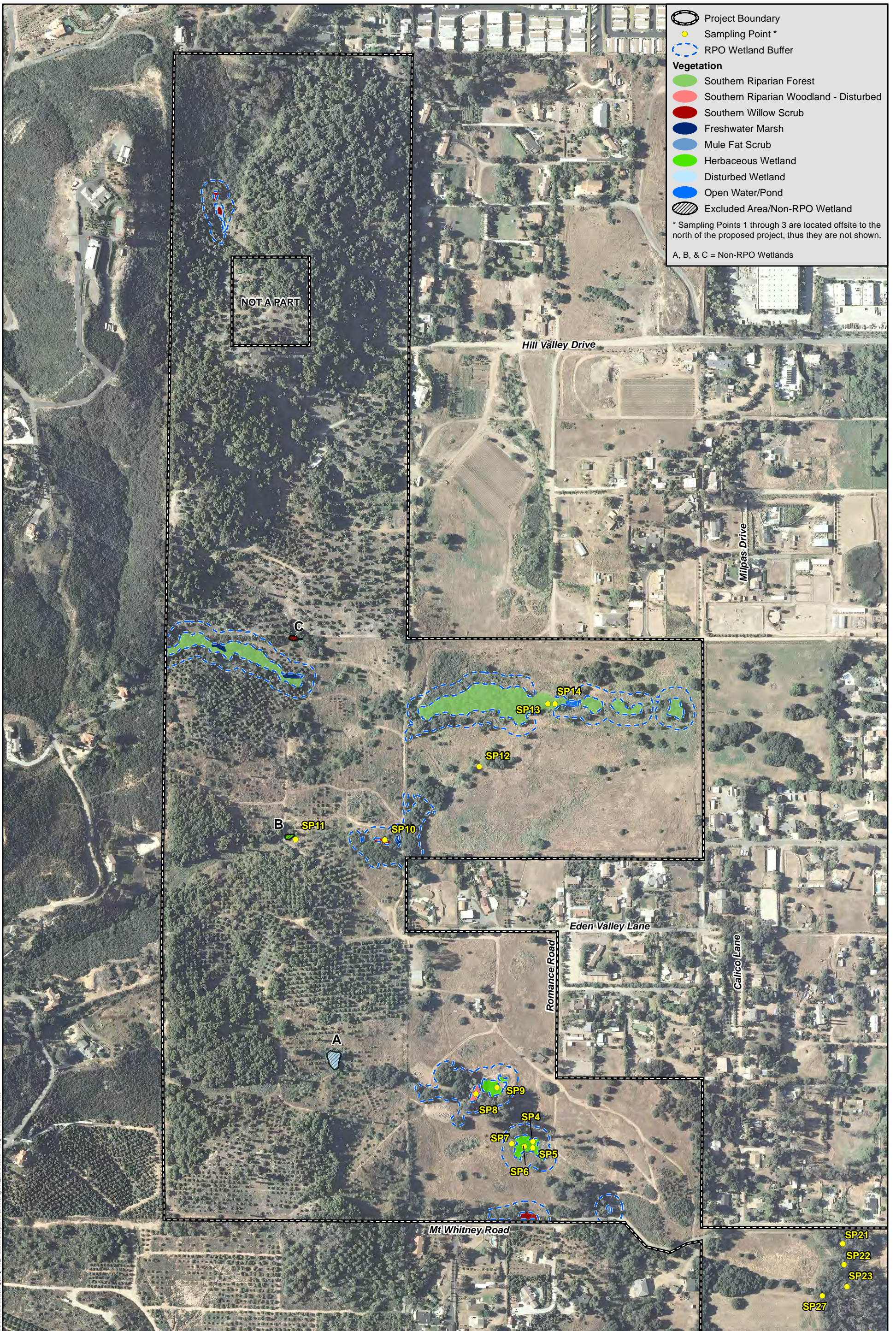
2.2 SPECIAL STATUS ANIMAL SPECIES

A total of ten sensitive animal species were observed on site during surveys (Cooper's hawk, grasshopper sparrow, red-shouldered hawk, turkey vulture, northern harrier, white-tailed kite, prairie falcon, southern mule deer, yellow warbler, and western bluebird). The potential for additional sensitive animal species to occur on site is included in Appendix D. An explanation of status codes is provided in Appendix E. Sensitive species status was taken from CDFW (2009 and 2010).

