

Aerial photographs taken during the 2016/2017 wet season re-confirm the presence of the previously identified, yet never-surveyed, “potential vernal pool” located on Newport-Mesa Unified School District (NMUSD) surplus property

Notice of Violation: V-5-13-003

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Introduction.

In late 2012, the NMUSD erected a 2,046-foot chain-link fence around the western 1/3 of their 11.5-acre surplus property on Banning Ranch. This fence was erected without the necessary Coastal Development Permit (CDP) from the California Coastal Commission (CCC) and was subsequently the subject of a CCC Notice of Violation (NOV) letter (V-5-13-003) issued on 2/15/13. In an effort to keep the fence intact, the NMUSD applied for an “after-the-fact” CDP in November 2013 (5-13-1100). After the CCC issued a Notice of Incomplete Application (NOIA) letter on 12/11/13, NMUSD’s “after-the-fact” CDP application was eventually filed on 10/1/14 and subsequently scheduled to be heard by the CCC. Due to significant impacts to wetlands and Environmentally Sensitive Habitat Area (ESHA), the project was considered to be inconsistent with sections 30233 and 30240 of the Coastal Act and the CCC staff recommended denial of the CDP. The Banning Ranch Conservancy (BRC) is not aware that the item was ever heard by the CCC and it is our understanding that the issue of the unpermitted fence is still unresolved.

Nearly all of the unpermitted fence is constructed in USFWS-declared critical habitat (subunit 1c, and the only such critical habitat in all of Orange County) for the San Diego Fairy Shrimp (*Branchinecta sandiegonensis*).

Robert Hamilton of Hamilton Biological, on behalf of the BRC, submitted a review of the biology of the NMUSD property, and the impacts of the unpermitted fence (see separate attachment). It is the position of the BRC that the unpermitted fence be removed.

The “potential vernal pool” was not part of NMUSD’S previous assessment.

When the BRC became aware of NMUSD’s unpermitted fence, the BRC submitted aerial photos documenting the vernal pools on and around the NMUSD surplus property, including documentation of a “potential vernal pool” located roughly in the middle of the western 1/3 of the property. As part of its “after-the-fact” CDP application, NMUSD hired biologist David Bramlet to conduct a habitat assessment for the site. Although this habitat assessment did include a discussion of three seasonal wetlands (BRC 6, Pool K and a “road-rut” on the northeastern portion of the property) as well as two additional “depressional features” located on the southern portion of the property, there was no discussion of the above mentioned “potential vernal pool.”

Aerial photographs underscore the recurrence of the “potential vernal pool.”

After five years of drought, the 2016/2017 wet season had above average rainfall and it appears that all of the vernal pools on Banning Ranch, including those on the NMUSD surplus property, pooled. The series of aerial photographs at the end of this report document the recurrence of the “potential vernal pool” on the NMUSD surplus property.

Adequate evaluation of the “potential vernal pool” on the NMUSD surplus property needs to be conducted.

USFWS-protocol branchiopod surveys, and vernal pool vegetation surveys need to be conducted on the “potential vernal pool.” At this time (late April) vernal pool indicator plants are easily identified and it would be the appropriate time to conduct such vegetation studies on the NMUSD surplus property (as well as the rest of Banning Ranch).

