



VANDERMOST CONSULTING SERVICES, INC.
Government Affairs • Community Relations • Regulatory Assistance

June 29, 2006

Mr. Miles Rosedale
Monrovia Nursery
18331 E. Foothill Blvd.
Azusa, CA-91702

SUBJECT: Assessment of Jurisdictional “Waters of the U.S. and State” for Monrovia Nursery in the City of Glendora, Los Angeles County, California

Dear Mr. Rosedale:

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), Regional Water Quality Control Board (RWQCB), and California Department of Fish and Game (CDFG) jurisdictional “waters of the U.S. and State” associated with Monrovia Nursery site. The approximately 95.7-acre site is located in the City of Glendora, Los Angeles County, California. The site is bordered to the north by Sierra Madre Avenue, to the south by railroad tracks, to the west by approved development in the City of Azusa, and to the east by Barranca Avenue. Regional access is provided by State Route 210 (SR-210). Site access is taken from Palm Drive and Sierra Madre Avenue. Regional and local vicinity maps are attached as Figures 1 and 2, respectively. Figure 3 depicts the property on the U.S. Geological Survey (USGS) 7.5-minute Azusa quadrangle.

On January 6, 2006, Vandermost Consulting Services, Inc. (VCS) examined the project site to determine the limits of Corps jurisdiction pursuant to Section 404 of the Clean Water Act, RWQCB jurisdiction pursuant to Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Act, and the limits of CDFG jurisdiction pursuant to Section 1600 of the California Fish and Game Code. Attached as Figure 4, is a topographic map depicting the areas of Corps, RWQCB, and CDFG jurisdiction assessed on-site by VCS. Photographs of the current topography, vegetative communities, and general widths of “waters of the U.S. and State” are provided as Exhibit A.

I. METHODOLOGY

Prior to beginning the field delineation, a 100-scale topographic map and aerial photographs of the property were examined to determine the locations of potential areas of Corps, RWQCB, and CDFG jurisdiction. In addition, the USGS map was examined to determine the presence of historical blue-line drainages on-site. Potential jurisdictional areas within and adjacent to the property were field checked for the presence of definable channels and/or wetland vegetation, soils, and hydrology. Upon identification of jurisdictional field indicators, drainages were measured for length and width and recorded onto the topographic map using visible landmarks for guidance.

II. JURISDICTION

Army Corps of Engineers (Corps)

A. Definition of "Waters of the U.S."

Pursuant to Section 404 of the Clean Water Act (CWA), the Corps regulates the discharge of dredged and/or fill material into waters of the United States. The term "waters of the United States" is defined at 33 CFR part 328 to include: 1) all navigable waters (including all waters subject to the ebb and flow of the tide), 2) all interstate waters and wetlands, 3) all other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use degradation or destruction of which could affect interstate or foreign commerce, 4) all impoundments of waters mentioned above, 5) all tributaries to waters mentioned above, 6) the territorial seas, and 7) all wetlands adjacent to waters mentioned above.

The definition of "waters of the U.S." was altered by the January 2001 U.S. Supreme Court Decision, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers et al (SWANCC)*. In the SWANCC decision, the Supreme Court held that the Corps exceeded its authority by asserting CWA jurisdiction over an abandoned sand and gravel pit, solely because it provided habitat for migratory birds. The SWANCC rule is limited to intrastate waters that are non-navigable and isolated, and clarified that the Corps staff should no longer rely on the use of waters by migratory birds as the sole basis for asserting jurisdiction.

In the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent and ephemeral streams, extends to the ordinary high water mark (OHWM), which is defined at 33 CFR 328.3(e) as:

that line on the shore established by the fluctuation of water indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial

vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Non-wetland waters are classified as either ephemeral, intermittent, or perennial waters as defined in the January 15, 2002 Federal Register notice:

Ephemeral Stream - An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral streambeds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Intermittent Stream - An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Perennial Stream - A perennial stream has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Wetlands are defined at 33 CFR 328.3(b) as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support ...a prevalence of vegetation typically adapted for life in saturated soil conditions.” The methodology set forth in the 1987 Wetland Manual generally requires that in order to be considered a wetland, the vegetation, soils, and hydrology of an area must exhibit at least minimal hydric characteristics. While the manual provides great detail in methodology and allows for varying special conditions, a wetland should normally meet each of the following three criteria:

1. Hydrophytic Vegetation: More than fifty percent of the dominant plant species at the site must be typical of wetlands (i.e. rated as facultative or wetter in Region 0/California in the U.S. Fish and Wildlife Service 1988 *National List of Plant Species that Occur in Wetlands*);
2. Hydric Soils: Soils must exhibit physical and or chemical characteristics indicative of permanent or periodic saturation (for example, a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and,
3. Hydrology: Hydrologic characteristics must indicate that the ground is saturated to within 12 inches of the surface for at least five- percent of the growing season during a normal rainfall year. For most of low-lying southern California, five percent of the growing season is equivalent to 18 days.

