GENERAL BIOLOGICAL RESOURCES ASSESSMENT

LAKE VIEW APARTMENTS

APN 3090-501-01

VICTORVILLE, SAN BERNARDINO COUNTY, CALIFORNIA
(Township 5 North, Range 4 West, Section 22)

Prepared for:

Village Lake East, LLC

Prepared by:

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Principal Investigator:

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RCA ASSOCIATES, INC

Project: #2019-66

October 11, 2019

TITLE PAGE

Date Report Written:	**October 11, 2019**
Date Field Work Completed:	**October 9, 2019**
Report Title:	**General Biological Resources Assessment**
Prepared for:	**Village Lake East, LLC** **APN 3090-501-01**
Principal Investigators:	**Randall C. Arnold, Jr., Principal Biologist**
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1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 22-acre parcel located about 2-miles north of Bear Valley Road and directly west of Ridgecrest Road in the City of Victorville, California (Township 5 North, Range 4 and West, Section 22, USGS Victorville, California Quadrangle, 1956) (Figures 1, 2, 3, 4). Focused surveys were also performed for the desert tortoise and burrowing owl, and a habitat assessment was performed for the Mohave ground squirrel. The site has been somewhat disturbed by human activities (e.g., numerous debris piles, walking paths, etc.) and numerous dirt paths/roads bisects the site (Figure 2).

The site supports a creosote shrub (*Larrea tridentata*) community with ephedra (*Ephedra nevadensis*) a co-dominant (Figure 3). Other plants observed included Anderson's thornbush (*Lycium andersonii*), buckwheat (*Eriogonum fasciculatum*), pencil cholla (*Opuntia* sp.), Russian thistle (*Salsola tragus*), and saltbush (*Atriplex* sp.). Primary herbaceous species included brome grasses (*Bromus sp.*) and schismus (*Schimus barbatus*). Approximately twenty-five Joshua trees (*Yucca brevifolia*) were also observed throughout the site.

As part of the environmental process, California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS) data sources were reviewed. Following the data review, surveys were performed on the site on October 9, 2019, during which the biological resources on the site and in the surrounding areas were documented by a biologist from RCA Associates, Inc. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife species. The property was also evaluated for the presence of sensitive habitats including wetlands, vernal pools, riparian habitats, and jurisdictional areas.

Focused surveys were also conducted for both desert tortoise and burrowing owl and a habitat assessment was performed for the Mohave ground squirrel. Based on data from U.S. Fish and Wildlife (USFWS), California Department of Fish and Wildlife (CDFW), and a search of the California Natural Diversity Database (CNDDB, 2019), desert tortoises (*Gopherus agassizii*), burrowing owls (*Athene cunicularia*), and Mohave ground squirrels (*Xerospermophilus mohavensis*) have been documented within approximately five miles of the property. Several other

special status species has also been documented and these are listed in the CNDDB table provided in Appendix A). Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property site is located about 2-miles north of Bear Valley Road and bordered on its eastern boundary by Ridgecrest Road in the City of Victorville, California (Township 5 North, Range 4 West, Section 22, USGS Victorville, California Quadrangle, 1956) (Figures 1, 2, 3 and 4). As noted above, the site supports a creosote bush plant community typical of the region. The site has been disturbed due to various human activities and several footpaths and dirt roads bisect the site (Figure 2). The site is bordered on the east by Ridgecrest Road beyond which is an existing residential development. Residential dwellings also border the site on the south and vacant lands are located along the northern boundary. Railroad tracks border the site on the west.

A creosote bush community (*Larrea tridentata*) is present on the property with ephedra (*Ephedra nevadensis*), Anderson's thornbush (*Lycium andersonii*), buckwheat (*Eriogonum fasciculatum*), saltbush (*Atriplex* sp.), Joshua tree (Yucca brevifolia), and cholla (*Opuntia* sp.) also observed through the site and in adjacent areas (Figure 3). Brome grasses *(Bromus sp.*) and schismus (*Schismus barbatus*) were the primary annuals on the site. Section 5.0 provides an additional discussion of the various plant species observed during the surveys.

A variety of wildlife were observed during the field investigations such as common ravens (*Corvus corax*), mourning doves (*Zenaida macroura*), California ground squirrels (*Otospermophilus beecheyi*), jackrabbits (*Lepus califonicus*), red-tailed hawks (*Buteo jamaicensis*), and desert cottontails (*Sylvilagus auduboni*). Coyotes (*Canis latrans*) also traverse the site occasionally during hunting activities as indicated by the presence of tracks and scats. Section 5.0 provides a more detailed discussion of the various species observed during the surveys. Reptiles seen during the surveys included side-blotched lizards (*Uta stansburiana*); although, desert spiny lizard (*Sceloporus magister*) and western whiptail lizard (*Cnemidophorus tigris*) may also occur on the site. Table 2 (Appendix A) provides a compendium of wildlife species observed on the property as well as those common species known to occur in the area. No sensitive habitats (e.g., critical habitats for listed species, drainage channels, riparian habitats, etc.) have been documented in the immediate area according to the CNDDB (2019) and none were observed on the site during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on October 9, 2019, during which a biologist from RCA Associates, Inc. initially walked meandering transects throughout the property site. During the surveys, data was collected on the plant and animal species present on the site. All plants and animals detected during the surveys were recorded and are provided in Tables 1 & 2 (Appendix A). The property was also evaluated for the presence of habitats which might support sensitive species. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980). Following completion of the initial reconnaissance survey, protocol surveys were conducted for the desert tortoise and burrowing owl as per agency requirements, and a habitat assessment was performed for the Mohave ground squirrel.