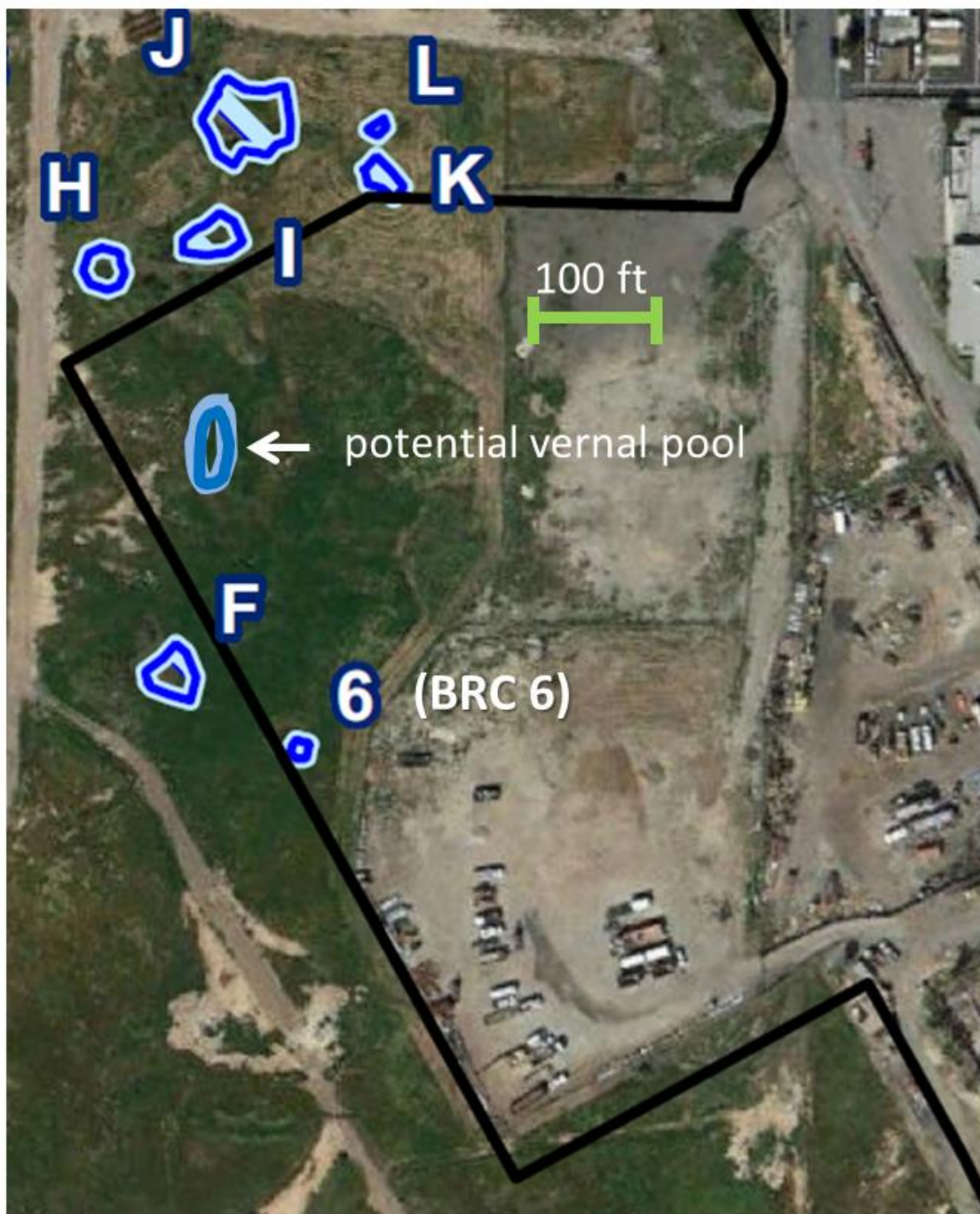


Figure 1 Map showing vernal pools on and around the NMUSD property

