Attachment C

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Harper Canyon (Encina Hills) Subdivision Project
Supplemental
Draft Environmental Impact Report
SCH# 2003071157
PLN 000696

March 2024

Prepared For:

County of Monterey
2441 Schilling Place
Salinas, California 93901

Prepared By:

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Chapter 1.0 INTRODUCTION

This Supplemental Draft Environmental Impact Report (SDEIR) has been prepared by the County of Monterey Housing and Community Development Department (County), as lead agency, pursuant to applicable provisions of the California Environmental Quality Act (CEQA) and its implementing guidelines (CEQA Guidelines). This SDEIR discloses revisions made to the Environmental Impact Report (EIR) prepared for the Harper Canyon (Encina Hills) Subdivision (proposed project), pursuant to Sections 15162 and 15163 of the CEQA Guidelines.

Portions of **Section 3.3, Biological Resources**, of the EIR previously prepared by the County for the proposed project has been revised to address the Sixth District Court of Appeal's March 29, 2021, opinion (Opinion) upholding the project approvals and EIR, with the exception of its discussion of direct project impacts on wildlife corridors. (*Landwatch Monterey, et al. v. County of Monterey et al., Case No. H046932* (Lawsuit)). Except for this deficiency, the EIR previously certified by the County was upheld as to all other issues (A copy of the Monterey County Superior Court's Second Amended Peremptory Writ of Mandate dated July 1, 2021, and a copy of the Sixth District Court of Appeal's opinion dated March 29, 2021, are provided as **Appendix J**[1] of this SDEIR). The portions of **Section 3.3., Biological Resources**, have been revised to adequately address the wildlife corridors issues identified in the Opinion.

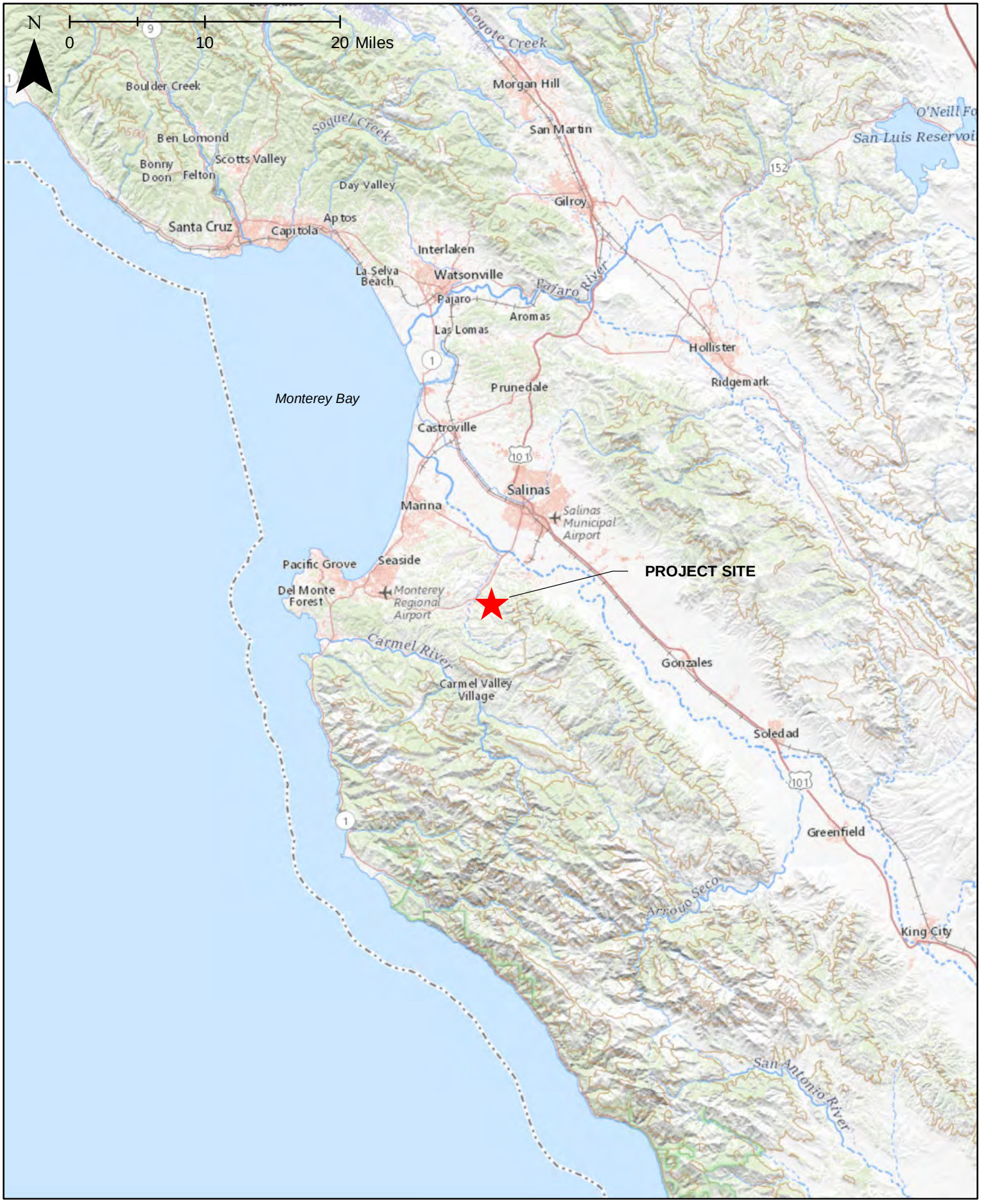
1.1 BACKGROUND AND PURPOSE OF SUPPLEMENTAL DRAFT EIR

1.1.1 Harper Canyon (Encina Hills) Subdivision 2015 EIR

The application for the proposed project was deemed complete by the County of Monterey on November 22, 2002. An initial study was prepared to evaluate the environmental effects of the proposed project in July 2003. The initial study was circulated for a 30-day public review before going before the Monterey County Planning Commission who directed staff to proceed with an EIR. A Draft EIR (DEIR) was prepared and distributed for review in October 2008. Upon review of the DEIR, County staff determined that significant new information existed, and issues raised during the public review period were to be addressed. As such, County staff request a recirculation of relevant portions of the DEIR pursuant to CEQA Guidelines Section 15088.5. The Recirculated DEIR (RDEIR) for the Harper Canyon Subdivision was prepared by PMC in December 2009 and the Final Environmental Impact Report (FEIR) in December 2013. The Monterey County Board of Supervisors certified the Harper Canyon (Encina Hills) Subdivision EIR and approved the proposed project on April 7, 2015 (PLN000696, State Clearinghouse #2003071157). For the purposes of this document, the Harper Canyon Subdivision EIR, which includes the DEIR (2008), RDEIR (2009), and FEIR (2013), is collectively referred to as the 2015 EIR.

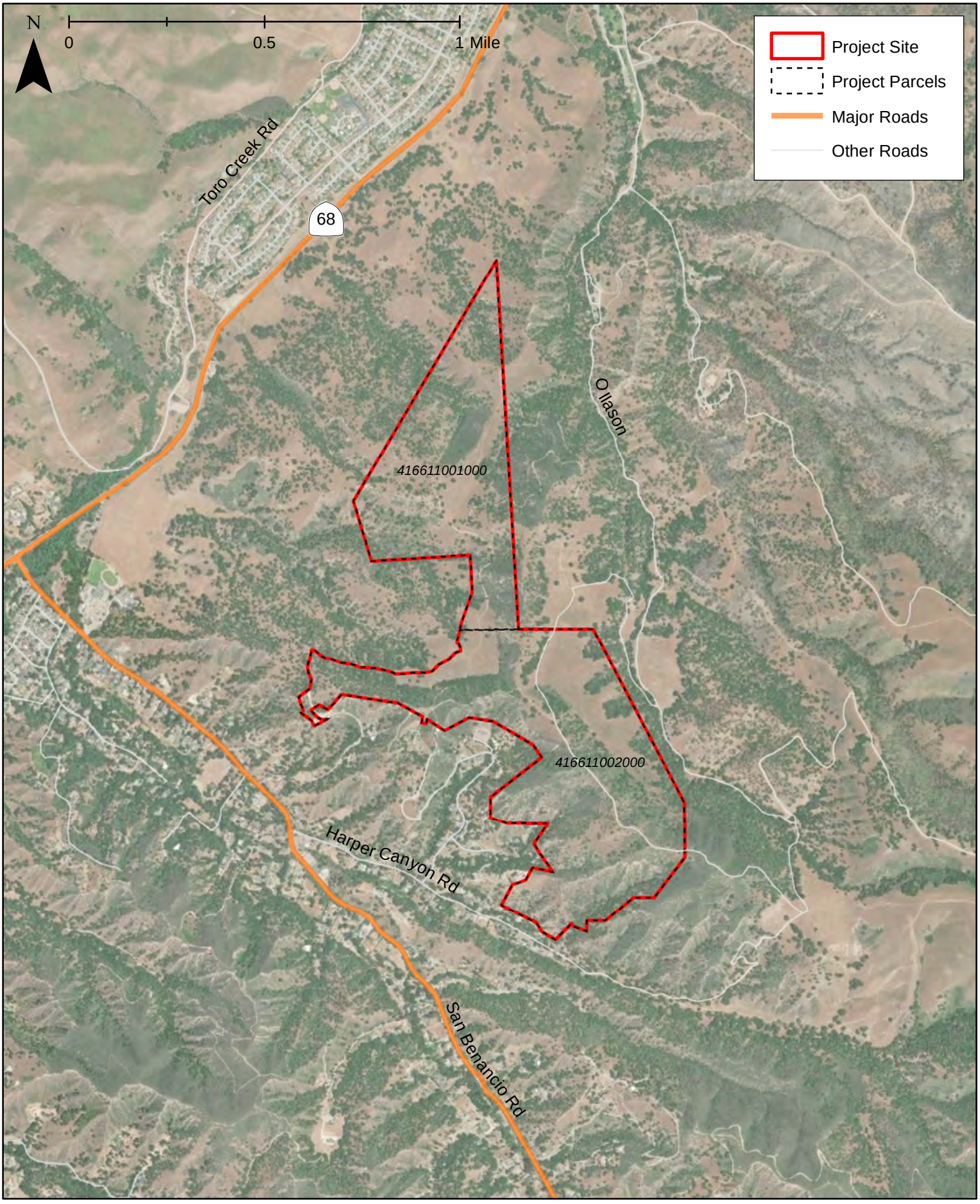
The 2015 EIR evaluated the potential environmental effects associated with the approval of the Harper Canyon/Encina Hills Subdivision. The proposed project is a 17-lot residential subdivision on approximately 164 acres, with a remainder parcel, approximately 180 acres in size, left as open space in Monterey County. The proposed project is located along the State Route 68 corridor of Monterey County off San Benancio Road. The regional location is shown in **Figure 1, Regional Location**, and the project site is shown in **Figure 2, Project Location**.

[1] This appendix follows Appendices A through I of the 2015 EIR.



Regional Location	Date 6/9/2022	Denise Duffy & Associates, Inc. Planning and Environmental Consulting	Figure 1-1
	Scale 1 in = 50,000 ft		

Path: D:\GIS\GIS_Projects\2022-27 Harper Canyon Subdivision\Final Products\Fig 1 - Regional Location.mxd



Project Location

Date
6/9/2022

Scale
1 in = 2,000 ft

Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Figure
1-2

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The terrain is varied with elevations ranging from 340 feet in the northern portion to approximately 1,020 feet in the southeastern portion of the proposed project site. Slopes within the proposed project site are variable and range from 0-30% grades. Existing improvements onsite include dirt roads and trails. The proposed project site is composed of annual grasslands, coast live oak woodlands and savannas, coastal scrub, and maritime chaparral. The proposed project site contains natural drainages and springs that feed El Toro Creek and the Salinas River which are located north and northeast of the proposed project site, respectively.

The Court found no deficiencies in the description of the proposed project in the 2015 EIR. The project applicant is not proposing any changes to the project.

1.1.2 Project Litigation and Resolution

The Monterey County Board of Supervisors certification and approval came after public testimony stated that the proposed project would severely degrade a regionally significant wildlife corridor between Toro Regional Park and Fort Ord National Monument (BOS Res. 14-075). To address concerns related to biological resources, a Condition Compliance and Mitigation Monitoring and Reporting Plan (MMRP) was subsequently prepared in accordance with Monterey County regulations and incorporated a requirement to develop a Wildlife Corridor Plan to facilitate wildlife movement and preserve wildlife corridors. The conditions of the Condition Compliance and MMRP sufficiently met the criteria of California Government Code Sec. 66474 (Subdivision Map Act) and Monterey County Code Title 19 (BOS Draft Resolution April 2015). Project documents can be accessed at:

https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/current-major-projects/harper-canyon-encina-hills-subdivision-eir.

The 2015 Board of Supervisor's decision was challenged and ultimately resulted in the Sixth District Court of Appeal's opinion that the EIR lacked analysis concerning the proposed project's potential impacts to the Toro Creek wildlife corridor (*Landwatch Monterey, et al. v. County of Monterey, et al., Case No. H046932*). As a response to the Court of Appeal opinion, a supplemental draft EIR was requested to evaluate the proposed project's potential impacts on the wildlife corridors in the vicinity of the proposed project site.

Specifically, the Board's 2015 action was challenged in Monterey Superior Court by Landwatch Monterey County and Meyer Community Group (Petitioners) on various grounds, including traffic, water, and general plan consistency. On December 3, 2018, the trial court issued its Final Statement of Decision and Ruling on Remedy in the case. The trial court rejected the vast majority of the claims raised by Petitioners and upheld the County's action except as to recirculation and project wildlife corridors. The County and applicant appealed on these issues. Petitioners appealed on the adequacy of the EIR's groundwater analysis. On March 29, 2021, the Court of Appeal ruled for the County and applicant on the water issues and for Petitioners on the wildlife corridor issue.

The Court of Appeal remanded the matter to the trial court with directions to vacate its original order and issue a new writ of mandate ordering the Court to vacate Resolution No. 15-084, and to vacate the Board's approval and certification of the EIR for the project only as it relates to project wildlife corridor issues.

On July 1, 2021, the trial court issued its Second Amended Judgment Granting Peremptory Writ of Mandate, and Second Amended Peremptory Writ of Mandate (Writ) which requires the Board to:

1. Rescind portions of Resolution No. 15-084 certifying the FEIR, adopting the findings, approving the Combined Development Permit, and adopting the Mitigation Monitoring and Reporting Plan for the project only to the extent they are dependent on wildlife corridor issues.
2. Suspend any and all activities related to the project except the preparation, circulation, and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Opinion.
3. Before taking any further action on the project, comply with CEQA by the preparation, circulation, and consideration of a legally adequate EIR with regard to the wildlife corridor issues discussed in the opinion.
4. Make and file a return to this writ within 60 days of taking such action, setting forth what it has done to comply.

On August 24, 2021, the Board of Supervisors adopted Resolution No. 21-151, which incorporates the Second Amended Peremptory Writ of Mandate issued by the trial court. On September 15, 2021, the County filed a Return to Writ indicating compliance with the direction of the trial court.

1.1.3 Supplemental Draft EIR

In response to the Writ, the County is taking specific action necessary to bring its consideration of the project into compliance with CEQA. The County determined that revising the relevant portions of **Section 3.3, Biological Resources**, of the 2015 EIR to address the inadequacies identified by the Court is the appropriate process for complying with the Court's ruling.

This Supplemental Draft Environmental Impact Report (SDEIR) has been prepared pursuant to Section 15234 of the CEQA Guidelines, which only requires additional environmental review of portions of the 2015 EIR that the Court of Appeal found did not to comply with CEQA, consistent with principles of res judicata. The County need not expand the scope of analysis on remand beyond that specified by the Court. Therefore, the SDEIR will only address portions of the 2015 EIR determined not to comply with CEQA, including portions of **Section 3.3, Biological Resources**. All other portions of the 2015 EIR and corresponding findings remain valid.

1.2 CONTENT OF THE SUPPLEMENTAL DRAFT EIR

The County rescinded portions of Resolution No. 15-084 that certified the 2015 EIR, adopted the findings, approved the Combined Development Permit, and adopted the MMRP for the proposed project only to the extent they were dependent on wildlife corridor issues on August 24, 2021, pursuant to Resolution 21-281. This action allowed for the preparation and circulation of this SDEIR.

This SDEIR examines the wildlife movement between the Fort Ord National Monument, Santa Lucia Ranges, and Toro Creek via under-crossing of State Route 68, overpasses along Portola Drive, and local/onsite drainages and culverts and includes the review of previous research, including but not limited to, the Central Coast Connectivity Project and the 2008 WRA Environmental Consultants memorandum developed for the Ferrini Ranch EIR (SCH #2005091055). In response to the Court of Appeal ruling, the document focuses solely on analyzing the wildlife corridors in the vicinity of the proposed project and evaluates the potential impacts the proposed project may have on these corridors. The SDEIR identifies,

where necessary, mitigation to avoid, eliminate, or reduce impacts to a less than significant level, where feasible.

This SDEIR has been prepared pursuant to Section 15163 of the CEQA Guidelines, which provides guidance for the preparation and circulation of a supplemental EIR. As described above, the Court and County determined a supplemental EIR was the appropriate level of CEQA documentation to comply with the ruling as "only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation" (CEQA Guidelines Section 15163(a)(2)). A supplemental EIR need only contain the "information necessary to make the previous EIR adequate for the project as revised" (CEQA Guidelines Section 15163(b)). Therefore, the County is only including the revised portions of **Section 3.3, Biological Resources**, in this SDEIR.

In addition, this SDEIR includes the following chapters:

- **Chapter 1, Introduction** – Chapter 1 describes the purpose and organization of the SDEIR.
- **Chapter 7, Report Preparers and References** – Chapter 7 identifies the SDEIR authors and consultants who provided analysis in support of the SDEIR's conclusions and a comprehensive listing of all sources of information used in the preparation of the SDEIR.

This SDEIR also includes additional documents in **Appendix A** and **Appendix C** of the 2015 EIR, including the Notice of Preparation (NOP) for the SDEIR and public comment letters received during the scoping period, and biological studies, respectively. This SDEIR contains an additional appendix to the 2015 EIR (**Appendix J**), which includes relevant court documents.

The information contained in this SDEIR does not substantially change the information, analysis, or significance conclusions in the remaining sections of the 2015 EIR. Therefore, these sections are not included in the SDEIR. Furthermore, the information contained in the SDEIR does not result in any changes to the proposed project description or the project footprint described in the 2015 EIR.

All chapter and section numbering is consistent with the chapter and section numbering outlined in the DEIR (released October 2008), which is available on the County's website at the following address:

https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/library-current-major-projects/harper-canyon-encina-hills-subdivision-eir

1.3 PUBLIC REVIEW OF THE SUPPLEMENTAL DRAFT EIR

Although not required under CEQA, the County published a Notice of Preparation (NOP) for the SDEIR on July 15, 2022, and held two scoping meetings on July 25 and August 15, 2022, to inform Trustee and Responsible Agencies and all interested parties of the preparation of the SDEIR, and to solicit input on the scope of the wildlife corridor analysis. The County received nine (9) comment letters during the public scoping period, and one (1) comment letter received after the close of public scoping period. The NOP and comment letters are included in **Appendix A**. The presentation and recorded scoping meeting are available at:

https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/library-current-major-projects/harper-canyon-encina-hills-subdivision-eir

As required under Section 15087 of the CEQA Guidelines, the County has sent a Notice of Availability (NOA) for the SDEIR to all those who submitted comments on the 2015 EIR, to all organizations and

members of the public who were on the County's distribution list for the 2015 EIR, and to any additional persons or organizations that have requested information about the EIR since certification of the 2015 EIR.

Consistent with the requirements of Section 15087 of the CEQA Guidelines, this SDEIR is being made available for public review and comment for a period of 45 days, beginning on March 12, 2024, and concluding on April 26, 2024. During this period, the general public, agencies, and organizations may submit written comments on the SDEIR to the County. Pursuant to procedures set forth in Section 15088.5(f)(2) of the CEQA Guidelines, reviewers are requested to limit their comments to the materials contained in the SDEIR.

The SDEIR is available on the County's website at

https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/library-current-major-projects/harper-canyon-encina-hills-subdivision-eir

and at the County HCD department located at:

Monterey County HCD
2441 Schilling Place, 2nd Floor
Salinas, California 93901

Written comments will be accepted by Monterey County through 5:00 P.M. on April 26, 2024.

You may submit comments by: (1) U.S. mail; or (2) electronic mail (e-mail). Comments provided by email should include "**Harper Canyon Subdivision Supplemental Draft EIR Comments**" in the subject line, and the name and physical address of the commenter should be contained in the body of the email.

Please send all written comments to:

Monterey County HCD
ATTN: Craig Spencer
Acting Director of Housing & Community Development
2441 Schilling Place
Salinas, California 93901

OR via email to:

ceqacomments@co.monterey.ca.us
Subject line: "**Harper Canyon Subdivision Supplemental Draft EIR Comments**"

Please contact Craig Spencer, ACIP, Acting Director of Housing & Community Development at spencerC@co.monterey.ca.us or call (831) 755 - 5233 if you have any questions about the environmental review process for the proposed project.

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3.3 BIOLOGICAL RESOURCES

As described in **Chapter 1, Introduction**, the following information is supplemental to **Section 3.3, Biological Resources**, of the 2015 EIR for the Harper Canyon (Encina Hills) Subdivision, in accordance with the Sixth District Court of Appeal decision. The Court of Appeal decision requires an assessment of the environmental setting that would define the beginning, middle, and end of the wildlife corridor, the habitat contained therein, and would describe the nature and magnitude of wildlife movement and traffic in the vicinity of the project site. This information would constitute a baseline from which to measure changes in the environment that would result from project implementation and determine whether the changes in the environment are significant. This section and the studies contained in **Appendix C** supplement the 2015 EIR accordingly. The organization and numbering of this section and appendices follow the document convention in the 2015 EIR.[1]

Public and agency comments related to biological resources were received during the public scoping period, and are summarized below:

- Identify and analyze wildlife movement corridors;
- Describe how the open space is going to be maintained to ensure animals continue utilizing the documented corridor and the associated wildlife crossing locations on State Route 68 (SR 68); and
- Evaluate potential impacts of the project to native wildlife nursery sites.

To the extent that issues identified in public comments involve potentially significant effects on wildlife corridors and movement, they are identified and addressed within this SDEIR. Comment letters received by the County in response to the NOP are included in **Appendix A**, **NOP for the SDEIR and Public Comment Letters**.

3.3.1 Environmental Setting

WILDLIFE CORRIDORS

Wildlife corridors refer to established migration routes commonly used by resident and migratory species for passage from one geographic location to another. Corridors are present in a variety of habitats and link otherwise fragmented acres of undisturbed area. Maintaining the continuity of established wildlife corridors is important to sustain species with specific foraging requirements, preserve a species' distribution potential, and retain diversity among many wildlife populations. Therefore, resource agencies consider wildlife corridors to be a sensitive resource. The following discussion summarizes the studies and literature reviewed to identify the wildlife corridors and describe wildlife movement in the project vicinity.

Connectivity for Wildlife Study

In a 2010 publication, Connectivity for Wildlife prepared the *Central Coast Connectivity Project Northern Monterey County Linkages: Report on the Mount Toro to Fort Ord Reserve Study 2008-2009* (CCCP) for the Big Sur Land Trust (BSLT) (Connectivity for Wildlife, 2010).The study was funded by the BSLT to identify animal movement between the Santa Lucia Mountain Range and the Bureau of Land Management (BLM) property on the former Fort Ord (referred to in the study as "Fort Ord Natural Reserve" and now the site of the Fort Ord National Monument [FONM]) located north of State Route [SR] 68) (**Figures 3.3-1** and **3.3-**

[1] Section 3.2, Regulatory Setting, did not require updating and, therefore, is not included in the SDEIR.

2). The study was prepared as a follow-up to previous studies prepared for Marks Ranch, which is located to the north of the project site, and studies conducted within the former Fort Ord area. The study has not been, and is not intended to be, adopted as an official habitat plan, but instead was developed as a tool to understand wildlife movement in the area.

The study identifies two remaining undeveloped linkages between the protected upland habitats of the Sierra de Salinas within Marks Ranch and Toro Park to the protected lowlands of the FONM and the coastal and dune habitat beyond – the Highway 68/El Toro Creek Bridge[2] linkage and the Salinas River Corridor linkage. The study focuses on the Highway 68/El Toro Creek Bridge linkage. As part of the study, the undercrossing at the SR 68 bridge that crosses El Toro Creek was monitored for animal movement.

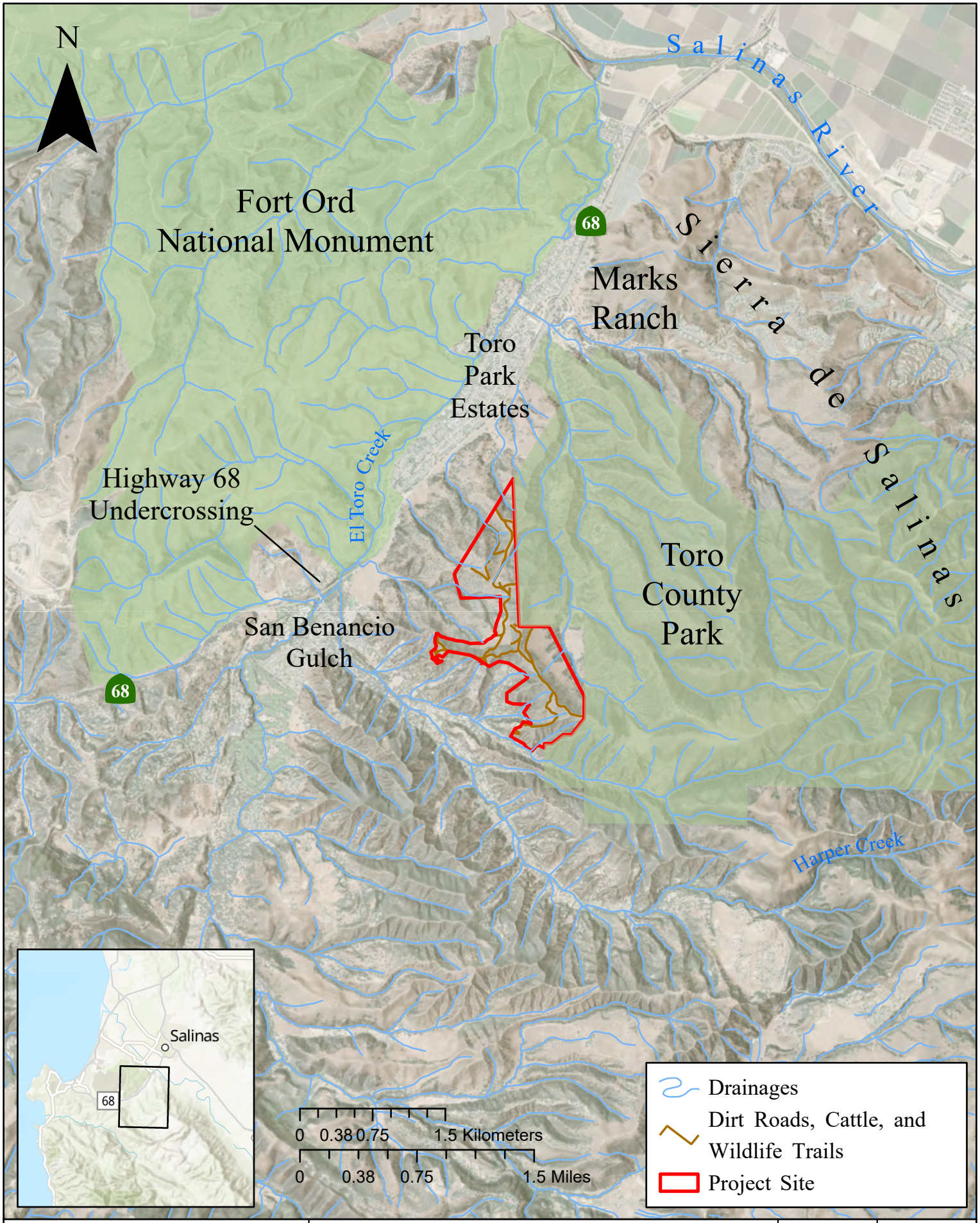
This narrow, roughly half-mile wide, undeveloped gap sits between the relatively dense housing along San Benancio Road and the Toro Park Estates subdivision (please refer to the "Wildlife Movement" label on **Figure 3.3-2**). Toro Park Estates is separated from Highway 68 by a sound wall along its southeast boundary. Typical of residential development, the neighborhood contains a matrix of residential roads with fences separating each property. Many of the yards are lit up at night and domestic dogs and cats are present. Draining the north slopes of the Sierra de Salinas, the Harper and Watson Creeks merge just west of the undercrossing before their confluence with El Toro Creek on its way to the Salinas River (**Figure 3.3-2**). El Toro Creek makes its fourth pass under Highway 68 at this location via a relatively wide highway bridge. The riparian habitats along these creeks provide natural pathways for travel and the bridge creates a safe passage under the highway for wildlife movement. Many wildlife species, including mountain lions, deer, bobcats, and gray fox, travel along riparian corridors.

Both topography and composition in the area provide suitable habitat and allow free movement for multiple species. The protected core habitats within the area include FONM, Marks Ranch, and Toro County Park (**Figure 3.3-1**). Each site consists of a mosaic of grassland, oak woodland, chaparral, and riparian habitat.

The study confirms the importance of the undercrossing at El Toro Creek for wildlife crossing of SR 68. Between October 2008 and October 2009, 404 individual animal detections were recorded via remote sensor cameras at this crossing. The majority of detections were bobcat, deer, wild pig, coyote, and raccoon. Several individual animals and their offspring were observed multiple times. For example, of the 404 detections, as many as seven different bobcats (including two adults and two different litters of kittens) were recorded making 97 trips over the two-year monitoring period. According to the study, the adult female was using the eastern side of the crossing as its natural range, as she was documented traveling with her kittens, which were also recorded multiple times. The area beneath the bridge and on either side was being used as a home range by this individual bobcat. In addition, Monterey dusky-footed woodrats, a species of special concern, were also detected using the underpass. In addition, on either side of the underpass, there were existing Monterey dusky-footed woodrat nests. One mountain lion was detected.

Wildlife movement at the undercrossing at El Toro Creek Bridge may be facilitated by the protection and cover provided by riparian habitat along Harper Creek, which is located near San Benancio Road and connects to El Toro Creek. Because all of the detections during the study were made within the El Toro Creek bottom, it is not known if the species observed continue to use the Harper Creek riparian corridor and traverse underneath San Benancio Road farther upstream or leave the riparian corridor and move through the project site. The study concluded that lands extending along the south side of SR 68 and

[2] Highway 68 and SR 68 are used interchangeably in this analysis to be consistent with how it is referenced in studies and figures.



Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Proposed Project Site and Surrounding Area

Date 11/3/2023

Scale 1:50,000

Figure 3.3-1

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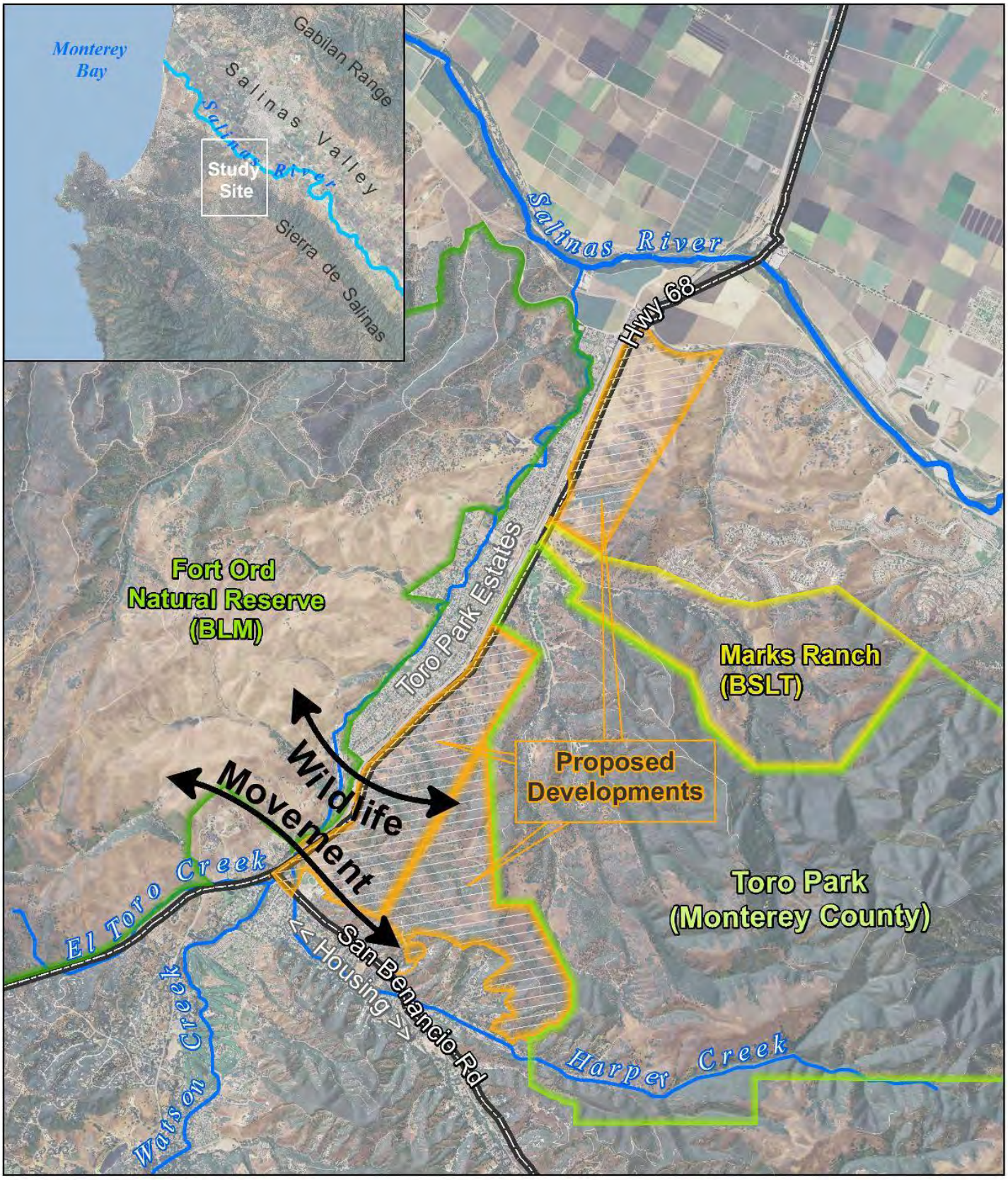


Source: Connectivity for Wildlife, 2010

0 Miles 1

N W E S

Denise Duffy & Associates, Inc. Planning and Environmental Consulting	North Monterey Connectivity Map Study Site with Proposed Development Boundaries	Date 2/28/2024 Scale N/A	Figure 3.3-2

upslope along El Toro Creek and adjacent watersheds exhibit a high degree of wildlife movement for the focal species recorded and suggest that this area and the safe passage afforded by the Highway 68/El Toro Creek Bridge serves as a linkage for wildlife to move between core habitats.

Wildlife Corridor Analysis for Ferrini Ranch

Ferrini Ranch is an 866-acre property located on the south side of SR 68 between River Road and San Benancio Road, north of the project site. On December 9, 2014, the County approved a subdivision of the Ferrini Ranch into 185 lots with approximately 700 acres remaining as open space. According to a technical memorandum prepared by Wetland Research Associates Environmental Consultants (WRA) in December 2008 for the Ferrini Ranch Project, a wide range of terrestrial wildlife species are known to occur in the immediate vicinity of Ferrini Ranch on both sides of SR 68 bridge, including American badger (*Taxidea taxus*), mountain lion (*Puma concolor*), bobcat (*Lynx rufus*), black-tailed deer (*Odocoileus hemionus columbianus*), wild pig (*Sus scrofa*), and coyote (*Canis latrans*) (WRA, 2008) (**Appendix C**). Current corridors for wildlife to move between Fort Ord and the Sierra de Salinas or Santa Lucia Mountain Ranges are limited to the Portola Drive overpass and the above-described undercrossing at El Toro Creek. The Portola Drive overpass is located just north of Marks Ranch. SR 68 is a major barrier to wildlife movement between the thousands of acres of open space on either side of the highway, and the Toro Park Estates development is an additional barrier. The El Toro Creek undercrossing is located 0.75 miles northwest of the project site near the intersection of San Benancio Road and SR 68. The BSLT and The Nature Conservancy have partnered with public agencies in an effort to protect the corridor between the former Fort Ord and the Santa Lucia Mountain range.

According to WRA, the El Toro Creek undercrossing is one of the few significant safe passages for both small and large mammals, amphibians, and reptiles between the large tracts of open space. The passage is bordered by riparian vegetation which offers cover and shade for daytime movements, and the creek itself is shallow and flows slowly enough (except for during storms) to allow mammals to wade through it. A smaller, seasonal tributary to El Toro Creek joins in this location, providing additional opportunities for movement of terrestrial species, as it does not carry perennial flows.

Final SR 68 Scenic Highway Plan

In December 2015, the Transportation Agency for Monterey County (TAMC) authorized Pathways for Wildlife to conduct a wildlife connectivity study on SR 68 (TAMC Study) (Pathways for Wildlife, 2017). The objectives of the study were to provide a detailed wildlife analysis, including GIS mapping of habitats, existing crossings, connectors (e.g., culverts, drainpipes, and bridges), and roadkill data; collect species-specific crossing data for existing connectors and crossings; and make recommendations for potential wildlife mobility features and conceptual designs for new connectors.

Wildlife roadkill data was collected within the study corridor. A total of eight animals were reported killed along the study segments from 2005 to the study period, including six deer and two badgers. Four of the deer were hit on the segment between York Road and Pasadera Drive in the vicinity of the golf course. Another three animals – two deer and one badger – were killed on the segment between San Benancio and Toro Creek Road. Given the clustering of the hit animals, it was recommended that wildlife fencing and/or crossings be considered at those two locations to facilitate linkages between the habitat areas on either side of SR 68. Additional roadkill data was provided by the Society for the Prevention of Cruelty of Animals (SPCA) Monterey County, which indicated seven more fatalities on the corridor including three hawks, two quail, one owl, and one coyote. Both quail were struck near the Portola Road interchange. The others occurred throughout the corridor; dates with these kills are unknown. This data was based on information collected as of 2015.

The TAMC Study recorded a total of 2,709 animal detections from the 11 camera stations along the SR 68 corridor. The cameras with the highest number of detections include: 1) El Toro Creek Bridge with 613 detections; 2) San Benancio Bridge with 482 detections; 3) Box Culvert 1 (located west of San Benancio Bridge with 356 detections; 4) Boots Road Culvert with 327 detections; and 5) Box Culvert 2 (located east of El Toro Creek Bridge) with 307 detections. The camera station with the highest average detections per month was the El Toro Creek Bridge (51), the second highest is the San Benancio Bridge (40), and the third is Box Culvert 1 (30). These three locations made up half of the total detections at 52%. The species with the highest number of detections and percentage recorded include bobcats (1,039), deer (460), and raccoons (446). Bobcats and deer make up half of the total detections at 55%. Various culverts and bridges are successfully facilitating large to medium size mammal movement underneath the highway, such as El Toro Creek Bridge, San Benancio Bridge, the Salinas River Bridge, and Box Culvert 2.

A total of five bobcat families were recorded traveling through six of the SR 68 culverts and bridges. There was a total of 11 bobcat kittens recorded throughout the study site. At the El Toro Creek Bridge, two different females with kittens were recorded. This is a significant finding as male bobcats can have home ranges up to 5.2 square kilometers (3.2 square miles). Female bobcat home ranges are generally 2.3 square kilometers (1.5 square miles). Recording so many females indicates a healthy bobcat population. The females are also teaching their kittens to use these crossing structures as pathways to safely cross underneath the road as they routinely travel back and forth through the various structures with their kittens.

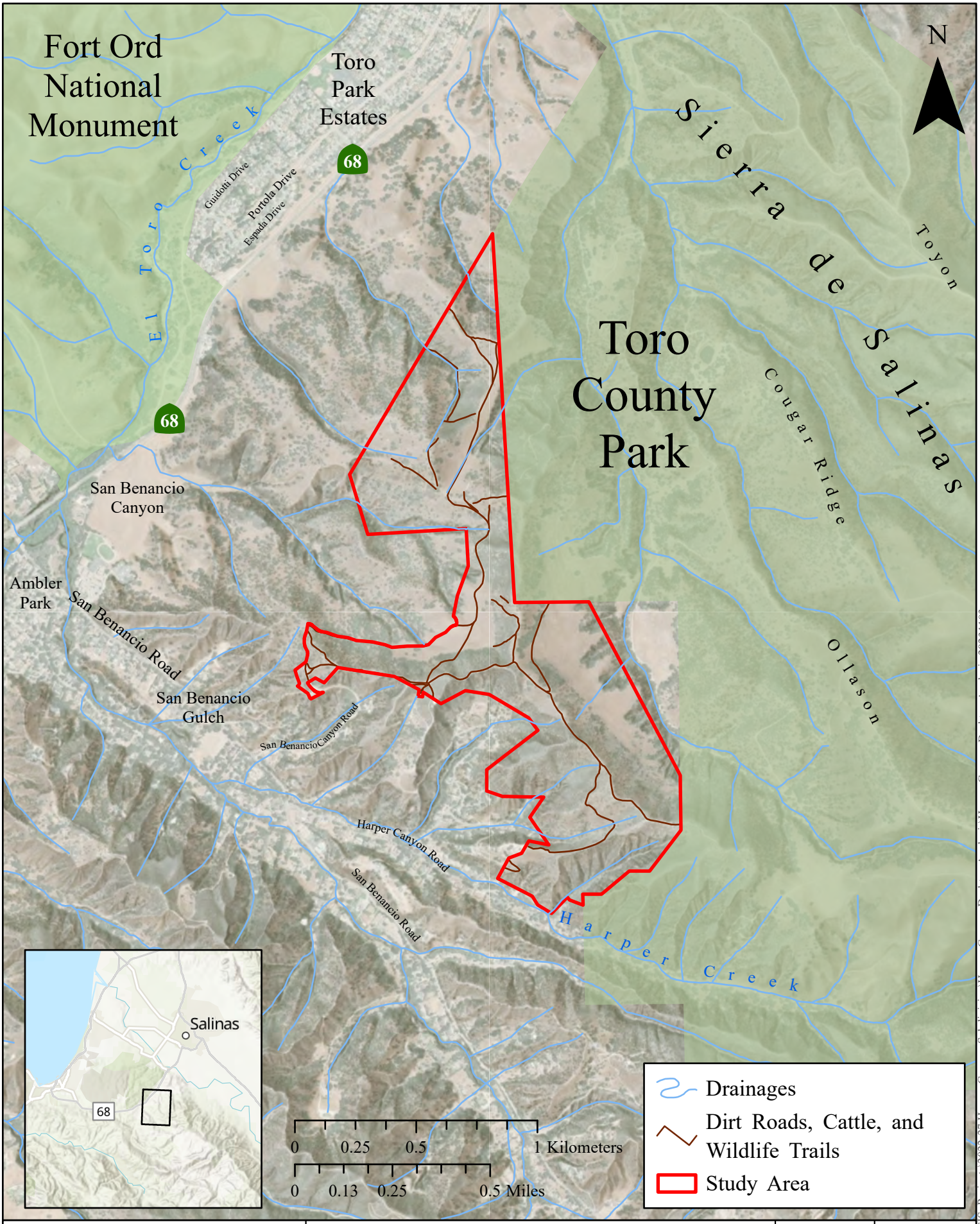
Based on the results of the TAMC Study, the California Department of Transportation's (Caltrans) proposed Scenic Route 68 Corridor Improvements Project has been designed in part to protect wildlife by reducing wildlife-vehicle collisions. The project incorporates five wildlife passage improvements (undercrossings) in the form of enlarged culverts to be placed at existing culvert locations along SR-68 between York Road and the San Benancio Road/SR 68 intersection (Caltrans, 2023). Fencing would also be installed to keep animals off the roadway and guide them to the undercrossings. At some locations, the fencing would end at a natural landform to discourage animals from walking around the end of the fence and entering the roadway. The undercrossings would incorporate gentle approach slopes at their openings to create openness and visual clearance, which should encourage wildlife to use them. The proposed improvements would increase wildlife connectivity along SR 68, including the San Benancio Road/SR 68 intersection adjacent to El Toro Creek. The proposed project schedule estimates construction to begin in February 2028 and conclude in November 2030.

Harper Canyon Subdivision Project Wildlife Camera Trapping Study Report

Background

Denise Duffy & Associates, Inc. (DD&A) was contracted by the County to conduct a wildlife camera trapping study for the proposed Harper Canyon Subdivision in compliance with the Sixth District Court of Appeal decision described above (DD&A Wildlife Study) (DD&A, 2023) (**Appendix C**). The objective of this study was to develop a baseline inventory of wildlife usage throughout the Study Area acting as a basis for the wildlife corridor impact assessment described herein.

The Study Area consists of the entire proposed project site (**Figure 3.3-3**), an approximately 343-acre area of rolling and undeveloped terrain, bordered on the east and south by Toro County Park, on the west by an existing housing subdivision within San Benancio Gulch, and to the northwest by private open space (proposed for the future Ferrini Ranch Subdivision development), SR 68, and beyond that, the FONM (hereafter referred to as the "Study Area"). Vegetative communities within the Study Area consist of annual grassland, coast live oak woodland and savanna, and chamise chaparral. Dirt roads, cattle trails, and wildlife trails are found throughout the Study Area, which is primarily used for livestock grazing.



Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Wildlife Camera Trapping Study Area

Date 11/3/2023

Scale 1:20,000

Figure 3.3-3

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There are nine unnamed drainages within the Study Area that direct most surface water to two intermittent creeks, El Toro Creek and Harper Creek. These creeks do not traverse the Study Area but are in the vicinity of the Study Area. El Toro Creek is an intermittent drainage located north of the Study Area that originates near the Laguna Seca Raceway and flows generally northeast on the north side of SR 68 to the Salinas River. Harper Creek is an intermittent tributary of El Toro Creek located south and southwest of the Study Area that originates in the Sierre de Salinas Mountains just south of Toro County Park and generally flows northwest through the San Benancio Gulch. San Benancio Gulch is a regional identifier used to describe the lowlands between two ridges, that also conveys San Benancio Road. Four of these drainages flow north toward SR 68, Toro Park Estates, and El Toro Creek, although only one of them appears to have a surface connection to El Toro Creek. Four of the drainages flow southwest toward San Benancio Gulch and appear to have surface connection to Harper Creek during storm events. Two drainages flow in a northeastern direction towards Toro County Park. The presence of surface water within drainages was documented in some instances as a part of the study.

Methods

Time Frame

The wildlife camera trapping study began on December 2, 2022, with the installation of six wildlife camera trapping stations (WCTS). WCTS were installed for a duration of six months, for a total of at least 1,080 camera trap days. Literature suggests that 1,000 camera trap days are sufficient for detecting 60-70% of the species within a Study Area. Data collection from the camera stations occurred on a bi-weekly basis.

Focal Species

The study centered on six focal species: mountain lion, gray fox, bobcat, black-tailed deer, wild pig, and coyote. Four of these species—mountain lion, gray fox, bobcat, and black-tailed deer—were selected based upon their diversity of habitat requirements and movement patterns, which were documented in the Central Coast Connectivity Project (CCCP), as discussed above. American badger and Monterey dusky-footed woodrat (*Neotoma fuscipes luciana*) were also included as focal species in the CCCP; however, the study only detected each of these species one time with WCTS. Given the infrequent observations of these species in the CCCP, the study replaced those focal species with wild pig and coyote, which were species that were documented using camera trapping stations in the CCCP, but were not included in the suite of focal species for that study.

Camera Trapping Station Location Determination

DD&A biologists reviewed applicable background documentation and data, including the State Route 68 Scenic Highway Plan (Kimley-Horn & Associates, Inc., 2017), the CCCP, *Biological Resource Assessment, Encina Hills Property, Monterey County, California* (Zander, 2001a), *Results of Follow-up Survey, Encina Hills Property, Monterey County, California* (Zander, 2001b), *Revised Biological Resource Assessment, Encina Hills Property, Monterey County, California* (Zander, 2005), the California Department of Fish and Wildlife's California Natural Diversity Database Biogeographic Information and Observation System, historical/current aerial photography/satellite imagery, topography, and other local sources. The review included a desktop geographic analysis of the Study Area using ESRI ArcGIS to determine the most likely locations for potential wildlife corridors/pathways and potential locations for WCTS. Potential WCTS locations were plotted on cartographic materials for use in the field installation component. Potential locations focused on entry and exit points to the Study Area, based on topographic features (e.g., drainages, existing trails, and roads) and habitat types (e.g., riparian, grassland, oak woodland).