Weather conditions during the field work consisted of wind speeds of 0 to 10 mph, temperatures in the mid-60's to mid-70's (°F) with five percent cloud cover. The applicable methodologies are summarized below. During the various biological surveys, all transects were walked in a north-south direction at a pace that allowed careful observations along the transect routes and in the immediate vicinity. Field notes were recorded regarding native plant assemblages, wildlife sign, and human effects in order to determine the presence or absence of suitable tortoise foraging habitat.

General Plant and Animal Surveys: Meandering transects were walked throughout the site and in the surrounding area (i.e., the zone of influence) at a pace that allowed for careful documentation of the plants and animals present on the site. All plants observed were identified in the field and wildlife was identified through visual observations and/or by vocalizations. Tables 1 and 2 (Appendix A) provides a comprehensive compendium of the various plant and animal species observed during the field investigations.

Desert Tortoise: A habitat assessment was conducted on the site for the desert tortoises and an initial survey was also performed for the presence of any potential tortoise burrows by biologists from RCA Associates, Inc. Following completion of the initial habitat assessment, a protocol survey was conducted as per CDFW and USFWS requirements. Ten-meter, parallel belt transects

were walked in an east-west direction until the entire property had been checked for any tortoise sign (burrows, tracks, scats, etc.). Surveys in the zone of influence (ZOI) were also conducted in the vacant area directly north of the site. No tortoises or tortoise sign (i.e., burrows, tracks scats, etc.) were identified on the site or zone of influence. If tortoises occur on the site in the future, a Section 10(a) incidental take permit from the USFWS and a Section 2081 permit from CDFW will be required to mitigate for impacts to the species.

Burrowing Owl: A habitat assessment (Phase 1) was conducted for the burrowing owl in conjunction with the general biological surveys to determine if the site supports suitable habitat for the species. Following completion of the habitat assessment, it was determined that the site does support suitable habitat for the burrowing owl and a few burrows which could be utilized by owls were also noted; although, no owls or owl sign was observed. A focused survey (Phase II) was conducted for burrowing owls and all occupiable burrows were closely inspected for the presence of any owl sign (e.g., whitewash, castings, feathers, etc.) which might indicate the presence of owls. Burrowing owls typically utilize burrows which have been excavated by other animals (squirrels, coyotes, foxes, dogs, etc.) since owls rarely dig their own burrows. CDFW protocol also requires surveys be conducted in the surrounding area out to a distance of about 500 feet where possible; therefore, zone of influence (ZOI) surveys were performed in the vacant lands north of the site. If owls are present on a site, CDFW typically requires the owls to be passively relocated during the non-breeding season.

Mohave Ground Squirrel: A habitat assessment was performed for the Mohave ground squirrel as per CDFW protocol including an analysis of the on-site habitat, evaluation of local populations, and assessment of connectivity with habitats in the surrounding area which might support populations of the Mohave ground squirrel. As noted above, the site supports a disturbed creosote bush community; although, the site has been disturbed due to past and on-going human activities (e.g., trash dumping, off-road vehicle activities. etc.). Due to the low population levels in the region and the fact the site is basically surrounded by existing development, it is the opinion of RCA Associates, Inc. the Mohave ground squirrel does not inhabit the site nor is it expected to occur on the site in the future.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDB) search was performed. Based on this review, it was determined there are numerous special status species which have been documented within about five miles of the site. The CNDDB Summary table in Appendix A lists twelve birds, five mammals, seven plants, five reptiles, one fish and one insect which have been documented in the general region within a 5-mile radius. The habitat requirements of each of the special status species is summarized in the Summary Table. The results of the field investigations for special status species and their potential presence on the site is discussed in Section 5.0.