B. Corps Permit Mechanisms

Two distinct permit categories currently exist under the Section 404 process, the Nationwide Permit (NWP) and the Individual Permit (IP). NWP's are general permits for specific categories of activities that require minimal impacts on aquatic resources. In order to qualify for a NWP, the project applicant must demonstrate compliance with the general and/or regional conditions set forth by the Corps NWP program.

Generally, an IP is required if over 0.50 acre of jurisdictional "waters of the U.S." will be impacted by a proposed project, or if over 300 linear feet of jurisdictional non-ephemeral waters are impacted.

Regional Water Quality Control Board (RWQCB)

Pursuant to Section 401 of the CWA, the RWQCB regulates "waters of the U.S." with similar jurisdiction as the Corps. The RWQCB focuses on the effects of a project on downstream water quality conditions and beneficial uses. In contrast to the Corps, the RWQCB may assess jurisdiction over isolated features pursuant to the Porter-Cologne Water Quality Act.

California Department of Fish and Game (CDFG)

The State of California regulates water resources under Sections 1600-1616 of the California Fish and Game Code. Pursuant to Division 2, Chapter 6, Section 1602 of the California Fish and Game Code, CDFG regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake, which supports fish or wildlife. Section 1602 states the following:

...an entity may not substantially divert or obstruct the natural flow or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake, unless.... The department receives written notification regarding the activity in the manner prescribed by the department.

CDFG considers most drainages to be "streambeds" unless it can be demonstrated otherwise. A stream (which includes creeks and rivers) is defined as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes water courses having a surface or subsurface flow that supports or has supported riparian vegetation." Additionally, CDFG defines "lake" to include "natural lakes or man-made reservoirs." CDFG jurisdiction includes ephemeral, intermittent and perennial watercourses and extends to the limit of riparian habitat located contiguous to the water resource that functions as part of the watercourse system. The California Fish and Game Code defines "riparian habitat" as "... lands which contain habitat which grows close to and which depends on

soil moisture from a nearby freshwater source". CDFG may also assess jurisdiction over isolated drainages pursuant to the Fish and Game Code of California.

U.S. Fish and Wildlife Service (USFWS)

Under Section 7 of the Federal Endangered Species Act, the U.S. Fish and Wildlife Service (USFWS) and the Corps enter into consultation when the proposed project site is located within mapped designated critical habitat for a federally endangered species and/or an endangered species may be adversely affected by a proposed project as generally determined by the project general biological assessment. The USFWS reserves the right to request additional mitigation based on several factors including, but not limited to, quality of habitat, occupation of habitat by endangered species, and connectivity to habitat corridors.

DELINEATION RESULTS

Non-Jurisdictional Irrigation Ditches

Monrovia Nursery has operated a wholesale container stock nursery on the property for over 40 years. As part of their operation, Monrovia Nursery relied on a sophisticated water circulation and recycling program in all of its growing fields. The Nursery constructed a series of concrete ditches and swales to capture and channel irrigation runoff to central collection facilities. The water was then pumped to an on-site water treatment facility, treated, and pumped back to the growing fields for use as irrigation. Monrovia Nursery was able to capture approximately 95 percent of its irrigation runoff.

The concrete ditches and swales are non-jurisdictional for several reasons. The ditches were constructed for the purpose of conveying irrigation runoff, not storm water. The ditches convey water internally within the property, not across the property from off site locations. The function and value of these drainage features are considered minimal due to substantial disturbance, the lack of vegetation, and the lack of special aquatic sites. In addition, it is unlikely that any of the drainage features on site contribute to groundwater recharge during "ordinary" rain conditions because the ditches and swales are concrete lined. The relatively low water table on the property supports this conclusion.

Non-Jurisdictional Storm Water Runoff from Existing Streets

Upstream of the lower portion of the Nursery property are existing residential homes. This neighborhood does not have a storm drain system. Consequently, the storm flows from this neighborhood flow onto and across the Monrovia Nursery property. Baldy Vista Avenue and Oak Bank Drive are existing streets that terminate at the Nursery boundary. Both of these streets convey storm runoff onto the Nursery property.