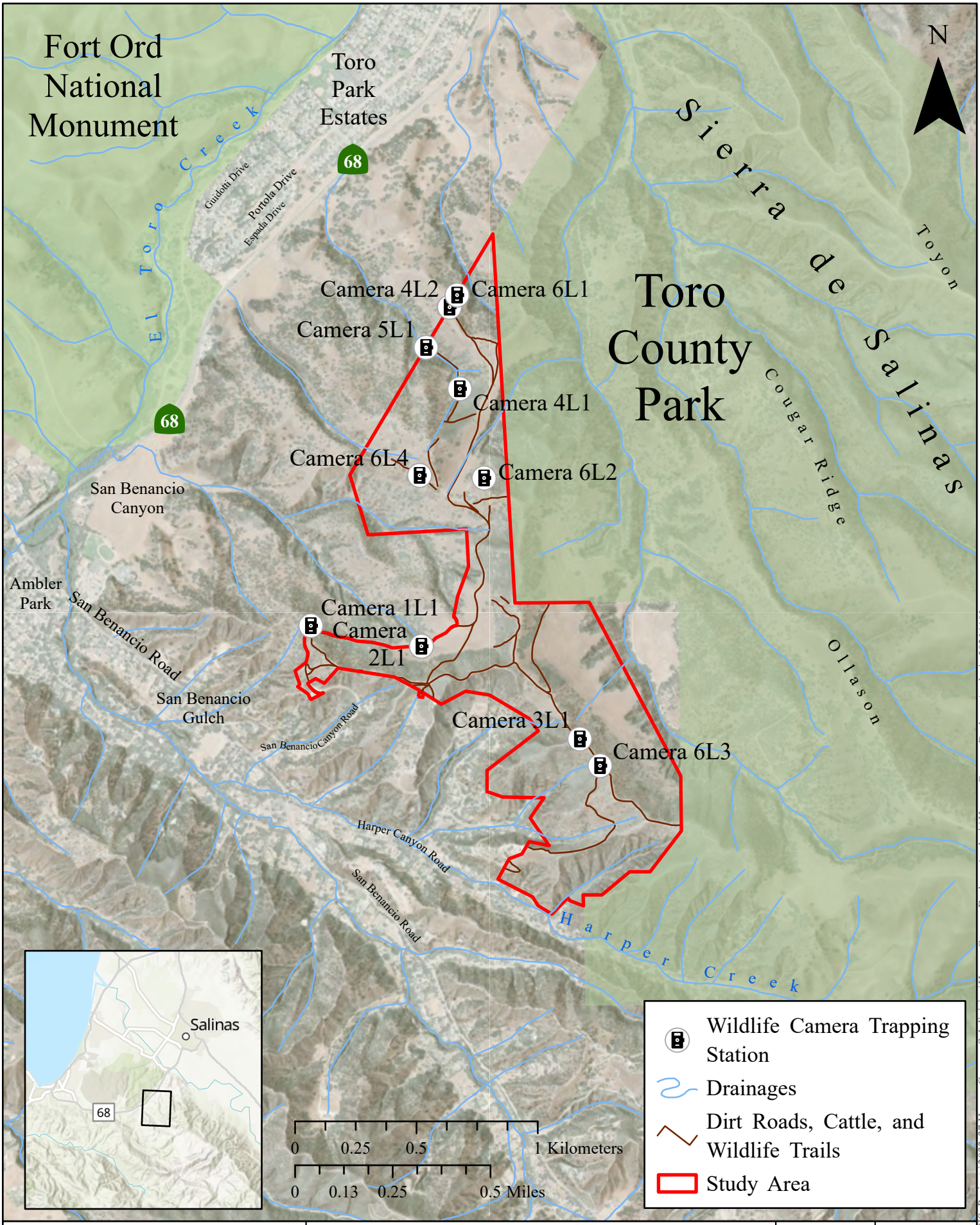
DD&A biologists traversed the Study Area with the cartographic materials described above to field-truth the potential locations for WCTS. The initial six camera trapping stations were placed at locations that

showed some sign of wildlife activity (e.g., scat, trails, sign, burrows) or had topographic/habitat characteristics suggesting their use as a movement corridor (e.g., riparian drainages, wildlife trail, cattle trails, bedding areas). One camera was installed adjacent to a cave feature that had a wildlife sign (i.e., tracks) and could be used by wildlife as shelter (Appendix A, Photo 1 in **Appendix C**).

Once WCTS locations were selected, equipment was placed with the intention to minimize effects on animal behavior. Camera setup also took into account the size of species that could be accommodated by the area and passage being monitored, and WCTS locations were selected for both large-sized mammals and small-sized animals. According to Rovero et al. (2013), camera placement for faunal detection can be opportunistic (i.e., placed along intensively used wildlife trails, nests, feeding, or drinking sites) and the spatial arrangement of camera traps can be flexible; there are no strict requirements on minimum distances between camera traps or total Study Area to be covered. Tobler et al. (2008) indicated that the area covered by the camera traps may have little impact on the number of species detected; inventories may, therefore, be conducted in a sampling area that is representative of the total Study Area and primary habitat types (e.g., dense forest, woodland, wooded grassland, grassland, etc.). Therefore, WCTS were placed along drainages, wildlife trails, and areas that provided shelter, in all of the vegetation communities within the Study Area.

During the study period, WCTS were adjusted to observe other locations or features within the Study Area. WCTS 4L1 was initially located within a drainage adjacent to a cave feature that could provide shelter for wildlife. One month into the study period, this location did not result in any captures and the camera was relocated to a well-defined cattle/wildlife trail along a ridge heading leading north of the Study Area. WCTS 6L1 was relocated three times along various wildlife trails throughout the Study Area. Generally, camera locations that were producing low levels of success were relocated to new locations. Basing relocation on activity may lead to data bias; however, since the objective of the study was to establish a wildlife inventory, it was determined that locations with more activity were more important than the objectiveness of WCTS locations.

DD&A deployed six, motion-sensitive, infrared wildlife cameras at the locations identified below (**Figure 3.3-4**). **Table 3.3-1** presents additional details on the camera locations, including duration of time at each station, surrounding topography, general location details, and generalized habitat characteristics. Please refer to Section 3.4, Cameras, of the study in **Appendix C** for details regarding camera specifications.



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Wildlife Camera Trapping Stations

Date 11/3/2023

Scale 1:20,000

Figure 3.3-4

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Table 3.3-1. Wildlife Camera Location Details

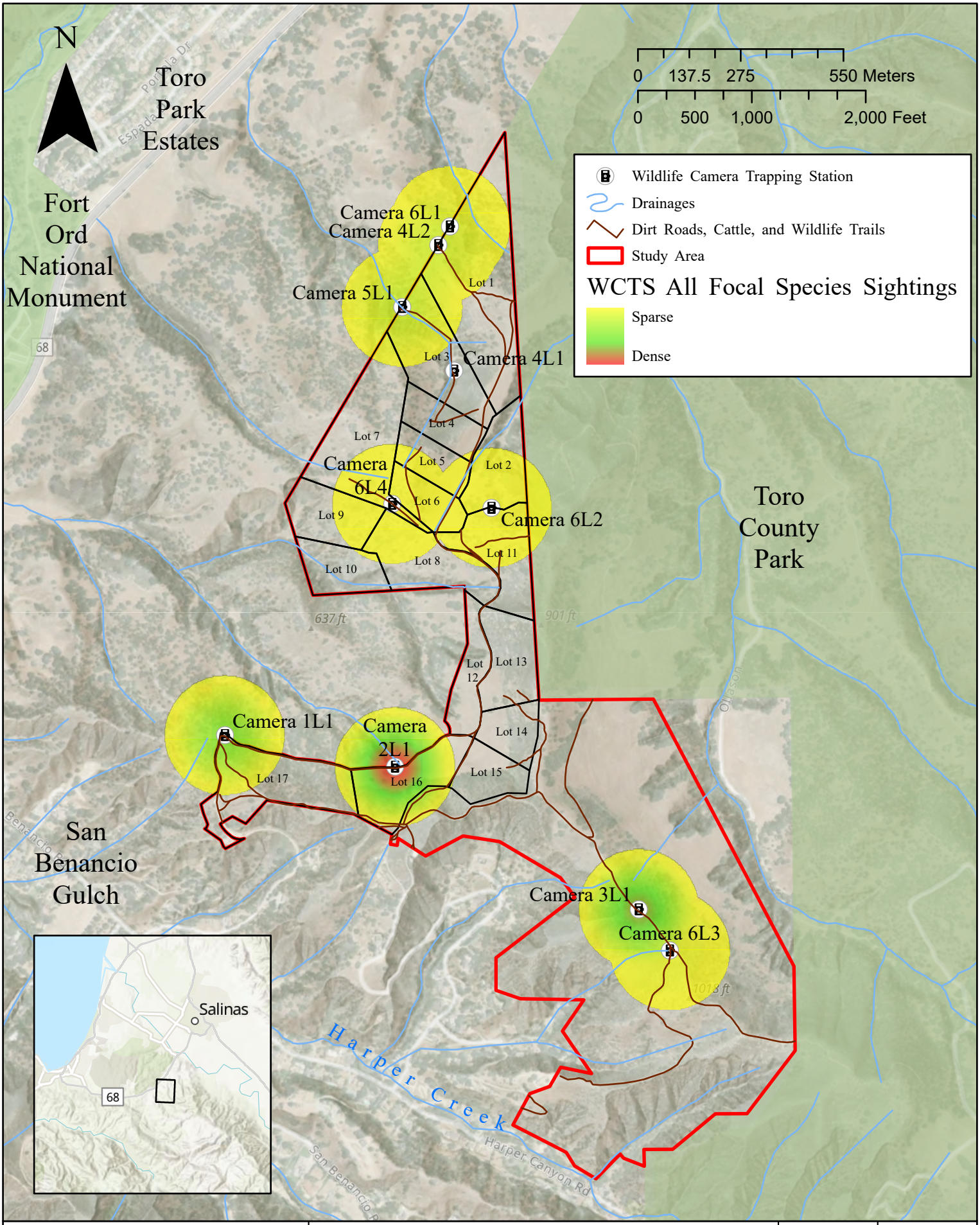
Camera[3]	Dates Deployed	Surrounding Topography	General Location Details	Surrounding Habitat
1L1	12/2/2022-5/30/2023	Plateau	Study Area from San Benancio Gulch to the West, Adjacent to Dirt Road	Oak Woodland/ Savanna
2L1	12/2/2022-5/30/2023	Flat	Near Middle of Study Area, Along Dirt Road	Oak Woodland/ Grassland
3L1	12/2/2022-5/30/2023	Ridgeline	Connecting Trail from Toro Park to Southern End of the Study Area	Oak Woodland/ Scrub
4L1	12/2/2022-1/6/2023	Drainage	Along Drainage Heading North Toward Highway 68 and Toro Creek, Adjacent to Cave Feature	Oak Woodland/ Riparian
4L2	1/6/2023-5/30/2023	Ridgeline	North End of Study Area, Adjacent to Cattle Trail	Grassland
5L1	12/2/2022-5/30/2023	Drainage	Along Drainage Heading North Toward Highway 68 and Toro Creek	Oak Woodland/ Riparian
6L1	12/2/2022-1/6/2023	Ridgeline	Property Fenceline Trail Heading North to Highway 68 and Toro Creek	Oak Woodland/ Grassland
6L2	1/6/2023-2/10/2023	Hillside	Trail Heading West from Study Area into Toro Park	Oak Woodland/ Savanna
6L3	2/10/2023-4/30/2023	Ridgeline	Top of Trail Coming from San Benancio Gulch to the East	Oak Woodland/ Savanna
6L4	4/30/2023-5/30/2023	Hillside	Along Trail Heading Northwest to Highway 68	Oak Woodland/ Savanna

Results and Discussion

Heat Maps

A heat map is a graphical representation of data that uses a system of color coding to represent different values. Heat Maps (Appendix B-1 through B-7 in **Appendix C**) were created using the sightings collected at each WCTS to depict represent density of occurrences for wildlife. WCTS with several occurrences (dense) of a species are represented with red coloring while WCTS with few occurrences (sparse) are represented with yellow or green. An overview Heat Map (**Figure 3.3-5**) was created to display wildlife occurrences for all focal species, as well as Heat Maps for each individual focal species. Heat Maps present a simple visual representation of locations within the Study Area that are frequented more regularly by each focal species and wildlife in general.

[3] Camera nomenclature represents the order in which the camera was deployed and the location. For example, Camera 4L2 was the fourth camera deployed during the initial deployment and the second location for Camera 4 after it was determined that the original location was not producing significant wildlife activity.



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Wildlife Camera Trapping Study
Overview Heat Map-All Focal Species

Date 11/3/2023
Scale 1:13,000

Figure 3.3-5

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Focal Species

The WCTS documented 2,422 instances of wildlife activity between December 20, 2022, and May 30, 2023. As discussed above, the focal species for the study were selected based on the CCCP and due to their diversity of habitat requirements and movement patterns; however, the suite of focal species was altered to include two species that were more consistently captured by WCTS in the CCCP (i.e., wild pig and coyote). A brief paragraph describing the activity of each focal species and as a discussion of other species observed during the study is presented below. Summarized results for each focal species are presented in **Table 3.3-2**.

Table 3.3-2. Focal Species Wildlife Camera Trap Results

Species	# of Tagged Photos	# of Sightings	Camera Locations
Bobcat	133	65	1L1, 2L1, 3L1, 4L2, 5L1, 6L3, 6L4
Coyote	226	120	1L1, 2L1, 3L1, 4L2, 5L1, 6L1
Fox	461	175	1L1, 2L1, 3L1, 6L3
Black-Tailed Deer	204	58	1L1, 2L1, 3L1, 4L2, 5L1, 6L1, 6L3
Mountain Lion	52	14	1L1, 2L1, 3L1, 5L1, 6L3
Wild Pig	148	26	1L1, 2L1, 3L1, 4L2, 5L1
Note: Photos taken within one 15-minute block of time were considered a sighting.			

Bobcat

Bobcats were tagged in 133 photos for a total of 65 sightings within the Study Area. Most bobcat sightings occurred at night with approximately 35.3% occurring between the hours of 1800 and 2200. WCTS 1L1 and 3L1 were the most active stations for this species with 36.8% and 30.9% of the sightings. Bobcats were documented at 7 of the 10 WCTS. The Heat Map (Appendix B-1 in **Appendix C**) suggests that the majority of bobcat activity occurred on the southern half of the Study Area moving between Toro County Park and San Benancio Gulch (Appendix A, Photos 2-4 in **Appendix C**); however, bobcats were also documented traveling in and out of the Study Area on the northern boundary toward Highway 68 and the Toro Creek Undercrossing (Appendix A, Photos 5-6 in **Appendix C**).

Coyote

Coyotes were tagged in 226 photos for a total of 120 sightings within the Study Area. Coyote sightings were split almost equally between day and night with the majority (23.3%) occurring between the hours of 1800 and 2200. WCTS 1L1 and 2L1 were the most active stations for this species with 37.5% and 35.8% of the sightings. Coyotes were documented at 6 of the 10 WCTS. The Heat Map (Appendix B-2 in **Appendix C**) suggests a concentration of coyote activity near the entrance to the Study Area on the west side of San Benancio Gulch (Appendix A, Photos 7-8 in **Appendix C**). Coyotes were also documented traveling in and out of the northern and southern boundaries of the Study Area (Appendix A, Photos 9-10 in **Appendix C**).

Fox

Foxes were the most dominant focal species documented within the Study Area with 461 tagged photos, for a total of 175 sightings within the Study Area. The large majority (97.1%) of documented fox activity occurred at night with approximately 41.1% occurring between the hours of 1800 and 2200. WCTS 3L1 was the most active station for this species with 59.4%. Foxes were documented at 4 of the 10 WCTS. The Heat Map (Appendix B-3 in **Appendix C**) shows that most foxes were documented along the ridgeline that travels north/south through the southern end of the Study Area. Although foxes were photographed the most, when compared to the other focal species, they were also the species with the smallest range within the Study Area. Foxes were not documented in the northern half of the Study Area.

Black-Tailed Deer

Black-tailed deer were tagged in 204 photos for a total of 58 sightings within the Study Area. Most black-tailed deer sightings occurred during the day with approximately 43.1% occurring between the hours of 0600 and 1000. Black-tailed deer were documented at 7 of the 10 WCTS and distributed relatively evenly throughout the Study Area (Appendix B-4); however, WCTS 1L1 (Appendix A, Photo 11 in **Appendix C**) and 4L2 (Appendix A, Photo 12 in **Appendix C**) were the most active stations for this species with 43.1% and 20.7% of the sightings, respectively.

Mountain Lion

Mountain lions were tagged in 52 photos for a total of 14 sightings within the Study Area. All mountain lion sightings occurred at night with approximately 35.7% occurring between the hours of 0200 and 0600. Camera stations 3L1 and 5L1 were the most active stations for this species with 35.7% and 28.6% of the sightings. Mountain lions were documented at 5 of the 10 camera trapping stations. The Heat Map (Appendix B-5 in **Appendix C**) shows that mountain lions were more active in the southern and northern portions of the Study Area.

Given the sparse number sightings and their importance in the context of macro scale wildlife corridors, a detailed accounting of mountain lion activity is provided. The first mountain lion was captured on WCTS 3L1 on December 5, 2022, at 0511 (Appendix A, Photo 13 in **Appendix C**). On December 8, 2022, at 1844 hours, two mountain lions were photographed moving south to north along the ridgeline in the southern half of the Study Area (Appendix A, Photo 14 in **Appendix C**). One of the pair was documented marking territory near the WCTS (Appendix A, Photo 3 in **Appendix C**). At the same WCTS, mountain lions were captured moving south toward Toro County Park on March 18 (Appendix A, Photo 16) and April 12, 2023 (Appendix A, Photo 17 in **Appendix C**). Two mountain lions were also documented using the drainage on the northern end of the Study Area by WCTS 5L1 (Appendix A, Photo 18 in **Appendix C**). A single mountain lion was documented at WCTS 5L1 on March 17, 2023, at 2031 hours (Appendix A, Photo 19 in **Appendix C**). On February 10, 2023, a mountain lion was captured by WCTS 6L3 heading north into the Study Area from the San Benancio Gulch area (Appendix A, Photo 20 in **Appendix C**).

Wild Pig

Wild pigs were tagged in 148 photos for a total of 26 sightings within the Study Area. Most wild pig sightings occurred at night with 26.9% occurring between the hours of 2200 and 0600. WCTS 2L1 and 5L1 were the most active stations for this species with 30.8% and 26.9% of the sightings, respectively. Wild pigs were documented at 5 of the 10 WCTS distributed relatively evenly between the WCTS (Appendix B-6 in **Appendix C**). Wild pigs with piglets were documented at WCTS 5L1 on April 25, May 9, and May 13, 2023 (Appendix A, Photo 21 in **Appendix C**).

All Focal Species

All focal species were tagged in 1,224 photos for a total of 458 sightings within the Study Area. Most focal species sightings occurred at night with 69.9% occurring between the hours of 1800 and 0600. WCTS 3L1 and 1L1 were the most active stations for all focal species with 31.6% and 31.0% of the sightings, respectively. Focal species were documented at 8 of the 10 WCTS (Appendix B-7 in **Appendix C**).

Non-Focal Species

In addition to the focal species that were captured during the study, several other wildlife species were documented within the Study Area. Other wildlife species included American badger (Appendix A, Photo

22 in **Appendix C**), American kestrel (*Falco sparverius*), mouse[4], owl, California quail (*Callipepla californica*), California scrub jay (*Aphelocoma californica*), rabbit, greater roadrunner (*Geococcyx californianus*; Appendix A, Photo 23 in **Appendix C**), striped skunk (*Mephitis mephitis*), spotted skunk (*Spilogale gracilis*; Appendix A, Photo 24 in **Appendix C**), spotted towhee (*Pipilo maculatus*), turkey vulture (*Cathartes aura*), wild turkey (*Meleagris gallopavo*), western bluebird (*Sialia mexicanus*), western meadowlark (*Sturnella neglecta*), and several bird species that could not be identified to the species level.

DD&A Wildlife Study Conclusions

The study captured 21 species of wildlife that could be identified to species,[5] including the six focal species, utilizing varying movement corridors and habitats within the Study Area. In addition, the study documented various rodent and avian individuals that could not be identified or differentiated from other species. Wildlife activity captured during the study suggests that the Study Area provides suitable habitat and movement corridors for all the focal species, as well as for various other wildlife species.

The documented wildlife activity also suggests that five out of the six focal species are traveling through the Study Area to access adjacent large contiguous undeveloped lands (e.g., Toro County Park and FONM). For example, the study documented a pair of mountain lions entering the Study Area along a trail that originates in the southwestern quadrant of Toro County Park (WCTS 3L1, Appendix A, Photo 14 in **Appendix C**). A pair of mountain lions were also documented (WCTS 5L1)[6] leaving the Study Area via a game trail located adjacent to a drainage on the northern boundary of the Study Area on December 12, 2022, at 1732 hours, and then documented returning past the same WCTS on December 13, 2022, at 0241 hours (Appendix A, Photo 18 in **Appendix C**). This occurrence suggests that the focal species, including mountain lions and deer, are traveling through the Study Area to access the contiguous undeveloped lands located north and south of the Study Area (i.e., FONM, the Sierra de Salinas Mountain Range, Toro County Park, etc.). The one exception within the suite of focal species was gray fox, which was documented traveling on a relatively localized scale. Gray fox was only documented at four WCTS (1L1, 2L1, 3L1, 6L3), all located within the southern half of the Study Area. However, given that the estimated home range for this species varies from 75 hectares (ha) (185 acres) to 757 ha (1,870 acres), it is probable that gray foxes documented during the study were also traveling outside of the boundaries of the Study Area to access the undeveloped lands adjacent to the Study Area.

The Heat Map for all focal species shows that wildlife activity is the densest within Lots 16 and 17 along the main thoroughfare (Appendix B-7 in **Appendix C**). This existing dirt road, along with the arterial dirt road that traverses the ridgeline from Lot 15 and 16 to the Remainder Parcel, provide a convenient movement corridor for wildlife from Toro County Park to the San Benancio Gulch area, and eventually to the FONM though the Highway 68 undercrossing at El Toro Creek. Development of these roads and increased traffic could result in impacts to wildlife currently using them as movement corridors. Providing alternative corridors outside of the single-family residence and infrastructure development envelopes by limiting access to existing cattle paths and other wildlife trails could help to lessen this impact. Wildlife activity was also dense within the drainage that bifurcates Lot 3 running from southeast to northwest. Water was observed throughout the duration of the study period and the coast live oak tree canopy provides habitat and cover for several wildlife species.

[4] Wildlife captured that are presented without scientific names were not able to be categorized to the species level due to the quality of the photo documentation.

[5] Some species were not able to be identified or differentiated from other species.

[6] The pair was not captured in a single photo but in two consecutive photos of one sighting.

As stated, this study is an important step in the process of identifying and understanding the type and density of wildlife utilizing the Study Area. The primary objective of this study was to develop a baseline inventory of wildlife usage throughout the Study Area. By placing WCTS throughout the Study Area for a period of six months, DD&A was able to document more than 20 different wildlife species utilizing the Study Area. While additional study methodologies suggested above can be employed in the future to refine wildlife movement and usage, the study determined that there is robust wildlife usage within the Study Area.

Relevant Literature

The scientific literature shows a large range of recommended movement corridor widths, ranging from a few feet to thousands of feet, depending on species or guild. Small mammals and less sensitive songbirds seem to lean toward the narrow end of this range, whereas carnivores and other sensitive species or those requiring large home ranges tend to need wider corridors. Amphibian requirements are highly variable but often seem to fall somewhere in between, depending on whether these species' rather complex requirements are met – for example, interspersed wetlands and uplands, with relatively short distances between wetlands or other key habitats. Several studies and synthesis reports suggest corridors should be at least 328 feet (100 meters) wide to provide for most wildlife movement and habitat functions (Hennings and Soll, 2010).

As summarized by Hennings and Soll (2010):

> Studies and models suggest that wider corridors direct and increase animals' movement rates between patches, acting a bit like draft fences or funnels guiding animals toward habitat patches (Haddad, 1999). Some researchers suggest that larger habitat patches require larger movement corridors (Kubes, 1996). Wider corridors are obviously preferred, but land use and cost constraints favor narrower corridors (Beier et al., 2009). The key goal should be to provide connectivity between populations and prevent reproductive isolation. There are no hard and fast rules for corridor width design; educated but subjective decisions must be made.

While larger animals may use wide corridors in natural conditions, a narrow corridor is not restrictive to their passage (Beier, 1996). Mountain lions, for example, are routinely observed moving in suburban areas and are known to use culverts and bridges as crossings beneath highways. When designing wildlife corridors, Paul Beier, a leading researcher in mountain lion movement and a strong proponent of wildlife corridors, warns against planning for the largest animals (Beier et al., 2008):

> We argue against designing a linkage solely for large carnivores – or any single species. Many other species need linkages to maintain genetic diversity and metapopulation stability. Furthermore, most large carnivores are habitat generalists that can move through marginal and degraded habitats, and a corridor designed for them does not serve most habitat specialists with limited mobility.

Animals such as amphibians and small mammals may spend a considerable time within a corridor; whereas large animals will move quickly through corridors to areas that are more supportive of their biological and ecological requirements. Within suburban areas such as the project site, many existing constraints need to be considered. Factors affecting corridor use such as highly traveled highways, existing residential use, and the land uses within the corridor affect how animals use these areas.

3.3.2 Impacts and Mitigation

Thresholds of Significance

As described in **Chapter 1, Introduction**, in response to the Court of Appeal ruling, this SDEIR focuses solely on analyzing the wildlife corridors in the vicinity of the proposed project and evaluates the potential impacts the proposed project may have on these corridors. Therefore, in accordance with Appendix G of the State CEQA Guidelines, this analysis assumes that a project impact would be considered significant if the project would:

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.

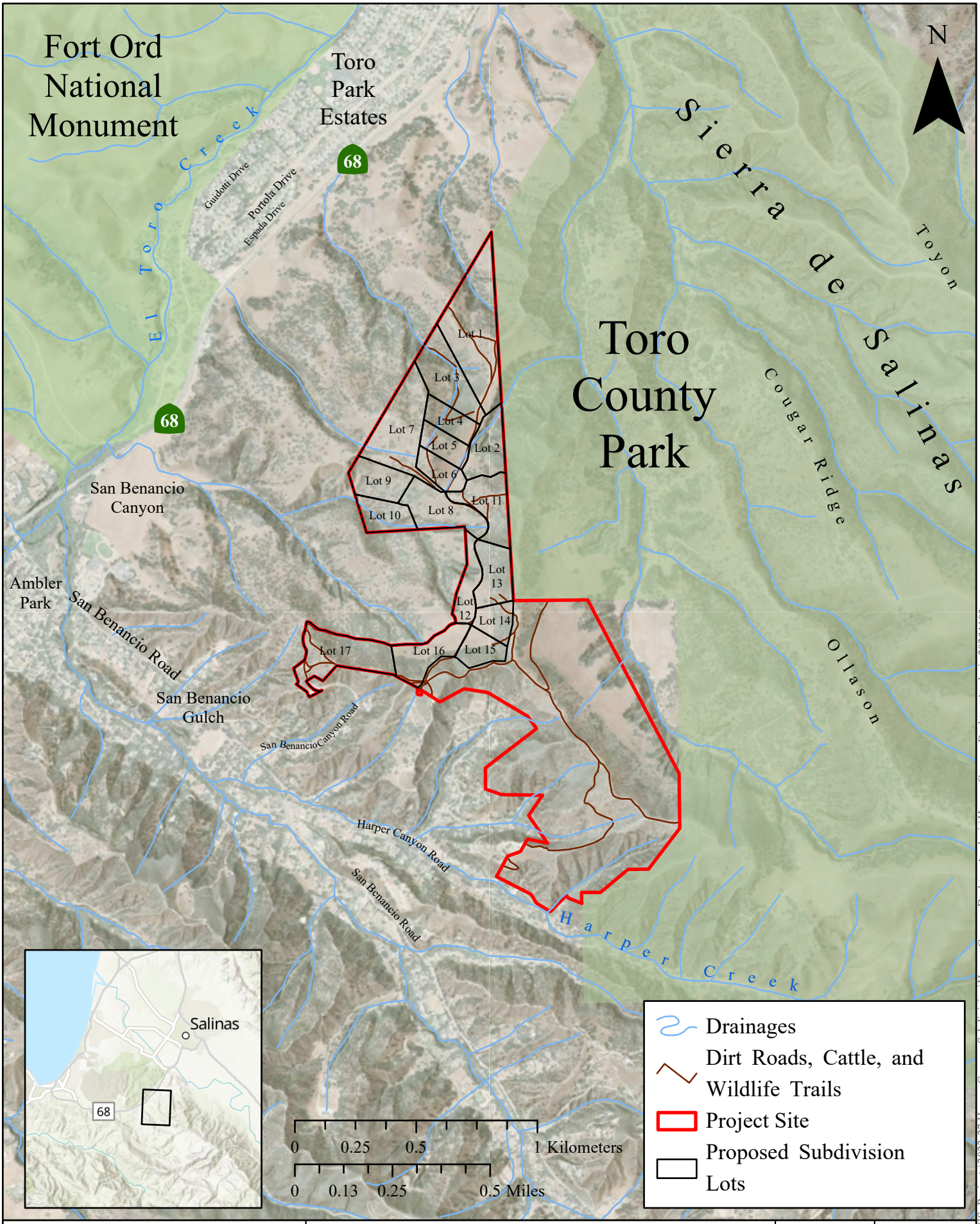
Project Impacts and Mitigation Measures

Impact 3.3-8: Implementation of the proposed project would result in disturbance and construction activity in the vicinity of the SR 68/El Toro Creek Bridge undercrossing, which is considered a significant route of safe passage for both small and large mammals, amphibians, and reptiles moving between former Fort Ord lands and the Sierra de Salinas or Santa Lucia Mountain ranges. This is a potentially significant impact.

El Toro Creek is bordered by riparian vegetation that offers cover and shade for daytime movements, and the creek itself is shallow and usually flowing slowly enough for mammals to wade through it. A small seasonal tributary to El Toro Creek also joins at this location (i.e., Harper Creek) and provides additional cover and opportunity for wildlife movement. Therefore, El Toro Creek provides a good opportunity for many species to move between the former Fort Ord lands and the open space provided on the project site and to the north and south. According to a review of the scientific literature by Hennings and Soll (2010), a corridor width of approximately 300 to 400 feet with a variety of habitats provides protected movement corridors and staging areas for wildlife moving from higher open space in the mountains to the lower valleys.

SR 68 and Toro Park Estates development are major barriers for wildlife species attempting to travel between the former Fort Ord and the project site. The existing noise and vehicular movement along SR 68, the sound barrier wall along Toro Park Estates, and the 1,400-foot-wide band of residential development discourage movement of wildlife. Existing corridors for wildlife are limited to El Toro Creek, the Portola Drive overpass, and culverts that run beneath SR 68. The El Toro Creek undercrossing is located 0.75 miles west of the project site.

The proposed project consists of 17 lots on approximately 164 acres (**Figure 3.3-6**). Many of the lots contain drainages that facilitate wildlife movement by the protection and cover provided by riparian habitat along the drainages. It was documented that wildlife activity is the densest within Lots 16 and 17 along the main thoroughfare. This existing dirt road, along with the arterial dirt road that traverses the ridgeline from Lot 15 and 16 to the Remainder Parcel, provide a convenient movement corridor for wildlife from Toro County Park to the San Benancio Gulch area, and eventually to the FONM though the Highway 68 undercrossing at El Toro Creek. Development of these roads and increased traffic could result in impacts to wildlife currently using them as movement corridors. Wildlife activity was also dense within the drainage that bifurcates Lot 3 running from southeast to northwest. Water was observed throughout the duration of the study period of the DD&A Wildlife Study and the coast live oak tree canopy provides habitat and cover for several wildlife species.



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Proposed Project Site Plan

Date 11/3/2023

Scale 1:20,000

Figure 3.3-6

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While wildlife activity was more concentrated in some lots and not others; all of the lots within the project site provide habitat for wildlife movement and occur within a documented wildlife corridor. Development of the proposed project would discourage, interrupt, or otherwise impact the use of this wildlife corridor. Noise generated by construction activities associated with development of residential lots would discourage wildlife from using this wildlife corridor. Typically, single family homes require 8-12 months of construction; however, the duration can be variable depending on a number of factors including supplies, weather, and other constraints. Construction of each of the 17 lots could occur independently or overlap, but noise would be intermittent and limited to standard construction hours. However, this noise would be temporary and wildlife movement would likely return to the area upon completion of construction. Restricting access to or from the El Toro Creek undercrossing would also limit use of this safe wildlife corridor. Access could be restricted due to lack of maintenance of vegetation on either side of the undercrossing and if development was permitted to allow solid barrier fencing that limits the amount of area wildlife would have to move from the El Toro Creek undercrossing to the open space to the south. These impacts of project implementation would be a potentially significant impact.

The proposed project design would maintain a 180-acre open space area between Harper Creek and Toro County Park and the applicant has committed to donating approximately 154 acres of this parcel by deeding the property to the County of Monterey as an expansion of the Toro County Park pursuant to Section 66428(a)(2) of the Subdivision Map Act. As a result, this portion of the wildlife corridor identified in the CCCP study by Diamond et al. (2010) would be maintained as open space. This open space corridor with a minimum width of approximately 1,500 feet would maintain a corridor between Toro County Park and El Toro Creek allowing for safe wildlife passage. As described above, the Caltrans Scenic SR 68 Improvements Project includes wildlife connectivity improvements at the San Benancio/SR 68 intersection, which would improve wildlife movement through this corridor. In addition to setting aside and protecting 154 acres of permanent open space, the following mitigation measures identified in the 2015 EIR and the adopted MMRP would reduce potentially significant impacts to wildlife movement and corridors:

- **Mitigation Measure 3.3-2a** requires that the project applicant submit landscape design plans that exclude invasive and non-native plants, emphasize the use of native species that are drought-tolerant, which would reduce impacts to the surrounding natural communities and wildlife species that utilize them.
- **Mitigation Measure 3.3-2b** requires that the project applicant controls the introduction of non-native, invasive plants through rapid-revegetation of denuded areas with native species, which would reduce impacts to the surrounding natural communities and wildlife species that utilize them.
- **Mitigation Measure 3.3-2c** requires that the project applicant consult with a qualified biologist to develop Covenants, Conditions, and Restrictions (CC&Rs) that describes the native flora and fauna and provides guidelines for homeowners to follow to limit disturbance of native habitat, which would reduce impacts to the surrounding natural communities and wildlife species that utilize them.
- **Mitigation Measure 3.3-2d** requires that the project applicant designs the proposed development on the project site so that homesites, landscaped areas, and outbuildings are located a minimum of 75 to 100 feet from active drainage channels, which would reduce impacts to wildlife species that utilize riparian and aquatic habitats.
- **Mitigation Measures 3.3-3a through 3.3-3c** require that the project applicant contract with a qualified arborist to prepare a Final Forest Management Plan that minimizes the removal of coast

live oak trees, replacement of impacted oak trees at a 3:1 ratio and monitoring, and protection of trees during construction, which would reduce impacts to the wildlife species that utilize oak trees and oak woodland habitat.

- **Mitigation Measures 3.3-4 through 3.3-6** require that the project applicant contract with a qualified biologist to conduct pre-construction surveys for special-status bats, Monterey dusky-footed woodrat, and nesting raptors and migratory birds, which would reduce potential impacts to these wildlife species during construction.

While these project design features and required mitigation measures would reduce potentially significant impacts to wildlife movement and corridors, they would not reduce impacts to a less-than-significant level and, therefore, additional mitigation measures are identified below. The implementation of these mitigation measures combined with the project design features and required mitigation measures from the 2015 EIR would reduce potentially significant impacts to wildlife movement and corridors to a less-than-significant level.

Mitigation Measures

MM 3.3-8a Consistent with mitigation measure **Mitigation Measure (MM) 3.3-2d**, the project applicant shall design the proposed development on the project site so that homesites, landscaped areas, and outbuildings are located a minimum of 75 to 100 feet from active drainage channels and to remove or relocate development away from the riparian corridor to allow sufficient wildlife movement and access and preserve other biological resources and habitat. No new development or improvements, including fencing, shall occur within 200 feet of the riparian edge. The project applicant shall contract with a qualified biologist to delineate the riparian habitat boundaries.

MM 3.3-8b CC&Rs shall be established for the subdivision the limit the use and installation of solid barrier fencing beyond future building envelopes and yard areas. Fencing will be designed to allow for wildlife movement but still contain cattle and allow for continued grazing on open space lands, as applicable.

MM 3.3-8c Prior to recordation of the final map, the Monterey County Housing and Community Development shall require the project applicant to dedicate the 154 acres of the 180-acre remainder parcel to the County in accordance with Monterey County Code Section 19.12.010(E)(1). The project applicant shall submit to the Monterey County Public Works Facilities Parks for review and approval the necessary documentation to facilitate the land donation prior to the recordation of the final map, including a plan for fencing improvements to be made on the dedicated parcel.

MM 3.3-8d Road lighting will be restricted to that necessary to illuminate the road surface and will not be directed into open space areas.

MM 3.3-8e Any culverts or bridges over drainages will be designed with sufficient capacity to allow for small animal (generally a few inches high and up to 16 inches long) passage (generally a cross-sectional area of 2 to 4 feet for the structure entrance is recommended for small mammals).

MM 3.3-8f In order to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument, the owner/applicant shall submit a Wildlife Corridor Plan (WCP) for all the lots on the vesting tentative map. The WCP shall be prepared in consultation with a qualified biologist with expertise in

wildlife connective planning and is subject to approval by Monterey County Housing and Community Development. The WCP shall identify measures to ensure effective wildlife movement that apply to subdivision improvements to be implemented through subdivision improvement plans and measures that would be made enforceable restrictions or conditions of development of individual lots within the subdivision. Measures shall include, but is not limited to, the following:

- Fencing: limit fencing height (how tall as well as ground clearance), ensure adequate opening in fencing (e.g., post and rail), identify fence types, and identify areas where no fencing will be allowed (e.g., areas adjacent to natural drainage courses). The WCP may allow limited solid fencing in the developed areas within the building envelopes, which are required to be designated in accordance with adopted **Mitigation Measure 3.1-2b**. Fencing specifications shall follow recommendations from "A Landowner's Guide to Wildlife Friendly Fences: How to Build a Fence with Wildlife in Mind" (available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161708#:~:text=We%20recommend%3A&text=A%20top%20wire%20or%20rail,%E2%80%A2%20Preferably%2C%20no%20vertical%20stays).
- Lighting: incorporate wildlife-friendly lighting and identify placement of lighting that minimizes impacts to wildlife.
- Providing alternative corridors outside of the single-family residence and infrastructure development envelopes by limiting access to existing cattle paths and other wildlife trails could help to lessen this impact.
- Best Management Practices have been developed for wildlife corridors (Beier et al. 2008) and should be considered for inclusion in the WCP:
    - Minimize impacts of outdoor night lighting by regulating brightness, shielding, light direction, etc.
    - Prohibit intentional planting of invasive plants.
    - Provide crossing structures on all thoroughfares and maintain them for access.
    - Maintain or improve native riparian vegetation.
    - Encourage small building footprints on large parcels with a minimal road network.
    - Combine habitat conservation with compatible public goals such as recreation and protection of water quality.
    - Develop a public education campaign to inform those living and working within the linkage area about living with wildlife, and the importance of maintaining ecological connectivity.
    - Discourage residents and visitors from feeding or providing water for wild mammals, or otherwise allowing wildlife to lose their fear of people.
    - Install wildlife-proof trash and recycling receptacles and encourage people to store their garbage securely.

- Do not install artificial night lighting on rural roads that pass through the linkage design. Reduce vehicle traffic speeds in sensitive locations by speed bumps, curves, artificial constrictions, and other traffic calming devices.
- Encourage the use of wildlife-friendly fencing on property and pasture boundaries, and wildlife-proof fencing around gardens and other potential wildlife attractants.
- Discourage the killing of "threat" species such as rattlesnakes.
- Reduce or restrict the use of pesticides, insecticides, herbicides, and rodenticides, and educate the public about the effects these chemicals have throughout the ecosystem.

This mitigation measure shall be placed as a note on each final map and in the CC&Rs. Prior to recording the first final map, the Owner/Applicant shall submit the WCP to Monterey County Housing and Community Development for review and approval. Recommendations of the WCP shall be incorporated in the subdivision improvements plans or made enforceable conditions of development for individual lots in the subdivision.

Implementation of the above mitigation measures would minimize disturbance and restriction of access to the Highway 68/El Toro Creek Bridge undercrossing and corridor in order to ensure movement of wildlife to and from the Marks Ranch and Toro County Park to the FONM, and maintain movement through the project site. These measures would reduce the proposed project's effect on wildlife movement and corridors to a less-than-significant level. No further mitigation would be necessary.

3.3.3 References

Beier, P. 1996. Metapopulation models, tenacious tracking, and cougar conservation. In D. R. McCullough (ed.), Metapopulations and Wildlife Conservation. Washington, D.C.: Island Press.

Beier, P., Majka, D., Spencer, W. 2008. Forks in the Road: Choice in Procedures for Designing Wildlife Linkages. Conservation Biology. 22:836-851.

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Diamond, T., D. Waetjen, I. Lacher, David Waetjen, K. Harrold, and F.M. Shilling. 2013. "Prioritizing mitigation for interstates using wildlife movement information." In Proceedings of the 2013 International Conference on Ecology and Transportation.

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WRA. 2014. Technical Memorandum: Ferrini Ranch Wildlife Corridors. September 5, 2014.

Zander Associates. 2001a. Biological Resource Assessment, Encina Hills Property, Monterey County, California.

Zander Associates. 2001b. Results of Follow-up Survey, Encina Hills Property, Monterey County, California.

Zander Associates. 2005. Revised Biological Resource Assessment, Encina Hills Property, Monterey County, California.

Chapter 7.0 REPORT PREPARERS AND REFERENCES

7.1 LEAD AGENCY

County of Monterey

- Craig Spencer, AICP, Acting Director Housing and Community Development
- Kelly Donlon, Assistant County Counsel

7.2 SUPPLEMENTAL DRAFT EIR CONSULTANTS

EIR Consultant: Denise Duffy and Associates, Inc.

- Denise Duffy, Principal
- Erin Harwayne, AICP, Senior Project Manager
- Josh Harwayne, Senior Environmental Scientist
- Matt Johnson, Senior Environmental Scientist/Wildlife Biologist
- Patric Krabacher, Senior Environmental Scientist/Certified Arborist
- Oliviya Wyse, Associate Environmental Planner
- Robyn Simpson, Associate Planner
- Troy Lawson, Assistant Environmental Scientist
- Mikaela Bogdan, Assistant Environmental Planner

7.3 REFERENCES

Beier, P. 1996. Metapopulation models, tenacious tracking, and cougar conservation. In D. R. McCullough (ed.), Metapopulations and Wildlife Conservation. Washington, D.C.: Island Press.

Beier, P., Majka, D., Spencer, W. 2008. Forks in the Road: Choice in Procedures for Designing Wildlife Linkages. Conservation Biology. 22:836-851.

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California Department of Transportation [Caltrans]. 2023. Scenic Route 68 Corridor Improvements Project Draft Environmental Impact Report/Environmental Assessment and Section 4(f) Evaluation. State Clearinghouse Number 2019030448. November 2023. Available at: https://publicinput.com/Customer/File/Full/c313c687-4305-4938-8a54-4b389a110113.

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Diamond, T., D. Waetjen, I. Lacher, David Waetjen, K. Harrold, and F.M. Shilling. 2013. "Prioritizing mitigation for interstates using wildlife movement information." In Proceedings of the 2013 International Conference on Ecology and Transportation.

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Haddad, N.M. 1999. Corridor use predicted from behaviors at habitat boundaries. The American Naturalist. 153:215-227.

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Kubes, J. 1996. Biocentres and corridors in a cultural landscape: A critical assessment of the 'territorial system of ecological sustainability.' Landscape and Urban Planning. 35:231-240.

Pathways for Wildlife. 2017. Monterey-Salinas SR 68 Plan: Wildlife Connectivity Analysis. Prepared for the Transportation Agency for Monterey County.

Rovero, Francesco and Zimmermann, Fridolin & Berzi, Duccio & Meek, Paul. 2013. " Which camera trap type and how many do I need?" A review of camera features and study designs for a range of wildlife research applications. Hystrix. 24. 10.4404/hystrix-24.2-8789.

Tobler, M. W., Carrillo-Percastegui, S. E., Leite Pitman, R., Mares, R., & Powell, G. 2008 An evaluation of camera traps for inventorying large- and medium-sized terrestrial rainforest mammals. Animal Conservation, 11(3): 169-178.

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WRA. 2014. Technical Memorandum: Ferrini Ranch Wildlife Corridors. September 5, 2014.

Zander Associates. 2001a. Biological Resource Assessment, Encina Hills Property, Monterey County, California.

Zander Associates. 2001b. Results of Follow-up Survey, Encina Hills Property, Monterey County, California.

Zander Associates. 2005. Revised Biological Resource Assessment, Encina Hills Property, Monterey County, California.

Appendix A

Notice of Preparation for Supplemental Draft EIR and Public Comment Letters

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Notice of Preparation

To: Trustee and Responsible Agencies/All Interested Persons

(Address)

From: County of Monterey – Housing and Community Development

1441 Schilling Place, South 2nd Floor

Salinas, CA 93901

(Address)

Subject: Notice of Preparation of a Supplemental Draft Environmental Impact Report

The County of Monterey will be the Lead Agency and will prepare a Supplemental Draft Environmental Impact Report (EIR) for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the Supplemental Draft EIR prepared by our agency when considering your permit or other approval for the project.

The proposed project description, location, and the potential environmental effects are contained in the attached materials. Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 30 days after receipt of this notice.

A public scoping meeting will be held via Zoom Webinar on **July 25, 2022, from 1:00-2:00pm**. The Zoom Webinar may be joined via the following methods:

Join from a PC, Mac, iPad, iPhone or Android device:
Please use this URL to join. https://montereycty.zoom.us/j/96249605619
Or join by phone:
Dial: 1-669-900-6833
Webinar ID: 931 1080 8964
Password: 706767

Please send any responses to Erik Lundquist, ACIP, Director of Housing & Community Development at the address shown above or LundquistE@co.monterey.ca.us or call (831) 755 - 5154. Please give a name for a contact in your agency.

Project Title: Harper Canyon (Encina Hills) Subdivision (PLN000696)
Project Applicant, if any: Harper Canyon Realty, LLC. 313 S. Main Street, Suite D, Salinas CA 93901

Date _____ Signature _____
Title Director of Housing & Community Development
Telephone (831) 755- 5154

Reference: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375.

PROJECT LOCATION AND SETTING

The Harper Canyon Subdivision (proposed project) is a 17-lot subdivision on 164 acres, with one 180-acre remainder parcel in Monterey County. The proposed project is located along the State Route 68 corridor of Monterey County off San Benancio Road. The regional location is shown in **Figure 1, Regional Location**, and the project site is shown in **Figure 2, Project Location**.

The terrain is varied with elevations ranging from 340 feet in the northern portion to approximately 1,020 feet in the southeastern portion of the proposed project site. Slopes within the proposed project site are variable and range from 0-30% grades. Existing improvements onsite include dirt roads and trails. The proposed project site is composed of annual grasslands, coast live oak woodlands and savannas, coastal scrub, and maritime chaparral. The proposed project site contains natural drainages and springs that feed El Toro Creek and the Salinas River which are located north and northeast of the proposed project site, respectively.

GENERAL PLAN LAND USE DESIGNATION AND ZONING

The proposed project site is located in the Toro Area Land Use Plan. The proposed project site is comprised of Assessor Parcel Numbers (APNs) 416-611-001-000 and 416-611-002-000. As described in the *Harper Canyon Subdivision Final Environmental Impact Report [SCH#2003071157],* the Monterey County General Plan designates these parcels as "Rural Density Residential," with a small portion of the proposed project site designated as "Low Density Residential." Monterey County Zoning has both parcels zoned as "Rural Density Residential" with a "Design Control District."

PROJECT OVERVIEW

Background

The application for the proposed project was deemed complete by the County of Monterey on November 22, 2002. An initial study was prepared to evaluate the environmental effects of the proposed project in July 2003. The initial study was circulated for a 30-day public review before going before the Monterey County Planning Commission who directed staff to proceed with an EIR. A Draft EIR (DEIR) was prepared and distributed for review in October 2008. Upon review of the DEIR, County staff determined that significant new information existed, and issues raised during the public review period were to be addressed. As such, County staff request a recirculation of relevant portions of the DEIR pursuant to CEQA Guidelines §15088.5. The Recirculated DEIR was prepared by PMC in December 2009, and the Final Environmental Impact Report in 2013 for the Harper Canyon Subdivision.

The Monterey County Board of Supervisors certified the Harper Canyon Subdivision EIR and approved the proposed project on April 7, 2015. This certification and approval came after public testimony stated that the proposed project would severely degrade a regionally significant wildlife corridor between Toro Regional Park and Fort Ord National Monument (BOS Res. 14-075). To address concerns related to biological resources, a Condition Compliance and Mitigation Monitoring and Reporting Plan was subsequently prepared in accordance with Monterey County regulations and incorporated a requirement to

develop a Wildlife Corridor Plan to facilitate wildlife movement and preserve wildlife corridors. The conditions of the Condition Compliance and Mitigation Monitoring Reportion Plan sufficiently met the criteria of California Government Code Sec. 66474 (Subdivision Map Act) and Monterey County Code Title 19 (BOS Draft Resolution April 2015). Project documents can be accessed at: https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/current-major-projects/harper-canyon-encina-hills-subdivision-eir.

The 2015 Board of Supervisor's decision was challenged and ultimately resulted in the Sixth District Court of Appeal's opinion that the EIR lacked analysis concerning the proposed project's potential impacts to the Toro Creek wildlife corridor (*Landwatch Monterey et al. v. County of Monterey et al., Case No. H046932).* As a response to the court of appeal ruling, a supplemental draft EIR was requested to evaluate the proposed project's potential impacts on the wildlife corridors in the vicinity of the proposed project site.