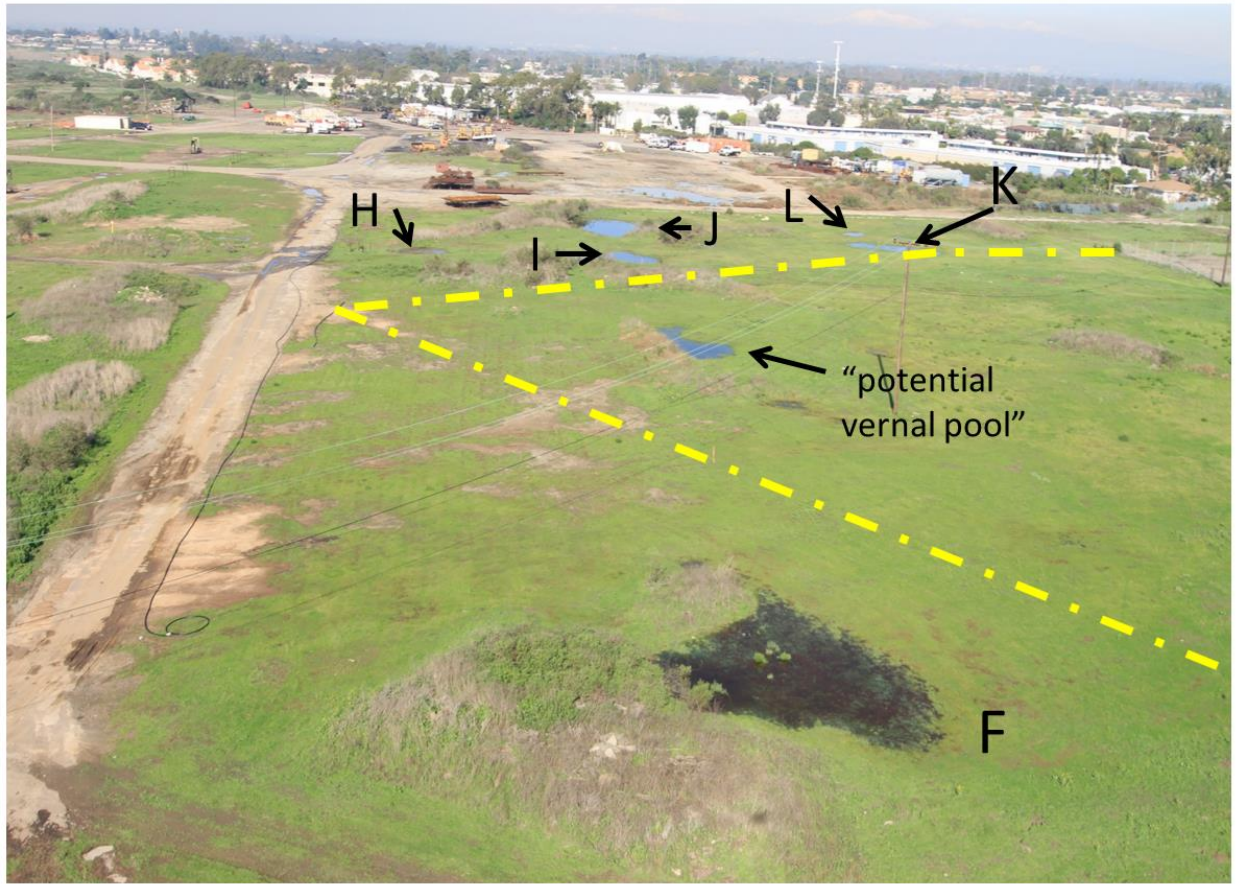


Figure 2 12/24/10 Looking towards north