At the end of Baldy Vista Avenue a concrete lined open ditch conveys urban storm runoff to the continuation of Baldy Vista Creek. Eventually, the storm runoff reaches the storm drain system in Citrus Avenue.

At the end of Oak Bank Drive a concrete lined open ditch conveys urban storm runoff across the Nursery property, under the railroad tracks, and into the municipal storm drain system in Foothill Boulevard.

These open channel drainages are not jurisdictional because they function as storm drains for a neighborhood without a storm drain system. The runoff in these ditches is from streets and rooftops in an urban neighborhood, not natural open space areas. The ditches provide minimal function and value due to substantial disturbance, the lack of vegetation, and the lack of special aquatic sites. In addition, it is unlikely that any of the drainage features on site contribute to groundwater recharge during "ordinary" rain conditions because the ditches are concrete lined. The relatively low water table on the property supports this conclusion.

Jurisdictional Storm Water Runoff from the Mountains

The Hicrest Drainage Area includes the foothills above the Monrovia Nursery property. Storm runoff from the Hicrest Drainage Area makes its way through an existing residential neighborhood north of Sierra Madre and onto the Monrovia Nursery property. Storm runoff flows across the Nursery property, down Calera, Donnington, and Leadora Avenue, before the flows enter Baldy Vista Creek. Baldy Vista Creek is a vegetated drainage course traversing the front and rear portions of residential property. Baldy Vista Creek discharges into an unvegetated, rip-rap lined, open ditch on the Monrovia Nursery property as depicted on Figure 4. The runoff flows through this ditch eventually entering the storm drain system in Citrus Avenue.

Drainage A

Drainage A is an unvegetated concrete lined feature measuring approximately 1,388 feet in length and 0.5 feet in width. Drainage A receives storm flows that cross Sierra Madre and through the Nursery property. The concrete lined channel ends at a residential street, where storm water flows on city streets before entering Baldy Vista Creek. Photographs of the drainage are provided in Exhibit A. Flows in Drainage A are ephemeral.

Drainage B

Drainage B is a concrete lined feature for approximately 481 linear feet and then soft bottom for approximately 135 linear feet after traversing through approximately 126 linear feet of pipe. The concrete lined portion measures approximately 1 foot in width and the earthen portion measures approximately 3 feet of Corps jurisdiction and 10 feet of CDFG jurisdiction. Drainage B also connects to the Baldy Vista Creek. Photographs of the drainage are attached in Exhibit A. Flows in Drainage B are ephemeral.

Baldy Vista Creek

Storm flows from Drainage Areas A and B confluence at the head of Baldy Vista Creek. Baldy Vista Creek is a natural drainage course located off the subject property and in the front and rear of surrounding residential properties. Flows from Baldy Vista Creek eventually outlet into Drainage C. The proposed project will not impact the Baldy Vista Creek as shown on Figure 4. Flows in Baldy Vista Creek are ephemeral.

Drainage C

Drainage C continues on site for approximately 1,791 linear feet at a width of 3 feet for Corps jurisdiction and 10 feet for CDFG jurisdiction. The drainage is unvegetated and lined with ungrouted rock material for the entire length. Drainage C receives upstream flows from the Baldy Vista Creek. Flows from Drainage C outlet into an off site municipal storm drain in Citrus Avenue. Photographs of the drainage are attached in Exhibit A. Flows in Drainage C are ephemeral.

Summary of "Waters of the U.S. & State"

Based on the delineation results, the site contains approximately 0.153 acre of ephemeral Corps and RWQCB jurisdictional "waters of the U.S." and approximately 0.450 acre of CDFG jurisdictional "waters of the State," as shown in the following table:

MONROVIA NURSERY
TOTAL JURISDICTIONAL "WATERS OF THE U.S. & STATE"

Drainage	Length	Acreage	
		Corps/RWQCB	CDFG
Drainage A	1388	0.016	0.016
Drainage B	742	0.014	0.023
Drainage C	1791	0.123	0.411
Total	3921	0.153	0.450

Impacts to "Waters of the U.S. & State"

Implementation of the proposed project will result in permanent impacts to the entire extent of Drainage A, B, and C. The function and value of the drainages are minimal due to disturbance. Impacts will total approximately 0.153 acre of Corps and RWQCB jurisdictional "waters of the U.S." and approximately 0.450 acre of CDFG jurisdictional "waters of the State," as shown in the following table:

MONROVIA NURSERY
TOTAL JURISDICTIONAL IMPACTS TO "WATERS OF THE U.S. & STATE"

Drainage	Length	Acreage	
		Corps/RWQCB	CDFG
A	1388	0.016	0.016
B	742	0.014	0.023
C	1791	0.123	0.411
Total	3921	0.153	0.450

Mitigation

It is anticipated that impacts to the above mentioned features require Section 404, 401, and 1602 authorizations from the Corps, RWQCB, and CDFG. A certified CEQA document is required prior to issuance of a Section 401 and 1602 authorizations. Section 404 authorization requires a Section 401 Water Quality Certification prior to issuance. Compensatory mitigation is proposed to occur on-site at a 1:1 ratio to ensure no net loss.

If you have any questions or comments regarding this report, please call me at (949) 489-2700, extension 205.

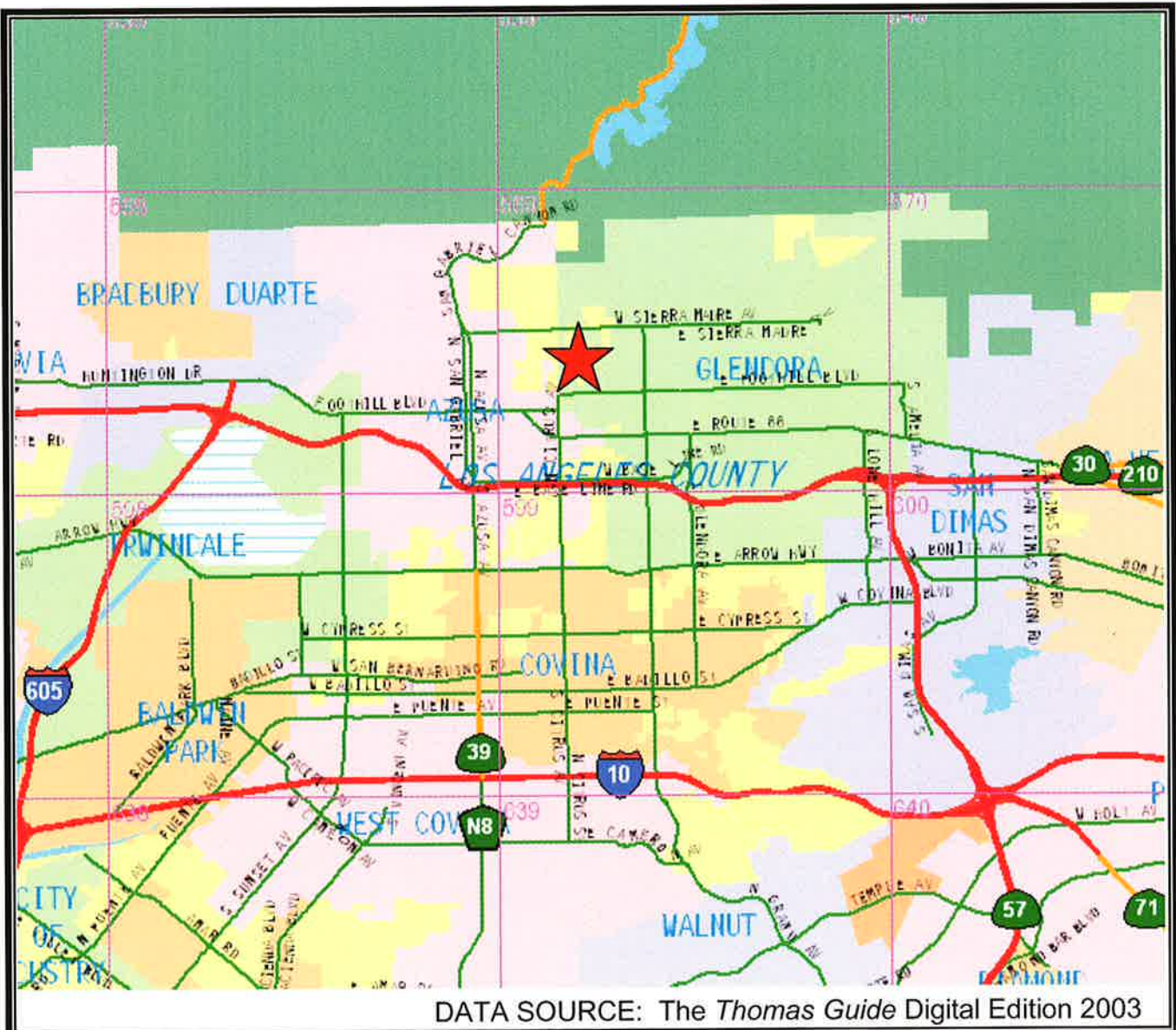
Sincerely,



Beth Jolie Martinez
Director of Regulatory Services

Attachments:

- Figure 1 – Regional Location Map
 - Figure 2 – Local Site Vicinity Map
 - Figure 3 – USGS Quadrangle Map
 - Figure 4 – Delineation map – Jurisdictional Waters
- Exhibit A – Photographs of Drainages



MONROVIA NURSERY

REGIONAL LOCATION MAP



APPROXIMATE SITE LOCATION

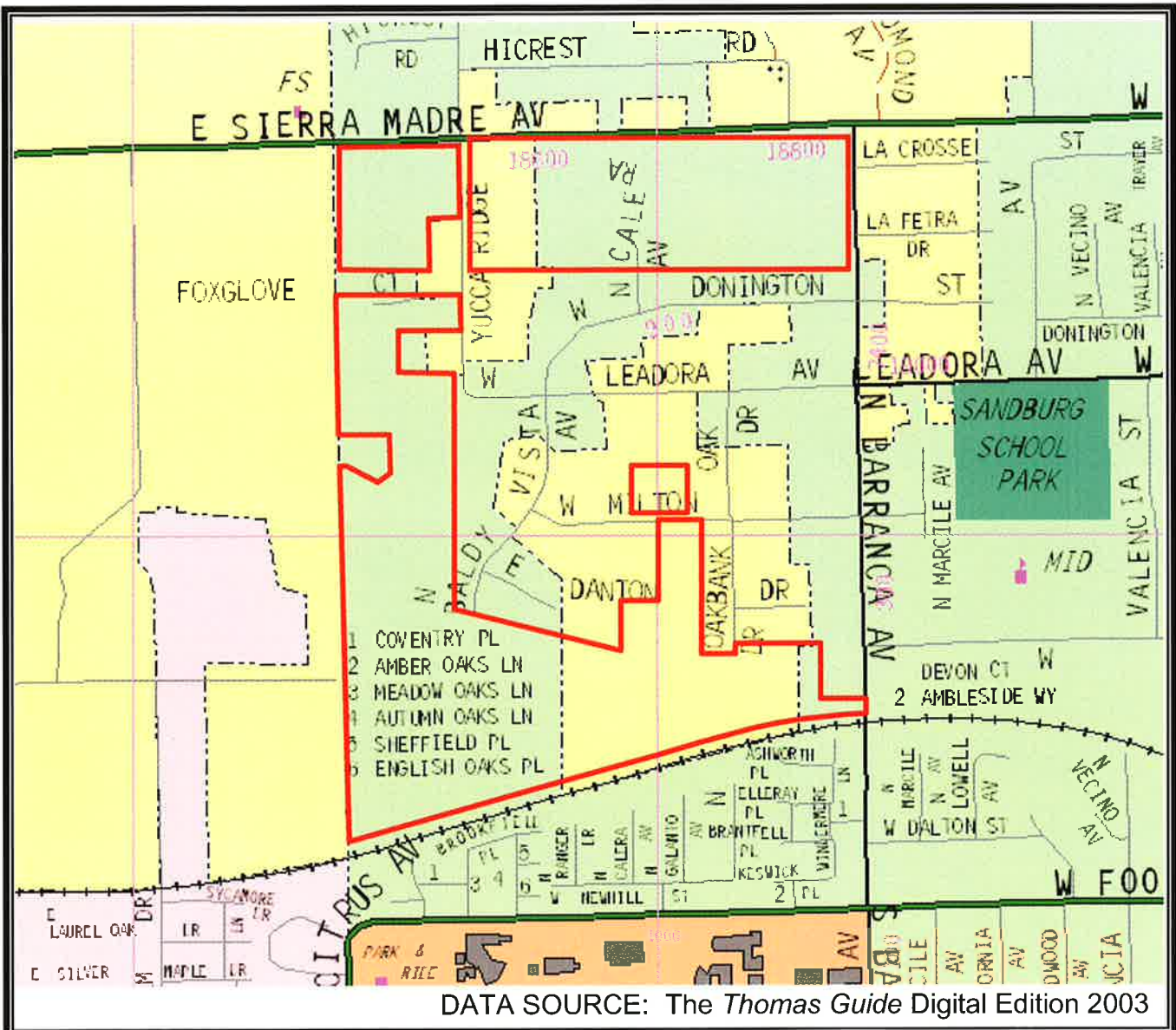


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FIGURE 1