On December 3, 2018, the Superior Court issued its Final Statement of Decision and Ruling on Remedy in the case. The County and applicant appealed the Superior Court's judgement and argued that substantial evidence supported the County's determinations regarding impacts to wildlife corridors. On March 29, 2021, the Court of Appeal issued its opinion (Opinion) agreeing with the trial court's conclusion that the FEIR's analysis of the impacts on wildlife corridors was deficient and not supported by substantial evidence. The Court of Appeal remanded the matter to the trial court with directions to vacate its original order and issue a new writ of mandate ordering the Court to vacate Resolution No. 15-084 and to vacate the Board's approval and certification of the EIR for the project only as it relates to wildlife corridor issues.

On July 1, 2021, the Superior Court issued its Second Amended Judgment Granting Peremptory Writ of Mandate, and Second Amended Peremptory Writ of Mandate which requires the Board to:

1. Rescind portions of Resolution No. 15-084 certifying the FEIR, adopting the findings, approving the Combined Development Permit, and adopting the Mitigation Monitoring and Reporting Plan for the project only to the extent they are dependent on wildlife corridor issues.
2. Suspend any and all activities related to the project except the preparation, circulation, and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the opinion.
3. Before taking any further action on the project, comply with CEQA by the preparation, circulation and consideration of a legally adequate EIR with regard to the wildlife corridor issues discussed in the opinion.
4. Make and file a return to this writ within 60 days of taking such action, setting forth what it has done to comply.

As of August 24, 2021, the Board passed and adopted Resolution No. 21-151 which incorporates the Second Amended Peremptory Writ of Mandate issued by the Superior Court.

Project Description

The Supplemental Draft EIR will examine wildlife movement between the Fort Ord National Monument, Santa Lucia Ranges, and Toro Creek via under-crossing of State Route 68, overpasses along Portola Drive, and local/onsite drainages and culverts and will include the review of previous research, including but not limited to, the Central Coast Connectivity Project and the 2008 WRA Environmental Consultants memorandum developed for the Ferrini Ranch EIR [SCH2005091055]. In response to the court of appeal ruling, the document will focus solely on analyzing the wildlife corridors in the vicinity of the proposed project and will evaluate the potential impacts the proposed project may have on these corridors. The

Supplemental Draft EIR will identify, where necessary, mitigation to avoid, eliminate, or reduce impacts to a less than significant level, where feasible.

RESPONSIBLE AGENCIES

For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project (CEQA Guidelines Section 15381). Discretionary approval power may include such actions as issuance of a permit, authorization, or easement needed to complete some aspect of a project. The County of Monterey as the lead agency, has approval authority and responsibility for considering the environmental effects of the proposed project as a whole.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

Pursuant to CEQA Guidelines (Guidelines §15163) a Supplemental Draft EIR will be prepared to evaluate the potential physical and environmental impacts of the proposed project on wildlife corridors. The Supplemental Draft EIR will identify mitigation that avoids, eliminates, or reduces impact to a less than significant level, where feasible. It is anticipated that the County will rely on the Draft EIR and SEIR for subsequent project phases and development as deemed appropriate and consistent with the requirements of CEQA by the County as the Lead Agency.

PUBLIC SCOPING MEETING

Monterey County Housing and Community Development (HCD) will hold a public scoping meeting for the proposed project. This meeting will be held on July 25, 2022. The scoping meeting will include a description of the proposed project and the environmental review process. The primary goal of the scoping meeting is to obtain the public's input on the Supplemental Draft EIR analysis for the proposed project. Responsible agencies and members of the public are invited to attend and provide input on the scope of the Supplemental Draft EIR.

Date and Time: July 25, 2022, at 1:00-2:00pm

Zoom Info: The public may also join this meeting using Zoom by visiting the web address https://montereycty.zoom.us/j/93110808964?pwd=QUtiQUdISktuWEFLNm0zMmhRQ3BxUT09 or dialing one of the following telephone numbers: +1 408 638 0968 US (San Jose) or +1 669 900 6833 US (San Jose). To access the meeting, please enter the Webinar ID and Passcode below.
Webinar ID: 931 1080 8964
Password: 706767

COMMENTS ON THE SCOPE OF THE SUPPLEMENTAL EIR

Pursuant to CEQA Guidelines §15083 the NOP will be circulated for public review and comment for a period of 30 days beginning **July 15, 2022**. Monterey County HCD welcomes all comments regarding the potential environmental impacts of the proposed project to wildlife corridors, as relevant to the Supplemental Draft EIR. All comments will be considered in the preparation of the Supplemental Draft EIR. **Written comments will be accepted by Monterey County through 5:00 P.M. on August 15, 2022**.

You may submit comments in a variety of ways: (1) by U.S. mail; (2) by electronic mail (e-mail); or (3) by attending the public scoping meeting and submitting verbal comments at that time. Comments provided by

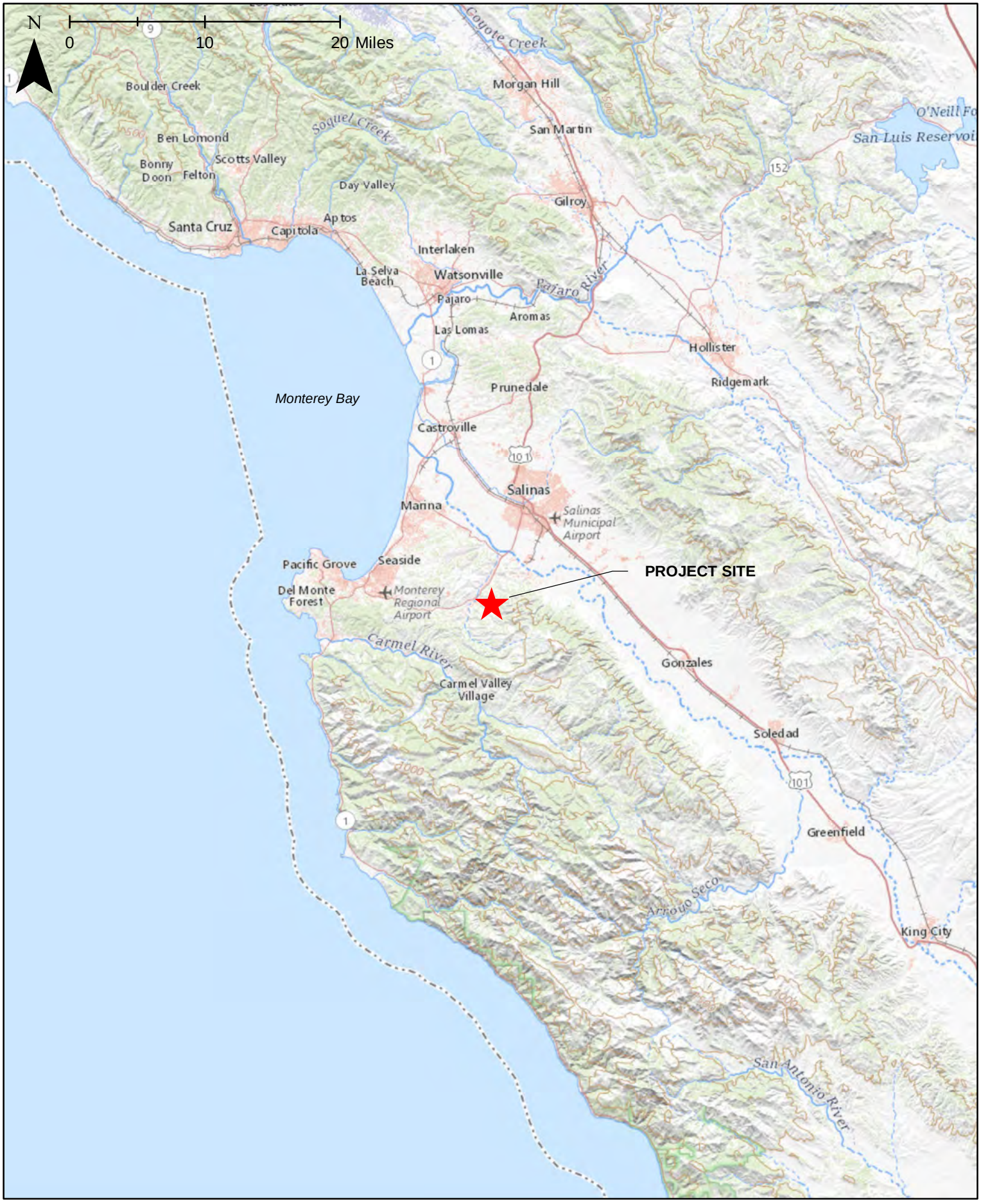
email should include "**Harper Canyon Subdivision Supplemental Draft EIR NOP Scoping Comments**" in the subject line, and the name and physical address of the commenter should be contained in the body of the email.
Please send all comments via mail to:

ATTN: Erik Lundquist, AICP
Director of Housing &Community Development
Monterey County HCD
2441 Schilling Place
Salinas, California 93901

OR via email to:
Erik Lundquist, ACIP
Director of Housing & Community Development
LundquistE@co.monterey.ca.us

Subject line: "**Harper Canyon Subdivision Supplemental Draft EIR NOP Scoping Comments**"

Your views and comments on how the proposed project may affect the wildlife corridors are welcomed and will be used to identify the range of action, alternatives, mitigation measures, and significant effects to be analyzed in depth in the Supplemental Draft EIR. Please contact Erik Lundquist, ACIP, Director of Housing & Community Development at LundquistE@co.monterey.ca.us or call (831) 755 - 5154. if you have any questions about the environmental review process for the proposed project.

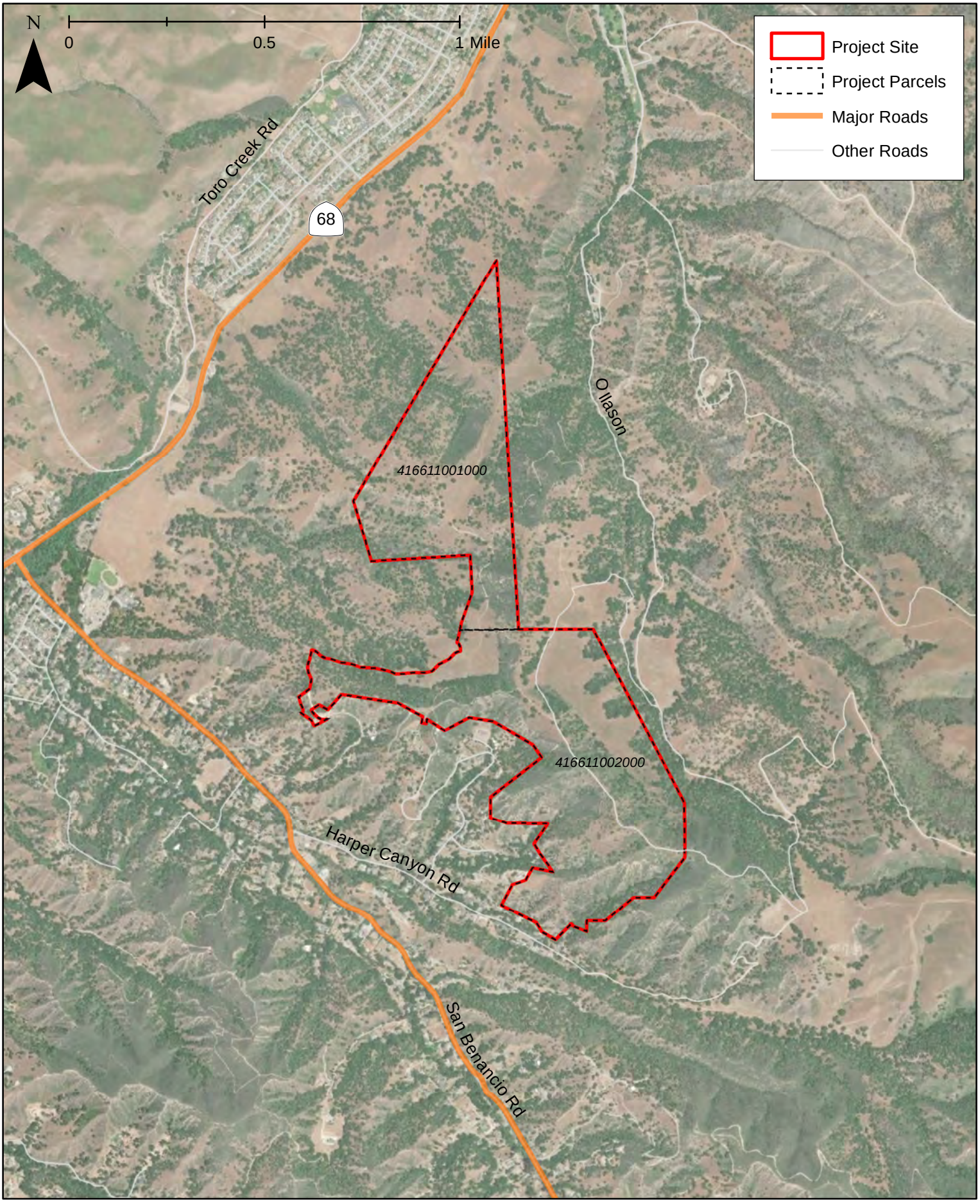


Regional Location

Date	Scale	Figure
6/9/2022	1 in = 50,000 ft	1

Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Path: D:\GIS\GIS_Projects\2022-27 Harper Canyon Subdivision\Final Products\Fig 1 - Regional Location.mxd



Project Location

Date
6/9/2022

Scale
1 in = 2,000 ft

Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Figure
2

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MONTEREY COUNTY
HOUSING AND COMMUNITY DEVELOPMENT
Erik V. Lundquist, AICP, Director

HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

(831)755-5025
www.co.monterey.ca.us

July 15, 2022

State Clearinghouse Staff
Via email

Subject: Request submittal of "corrected" Notice of Preparation under SCH# 2003071157

County of Monterey Community & Housing Development staff filed a Notice of Preparation on July 15, 2022 for PLN000696 (Harper Canyon [Encina Hills] Subdivision). The document was published the same day.

Clerical staff failed to attach Figure 1 & Figure 2 to the Notice of Preparation.

The "corrected" Notice of Preparation with the two figures included is attached to this letter.

Please advise me if the "corrected" Notice of Preparation can be accepted & published to **replace** the existing NOP published July 15th.

Staff **has not** filed the Notice of Preparation with the County Clerk.

Please let me know if you have any questions or require further information/documentation.

Thank you.

Michele Friedrich

Sincerely,
Michele Friedrich
Housing & Community Development Department
Principal Office Assistant
(831) 755-5189
friedrichm@co.monterey.ca.us

Gavin Newsom
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit

Samuel Assefa
Director

Memorandum

Date: July 15, 2022

To: All Reviewing Agencies

From: Samuel Assefa, Director

Re: SCH # **2003071157**

Harper Canyon (Encina Hills) Subdivision

The Lead Agency has corrected some information regarding the above-mentioned project. Please see the attached file(s) for more specific information: **CORRECTED_NOP_PLN000696** and **LET_STAFF_PLN000696_071522.** All other project information remains the same.

Notice of Preparation

To: Trustee and Responsible Agencies/All Interested Persons

(Address)

From: County of Monterey – Housing and Community Development

1441 Schilling Place, South 2nd Floor

Salinas, CA 93901

(Address)

Subject: Notice of Preparation of a Supplemental Draft Environmental Impact Report

The County of Monterey will be the Lead Agency and will prepare a Supplemental Draft Environmental Impact Report (EIR) for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the Supplemental Draft EIR prepared by our agency when considering your permit or other approval for the project.

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Join from a PC, Mac, iPad, iPhone or Android device:
Please use this URL to join. https://montereycty.zoom.us/j/96249605619
Or join by phone:
Dial: 1-669-900-6833
Webinar ID: 931 1080 8964
Password: 706767

Please send any responses to Erik Lundquist, ACIP, Director of Housing & Community Development at the address shown above or CEQAcomments@co.monterey.ca.us or call (831) 755-5154. Please give a name for a contact in your agency.

Project Title: Harper Canyon (Encina Hills) Subdivision [PLN000696)

Project Applicant, if any: Harper Canyon Realty LLC, 313 S Main St Ste D, Salinas CA 93901

Date July 14, 2022

Signature

Title: Director of Housing & Community Development

Telephone: (831) 755- 5154

Reference: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375.

PROJECT LOCATION AND SETTING

The Harper Canyon Subdivision (proposed project) is a 17-lot subdivision on 164 acres, with one 180-acre remainder parcel in Monterey County. The proposed project is located along the State Route 68 corridor of Monterey County off San Benancio Road. The regional location is shown in **Figure 1, Regional Location**, and the project site is shown in **Figure 2, Project Location**.

The terrain is varied with elevations ranging from 340 feet in the northern portion to approximately 1,020 feet in the southeastern portion of the proposed project site. Slopes within the proposed project site are variable and range from 0-30% grades. Existing improvements onsite include dirt roads and trails. The proposed project site is composed of annual grasslands, coast live oak woodlands and savannas, coastal scrub, and maritime chaparral. The proposed project site contains natural drainages and springs that feed El Toro Creek and the Salinas River which are located north and northeast of the proposed project site, respectively.

GENERAL PLAN LAND USE DESIGNATION AND ZONING

The proposed project site is located in the Toro Area Land Use Plan. The proposed project site is comprised of Assessor Parcel Numbers (APNs) 416-611-001-000 and 416-611-002-000. As described in the *Harper Canyon Subdivision Final Environmental Impact Report [SCH#2003071157],* the Monterey County General Plan designates these parcels as "Rural Density Residential," with a small portion of the proposed project site designated as "Low Density Residential." Monterey County Zoning has both parcels zoned as "Rural Density Residential" with a "Design Control District."

PROJECT OVERVIEW

Background

The application for the proposed project was deemed complete by the County of Monterey on November 22, 2002. An initial study was prepared to evaluate the environmental effects of the proposed project in July 2003. The initial study was circulated for a 30-day public review before going before the Monterey County Planning Commission who directed staff to proceed with an EIR. A Draft EIR (DEIR) was prepared and distributed for review in October 2008. Upon review of the DEIR, County staff determined that significant new information existed, and issues raised during the public review period were to be addressed. As such, County staff request a recirculation of relevant portions of the DEIR pursuant to CEQA Guidelines §15088.5. The Recirculated DEIR was prepared by PMC in December 2009, and the Final Environmental Impact Report in 2013 for the Harper Canyon Subdivision.

The Monterey County Board of Supervisors certified the Harper Canyon Subdivision EIR and approved the proposed project on April 7, 2015. This certification and approval came after public testimony stated that the proposed project would severely degrade a regionally significant wildlife corridor between Toro Regional Park and Fort Ord National Monument (BOS Res. 14-075). To address concerns related to biological resources, a Condition Compliance and Mitigation Monitoring and Reporting Plan was subsequently prepared in accordance with Monterey County regulations and incorporated a requirement to develop a Wildlife Corridor Plan to facilitate wildlife movement and preserve wildlife corridors. The conditions of the Condition Compliance and

Mitigation Monitoring Reportion Plan sufficiently met the criteria of California Government Code Sec. 66474 (Subdivision Map Act) and Monterey County Code Title 19 (BOS Draft Resolution April 2015). Project documents can be accessed at: https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/current-major-projects/harper-canyon-encina-hills-subdivision-eir.

The 2015 Board of Supervisor's decision was challenged and ultimately resulted in the Sixth District Court of Appeal's opinion that the EIR lacked analysis concerning the proposed project's potential impacts to the Toro Creek wildlife corridor (*Landwatch Monterey et al. v. County of Monterey et al., Case No. H046932).* As a response to the court of appeal ruling, a supplemental draft EIR was requested to evaluate the proposed project's potential impacts on the wildlife corridors in the vicinity of the proposed project site.

On December 3, 2018, the Superior Court issued its Final Statement of Decision and Ruling on Remedy in the case. The County and applicant appealed the Superior Court's judgement and argued that substantial evidence supported the County's determinations regarding impacts to wildlife corridors. On March 29, 2021, the Court of Appeal issued its opinion (Opinion) agreeing with the trial court's conclusion that the FEIR's analysis of the impacts on wildlife corridors was deficient and not supported by substantial evidence. The Court of Appeal remanded the matter to the trial court with directions to vacate its original order and issue a new writ of mandate ordering the Court to vacate Resolution No. 15-084 and to vacate the Board's approval and certification of the EIR for the project only as it relates to wildlife corridor issues.

On July 1, 2021, the Superior Court issued its Second Amended Judgment Granting Peremptory Writ of Mandate, and Second Amended Peremptory Writ of Mandate which requires the Board to:

1. Rescind portions of Resolution No. 15-084 certifying the FEIR, adopting the findings, approving the Combined Development Permit, and adopting the Mitigation Monitoring and Reporting Plan for the project only to the extent they are dependent on wildlife corridor issues.
2. Suspend any and all activities related to the project except the preparation, circulation, and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the opinion.
3. Before taking any further action on the project, comply with CEQA by the preparation, circulation and consideration of a legally adequate EIR with regard to the wildlife corridor issues discussed in the opinion.
4. Make and file a return to this writ within 60 days of taking such action, setting forth what it has done to comply.

As of August 24, 2021, the Board passed and adopted Resolution No. 21-151 which incorporates the Second Amended Peremptory Writ of Mandate issued by the Superior Court.

Project Description

The Supplemental Draft EIR will examine wildlife movement between the Fort Ord National Monument, Santa Lucia Ranges, and Toro Creek via under-crossing of State Route 68, overpasses along Portola Drive, and local/onsite drainages and culverts and will include the review of previous research, including but not limited to, the Central Coast Connectivity Project and the 2008 WRA Environmental Consultants memorandum developed for the Ferrini Ranch EIR [SCH2005091055]. In response to the court of appeal ruling, the document will focus solely on analyzing the wildlife corridors in the vicinity of the proposed project and will evaluate the potential impacts the proposed project may have on these corridors. The Supplemental Draft EIR will identify, where necessary, mitigation to avoid, eliminate, or reduce impacts to a less than significant level, where feasible.

RESPONSIBLE AGENCIES

For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project (CEQA Guidelines Section 15381). Discretionary approval power may include such actions as issuance of a permit, authorization, or easement needed to complete some aspect of a project. The County of Monterey as the lead agency, has approval authority and responsibility for considering the environmental effects of the proposed project as a whole.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

Pursuant to CEQA Guidelines (Guidelines §15163) a Supplemental Draft EIR will be prepared to evaluate the potential physical and environmental impacts of the proposed project on wildlife corridors. The Supplemental Draft EIR will identify mitigation that avoids, eliminates, or reduces impact to a less than significant level, where feasible. It is anticipated that the County will rely on the Draft EIR and SEIR for subsequent project phases and development as deemed appropriate and consistent with the requirements of CEQA by the County as the Lead Agency.

PUBLIC SCOPING MEETING

Monterey County Housing and Community Development (HCD) will hold a public scoping meeting for the proposed project. This meeting will be held on July 25, 2022. The scoping meeting will include a description of the proposed project and the environmental review process. The primary goal of the scoping meeting is to obtain the public's input on the Supplemental Draft EIR analysis for the proposed project. Responsible agencies and members of the public are invited to attend and provide input on the scope of the Supplemental Draft EIR.

Date and Time: July 25, 2022, at 1:00-2:00pm

Zoom Info: The public may also join this meeting using Zoom by visiting the web address https://montereycty.zoom.us/j/93110808964?pwd=QUtiQUdISktuWEFLNm0zMmhRQ3BxUT09 or dialing one of the following telephone numbers: +1 408 638 0968 US (San Jose) or +1 669 900 6833 US (San Jose). To access the meeting, please enter the Webinar ID and Passcode below.
Webinar ID: 931 1080 8964
Password: 706767

COMMENTS ON THE SCOPE OF THE SUPPLEMENTAL EIR

Pursuant to CEQA Guidelines §15083 the NOP will be circulated for public review and comment for a period of 30 days beginning **July 15, 2022**. Monterey County HCD welcomes all comments regarding the potential environmental impacts of the proposed project to wildlife corridors, as relevant to the Supplemental Draft EIR. All comments will be considered in the preparation of the Supplemental Draft EIR. **Written comments will be accepted by Monterey County through 5:00 P.M. on August 15, 2022**.

You may submit comments in a variety of ways: (1) by U.S. mail; (2) by electronic mail (e-mail); or (3) by attending the public scoping meeting and submitting verbal comments at that time.

Comments provided by email should include "**Harper Canyon Subdivision Supplemental Draft EIR NOP Scoping Comments**" in the subject line, and the name and physical address of the commenter should be contained in the body of the email.

Please send all comments via mail to:

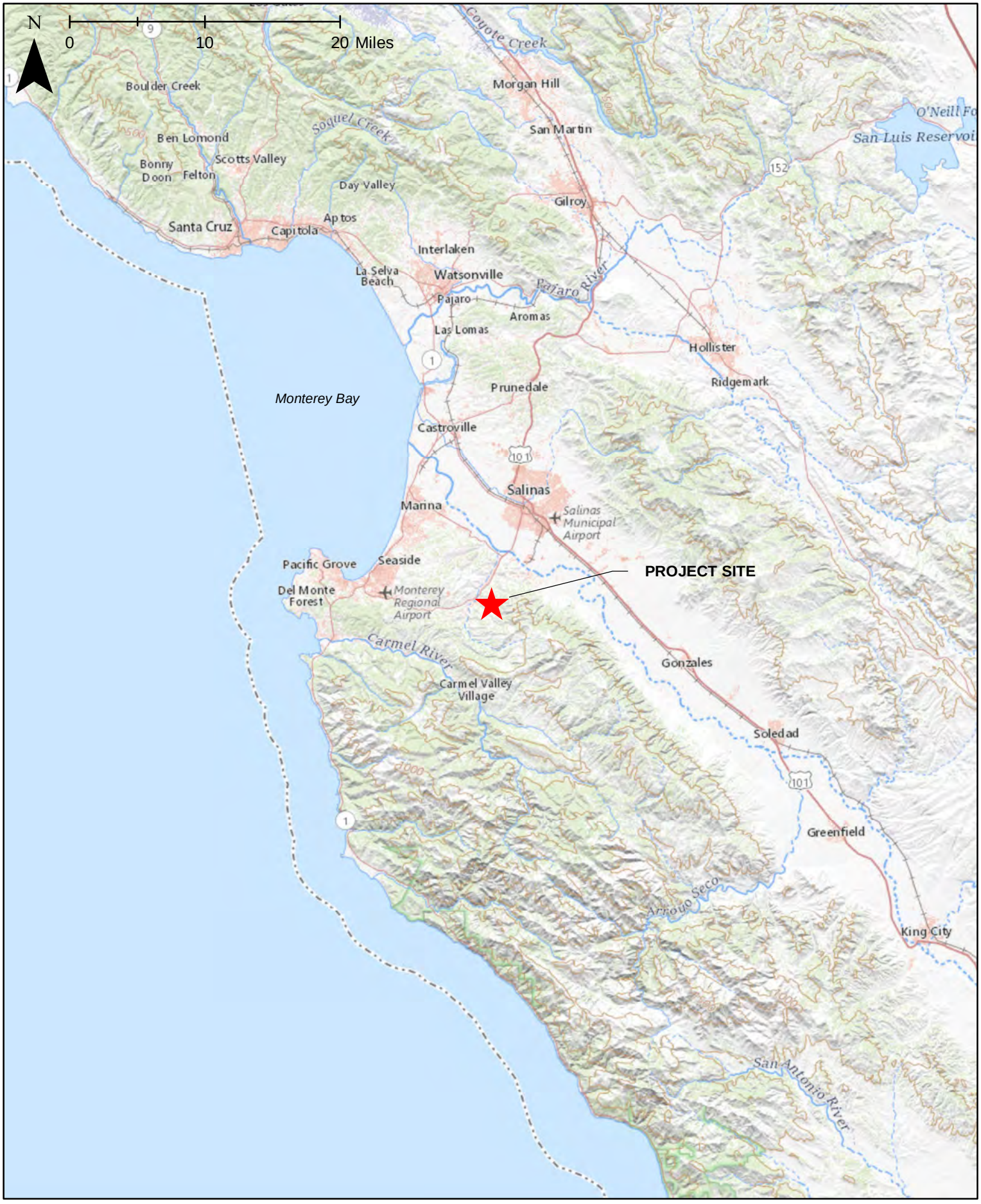
ATTN: Erik Lundquist, AICP
Director of Housing & Community Development
Monterey County HCD
1441 Schilling Place 2nd Floor
Salinas, California 93901

OR via email to:

Erik Lundquist, ACIP
Director of Housing & Community Development
CEQAcomments@co.monterey.ca.us

An emailed document should contain the name of the person or entity submitting the comment and contact information such as a phone number, mailing address and/or email address and include any and all attachments referenced in the email. To ensure a complete and accurate record, we request that you also provide a follow-up hard copy to the name and address listed above. If you do not wish to send a follow-up hard copy, then please send a second email requesting confirmation of receipt of comments with enough information to confirm that the entire document was received. If you do not receive email confirmation of receipt of comments, then please submit a hard copy of your comments to ensure inclusion in the environmental record or contact Agency to ensure the Agency has received your comments.

Your views and comments on how the proposed project may affect the wildlife corridors are welcomed and will be used to identify the range of action, alternatives, mitigation measures, and significant effects to be analyzed in depth in the Supplemental Draft EIR. Please contact Erik Lundquist, ACIP, Director of Housing & Community Development at lundquiste@co.monterey.ca.us or call (831) 755-5154. if you have any questions about the environmental review process for the proposed project.

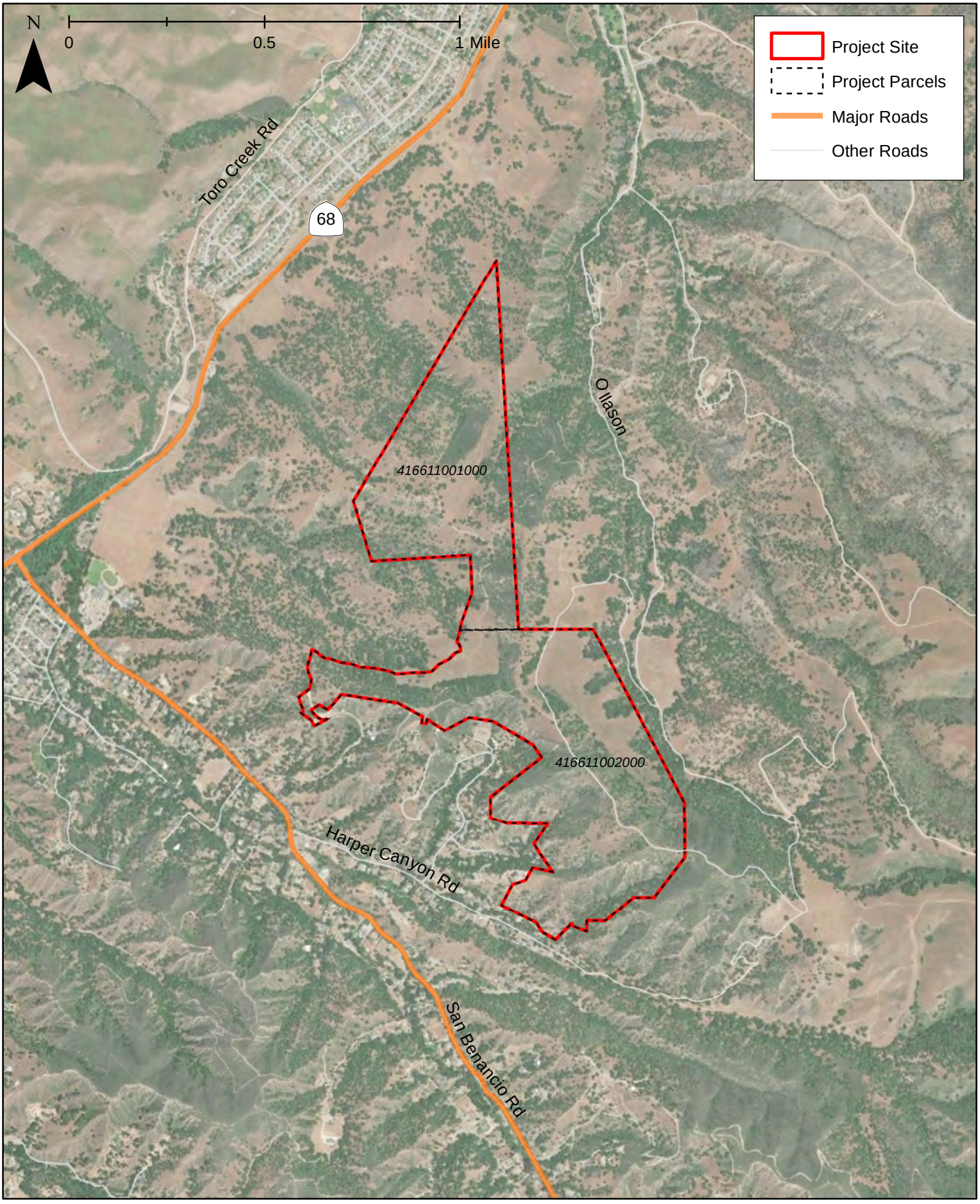


Regional Location

Date	Scale	Figure
6/9/2022	1 in = 50,000 ft	1

Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Path: D:\GIS\GIS_Projects\2022-27 Harper Canyon Subdivision\Final Products\Fig 1 - Regional Location.mxd



Project Location

Date
6/9/2022

Scale
1 in = 2,000 ft

Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Figure
2

Path: D:\GIS\GIS_Projects\2022-27 Harper Canyon Subdivision\Final Products\Fig 2 - Project Location.mxd

To: Erik Lundquist
Re: NOP Zoom Meeting

Notice of Preparation: Determine scope and contents of EIR

Guidelines 15375: To solicit guidance from other agencies on the scope and content of environmental information to be included in the EIR

Objective: To define the wildlife corridor boundaries in the vicinity of the proposed project and determine whether the project intrudes into the corridor. If the project intrudes, determine how much and if there is a conflict, propose feasible mitigation measures and/or project alternatives.

Methodology: To investigate the nature and magnitude of the wildlife movement and habitat in vicinity of the project and approximate the wildlife corridor boundaries beginning, middle, end, width, and how much the project intrudes into the corridor

Steps:

1. Identify target areas on both side of highway 68

    a. Project within Regional Corridor. AR: 757

    b. Evidence of movement on both sides in TAMC and Connectivity Reports, testimony by planners and citizens before P/C and BOS, and Regional Setting described at 3.3.1 of DEIR, AR: 757.

    c. Court of Appeal opinion 44: Comments from staff suggest that a corridor passes thru the property.

2. Identify different species moving through the Regional Corridor and the vicinity of the project. Identify the movement and dispersal patterns of species of interest and their juveniles.

    a. Nature and magnitude of wildlife movement in the vicinity of project

    b. Determine travel routes thru transient surveys (Utilize the Toro Creek underpass as the focal point to identify the extent of the wildlife corridor boundaries leading south. Identify and track all trails leaving the creek from the east or south side between the Highway 68 over-crossing and the elementary school. Track all such trails to determine if any continue into or across the subject property and beyond), radio tags, stereoscopic aerial photography and camera trappings.

    c. Identify species with larger home ranges

    c. Identify habitat needs of the species identified-nesting and raising young

3. Identify habitat of the corridor

    a. (Linkage) Habitat attributable to certain species (needs) and how that may influence wildlife movement through the property and to adjacent open space.

4. Vicinity of project is an area designated by State as essential thoroughfare.

5. Assess for mountain lions as a candidate under California Endangered Species Act.

ATTACHMENT 1

Richard H. Rosenthal

From: Richard H. Rosenthal <rrosenthal62@sbcglobal.net>
Sent: Monday, March 21, 2022 7:43 PM
To: Erick Lundquist
Cc: Richard H. Rosenthal; zancan@aol.com; Donlon, Kelly L. x5313; district5 @co.monterey.ca.us; district4@co.monterey.ca.us; district3@co.monterey.ca.us; district2 @co.monterey.ca.us; district1@co.monterey.ca.us; cttb@co.monterey.ca.us
Subject: Agenda Item 45

Erik: Thank you for Board Report on agenda item 45 on Tuesday's Board Agenda.

For the reasons stated below and discussions I previously had with you, Meyer Community Group requests this matter to be taken off of calendar until such time as an adequate proposal is presented that meets the mandates of the Court of Appeal decision that includes technical studies and surveys of the wildlife movement in the vicinity of the project.

Your staff report goes through the chronology of events with the case and generally recaps the Court of Appeal decision with regard to the water issues. It does not discuss, in any detail, the Court of Appeal mandate regarding the new EIR on Wildlife Corridor issues. I have discussed them with you for the last seven months.

The Court of Appeal opinion requires the determination of the baseline, which is the first step in the environmental review. Opinion p.44. The Opinion goes to note the EIR fails to describe the basic information necessary for a reader to understand the topic of wildlife corridor, "such as where the corridor begins and ends, its width, and how far the Project intrudes upon the corridor". Opinion p. 44-45 The Court also noted "the County appears to have concluded without any study or supporting documentation the layout will be sufficient to maintain the corridor and prevent interference with animal movement." Id. The new EIR's function is to provide the studies and documentation to determine the nature and magnitude of animal movement in the vicinity of the project and how far the project intrudes into it. Id. *Sierra Club v. County of Fresno* (2018) 6 Cal 5th 502, 514. (Sierra Club) In other words, the EIR is vacant of any relevant information on wildlife corridors in the vicinity of the project requiring the Court order EIR to start from scratch.

If the wildlife corridor assessment determines that there is a conflict between the wildlife corridor and the project intruding into it, and the intrusion is significant, the new EIR will have to address project alternatives in light of the significant impact, *Sierra Club* at 514, and possibly project description if lots have to be eliminated or moved. See Administrative Record AR: 4973. Lot movements was also discussed by Judge Wills in his Final Statement of Decision at JA 1514 ".., a new analysis of the wildlife corridors could result in a change of lot locations."

With these metrics in mind, the Denise Duffy and Associates (DD&A) proposal is woefully inadequate to comply with the Court of Appeal opinion:

1. The total cost is $19,885.00. This is extremely low and it reflects, in part, a small number of hours spent on determining the baseline for the wildlife corridor with no technical study. Robert Baker, Inc. proposal total estimated cost is $174,610. EMC's estimated cost is $39,770.
2. Task 1, Project Initiation/Data Collection states that 20 hours at an estimated cost of $3,072. Task 1 indicates that DD&A will visit the site to assess the environmental conditions. Robert Baker's proposal stated 83 hours at an estimated cost of $22,180 and $10,000 for subcontractor. EMC's estimates 88 hours and an estimated cost of $12,820. None of the proposals discuss a substantive wildlife survey that would provide meaningful and relevant data regarding the nature and magnitude of wildlife movement in the vicinity of the project and whether the project intrudes into the corridor. The DD&A proposal lacks any discussion of qualified biologist to undertake the assessment. This should be compared to the assessment proposed by Robert Baker, Inc. at pg. 3

of their proposal. Also, DD&A fails to mention mountain lions in the region of the property have become candidates species under the California Endangered Species Act.

3. The proposal does not indicate that DD&A reviewed pertinent portions of the Court of Appeal or Trial Court opinions setting aside the EIR's assessment of wildlife corridors.
4. Under Task 2, the DD&A proposal indicates that it will prepare a level of analysis commensurate with the wildlife corridor assessment presented in the Ferrini Ranch EIR. The Ferrini Ranch EIR is for a different property, different environmental conditions and was not subject to a Court of Appeal mandate to undertake a thorough baseline analysis. See CEQA Guidelines 15143-15147 regarding degree of specificity.
5. Assumptions: The proposal states: "This scope and budget assumes preparation of technical reports will not be required for completion of the CEQA document." The EIR must contain technical reports assessing the nature and magnitude of wildlife movement in the vicinity of the project and whether the project intrudes into the wildlife corridor. The EIR will be defective on its face ignoring the mandate of the Court of Appeal to assess the beginning, middle and ending of the wildlife corridor and whether the project intrudes into the corridor, and if so, whether the impact is significant.

I sent you numerous emails with attachments of maps regarding the areas around the vicinity of the project that must be assessed. I have also discussed the need for the new EIR to address the Alternative assessment of the EIR if the new EIR reflects a significant impact from the project on the wildlife corridor. See Opinion p. 44. *Sierra Club* at 514. (an adequate description of adverse environmental effects is necessary to inform the critical discussion of mitigation measures and project alternatives at the core of the EIR") This may also generate a need to revisit the project description and the remainder lot that was left out of the project description discussion.

I would suggest continuing the hearing until the scope of work is better defined and consistent with the Court of Appeal mandate.

Thank you

RHR

Richard H. Rosenthal, Esq.
Attorney at Law
P.O. Box 1021
Carmel Valley, CA 93924
831.625.5193
831.625-0470 (fax)

Denise Duffy & Associates, Inc.
PLANNING AND ENVIRONMENTAL CONSULTING

January 13, 2022

Erik V. Lundquist, AICP
Director of Housing & Community Development
County of Monterey Housing & Community Development
1441 Schilling Place South, 2nd Floor, Salinas, CA 93901

RE: Scope and Cost Estimate for CEQA Documentation – Harper Canyon/Encina Hills Subdivision Project

Dear Mr. Lundquist:

Thank you for providing Denise Duffy & Associates, Inc. (DD&A) with the opportunity to conduct environmental support services for the County of Monterey (County) Housing & Community Development. Attached, please find a scope of work and cost estimate to prepare California Environmental Quality Act documentation, including preparation of Administrative Draft, Screen Check Draft, and Final Revised Environmental Impact Report focused on wildlife corridors for the Harper Canyon/Encina Hills Subdivision Project.

If the attached proposal is acceptable, please provide us with a Notice to Proceed. We look forward to performing this work for you.

Sincerely,

Josh Harwayne
Senior Environmental Scientist
Denise Duffy & Associates, Inc.

Scope and Cost Estimate for the Preparation of CEQA Documentation – Harper Canyon/Encina Hills Subdivision Project

SCOPE OF WORK AND APPROACH

Denise Duffy & Associates, Inc. (DD&A) is pleased to submit this proposal to provide the requested environmental services for the proposed project. It is our understanding that the Revised Environmental Impact Report (REIR) will focus solely on wildlife corridor issues.

The following scope of work to be performed by DD&A is based on our review of the background information provided by the County, including applicable sections of the certified Environmental Impact Report (EIR), the Ferrini Ranch EIR, and letters from Harper Canyon Realty's legal representation; communication with County staff; knowledge of the resources in the project area and vicinity; and applicable sections of local, state, and federal environmental guidelines. The scope of work includes the following tasks: 1) Project Initiation/Data Collection; 2) Prepare Administrative Draft Revised Environmental Impact Report (Administrative Draft); 3) Prepare Screen Check Draft Revised Environmental Impact Report (Screen Check Draft); 4) Prepare Final Draft Revised Environmental Impact Report (Final Draft); 5) Prepare Draft Final Revised Environmental Impact Report (Draft Final); 5) Prepare Final Revised Environmental Impact Report (Final); and 6) Project Management, Meetings, and Coordination.

20 hrs

Task 1. Project Initiation/Data Collection

DD&A will initiate the project by consulting with Monterey County Housing and Community Development (HCD) to obtain any additional pertinent reports, project information, and design plans. Project initiation will include the following tasks:

- Review available background information,
- Conduct initial project management,
- Attend a kick-off meeting with HCD to discuss the project documentation approach and finalize the scope of work (HCD may determine that a Supplement to the Certified EIR is a more appropriate format to meet CEQA Guidelines Section *15163*),
- Identify data and documentation needs,
- Confirm format, quantities, and distribution of deliverables, and
- Establish a schedule and protocols for communication.

During this task, DD&A will visit the site to assess the environmental conditions of the site and its surroundings. DD&A will collect, compile, and refine data needed to complete the environmental documentation. Data gathered as part of this task will be reviewed and used to develop a comprehensive picture of the wildlife corridors that may be affected by the proposed project.

Task 2. Prepare Administrative Draft REIR

DD&A will prepare an Administrative Draft for the project in accordance with CEQA requirements to specifically address wildlife corridor issues. The Administrative Draft will include a discussion of the existing size and conditions of wildlife corridors in the vicinity of the project site (including the Toro Creek wildlife corridor and on-site drainage channels), potential species that could use these corridors (including larger wildlife), and potential impacts to these corridors that could occur as a result of the proposed project. Thresholds of significance will be determined based on state, regional, or local criteria. The Administrative Draft will acknowledge and discuss the Central Coast Connectivity Study prepared by Connectivity for

Wildlife LLC in 2010 and the memorandum prepared by WRA Environmental Consultants in 2008 for the adjacent Ferrini Ranch Project, and will provide a level of analysis commensurate with the wildlife corridor analysis presented in the Ferrini Ranch EIR. The Administrative Draft will also identify mitigation that avoids, eliminates, or reduces impacts to a less than significant level, where feasible. DD&A will submit an electronic copy of the Administrative Draft to HCD for review and comment.

Task 3. Prepare Screen Check Draft REIR

DD&A will revise the Administrative Draft based on the comments received and prepare a Screen Check Draft.

Task 4. Prepare Final Draft REIR

After receipt of comments from HCD on the Screen Check Draft, DD&A will then prepare the Final Draft for public review. DD&A will work with HCD to upload the Final Draft to the State Clearinghouse's "CEQA Submit" system, in fulfillment of CEQA requirements for State-level review[1]. DD&A will also prepare and file the Notice of Intent (NOI) with the Monterey County Clerk, per CEQA requirements. The document will be available in Adobe Acrobat (pdf) format for posting on the County's website, if needed. This scope assumes that all public mailings and publication (of documentation, notices, etc.) will be conducted and paid for by HCD. This task assumes that HCD will be responsible for publishing the notice in the Monterey County Weekly.

Task 5. Prepare Draft Final REIR

DD&A will respond to public comments on the Final Draft received during the public review period. DD&A, in consultation with HCD, will prepare formal responses to these comments. The comment letters and responses, as well as any necessary changes to the text of the Final Draft, will be incorporated into the Draft Final EIR and Draft Mitigation Monitoring and Reporting Program (MMRP) and submitted to HCD for review and comment.

Task 6. Prepare Final REIR

After receiving and incorporating comments from HCD, DD&A will prepare the Final REIR, MMRP, and a Notice of Determination (NOD). DD&A will work with HCD to upload the NOD to the State Clearinghouse's "CEQA Submit" system, in fulfillment of CEQA requirements, and file the NOD with the Monterey County Clerk. The document will be available in Adobe Acrobat (pdf) format for posting on the County's website, if needed. This scope of work assumes that HCD will provide draft staff report, resolution, and findings to DD&A for review and comment. This scope assumes that all public mailings and publication (of documentation, notices, etc.) and will be conducted and paid for by HCD.

Task 7. Project Management, Meetings, and Coordination

DD&A will provide work in close coordination with HCD throughout the duration of the project, including phone and email correspondence. DD&A will attend one kick-off meeting and up to three (3) additional meetings/conference calls throughout the duration of the project, including hearing attendance for consideration of the project and CEQA document, as necessary and requested. This scope of work assumes DD&A will assist with the preparation of meeting materials and presentation at the hearing, as needed. In addition, DD&A will provide project management services, including subconsultant administration and management, schedule and budget monitoring and reporting, and client coordination up to the total estimated budget provided.

[1] This process will be conducted in lieu of producing hard copies for State-level review of the Draft CEQA document as required by OPR.

ASSUMPTIONS

This scope assumes that the HCD will conduct all distribution tasks required by CEQA. This scope assumes that HCD will have moderate and typical comments on the draft documents. If excessive comments are received, additional budget may be required. This scope assumes that HCD will receive moderate and typical comments from the public on the draft documents. If excessive comments are received, additional budget may be required. If the project timeline is extended resulting from excessive review and response times, additional budget may be required. This scope assumes that the project description will not change after initiating the document preparation. If changes to the project occur, additional budget may be required.

This scope and budget assume preparation of technical reports will not be required for completion of the of the CEQA document. If technical reports are determined to be required at a later date, a scope and budget amendment would be required. This budget also assumes that only electronic formats of the CEQA document and associated notices will be produced. If hardcopies are requested by HCD, an add-on to the contract would be required and the cost would be based on the production cost.

COST ESTIMATE

The tasks required to complete the CEQA document have been outlined in the Scope of Work and Approach section of this proposal. This project will be billed by task on a time-and-materials basis, as shown in the attached budget estimate. The not-to-exceed amount is an estimate based on the assumptions above and is subject to change if additional work is required beyond that described in this proposal.

SCHEDULE

DD&A is available to begin work immediately upon approval of the proposed scope and budget. A project schedule and expected deadlines can be articulated during project initiation.

COST ESTIMATE

Harper Canyon/Encina Hills Subdivision Project							
TASKS #	Task Description	Senior Project Manager	Senior Environmental Scientist	Associate Environmental Scientist	Graphics/GIS	Administrative Manager	Task Total
	Rate	**$ 171**	**$ 140**	**$ 114**	**$ 109**	**$ 89**	
1	Project Initiation/Data Collection	4	8	8		4	**$3,072**
2	Prepare Administrative Draft REIR	4	16	32	6		**$7,226**
3	Prepare Screen Check Draft REIR	2	4	8	2		**$2,032**
4	Prepare Final Draft REIR	1	2	6	1		**$1,244**
5	Prepare Draft Final REIR	4	6	8			**$2,436**
6	Prepare Final REIR	1	2	6			**$1,135**
7	Project Management, Meetings, & Coordination	8	4	4		4	**$2,740**
Total DDA hours by person		24	42	72	9	8	
Total DDA cost by person		**$ 4,104**	**$ 5,880**	**$ 8,208**	**$ 981**	**$ 712**	**$19,885**

TOTAL COST	**$19,885.00**

ATTACHMENT 2

(*Gonzalez v. Mathis* (2018) 20 Cal.App.5th 257, 274, fn. 4; *Building Maintenance Service Co. v. AIL Systems, Inc.* (1997) 55 Cal.App.4th 1014, 1028 ["[w]e . . . need not address . . . contention[s] made only in a footnote"]; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 71 ["[w]e may decline to address arguments made perfunctorily and exclusively in a footnote"].) Second, Meyer cites no supporting authority. (See *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408; *Golden Drugs Co., Inc.*, *supra*, 179 Cal.App.4th at p. 1468.) Regardless, the argument lacks merit.