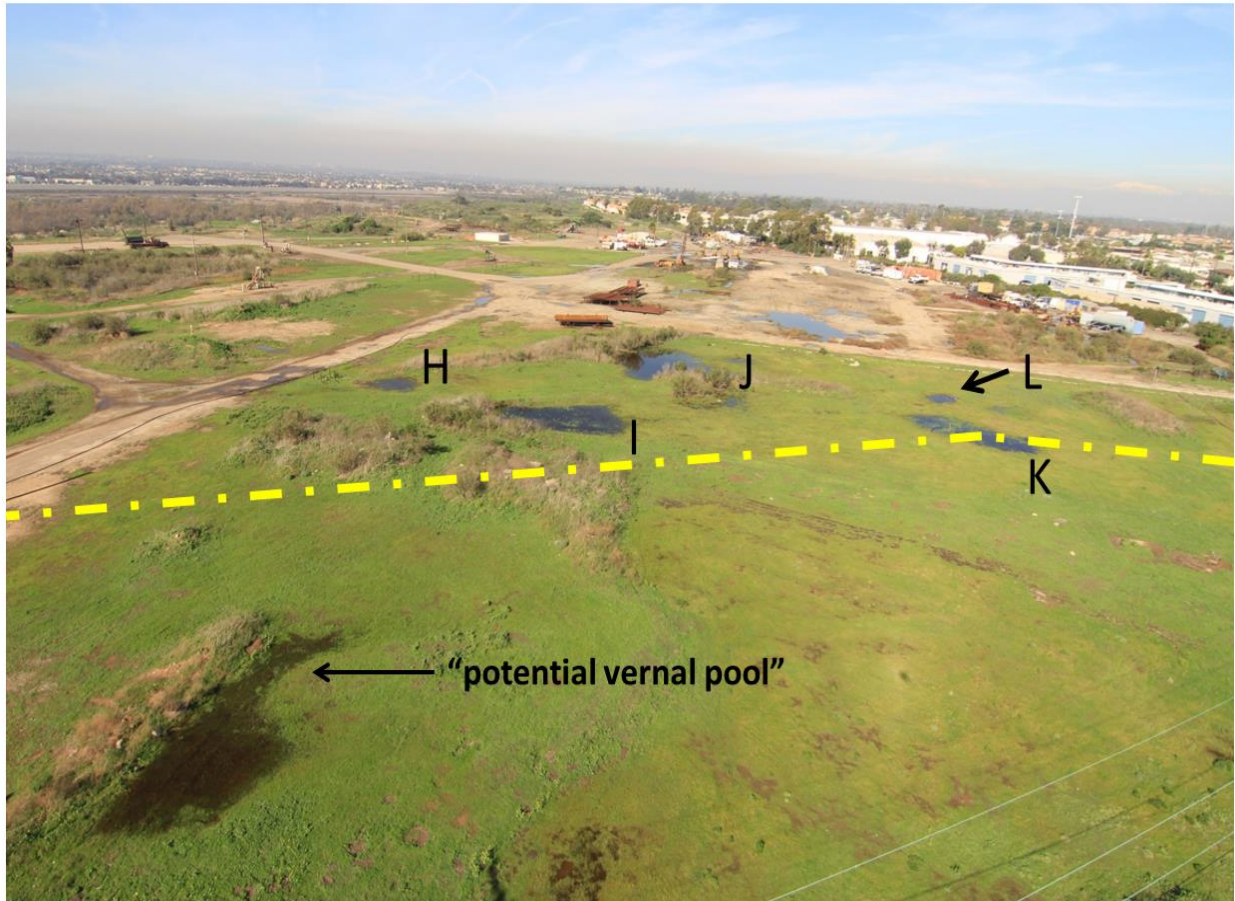


Figure 3 12/24/10 Looking towards northwest