2.3 RIPARIAN HABITAT OR SENSITIVE NATURAL COMMUNITIES

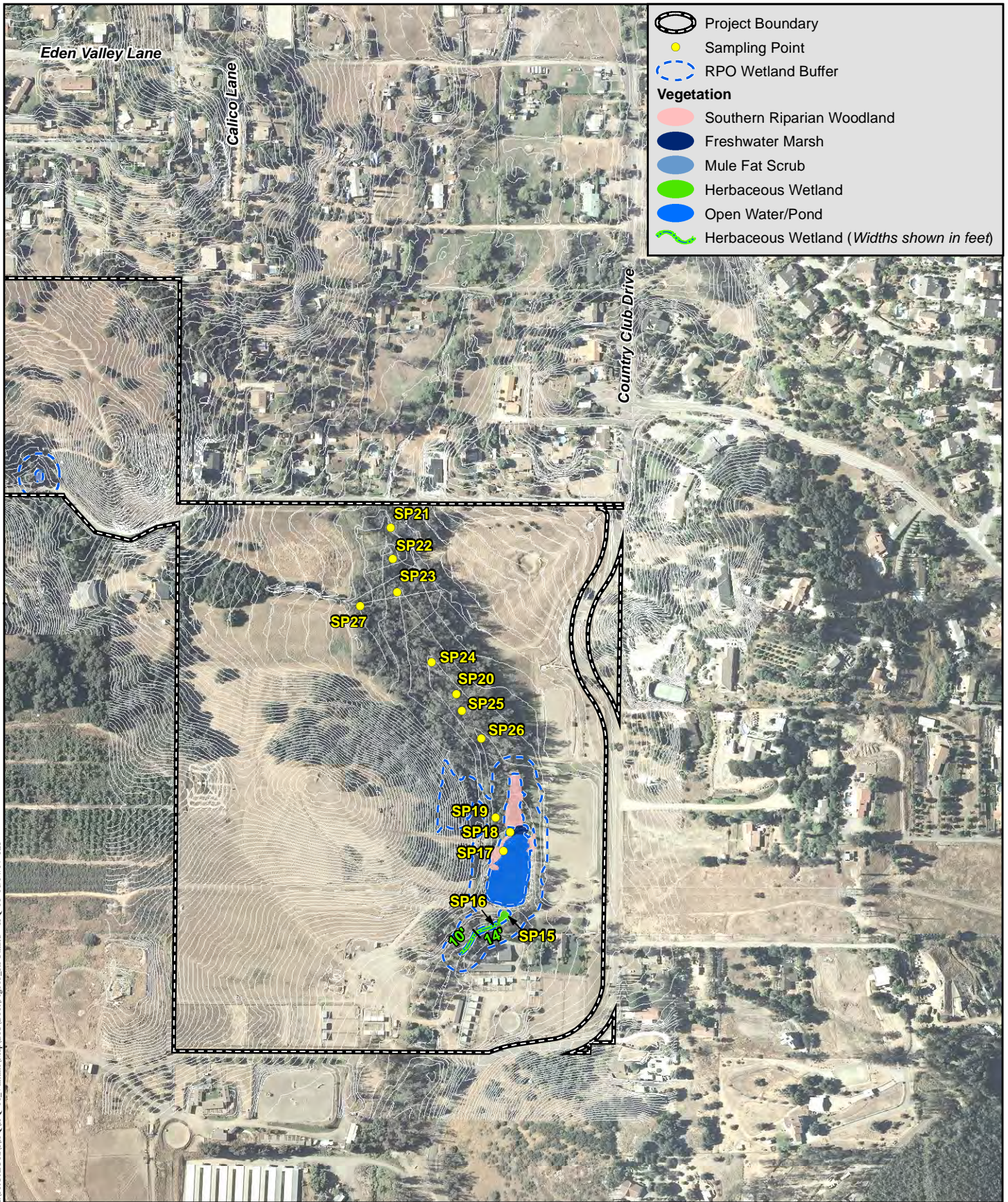
The proposed Project would result in direct impacts to 164.9 acres of on-site vegetation communities, which include all areas occurring within Fuel Modification Zones 1 and 2 (Table 6, Figures 11a and 11b). Of that total impact, 64.9 acres are sensitive vegetation communities, including: 0.17 acre of southern riparian forest, 0.04 acre of southern willow scrub, 0.01 acre of mule fat scrub, 0.02 acre of herbaceous wetland, 0.08 acre of disturbed wetland, 6.7 acres of coast live oak woodland, 1.0 acre of Diegan coastal sage scrub, 3.1 acres of southern mixed chaparral, and 53.8 acres of non-native grassland (Table 6, Figures 11a and 11b).