The Guidelines require an EIR to describe and assess cumulative impacts *only* if the project's incremental effect is cumulatively considerable. (Guidelines, § 15130(a).) "If the lead agency determines that a project's incremental effect is not cumulatively considerable, the EIR need only briefly describe the basis for its findings. [Citation.]" (*City of Long Beach*, *supra*, 176 Cal.App.4th at p. 909; Guidelines, § 15130, subd. (a).) Moreover, when an EIR concludes that a project's potential contribution to a cumulative impact will be fully mitigated, a separate cumulative impact analysis is not required. (Guidelines, § 15130, subd. (a)(3); *EPIC*, *supra*, 44 Cal.4th at p. 526.)

The EIR concluded that buildout of the Project together with other reasonably foreseeable development would "result in disturbance to special status species and sensitive habitats throughout the region." (AR 970.) But the EIR also concluded that implementation of six mitigation measures would reduce this disturbance to a less than significant level. (*Ibid.*) Consequently, no further analysis was required.[42]

8.4 Direct Impact

Meyer argues that the EIR lacked 1) analysis of the Project's impacts upon wildlife corridors; 2) a statement regarding wildlife corridors from a "qualified wildlife biologist"; or 3) an assessment of "wildlife movement [ ]or the wildlife corridor" in the Project area.

CEQA was intended, in part, to "[p]revent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve

[42] The court expresses no opinion as to the separate question whether the EIR's conclusions regarding the Project's cumulative impact upon wildlife corridors were supported by substantial evidence.

for future generations representations of all plant and animal communities." (Pub. Resources Code, § 21001, subd. (c).) Nevertheless, to the extent a lead agency concludes — as the County did here — that the Project's effects upon wildlife corridors would be insignificant, CEQA requires only that the lead agency provide a brief statement indicating its reasoning. (Pub. Resources Code, § 21100, subd. (c); Guidelines, § 15128.)

Real Party is correct that the record includes a study and study update containing expert analysis concerning drainage channels, which it explained provide "movement corridors" for amphibians and certain other animals. (AR 1240, 1279, 1281-1282.) The DEIR relied upon this analysis in assessing the Project's impacts upon biological resources. (AR 761, 773, 777-778.) The DEIR also adopted several mitigation measures, including some that were drawn from recommendations provided by the relevant study. (AR 778.) The Board adopted those measures as conditions of approval for the Project. (AR 23-27, 92-101.) Additionally, the DEIR provided a general definition of the term "wildlife corridors." (AR 768-769.) However, the DEIR failed to discuss specific "wildlife corridors" other than the aforementioned "movement corridors." Although some animals, including amphibians use drainage channels as "movement corridors," the DEIR's discussion did not reach larger wildlife that would not cross via drainage tunnel. (AR 761; see also AR 1238-1239.) Indeed, the DEIR did not acknowledge that such wildlife traverse the relevant area, much less that a wildlife corridor other than the drainage channels exists.

The FEIR supplemented the DEIR's analysis, referencing (but not incorporating) a new memorandum. (AR 307.) That memorandum acknowledged, "a wide range of terrestrial wildlife species are known to occur on Fort Ord land including: American Badger, Mountain Lion, Bobcat (*Lynx rufus*), Black-tailed Deer (*Odocoileus hemionus*), and Coyote (*Canis latrans*). Current corridors for wildlife to move between Fort Ord and the Sierra de Salinas or Santa Lucia ranges are limited to El Toro Creek, the Portola Drive overpass and possible culvert running beneath State Route 68. The El Toro Creek undercrossing is located 0.75 miles northwest of the project site near the intersection of San Benancio

Road and State Route 68." (*Ibid.*, italics in original.)[43] The FEIR's discussion is deficient for several reasons.

First, although it conceded the existence of larger wildlife that cross the wildlife corridor, the FEIR contained no analysis of the Project's potential effect upon that corridor. Instead, the reader must infer that the EIR concluded that the Project's distance from the El Toro Creek undercrossing would limit any impact to that wildlife corridor to a less-than-significant level. It is not clear that this inference satisfied the County's obligation to provide a "statement" indicating the EIR's reasons for determining that the Project's impacts would be insignificant. (Pub. Resources Code, § 21100, subd. (c); Guidelines, § 15128.) But even assuming arguendo that the EIR's inferred "statement" is adequate, the EIR did not support that "statement" with evidence. The EIR did not even incorporate the Technical Memorandum it referenced, and the Memorandum is not provided elsewhere in the administrative record. An EIR must both explain its conclusions and support those conclusions with substantial evidence. (*East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 302-303.) Here, the EIR did neither.

Second, the FEIR implied that the relevant "wildlife corridor" is the El Toro Creek undercrossing. But the FEIR ignored that a "corridor," as defined in the EIR, must have both a starting point and a terminus. (AR 768 ["[w]ildlife corridors refer to established migration routes commonly used by resident and migratory species for passage *from one geographic location to another*"].) Indeed, the FEIR did not address *how far the corridor continues in the direction of the Project site*. Similarly, the FEIR failed to address the width of the wildlife corridor. Instead, the FEIR assumed — without evidentiary support — that the corridor was restricted to the limited portion of land at which wildlife crosses SR 68 at a specific undercrossing. (AR 307.)

Third, even accepting the FEIR's constricted definition of the "wildlife corridor," the FEIR contained neither analysis nor evidentiary support for its conclusion that this "corridor" was sufficiently far from the Project site to mitigate any possible Project impacts to that corridor. (*Ibid.*)

[43] It could be argued that this new information was sufficiently "significant" to trigger recirculation of the biological resources analysis. (Guidelines, § 15088.5, subd. (a).) Yet Meyer has not made this argument, so the court will not address it.

Real Party counters that the post-EIR statements of County staff[44] discussed *ante*, are substantial evidence in support of the County's conclusion that the Project would have an insignificant impact upon wildlife corridors. Real Party notes that the County was entitled to rely upon its staff's opinion as substantial evidence. (*Browning-Ferris, supra*, 181 Cal.App.3d at p. 866 ["An agency may also rely upon the opinion of its staff in reaching decisions, and the opinion of staff has been recognized as constituting substantial evidence"].) This is correct, but staff opinion, like any expert opinion, is not substantial evidence if it is conclusory. (See *City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1387; *Anthony v. Snyder* (2004) 116 Cal.App.4th 643, 663-664; Pub. Resources Code, § 21082.2, subd. (c) ["unsubstantiated opinion or narrative . . . is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts"].)

Here, staff's conclusion is unsubstantiated. Staff opined that, "because of the sparsity of the development, and due to the distance from the project site [.75 miles] and limited development proposed, the proposed project would not result in substantial adverse effect on this wildlife corridor." (AR 5159:20-25.) Staff's conclusion that the Project location is outside the wildlife corridor is not supported by evidence in the record. Neither Staff nor the FEIR have defined the boundaries of the wildlife corridor. Moreover, there is ample, uncontroverted evidence in the record to suggest the wildlife corridor in question extends into the Project site. (AR 5178-5179, 5271-5272, 5281-5282, 14251-14255, 14333, 18139-18141.) Additionally, although staff's conclusion that limited development would lessen the potential impact upon the wildlife corridor is logical, staff offers no explanation or evidence to explain the *extent* to which this is the case. Absent that information, it is impossible for a reader to accurately determine the degree of the Project's impact upon the wildlife corridor. In short, there is no substantial evidence in the record to support either the EIR's conclusion or the Board's finding that the Project would have no significant impact upon wildlife corridors.

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[44] Meyer contends that any such post-EIR statements cannot be considered. Meyer is incorrect. "[W]hen an EIR contains a brief statement of reasons for concluding an impact is less than significant, then the petitioner has the burden of demonstrating 'the conclusion was not supported by substantial evidence *in the administrative record*.' [Citation.]" (*North Coast Rivers Alliance, supra*, 216 Cal.App.4th at p. 638, italics in original.)

Real Party suggests that any such error was non-prejudicial. The court disagrees. "'[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.' [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' [Citation.]" (*San Joaquin Raptor/Wildlife Rescue Center, supra*, 27 Cal.App.4th at pp. 721–722; *Save Our Peninsula, supra*, 87 Cal.App.4th at p. 118.) Here, the DEIR failed to include *any* analysis of the Project's impact upon significant portions of the wildlife corridor. The public thus had no opportunity to comment; informed public participation was entirely precluded. Further, the FEIR's discussion implied, but did not contain, analysis. Staff's reasoning post-FEIR was similarly conclusory, providing neither the public nor the Board with adequate information. These defects were a paradigmatic example of prejudicial error. (Pub. Resources Code, § 21005, subd. (a); *California Native Plant Soc., supra*, 177 Cal.App.4th at p. 987 ["the omission of required information constitutes a failure to proceed in the manner required by law where it precludes informed decision-making by the agency or informed participation by the public"].)

9. Remedy

The parties differ as to the scope of the writ to issue. Petitioner Meyer contends that the writ should mandate that 1) the entire EIR be decertified; and 2) all project approvals be voided. Petitioner Landwatch argues that only the defective portions of the EIR should be decertified, but that all other project approvals should be voided. Finally, Real Party and the County agree with Landwatch that the defective portions of the EIR should be decertified but contend that the remaining approvals should be left in place. The parties agree that any writ that issues should mandate the suspension of Project activity pending CEQA compliance.

The court is mindful of the extraordinary time and expense involved in pursuing CEQA compliance in this case so far. It is only common sense that unnecessary duplication of the tremendous effort invested by both sides to date be avoided to the extent practical. Paring down the issues will allow a

more focused, coherent, and clear discussion of the remaining issues to be resolved. It will also avoid unnecessary delay in reaching final resolution.

With the foregoing in mind, severance and decertification of the EIR as to the groundwater and wildlife corridor analyses, and a corresponding halt in any construction of the project pending their resolution is warranted, as discussed below. Similarly, the remainder of the approvals will be partially voided to the extent they are predicated upon the EIR's groundwater and/or wildlife corridor analysis.

9.1 Severance of the defective portions of the EIR

Public Resources Code section 21168.9 governs remedies for CEQA violations. Under that section, the court is required to enter a writ containing one or more of three mandates. First, the court may mandate that the agency void "the determination, finding, or decision . . . in whole or in part." (Pub. Resources Code, § 21168.9, subd. (a)(1).) Second, to the extent the Project may adversely affect the physical environment until CEQA compliance is achieved, the court may mandate that the agency suspend "any or all specific project activity or activities." (*Id.*, subd. (a)(2).) This finding may only be made if the court concludes that the project activity in question would prejudice the consideration or implementation of specific mitigation measures or alternatives. (*Ibid.*) Finally, the court may mandate the County to take the specific action necessary to bring the defective finding or decision into compliance with CEQA.

The court is not authorized to direct the County to exercise its discretion in any particular way. (Pub. Resources Code, § 21168.9, subd. (c).) Any order must "include only those mandates . . . necessary to achieve compliance" and must address "only those specific project activities in noncompliance" with CEQA. (*Id.*, subd. (b).) Regardless, to justify severance, a court must make specific findings. (*POET, LLC v. State Air Resources Board* (2017) 12 Cal.App.5th 52, 91.) Specifically, the court must conclude that the particular portion of the project is severable, that severance would not prejudice full compliance with CEQA, and that the remainder of the Project is compliant with CEQA. (*Id.*, subd. (b)(1)-(3).) Consistent with these provisions, this court has the authority to partially decertify the EIR. (*Center for Biological Diversity v. Department of Fish & Wildlife* (2017) 17 Cal.App.5th 1245, 1252-1253.)

As discussed *ante*, the court concludes that, other than the defects in the groundwater supply analysis and in the direct impact portion of the biological resources analysis, the EIR complies with CEQA. These defects are both discrete and severable from the remainder of the EIR. The only question is whether severance would prejudice full compliance with CEQA. Landwatch correctly points out that allowing project construction to occur could negatively impact the consideration of project alternatives and mitigation measures. For example, a new analysis of the wildlife corridors could result in a change to lot locations. Similarly, a revised groundwater supply analysis could lead the County to conclude a smaller project is warranted. Consequently, the court will mandate all project activity be suspended pending remediation of the EIR's defects. With that mandate, severance of the deficient portions of the EIR would not prejudice full compliance with CEQA, and is therefore ordered. The court retains jurisdiction over the County's proceedings by way of a return on the writ until it concludes the County has fully complied. (Pub. Resources Code, § 21168.9, subd. (b); *Endangered Habitats League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 243-245.)

9.2 Other project approvals

Petitioners insist that all other approvals must be voided.

Courts regularly order the setting aside of all approvals for CEQA violations. (See, e.g., *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 266-267; *LandValue 77, LLC v. Board of Trustees of California State University* (2011) 193 Cal.App.4th 675, 683.) "The choice of a lesser remedy involves the trial court's consideration of equitable principles. [Citation.]" (*San Bernardino Valley Audubon Soc. v. Metropolitan Water Dist. of Southern California* (2001) 89 Cal.App.4th 1097, 1104.) The court "has the authority to leave some project approvals in place when decertifying portions of an EIR, so long as it appropriately finds the portions severable under section 21168.9, subdivision (b)." (*Center for Biological Diversity v. Department of Fish & Wildlife*, *supra*, 17 Cal.App.5th at p. 1256.) "Thus, if the court finds that it will not prejudice full compliance with CEQA to leave some project approvals in place, it must leave them unaffected." (*Id.* at p. 1255.)

County Resolution No. 15-084 contains all applicable approvals including 1) the County's certification of the FEIR; 2) adopting the Board's findings and a Statement of Overriding Considerations; 3) the approval of a Combined Development Permit (CDP) consisting of a Vesting Tentative Map, various use permits, and Project grading; and 4) the adoption of a Mitigation Monitoring and Reporting Plan (MMRP). (AR 3.)

The court does not agree with Petitioners that *all* such approvals should be voided. However, the court does agree that the *portions of the Board's approvals based upon the analyses in the defective portions of the EIR* should be voided. For example, the Board made specific CEQA Findings as to groundwater supply and wildlife corridors. (AR 19 [Finding 8(g)], 30 [Finding 9(f)], 36-38 [Findings 11(e), (j)].) The Board also made consistency findings related to groundwater supply and wildlife corridors. (AR 7-11 [Finding 3(h)], 16-17 [Findings 7(d), (f)].) At minimum, those Findings will likely need revision following the County's remedial CEQA action. Likewise, new or revised mitigation measures may arise from the County's efforts that require revision of the MMRP.

Additionally, the CDP was granted, in part, based upon the Board's upholding of an appeal by Real Party of the Planning Commission's denial of their application. (AR 44-53.) The Planning Commission's "central issue of concern" was the availability of an "assured long-term water supply." (AR 45.) The Commission concluded that the Project's water use would be inconsistent with several General Plan Goals and Policies. (*Ibid.*) It also "determined as a policy matter that the goal of promoting adequate water service for all county needs was better served by not approving new lots." (*Ibid.*) In reaching these conclusions, the Commission relied upon the testimony of Project opponents that the CDT Subbasin does not receive hydrological benefits from the SVWP. (AR 44.)

The Board reversed the Commission's decision, expressly relying upon the Geosyntec Study and the FEIR. (AR 46-50.) The Board concluded that these documents "demonstrate that the project has an assured long term water supply" because they show that 1) the Project's wells are located within the SVGB; 2) the CDT Subbasin and the remainder of the SVGB are hydraulically connected; 3) the Project and its wells are located in MCWRA's Zone 2C; 4) the Project benefits from the SVWP; and 5) the Project

"should have negligible effects on the aquifer in [the immediate] area and on nearby existing wells." (AR 47-50.) Hence, the Board partially predicated its approval of the CDP upon a groundwater supply and hydrogeology analysis not circulated in compliance with CEQA, an analysis the court mandates must be decertified. It is therefore appropriate that the Board's approval be voided to the same extent.[45]

In sum, the non-CEQA approvals in County Resolution 15-084 (i.e., Board findings, approval of the CDP and any of its subparts, and the adoption of the MMRP) are infirm and set aside *only to the extent that they are dependent upon the groundwater and wildlife corridor* issues being rectified and brought into compliance with CEQA.

Disposition

Meyer and Landwatch's petitions for writ of mandate are partially granted.

The DEIR's Groundwater Resources and Hydrogeology analysis was "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. [Citation.]" (Guidelines, § 15088.5, subd. (a).) Additionally, the EIR's analysis of direct Project impacts to wildlife corridors was deficient. The remainder of Petitioners' challenges are without merit.

The court directs Petitioners' counsel to prepare appropriate judgments and writs consistent with this decision, present them to opposing counsel for the County and Real Party for approval as to form, and return them to this court for signature.

Dated: 12/3/18

THOMAS W. WILLS
Judge of the Superior Court

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[45] The court recognizes that it has concluded *ante*, that the FEIR's cumulative groundwater supply analysis was supported by substantial evidence. Nevertheless, the County will need to bring its groundwater supply analysis into compliance with CEQA. In so doing, the new FEIR may be markedly different from the existing FEIR; the County may arrive at different conclusions and/or develop new mitigation measures that would bear on the Board's groundwater supply findings.

ATTACHMENT 3

Filed 3/29/21 Landwatch Monterey County v. County of Monterey CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

LANDWATCH MONTEREY COUNTY, Plaintiff and Appellant, v. COUNTY OF MONTEREY, Defendant and Appellant; HARPER CANYON REALTY, LLC, Real Party in Interest and Appellant.	H046932 (Monterey County Super. Ct. No. M131893)
MEYER COMMUNITY GROUP, Plaintiff and Appellant, v. COUNTY OF MONTEREY et al., Defendants and Appellants; HARPER CANYON REALTY, LLC, Real Party in Interest and Appellant.	H046932 (Monterey County Super. Ct. No. M131913)

impacts had not been analyzed. (*Id.* at p. 134.)[12] Again, no such deficiency is present here.

In sum, we agree with the County and applicant that substantial evidence supported the agency's decision not to recirculate the Final EIR.[13] Therefore, the trial court erred in ruling that the Draft EIR's inadequacies required recirculation of the groundwater resources and hydrogeology analyses in the Final EIR.

D. *Wildlife Corridors*

The County and applicant challenge the trial court's finding that the Final EIR is deficient in its analysis of the project's potential impact on wildlife corridors. Wildlife corridors, as defined in the Final EIR, are "established migration routes commonly used by resident and migratory species for passage from one geographic location to another" and serve to "link otherwise fragmented acres of undisturbed area." The Final EIR implicitly concludes that the project would not adversely effect, either directly or cumulatively, the sensitive resource of wildlife corridors.

The trial court decided that the Final EIR's explanation for why the project would not significantly impact a wildlife corridor was deficient as not supported by substantial evidence. The County contends that the trial court erred because there *is* substantial

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[12] Amici California Building filed a request that we take judicial notice of sections of the California Natural Resources Agency rulemaking file. The rulemaking file is not relevant or necessary to decide the appeals at issue here. We therefore deny the request for judicial notice. (See *Surfrider Foundation v. California Regional Water Quality Control Bd.* (2012) 211 Cal.App.4th 557, 569, fn. 7.)

[13] In addition to their challenges to the informational adequacy of the Final EIR and the County's failure to recirculate the Final EIR, petitioners under a separate heading in their opening brief on cross-appeal identify an issue they describe as "The Court should not reach the issue of whether the water supply impact findings were supported by substantial evidence because the EIR is not informationally adequate without comment responses." Although petitioners' argument on this point is not entirely clear, it appears that they are under a separate heading simply reiterating their arguments that the Final EIR is informationally inadequate and should have been recirculated before certification. For the reasons stated above, we have rejected those contentions.

evidence to support the Final EIR's determination that the project would have no significant impact to wildlife corridors and the Final EIR "thoroughly analyzed" this issue.

1. Additional Background

The Draft EIR discussed wildlife corridors in a subsection addressing various biological resources. The Draft EIR stated, in pertinent part, that "[m]aintaining the continuity of established wildlife corridors is important to: a) sustain species with specific foraging requirements; b) preserve a species' distribution potential; and c) retain diversity among many wildlife populations" and "[t]herefore, resource agencies consider wildlife corridors to be a sensitive resource."

The Draft EIR noted that the 344-acre project site consists primarily of "grazing land on rolling terrain" and there were no homes or other building structures currently on site. Toro County Park lies to the east of the project site. Fort Ord Public Lands lie to the north of the project location.

The Draft EIR noted that the project site has drainages, mostly that were tributary to El Toro Creek, and that the channels "can provide movement corridors for amphibians when water is present and for other animals throughout the year." The Draft EIR also identified larger wildlife, such as mountain lions and bobcats, as living in Monterey County. It did not detail or describe the movement corridors for these larger species. The Draft EIR established the following significance threshold pertaining to wildlife corridors: an impact was considered significant if the proposed project would "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors."

The Draft EIR found that "the loss or disturbance of habitats that support sensitive plant and wildlife species would be considered a potentially significant impact." (Bolding omitted.) The Draft EIR concluded that the impact would be reduced to a less than significant level through a mitigation measure that requires all proposed home sites,

landscaped areas, and outbuildings to be located a minimum of 75 feet to 100 feet from the active drainage channels to avoid filling or disturbing natural drainage courses.

The Draft EIR's analysis of potential impacts to biological resources at the project site relied on assessments done by a consultant called Zander Associates (Zander). Neither the Draft EIR nor the Zander assessments discussed a wildlife corridor related to El Toro Creek, which is not part of the project but runs nearby.

During the review period for the Draft EIR (which ended in December 2008), the public submitted written comments that mountain lions had been observed in the vicinity of the project site and that the Draft EIR appeared to be "incomplete without investigating and outlining the extent to which the development is an active mountain lion habitat or corridor."

Following the review period, the topic of wildlife corridors arose at public hearings for the project. For example, at a Planning Commission hearing about the project in June 2010, a member of the public expressed concern that the project lies within a major wildlife corridor that connects the Fort Ord lands to the areas near the Monterey Peninsula and Santa Lucia and "that is a cumulative impact that also needs to be identified, analyzed, and mitigated." In October 2010, the County received a study related to wildlife connectivity that had been funded by an independent environmental organization called the Big Sur Land Trust (connectivity study). The connectivity study focused on wildlife movement in the "Highway 68 corridor and the area around Marks Ranch, Toro Park, and Fort Ord Natural Reserve." The study, which began in October 2008, found that "El Toro Creek passes under a bridge on Highway 68 providing safe passage and habitat for wildlife moving between the uplands of the Sierra de Salinas and the lowland habitats toward Monterey Bay."

Addressing wildlife corridors, the 2013 Final EIR amends the Draft EIR by adding two paragraphs to the Draft EIR. The new text references a technical report related to a nearby project called the Ferrini Ranch Subdivision that studied wildlife movement in

that project's area.[14] Specifically, the first paragraph added in the Final EIR states: "According to a Technical Memorandum prepared by WRA, Inc. in December 2008 for the proposed Ferrini Ranch Subdivision, a wide range of terrestrial wildlife species are known to occur on For[t] Ord land including: American Badger, Mountain Lion, Bobcat . . ., Black-tailed Deer . . ., and Coyote . . . Current corridors for wildlife to move between Fort Ord and the Sierra de Salinas or Santa Lucia ranges are limited to El Toro Creek, the Portola Drive overpass and possible culvert running beneath State Route 68. The El Toro Creek undercrossing is located 0.75 miles northwest of the project site near the intersection of San Benancio Road and State Route 68." (Underlining omitted.) The second added paragraph states in full: "The Big Sur Land Trust and the Nature Conservancy have partnered with public agencies in an effort to protect the corridor between Fort Ord and the Santa Lucia Range." (Underlining omitted.)

The Final EIR does not append the technical memorandum from the Ferrini Ranch project or incorporate it by reference. The Final EIR does not discuss or cite to the connectivity study.

In January 2014, following the release of the Final EIR, a Planning Commission hearing occurred at which staff from the County's Planning Department discussed wildlife corridors. A representative from the Big Sur Land Trust noted that the development was located in prime habitat for wildlife including mountain lions and expressed concern that the development not cut off the passageway for wildlife to move

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[14] According to a map in the administrative record, Ferrini Ranch lies next to and roughly west of the project site. This court considered an appeal related to the Ferrini Ranch project that raised various CEQA challenges (including by Landwatch), such as arguments related to groundwater resources, in which this court upheld the EIR for that project. (*Highway 68 Coalition v. County of Monterey* (July 26, 2019, No. H045253) [nonpub. opn.].) We note that the opinion did not discuss any claims related to wildlife or wildlife corridors that were related to that project.

through the El Toro Creek underpass and adjacent lands and to "ensure a functional wildlife corridor remains."

Later, in May 2014, at a hearing before the Board, the EIR consultant for County staff briefly addressed wildlife corridors stating that that El Toro Creek was a "key wildlife corridor area" but that it was about three-quarters of a mile away from the project. A representative from the Big Sur Land Trust stated at the hearing that the project was "right in the middle of a critically-important wildlife corridor from the Sierra to Salinas mountains." She noted that the El Toro Creek underpass under Highway 68 was indeed "three-quarters of a mile away" from the project but this underpass was not the corridor itself; rather the "corridor consists of that underpass plus the habitat on either side of the road." She observed that experts have "identified the standard width for a corridor to be 1.2 miles. So the development actually is within an important corridor."

Following the Planning Commission's denial of the project, County staff prepared a report for the Board that recommended approval of the project by the Board. The report generally addressed wildlife corridors and specifically discussed El Toro Creek and the connectivity study, stating that "[t]he study did determine wildlife moves underneath the bridge; however, due to the distance from the project site and limited development proposed, the proposed project would not result in substantial adverse effect on this wildlife corridor."

In March 2015, County staff addressed wildlife corridors at a Board hearing related to the project and discussed an alternative that would involve eliminating four lots in the center of the project that would apparently allow movement from the "open space, the remainder parcel, Toro Park" and "down on to the area that is adjacent to Highway 68 and some of the undercrossing there under Highway 68."

In its resolution approving the project, the Board conditioned its approval on applicant's submission of a "Wildlife Corridor Plan" (Condition 21).

Condition 21 states: "In order to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument, the Owner/Applicant shall submit a Wildlife Corridor Plan ('Plan') for all the lots on the vesting tentative map. The Plan shall be prepared in consultation with a qualified biologist with expertise in wildlife connectivity planning and is subject to approval by RMA-Planning. The Plan shall include the following elements to ensure effective wildlife movement: [¶] [1] Fencing: limit fence height (how tall as well as ground clearance), ensure adequate openings in fencing (e.g. post and rail), identify fence types, and identify areas where no fencing will be allowed (e.g. areas adjacent to natural drainage courses). The plan may allow limited solid fencing in the developed areas within the building envelopes as required by Mitigation Measure MM 3.1-2b. [¶] [2] Lighting: incorporate wildlife-friendly lighting and identify placement of lighting that minimizes impacts to wildlife."[15]

The County and applicant contend that the County's determination that the project will not impede wildlife movement is supported by substantial evidence and the trial court erred in ruling to the contrary. The County and applicant state that the "lot layouts, sizes, and configurations plainly provide ample room for wildlife movement" and note

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[15] We note that the Board's resolution approving the project contains two other conditions/mitigation monitoring measures that reference Condition 21 and the wildlife corridor plan. Specifically, a condition related to the designation of scenic easements requires that the easement document incorporate the "applicable recommendations in the approved Wildlife Corridor Plan" required in Condition 21. Another condition related to the submission of a "detailed lighting plan" requires that the lighting plan incorporate the "applicable recommendations in the approved Wildlife Corridor Plan" required in Condition 21. Another condition related to biological resources, although it does not refer explicitly to Condition 21, requires applicant to design the proposed development on the project site "so that homesites, landscaped areas and outbuildings are located a minimum of 75 feet to 100 feet from the active drainage channels to avoid filling or disturbing natural drainage courses."

that applicant will dedicate approximately half of the property (154 acres) to the County which will remain undeveloped. The County and applicant also rely on the technical memorandum related to the Ferrini Ranch project and County staff's remarks contained in the administrative record pertaining to wildlife corridors. Moreover, the County and applicant argue that any error was not prejudicial in light of Condition 21.

2. Legal Principles

"There is no 'gold standard' for determining whether a given impact may be significant. 'An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.' (Guidelines, § 15064, subd. (b).)" (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1107.) "Under the Guidelines, however, '[e]ach public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.' (Guidelines, § 15064.7, subd. (a).)" (*Ibid.*)

"Section 21100, subdivision (c), requires an EIR to 'contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.' (See also CEQA Guidelines, § 15128.)" (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 302.) The agency's conclusion that a particular effect of a project will not be significant can be challenged as an abuse of discretion on the ground the conclusion was not supported by substantial evidence in the administrative record. (*Id.* at p. 290.) The

burden is on petitioners to affirmatively show there was no substantial evidence in the record to support the County's finding that the project would not have a significant impact on an existing wildlife corridor. (See *Center for Biological Diversity I*, *supra*, 232 Cal.App.4th at p. 948.)

3. Analysis

The record makes clear that wildlife corridors are a sensitive resource, and the Final EIR states that a substantial interference with such a corridor would constitute a significant impact. It is also undisputed that the project is located on currently undeveloped land that lies less than a mile away from a key wildlife passage that allows wildlife to bypass Highway 68. Nevertheless, the Final EIR does not provide basic information about the wildlife corridor of which this passage is a part, such as its dimensions, or even definitively state whether or not the corridor overlaps a portion of the project site. This baseline determination is the first step in the environmental review process by which an agency can determine whether an impact is significant. (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at p. 125.)

There is not substantial evidence that no such wildlife corridor passes through the project site. Indeed, Zander reported that the natural drainage in the project site serves as a wildlife corridor. Comments from County staff that the County and applicant rely upon in their appeals further appear to suggest that a corridor *does* pass through the project site. In particular, as noted above, staff stated at a 2015 hearing that: "With regard to biology, there was some question regarding wildlife corridors; although, the EIR addressed that those were less-than-significant impacts, one of the things we pointed out at the previous hearing is that we have the environmentally-superior alternative, which is four less lots, which would eliminate lots here, four lots here in the center of the project, *which would allow that contiguous wildlife corridor from the open space, the remainder parcel, Toro Park, through and on through*; although these—where it says, 'not a park,' these are

subdivided lots in here, but they aren't developed, *down on to the area that is adjacent to Highway 68 and some of the undercrossing there under Highway 68*." (Italics added.)

While the Final EIR notes that the El Toro Creek passage is not on the project site, it does not explain how the corridor relates to this passage or whether the corridor passes by or through the project site. Rather, the County appears to have concluded without any study or supporting documentation the layout will be sufficient to maintain the corridor and prevent interference with animal movement. In the absence of any such discussion, the Final EIR is informationally deficient under CEQA. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 728–729.)

The County and applicant further argue that the "Ferrini Ranch EIR concluded that the 185-home project at issue there would not adversely impact El Toro Creek if development were setback at least 200 feet from the riparian edge or undercrossing" and that "[b]y comparison, the 17-home Harper Project is located approximately 4,000 feet from the undercrossing and creek." However, they provide no authority for the proposition that another project EIR, which was not included in the EIR at issue here, is relevant to the legal question of an EIR's informational adequacy. As noted by petitioners, the EIR for this project fails to describe the basic information necessary for a reader of the EIR for this project to understand the topic of the wildlife corridor, such as where the wildlife corridor "begins and ends, its width, and how far the Project intrudes upon the corridor." Moreover, the excerpts of the Ferrini Ranch EIR upon which the County and applicant rely confirm the importance of the "El Toro bridge" as a wildlife corridor but do not address the project here or find that the corridor does not pass through it.

Additionally, petitioners do not point to any place in the administrative record that reflects that County staff actually reviewed or relied upon the Ferrini Ranch EIR's discussion of wildlife corridors in connection with the Final EIR for the project at issue

here. Rather, we note that the Final EIR for this project (dated December 2013) predates the September 2014 Ferrini Ranch EIR relied upon by the County and applicant.

While our review of an EIR's adequacy is deferential, "we must also bear in mind that the overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at p. 117.) Prejudicial error occurs " ' "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." ' " (*Id.* at p. 118.)

We are also not persuaded that the County department staff's comments constitute substantial evidence that the project would have no significant impact on a wildlife corridor. As noted above, the comments from staff consisted of conclusory and vague remarks based on the configuration of the proposed development and the distance to the El Toro Creek underpass. " 'Conclusory comments in support of environmental conclusions are generally inappropriate.' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404.) Staff did not explain how the configuration of the homes was evidence that the impact on any corridor would be insignificant. We further note that one of the citations to the administrative record provided by the County and applicant is not evidence, let alone substantial evidence, but rather consists of an attorney's argument before the Board.

We decide petitioners have met their burden of showing that the County failed to provide substantial evidentiary support for its implicit conclusion that the project would have no significant impact on a wildlife corridor. The decisionmakers and the public lacked the basic information about the wildlife corridor they needed to understand the County's conclusion. "[W]hen the agency chooses to rely completely on a single quantitative method to justify a no-significance finding, CEQA demands the agency research and document the quantitative parameters essential to that method. Otherwise,

court with directions to vacate its original order partially granting the petitions for writ of mandate, to vacate its prior writs of mandate issued pursuant to its original order, and to issue new writs of mandate ordering the Monterey County Board of Supervisors to vacate Resolution No. 15-084, and to vacate the Board's approval and certification of the Environmental Impact Report for the project only as it relates to wildlife corridor issues. The Board shall be ordered not to take any further action to approve the project without the preparation, circulation and consideration under CEQA of a legally adequate Environmental Impact Report with regard to the wildlife corridor issues discussed in this opinion. The parties are to bear their own costs on appeal.

decision makers and the public are left with only an unsubstantiated assertion that the impacts—here, the cumulative impact of the project on global warming—will not be significant. (See Guidelines, § 15064, subd. (f)(5) [substantial evidence to support a finding on significance includes 'facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,' but not '[a]rgument, speculation, [or] unsubstantiated opinion'].)" (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 228 (*Center for Biological Diversity II*).)

We also agree with petitioners that the County's failure to provide substantial evidentiary support for its no significant impact conclusion was prejudicial, in that it deprived decisionmakers and the public of substantial relevant information about the project's likely impacts. (*Center for Biological Diversity II*, *supra*, 62 Cal.4th at p. 228.) The County and applicant argue that any error was not prejudicial given Condition 21 and cite to *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1073–1074. We disagree. *Save Cuyama Valley* held that the EIR at issue there "sets forth all the pertinent data and follows all the procedures" (*id.* at p. 1073) but came to the wrong conclusion that a mine's impact on water quality would be insignificant; the court held this error was not prejudicial because a condition required the real party in interest to ensure that no groundwater is exposed and this condition, if feasible, "would be *wholly effective* in negating the mine's adverse impact on water quality." (*Id.* at p. 1074, italics added.)

Save Cuyama Valley is distinguishable for at least two reasons. First, the Final EIR here, as discussed above, does not set forth all the pertinent data. The Final EIR lacks any analysis or information about the wildlife corridor. Second, Condition 21 does not by its plain terms show it would be "wholly effective" in negating any adverse impact on the wildlife corridor. Condition 21, for example, mandates that a wildlife corridor plan include certain fencing elements to "ensure effective wildlife movement," but there

is no evidence in the record that those fencing elements will ensure that the project will not interfere substantially with any wildlife corridor.

We note that the County appears to have assumed that the low density of the development means that there is no substantial interference with the wildlife corridor; however, there is no evidence to support that assumption given the lack of information about the corridors on site other than drainages, and the record does not contain any expert opinion or data relied upon by the County to support that conclusion. For these reasons, we do not agree with the County and applicant that the failure to define or explain the project's relationship to the wildlife corridor is nonprejudicial.

We therefore affirm the trial court's ruling finding the Final EIR's analysis of direct project impacts to wildlife corridors was deficient.

E. *Summary of Conclusions*

For the reasons explained above, we agree with some but not all of petitioners' claims in their cross-appeal. Specifically, we agree that the Final EIR's treatment of the issue of wildlife corridors is deficient under CEQA. By contrast, based on our independent review of the record before us (*Protecting Our Water*, *supra*, 10 Cal.5th at p. 495), we conclude that the County did not commit any legal error under CEQA as to the Final EIR's discussion and analysis of groundwater resources. With respect to the appeal filed by the County and applicant, we agree that the trial court erred when it decided that the County was required to recirculate the Final EIR on the topic of groundwater resources, and we conclude that substantial evidence supports the County's determination that CEQA did not require recirculation.

Based on these conclusions, we reverse the judgments and remand with the directions stated below.

III. DISPOSITION

The March 8, 2019 judgment in case No. M131893 and the April 15, 2019 judgment in case No. M131913 are reversed. The matter is remanded to the superior

Danner, J.

WE CONCUR:

Greenwood, P.J.

Bamattre-Manoukian, J.

ATTACHMENT 4

SR 68 Scenic Highway Plan

Final

Appendix A

Transportation Agency for Monterey County

SR68 SCENIC HIGHWAY PLAN

for half of the total detections at 55% (Chart 4). Many different individual animals were recorded consistently using several of the culverts and bridges. Various culverts and bridges are successfully facilitating large to medium size mammal movement underneath the highway, such as El Toro Creek Bridge, San Benancio Bridge, the Salinas River Bridge and Box Culvert 2 (Table 2).

Camera Name	Bobcat	Coyote	Deer	Domestic Cat	Domestic Dog	Gray fox	Opossum	Rabbit	Raccoon	Skunk	Total Animals Recorded at Each Camera Station
C1-York Culvert	61	0	1		0	0	55	3	4	62	**186**
C2-Hot Spot Culvert: Degraded corrugated metal culvert.	4	9	5		0	0	10	13	19	6	**66**
C3-Wildlife trail by 55 mile sign-Road kill Hot Spot	4	3	5		0	0	0	1	1	0	**14**
C4-Boots Road	98	1	0	12	0	0	99	4	105	8	**327**
C5-Laureles Grade	2	2	0	0	0	0	0	22	0	1	**27**
C6-Box Culvert 1: Just south of San Benancio	108	0	0	0	0	0	68	1	87	91	**356**
C7-San Benancio Bridge	93	2	177	0	0	0	48	0	137	25	**482**
C8-El Toro Creek Bridge	251	3	207	0	4	0	50	17	63	18	**613**
C9-Box Culvert 2: Just north of El Toro Creek	274	0	13	0	0	0	14	0	4	2	**307**
C 10-Dual Culverts: in Toro Park	86	0	0	0	0	20	38	0	10	3	**157**
C 11-Salinas River Bridge	58	27	52	0	0	0	16	0	16	5	**174**
Grand Totals	**1039**	**47**	**460**	**12**	**4**	**20**	**398**	**61**	**446**	**221**	**2709**

Table 2. Total Number of Detections by Species.

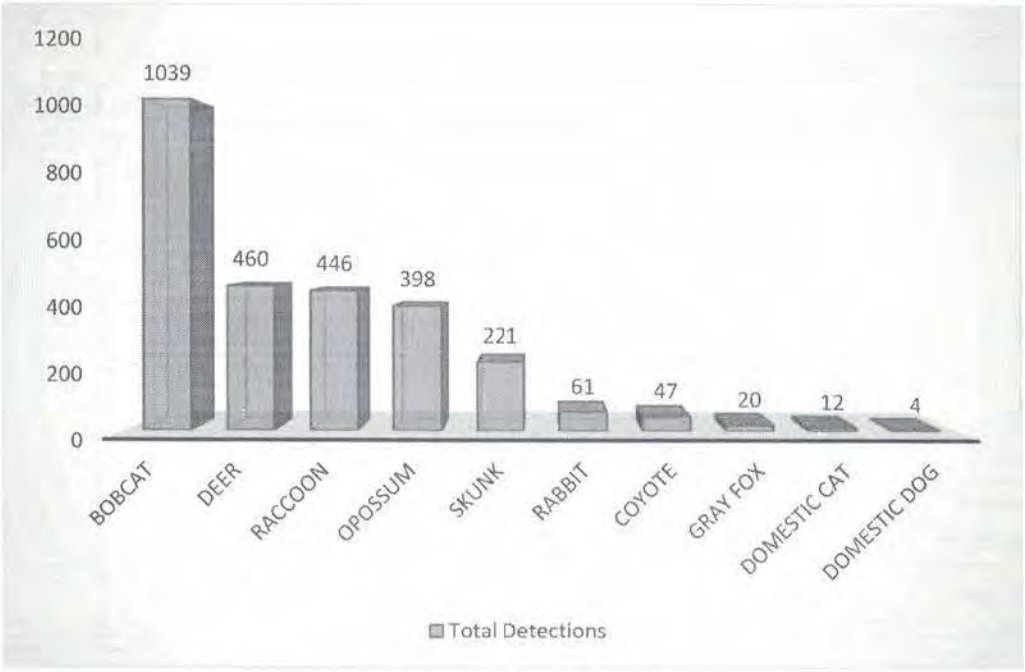

Chart 3. Detections by Species.

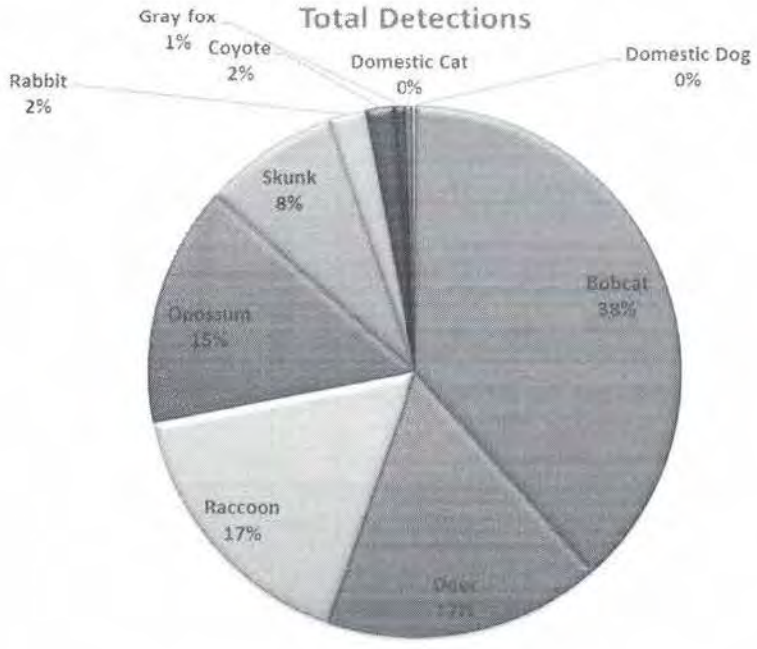

Chart 4. Percentage of Detections by Species.

LAW OFFICES

RICHARD H. ROSENTHAL
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15 AUGUST, 2022 460.22.08.15.RESNOP

Erik V. Lundquist Via Email
County of Monterey-Housing and Community Development
1441 Schilling Place South Second Floor
Salinas, CA, 93901
CEQA Comments@co.monterey.ca.us

State Clearing House Number: 2003071157 NOP for Supplemental DEIR Harper Canyon (Encina Hills) Subdivision Project, Monterey County

Dear Mr. Lundquist:

Meyer Community Group has received the Notice of Preparation, Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above.

The purpose of the NOP is to solicit guidance on the scope and content of the environmental information to be included in the Supplemental EIR. Meyer Community Group has communicated extensively with HCD regarding the scope of information and the nature of the investigation that should support the Supplemental EIR. Meyer raised concerns regarding the lack on of investigation proposed in the Denise Duffy &Associates proposal prior to Board Approval. I have attached the email as Attachment 1 hereto. Meyer will suggest levels of investigation that are appropriate for the project at hand.

The Harper Valley subdivision sits in a wildlife corridor that the State of California considers essential. The trial court found that there was uncontroverted evidence to suggest that the wildlife corridor in question runs into the project site, JA 1511, and further suggested that new analysis wildlife corridors could result in a change to lot locations. JA 1514. See Attachment 2-Portion of Trial Court decision dealing with wildlife corridors.

I. Project Description: The Supplemental DEIR should examine the nature and magnitude of wildlife movements and native wildlife nursery sites, between the Fort Ord National Monument, Saint Lucia Ranges, and Toro Creek via under-crossings of State Route 68, overpasses along Portola Drive, and local onsite drainages and culverts. The wildlife corridor must be defined, its beginning, middle, end and width and whether the project intrudes into the boundaries of the corridor. As the Court Of Appeal opined, this is the baseline and once the baseline is determined, the nature and magnitude of the project's impact on wildlife corridors and

movement, fragmentation, and use of native wildlife nursery sites maybe assessed. Court of Appeal Opinion p. 44. Attachment 3. (Opinion)

The lot layouts and building envelopes approved pursuant to Resolution 15-084 should be used to determine the projects impact on wildlife movement and corridors. If the assessment determines the enactment of the proposed project would interfere substantially with the movement of wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursey sites, the impact(s) is significant and informs the EIR's discussion of recommended mitigation measures and/or project alternatives.

II. Background of Project Approval and Court Proceedings

Meyer Community Group is Petitioner in the case entitled Meyer Community Group v. Monterey County, Case # M131893. Meyer obtained a Writ of Mandate ordering the County to redo the wildlife corridor issues in, the DEIR and FEIR. Harper Canyon Realty LLC, the project proponent, appealed the case to the Sixth District Court of Appeal. The Court sustained the trial court's ruling and added the following mandates that are relevant to the preparation of the Supplemental EIR:

"the Final EIR does not provide basic information about the wildlife corridor of which this passage is a part, such as its dimensions, or even definitively state whether or not the corridor overlaps a portion of the project site. This baseline determination is the first step in the environmental review process by which an agency can determine whether an impact is significant. (citation omitted)" Opinion 44.

"the EIR for the project fails to describe the basic information necessary for a reader of the EIR for this project to understand the topic of wildlife corridor, such as where the wildlife corridor "begins and ends, its width, and how far the Project intrudes upon the corridor. " See Opinion p. 45

"The Board is ordered not to take any further action to approve the project without the preparation, circulation and consideration under CEQA of a legally adequate EIR with regard to wildlife corridor issues as discussed in the opinion. Opinion 49.

The Court of Appeal decision relating to Wildlife Corridor Issues is attached as Attachment 3

The Court of Appeal and Trial Court requires at a minimum, an assessment of the environmental setting that would define the beginning, middle and ending of the wildlife corridor, the habitat contained therein, and would also describe the nature and magnitude of wildlife movement and traffic in the vicinity of the project site. This would constitute the baseline determination which is the first step in the environmental review process. Opinion 44. The baseline is used to measure changes to the environment that will result from the project and for determining whether

the changes to the environment are significant. CEQA Guidelines 15125(A). In assessing the baseline, Guidelines 15125 (c) requires special emphasis to be placed on environmental resources that are rare or unique to the region and would be affected by the project. Id. at (c). Special emphasis should be given to mountain lions with their 2020 listing by the Fish and Game Commission as a candidate species under California Endangered Species Act (CESA) protected species. Mountain Lions have been seen in the vicinity of the project site and habitat to draw mountain lions in or around the project site. See Attachment 4, Map and page 39 of the Final Scenic Hwy Plan, 2017.

Once the baseline is determined, the nature and magnitude of the project's impact on wildlife corridors and movement can be assessed. If the assessment determines that the implementation of the proposed project would interfere substantially with the movement of wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursey sites, AR: 773, the impact(s) is significant and must be mitigated if feasible. If the impact is significant, the environmental review should consider appropriate mitigation measures and project alternatives. An adequate description of adverse environmental effects is necessary to inform the critical discussion of mitigation measures and project alternatives at the core of the EIR. *Sierra Club v. County of Fresno* (2018) 6 Cal 5th 502, 514. If the conflict is significant and an alternative suggest moving multiple lots, the project description may have to be revisited and an assessment of the 26 acre remainder parcel, AR: 691, may have to be undertaken for its ability to accommodate one or more of the moved lots.

III. The Level of Investigation into the Nature and Magnitude of Wildlife Movement and Corridors in the Vicinity of the Project. Suggested steps[1]

Methodology: To investigate the nature and magnitude of the wildlife movement and habitat in vicinity of the project and approximate the wildlife corridor boundaries beginning, middle, end, width, and how much the project intrudes into the corridor. Also, the purpose is to identify critical habitat linkages leading up to, through, and beyond the project site.

Steps:

1. Retain a wildlife tracker to oversee the investigation.

2. Identify target areas on both side of Highway 68
   a. Project within Regional Corridor. AR: 757
   b. Court of Appeal opinion 44: Comments from staff suggest that a corridor passes thru the property. Attachment 3.

[1] Also, see Beier "Checklist For Evaluating Impacts to Wildlife Corridors" (1992) Wildl. Soc. Bull. 20-434-440

c. Trial Court found uncontroverted evidence to suggest that the wildlife corridor in question runs into the project site, JA 1511 Attachment 2

d. Final SR 68 Scenic Hwy Plan 2017, Attachment A-3. Pg.10-11, Table 2 and Chart 3. Attachment 4.

3. Central Coast Connectivity Project Northern Monterey County Linkages: 2008-2009. AR: 17828-17865.[2]

2. Identify different species moving through the Regional Corridor and the vicinity of the project. Identify the movement and dispersal patterns of species of interest and their juveniles.

a. Determine travel routes thru transient surveys (Utilize the Toro Creek underpass as the focal point to identify the extent of the wildlife corridor boundaries leading south. Identify and track all trails leaving the creek from the east or south side between the Highway 68 over-crossing and the elementary school. Track all such trails to determine if any continue into or across the subject property and beyond), multiple days or weeks of field camera survey, radio tags, and stereoscopic aerial photography.

c. Identify species with larger home ranges

c. Identify habitat needs of the species identified-nesting and raising young

3. Identify habitat of the corridor

a. Habitat attributable to certain species (needs) and how habitat may influence wildlife movement through the property and to adjacent open space.