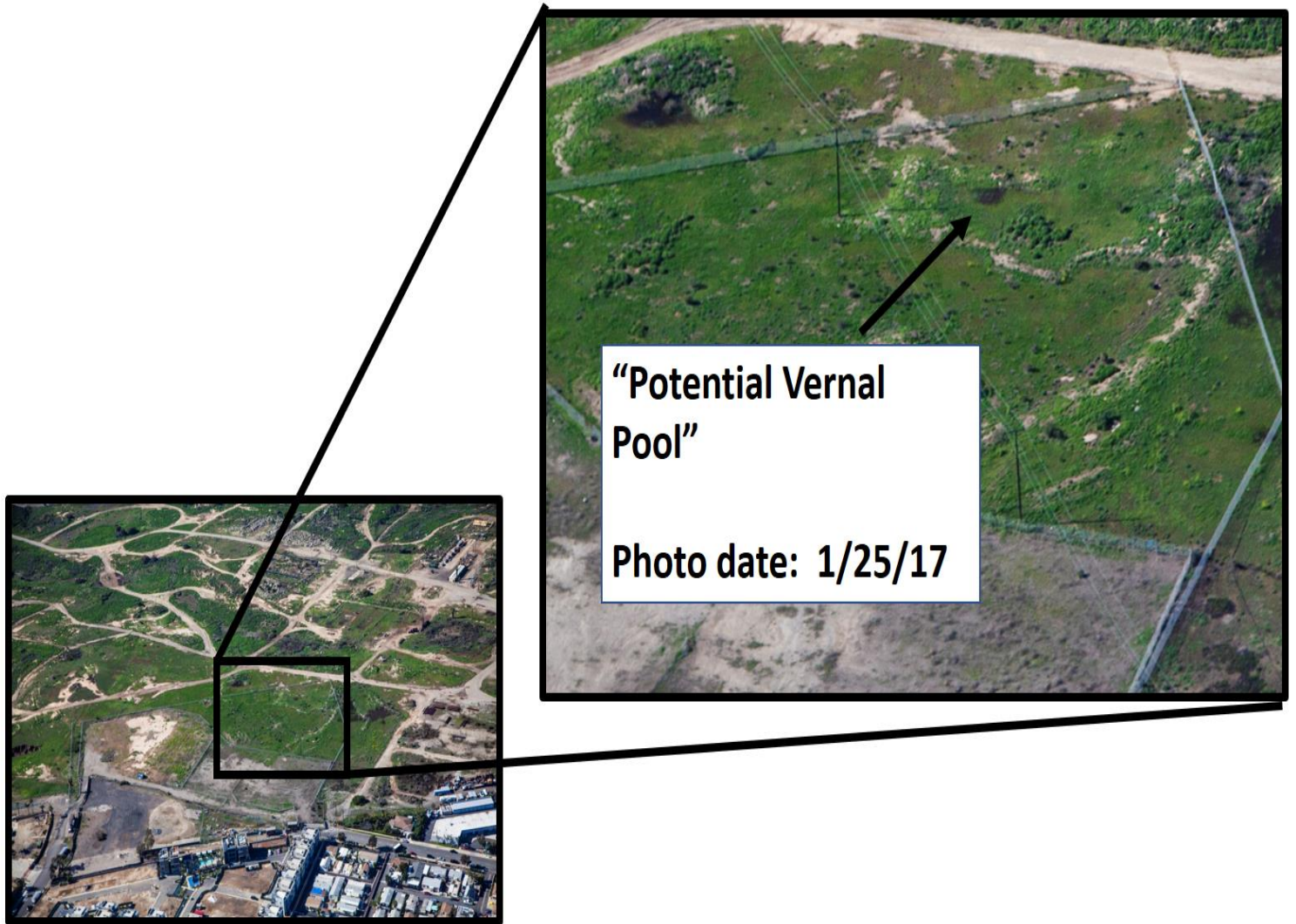


Figure 4 Photo from 1/25/17 showing "Potential Vernal Pool."