In addition to the on-site effects on non-sensitive vegetation communities, the Project would affect 1.5 acres of off-site area to install required infrastructure. The off-site impacts are comprised entirely of disturbed and developed lands, including 0.1 acre of disturbed habitat and 1.4 acres of developed land (Figures 11a and 11b). Off-site improvements would not impact any sensitive vegetation communities.



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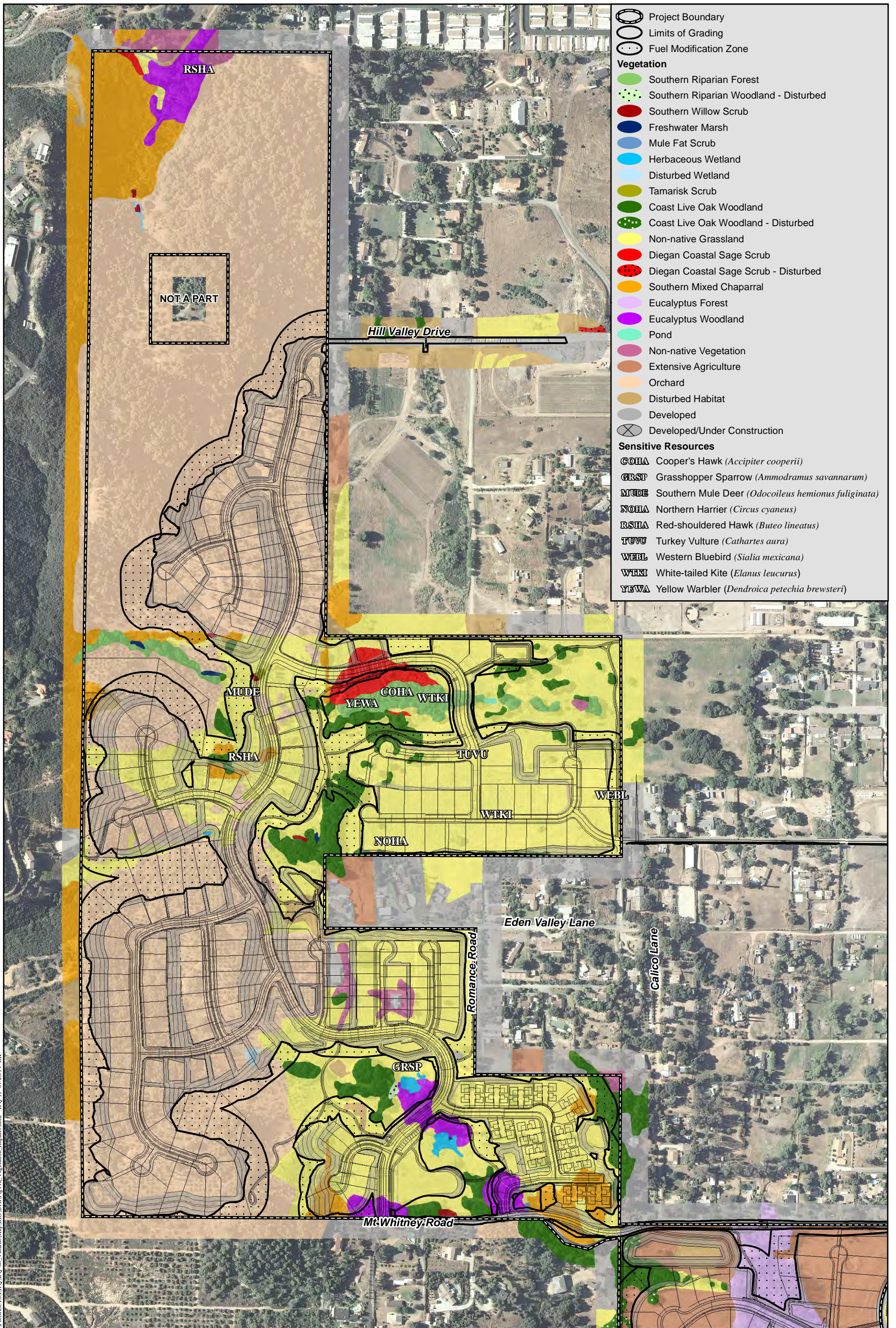
County of San Diego RPO Wetlands