4. Assess for mountain lions as a candidate under California Endangered Species Act. Final SR 68 Scenic Hwy Plan 2017, Attachment A-3. P.39. Also, see map at AR: 1425.

5. Meyer incorporates the recommendation of the Department of Fish and Wildlife (CDFW) to consider the Guidance Document for Fine Scale Wildlife Connectivity Analysis (CDFW) found at page 3 of their comments.

IV. Denise Duffy and Associates Proposal

The Denise Duffy and Associates Proposal is attached hereto as a portion of Attachment 1. On page 4, the Cost Estimate provides for 20 hours for Project Initiation and Data Collection for a total cost of $3,072. This is inadequate for the undertaking required by the Court of Appeal to define the boundaries of the wildlife corridors to determine whether the project intrudes and if it does to provide mitigation measures or project alternatives, to assess the nature and magnitude of wildlife movement in the vicinity of the project and determine the suitable habitat needs of species identified. I have attached a memo regarding the perceived inadequacy of the proposal sent to HCD earlier this year.

[2] AR refers to pages from the Administrative Record of Case #131893

If you have any questions please feel free to contact me.

Thank you,

/s/

Richard H. Rosenthal
Enclosures as noted

Cc: Via Email-Alexander Henson, Meyer Community Group, Office of Planning and Research-State Clearinghouse, state.clearinghouse@opr.ca.gov

NATIVE AMERICAN HERITAGE COMMISSION

July 15, 2022

Erik V. Lundquist
County of Monterey
1441 Schilling Place South 2nd Floor
Salinas, CA 93901

Re: 2003071157, The Harper Canyon (Encina Hills) Subdivision Project, Monterey County

Dear Mr. Lundquist:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015. If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). Both SB 18 and AB 52 have tribal consultation requirements. If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- **a.** A brief description of the project.
- **b.** The lead agency contact information.
- **c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- **d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- **a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- **a.** Alternatives to the project.
- **b.** Recommended mitigation measures.
- **c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- **a.** Type of environmental review necessary.
- **b.** Significance of the tribal cultural resources.
- **c.** Significance of the project's impacts on tribal cultural resources.
- **d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- **a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
- **b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or

b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

a. Avoidance and preservation of the resources in place, including, but not limited to:

i. Planning and construction to avoid the resources and protect the cultural and natural context.

ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

i. Protecting the cultural character and integrity of the resource.

ii. Protecting the traditional use of the resource.

iii. Protecting the confidentiality of the resource.

c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).

e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).

f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.

b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.

c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe. (Gov. Code §65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
    a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
    b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: http://nahc.ca.gov/resources/forms/.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:
    a. If part or all of the APE has been previously surveyed for cultural resources.
    b. If any known cultural resources have already been recorded on or adjacent to the APE.
    c. If the probability is low, moderate, or high that cultural resources are located in the APE.
    d. If a survey is required to determine whether previously unrecorded cultural resources are present.

2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
    a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
    b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:

a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.

b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.

b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.

c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Cody.Campagne@nahc.ca.gov.

Sincerely,

Cody Campagne

Cody Campagne
Cultural Resources Analyst

cc: State Clearinghouse

Via email: CEQAcomments@co.monterey.ca.us

Big Sur Land Trust
Harper Canyon Subdivision Supplemental Draft EIR NOP Scoping Comments
Statement provided during August 15, 2022, Public Meeting (amended with several additional points)

Good afternoon. My name is Rachel Saunders, Director of Conservation for Big Sur Land Trust. Big Sur Land Trust is a nationally accredited land trust, whose mission is to inspire love of land across generations, conservation of our unique Monterey County landscapes, and access to outdoor experiences for all. Thank you for the opportunity to comment on the scope and content of the Supplemental DEIR for the Harper Canyon Subdivision.

The Land Trust has conserved lands in the Sierra de Salinas Mountain range, where the Harper Canyon subdivision is located, including Marks Ranch next to Toro Park. Between 2007 and 2014 we supported field research by wildlife tracking experts at Pathways for Wildlife, which documented a high degree of wildlife activity in this area and its importance as a wildlife corridor. Specifically, the research showed that the adjacent habitats on either side of the Hwy 68 El Toro Creek Underpass, which includes Harper Canyon, is a critical wildlife corridor for multiple species moving through the Sierra de Salinas to Fort Ord and back. The bridge on San Benancio Road also acts as an important crossing structure for the corridor. A wildlife corridor, which is not just the crossing structure but the lands on either side, must be large enough to encompass the home range of species such as a mountain lion which can be up to 100 square miles, and large enough to encompass breeding habitat for species, along with enough habitat for juveniles, such as bobcats to disperse and establish their own home range. We encourage the consultants preparing the CEQA analysis to access the latest data on standards for how large a wildlife corridor must be for different species. We also note that since the Harper Canyon subdivision was approved, mountain lions have now been identified as a Candidate Species for listing in the State of California, thus making a thorough analysis of impacts related to this species even more important. We know from State studies that this area is highly suitable habitat for lions.

Habitat fragmentation and the loss of animals' ability to move across a landscape to find food, reproduce, raise their young and disperse is one of the greatest threats to biodiversity. Wildlife species already face obstacles in this area (Hwy 68, the existing residential development at Toro Park Estates, and potential future development). Only a few safe (permeable) wildlife passages remain where - if animals can get across Hwy 68 - they can access high quality habitat – extending through the proposed Harper Canyon subdivision and the areas beyond. We ask that the County ensure that a comprehensive study is done both looking at potential impacts from the proposed subdivision itself but also cumulative impacts. This is critical to ensure a functional corridor will remain, and that specific aspects of the development will minimize impacts on wildlife to the greatest extent possible.

An analysis of potential development impacts to wildlife and wildlife corridors should also include:

- Identifying and mapping habitat areas within the project footprint and in adjoining areas, including neighboring properties where activities on the development parcel could lead to direct or indirect impacts (including conserved lands like Marks, Toro Park).

- An up-to-date inventory of all current and proposed special status species (not just listed by ESA or CESA) that are known or could potentially occur in the project area and adjoining properties – mammals, birds, invertebrates, reptiles, insects, amphibians.
- Identifying habitat preferences for all special status species that occur in the vicinity. Consultants should review the CNDDB BIOS dataset to identify relevant California Essential Habitat Connectivity data.
- Potential impacts to analyze include:
    - will there be any narrowing or other impacts on the size or permeability of potential wildlife corridors?
    - will any barriers to wildlife movement be introduced, particularly for access to water sources?
    - will there be any loss of wildlife breeding sites or nesting areas, or will there be any habitat fragmentation?
- Another consideration is seasonality. Wildlife corridor analysis should not be done exclusively during the hot summer or fall months of an exceptionally dry year. There is likely less wildlife moving around freely because animals may be focused on finding water sources. Species behavior also differs depending on the season. Coming to conclusion about impacts based on activity in the fall and during a drought, for example, may not capture the extent of the use of the development parcel or the corridor or what the impacts would ultimately be. Any kind of limitations of a study done purely during one season or one climate regime such be acknowledged. A truly comprehensive study would occur over all four seasons, and we would strongly recommend that in this case. It should also take into consideration other variables – like impacts from the River Fire in 2021, which likely affected wildlife populations and movement in the area.
- It is critical that any analysis and findings be supported by site-specific field work to document wildlife activity through the proposed development areas and through adjoining properties where dispersal or movement could be impacted by the development. Any site-specific study should include the use of wildlife cameras, tracking plates, observational data of tracks, scat, game trails, identification of water sources, bedding areas, feathers, forage areas, burrows, and seasonal use for migratory as well as resident species.
- Any wildlife study should also include recommendations on improvements/enhancements to the wildlife corridor to reduce impacts, and other measures associated with the subdivision that could reduce barriers to wildlife (e.g., reducing the development footprint, wildlife friendly lighting, fencing, roads, noise, and tangibly addressing other uses that could cause impacts to wildlife).

Thank you again for the opportunity to provide these comments.

California Department of Transportation

CALTRANS DISTRICT 5
50 HIGUERA STREET | SAN LUIS OBISPO, CA 93401-5415
(805) 549-3101 | FAX (805) 549-3329 TTY 711
www.dot.ca.gov

August 15, 2022

MON-68-17.815
SCH#2003071157

Erik Lundquist, AICP
Director of Housing & Community Development
Monterey County HCD
1441 Schilling Place 2nd Floor
Salinas, California 93901

COMMENTS FOR THE NOTICE OF PREPARATION (NOP) – HARPER CANYON (ENCINA HILLS) SUBDIVISION, MONTEREY COUNTY, CA

Dear Mr. Lundquist:

The California Department of Transportation (Caltrans), District 5, Development Review, has reviewed the Harper Canyon (Encina Hills) Subdivision NOP which will examine wildlife movement between the Fort Ord National Monument, Santa Lucia Ranges, and Toro Creek via under-crossing of State Route (SR) 68, overpasses along Portola Drive, and local/onsite drainages and culverts. Caltrans offers the following comments in response to the NOP:

1. Caltrans supports local development that is consistent with State planning priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety. We accomplish this by working with local jurisdictions to achieve a shared vision of how the transportation system should and can accommodate interregional and local travel and development. Projects that support smart growth principles which include improvements to pedestrian, bicycle, and transit infrastructure (or other key Transportation Demand Strategies) are supported by Caltrans and are consistent with our mission, vision, and goals.

2. All future work in, on, under, over, or affecting State highway right-of-way is subject to a Caltrans encroachment permit. Depending on the complexity of the project improvements requiring an encroachment permit, Caltrans oversight may be the more appropriate avenue for project review and approval by Caltrans. The District Permit Engineer has been granted authority by Caltrans to make this decision. Please consult with the District Permit Engineer to determine the most appropriate Caltrans project permitting system. For more information regarding the encroachment permit process, please visit our Encroachment Permit Website at:

https://dot.ca.gov/caltrans-near-me/district-5/district-5-programs/d5-encroachment-permits.

3. Please take into consideration future projects along SR 68 and how they might impact future wildlife migration. We currently have a project at Toro Creek to add directional fencing and improve culverts which includes Portorla Drive and existing drainage systems. The final environmental document for the State Route 68 Drainage Improvements project can be found here: https://dot.ca.gov/caltrans-near-me/district-5/district-5-current-projects/05-1j880. Construction is expected to begin in January 2025 and expected to end in January 2026.

Thank you for the opportunity to review and comment on the proposed project. If you have any questions, or need further clarification on items discussed above, please contact me at (805) 835-6543 or email christopher.bjornstad@dot.ca.gov.

Sincerely,

Christopher Bjornstad

Chris Bjornstad
Associate Transportation Planner
District 5 Development Review

From:	Martin Peterson
To:	ceqacomments
Subject:	Harper Canyon Subdivision Supplemental Draft EIR NOP Scoping Comments
Date:	Sunday, July 31, 2022 11:23:19 AM

Dear Mr. Lundquist.

As a resident on Weather Rock Way for 30 years I have witnessed the significant movement of deer and turkey that occurs between the Ollason Trail area and San Benancio Road area. In my opinion the close proximity of the proposed subdivision to the Rimrock Rd, Weather Rock area will in all likelihood eliminate this wildlife movement. While the initial grading of rough home pads, roads, storm drain and utility work could be accomplished in 18 months the finish grading of home pads as well as home construction will probably stretch out for a decade. This work, noise, vibration, in my opinion will serve to push the local wild life population further east during that construction. The animals that use this travel route will probably leave this area during construction and not return as there will no effective wildlife buffer/corridor between the new subdivision and the existing homes.

Marty Peterson for Richard Eckhart
Senior Project Specialists

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

August 12, 2022

Erik Lundquist, Director of Housing & Community Development
Monterey County Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas, California 93901
CEQAcomments@co.monterey.ca.us

Subject: Harper Canyon Subdivision (Project)
Notice of Preparation (NOP) for a Supplemental Draft Environmental Impact Report (EIR)
State Clearinghouse No.: 2003071157

Dear Mr. Lundquist:

The California Department of Fish and Wildlife (CDFW) received an NOP from Monterey County Housing and Community Development for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through exercise of our own regulatory authority under the Fish and Game Code.

Due to the limited Project information provided, the following comments do not represent all of our concerns; more specific comments can be provided once CDFW has had the opportunity to review the Supplemental Draft EIR that will be prepared for this Project. Our comments follow.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in the trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Monterey County Housing and Community Development

Objective: The Supplemental Draft EIR will examine wildlife movement between Fort Ord National Monument, Santa Lucia Ranges, and Toro Creek via under-crossing of State Route 68, overpasses along Portola Drive, and local/onsite drainages and culverts and will include the review of previous research, including but not limited to, the Central Coast Connectivity Project and the 2008 WRA Environmental Consultants memorandum developed for the Ferrini Ranch EIR (SCH# 2005091055). In response to the court of appeal ruling, the document will focus solely on analyzing the wildlife corridors in the vicinity of the proposed project and will evaluate the potential impacts the proposed Project may have on these corridors. The Supplemental Draft EIR will identify, where necessary, mitigation to avoid, eliminate, or reduce impacts to a less than significant level, where feasible.

Location: The proposed Project is located along the State Route 68 corridor of Monterey County off San Benancio Road.

Timeframe: N/A.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Monterey County Housing and Community Development in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the environmental document for this Project.

Wildlife Corridor: Habitat loss and fragmentation are major threats to plant and animal communities across the globe (Buchmann et al. 2013). Identifying areas of high quality habitat and connectivity are essential to maintain viable populations in the future (Gilpin

1987). Habitat connectivity provides paths for movement across the landscape and is important for species to find food, cover, and mates. Development and habitat conversion can impede movement across the landscape. Habitat connectivity can be achieved through the identification of conservation of corridors with fine scale wildlife connectivity analysis (CDFW 2014). Along with using multiple resource methods such as review of previous wildlife corridor research, use of field camera surveys, track surveys, and animal-vehicle collision data, CDFW recommends considering CDFW's *Guidance Document for Fine-Scale Wildlife Connectivity Analysis* (CDFW 2014) to identify wildlife movement corridor(s) within the Project site to preserve them. CDFW also recommends multi-day surveys for data collection; multi-day surveys are necessary to get a clear and complete picture of wildlife movement within the Project site.

Special Status Species: Based on species occurrence records from the California Natural Diversity Database (CNDDB), the Project site is known to and/or has high potential to support special-status species, including CESA-listed species. Specifically, CDFW is concerned about potential impacts to the State and federally threatened California tiger salamander (CTS; *Ambystoma californiense*); there are two CTS records, both within a mile, located north and west of the Project site (CDFW 2022). While the scope of the Supplemental Draft EIR focuses only on wildlife corridors, CDFW finds that CTS has the potential to be impacted by the Project and recommends the EIR address this species.

Federally Listed Species: CDFW recommends consulting with the United States Fish and Wildlife Service (USFWS) on potential impacts to federally listed species including, but not limited to, CTS. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

CDFW is available to meet with you to discuss potential impacts and possible mitigation measures for biological resources. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: See Page Four

ec: United States Fish and Wildlife Service
Patricia Cole; patricia_cole@fws.gov

Office of Planning and Research
State Clearinghouse
state.clearinghouse@opr.ca.gov

California Department of Fish and Wildlife
Jeff Cann; Jeff.Cann@wildlife.ca.gov
Jim Vang; Jim.Vang@wildlife.ca.gov

Richard H. Rosenthal
rrosenthal62@sbcglobal.net

REFERENCES

Buchmann, C.M., Schurr, J.M., Nathan, R. & Jeltsch, F. 2013. Habitat loss and fragmentation affecting mammal and bird communities – The role of interspecific competition and individual space use. *Ecological Informatics*, 14, 90-98.

California Department of Fish and Wildlife (CDFW). 2014. *Guidance Document for Fine-Scale Wildlife Connectivity Analysis*. December 2014. Available: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=93018&inline.

CDFW. 2022. Biogeographic Information and Observation System (BIOS). https://www.wildlife.ca.gov/Data/BIOS.

Gilpin, M.E. 1987. Spatial structure and population vulnerability. In: *Viable populations for Conservation* (ed. Soule, ME). Cambridge University Press Cambridge, England, pp. 125-139.

From:	Richard H. Rosenthal
To:	Lundquist, Erik
Cc:	Richard H. Rosenthal; Alexander Henson; Susan Bacigalupi; Joanne Webster
Subject:	Notice of Preparation
Date:	Monday, July 18, 2022 10:02:41 AM

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Erik: I am in receipt of the NOP. Thank you for getting it out . I still have concerns on how you are framing the Court of Appeal mandate. The Court of Appeal did order the preparation, circulation, and consideration of a legally EIR with regard to wildlife issues and to determine the project's impact on the wildlife corridor. But as I have reiterated over and over to you in previous correspondence, the Court of Appeal also stated:

"the EIR for the project fails to describe the basic information necessary for a reader of the EIR for this project to understand the topic of wildlife corridor, such as where the wildlife corridor "begins and ends, its width, and how far the Project intrudes upon the corridor." See Court of Opinion pgs. 45 and 44.

I don't mean to be pedantic about it but may directly affect the investigation into the nature and magnitude of wildlife movement in the vicinity of the project and the project's impact on the corridors and wildlife movement. Reviewing literature and walking the property once is not going to cut it.

In addition to mitigation measures, the new EIR should consider alternatives that would lessen the impact to the corridors and animal movement and what, if any changes to the project, the alternatives would require.

This is not my response to the NOP, only concerns regarding the lack of information in the NOP

Thanks for considering these items.

RHR

Richard H. Rosenthal, Esq.
Attorney at Law
P.O. Box 1021
Carmel Valley, CA 93924
831.625.5193
831.625-0470 (fax)

From: Bjornstad, Christopher@DOT
To: Lundquist, Erik
Subject: Harper Hills Additional Comment
Date: Tuesday, August 16, 2022 8:15:21 AM
Attachments: image001.png

Hi Erik,
I received one more comment after I sent my letter last night after work. I know the comment period has closed but wanted to pass it on:
Caltrans State Route 68 (SR-68) Corridor Improvements Project includes wildlife crossing improvements along SR-68 between York Road and the San Benancio Road-SR-68 intersection. These features will be constructed with the highway project to maintain and enhance wildlife movement patterns that are described in TAMC's SR 68 Scenic Highway Plan (2017). At present, wildlife movement is unimpeded on the entire ranch where development is proposed. The presence of homes, pets, lighting, etc. can alter wildlife movement patterns. Proposed mitigation for the housing development will need to explain how the open space is going to be maintained to ensure animals continue utilizing the documented corridor and the associated wildlife crossing locations on SR-68.

Thanks
Chris Bjornstad
Associate Transportation Planner
Land Development Review Liaison-North
Caltrans District 5
(805) 835-6543

Appendix C

Biological Resources

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ENVIRONMENTAL CONSULTANTS

Technical Memorandum

To: Mark Kelton

From: Michael Josselyn, PhD
415.454.8868 x125

Date: December 10, 2008
Subject: Ferrini Ranch Wildlife Corridor

This technical memorandum is meant to summarize potential wildlife corridor issues associated with a proposed development on the 895-acre Ferrini Property (Project Area) outside the City of Salinas, Monterey County, California. I have conducted this review based on my experience in conservation planning for other large projects in Monterey (Santa Lucia Preserve) and in Tejon Ranch. The latter project involved working with the South Coast Linkages Project and the Trust for Public Land to design a preserve that would also provide regional and local wildlife corridor linkages for 24 species in the Tehachapi mountain range.

The Project Area is located south of the town of Salinas and to the east of Highway 68, or Salinas-Monterey Road. The northwestern edge of the Project Area borders Highway 68. The southeastern border is between approximately 0.3 and 0.7 miles from the highway and runs at an angle of roughly 40 degrees northeast. The Project Area is roughly 3.75 miles long.

I have reviewed both the proposed project and the alternate site plan dated February 1, 2008. This report will address the alternate site plan as we believe that this plan provides an evvironmentally superior wildlife corridor.

BACKGROUND

Potential barriers to wildlife movement currently exist within the Project Vicinity due to previous development activities for regional transportation needs and residential and commercial development. These barriers can affect both larger mammals which may move more frequently through the region as well as smaller, less mobile species that may move over generational time periods.

In particular, Highway 68 and the Toro Park Estates development are a major barrier for wildlife species attempting to travel east and west through the Project Area. As of 2007, it carried about 26,000 vehicles per day. This level of traffic presents a formidable barrier to wildlife movement. Adjacent to most of this barrier of heavy traffic is a sound wall built to shield

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the Toro Park Estates development form the traffic noises of Highway 68. In addition, the development behind the sound wall is approximately 1400 ft wide. The three of these features impose a significant barrier to terrestrial wildlife species attempting to travel between Fort Ord to the Sierra de Salinas or Santa Lucia ranges. Wide-ranging terrestrial wildlife known to occur on Fort Ord lands include: American Badger, Mountain Lion, Bobcat (*Lynx rufus*), Black-tailed Deer (*Odocoileus hemionus)* and Coyote (*Canis Latrans*).

The current corridors for wildlife in this area are limited to El Toro Creek and the Portola Drive overpass (providing access to El Toro Regional Park) and possible culverts running beneath the highway. Those species that attempt to cross the road are subject to being killed. The Monterey Count SPCA lists the areas of greatest deer activity at night as Pebble Beach, Carmel Valley Road, the Highway 68 corridor, Holman Highway, River Road, and Highway 1 from Seaside to south of Carmel. Two of these roads abut the Project Area. During the deer breeding season in fall, the SPCA responds to an average of 20 to 30 hit-by-car deer calls a month in these areas, with almost all the deer involved either dead on arrival or needing to be humanely euthanized immediately.

EL TORO CREEK UNDERCROSSING

As discussed above, the El Toro Creek undercrossing is one of the remaining significant safe passages for both small and large mammals, amphibians, and reptiles. It is bordered by riparian vegetation which offers cover and shade for day time movements and the creek itself is shallow and, except during storms, flowing slowly enough for mammals to wade through it. A small seasonal tributary to El Toro also joins at this point and provides additional cover and opportunities for movement of more terrestrial species as it does not have perennial flows. Therefore, this location offers a good opportunity for many species to utilize this undercrossing and move between Fort Ord and the open space provided in the proposed project site.

PROJECT DESIGN CONSIDERATIONS TO CONTINUED USE OF UNDERCROSSING

Wildlife corridors design must consider a variety of factors including species specific habitat requirements, provision of cover for dispersal, and sufficient buffer from human disturbance. Wildlife do utilize a variety of man-made structures for crossing highways and roads, including culverts, bridges, and overpasses and are known to utilize relatively narrow passages in moving from one suitable habitat to another. Within open areas, corridor width may be larger to accommodate random movements associated with the search for cover or food. There is little research or data on optimal widths for wildlife corridors and larger species can move relatively quickly through narrow corridors whereas smaller species may need additional cover for multiple day movements.

The overall project conserves considerable open space and corridors for wildlife movement towards the El Toro Creek area. In particular, the large valley floor in the vicinity of the corridor will remain undeveloped as will the grassland and oak woodland corridor (800 to 1200 feet wide) between lot groupings in the 30s and 40s. A width of 300-400 feet is sufficient given the focal point of this undercrossing. This will provide both protected movement corridors and staging areas for wildlife moving from the higher open space lands to the valley floor. The

corridor width includes a variety of habitats including woodlands and aquatic habitats and therefore will accommodate a variety of species.

In the vicinity of El Toro Creek, the proposed project has been revised (per the alternate site plan) to reduce the number and density of lots near the El Toro Creek and Highway 68 undercrossing.

Important changes that have been made include:

- Maintenance of open space areas to the northeast of the undercrossing and parallel to Highway 68 so that species moving north-south through the project area can reach the undercrossing.

- In the area near San Benancio Rd the revised layout minimizes intrusion into riparian areas and preserves riparian corridor along El Toro Creek and its tributary through the reduction in number of lots from 12 to 1 and an increase in the size of the open space preserve lot (Parcel A2) at this location.

- Consolidation of three lots nearest El Toro Creek into one lot with no new structures proposed other than substantially within the footprint of the existing buildings.

- No barrier fencing will be allowed (open fencing such as rail fencing will be allowed) allowed on those portions of lots adjoining riparian areas in the area of El Toro Creek to allow for movement of species within lots outside of development envelope.

CONCLUSION

The revised plan will allow both large and small animals to access the undercrossing of Highway 68 at El Toro Creek. Additional space and passageways have been provided within the site plan to allow species to move from the larger open space areas provided in the project plan to the undercrossing. In addition, the width of the wildlife corridor prior to reaching the cover of El Toro Creek is sufficient to provide a staging area for a variety of species due to the inclusion of a variety of habitats that provide cover and food resources.

Applicant Submittal

wra
ENVIRONMENTAL CONSULTANTS

Memorandum

To: John Ford, County of Monterey

From: Michael Josselyn, PhD PWS
josselyn@wra-ca.com
415-454-8868 x 125

Cc:

Date: September 5, 2014

Subject: Ferrini Ranch: Wildlife Corridors

WRA prepared a Technical Report on Wildlife Corridors as they apply to the Ferrini Ranch Subdivision in July 2008. This technical memorandum assessed barriers to movement such as nearby residential housing, Highway 68, and fencing bordering Highway 68. It also evaluated potential movement corridors such as the Highway 68 bridge over El Toro Creek that, at that time, was presumed to provide access to the property from the Fort Ord area. The technical report contained a number of recommendations that were incorporated into Alternative 5A/B.

The Re-circulated DEIR (RDEIR) contains new information collected by Diamond *et al* (2010) using camera stations positioned under the Highway 68 bridge at El Toro Creek. This information documented the use of the creek by a number of wildlife species. The DEIR also discussed the most recent scientific literature on wildlife corridors that reviewed over 48 scientific papers and found that a width of 100 meters or 328 feet as suitable for most species (Hennings and Soll 2010). The table summarizing their findings is attached to this memorandum and illustrates the range of corridor widths that have been found for various species.

As summarized by Hennings and Soll (2010):

> "Studies and models suggest that wider corridors direct and increase animals' movement rates between patches, acting a bit like drift fences or funnels guiding animals toward habitat patches (Haddad 1999). Some researchers suggest that larger habitat patches require larger movement corridors (Kubes 1996). Wider corridors are obviously preferred, but land use and cost constraints favor narrower corridors (Beier et al 2009). The key goal should be to provide connectivity between populations and prevent reproductive isolation. There are no hard and fast rules for corridor width design; educated but subjective decisions must be made."

Animals such as amphibians and small mammals may spend a considerable time within a corridor; whereas large animals will move quickly through corridors to areas that are more supportive of their biological and ecological requirements. Within suburban areas such as the project site, many existing constraints need to be considered. Factors affecting corridor use such as highly traveled highways, existing residential use, and the land uses within the corridor affect how animals use these areas.

Corridors for large animals such as mountain lions are much harder to study given the scarcity of these animals and the few events that can be studied. Placing transmitters can provide useful information; but modeling is often used to establish estimated widths for these species based on their home range and habitat requirements. Large scale regional studies in natural habitats suggest that corridor widths of up to 2 km. This recommendation is based on use of theoretical models that assumed areas that were far more rural in nature than the project site. Thus, the assumptions and methodologies applied there are not directly applicable to the project site.

This does not mean, however, that mountain lions do not use narrower corridors. There is evidence, for example, that mountain lions can use fairly narrow habitat remnants that are not in fact good lion habitat (Beier 1996). In addition, mountain lions have frequently been observed using culverts and bridge overcrossings while moving between home ranges.

When designing wildlife corridors, Paul Beier, the leading researcher in mountain lion movement and a strong proponent of wildlife corridors warns against planning for the largest animals (Beier *et al.* 2008):

> We argue against designing a linkage solely for large carnivores—or any single species. Many other species need linkages to maintain genetic diversity and metapopulation stability. Furthermore, most large carnivores are habitat generalists that can move through marginal and degraded habitats, and a corridor designed for them does not serve most habitat specialists with limited mobility.

An important consideration when considering wildlife corridors are the existing conditions that may restrict movement. For example, Highway 68, with over 24,000 trips/day, has a significant impact on the movement of wildlife. A review of 79 studies found that negative effects of roads on wildlife outnumbered positive effects by a factor of five (Fahrig and Rytwinski 2009). The review indicated that amphibians and reptiles tended to show negative effects. Birds primarily showed negative or no effects, small mammals generally showed either positive effects or no effect, mid-sized mammals showed either negative effects or no effect, and large mammals showed predominantly negative effects. The findings indicate that roads most negatively impact certain groups of species, including species that are attracted to or do not avoid roads and are unable to avoid individual cars (for example, amphibians) and species with large movement ranges, low reproductive rates, and low natural densities (for example, large carnivores). We can therefore expect that mountain lions would be strongly negatively affected by the presence of Highway 68 and their movement restricted in this area, limited to a narrow 200 ft undercrossing at El Toro Creek. Thus, the limitation to movement of mountain lions, or any wildlife species for that matter, is Highway 68 itself, not the project site.

Although further development is proposed on the western portion of the project site where the El Toro Creek undercrossing of Highway 68 is located, implementation of Mitigation Measure 3.3-8 will reduce potential impacts to this undercrossing area to a less than significant level. Mitigation Measure 3.3-8 requires the applicant to revise the proposed Project site plan in the vicinity of El Toro

Creek to remove or relocate development away from the riparian corridor to allow sufficient wildlife movements. In particular, that measure prohibits any new development from being located within 200 feet of the riparian edge or the Highway 68 undercrossing. In addition, fencing in the vicinity of the Highway 68 corridor will be designed to allow for wildlife movement and the open space areas on both sides of the undercrossing will be preserved in perpetuity so that species moving north-south through the project site have an intact area in which to reach this undercrossing. The site plan for Alternative 5 in the RDEIR (Fig. 4.3b-Alternative 5 Site Plan West) provides an example of a development that comports with the requirements of this measure. With implementation of Mitigation Measure 3.3-8 impacts to wildlife corridors will be reduced to a less than significant level.

It is my professional opinion and supported by a review of the scientific literature, that the information contained in the recommendations made in 2008 and the updated information contained in the RDEIR best present the most recent data available about the site and about the science of wildlife corridor design. Implementation of Mitigation Measure 3.3-8 such as through a development like that proposed by Alternative 5 is sufficient to reduce the impact to wildlife corridors to less than significant.

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Research suggesting movement corridor widths (in feet and meters) required by various North American wildlife species. Widths are total corridor widths, including both sides of streams unless noted.

Reference	Location, species and context	Recommended or studied corridor width(s)	Notes
Best [37]	Birds in Iowa agricultural lands May-November and March-April	• N/A – study relating to 3 types of fencerows (all narrow, width not quantified) • More species in fencerows with more woody vegetation	In every season studied (spring, summer, fall), increase in species was substantial along hedgerows from herbaceous to scattered trees/shrubs to continuous trees/shrubs. Abundance trended in same direction, except summer (scattered trees/shrubs more abundant than continuous).
Brudvig et al. [54]	Experimental connectivity study at Savannah River site, South Carolina. Patches and corridors were early successional habitat within a pine forest matrix. Experimental forest setting. Vascular plants, not season-specific.	• 105-foot (32-meter) corridors enhances biodiversity "spillover" effect	Corridors facilitate movement of organisms between patches, increasing species richness within patches. In patches connected by corridors vs. isolated patches, corridors created a biodiversity "spillover" effect extending approx. 30% of the width of the 1-hectare connected patches, resulting in 10-18% more vascular plant species around connected patches.
Burbrink et al. [56]	Reptiles and amphibians in Illinois	• 328 feet (100 meters) or more; depends greatly on patch characteristics and corridor conditions	Wide (> 3,281 feet or 1,000 meters) riparian corridors did not support more species than narrow (<320 feet or 100 meters). Instead, proximity to core area and local habitat heterogeneity best explained species richness. Other literature suggested that lack of upland habitats and fishless pools, and hydroperiod inhibited many species from consistently occurring in corridor. Demonstrates importance of local conditions and natural history.
Calhoun and Clemens [62]	Amphibians	• 98-755 feet (30-230 meters); salamanders at lower end of range, frogs at upper end.	Recommend 3 management zones: the wetland depression, the wetland envelope (i.e., land within 98 feet or 30 meters of the wetland), and the critical terrestrial habitat (i.e., 98-755 feet or 30–230 meters from the wetland).
Conner et al. [77]	Riparian (intermittent stream) forest breeding bird communities in eastern Texas; used 3 widths: narrow (16-82 feet, or 5-25 meters), medium (98-131 feet, or 30-40 meters) and wide (164-328 feet, or 50-100 meters). Young pine plantations in rural setting.	(extracted species occurring in W OR) • Steadily increased with increasing width: downy woodpecker • 197-230 feet (60-70 meters): abruptly increased after threshold reached: pileated woodpecker, yellow-billed cuckoo • Steadily decreased with forest width: yellow-breasted chat • Not associated with forest width: hairy woodpecker, brown-headed cowbird	Detected many Neotropical migrant species in narrower widths, suggesting these zones do have some value. Shrub-breeding birds more associated with narrow widths.
Constantine et al. 2005 [78]	Small mammal study conducted in mature loblolly pine stands in South Carolina. Considered edge effects of 328-foot (100-meter) wide mature pine corridors through clear cuts.	• In some areas, 328-foot (100-meter) forested movement corridors may be sufficient to provide passage for some small mammal species (e.g., shrews). • Some small mammals may use corridor as their entire home ranges.	Live-trapped small mammals in three regenerating stands following clear-cuts. Harvested stands were bisected by 100-m corridors.

Reference	Location, species and context	Recommended or studied corridor width(s)	Notes
Croonquist and Brooks [82]	Bird species in central Pennsylvania riparian corridors, spring-summer	• At least 164 feet (50 meters); wider to support sensitive species; 820 feet (250 meters) to support full complement of bird communities • 13 feet (4 meters) woody vegetation for bird community in disturbed areas	Undisturbed (reference) vs. disturbed (agricultural / residential) corridors – species richness, abundance generally decrease with distance from stream in disturbed, but not undisturbed, watersheds. Specialist neotropical migrants used disturbed corridors primarily for migration. Disturbance-sensitive species occurred only in undisturbed corridor 82 feet (25 meters) or greater.
Damschen et al. [86] Damschen et al. [85]	Experimental connectivity study at Savannah River site, South Carolina. Experimental forest setting. Patches and corridors were early successional habitat within a pine forest matrix. Two patch types: edgy and not edgy. Vascular plants, not season-specific.	• 105-foot (32-meter) corridors	1 - Habitat patches connected by corridors retained more native plant species than do isolated patches, this difference increased over time, and the corridors did not promote invasion by exotic species. 2 – Looking at plant dispersal, found that dispersal vectors (birds vs. wind dispersed) and habitat features (edge, corridors) affected species colonization. Bird-dispersed plant species showed positive connectivity effects increasing then stabilizing over time, but no edge effects. Wind-dispersed plant species richness showed steadily accumulating edge and connectivity effects.
Darveau et al. (1995) [87]	Spring songbirds in riparian boreal forests in Canada. Studied corridors 66, 131, 197 feet (20, 40, 60 meters) and control (984 feet, or 300 meters) wide, effects over time due to logging.	• 197-foot (60-meter) wide corridors	To maintain forest breeding birds. Bird densities increased in buffer strips immediately after logging ("packing" effect), then decreased in all strip widths thereafter. By third year after clear-cutting, forest-dwelling species less abundant than generalists in 66-foot (20-meter) strips; Golden-crowned Kinglet and Swainson's Thrush became essentially absent in 66-foot (20-meter) strips after 3 years. Moderate thinning had a more moderate, but similar, effect.
Dickson et al. [93]	Breeding birds in 3 riparian widths in eastern Texas	• 49-82 feet (15-25 meters) (narrow – not recommended) • 98-131 feet (30-40 meters) (medium – minimum recommended) • 164-312 feet (50-95 meters) (wide, recommended) *Species-specific corridor width associations:* • Cowbird, Common Yellowthroat, Mourning Dove: no association • Yellow-breasted Chat: narrow • Red-eyed Vireo, Yellow-billed Cuckoo: increased with width • Downy woodpecker, American Crow: medium/wide	Narrow width (49-82 feet, or 15-25 meters) contained many shrub and edge associates. Medium width (98-131 feet, or 30-40 meters) contained a mix of species associated with narrow and wide widths. Widest width (164-312 feet, or 50-95 meters) contained species primarily associated with mature pine-hardwood and bottomland hardwood.
Environment Canada 1998 [106]	Minimum to allow for interior habitat species movement Sufficient to allow for generalist species movement	• 328 feet (100 meters) • 164 feet (50 meters)	Connectivity width will vary depending on the objectives of the project and the attributes of the nodes that will be connected. Corridors designed to facilitate species movement should be a minimum of 164-328 feet (50-100 meters) wide. Corridors designed to accommodate breeding habitat for specialist species need to be designed to meet habitat requirements of those target species.
Fahrig and Merriam (1985) (from 244)	White-footed mice (Peromyscus leucopus)	• "a few meters"	To reduce probability of extinction in woodlots
Fernandez-Juricic [113]	Urban birds in Madrid, Spain	• Wooded streets increase habitat connectivity to parks	Streets with trees that connected parks positively influenced the number of species in parks

Reference	Location, species and context	Recommended or studied corridor width(s)	Notes
Fernandez-Juricic and Jokimaki [115]	Review two comprehensive urban bird studies in Spain and Finland parks	• N/A - surrounding urban streets.	Wooded streets increase habitat connectivity to parks
Haddad [149]	2 butterfly species in experimentally designed landscape, South Carolina. Patches and corridors were early successional habitat within a pine forest matrix.	• 105 feet (32 meters) corridor	Corridors increased inter-patch movement rates; movement rate was significantly, negatively related to inter-patch distance. Corridor effects were stronger for males than for females.
Haddad and Baum [151]	4 butterfly species in experimentally designed landscape, South Carolina. Patches and corridors were early successional habitat within a pine forest matrix.	• 105 feet (32 meters) corridor	Three out of four butterfly species reached higher densities in patches connected by corridors than in similar, isolated patches.
Haddad et al. [152]	Variety of invertebrate and vertebrate species (10 spps) in experimentally designed landscape, South Carolina. Patches and corridors were early successional habitat within a pine forest matrix.	• 105 feet (32 meters) corridor	This width was sufficient (and was the only width tested) to successfully direct movement of animals to the next patch. Interestingly, the same number of animals left a given patch with or without corridors, but corridors increased their arrival at the next patch by more than 68 percent for each of 10 species, acting as a sort of "drift fence."
Hagar 1999 [155]	Western Oregon study of logged and unlogged riparian areas. Study conducted May-July in Coast Range.	These species' numbers increased with increasing buffer width (40-70m 1-sided buffers): • Pacific-slope Flycatcher, Brown Creeper, Chestnut-backed Chickadee, Winter Wren 1-sided, 70-m buffer may be too narrow for these species: • Hammond's Flycatcher, Golden-crowned Kinglet, Varied Thrush, Hermit Warbler	
Helferty 2002 [163]	Review of needs for amphibian upland corridors in Toronto area	• Up to 0.62 mile (1 kilometer) traveled between wetland and terrestrial habitats.	Maintenance of natural hydrology regimes is critical to maintaining amphibian biodiversity.
Hodges and Krementz 1996 [177]	Riparian forests in Georgia during breeding season. Minimum distance needed to support area-sensitive Neotropical migratory birds	• 328 feet (100 meters) or more, 1-sided width • Red-eyed Vireo probably needs more	Sufficient to maintain the six most common species of breeding Neotropical migrant birds.

Reference	Location, species and context	Recommended or studied corridor width(s)	Notes
Keller, Robbins & Hatfield 1993 [190]	Birds in riparian corridors (117) in agricultural setting in Maryland and Delaware, 25-800 m wide.	• Probablility of area-sensitive Neotropical migrants increased most dramatically between 25-100m • Recommended minimum 100-m corridors Significant probability of detecting these species continued to increase to maximum width: • Red-eyed Vireo, Wood Thrush, Eastern Wood-peewee • Noted Red-eyed Vireo, Wood Thrush, Hairy Woodpecker as area-sensitive species with maximum probability of detection in minimum 100-ha patches. These species were significantly associated with narrow corridors: • Purple Martin, Mourning Dove, Red-winged Blackbird, European Starling, Turkey Vulture, House Sparrow, American Robin	Brown-headed Cowbird came close to significance (P =0.07) for wider corridors. This makes sense in light of other studies showing correlation not necessarily with hard edges, but particularly with streamside edges.
Kilgo et al. 1998 [195]	Compared breeding bird abundance, species richness among S. Carolina bottomland hardwood stands ranging in width from <50 m to >1,000 m and enclosed by forested habitat. Also compared avian abundance and richness among stands enclosed by pine (Pinus spp.) forest and stands enclosed by field-scrub habitats.	• Neotrop and total species richness was positively associated with stand width. • Total abundances were generally greatest in width classes <50m and >1000m. • Probability of occurrence was + associated with stand width for 12 species, - for one. • Even narrow riparian zones can support diverse avifauna, but 500-m zones are needed to maintain complete avian community characteristics.	Because these bottomland forests were embedded within other forest or vegetation types, relevance to the Metro region may not be high.
Kinley & Newhouse 1997 [197]	SE British Columbia breeding bird surveys examining riparian reserve zone width and bird density, diversity. Three zones: 70, 37 or 14 m wide.	These species seem to prefer the widest corridors (70 m or more): • Golden-crowned Kinglet, Gray Jay , Townsend's Warbler, Varied Thrush, Warbling Vireo (P<0.07), Winter Wren • Density of all species and all riparian-associated species > with increasing width.	See pages 81-82 for species-habitat relationships.
Cross et al. 1985 [200]	Downy woodpecker	• 98 feet (30 meters)	Minimum mean width supporting breeding populations of downy woodpeckers
Knutson and Naef 1997 [200]	Black-capped chickadee	• 98 feet (30 meters)	Minimum mean width supporting breeding populations of black-capped chickadees
Mudd 1975 [264]	Mourning doves	• 98 feet (30 meters)	Sufficient width for mourning doves
Stauffer and Best 1980 [347]	White-breasted nuthatch	• 112 feet (34 meters)	Minimum mean width supporting breeding populations of white-breasted nuthatch

Reference	Location, species and context	Recommended or studied corridor width(s)	Notes
Stauffer and Best 1980 [347]	Minimum needed to support Rufous-sided Towhee breeding populations	• 1,310 feet (400 meters)	Rufous-sided Towhees were subsequently split between Spotted and Eastern towhees.
Mudd 1975 [264]	Pheasant, quail and deer	• 150 feet (46 meters)	
Machtans et al. 1996 [224]	Bird movements through riparian (lakeside) buffer strips before and after harvest in Alberta, Canada May-August, 3 years	• At least 328 feet (100 meters) buffer along 1 edge of lake	Resident juvenile birds (dispersal). Number of mist-net captures for all ages/species increased logarithmically closer to lake.
Margui 2007 [266]	Valencia, Spain street tree study over several seasons.	• Tree species richness, abundance, height were primary factors affecting bird metrics. • Siberian elm, box elder, white poplar were bird favorites. • Use varied by bird species and season. • Winter: 25% of all wintering bird species in the area used street trees; breeding = 19%	Author concludes that street trees provide poor habitat, in sharp contrast to two other studies examining street trees as corridors in Madrid, Spain and Melbourne, Australia [113;384]. The Valencia study sites were purposely selected such that there were no natural areas nearby, unlike the other street tree studies, which were connected to natural areas. Madrid and Melbourne also had larger, more mature street trees. For more sensitive species, it seems likely that street trees may be quite valuable for connectivity but less valuable as habitat.
May 2000 [238]	General wildlife habitat	• 328 feet (100 meters)	Wildlife needs summarized from May's literature review.
Merriam	Eastern chipmunk	• *Note this deals with length, not width.* • 66-1,509 feet (20-460 meters); most frequent usage in the 66-131-foot (20-40-meter) range	Range of distances traveled between isolated upland forests; 90% via wooded linkages.
Peak and Thompson 2004 [295]	Nest success of songbirds in riparian forests of different widths (agricultural setting) in Missouri	• Wider than 1312-1739 feet (400-530 meters) for most area-sensitive species. • 180 feet (55 meters) may be sufficient for generalist species such as catbirds and cardinals.	This study was for breeding habitat, not corridor movement; applies to birds attempting to nest within corridors.
Pennington et al. 2008 [299]	Neotropical migratory birds in Ohio – breeding and migration	• 1640 feet (500 meter) wide corridor or patch without buildings for breeding • 820 feet (250 meters) for migrating, buildings okay	Hard to disentangle native vegetation from corridor width (true also here); both bird measures also positively related to native vegetation and mature trees. Recommend adding high native tree cover in urban areas for stopover habitat.
Rudolph and Dickson 1990 [322]	Full complement of herpetofauna and other vertebrate species	• > 197 feet (60 meters)	Corridor should have mature trees.

Reference	Location, species and context	Recommended or studied corridor width(s)	Notes
Semlitsch and Bodie 2003 [329]	Literature review relating to wetland / riparian buffer requirements for reptiles and amphibians, so this is not strictly a corridor reference.	Group / range of recommended widths • Frogs / 673-1207 (205-368 meters) • Salamanders / 384-715 feet (117-218 meters) • Amphibians / 522-951 feet (159-290 meters) • Snakes / 551-997 feet (168-304 meters) • Turtles / 404-942 feet (123-287 meters) • Reptiles / 417-948 feet (127-289 meters) • Herpetofauna / 466-948 feet (142-289 meters) • Overall recommendation to cover most species: 98-197 feet (30-60 meters) aquatic buffer, 466-1276 feet (142-389 meters) core habitat (from stream), additional 164 feet (50 meters) beyond core for terrestrial buffer.	Mean minimum and maximum core terrestrial habitat for amphibians and reptiles. Values represent mean linear radii extending outward from the edge of aquatic habitats compiled from summary data in the authors' appendix (i.e., one-sided buffer). The review summarized terrestrial migration distances from aquatic sites for reptiles and amphibians, so the widths are more relevant to home range radii than corridors. However, provides information regarding both core habitat and corridor length requirements for a wide variety of species, including the following species occurring here: western toad, Pacific chorus frog (from 1956 OR study), bullfrog, OR spotted frog, rough-skinned newt (from 1960 OR study), snapping turtle, painted turtle, and northwestern pond turtle.
Silva and Prince 2008 [332]	Prince Edward Island, Canada Small mammals in agricultural landscape	• Hedgerows provided substantial connectivity for small mammals • Hedgerows narrow, but length and composition are important	Abundance of small mammals except eastern chipmunk increased in hedgerows longer than 225–250 m, but was independent of length in shorter hedgerows. Most small mammals appeared to benefit from hedgerows with high shrub diversity, ground cover and few gaps.
Small 1982 [339]	Pileated woodpecker nesting	• 328 feet (100 meters)	
Small 1982 [339]	Travel corridor for red fox and marten	• 328 feet (100 meters)	
Soulé et al. 1988 [344]	4 chaparral bird species, including Spotted Towhee	• 16 feet (5 meters)	chaparral strips running between habitat patches to reduce local extinctions in isolated patches
Spackman and Hughes 1995 [345]	Birds and vascular plants in Vermont Spring; rural setting.	• At least 492-1148 feet (150-350 meters) to retain 90% of bird species. • Small mammals traveled primarily below or just above high water mark.	Used "above high water mark" terminology to describe corridors, so assumed distances were 1-sided and doubled them. Corridors should be forested.
Thurmond et al. 1995 [359]	Forest interior and neotropical migrant birds in Georgia riparian areas	• Wider than 165 feet (50 meters)	Forest interior and neotropical migrants were essentially absent in widths less than this distance.
Todd 2000	General wildlife habitat	• 100-325 feet (30-99 meters)	From buffer width chart – wildlife needs

Reference	Location, species and context	Recommended or studied corridor width(s)	Notes
Tzilkowski, Wakely & Morris 1986 [361]	Relationships between street-tree characteristics, including habitat features, and use by urban birds were investigated from May-July in State College, PA. Bird presence or absence was sampled in 1278 individual street trees of 24 species.	• Analysis of tree species, height class and bird occurrence determined that pin oak, American elm and honey locust were used most frequently by birds. • There was a positive linear relationship between height class and bird occurrence. • Both native and non-native birds occurred more frequently in tall street trees where there was little other tree cover. • Natives were seen more often in residential areas with low vehicular traffic. • Non-natives were seen more often in business areas with high traffic volume.	Street tree species and structure vary in their attractiveness to bird species. This study does not specifically address connectivity but ties to three other street tree studies cited here [113;266;384].
Prose 1985 [308]	Belted Kingfisher roosts; this was a Habitat Suitability Model from USFWS, and this reference was from Maritime Provinces.	• 100-200 feet (30-61 meters) from water (note 1-sided width)	Kingfishers typically roosted among the leaves of deciduous trees and near the tips of small supple limbs, where they were safe from nocturnal predators.
White et al. 2005 [384]	Urban bird study in Melbourne, Australia.	• The transition from native to exotic streetscapes saw the progressive loss of insectivorous and nectivorous species reflecting a reliance by these species on structurally diverse and/or native vegetation for both shelter and food resources. More structurally diverse streetscapes provided habitat and movement corridors for more species.	The implementation of effective strategies and incentives which encourage the planting of structurally diverse native vegetation in streetscapes and gardens should be paramount if avian biodiversity is to be retained and enhanced in urban environments.
Hannon et al. 2002 [157]	Studied changes in terrestrial vertebrate communities from pre- to post-harvest over 3 years in experimentally created buffer strips (20, 100, 200, and 800 m wide) in a boreal mixed wood forest in Alberta, Canada.	• 656-foot (200-meter) buffer needed to conserve pre-harvest passerine bird community, at least up to 3 years post-harvest.	Forest-dependent bird species declined as buffer width narrowed from 200 to 100 m and narrower. Changes in small mammal or amphibian abundance were not detected for any treatment relative to controls; however, studied species are habitat generalists that used and even bred in clear cuts.