MONROVIA NURSERY

SITE VICINITY MAP



APPROXIMATE SITE BOUNDARY

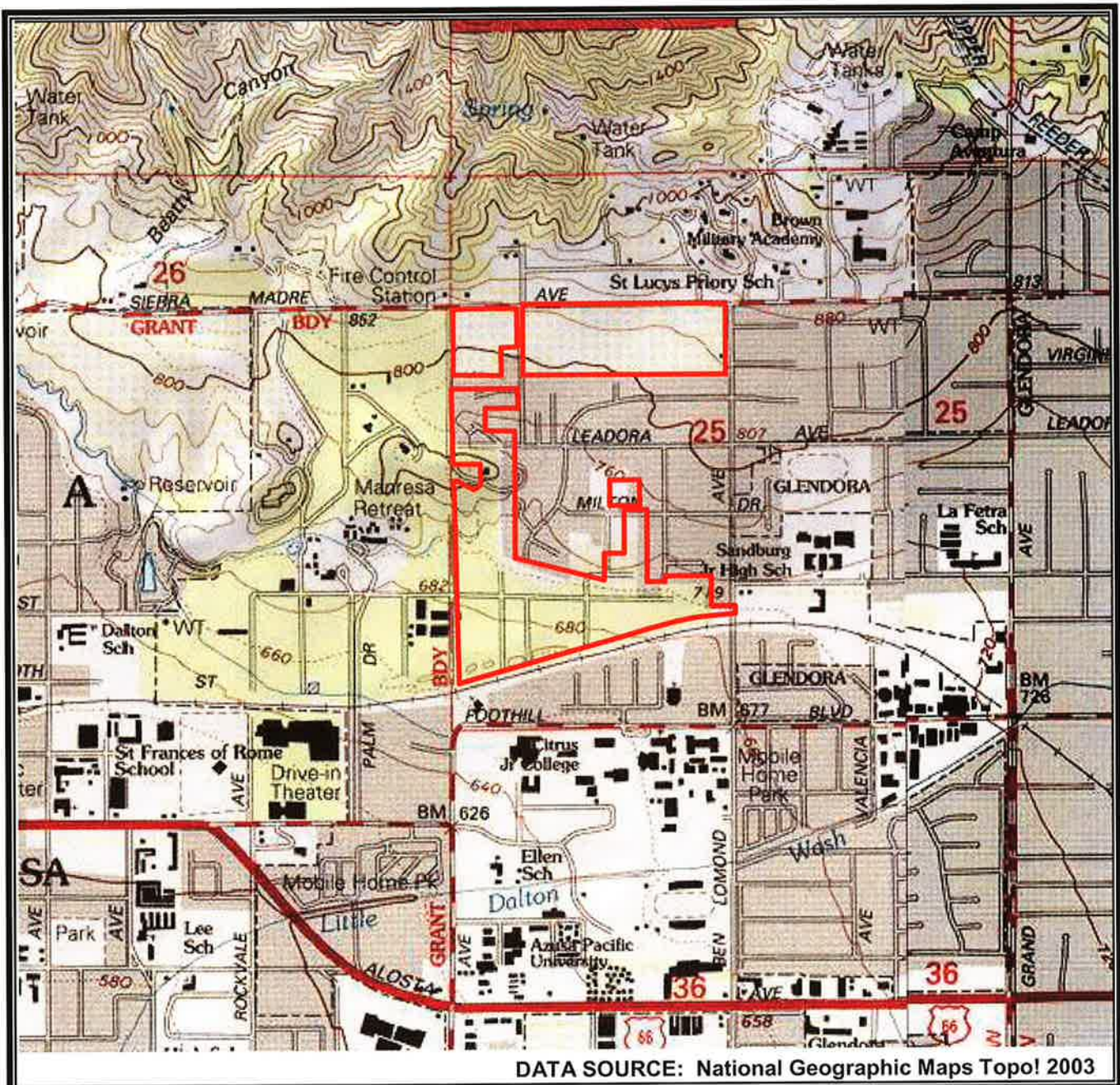


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FIGURE 2



MONROVIA NURSERY

AZUSA 7.5-MINUTE QUADRANGLE MAP



APPROXIMATE SITE BOUNDARY



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FIGURE 3