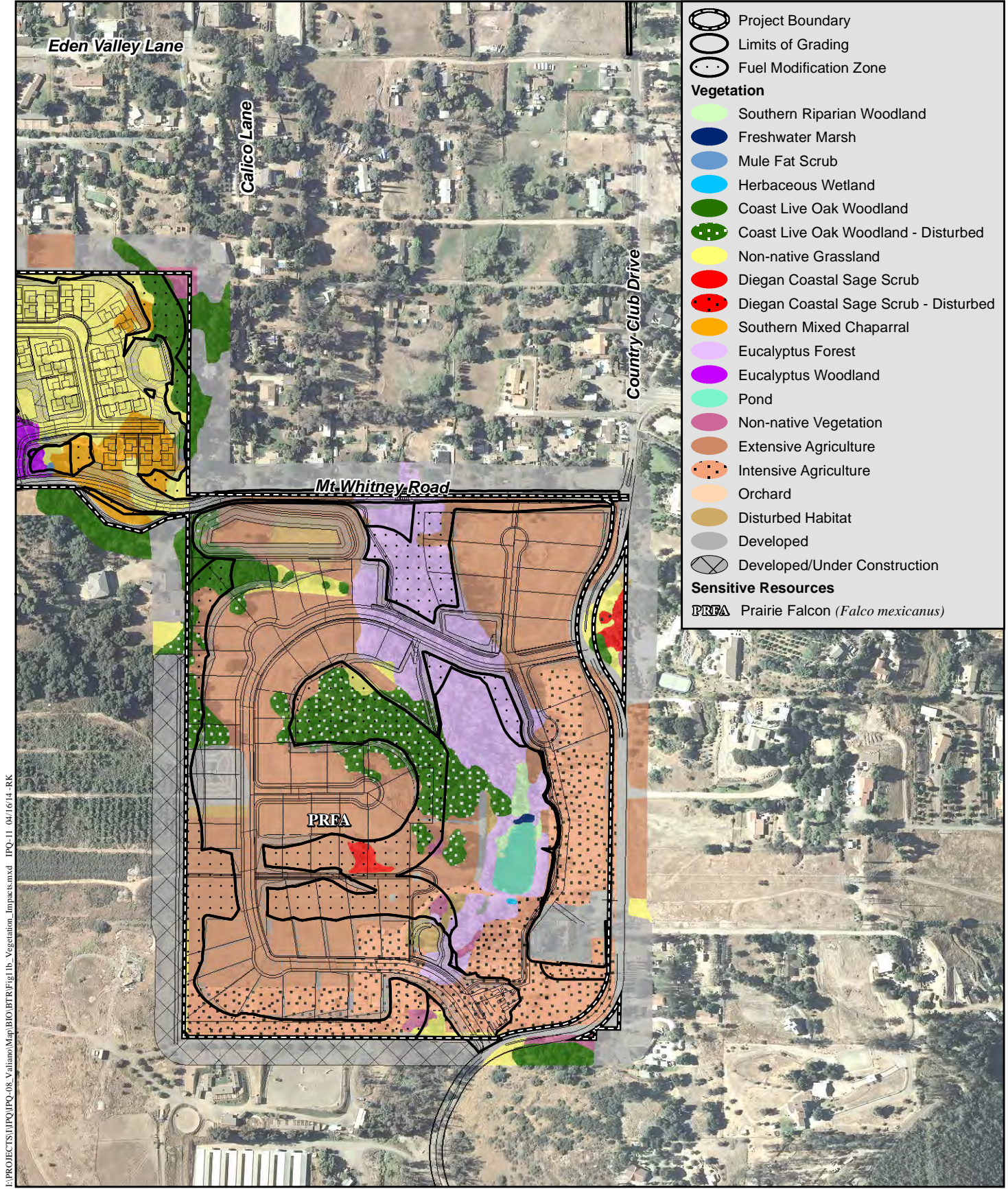
County of San Diego RPO Wetlands

VALIANO

Figure 10b



Vegetation and Sensitive Resources/Impacts



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Vegetation and Sensitive Resources/Impacts

VALIANO

Figure 11b