Harper Canyon Subdivision Project
Wildlife Camera Trapping Study Report

November 2023

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Appendices

1. INTRODUCTION

Denise Duffy & Associates, Inc. (DD&A) was contracted by the County of Monterey Housing and Community Development Department (County) to conduct a wildlife camera trapping study for the proposed Harper Canyon Subdivision Project (proposed project), located in the County of Monterey (County) along Highway 68 and approximately five miles west of the City of Salinas (**Figure 1**). The proposed project involves a combined development permit for the subdivision of 344 acres into 17 residential lots for single-family homes (**Figure 2**). The proposed project site consists of rolling and undeveloped terrain, bordered on the east and south by Toro County Park and on the west by an existing housing subdivision within San Benancio Gulch. The Fort Ord National Monument (FONM) is located less than one mile north of the proposed project site, across Highway 68.

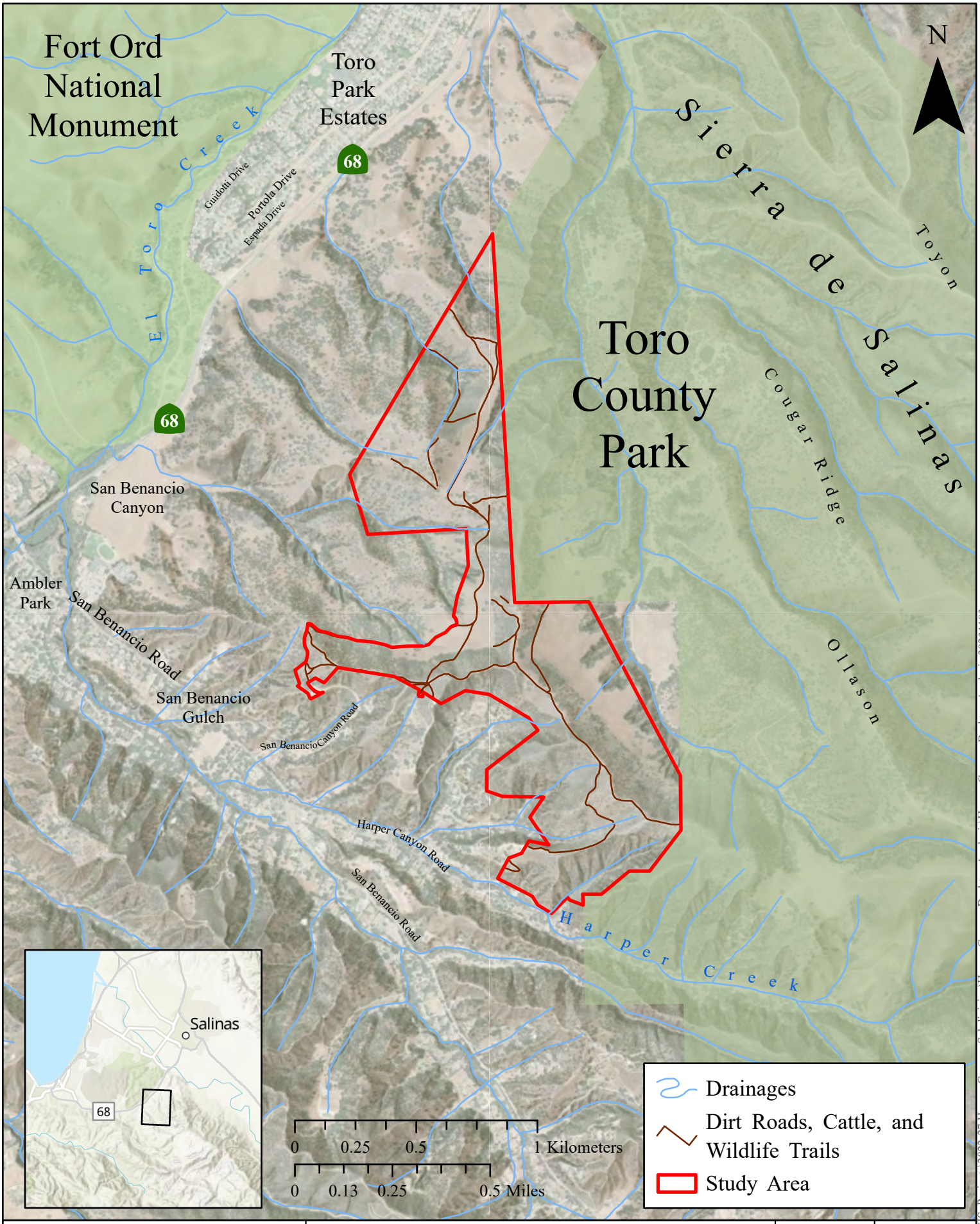
An Environmental Impact Report (EIR) was prepared for the project in December 2013 (State Clearinghouse No. 2003071157). The County served as the lead agency responsible for preparing the EIR. The Draft EIR noted that the proposed project site contained drainages, mostly tributaries to El Toro Creek, and that these channels "can provide movement corridors for amphibians when water is present and for other animals throughout the year." The Draft EIR also identifies larger wildlife, such as mountain lions and bobcats, as living in Monterey County. The Final EIR identifies wildlife corridors as a sensitive resource, and states that a substantial interference with such a corridor would constitute a significant impact. The proposed project is located less than a mile from a key wildlife passage (the Toro Creek Undercrossing) that allows wildlife to bypass Highway 68 (**Figure 3**). The courts determined that the Final EIR does not provide basic information about the wildlife corridor of which this passage is a part, such as its dimensions, or a definitive statement as to whether or not the corridor overlaps a portion of the proposed project site. The wildlife camera trapping study, conducted between December 2022 and May 2023, is an important step in the process of identifying and understanding the type and density of wildlife utilizing the proposed project site. This report describes the methods and results of the study.

2. STUDY AREA AND OBJECTIVES

The Study Area consists of the entire proposed project site (**Figure 1**), an approximately 343-acre area of rolling and undeveloped terrain, bordered on the east and south by Toro County Park, on the west by an existing housing subdivision within San Benancio Gulch, and to the northwest by private open space (proposed for the future Ferrini Ranch Subdivision development), Highway 68, and beyond that the FONM. Vegetative communities within the Study Area consist of annual grassland, coast live oak woodland and savanna, and chamise chaparral. Dirt roads, cattle trails, and wildlife trails are found throughout the Study Area, which is primarily used for livestock grazing. There are nine (9) unnamed drainages within the Study area that direct most surface water to two (2) intermittent creeks, El Toro Creek and Harper Creek. These creeks do not traverse the Study Area but are in the vicinity of the Study Area. El Toro Creek is an intermittent drainage located north of the Study Area that originates near the Laguna Seca Raceway and flows generally northeast on the north side of Highway 68 to the Salinas River. Harper Creek is an intermittent tributary of El Toro Creek located south and southwest of the Study Area that originates in the Sierre de Salinas Mountains just south of Toro County Park and generally flows northwest through the San Benancio Gulch. San Benancio Gulch is a regional identifier used to describe the lowlands between two ridges, that also conveys San Banacio Road. Four (4) of these drainages flow north toward Highway 68, Toro Park Estates, and El Toro Creek, although only one (1) of them appears to have a surface connection to El Toro Creek (USGS 2023). Four (4) of the drainages flow southwest toward San Benancio Gulch and

appear to have surface connection to Harper Creek (USGS 2023) during storm events. Two (2) drainages flow in a northeastern direction towards Toro County Park. The presence of surface water within drainages was not a parameter that was consistently documented as a part of this study.

The objective of this study is to develop a baseline inventory of wildlife usage throughout the Study Area.



Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Harper Canyon Subdivision Project
Wildlife Camera Trapping Study Area

Date 11/3/2023
Scale 1:20,000
Figure 1

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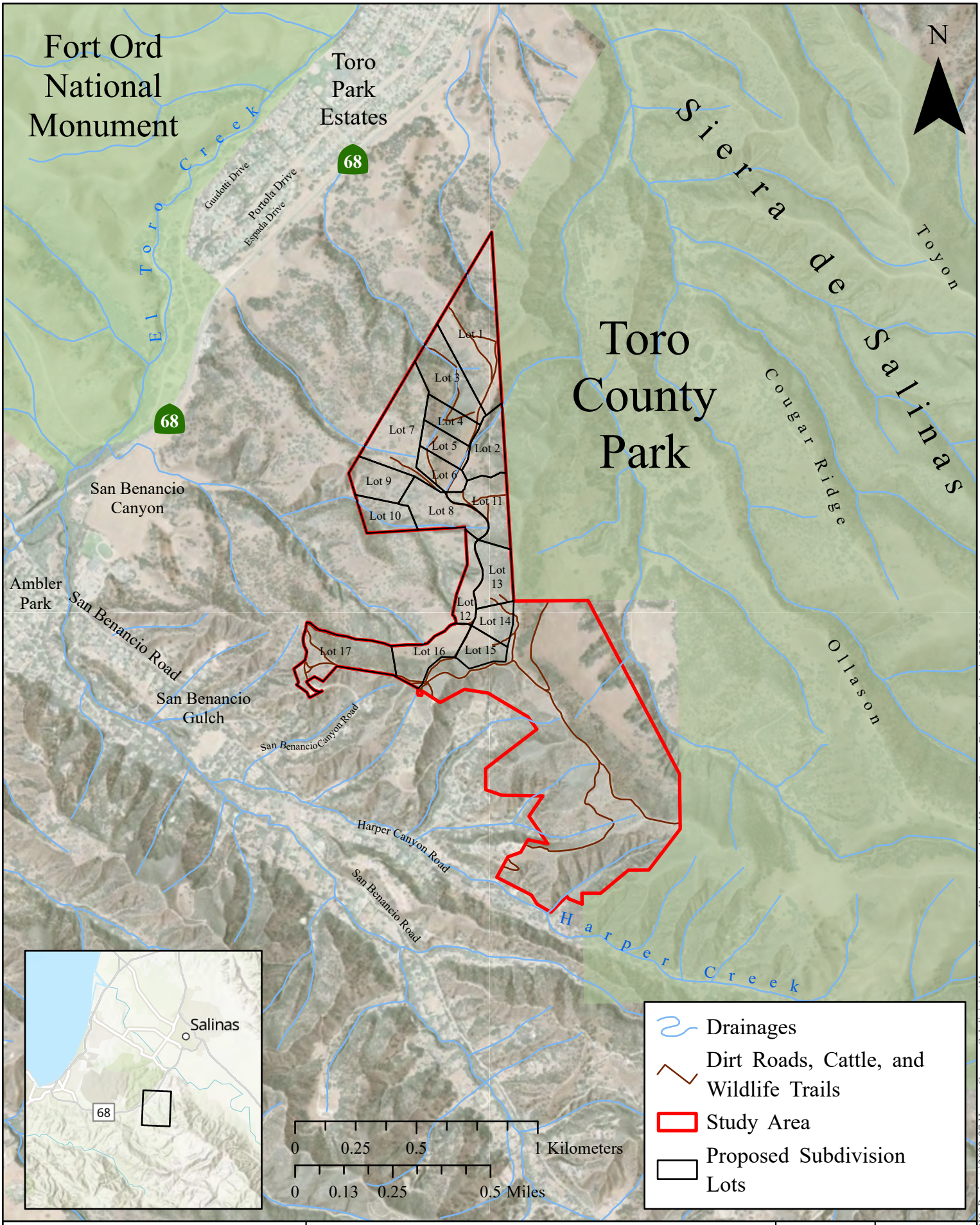

Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Harper Canyon Subdivision Project Site Plan

Date 11/3/2023

Scale 1:20,000

Figure 2

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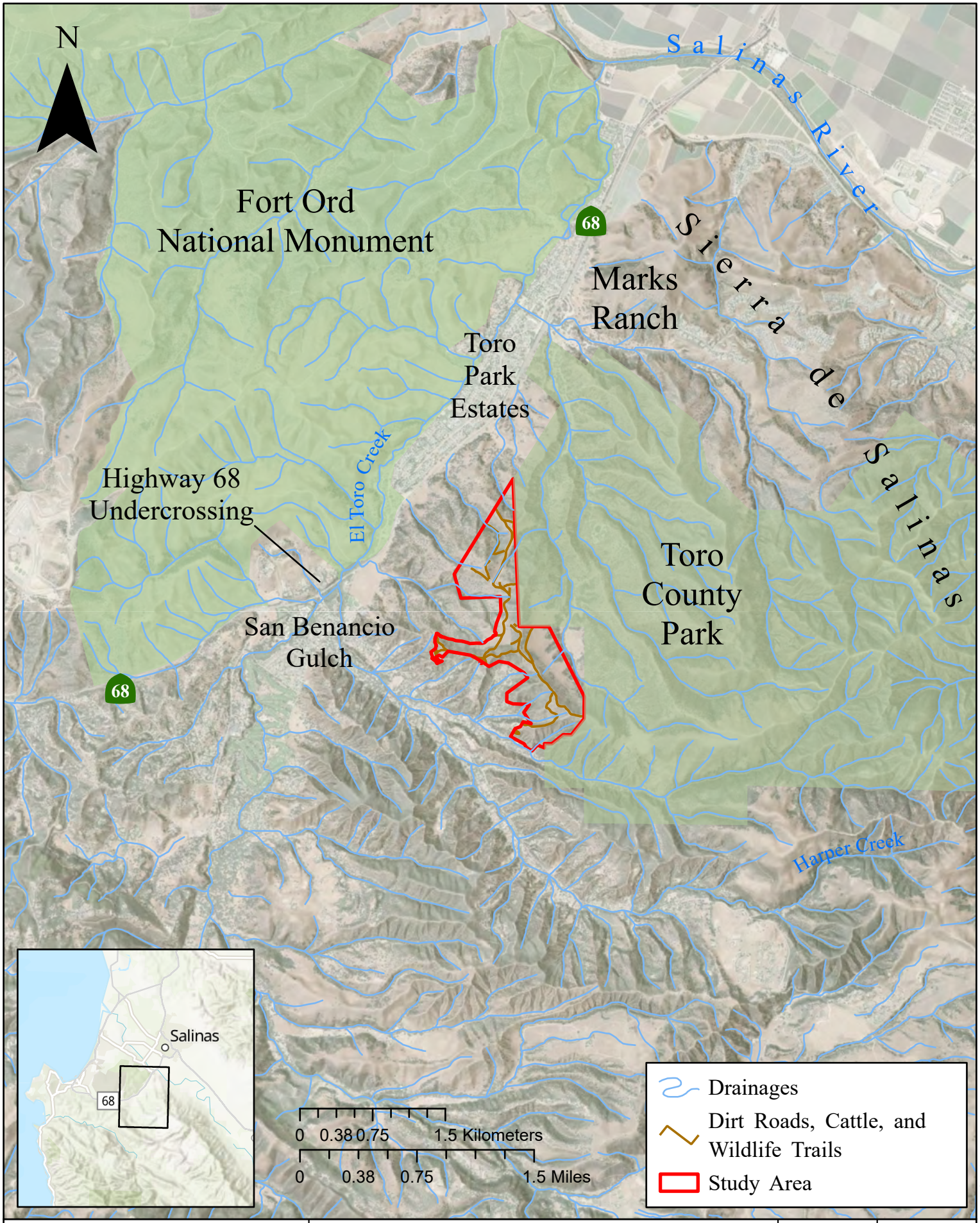

Denise Duffy & Associates, Inc. Planning and Environmental Consulting	Harper Canyon Subdivision Project Wildlife Camera Trapping Study Surrounding Area	Date 11/3/2023 Scale 1:50,000	Figure 3

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3. METHODS

3.1 Time Frame

The wildlife camera trapping study began on December 2, 2022, with the installation of six wildlife camera trapping stations (WCTS). WCTS were installed for a duration of six months, for a total of at least 1,080 camera trap days. Literature suggests that 1,000 camera trap days are sufficient for detecting 60-70% of the species within a Study Area (Tobler, et al., 2008; F. Rovero, et al., 2010). Data collection from the camera stations occurred on a bi-weekly basis.

3.2 Focal Species

This study centers on six focal species: mountain lion (*Puma concolor*), gray fox (*Urocyon cinereoargenteus*), bobcat (*Lynx rufus*), black-tailed deer (*Odocoileus hemionus columbianus*), wild pig (*Sus scrofa*), and coyote (*Canis latrans*). Four of these species—mountain lion, gray fox, bobcat, and black-tailed deer—were chosen based upon their diversity of habitat requirements and movement patterns, which were documented in the Central Coast Connectivity Project (CCCP), a wildlife corridor study that analyzed wildlife movement patterns and identified lands and waterways that provide important connectivity between core habitat areas for wildlife between Central Coast mountain ranges (Connectivity for Wildlife, 2010). American badger (*Taxidea taxus*) and Monterey dusky-footed woodrat (*Neotoma fuscipes luciana*) were also included as focal species in the CCCP; however, the study only captured each of these species once with WCTS. Given the infrequent observations of these species in the CCCP, this study replaces those focal species with wild pig and coyote, species that were documented using camera trapping stations in the CCCP, but were not included in the suite of focal species for that study.

3.3 Camera Trapping Station Location Determination

DD&A biologists reviewed applicable background documentation and data, including the State Route 68 Scenic Highway Plan (TAMC, 2017), the CCCP, *Biological Resource Assessment, Encina Hills Property, Monterey County, California* (Zander, 2001a), *Results of Follow-up Survey, Encina Hills Property, Monterey County, California* (Zander, 2001b), *Revised Biological Resource Assessment, Encina Hills Property, Monterey County, California* (Zander, 2005), the California Department of Fish and Wildlife's California Natural Diversity Database Biogeographic Information and Observation System, historical/current aerial photography/satellite imagery, topography, and other local sources. The review included a desktop geographic analysis of the Study Area using ESRI ArcGIS to determine the most likely locations for potential wildlife corridors/pathways and potential locations for WCTS. Potential WCTS locations were plotted on cartographic materials for use in the field installation component. Potential locations focused on entry and exit points to the Study Area, based on topographic features (e.g., drainages, existing trails and roads) and habitat types (e.g., riparian, grassland, oak woodland).

DD&A biologists traversed the Study Area with the cartographic materials described above to field-truth the potential locations for WCTS. The initial six camera trapping stations were placed at locations that showed some sign of wildlife activity (e.g., scat, trails, sign, burrows) or had topographic/habitat characteristics suggesting their use as a movement corridor (e.g., riparian drainages, wildlife trail, cattle trails, bedding areas). One camera was installed adjacent to a cave feature that had a wildlife sign (i.e., tracks) and could be used by wildlife as shelter (**Appendix A**, Photo 1).

Once WCTS locations were selected, equipment was placed with the intention to minimize effects on animal behavior. Camera setup also took into account the size of species that could be accommodated by

the area and passage being monitored, and WCTS locations were selected for both large-sized mammals and small-sized animals. According to Rovero et al. (2013), camera placement for faunal detection can be opportunistic (i.e., placed along intensively used wildlife trails, nests, feeding, or drinking sites) and the spatial arrangement of camera traps can be flexible; there are no strict requirements on minimum distances between camera traps or total Study Area to be covered. Tobler et al. (2008) indicated that the area covered by the camera traps may have little impact on the number of species detected; inventories may, therefore, be conducted in a sampling area that is representative of the total Study Area and main habitat types (e.g., dense forest, woodland, wooded grassland, grassland, etc.). Therefore, WCTS were placed along drainages, wildlife trails, and areas that provided shelter, in all of the vegetation communities within the Study Area.

During the study period WCTS were adjusted to study other locations or features within the Study Area. WCTS 4L1 was initially located within a drainage adjacent to a cave feature that could provide shelter for wildlife. One month into the study period this location did not result in any captures and the camera was relocated to a well-defined cattle/wildlife trail along a ridge heading leading north of the Study Area. WCTS 6L1 was relocated three times along various wildlife trails throughout the Study Area. Generally, camera locations that were producing low levels of success were relocated to new locations. Basing relocation on activity may lead to data bias; however, since the goal of the study was to establish a wildlife inventory, it was determined that locations with more activity were more important than the objectiveness of WCTS locations.

Locations for WCTS were recorded using survey-grade Trimble Geo7Series GPS collectors. GPS data collected was imported into ArcGIS for the development of cartographic materials. DD&A deployed six, motion-sensitive, infrared wildlife cameras at the locations identified below (Figure 4). Table 1 presents additional details on the camera locations, including duration of time at each station, surrounding topography, general location details, and generalized habitat characteristics.

Table 1. Wildlife Camera Location Details

Camera[1]	Dates Deployed	Surrounding Topography	General Location Details	Surrounding Habitat
1L1	12/2/2022-5/30/2023	Plateau	Study Area from San Benancio Gulch to the West, Adjacent to Dirt Road	Oak Woodland/ Savanna
2L1	12/2/2022-5/30/2023	Flat	Near Middle of Study Area, Along Dirt Road	Oak Woodland/ Grassland
3L1	12/2/2022-5/30/2023	Ridgeline	Connecting Trail from Toro Park to Southern End of the Study Area	Oak Woodland/ Scrub
4L1	12/2/2022-1/6/2023	Drainage	Along Drainage Heading North Toward Highway 68 and Toro Creek, Adjacent to Cave Feature	Oak Woodland/ Riparian
4L2	1/6/2023-5/30/2023	Ridgeline	North End of Study Area, Adjacent to Cattle Trail	Grassland
5L1	12/2/2022-5/30/2023	Drainage	Along Drainage Heading North Toward Highway 68 and Toro Creek	Oak Woodland/ Riparian

[1] Camera nomenclature represents the order in which the camera was deployed and the location. For example, Camera 4L2 was the fourth camera deployed during the initial deployment and the second location for Camera 4 after it was determined that the original location was not producing significant wildlife activity.

Camera[1]	Dates Deployed	Surrounding Topography	General Location Details	Surrounding Habitat
6L1	12/2/2022-1/6/2023	Ridgeline	Property Fenceline Trail Heading North to Highway 68 and Toro Creek	Oak Woodland/ Grassland
6L2	1/6/2023-2/10/2023	Hillside	Trail Heading West from Study Area into Toro Park	Oak Woodland/ Savanna
6L3	2/10/2023-4/30/2023	Ridgeline	Top of Trail Coming from San Benancio Gulch to the East	Oak Woodland/ Savanna
6L4	4/30/2023-5/30/2023	Hillside	Along Trail Heading Northwest to Highway 68	Oak Woodland/ Savanna

3.4 Cameras

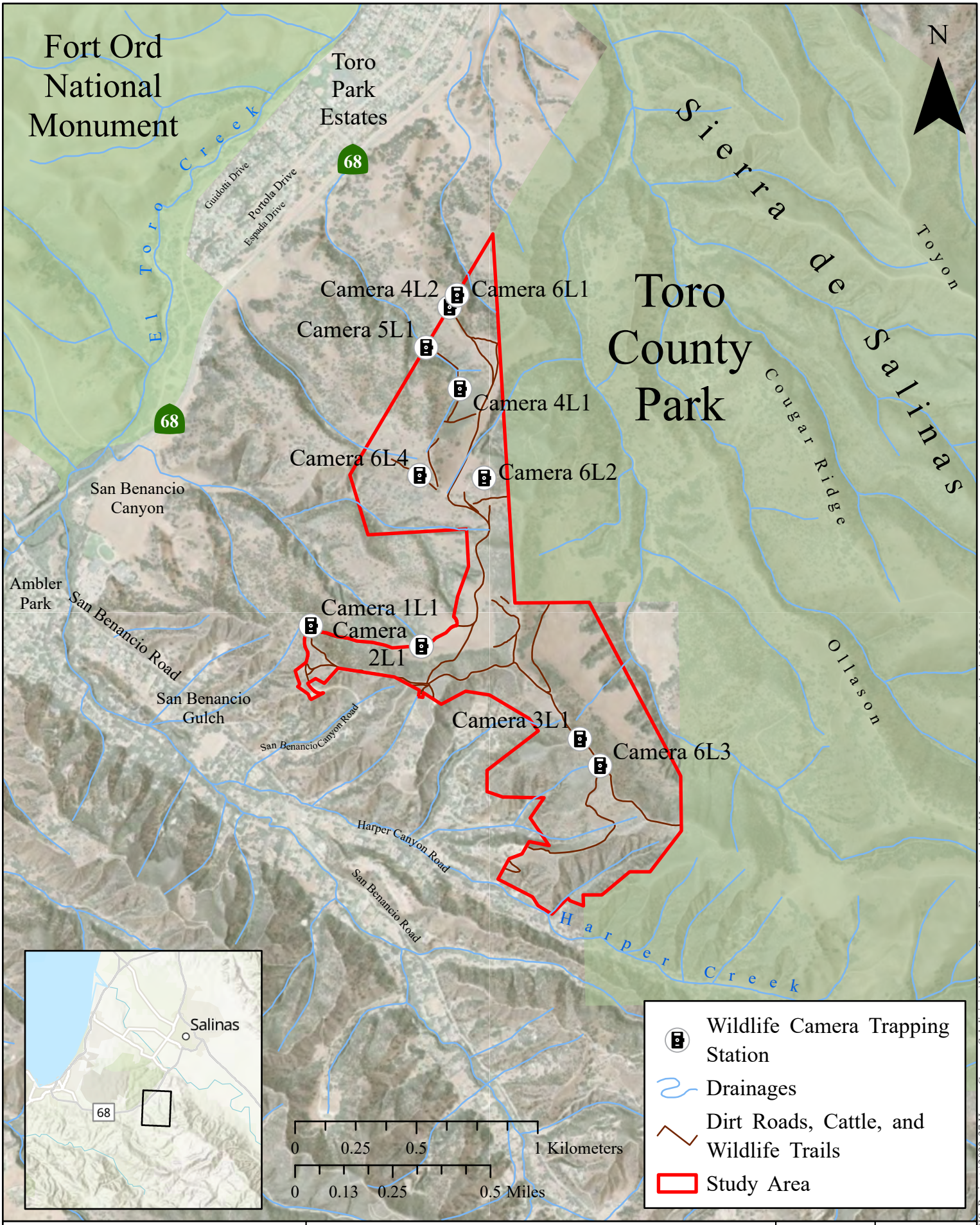
DD&A deployed six Bushnell Core DS No Glow Trail Cameras. CORE Dual Sensor (DS) Technology includes two image sensors, one optimized for sharper and richer images during the day and another optimized for images with consistent and further illumination at night. The camera provided an 80-foot range with minimal to no light emitted to produce photos at night. Table 2 details the camera settings that were used during the study. Photos from each station were downloaded directly from the SD cards to a laptop, where they were reviewed to confirm contents. Photos that did not contain wildlife (i.e., photos with humans, wind disturbance, etc.) were not included or categorized in the photo analysis. All photos containing wildlife were uploaded to Deer Lab (https://app.deerlab.com/), an online application used to categorize and organize wildlife camera photos. All wildlife in the photos were then tagged in the software to species level (if possible). Representative photos for each focal species and some unique species are included in Appendix A.

Table 2. Wildlife Camera Settings[2]

Mode	Image Size	Capture Number	Flash Mode	Interval	Sensor Level	Camera Mode	Time Stamp	Field Scan
Camera	30 MB	3	Long Range	10s	Auto	24 hrs.	On	Off

Mode: Selects the format your camera will record in.
Capture Number: Selects how many photos are taken in sequence per trigger.
Flash Mode: Selects the shutter speed.
Interval: Selects the length of time that the camera will "wait" until it responds to any additional triggers from the Passive Infra-Red Sensor.
Sensor Level: Auto sensor level will automatically adjust the sensor level depending on the surrounding temperature. >70°F (High); 45°F～70°F (Normal); < 45°F (Low).
Camera Mode: Allows user to limit operation to only day or night period if desired.
Time Stamp: Select "On" if you want the date & time (that the image was captured) imprinted on every photo/video, select "Off" for no imprint.
Field Scan: When set to "On", the Core Trail Camera will take a photo (or record a video clip) automatically at your choice of intervals (for example, once every five minutes) during one or two blocks of time you set up for each day, without requiring a trigger from an active animal.

[2] Settings for videos were not included since the trapping stations were set into camera mode.



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Planning and Environmental Consulting

Harper Canyon Subdivision Project
Wildlife Camera Trapping Stations

Date 11/3/2023
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4. RESULTS AND DISCUSSION

The WCTS documented 2,422 instances of wildlife activity between December 20, 2022, and May 30, 2023. As discussed above, the focal species for this study were selected based on the CCCP and due to their diversity of habitat requirements and movement patterns; however, the suite of focal species was altered to include two species that were more consistently captured by WCTS in the CCCP (i.e., wild pig and coyote). A brief paragraph describing the activity of each focal species and as a discussion of other species observed during the study is presented below. Summarized results for each focal species are presented in Table 3.

Table 3. Focal Species Wildlife Camera Trap Results

Species	# of Tagged Photos	# of Sightings	Camera Locations
Bobcat	133	65	1L1, 2L1, 3L1, 4L2, 5L1, 6L3, 6L4
Coyote	226	120	1L1, 2L1, 3L1, 4L2, 5L1, 6L1
Fox	461	175	1L1, 2L1, 3L1, 6L3
Black-Tailed Deer	204	58	1L1, 2L1, 3L1, 4L2, 5L1, 6L1, 6L3
Mountain Lion	52	14	1L1, 2L1, 3L1, 5L1, 6L3
Wild Pig	148	26	1L1, 2L1, 3L1, 4L2, 5L1
Note: Photos taken within one 15-minute block of time were considered a sighting.			

4.1 Heat Maps

A Heat Map is a graphical representation of data that uses a system of color coding to represent different values. Heat Maps (Appendix B-1 through B-7) were created using the sightings collected at each WCTS to depict represent density of occurrences for wildlife. WCTS with several occurrences (dense) of a species are represented with red coloring while WCTS with few occurrences (sparse) are represented with yellow or green. A cumulative Heat Map was created to display wildlife occurrences for all focal species, as well as Heat Maps for each individual focal species. Heat Maps present a simple visual representation of locations within the Study Area that are frequented more regularly by each focal species and wildlife in general.

4.2 Focal Species

4.2.1 Bobcat

Bobcats were tagged in 133 photos for a total of 65 sightings within the Study Area. Most bobcat sightings occurred at night with approximately 35.3% occurring between the hours of 1800 and 2200. WCTS 1L1 and 3L1 were the most active stations for this species with 36.8% and 30.9% of the sightings. Bobcats were documented at seven (7) of the ten (10) WCTS. The Heat Map (Appendix B-1) suggests that the majority of bobcat activity occurred on the southern half of the Study Area moving between Toro County Park and San Benancio Gulch (Appendix A, Photos 2-4); however, bobcats were also documented traveling in and out of the Study Area on the northern boundary toward Highway 68 and the Toro Creek Undercrossing (Appendix A, Photos 5-6).

4.2.2 Coyote

Coyotes were tagged in 226 photos for a total of 120 sightings within the Study Area. Coyote sightings were split almost equally between day and night with the majority (23.3%) occurring between the hours of 1800 and 2200. WCTS 1L1 and 2L1 were the most active stations for this species with 37.5% and 35.8%

of the sightings. Coyotes were documented at six (6) of the ten (10) WCTS. The Heat Map (Appendix B-2) suggests a concentration of coyote activity near the entrance to the Study Area on the west side of San Benancio Gulch (Appendix A, Photos 7-8). Coyotes were also documented traveling in and out of the northern and southern boundaries of the Study Area (Appendix A, Photos 9-10).

4.2.3 Fox

Foxes were the most dominant focal species documented within the Study Area with 461 tagged photos, for a total of 175 sightings within the Study Area. The large majority (97.1%) of documented fox activity occurred at night with approximately 41.1% occurring between the hours of 1800 and 2200. WCTS 3L1 was the most active station for this species with 59.4%. Foxes were documented at four (4) of the ten (10) WCTS. The Heat Map (Appendix B-3) shows that most foxes were documented along the ridgeline that travels north/south through the southern end of the Study Area. Although foxes were photographed the most, when compared to the other focal species, they were also the species with the smallest range within the Study Area. Foxes were not documented on the northern half of the Study Area.

4.2.4 Black-Tailed Deer

Black-tailed deer were tagged in 204 photos for a total of 58 sightings within the Study Area. Most black-tailed deer sightings occurred during the day with approximately 43.1% occurring between the hours of 0600 and 1000. Black-tailed deer were documented at seven (7) of the ten (10) WCTS and distributed relatively evenly throughout the Study Area (Appendix B-4); however, WCTS 1L1 (Appendix A, Photo 11) and 4L2 (Appendix A, Photo 12) were the most active stations for this species with 43.1% and 20.7% of the sightings, respectively.

4.2.5 Mountain Lion

Mountain lions were tagged in 52 photos for a total of 14 sightings within the Study Area. All mountain lion sightings occurred at night with approximately 35.7% occurring between the hours of 0200 and 0600. Camera stations 3L1 and 5L1 were the most active stations for this species with 35.7% and 28.6% of the sightings. Mountain lions were documented at five (5) of the ten (10) camera trapping stations. The Heat Map (Appendix B-5) shows that mountain lions were more active on the southern and northern portions of the Study Area.

Given the sparse number sightings and their importance in the context of macro scale wildlife corridors, a detailed accounting of mountain lion activity is presented below. The first mountain lion was captured on WCTS 3L1 on December 5, 2022, at 0511 (Appendix A, Photo 13). On December 8, 2022, at 1844 hours, two mountain lions were photographed moving south to north along the ridgeline in the southern half of the Study Area (Appendix A, Photo 14). One of the pair was documented marking territory near the WCTS (Appendix A, Photo 3). At the same WCTS, mountain lions were captured moving south toward Toro County Park on March 18 (Appendix A, Photo 16) and April 12, 2023 (Appendix A, Photo 17). Two mountain lions were also documented using the drainage on the northern end of the Study Area by WCTS 5L1 (Appendix A, Photo 18). A single mountain lion was documented at WCTS 5L1 on March 17, 2023, at 2031 hours (Appendix A, Photo 19). On February 10, 2023, a mountain lion was captured by WCTS 6L3 heading north into the Study Area from the San Benancio Gulch area (Appendix A, Photo 20).

4.2.6 Wild Pig

Wild pigs were tagged in 148 photos for a total of 26 sightings within the Study Area. Most wild pig sightings occurred at night with 26.9% occurring between the hours of 2200 and 0600. WCTS 2L1 and 5L1

were the most active stations for this species with 30.8% and 26.9% of the sightings, respectively. Wild pigs were documented at five (5) of the ten (10) WCTS distributed relatively evenly between the WCTS (Appendix B-6). Wild pigs with piglets were documented at WCTS 5L1 on April 25, May 9, and May 13, 2023 (Appendix A, Photo 21).

4.2.7 All Focal Species

All focal species were tagged in 1,224 photos for a total of 458 sightings within the Study Area. Most focal species sightings occurred at night with 69.9% occurring between the hours of 1800 and 0600. WCTS 3L1 and 1L1 were the most active stations for all focal species with 31.6% and 31.0% of the sightings, respectively. Focal species were documented at eight (8) of the ten (10) WCTS (Appendix B-7).

4.2.8 Non-Focal Species

In addition to the focal species that were captured during the study, several other wildlife species were documented within the Study Area. Other wildlife species included American badger (Appendix A, Photo 22), American kestrel (*Falco sparverius*), mouse[3], owl, California quail (*Callipepla californica*), California scrub jay (*Aphelocoma californica*), rabbit, greater roadrunner (*Geococcyx californianus*; Appendix A, Photo 23), striped skunk (*Mephitis mephitis*), spotted skunk (*Spilogale gracilis*; Appendix A, Photo 24), spotted towhee (*Pipilo maculatus*), turkey vulture (*Cathartes aura*), wild turkey (*Meleagris gallopavo*), western bluebird (*Sialia mexicanus*), western meadowlark (*Sturnella neglecta*), and several bird species that could not be identified to the species level.

5. CONCLUSION

The study captured 21 species of wildlife that could be identified to species,[4] including the six focal species, utilizing varying movement corridors and habitats within the Study Area. In addition, the study documented various rodent and avian individuals that could not be identified or differentiated from other species. Wildlife activity captured during this study suggests that the Study Area provides suitable habitat and movement corridors for all the focal species, as well as for various other wildlife species.

The documented wildlife activity also suggests that five out of the six focal species are traveling through the Study Area to access adjacent large contiguous undeveloped lands (Toro County Park and FONM). For example, the study documented a pair of mountain lions entering the Study Area along a trail that originates in the southwestern quadrant ofToro County Park (WCTS 3L1, Appendix A, Photo 14). A pair of mountain lions were also documented (WCTS 5L1)[5] leaving the Study Area via a game trail located adjacent to a drainage on the northern boundary of the Study Area on December 12, 2022, at 1732 hours, and then documented returning past the same WCTS on December 13, 2022, at 0241 hours (Appendix A, Photo 18). This occurrence suggests that the focal species, including mountain lions and deer, are traveling through the Study Area to access the contiguous undeveloped lands located north and south of the Study Area (i.e., FONM, the Sierra de Salinas Mountain Range, Toro County Park, etc.). The one exception within the suite of focal species was gray fox, which was documented traveling on a relatively localized scale. Gray fox was only documented at four WCTS (1L1, 2L1, 3L1, 6L3), all located within the southern half of the Study

[3] Wildlife captured that are presented without scientific names were not able to be categorized to the species level due to the quality of the photo documentation.
[4] Some species were not able to be identified or differentiated from other species.
[5] The pair was not captured in a single photo but in two consecutive photos of one sighting.

Area. However, given that the estimated home range for this species varies from 75 hectares (ha) (185 acres) (Yearsley and Samuel, 1984) to 757 ha (1,870 acres) (Haroldson and Fritzell, 1980), it is probable that gray foxes documented during this study were also traveling outside of the boundaries of the Study Area to access the undeveloped lands adjacent to the Study Area.

The Heat Map for all focal species shows that wildlife activity is the densest within Lots 16 and 17 along the main thoroughfare (Appendix B-7). This existing dirt road, along with the arterial dirt road that traverses the ridgeline from Lot 15 and 16 to the Remainder Parcel provide a convenient movement corridor for wildlife from Toro County Park to the San Benancio Gulch area, and eventually to the FONM though the Highway 68 undercrossing at El Toro Creek. Development of these roads and increased traffic could result in impacts to wildlife currently using them as movement corridors. Providing alternative corridors outside of the single-family residence and infrastructure development envelopes by limiting access to existing cattle paths and other wildlife trails could help to lessen this impact. Wildlife activity was also dense within the drainage that bifurcates Lot 3 running from southeast to northwest. Water was observed throughout the duration of the study period and the coast live oak tree canopy provides habitat and cover for several wildlife species. Setbacks from this drainage are recommended to lessen any potential impacts and continued use by wildlife moving through the Study Area. Best Management Practices have been developed for wildlife corridors (Beier et al. 2008) and should be considered including:

- Minimize impacts of outdoor night lighting by regulating brightness, shielding, light direction, etc.
- Prohibit intentional planting of invasive plants.
- Provide crossing structures on all thoroughfares and maintain them for access.
- Maintain or improve native riparian vegetation.
- Encourage small building footprints on large (> 40 acre) parcels with a minimal road network.
- Combine habitat conservation with compatible public goals such as recreation and protection of water quality.
- Develop a public education campaign to inform those living and working within the linkage area about living with wildlife, and the importance of maintaining ecological connectivity.
- Discourage residents and visitors from feeding or providing water for wild mammals, or otherwise allowing wildlife to lose their fear of people.
- Install wildlife-proof trash and recycling receptacles and encourage people to store their garbage securely.
- Do not install artificial night lighting on rural roads that pass through the linkage design. Reduce vehicle traffic speeds in sensitive locations by speed bumps, curves, artificial constrictions, and other traffic calming devices.
- Encourage the use of wildlife-friendly fencing on property and pasture boundaries, and wildlife-proof fencing around gardens and other potential wildlife attractants.
- Discourage the killing of 'threat' species such as rattlesnakes.
- Reduce or restrict the use of pesticides, insecticides, herbicides, and rodenticides, and educate the public about the effects these chemicals have throughout the ecosystem.

As stated, this study is an important step in the process of identifying and understanding the type and density of wildlife utilizing the Study Area. While this study was able to establish that several species of wildlife are existing and traveling through the Study Area, the subjective placement of the cameras limit the degree of statistical analysis that can be performed on the data collected. Additionally, redistribution of WCTS based upon level of activity introduces bias to the dataset that must be acknowledged. Camera placement

strategy using a more systematic and objective approach would allow for more meaningful statistical analysis in potential topics such as species richness, density, and abundance based on specific habitat type or topographic features. Additional evaluation of the photographs could also be performed to identify individual wildlife to track their particular movement throughout the Study Area.

The objective of this study was to develop a baseline inventory of wildlife usage throughout the Study Area. By placing WCTS throughout the Study Area for a period of 6 months DD&A was able to document more than 20 different wildlife species utilizing the Study Area. While additional study methodologies suggested above can be employed in the future to refine wildlife movement and usage, this study has determined that there is robust wildlife usage within the Study Area.

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Appendix A. Wildlife Camera Trapping Station Photographs

Photo 1. Cave feature located adjacent to WCTS 4L1.

Photo 2. Bobcat sighting at WCTS 2L1 on March 27, 2023 at 1749 hours traveling west along trail toward San Benancio Gulch.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 3. Bobcat sighting at WCTS 3L1 on April 8, 2023 at 1115 hours traveling along trail from south to north, toward San Benancio Gulch.

Photo 4. Bobcat sighting at WCTS 4L2 on January 31, 2023 at 1638 hours entering the Study Area from the Highway 68.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 5. Bobcat sighting at WCTS 6L4 on May 6, 2023 at 0802 heading northwest out of the Study Area toward Highway 68.

Photo 6. Bobcat sighting at WCTS 6L4 on May 20, 2023 at 0700 hours heading southeast into the Study Area from Highway 68.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 7. Two coyotes at WCTS 1L1 on January 24, 2023 at 2256 hours heading west from Study Area toward San Benancio Gulch.

Photo 8. Coyote sighting at WCTS 1L1 on January 13, 2023 at 0832 hours heading east from San Benancio Gulch. Coyote is sniffing area that was marked by several other coyotes.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 9. Coyote sighting at WCTS 3L1 on December 7, 2022 at 1504 hours heading south toward Toro Park area.

Photo 10. Coyote sighting at WCTS 5L1 on May 4, 2023 at 1032 hours moving along drainage path heading north toward Highway 68.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 11. Black-tailed deer sighting at WCTS 1L1 on April 18, 2023 at 0908 hours traveling east into the Study Area from the San Benancio Gulch.

Photo 12. Black-tailed deer sighting at WCTS 4L2 on January 20, 2023 at 0424 hours traveling south into the study area from Highway 68.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 13. Mountain lion at WCTS 3L1 on December 6, 2023 at 0511 hours traveling north into the study area from the Toro Park area.

Photo 14. Two mountain lions at WCTS 3L1 on December 8, 2023 at 1844 hours traveling north into the study area from the Toro Park area.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 15. Mountain lion at WCTS 3L1 captured marking territory.

Photo 16. Mountain lion at WCTS 3L1 on March 18, 2023 at 0409 hours traveling south from study area into Toro Park area.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 17. Mountain lion at WCTS 3L1 on April 12, 2023 at 2147 hours traveling south from study area into Toro Park area.

Photo 18. Two mountain lions at WCTS 5L1 on December 13, 2022 at 0241 hours traveling south along a drainage from the Highway 68 into the study area.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 19. Mountain lion at WCTS 5L1 on March 17, 2023 at 2031 hours traveling north toward Highway 68.

Photo 20. Mountain lion at WCTS 6L3 on February 10, 2023 at 2208 hours traveling north toward study area from the San Benancio Gulch area.

Appendix A. Wildlife Camera Trapping Station Photos

Photo 21. Wild pigs with piglets at WCTS 5L1 on April 25 at 1859 hours, traveling along a drainage heading north toward Highway 68.

Photo 22. American badger at WCTS 3L1 on May 6, 2023 at 0010 hours traveling north toward study area from the Toro Park area.

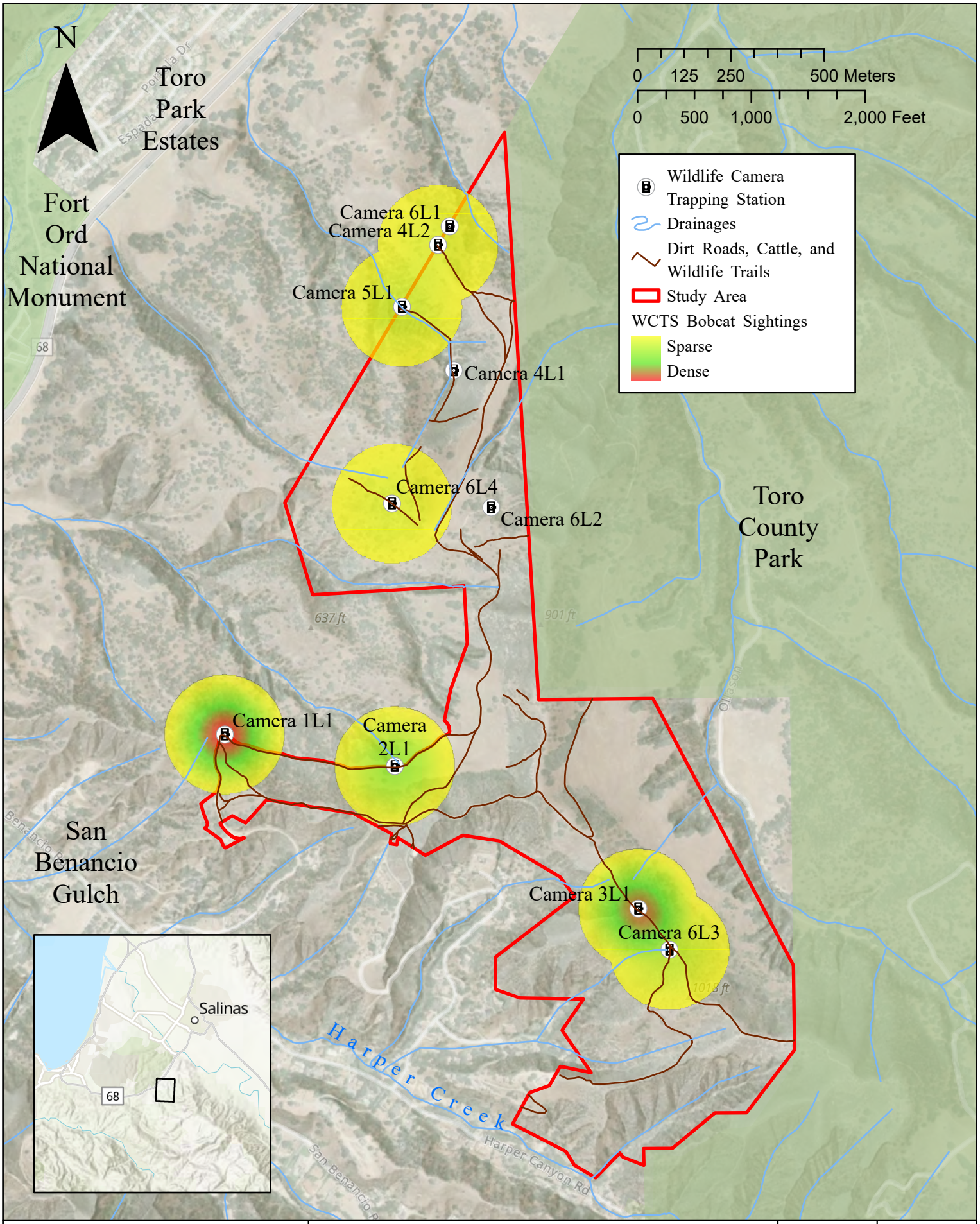
Appendix A. Wildlife Camera Trapping Station Photos

Photo 23. Greater roadrunner at WCTS 3L1 on March 5, 2023 at 1559 hours.

Photo 24. Spotted skunk at WCTS 3L1 on May 14, 2023 at 2205 hours traveling south toward the Toro Park area.