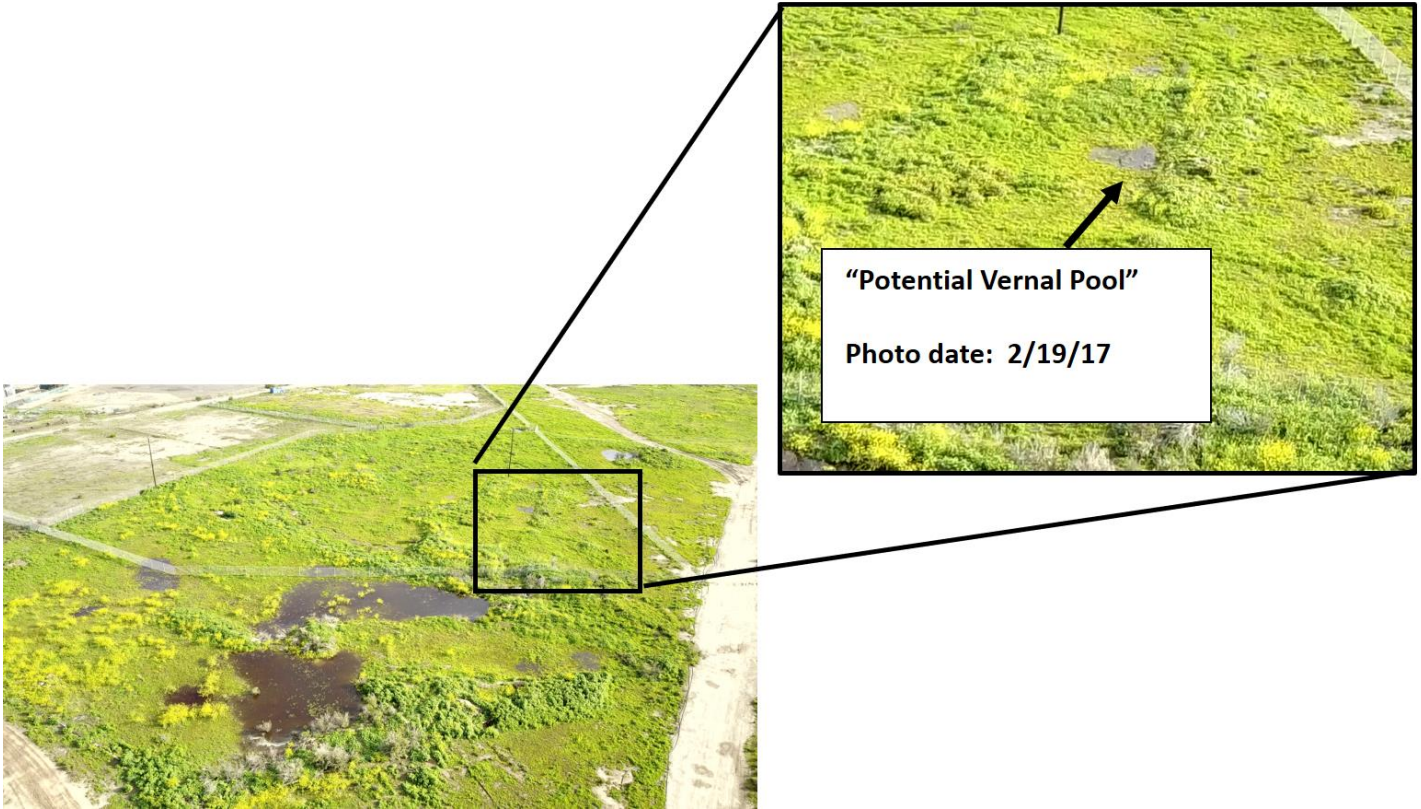


Figure 5 Photo from 2/19/17 showing "Potential Vernal Pool."

Approximate location of "potential vernal pool" on NMUSD surplus property.

Map source: Habitat Assessment for the Fencing Project at 975 W. 16th Street Newport Beach, California Prepared by David Bramlet 7/7/14

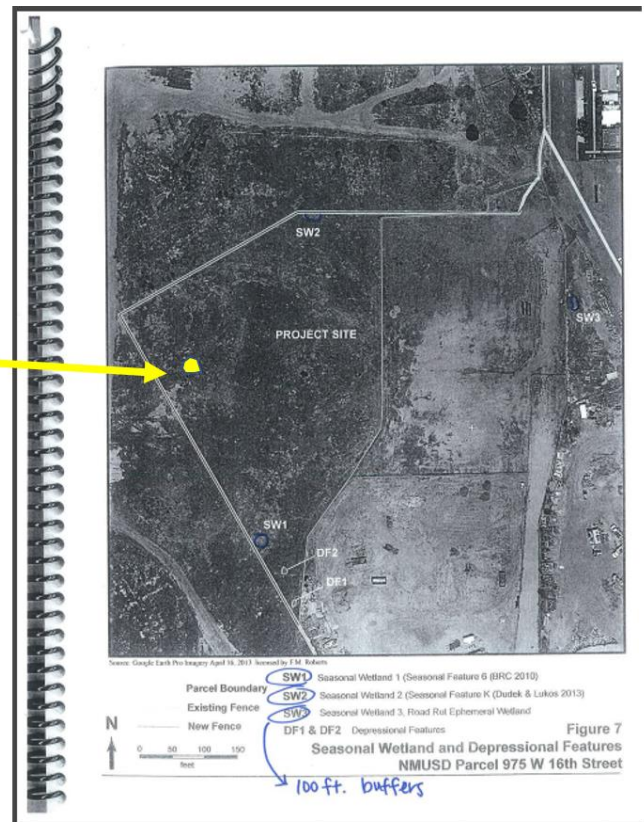


Figure 6 Approximate location of "Potential Vernal Pool."