Appendix A. Wildlife Camera Trapping Station Photos

Appendix B. Heat Maps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San Benancio Gulch
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Wildlife Camera Trapping Station
Drainages
Dirt Roads, Cattle, and Wildlife Trails
Study Area
WCTS Bobcat Sightings
Sparse
Dense
Camera 6L1
Camera 4L2
Camera 5L1
Camera 4L1
Camera 6L4
Camera 6L2
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Camera 2L1
Camera 3L1
Camera 6L3
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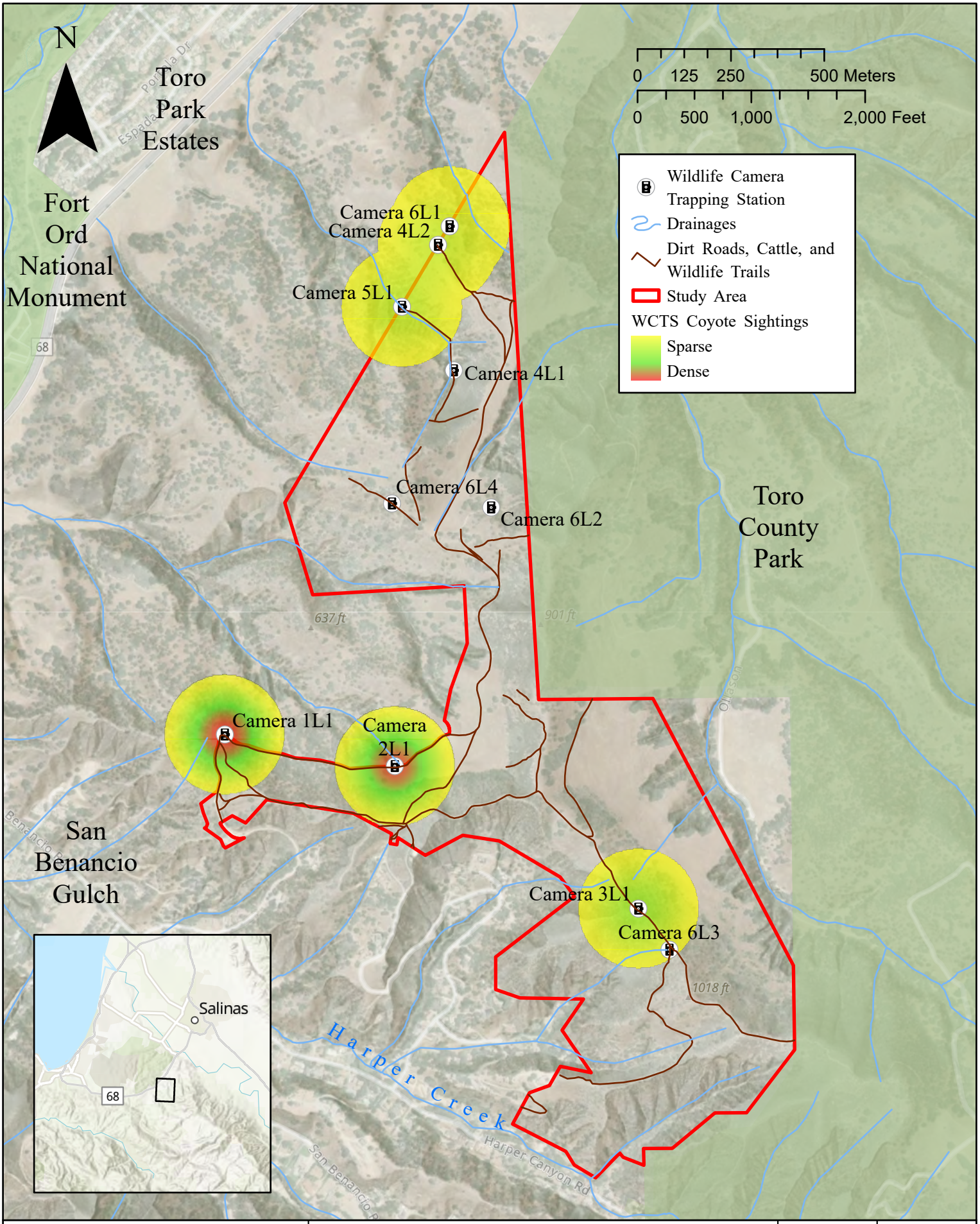
901 ft
1013 ft
Harper Creek
Harper Canyon Rd
Salinas
68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WCTS Coyote Sightings
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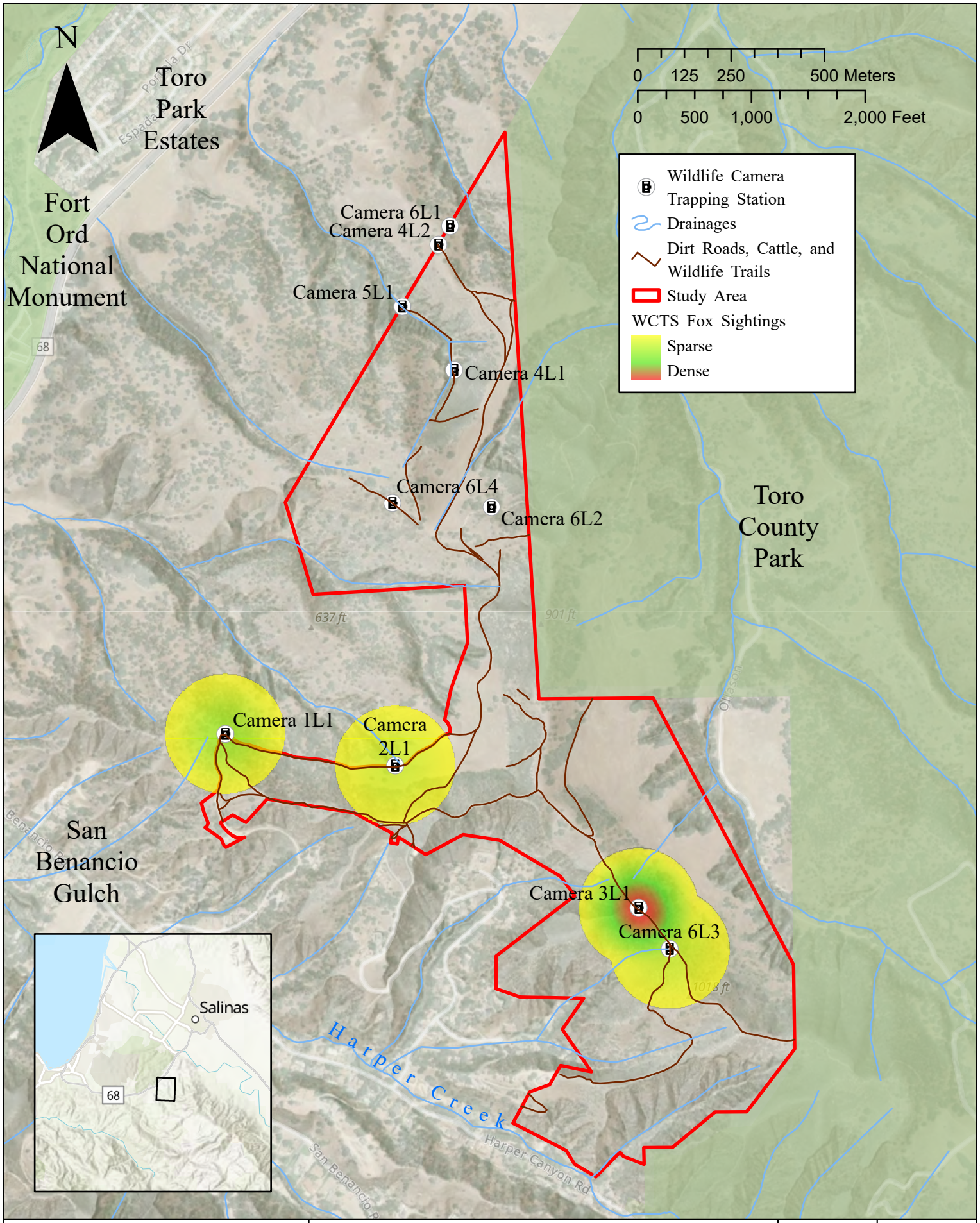
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Study Area
WCTS Fox Sightings
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Camera 5L1
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Harper Canyon Rd
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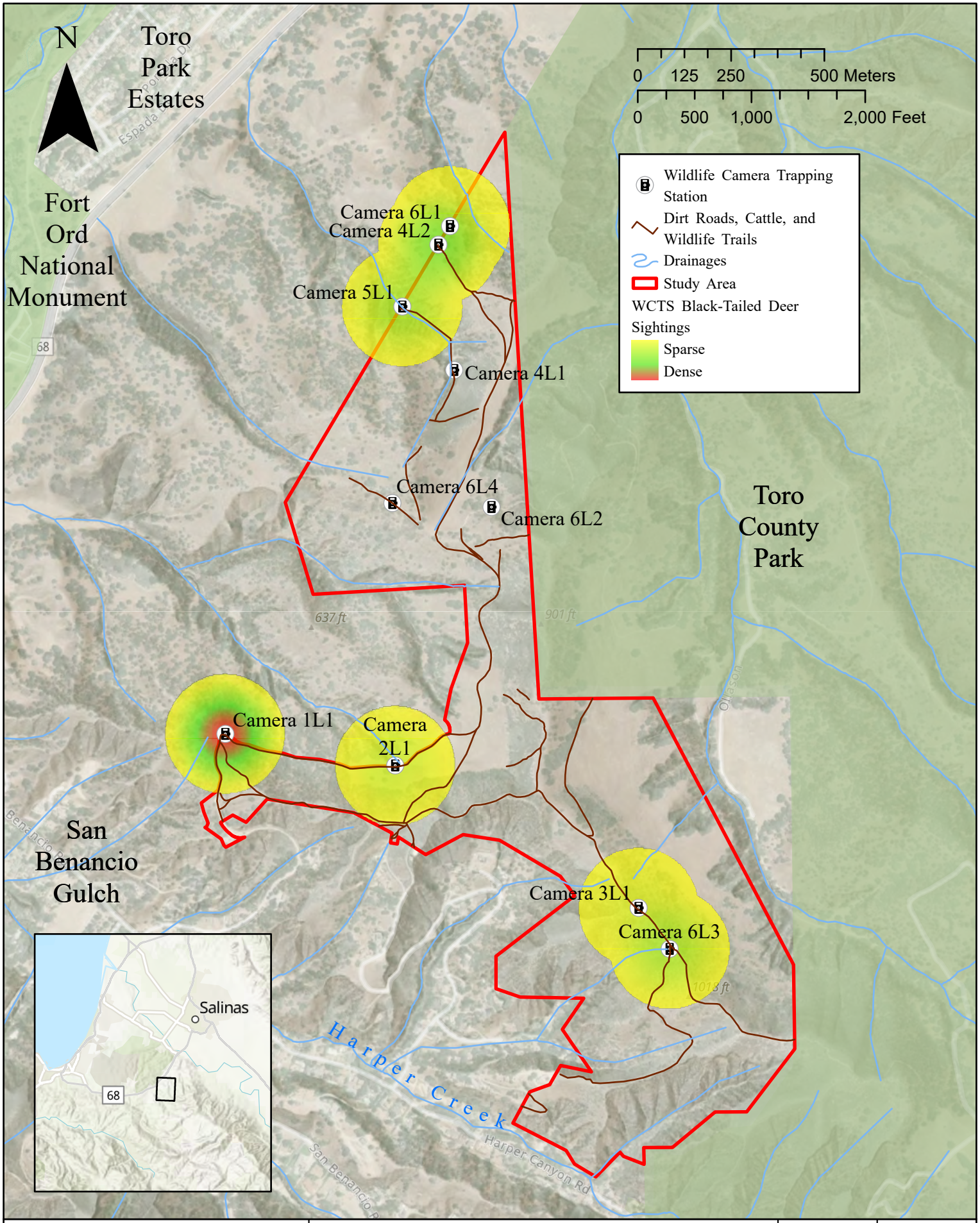

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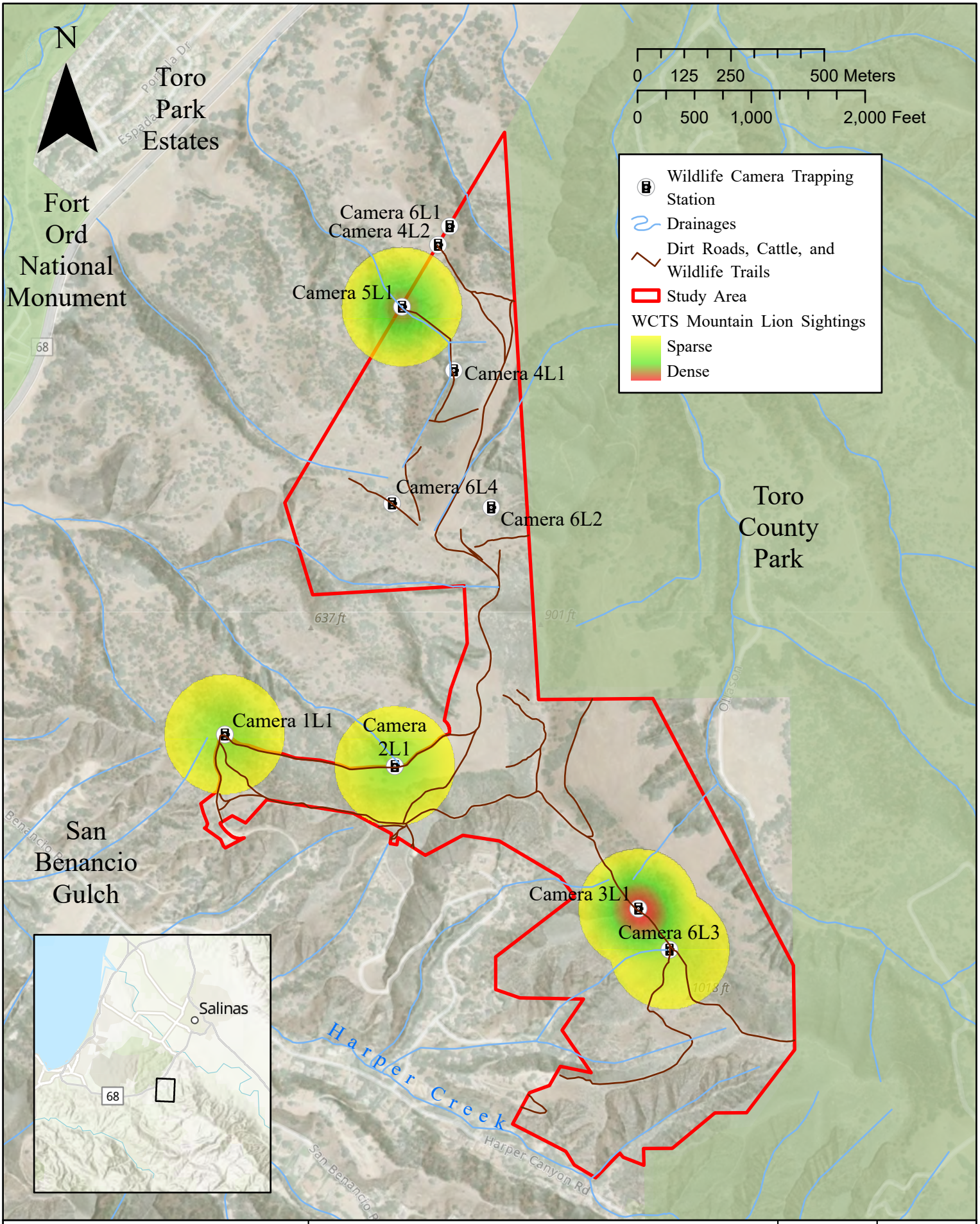
Denise Duffy & Associates, Inc. Planning and Environmental Consulting	Harper Canyon Subdivision Project Wildlife Camera Trapping Study Black-Tailed Deer Sighting Heat Map	Date 11/3/2023 Scale 1:13,000	Appendix B-4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Wildlife Camera Trapping Station
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Dirt Roads, Cattle, and Wildlife Trails
Study Area
WCTS Mountain Lion Sightings
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Camera 5L1
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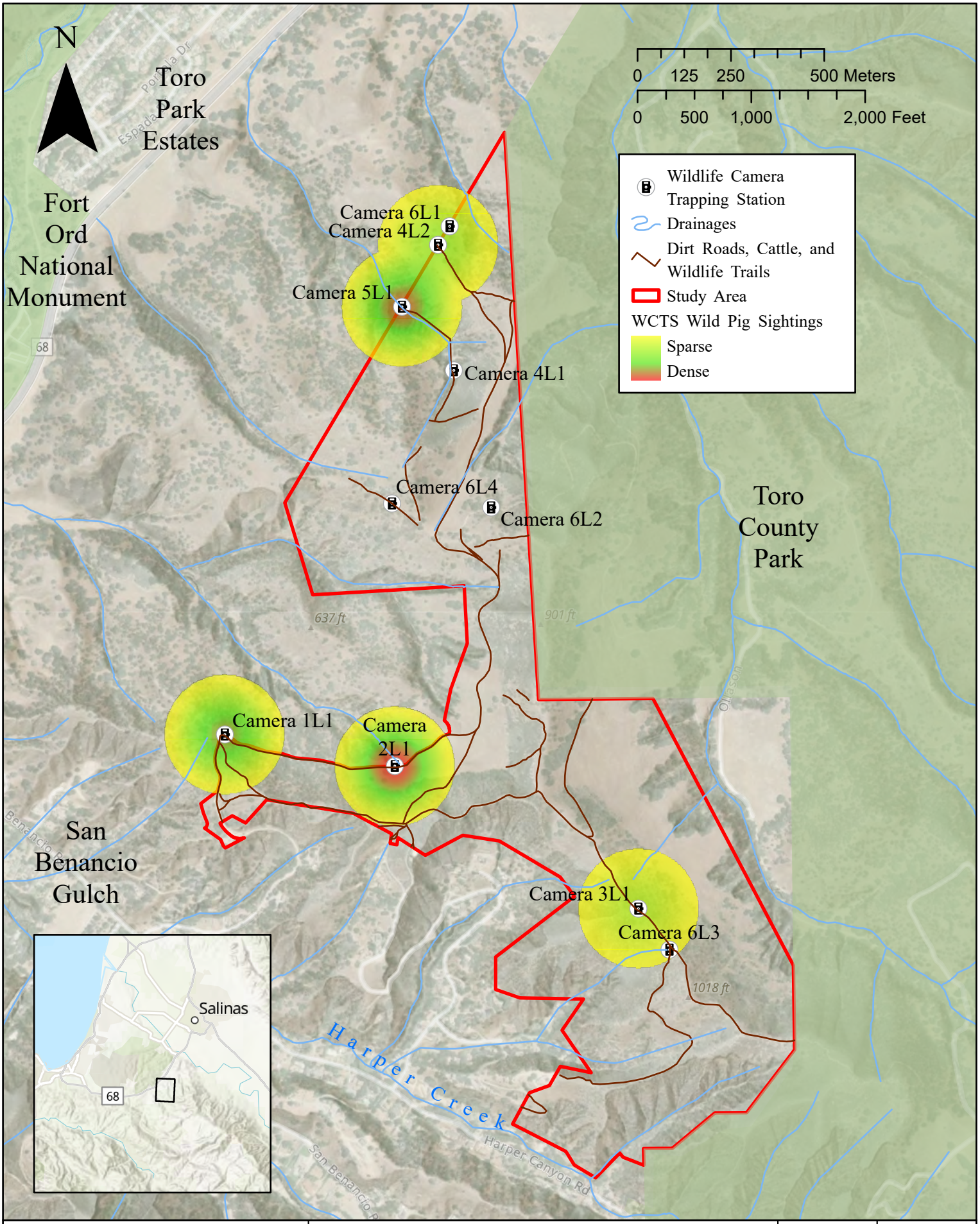

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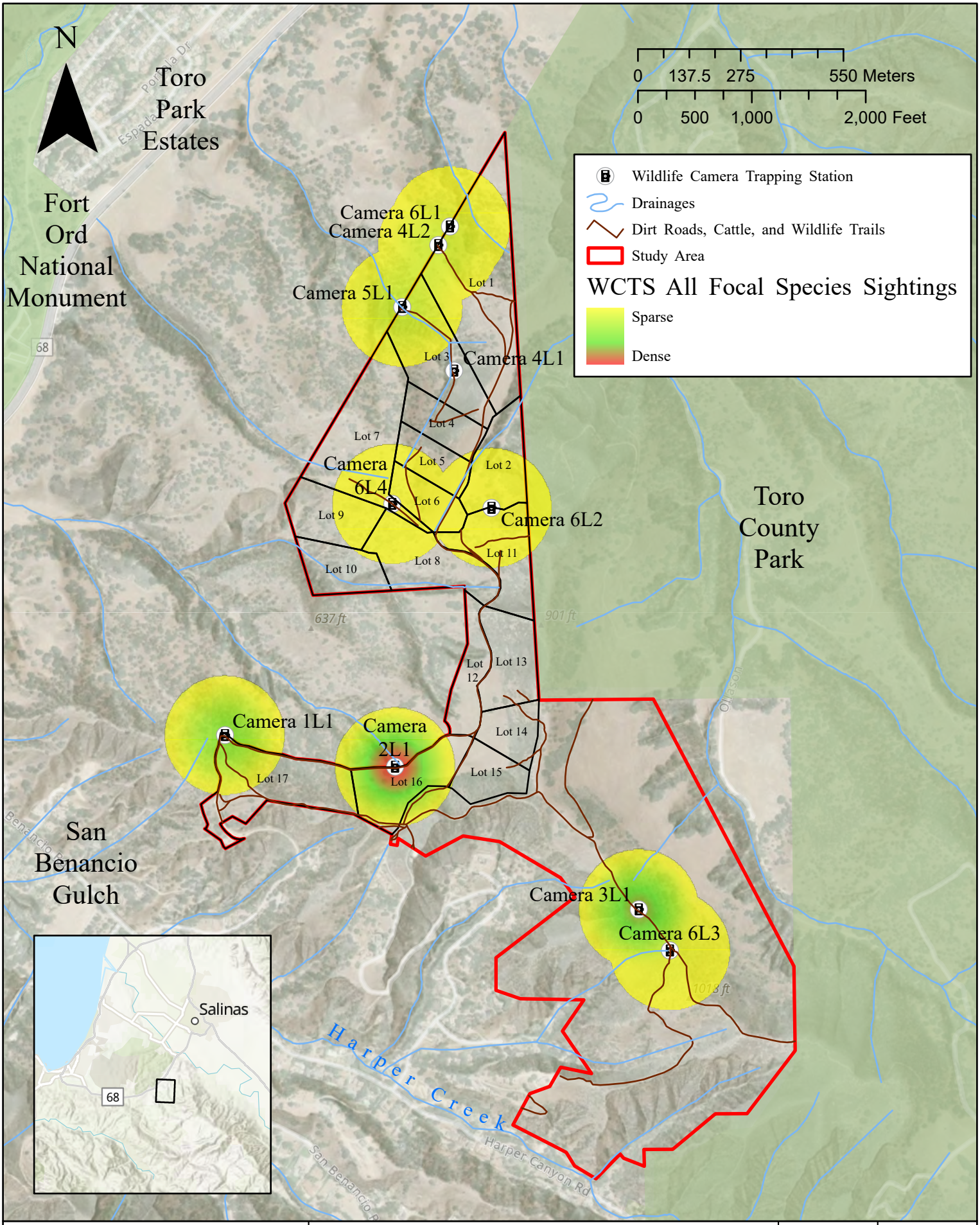
Denise Duffy & Associates, Inc. Planning and Environmental Consulting	Harper Canyon Subdivision Project Wildlife Camera Trapping Study Wild Boar Sighting Heat Map	Date 11/3/2023 Scale 1:13,000	Appendix B-6



Denise Duffy & Associates, Inc. Planning and Environmental Consulting	Harper Canyon Subdivision Project Wildlife Camera Trapping Study All Focal Species Sighting Heat Map	Date 11/3/2023 Scale 1:13,000	Figure B-7

Appendix J

Court Documents

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460.21.05.11.SECONDAMENDEDWRITOFMANDATE
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Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

Meyer Community Group Petitioner, v. County of Monterey, Monterey County Board of Supervisors Respondents. Harper Canyon Realty, LLC., Does 1-50 Real Parties in Interest	Case No. M 131913 ~~[PROPOSED]~~ **SECOND AMENDED PEREMPTORY WRIT OF MANDATE** **HONORABLE THOMAS W. WILLS** **DEPT. 8** **TRIAL DATE: MAY 3, 2018** **COURT OF APPEAL OPINION** **MARCH 29, 2021**

TO RESPONDENTS COUNTY OF MONTEREY AND MONTEREY COUNTY BOARD OF SUPERVISORS AND REAL PARTY IN INTEREST HARPER CANYON REALTY, L.L.C.:

Second Amended Judgment having been entered in this action ordering that a peremptory writ of mandate be granted in part and denied in part from this Court,

1. IT IS ORDERED that, within sixty (60) days of service of this writ, Respondents set aside the portions of Resolution No. 15-084 certifying the Environmental Impact Report ("EIR") for the Harper Canyon (Encina Hills) Subdivision Project (the "Project") as to project wildlife corridor issues only and reconsider the non-CEQA approvals in Resolution 15-084 (i.e., the Monterey County Board of Supervisors ["Board"] findings, approval of the Combined Development Permit and any of its subparts, and the adoption of the Mitigation Monitoring and Reporting Plan) for the Project and set them aside only to the extent that they are dependent on project wildlife corridor issues, consistent with the Sixth District Court of Appeal opinion issued on March 29, 2021 in Case Number H046932 (the "Opinion").
2. IT IS FURTHER ORDERED that Respondents and Real Party in Interest, its employees, agents, contractors, heirs, successors, and representatives are further ordered to suspend any and all activities related to the Project excepting only the preparation of additional environmental documentation or other actions to comply with the terms of this Writ, so long as they do not result in any change to the physical environment, until Respondents have reconsidered its decisions and brought them into compliance with the requirements of the California Environmental Quality Act ("CEQA"), as more specifically described below, and ordered pursuant to the Judgment, and the Court has accepted the return to this Writ. The Board is ordered not to take any further action to approve the Project without the preparation, circulation and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Opinion.
3. IT IS FURTHER ORDERED that before approving revisions to the Combined Development Permit, or issuing a new Combined Development Permit for the Project, that the County comply with CEQA by the preparation, circulation and

consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Opinion, by recirculating the revised portions of the EIR for public comment and response, by making revisions to the findings as may be required by the revised EIR, and by making revisions to the Mitigation Monitoring and Reporting Plan as may be required by the revised EIR, all as set forth in the Opinion. The Board is ordered not to take any further action to approve the Project without the preparation, circulation and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Opinion.

4. IT IS FURTHER ORDERED that Respondents make and file a return to this writ within sixty (60) days of taking such action, setting forth what it has done to comply. This Court will retain jurisdiction over Respondents' proceeding by way of a return to this peremptory writ of mandate until the Court has determined that Respondents have complied with CEQA.
5. Nothing in this Writ shall be construed to limit or control the discretion legally vested in Respondents.

LET THE FOREGOING WRIT ISSUE

Parties are reminded this matter is set for hearing 7/27/21 at 9 a.m. in Dept. 15.

Dated: 7/1/21

Judge of the Superior Court
Thomas W. Wills

Approved as to form:

Date: May 13, 2021

OFFICE OF THE COUNTY COUNSEL
COUNTY OF MONTEREY

By: Kelly Donlon
Deputy County Counsel

Date: May 13, 2021

RUTAN AND TUCKER, LLP

By: Matthew D. Francois
Attorneys for Real Party Harper Canyon Realty, LLC

By: Kelly Donlon
Deputy County Counsel

Date: May 13, 2021

RUTAN AND TUCKER, LLP

By: Matthew D. Francois
Attorneys for Real Party Harper Canyon Realty, LLC

PROOF OF SERVICE

I am employed in the County of Monterey; My business address is 27880 Dorris Drive, Suite 110, Carmel, California 93923, P.O. Box 1021, Carmel Valley, California 93924. I am over the age of eighteen years and not a party to the foregoing action.

On May 28, 2021, I served the within documents: Second Amended Judgment Granting Peremptory Writ of Mandate and Proposed Second Amended Peremptory Writ of Mandate

x by transmitting via e-mail the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.

Matthew Francois Rutan & Tucker, LLP Five Palo Alto Square 3000 El Camino Real, Suite 200 Palo Alto, CA 94306-9814 francois@rutan.com For Real Party In Interest	Kelly Donlon Deputy County Counsel 168 West Alisal Street, 3rd Floor Salinas, California 93901 donlonk@co.monterey.ca.us For Respondents
John Farrow M.R. Wolfe and Associates 555 Sutter Street, Suite 405 San Francisco, CA. 94102 jfarrow@mrwolfeassociates.com	

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28, 2021 Carmel Valley, California.

/S/
Richard H. Rosenthal

Richard H. Rosenthal

Filed 3/29/21

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

LANDWATCH MONTEREY COUNTY, Plaintiff and Appellant, v. COUNTY OF MONTEREY, Defendant and Appellant; HARPER CANYON REALTY, LLC, Real Party in Interest and Appellant.	H046932 (Monterey County Super. Ct. No. M131893)
MEYER COMMUNITY GROUP, Plaintiff and Appellant, v. COUNTY OF MONTEREY et al., Defendants and Appellants; HARPER CANYON REALTY, LLC, Real Party in Interest and Appellant.	H046932 (Monterey County Super. Ct. No. M131913)

The County of Monterey and its board of supervisors (collectively, the County) approved a residential subdivision project proposed by real party in interest Harper Canyon Realty, LLC (Harper or applicant). Two groups—LandWatch Monterey County (Landwatch) and Meyer Community Group (Meyer) (collectively, petitioners)[1]—separately filed petitions for writ of mandate under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.)[2] seeking to decertify the environmental impact report (EIR) prepared for the project and to overturn the County's approval of the project.

The trial court ruled partly in favor of petitioners and granted their petitions for writ of mandate. The trial court directed the County to vacate certification of the Final EIR and to prepare and circulate a legally adequate EIR with respect to specified groundwater and wildlife corridor issues. Related to the EIR's discussion of the project's effect on groundwater, the trial court decided that the County erred under CEQA and section 15088.5, subdivision (a)(4), of the CEQA Guidelines by failing to recirculate the Final EIR before approving the project.

The County and applicant have appealed the trial court's judgments and argue that substantial evidence supports the County's determinations regarding the project's groundwater resources and wildlife corridor impacts. The County and applicant also contend the trial court erred in determining that CEQA requires recirculation of the Final EIR. Petitioners for their part have filed cross-appeals asserting that the trial court erred in rejecting or failing to decide their claims that the Final EIR was legally inadequate in its discussion of the project's setting and its cumulative effect on groundwater resources.

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[1] Landwatch is a California non-profit public benefit corporation that is organized primarily to "promote sound land use planning and legislation at the city, county, and regional levels, to combat urban sprawl, and to promote livability in the region's cities and towns, through public policy development, advocacy, and education." Meyer is an unincorporated association of property owners who live and own property in the Highway 68 corridor of Monterey County.

[2] Unspecified statutory references are to the Public Resources Code.

For the reasons explained below, we conclude that the Final EIR did not comply with CEQA in its treatment of wildlife corridors and affirm the trial court's ruling in that regard. Related to groundwater resources, we decide that the Final EIR was adequate and therefore reject the claims made by petitioners in their cross-appeal. We also decide that, contrary to the trial court's ruling, CEQA did not mandate recirculation of the Final EIR on the topic of ground water resources prior to approval of the project. We will therefore reverse the judgments and direct that the trial court issue new writs of mandate in accordance with the views expressed herein.

I. FACTS AND PROCEDURAL BACKGROUND

A. *Factual Background*

1. The Project and General Background

The proposed development is known as the Harper Canyon (Encina Hills) Subdivision Project (project). The project involves a combined development permit for the subdivision of 344 acres into 17 residential lots for single-family homes. The project site is located in Monterey County, along Highway 68 and approximately five miles west of the City of Salinas. The project site consists of rolling and undeveloped terrain, bordered on the east by Toro County Park, on the west by an existing housing subdivision, and to the north by Fort Ord Public Lands.

Harper submitted its application for the project in 2001; its application was deemed complete in 2002. In 2005, the County's planning commission directed staff for the County of Monterey Resource Management Agency- Planning Department (County department) to prepare an environmental impact report (EIR) for the project. The County department served as the lead agency responsible for preparing the EIR, which it did with the assistance of an outside consultant. The project has been the subject of lengthy environmental and administrative review; we set out here only those aspects of the administrative record relevant to the questions before us.

Groundwater resources, on which Monterey County relies almost entirely to meet its water demands, constitute a central resource at issue in these appeals. Water for the homes in the proposed project will come from two existing wells, one that was drilled for an existing housing subdivision and another that was drilled on applicant's land. The source and availability of the groundwater that will supply the water for these wells has been directly analyzed or indirectly examined in a number of scientific studies.

2. 2002-2003: Project-Specific Study (Todd Report)

Prior to deeming the application complete in 2002, the County health department required a project-specific report for the proposed subdivision that assessed the site's hydrogeology and the project's potential impacts on groundwater. In 2002 and 2003, an engineering consultant prepared a report, referred to by the parties as the Todd Report.

The Todd Report addressed the hydrogeologic conditions in the project's vicinity. After reviewing available data and reports and conducting further study, the Todd Report concluded that the project will have a negligible effect on groundwater quantity and quality and that "an adequate water supply exists."

3. 2007 El Toro Groundwater Study (Geosyntec Study) and the Salinas Valley Water Project

In 2007, Geosyntec Consultants (Geosyntec) conducted a regional groundwater study for another County entity, the Monterey County Water Resources Agency. The study did not address the project specifically; rather, it studied the "El Toro Planning Area" which it defined as a "watershed-based planning area in Monterey County south of Salinas along the western margin of the Salinas Basin." The project site falls within some of the area covered by the Geosyntec study. Significantly, the two wells that will access groundwater for the project lie within the Geosyntec study area.

The primary objective of the 2007 Geosyntec study "was to evaluate groundwater resource capacity of the El Toro Planning Area and recommend maintaining or revising the B-8 zoning overlay." In Monterey County, "B-8 zoning" refers to a limitation on

land use that bars subdivisions due to scarce groundwater resources. The project site and two wells servicing the project are not located in a B-8 zoning district. Rather, as found by the Board, the wells and project site are located "within Monterey County Water Resources Agency's benefit assessment Zone 2C, and receive benefits of sustained groundwater levels attributed to the operation of both the Nacimiento and San Antonio Reservoirs and the Salinas Valley Water Project." We discuss the Salinas Valley Water Project further below.

Among other objectives, the Geosyntec study also evaluated "hydrogeologic connectivity between existing subareas." The study analyzed and compiled approximately 47 years of groundwater level data (from 1960 to 2007) for 45 wells in the El Toro Planning Area and vicinity. The Geosyntec study included a discussion of overdraft conditions.

"Overdraft" occurs where extractions from an aquifer exceed the amount of water replenishing it and which over time leads to depletion of the water supply. (See *Antelope Valley Groundwater Cases* (2020) 59 Cal.App.5th 241, 251, fn. 1.) The 2007 Geosyntec study found groundwater overdraft conditions in the northern portion of the El Toro Planning Area near Highway 68. It also found that the "primary aquifer system in the El Toro Planning Area is in overdraft," but that current and increased levels of pumping could be "sustained for decades" in parts of the El Toro Primary Aquifer System because of the large volume of stored groundwater. The study delineated four classifications for groundwater production potential: "good, poor, possible, and negligible." The Geosyntec study also described and projected downward trends in groundwater levels.

In 2008, while drafting the EIR for the project, County department staff and the EIR consultant discussed the Geosyntec study. In response, County staff directed the project's consultant to get input from the Monterey County Water Resources Agency, which had commissioned the Geosytnec report.

A representative from the Monterey County Water Resources Agency wrote County staff and confirmed that the project site and the two wells supplying its water formed part of the area covered by the Salinas Valley Water Project, and that the pertinent assessments were being paid. The Monterey County Water Resources Agency took the position that "a sustainable long term water supply exists for the project." In a subsequent e-mail, the Monterey County Water Resources Agency representative noted that he had reviewed the geologic and hydrogeologic data from the Geosyntec study, and he reconfirmed that the project site and wells would receive future benefits from the Salinas Valley Water Project.

The Salinas Valley Water Project, which became operational around 2010, was developed by the Monterey County Water Resources Agency to halt seawater intrusion into the Salinas Valley Groundwater Basin and to help "hydrologically balance the basin." The Salinas Valley Water Project involves various infrastructure improvements, such as reconfiguring the Nacimiento and San Antonio reservoirs to store a higher volume of water in the wet season and diverting water from the Salinas River during the irrigation season. The Salinas Valley Water Project forms a central component of the cumulative impact analysis in the Final EIR, which was released in 2013 (Final EIR).

4. 2008: Draft EIR

In October 2008, the County department released the draft environmental impact report (Draft EIR) for the project for public review and comment. The Draft EIR evaluated potential environmental impacts of the project, including those related to land use, noise, air quality, traffic, biological resources, and water. The Draft EIR contained a section addressing groundwater resources and hydrogeology.

The description of the source of the groundwater for the project's proposed wells is a significant disputed issue in these appeals. The Draft EIR stated that the groundwater

would come from the "El Toro Groundwater Basin,"[3] in which a majority of the project is located, as well as the Salinas Valley Groundwater Basin, in which a "small portion" of the project site is located. In terms of subareas of those larger basins, the Draft EIR stated the project site "lies in the El Toro Creek and San Benancio Gulch subareas of the El Toro Groundwater Basin and the Pressure subarea of the Salinas Valley Groundwater Basin." The Final EIR, which we discuss further below, describes the source of the groundwater for the project as a subbasin of the Salinas Valley Groundwater Basin called the Corral de Tierra Subbasin. The Draft EIR did not refer to the Corral de Tierra Subbasin.

The Draft EIR concluded that the project would have a less than significant long-term impact on regional groundwater resources because the project's water demand was approximately 12.75 acre-feet per year (AFY), and this demand "would be met by the 29.9 AFY water surplus within the San Benancio subarea." For its conclusion that the impact on regional groundwater resources would be less than significant and that no mitigation measures were necessary, the Draft EIR relied largely on the Todd Report. The Draft EIR also mentioned the then-newly-released 2007 Geosyntec study and noted a finding from it that "water bearing formations in this area dip in a northeasterly direction into the Salinas Valley."

The Draft EIR discussed the Salinas Valley Water Project, which at that point had not yet become operational. The Draft EIR stated that, according to the Monterey County Water Resources Agency, the project site, which it described as part of the El Toro planning area, enjoys the "benefits of sustained groundwater levels attributed to the

[3] "A groundwater basin is '[a]n alluvial aquifer or a stacked series of alluvial aquifers with reasonably well-defined boundaries in a lateral direction and having a definable bottom.' (Dept. of Water Resources, California's Groundwater, Bulletin 118 (2003) p. 216.) An aquifer is '[a] body of rock or sediment that is sufficiently porous and permeable to store, transmit, and yield significant or economic quantities of groundwater to wells and springs.' " (*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1198, fn. 1.)

operation of both the Nacimiento and San Antonio Reservoirs" and will benefit from the Salinas Valley Water Project upon its completion. In its discussion of long-term impact to groundwater resources, the Draft EIR stated that "given [the] project's groundwater recharge capability and the fact that water would be procured through wells located within the Salinas Valley Water Project Assessment Zone 2C, this increase in demand would be considered a less than significant impact." (Bolding omitted.)

During the public review period for the Draft EIR, several individuals and organizations submitted comments, some of which related specifically to the report's discussion of groundwater resources and hydrogeology. For example, one letter from an individual commented on the Draft EIR's analysis of long-term groundwater resources and alleged the Draft EIR "ignores" the Geosyntec study's conclusion that "the El Toro Basin, including the San Benancio Gulch and the Paso Robles aquifer are in overdraft." Landwatch submitted comments that discussed the 2007 Geosyntec study and asked the County to explain why the project would not exacerbate overdraft conditions in the El Toro Basin. A public entity called the Monterey Peninsula Water Management District raised concerns that the report's discussion of the project's hydrogeologic setting was inaccurate, specifically referenced the 2007 Geosyntec study, and noted that the EIR should contain an "up-to-date understanding" of hydrogeologic conditions.

In 2010, Geosyntec consultants prepared for the Monterey County Water Resources Agency a supplement to its 2007 study. Like the 2007 study, the 2010 supplement did not reference the project at issue in this appeal. The 2010 Geosyntec supplement included a geologic map and geologic cross-sections of the land from the El Toro Planning area to the Salinas Valley. A document accompanying the geologic map and cross-sections stated that the supplement relied on information from a map from the U.S. Geological Survey and "the continuous presence of the Paso Robles Formation beneath the El Toro Creek, the [Highway] 68 corridor, and Fort Ord military reserve to

the northwest provides hydraulic connection between the El Toro Planning Area and the Salinas Valley."

The County department did not recirculate an updated Draft EIR for the project on issues related to groundwater or hydrogeology. It did prepare and recirculate a revised section of the Draft EIR limited to transportation issues (2010 Revised Draft EIR) that responded to comments received in the public review period about traffic. The public review period for the 2010 Revised Draft EIR ended in February 2010. However, the County made no decisions related to approval of the project for several years.[4]

5. 2013: Final Environmental Impact Report (Final EIR)

In December 2013, the County department released the Final EIR for the project. The Final EIR runs to over 1600 pages and is composed of the 2008 Draft EIR, the 2010 Revised Draft EIR, comments received during the public review of those documents, the County department's responses to those comments, and "resulting text changes, clarifications or amplifications necessary to address those comments in the course of the County's review of the proposal."

The Final EIR includes a "master response" to public comments relating to the topic of water. The Final EIR notes that the County had received a number of comments referencing the 2007 Geosyntec study and its 2010 supplement. The master response in the Final EIR discusses the Geosyntec study in further detail and states it was "relevant as it provides continuing information and research about local groundwater dynamics." The Final EIR also states that the Geosyntec study area "overlaps with a portion of the project site and demonstrates hydraulic connectivity between the larger Salinas Valley

[4] In June 2010, the County prepared a final environmental impact report for the project, but that version was never certified. The project was put on hold for an extended time period due largely to a pending matter before the California Public Utilities Commission that is not relevant to these appeals. The County did not use the 2010 version of the Final EIR but instead chose to revise it in 2013.

Groundwater Basin and the Corral de Tierra Area Subbasin."[5] The Final EIR includes maps and information from the 2010 Geosyntec supplement and explains the location of the project in relation to the map and cross-sectional data.

Regarding text changes and amendments to the 2008 Draft EIR, the Final EIR contains strikeouts and underlining that reflect the changes between the Final EIR's section on groundwater resources and hydrogeology (i.e. section 3.6 of the Final EIR) and the Draft EIR's section on groundwater resources and hydrogeology that had been circulated five years earlier. The Final EIR explains these revisions were done in order "to update responses to comments and setting information related to groundwater and hydrogeology."

As discussed further below, the information about the basins from which the project draws its groundwater changed between the Draft EIR and the Final EIR. Relying on 2010 information from the California Department of Water Resources, the Final EIR states that the project site and its two wells are located in the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin. The Final EIR adds a figure (Figure 3.6-1) not included in the Draft EIR. The figure indicates a source date of 2010, sets out the boundaries of the basin and subbasins, and shows the position of the project site in relation to those boundaries.

The Final EIR states that overdraft, which leads to seawater intrusion and a corresponding rise in the salt concentration of groundwater, has occurred in the Salinas Valley Groundwater Basin.[6] However, the Final EIR asserts that the issue of seawater intrusion does not currently affect the Corral de Tierra Subbasin, the groundwater

[5] The county board of supervisors later made a finding that the Geosyntec study, including the 2010 supplement, demonstrated "the hydraulic connectivity between the larger Salinas Valley Groundwater Basin and the Corral de Tierra Area Subbasin."

[6] In Monterey County, when there is an overdraft condition, the water level declines, and seawater intrudes into aquifers. When seawater intrusion occurs, aquifers must either be deepened or abandoned or their water must be treated to dilute the salt concentration.

subbasin in which the project is located. The Final EIR also describes another subbasin called the "180/400-Foot Aquifer" and states "[r]ecent reports prepared for [the Monterey County Water Resources Agency] by Geosyntec Consultants have identified connectivity between the northeastern portion of the Corral de Tierra Subbasin and the 180/400-Foot Aquifer Subbasins (Geosyntec 2010)." The Final EIR includes a discussion of both of these subbasins.

The Final EIR, consistent with the Draft EIR, states that the proposed project will procure groundwater from two existing wells located in a special assessment zone called Zone 2C, which forms part of the area covered by the Salinas Valley Water Project. The Final EIR describes the Salinas Valley Water Project, which went into operation around 2010. The Final EIR states that based on information from the Monterey County Water Resources Agency "the project site" and the two wells sites "indirectly receive benefits of sustained groundwater levels within the Basin attributed to the Salinas Valley Water Project."

Regarding the project's cumulative effect on groundwater supply, the Final EIR concludes that any cumulative impact from the project's long-term pumping of groundwater resources would be mitigated by the Salinas Valley Water Project. In particular, the Final EIR states, "[i]mplementation of the proposed project, when combined with other development in the vicinity, will increase the demand on groundwater resources within the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin," but "the potable water for the project would be procured within Monterey County Water Resources Agency's Zone 2C, which funds the Salinas Valley Water Project" and "[t]herefore, this would be considered a less than significant cumulative impact." (Bolding omitted.)

With respect to recirculation of the report, the Final EIR asserts that the nature of the revisions in the hydrogeology and groundwater resources section when compared to

the analogous sections of the Draft EIR "serve to clarify, amplify or otherwise result in insignificant modifications to the [Draft EIR]."

The Final EIR also includes two new paragraphs (not present in the Draft EIR) that address the environmental issue of wildlife corridors. We examine the report's discussion of wildlife corridors further below.

6. 2015: Board's Resolution, Including Certification of Final EIR

After the Final EIR's release in December 2013, two hearings on the project occurred in January and February 2014 before the Monterey County Planning Commission (Planning Commission). The Planning Commission denied approval of the project, concluding that the applicants had not provided sufficient evidence of a long-term water supply for the project. In particular, the Planning Commission appears to have credited evidence that the subbasin where the project's wells are located does not receive hydrological benefits from the Salinas Valley Water Project.

Applicant appealed the Planning Commission's denial of approval for the project to the Monterey County Board of Supervisors (Board). In 2014 and 2015, the Board held several public hearings related to the appeal.

Prior to the Board's final hearing, the parties submitted additional materials for the Board's consideration. For example, on December 1, 2014, Landwatch's counsel provided a letter to the Board that asserted various claims about the Final EIR's inadequacy and attached a letter from a geologist and hydrologist engaged by Landwatch who had reviewed the Final EIR and concluded it was flawed in various respects. The letter from counsel argued that the Draft EIR and Final EIR "provide entirely different and inconsistent descriptions of the relevant groundwater basins."

On April 7, 2015, the Board adopted Resolution No. 15-084 (resolution) certifying the Final EIR and approving the project. Among other findings, the Board stated that the Final EIR did not require recirculation under CEQA because the Final EIR "merely clarified and amplified the analysis in the [Draft EIR] and [Revised Draft EIR] and did

not contain significant new information." Specifically, the Board found that "several modifications were made to the environmental setting to clarify the hydrogeologic setting and relationship with the Geosyntec Report" and that "the cumulative analysis was updated to reflect cumulative conditions of the groundwater basin (subbasin), Salinas Valley Water Project, as opposed to the El Toro Groundwater Basin" and concluded "[t]he findings remained less than significant." The Board further found that the Final EIR "acknowledged the existing overdraft conditions of the groundwater basin, but concluded that the contribution is not substantial."

The Board conditioned its approval of the project in a number of areas, including imposing a condition related to a "Wildlife Corridor Plan," which we discuss further below.

B. *Procedural History*

In May 2015, petitioners each filed verified petitions for a writ of mandate and complaints alleging the County failed to comply with the requirements of CEQA.[7] Among other relief, petitioners requested that the trial court direct the County to set aside its certification of the Final EIR and approval of the project.

The Monterey County Superior Court assigned Landwatch's petition for writ of mandate case No. M131893 and Meyer's petition for writ of mandate case No. M131913. Based on a stipulation by the parties, the trial court consolidated the two cases for trial. The trial court conducted a bench trial of the consolidated matters on May 3, 2018.

On December 3, 2018, the trial court issued its final written ruling that granted and denied the petitions in part. The trial court's order ran to over 140 pages and concluded that the Final EIR should be decertified as to the groundwater and wildlife corridor

[7] Petitioners also raised in the trial court non-CEQA challenges and CEQA challenges related to other environmental issues, such as traffic and aesthetics, that they have abandoned on appeal.

analyses only. The ruling denied all other claims asserted by Landwatch and Meyer and upheld the County's certification of the remaining portions of the Final EIR.

On March 8, 2019, the trial court entered a judgment in favor of Landwatch on its petition. The trial court filed a preemptory writ of mandate that included directions to the County to set aside portions of Resolution No. 15-084 as to the groundwater and wildlife corridor analyses and to, before the County approved revisions to the combined development permit or issued a new permit for the project, comply with CEQA by remedying the deficient portions of the EIR and by recirculating the revised portions of the EIR for public comment and response.

On April 15, 2019, the trial court entered a separate judgment in favor of Meyer on its petition and filed a preemptory writ of mandate with similar directions to the County.

From these two judgments, the parties have filed six appeals or cross-appeals related to the trial court's judgments in these two cases.

This court assigned case No. H046932 to all the notices of appeal, and we consider them together here.

II. DISCUSSION

These appeals center on the legality under CEQA of the County's certification of the Final EIR with respect to the project's effects on groundwater resources and on a corridor to facilitate the movement of wildlife. We first address the sufficiency of the Final EIR's discussion of groundwater resources and consider whether, even if legally adequate, the Final EIR should have been recirculated prior to its certification. We then turn to its treatment of wildlife corridors.

A. *CEQA Overview*

As the California Supreme Court has stated, "CEQA was enacted to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through

alternatives or mitigation measures when feasible; and (4) disclose the government's rationale for approving a project. [Citation.] CEQA embodies a central state policy requiring 'state and local governmental entities to perform their duties "so that major consideration is given to preventing environmental damage." ' [Citation.] Accordingly, CEQA prescribes how governmental decisions will be made whenever an agency undertakes, approves, or funds a project." (*Protecting Our Water and Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th 479, 488 (*Protecting Our Water*).)

"The environmental impact report is ' "the heart of CEQA" ' and the 'environmental "alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.' [Citation.] It is intended, further, ' "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." ' " (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1229.) "The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. [Citation.] For the EIR to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450 (*Vineyard*).)

" ' " ' "[A]n EIR is presumed adequate (Pub. Resources Code, § 21167.3), and the plaintiff in a CEQA action has the burden of proving otherwise." ' " ' " (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 329 (*South of Market*).) "The ultimate inquiry, as case law and the CEQA

guidelines[8] make clear, is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.' " (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 (*Sierra Club*).)

B. *Standard of Review*

Pursuant to CEQA, the standard of review for reviewing an agency's action is " 'whether there was a prejudicial abuse of discretion.' (§ 21168.5; see *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381.) 'Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' (§ 21168.5.)" (*Protecting Our Water*, *supra*, 10 Cal.5th at p. 495.)

As an appellate court, our review " 'is the same as the trial court's: [It] reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo.' [Citation.] The reviewing court independently determines whether the record 'demonstrates any legal error' by the agency and deferentially considers whether the record 'contains substantial evidence to support [the agency's] factual determinations.' " (*Protecting Our Water*, *supra*, 10 Cal.5th at p. 495.) " 'While we determine de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements" [citation], we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more

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[8] "CEQA is 'implemented by an extensive series of administrative regulations promulgated by the Secretary of the Natural Resources Agency.' [Citation.] These regulations can be found at title 14, division 6, chapter 3 of the California Code of Regulations." (*Protecting Our Water*, *supra*, 10 Cal.5th at p. 488, fn. 3.) We refer to these regulations, as does our high court, as the " 'CEQA Guidelines.' " (*Ibid.*)

reasonable," for, on factual questions, our task is "not to weigh conflicting evidence and determine who has the better argument." ' " (*Sierra Club*, *supra*, 6 Cal.5th at p. 512.)

Our review of the adequacy of an EIR "presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference. [Citations.] Thus, to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted." (*Sierra Club*, *supra*, 6 Cal.5th at p. 516.)

"[I]n reviewing an EIR's discussion, we do not require technical perfection or scientific certainty: ' " '[T]he courts have looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure.' " ' " (*Sierra Club*, *supra*, 6 Cal.5th at p. 515.) " ' "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." ' " (*South of Market*, *supra*, 33 Cal.App.5th at p. 331.) When an agency certifies an EIR that does not meet the informational requirements of CEQA, the agency has failed to proceed in a manner required by law and has therefore abused its discretion. (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 327 (*Cherry Valley*); *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118 (*Save Our Peninsula*).)

With these general principles in mind, we turn first to whether the Final EIR adequately addressed and analyzed the project's potential impact on groundwater resources.

C. *Groundwater Resources*

In their appeals, the County and applicant argue the trial court erred in concluding that CEQA requires that the County have recirculated the Final EIR before certifying it. In their cross-appeals, petitioners contend that the Final EIR is informationally inadequate, primarily because the environmental setting related to groundwater resources is internally contradictory and omits critical information about the extent of the overdraft condition and because its description of the cumulative impact analysis improperly conflates or misapplies the relevant legal standards for how an agency must address and analyze a project's cumulative impacts.

If we agree with petitioners' claims in their cross-appeals that the Final EIR must be revised to provide critical missing information, that determination may moot the issue of whether the trial court erred in its conclusion the County should have recirculated the report. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 101). Therefore, we begin our discussion with petitioners' contentions that the Final EIR is informationally inadequate.

1. Environmental Setting

Petitioners contend that the Final EIR's description of the hydrogeologic setting of the groundwater that will supply the project is deficient. Specifically, petitioners claim that the Final EIR includes the contradictory assertions that the groundwater is both in overdraft and in surplus, and the project's wells are hydrogeologically connected and not connected to areas where groundwater resources are stressed. Petitioners also assert the setting description is incomplete because it fails to disclose the declining groundwater levels and aquifer depletion described in the 2007 Geosyntec study.

a. Legal Principles

An accurate description of the project's environmental setting is essential to "set the stage" for a discussion of impacts, including a discussion of cumulative impacts. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859,

875 (*Friends of the Eel River*).) An agency's selection of the geographic area impacted by a proposed development falls within the lead agency's discretion, based on its expertise. (CEQA Guidelines, § 15130, subd. (b)(3); *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 907.) Absent a showing of arbitrary action, a reviewing court must assume the agency has exercised its discretion appropriately. (*City of Long Beach*, at p. 908.)

"Whether an EIR has omitted essential information is a procedural question subject to de novo review." (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 (*Banning Ranch*); see also *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 848 (*King & Gardiner Farms*) [assuming informational adequacy of EIR is a question of law].) "CEQA requires every EIR to identify '[a]ll significant effects on the environment of the proposed project.' " (*Banning Ranch,* at pp. 935–936.) In *Banning Ranch* for example, the California Supreme Court found an EIR informationally insufficient because it did not acknowledge that the project at issue was in a coastal zone that might qualify as an environmentally sensitive habitat area under the California Coastal Act and consequently omitted material information about feasible alternatives or mitigation measures. (*Id.* at pp. 924, 936–937.)

b. Surplus and Overdraft Discussion in the Final EIR

Petitioners contend that the Final EIR internally contradicts itself by claiming there is both a surplus and an overdraft in the pertinent water subbasin, i.e. the Corral de Tierra Subbasin of the Salinas Valley groundwater basin. The County and applicant respond that the Final EIR's discussion was not factually inconsistent on this point, and that the cumulative impact analysis was not based on surplus water supplies.

We disagree with petitioners' contention that the Final EIR admits both a surplus and an overdraft in the Corral de Tierra Subbasin. The Final EIR acknowledges there is an overdraft condition. It does not simultaneously claim there is also a "surplus." Rather, the Final EIR uses the phrase "water surplus" in the context of discussing the

Todd Report, but it does not actually claim there is a surplus or rely on such a surplus in its conclusion that the project would not have a cumulative impact on groundwater resources.

For example, when discussing the Todd Report, the Final EIR states, "According to the [Todd Report] some areas within the referenced Corral de Tierra subarea would not meet the estimated water demand upon buildout and development should be extremely rationed in the area. It was determined that although the loss of return flow associated with the proposed project may have an adverse impact on some of the individual subareas, the four subareas are interconnected and will maintain an overall water surplus of approximately 314.82 AFY." Following this language, the Final EIR then discusses the Geosyntec study (including the 2010 supplement) which notes that the "primary aquifer is in overdraft but current and increased groundwater pumping could be sustained for decades in areas where large saturated thicknesses of the primary aquifer stored large volumes of groundwater. The project site overlies a portion of the primary aquifer that has a large saturated thickness and groundwater production is considered good."

The Final EIR does not claim that the project will benefit from a surplus of water or that there is a surplus in the basin or subbasins. Rather, the report relies on the property owner's contributions to the Salinas Valley Water Project and the opinions of county agencies in reaching its conclusion that the project has a long-term sustainable groundwater supply and would have a less than significant impact on groundwater resources.

Similarly, regarding the cumulative effect of groundwater pumping, the Final EIR does not rely on a surplus in the basin or subbasins but rather states, "Groundwater pumping has the potential to cumulatively influence groundwater supplies within [] the adjacent subbasins and the basin as a whole. However, the potable water for the project would be procured within Monterey County Water Resources Agency's Zone C, which

funds the Salinas Valley Water Project. Therefore, this would be considered a less than significant cumulative impact." (Bolding omitted.)

Based on the language discussed above and on our independent review of the administrative record, we conclude the Final EIR does not present fundamentally conflicting pictures of both surplus and overdraft conditions in the Corral de Tierra Subbasin. Nor do petitioners argue there is any conflict in the setting related to the larger Salinas Valley Groundwater Basin, which the County determined was relevant. We disagree with petitioners' contention that the setting description at issue here is similar to the conflicting description held invalid in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 (*San Joaquin Raptor*).

In *San Joaquin Raptor*, petitioners challenged under CEQA the adequacy of an EIR's analysis of the impacts of a proposed expansion of an aggregate mining operation. (*San Joaquin Raptor*, *supra*, 149 Cal.App.4th at pp. 649, 656.) The conflicting description related to the mining operation project description, not to its environmental setting. The mining project description stated both that there would be "no increases in mine production" and also that there would be "substantial increases in mine production." (*Id.* at p. 655.) The court held that "[b]y giving such conflicting signals to decisionmakers and the public about the nature and scope of the activity being proposed, the Project description was fundamentally inadequate and misleading." (*Id.* at pp. 655–656.) We see no such contradictory description in the Final EIR here.

Friends of the Eel River, *supra*, 108 Cal.App.4th 859, upon which petitioners also rely, is similarly factually inapposite. In that case, the Court of Appeal found a project's setting description in an EIR insufficient because it did not include a portion of the river system that was the subject of proposals before a federal agency that would affect the water available for the project. (*Id*. at p. 875.) The record here contains no evidence of a significant relevant regulatory proceeding omitted by the agency's articulation of the project setting description.

Petitioners also argue that the Final EIR fails as an informational document because it omitted the "fact and the magnitude of the aquifer depletion and falling groundwater levels revealed by the Geosyntec Report."

We are not persuaded that the County ignored or omitted critical information about the project's setting to render the Final EIR informationally insufficient. The Final EIR references both overdraft in the Salinas Valley Groundwater Basin and discusses the 2007 Geosyntec report (as well as the 2010 Geosyntec supplement). The EIR for this project is therefore not like the one the California Supreme Court found objectionable in *Banning Ranch*, which failed to include any discussion of environmentally sensitive habitat areas. (See *Banning Ranch*, *supra*, 2 Cal.5th at pp. 937–938.) While the information in the Final EIR may not have been as extensive as petitioners would have liked, the County did not violate CEQA as a matter of law by failing to include in the Final EIR further details of the 2007 Geosyntec report.

The Final EIR reasonably acknowledges the overdraft problem, and petitioners have not demonstrated that the omitted information would have revealed a significant environmental impact. (See *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 226 (*Mount Shasta*); see also *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 525.) The ultimate question for the Final EIR was not the extent of the basin or subbasin's overdraft, but whether and to what extent the project would affect the overdraft beyond existing conditions. (See *Cherry Valley*, *supra*, 190 Cal.App.4th at pp. 346–347.) We decide that the Final EIR sufficiently identifies the issue of overdraft, and therefore we reject the petitioners' argument that the Final EIR is informationally deficient in its treatment of overdraft in the setting description.

c. Hydrogeological Connection Discussion in Final EIR

Petitioners also assert that the Final EIR's setting description is informationally inadequate because it makes contradictory claims about the hydrogeologic connection of

the project's wells to stressed areas to the south and west of the project site area in its discussion of the cumulative adverse effect of the project on the groundwater basin. Specifically, petitioners point to two paragraphs in the Final EIR that discuss the Todd Report and the Geosyntec study that petitioners claim are irreconcilable.

As a threshold matter, the County contends petitioners failed to exhaust their remedies as to this claim. (§ 21177, subd. (a); *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 527.) Petitioners assert that they satisfied the exhaustion requirement and as one example point to a geologist's letter submitted by Landwatch during the administrative proceeding that challenges the Final EIR's overall conclusions including about the direction of groundwater flow. On these facts, we accept petitioners' assertion of exhaustion. (See *Environmental Council of Sacramento v. County of Sacramento* (2020) 45 Cal.App.5th 1020, 1034.)

However, we decide that petitioners have not met their burden to show the Final EIR is informationally inadequate as a matter of law. The Final EIR observes, relying on the 2010 Geosyntec supplement, that the groundwater in the vicinity of the project is connected to the eastern aquifers in the Salinas Valley rather than to the stressed portions within the Geosyntec Study area (which studied the El Toro Planning Area that is generally south and west of the project site). In particular, the Final EIR states that "the Geosyntec Study update (2010) determined that the aquifer in the immediate vicinity of the project site is hydrogeologically contiguous with the aquifers to the east in the Salinas Valley, rather than the less productive and stressed areas within the Geosyntec Study area." Having reviewed the administrative record and the Final EIR in its entirety, we are not persuaded that the Final EIR is inadequate as a matter of law.

2. Cumulative Impacts Analysis

Petitioners also challenge the Final EIR's cumulative impact analysis. They renew their claim, rejected by the trial court, that the Final EIR fails to make the two required

determinations for a cumulative impacts analysis, which they describe as "(1) whether the impact of the project in combination [with] other projects exceeds the significance threshold, and (2) if so, whether the project's effect is a considerable contribution." (Italics omitted.) Because the County failed to make these determinations, petitioners argue, the public was left "uncertain whether the County (1) denies there is a significant cumulative impact in the [Corral de Tierra] Subbasin from cumulative pumping or (2) denies that the Project makes a considerable contribution."

a. Additional Factual Background

The Final EIR acknowledges that the project, when combined with other development in the area, will increase the demand on groundwater resources within the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin, but it concludes the project will have a "less than significant cumulative impact." (Bolding omitted.) The Final EIR bases its finding of an insignificant cumulative impact on the amount of groundwater in storage in the vicinity of the project site and on the "regional mitigation strategy" provided by the Salinas Valley Water Project.

After noting that the project site and wells are located in the northeastern portion of the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin, the Final EIR states, "[s]ince the [Salinas Valley Water Project] went into operation in 2010, the entire basin appears to be becoming more hydrologically balanced, as a noticeable change in depth to groundwater levels has been observed in most subbasins. [¶] Although the [Salinas Valley Water Project] will not deliver potable water to the project site, it was developed to meet projected water demands based on development and population forecasts. The proposed project has been deemed consistent with [the Association of Monterey Bay Area Government's] 2008 population forecasts, which was used for forecasting demands for the [Salinas Valley Water Project]. For all of these reasons, the cumulative effect of the project on water demand is considered less than significant." (Underlining and bolding omitted.) Among its findings, the Board found that the Final

EIR "acknowledged the existing overdraft conditions of the groundwater basin, but concluded that the contribution is not substantial."

b. CEQA Requirements and Standard of Review

"A cumulative impact is one 'created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts'. (Guidelines, § 15130, subd. (a)(1).) 'The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.' (*Id.*, § 15355, subd. (b).)" (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 527.)

"An EIR must discuss a project's cumulative impacts 'when the project's incremental effect is cumulatively considerable, as defined in section 15065(a)(3).' (Guidelines, § 15130, subd. (a).) ' "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.' [Citations.] 'A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.' (Guidelines, § 15130, subd. (a)(3).)" (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 276–277.)

"The Guidelines require that an EIR discuss 'cumulative impacts of a project when the project's incremental effect is cumulatively considerable.' (Guidelines, § 15130, subd. (a).) If, on the other hand, the cumulative impact is insignificant or if the project's incremental contribution to the impact is not cumulatively considerable, the Lead Agency is not required to conduct a full cumulative impacts analysis, but the EIR must include a brief explanation of the basis for the agency's finding(s)." (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 222.) "[A] project's cumulative

environmental impact cannot be deemed insignificant solely because its individual contribution to an existing environmental problem is relatively small." (*Id.* at p. 223.)

We review the agency's decision that a project's incremental effect is not cumulatively considerable for substantial evidence. (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1358–1359); *San Franciscans for Livable Neighborhoods v. City & County of San Francisco* (2018) 26 Cal.App.5th 596, 622.)

c. Analysis

We conclude substantial evidence supports the agency's decision that the project's incremental effect will not be cumulatively considerable. The Final EIR acknowledges the finding in the Geosyntec study that the "primary aquifer" (as that aquifer was defined by Geosyntec in the study) is in overdraft. However, the Final EIR also relies on the Geosyntec study's conclusion that the project is located "in an area with a large saturated thickness [] of the primary aquifer" and the aquifer is hydrogeologically connected to the Salinas Valley. In addition, the Final EIR concludes that the potential effect of cumulative groundwater pumping on groundwater supply is mitigated by the Salinas Valley Water Project, which provides a regional mitigation strategy for the groundwater basin and its subbasins.

The Final EIR's discussion of cumulative impacts is therefore sufficient under CEQA. "When an EIR concludes that a project's potential contribution to a cumulative impact will be fully mitigated, a separate cumulative impact analysis is not required." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2d ed. 2019) Insignificant Cumulative Impacts Should Be Discussed Briefly, § 13.40.)

We disagree with petitioners that the Final EIR suffers from the analytical flaws found in *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 (*LAUSD*). The EIR at issue in *LAUSD* reasoned that "the noise level around the schools is already beyond the maximum level permitted under Department of Health guidelines so even though traffic noise from the new development

will make things worse, the impact is insignificant." (*Ibid.*) The court rejected this reasoning because it " 'trivialize[d] the project's impact' by focusing on individual inputs, not their collective significance." (*Ibid.*) The court concluded that the "relevant issue to be addressed in the EIR on the plan is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools." (*Ibid.*)

Here, the Final EIR does not focus solely on the amount of water that would be pumped out of the wells supplying water to the project. To the contrary, the Final EIR states that any adverse cumulative impact caused by pumping of water supply from the groundwater basin will be mitigated by the Salinas Valley Water Project. Moreover, the Final EIR notes that "[s]ince the [Salinas Valley Water Project] went into operation in 2010, the entire basin appears to be becoming more hydrologically balanced, as a noticeable change in depth to groundwater levels has been observed in most subbasins." (Underlining omitted.)

We also reject petitioners' claim that the Final EIR's cumulative impacts analysis is informationally inadequate because it does not specify whether the impacts would be significant absent mitigation. Petitioners rely primarily on the decision of *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, but that case did not examine cumulative impacts. (*Id*. at pp. 653–654.) In addition, in *Lotus*, the First Appellate District, Division 3, identified as deficiencies in the EIR that it did not include standards of significance and that it included the mitigation measure in the description of the project itself. (*Id*. at pp. 655–656.) The Final EIR here does not share these features.

In sum, we conclude petitioners have not met their burden in showing the Final EIR's cumulative impacts analysis as to groundwater resources is inadequate under CEQA.

3. Recirculation

The County and applicant contend that, contrary to the trial court's finding, CEQA does not mandate recirculation of the Final EIR. The County argues that substantial evidence supports the County's decision not to recirculate the Final EIR and any failure to recirculate was not prejudicial. The County, applicant, and amici curiae contend the trial court misapplied CEQA's recirculation standards.[9]

As stated in the resolution approving the project, the County found that the Final EIR did not require recirculation "because the Final EIR merely clarified and amplified the analysis in the [Draft EIR] and [Revised Draft EIR] and did not contain significant new information." The County acknowledged that "several modifications" were made in the Final EIR to the environmental setting but that these modifications served to "clarify the hydrogeologic setting and relationship with the Geosyntec Report" and, as a result, "[t]he cumulative analysis was updated to reflect cumulative conditions of the groundwater basin (subbasin), Salinas Valley Water Project, as opposed to the El Toro Groundwater Basin" and that "[t]he findings remained less than significant."

The trial court decided that the County erred under CEQA and that recirculation was required pursuant to section 15088.5, subdivision (a)(4), of the CEQA Guidelines (hereafter section 15088.5(a)(4)) because the Draft EIR's groundwater resources and hydrogeology analysis was so fundamentally inadequate that it precluded meaningful public review and comment. In the trial court's view, the Draft EIR's inadequacy was "underscore[d]" by the "significant amendment" done in the Final EIR.

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[9] We granted two applications for leave to file briefs as amici curiae. One amicus brief was filed in support of the County and real party in interest Harper by the California State Association of Counties and League of California Cities. The other amicus brief was filed in support of the County and real party in interest by the California Building Industry Association, California Business Properties Association, Building Industry Association of the Bay Area, and Building Industry Legal Defense Foundation (collectively, "California Building"). Petitioners filed a joint response to both amicus briefs.

a. Legal Principles

"If the lead agency adds 'significant new information' to the EIR subsequent to the close of the public comment period but prior to certification of the final EIR, CEQA requires that the lead agency provide a new public comment period. (§ 21092.1.)" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124–1125, (italics omitted) (*Laurel Heights II*); *Mount Shasta*, *supra*, 210 Cal.App.4th at p. 217.)

Section 21092.1 mandates that "only the addition of significant new information triggers recirculation." (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1134.) In summarizing the intention of the Legislature in enacting section 21092.1 and in particular its adoption of the "significant new information" language, the California Supreme Court stated in *Laurel Heights II*: "[T]he Legislature apparently intended to reaffirm the goal of meaningful public participation in the CEQA review process. [Citation.] It is also clear, however, that by doing so the Legislature did not intend to promote endless rounds of revision and recirculation of EIR's. Recirculation was intended to be an exception, rather than the general rule. Significantly, at the time section 21092.1 was enacted, the Legislature had been and was continuing to streamline the CEQA review process. Recognizing the legislative trend, we previously have cautioned: '[R]ules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.' " (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1132, fn. omitted.)

Section 15088, subdivision (a), of the CEQA Guidelines states that the term " 'information' " can include "changes in the project or environmental setting as well as additional data or other information," and that "[n]ew information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment *upon a substantial adverse environmental effect of the project* or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)

that the project's proponents have declined to implement." (CEQA Guidelines, § 15088.5, subd. (a), italics added.) "Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." (*Id.*, subd. (b).)

As articulated by one Court of Appeal, "[t]he test for determining whether the updated data about the drought and its impact on water supply constitutes significant new information is whether the public was deprived of a meaningful opportunity to comment upon the project's substantial adverse effect on the water supply, including groundwater. (Guidelines, § 15088.5, subd. (a).)" (*King & Gardiner Farms*, *supra*, 45 Cal.App.5th at p. 850.)

Section 15088.5(a)(4) of the CEQA Guidelines—the section relied upon by the trial court in ordering recirculation—states that a disclosure requires recirculation where it reveals "[t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."[10] Section 15088.5(a)(4) cites to *Mountain Lion Coalition v. Fish & Game Com*. (1989) 214 Cal.App.3d 1043 (*Mountain Lion Coalition*). "This test for recirculation is based on the type of wholesale omission of information found in [*Mountain Lion Coalition*], in which the draft EIR omitted any analysis of cumulative impacts, and a detailed analysis was first provided in the final EIR." (Kostka & Zischke, Practice Under the Cal.

[10] Section 15088.5, subdivision (a), provides three other examples of " '[s]ignificant new information' " that require recirculation, which are not at issue here. They are: "(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. [¶] (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. [¶] (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it."

Environmental Quality Act (Cont.Ed.Bar 2d ed. 2019) Recirculation for Fundamentally Inadequate Draft EIR, § 16.15E.)

b. Standard of Review

We review for substantial evidence a lead agency's determination "that the new information in the final EIR was not 'significant' pursuant to section 21092.1." (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1135; see also CEQA Guidelines, § 15088.5, subd. (e) ["A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record."].)[11] In the CEQA context, substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384, subd. (a).) Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (*id.*, subd. (b)), but not "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment." (*Id.*, subd. (a).) "An agency's determination not to recirculate an EIR is given substantial deference and is presumed to be correct. A party challenging the determination bears the burden of showing that substantial evidence does not support the agency's decision not to recirculate." (*Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661.)

[11] Although petitioners state that the less deferential de novo standard of review "would be justified" here because this case involves a CEQA Guidelines section 15088.5(a)(4) claim, they cite no legal authority for application of this standard. Moreover, they concede that the de novo standard is "not required here." As it is well established that courts review an agency's decision not to recirculate an EIR for substantial evidence (see *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1063), we decline petitioners' invitation to apply a different standard.

c. Analysis

Having considered the record and applying the appropriate presumptions, we decide substantial evidence supports the County's conclusion that the revisions made in the Final EIR to the Draft EIR's discussion of groundwater resources and hydrogeology did not mandate recirculation of the Final EIR.

As an initial matter, we observe that public comments, including those made about the findings of the Geosyntec study, prompted the revisions in the Final EIR addressing these topics (in particular revised section 3.6). Courts have found recirculation not required where the new information was encompassed in comments following circulation of the original report.

For example, in *Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, the Court of Appeal reviewed the claim that a county should have recirculated an environmental document related to a residential development project based on a then-recent observation of larvae of an endangered toad species in a creek near the project. (*Id.* at p. 288.) The county had circulated a draft EIR stating that the probability of the toad occurring on the site was very low and the nearest population of the toad was 1.5 kilometers away. (*Id.* at p. 290.) During the public review period, commentators on the draft EIR challenged the overall assumption that the endangered toad species did not inhabit the site. (*Ibid*.) Following litigation and the release of a supplemental EIR, a zoologist observed the toad much closer to the project site and project opponents argued that the county erred by deciding not to recirculate the supplemental EIR based on that new information. (*Id.* at pp. 293, 301, 306.) In concluding recirculation was not mandated under section 21092.1, the Court of Appeal noted that there was no contention that either the EIR or supplemental EIR were "fundamentally flawed" and found that the zoologist's finding of the toad larvae much closer to the project site was not information the public needed in order to provide meaningful comment. (*Id.* at p. 304.)

Here, public comments on the Draft EIR included comments about the overdraft condition, the Geosyntec study, and advice from another governmental entity that the EIR should contain an "up-to-date" understanding of hydrogeologic conditions. We determine these comments about matters petitioners contend are substantively absent from the Draft EIR are noteworthy, although not dispositive, given the ultimate question is whether the public was deprived of a meaningful opportunity to comment on these matters. (*Center for Biological Diversity v. Department of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931, 950 (*Center for Biological Diversity I*).)

The California Supreme Court has underlined that "the primary reason for soliciting comments from interested parties is to allow the lead agency to identify, at the earliest possible time, the potential significant adverse effects of the project and alternatives and mitigation measures that would substantially reduce these effects." (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1129.) Here, the record reflects both the public did provide meaningful comment on the condition of overdraft and about the relevant and correct groundwater setting and that, in response, the County substantively changed the final environmental document in part to reflect those comments and concerns.

More critically, we conclude that the new information provided in the Final EIR, such as that related to the pertinent groundwater basins (focusing now only on the Salinas Valley Basin and identifying the Corral de Tierra Subbasin as part of that larger basin) and the more fulsome discussion of the Geosyntec study, did not constitute "significant new information" within the meaning of section 21092.1. As stated above, new information is not significant unless that new information involves a *substantial adverse* environmental effect of the project. (CEQA Guidelines, § 15088.5, subd.(a); see also *Vineyard*, *supra*, 40 Cal.4th at p. 477.) Here, no substantial adverse effect of the project on groundwater resources was identified in either the Draft EIR or Final EIR. Rather, both the Draft EIR and Final EIR found *no* substantial adverse environmental effect of

the project as to groundwater resources and therefore no need to adopt any new mitigation measures related to those resources.

The County and applicant concede that the revisions to the groundwater setting "shifted the focus" to the Salinas Valley Groundwater Basin versus the smaller "Toro Area" of the County. However, despite this shift, we are not persuaded that the rationales in the Draft EIR were therefore wholly inadequate and thwarted public comment on the project. The County explained in the Draft EIR that the project was partly in the Salinas Valley Groundwater Basin and would benefit from the Salinas Valley Water Project. The circumstances here are thus distinct from an EIR that included little or no discussion of the relevant environmental considerations or rationale for the agency's conclusions. (Cf. *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 252 ["Given the Department refrained from explaining its decision until it responded to public comments, recirculation was required to allow meaningful public comment directed at the rationale for its decision."]; cf. *Mountain Lion Coalition*, *supra*, 214 Cal.App.3d at pp. 1050–1051 ["[T]he draft EID circulated to the public only served to avoid important environmental considerations that were well known to appellants by the time this document was drafted. Rather than squarely addressing the subjects that were set out in the court's order and submitting their environmental conclusions to public scrutiny, appellants chose to circulate a document that simply swept the serious criticisms of this project under the rug."].) Given the record here, the County could quite reasonably conclude recirculation of the Final EIR was not necessary to permit the public to make informed and meaningful comments on the impact of the project on groundwater resources.

In the trial court's view, the Draft EIR's inadequacy was "underscore[d]" by the "significant amendment" done in the Final EIR. For example, the trial court emphasized that the Draft EIR did not mention the Corral de Tierra Subbasin or even acknowledge its existence. The trial court also emphasized the overall numerous revisions to the

groundwater resources section of the Final EIR. Although factually correct, we decide that, on this record, these observations are not legally dispositive under section 21092.1. The test for recirculation under section 21092.1 is not the amount or degree of revisions made in the Final EIR standing alone, or whether or not certain information was omitted in the draft environmental document. Rather, as stated by our high court, "only the addition of *significant* new information triggers recirculation. (§ 21092.1.)" (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1134.)

Petitioners rely primarily on three cases for support that recirculation was mandated here. However, none of these cases assist petitioners because all—unlike the record here—involve an explicit or implicit finding of substantial adverse environmental effect. For example, in *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, the court determined revisions to an impacts analysis required recirculation because the "revisions consist of a complete redesign of the project's stormwater management plan. Unlike with the other revisions, the City did not provide a strike-out version for these revisions showing the specific amendments to the EIR's text," and "[e]ssentially, the City replaced 26 pages of the EIR's text with 350 pages of technical reports and bald assurance the new design is an environmentally superior alternative for addressing the project's hydrology and water quality impacts." (*Id*. at p. 108.) Thus, "[g]iven their breadth, complexity, and purpose, the revisions to the hydrology and water quality analysis deprived the public of a meaningful opportunity to comment on an ostensibly feasible way to mitigate a *substantial adverse environmental effect*. Accordingly, we conclude the revisions to the hydrology and water analysis constituted significant new information requiring recirculation under section 21092.1." (*Id.* at pp. 108–109, italics added.)

Sutter Sensible Planning Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813 is also distinguishable, as it involved essentially a rewrite of the entire EIR about an industrial project that appears to have involved a projected impact on the water table. (*Id*.

at pp. 816–818, 821, 823.) In *Sutter*, the court held that a revised EIR related to the construction of a food processing plant contained significant new information and was improperly approved without recirculating it prior to construction of the project. (*Id*. at pp. 816, 818, 823.) The project in *Sutter* "would use very large quantities of water, an average of 1,000 to 1,200 gallons per minute during the processing season, and up to 1,800 gallons per minute during peak periods, which would be supplied by three deep wells." (*Id*. at p. 816.) The new information in the revised EIR in *Sutter* included: "additional details regarding the quantities of pesticide residues to be expected in the tomato waste water, a more elaborate discussion of ground water availability and the projected impact of the plant on the water table, updated figures on the amount of motor vehicle traffic in the vicinity of the plant and a discussion of the effect on rail traffic and new figures on the proposed method of disposing of waste water, substituting Department of Water Resources estimates of evapo-transpiration potentials of pasture land in the Sacramento Valley during the tomato processing season for figures used in the previous EIR which were repudiated by their purported author." (*Id.* at pp. 817–818.) No additional information of such magnitude appears in the Final EIR.

Finally, this court's decision in *Save Our Peninsula* also does not support the conclusion that recirculation was required here. *Save Our Peninsula* involved the disclosure, that arose late in the environmental review process, of new and significant information regarding the applicants' asserted riparian right which they claimed entitled them to use water from a subterranean stream without a permit. (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at pp. 131–132.) This court held that this disclosure raised a number of critical water issue questions, such as how the water use would be regulated and controlled. (*Id.* at pp. 133–134.) Thus, recirculation of an EIR was necessary after disclosure of new information that a new mitigation measure with potentially significant

impacts had not been analyzed. (*Id.* at p. 134.)[12] Again, no such deficiency is present here.

In sum, we agree with the County and applicant that substantial evidence supported the agency's decision not to recirculate the Final EIR.[13] Therefore, the trial court erred in ruling that the Draft EIR's inadequacies required recirculation of the groundwater resources and hydrogeology analyses in the Final EIR.

D. *Wildlife Corridors*

The County and applicant challenge the trial court's finding that the Final EIR is deficient in its analysis of the project's potential impact on wildlife corridors. Wildlife corridors, as defined in the Final EIR, are "established migration routes commonly used by resident and migratory species for passage from one geographic location to another" and serve to "link otherwise fragmented acres of undisturbed area." The Final EIR implicitly concludes that the project would not adversely effect, either directly or cumulatively, the sensitive resource of wildlife corridors.

The trial court decided that the Final EIR's explanation for why the project would not significantly impact a wildlife corridor was deficient as not supported by substantial evidence. The County contends that the trial court erred because there *is* substantial

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[12] Amici California Building filed a request that we take judicial notice of sections of the California Natural Resources Agency rulemaking file. The rulemaking file is not relevant or necessary to decide the appeals at issue here. We therefore deny the request for judicial notice. (See *Surfrider Foundation v. California Regional Water Quality Control Bd.* (2012) 211 Cal.App.4th 557, 569, fn. 7.)

[13] In addition to their challenges to the informational adequacy of the Final EIR and the County's failure to recirculate the Final EIR, petitioners under a separate heading in their opening brief on cross-appeal identify an issue they describe as "The Court should not reach the issue of whether the water supply impact findings were supported by substantial evidence because the EIR is not informationally adequate without comment responses." Although petitioners' argument on this point is not entirely clear, it appears that they are under a separate heading simply reiterating their arguments that the Final EIR is informationally inadequate and should have been recirculated before certification. For the reasons stated above, we have rejected those contentions.

evidence to support the Final EIR's determination that the project would have no significant impact to wildlife corridors and the Final EIR "thoroughly analyzed" this issue.

1. Additional Background

The Draft EIR discussed wildlife corridors in a subsection addressing various biological resources. The Draft EIR stated, in pertinent part, that "[m]aintaining the continuity of established wildlife corridors is important to: a) sustain species with specific foraging requirements; b) preserve a species' distribution potential; and c) retain diversity among many wildlife populations" and "[t]herefore, resource agencies consider wildlife corridors to be a sensitive resource."

The Draft EIR noted that the 344-acre project site consists primarily of "grazing land on rolling terrain" and there were no homes or other building structures currently on site. Toro County Park lies to the east of the project site. Fort Ord Public Lands lie to the north of the project location.

The Draft EIR noted that the project site has drainages, mostly that were tributary to El Toro Creek, and that the channels "can provide movement corridors for amphibians when water is present and for other animals throughout the year." The Draft EIR also identified larger wildlife, such as mountain lions and bobcats, as living in Monterey County. It did not detail or describe the movement corridors for these larger species. The Draft EIR established the following significance threshold pertaining to wildlife corridors: an impact was considered significant if the proposed project would "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors."

The Draft EIR found that "the loss or disturbance of habitats that support sensitive plant and wildlife species would be considered a potentially significant impact." (Bolding omitted.) The Draft EIR concluded that the impact would be reduced to a less than significant level through a mitigation measure that requires all proposed home sites,

landscaped areas, and outbuildings to be located a minimum of 75 feet to 100 feet from the active drainage channels to avoid filling or disturbing natural drainage courses.

The Draft EIR's analysis of potential impacts to biological resources at the project site relied on assessments done by a consultant called Zander Associates (Zander). Neither the Draft EIR nor the Zander assessments discussed a wildlife corridor related to El Toro Creek, which is not part of the project but runs nearby.

During the review period for the Draft EIR (which ended in December 2008), the public submitted written comments that mountain lions had been observed in the vicinity of the project site and that the Draft EIR appeared to be "incomplete without investigating and outlining the extent to which the development is an active mountain lion habitat or corridor."

Following the review period, the topic of wildlife corridors arose at public hearings for the project. For example, at a Planning Commission hearing about the project in June 2010, a member of the public expressed concern that the project lies within a major wildlife corridor that connects the Fort Ord lands to the areas near the Monterey Peninsula and Santa Lucia and "that is a cumulative impact that also needs to be identified, analyzed, and mitigated." In October 2010, the County received a study related to wildlife connectivity that had been funded by an independent environmental organization called the Big Sur Land Trust (connectivity study). The connectivity study focused on wildlife movement in the "Highway 68 corridor and the area around Marks Ranch, Toro Park, and Fort Ord Natural Reserve." The study, which began in October 2008, found that "El Toro Creek passes under a bridge on Highway 68 providing safe passage and habitat for wildlife moving between the uplands of the Sierra de Salinas and the lowland habitats toward Monterey Bay."

Addressing wildlife corridors, the 2013 Final EIR amends the Draft EIR by adding two paragraphs to the Draft EIR. The new text references a technical report related to a nearby project called the Ferrini Ranch Subdivision that studied wildlife movement in

that project's area.[14] Specifically, the first paragraph added in the Final EIR states: "According to a Technical Memorandum prepared by WRA, Inc. in December 2008 for the proposed Ferrini Ranch Subdivision, a wide range of terrestrial wildlife species are known to occur on For[t] Ord land including: American Badger, Mountain Lion, Bobcat . . ., Black-tailed Deer . . ., and Coyote . . . Current corridors for wildlife to move between Fort Ord and the Sierra de Salinas or Santa Lucia ranges are limited to El Toro Creek, the Portola Drive overpass and possible culvert running beneath State Route 68. The El Toro Creek undercrossing is located 0.75 miles northwest of the project site near the intersection of San Benancio Road and State Route 68." (Underlining omitted.) The second added paragraph states in full: "The Big Sur Land Trust and the Nature Conservancy have partnered with public agencies in an effort to protect the corridor between Fort Ord and the Santa Lucia Range." (Underlining omitted.)

The Final EIR does not append the technical memorandum from the Ferrini Ranch project or incorporate it by reference. The Final EIR does not discuss or cite to the connectivity study.

In January 2014, following the release of the Final EIR, a Planning Commission hearing occurred at which staff from the County's Planning Department discussed wildlife corridors. A representative from the Big Sur Land Trust noted that the development was located in prime habitat for wildlife including mountain lions and expressed concern that the development not cut off the passageway for wildlife to move

[14] According to a map in the administrative record, Ferrini Ranch lies next to and roughly west of the project site. This court considered an appeal related to the Ferrini Ranch project that raised various CEQA challenges (including by Landwatch), such as arguments related to groundwater resources, in which this court upheld the EIR for that project. (*Highway 68 Coalition v. County of Monterey* (July 26, 2019, No. H045253) [nonpub. opn.].) We note that the opinion did not discuss any claims related to wildlife or wildlife corridors that were related to that project.

through the El Toro Creek underpass and adjacent lands and to "ensure a functional wildlife corridor remains."

Later, in May 2014, at a hearing before the Board, the EIR consultant for County staff briefly addressed wildlife corridors stating that that El Toro Creek was a "key wildlife corridor area" but that it was about three-quarters of a mile away from the project. A representative from the Big Sur Land Trust stated at the hearing that the project was "right in the middle of a critically-important wildlife corridor from the Sierra to Salinas mountains." She noted that the El Toro Creek underpass under Highway 68 was indeed "three-quarters of a mile away" from the project but this underpass was not the corridor itself; rather the "corridor consists of that underpass plus the habitat on either side of the road." She observed that experts have "identified the standard width for a corridor to be 1.2 miles. So the development actually is within an important corridor."

Following the Planning Commission's denial of the project, County staff prepared a report for the Board that recommended approval of the project by the Board. The report generally addressed wildlife corridors and specifically discussed El Toro Creek and the connectivity study, stating that "[t]he study did determine wildlife moves underneath the bridge; however, due to the distance from the project site and limited development proposed, the proposed project would not result in substantial adverse effect on this wildlife corridor."

In March 2015, County staff addressed wildlife corridors at a Board hearing related to the project and discussed an alternative that would involve eliminating four lots in the center of the project that would apparently allow movement from the "open space, the remainder parcel, Toro Park" and "down on to the area that is adjacent to Highway 68 and some of the undercrossing there under Highway 68."

In its resolution approving the project, the Board conditioned its approval on applicant's submission of a "Wildlife Corridor Plan" (Condition 21).

Condition 21 states: "In order to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument, the Owner/Applicant shall submit a Wildlife Corridor Plan ('Plan') for all the lots on the vesting tentative map. The Plan shall be prepared in consultation with a qualified biologist with expertise in wildlife connectivity planning and is subject to approval by RMA-Planning. The Plan shall include the following elements to ensure effective wildlife movement: [¶] [1] Fencing: limit fence height (how tall as well as ground clearance), ensure adequate openings in fencing (e.g. post and rail), identify fence types, and identify areas where no fencing will be allowed (e.g. areas adjacent to natural drainage courses). The plan may allow limited solid fencing in the developed areas within the building envelopes as required by Mitigation Measure MM 3.1-2b. [¶] [2] Lighting: incorporate wildlife-friendly lighting and identify placement of lighting that minimizes impacts to wildlife."[15]

The County and applicant contend that the County's determination that the project will not impede wildlife movement is supported by substantial evidence and the trial court erred in ruling to the contrary. The County and applicant state that the "lot layouts, sizes, and configurations plainly provide ample room for wildlife movement" and note

[15] We note that the Board's resolution approving the project contains two other conditions/mitigation monitoring measures that reference Condition 21 and the wildlife corridor plan. Specifically, a condition related to the designation of scenic easements requires that the easement document incorporate the "applicable recommendations in the approved Wildlife Corridor Plan" required in Condition 21. Another condition related to the submission of a "detailed lighting plan" requires that the lighting plan incorporate the "applicable recommendations in the approved Wildlife Corridor Plan" required in Condition 21. Another condition related to biological resources, although it does not refer explicitly to Condition 21, requires applicant to design the proposed development on the project site "so that homesites, landscaped areas and outbuildings are located a minimum of 75 feet to 100 feet from the active drainage channels to avoid filling or disturbing natural drainage courses."

that applicant will dedicate approximately half of the property (154 acres) to the County which will remain undeveloped. The County and applicant also rely on the technical memorandum related to the Ferrini Ranch project and County staff's remarks contained in the administrative record pertaining to wildlife corridors. Moreover, the County and applicant argue that any error was not prejudicial in light of Condition 21.

2. Legal Principles

"There is no 'gold standard' for determining whether a given impact may be significant. 'An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.' (Guidelines, § 15064, subd. (b).)" (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1107.) "Under the Guidelines, however, '[e]ach public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.' (Guidelines, § 15064.7, subd. (a).)" (*Ibid.*)

"Section 21100, subdivision (c), requires an EIR to 'contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.' (See also CEQA Guidelines, § 15128.)" (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 302.) The agency's conclusion that a particular effect of a project will not be significant can be challenged as an abuse of discretion on the ground the conclusion was not supported by substantial evidence in the administrative record. (*Id.* at p. 290.) The

burden is on petitioners to affirmatively show there was no substantial evidence in the record to support the County's finding that the project would not have a significant impact on an existing wildlife corridor. (See *Center for Biological Diversity I*, *supra*, 232 Cal.App.4th at p. 948.)

3. Analysis

The record makes clear that wildlife corridors are a sensitive resource, and the Final EIR states that a substantial interference with such a corridor would constitute a significant impact. It is also undisputed that the project is located on currently undeveloped land that lies less than a mile away from a key wildlife passage that allows wildlife to bypass Highway 68. Nevertheless, the Final EIR does not provide basic information about the wildlife corridor of which this passage is a part, such as its dimensions, or even definitively state whether or not the corridor overlaps a portion of the project site. This baseline determination is the first step in the environmental review process by which an agency can determine whether an impact is significant. (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at p. 125.)

There is not substantial evidence that no such wildlife corridor passes through the project site. Indeed, Zander reported that the natural drainage in the project site serves as a wildlife corridor. Comments from County staff that the County and applicant rely upon in their appeals further appear to suggest that a corridor *does* pass through the project site. In particular, as noted above, staff stated at a 2015 hearing that: "With regard to biology, there was some question regarding wildlife corridors; although, the EIR addressed that those were less-than-significant impacts, one of the things we pointed out at the previous hearing is that we have the environmentally-superior alternative, which is four less lots, which would eliminate lots here, four lots here in the center of the project, *which would allow that contiguous wildlife corridor from the open space, the remainder parcel, Toro Park, through and on through*; although these—where it says, 'not a park,' these are

subdivided lots in here, but they aren't developed, *down on to the area that is adjacent to Highway 68 and some of the undercrossing there under Highway 68*." (Italics added.)

While the Final EIR notes that the El Toro Creek passage is not on the project site, it does not explain how the corridor relates to this passage or whether the corridor passes by or through the project site. Rather, the County appears to have concluded without any study or supporting documentation the layout will be sufficient to maintain the corridor and prevent interference with animal movement. In the absence of any such discussion, the Final EIR is informationally deficient under CEQA. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 728–729.)

The County and applicant further argue that the "Ferrini Ranch EIR concluded that the 185-home project at issue there would not adversely impact El Toro Creek if development were setback at least 200 feet from the riparian edge or undercrossing" and that "[b]y comparison, the 17-home Harper Project is located approximately 4,000 feet from the undercrossing and creek." However, they provide no authority for the proposition that another project EIR, which was not included in the EIR at issue here, is relevant to the legal question of an EIR's informational adequacy. As noted by petitioners, the EIR for this project fails to describe the basic information necessary for a reader of the EIR for this project to understand the topic of the wildlife corridor, such as where the wildlife corridor "begins and ends, its width, and how far the Project intrudes upon the corridor." Moreover, the excerpts of the Ferrini Ranch EIR upon which the County and applicant rely confirm the importance of the "El Toro bridge" as a wildlife corridor but do not address the project here or find that the corridor does not pass through it.

Additionally, petitioners do not point to any place in the administrative record that reflects that County staff actually reviewed or relied upon the Ferrini Ranch EIR's discussion of wildlife corridors in connection with the Final EIR for the project at issue

here. Rather, we note that the Final EIR for this project (dated December 2013) predates the September 2014 Ferrini Ranch EIR relied upon by the County and applicant.

While our review of an EIR's adequacy is deferential, "we must also bear in mind that the overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at p. 117.) Prejudicial error occurs " ' "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." ' " (*Id.* at p. 118.)

We are also not persuaded that the County department staff's comments constitute substantial evidence that the project would have no significant impact on a wildlife corridor. As noted above, the comments from staff consisted of conclusory and vague remarks based on the configuration of the proposed development and the distance to the El Toro Creek underpass. " 'Conclusory comments in support of environmental conclusions are generally inappropriate.' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404.) Staff did not explain how the configuration of the homes was evidence that the impact on any corridor would be insignificant. We further note that one of the citations to the administrative record provided by the County and applicant is not evidence, let alone substantial evidence, but rather consists of an attorney's argument before the Board.

We decide petitioners have met their burden of showing that the County failed to provide substantial evidentiary support for its implicit conclusion that the project would have no significant impact on a wildlife corridor. The decisionmakers and the public lacked the basic information about the wildlife corridor they needed to understand the County's conclusion. "[W]hen the agency chooses to rely completely on a single quantitative method to justify a no-significance finding, CEQA demands the agency research and document the quantitative parameters essential to that method. Otherwise,

decision makers and the public are left with only an unsubstantiated assertion that the impacts—here, the cumulative impact of the project on global warming—will not be significant. (See Guidelines, § 15064, subd. (f)(5) [substantial evidence to support a finding on significance includes 'facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,' but not '[a]rgument, speculation, [or] unsubstantiated opinion'].)" (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 228 (*Center for Biological Diversity II*).)

We also agree with petitioners that the County's failure to provide substantial evidentiary support for its no significant impact conclusion was prejudicial, in that it deprived decisionmakers and the public of substantial relevant information about the project's likely impacts. (*Center for Biological Diversity II*, *supra*, 62 Cal.4th at p. 228.) The County and applicant argue that any error was not prejudicial given Condition 21 and cite to *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1073–1074. We disagree. *Save Cuyama Valley* held that the EIR at issue there "sets forth all the pertinent data and follows all the procedures" (*id.* at p. 1073) but came to the wrong conclusion that a mine's impact on water quality would be insignificant; the court held this error was not prejudicial because a condition required the real party in interest to ensure that no groundwater is exposed and this condition, if feasible, "would be *wholly effective* in negating the mine's adverse impact on water quality." (*Id.* at p. 1074, italics added.)

Save Cuyama Valley is distinguishable for at least two reasons. First, the Final EIR here, as discussed above, does not set forth all the pertinent data. The Final EIR lacks any analysis or information about the wildlife corridor. Second, Condition 21 does not by its plain terms show it would be "wholly effective" in negating any adverse impact on the wildlife corridor. Condition 21, for example, mandates that a wildlife corridor plan include certain fencing elements to "ensure effective wildlife movement," but there

is no evidence in the record that those fencing elements will ensure that the project will not interfere substantially with any wildlife corridor.

We note that the County appears to have assumed that the low density of the development means that there is no substantial interference with the wildlife corridor; however, there is no evidence to support that assumption given the lack of information about the corridors on site other than drainages, and the record does not contain any expert opinion or data relied upon by the County to support that conclusion. For these reasons, we do not agree with the County and applicant that the failure to define or explain the project's relationship to the wildlife corridor is nonprejudicial.

We therefore affirm the trial court's ruling finding the Final EIR's analysis of direct project impacts to wildlife corridors was deficient.

E. *Summary of Conclusions*

For the reasons explained above, we agree with some but not all of petitioners' claims in their cross-appeal. Specifically, we agree that the Final EIR's treatment of the issue of wildlife corridors is deficient under CEQA. By contrast, based on our independent review of the record before us (*Protecting Our Water*, *supra*, 10 Cal.5th at p. 495), we conclude that the County did not commit any legal error under CEQA as to the Final EIR's discussion and analysis of groundwater resources. With respect to the appeal filed by the County and applicant, we agree that the trial court erred when it decided that the County was required to recirculate the Final EIR on the topic of groundwater resources, and we conclude that substantial evidence supports the County's determination that CEQA did not require recirculation.

Based on these conclusions, we reverse the judgments and remand with the directions stated below.

III. DISPOSITION

The March 8, 2019 judgment in case No. M131893 and the April 15, 2019 judgment in case No. M131913 are reversed. The matter is remanded to the superior

court with directions to vacate its original order partially granting the petitions for writ of mandate, to vacate its prior writs of mandate issued pursuant to its original order, and to issue new writs of mandate ordering the Monterey County Board of Supervisors to vacate Resolution No. 15-084, and to vacate the Board's approval and certification of the Environmental Impact Report for the project only as it relates to wildlife corridor issues. The Board shall be ordered not to take any further action to approve the project without the preparation, circulation and consideration under CEQA of a legally adequate Environmental Impact Report with regard to the wildlife corridor issues discussed in this opinion. The parties are to bear their own costs on appeal.

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Danner, J.

WE CONCUR:

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Greenwood, P.J.

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Bamattre-Manoukian, J.

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