5.0 RESULTS

5.1 General Biological Resources

The dominant perennial was creosote bush (*Larrea tridentata*) with ephedra (*Ephedra nevadensis*) a co-dominant. Other species common seen during the field investigations included Anderson's thornbush (*Lycium andersonii*), buckwheat (*Eriogonum fasciculatum*), pencil cholla (*Opuntia* sp.), Russian thistle (*Salsola tragus*), and saltbush (*Atriplex* sp.). Brome grasses (*Bromus sp.*) and schismus (*Schimus barbatus*) were the primary herbaceous species; although, erodium (*Erodium cicutarium*), wild oats (*Avena fatua*), mustard (*Descuriana pinnata*), and rice grass (*Oryzopsis hymenoides*) were also noted. Approximately twenty-five Joshua trees (*Yucca brevifolia*) were also observed throughout the site. Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Several wildlife species were observed during the October 2019 field investigations with birds the most abundant. Birds observed included ravens (*Corvus corax*), mourning dove (*Zenaida macroura*), and red-tailed hawks (*Buteo jamaicensis*). House finch (*Carpodacus mexicanus*), Costa's hummingbird (*Calypte costae*), horned lark (*Eremophila alpestris*), European starling (*Sturnus vulgaris*), savannah sparrow (*Passerculus sandwichensis*), American robin (*Turdus migratorius*), and sage sparrow (*Amphispiza belli*) were also seen.

Mammals observed included California ground squirrels (*Spermophilus beecheyi*), desert cottontails (*Sylvilagus auduboni*), and jackrabbits (*Lepus californicus*). Numerous small burrows were observed which might be utilized by antelope ground squirrels (*Ammospermophilus leucurus*) and Merriam's kangaroo rats (*Dipodomys merriamii*) which are known to occur in the area and have a wide-spread distribution. Tables 1 and 2 (Appendix A) provide a compendium of the various plant and animal species identified during the field investigations and those common to the area. No distinct wildlife corridors were identified on the site or in the immediate area.

The only reptiles observed during the survey included side-blotched lizard (*Uta stansburiana*); although, desert spiny lizard (*Sceloporus magister*) and western whiptail lizard (*Cnemidophorus tigris*) may also inhabit the site (Appendix A, Table 2). No sensitive habitats (e.g., wetlands,

vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

5.2 Federal and State Listed Species

The following are the listed and special status species that have been documented in the region; however, none of these species were observed during the October 9, 2019 field investigations, including the protocol surveys conducted for the desert tortoise and burrowing owl. The comprehensive list of all special status species in the area are provided in the CNDDB Summary Table (Appendix A).

Desert Tortoise: The site is located within the documented tortoise habitat according to CNDDB with the nearest recent documented sighting about 7-miles northwest of the property (CNDDB, 2019). The property supports marginal habitat for the desert tortoise based on the location of the site in a developed area of Victorville and past disturbances which have occurred (Figure 3). No tortoises or tortoise sign (burrows, scats, etc.) were observed anywhere within the property boundaries during the October 2019 protocol surveys. The species is not expected to move onto the site in the near future based on the absence of any sign, absence of any recent observations in the immediate area, and the presence of busy roadways, railroad tracks, and residential developments immediately adjacent to the site. The protocol survey results are valid for one year as per CDFW and USFWS requirements.

Mohave Ground Squirrel: The site does occur within the known distribution of the Mohave Ground Squirrels, and the nearest documented observation is about 4-miles to the west of the property. There are no recent observations of Mojave ground squirrels within the immediate area. It is the opinion of RCA Associates, Inc. that Mohave ground squirrels are unlikely to inhabit the site and the property is unlikely to support populations of the species in the future based on the following criteria:

1. No recent documented observations in the immediate area;

2. No connectivity with habitat which may support the species given the presence of residential developments, railroad tracks, and busy roadways (i.e., Ridgecrest Road) immediately adjacent to the site; and
3. Significant disturbance to the native vegetation due to past and on-going human activities.

Swainson's Hawk: The Swainson's hawk inhabits open grassland habitats and the species was identified in the area surrounding the site in 2005 (CNDDB, 2019). However, the species is an infrequent visitor to the Mohave Desert, and may only utilize the site infrequently during hunting activities.

5.3 Wildlife Species of Special Concern

Burrowing Owl: There are documented owl colonies in the area (CNDDB, 2019) with the nearest documented sighting about 5-miles west of the property (CNDDB, 2019). No owls or owl sign (whitewash, etc.) were seen on the property during the survey, and although there were a few suitable (i.e., "occupiable") burrows scattered throughout the site, no owl sign was noted at any of the burrows. The probability of owls moving onto the site in the future is low based on the results of the field investigations; although, a pre-construction survey will be required 30-dys prior to the start of any future ground clearing activities to make sure no owls have moved onto the site since the October 2019 surveys were completed.

Le Conte's Thrasher: The thrasher is an uncommon resident in Southern California and is infrequently seen in the Mohave Desert (CNDDB, 2019). It is primarily associated with open desert washes, desert scrub, and Joshua tree woodland habitats. The property site does not provide potential habitat for the species, nor was the species observed on the site during the field investigations. It is very unlikely that thrashers will occur on the site in the future.

5.4 Jurisdictional Waters and Riparian Habitat

No riparian vegetation (e.g., cottonwoods, willows, etc.) exist on the site or in the adjacent habitats, and no drainage channels, wetlands, or vernal pools were observed on the site during the surveys.

5.5 Protected Plants

Approximately 25 Joshua trees were observed on the site. The City may require preparation of a "protected plant plan" to determine if any of the trees can be utilized for on-site landscaping activities or transplanted off-site.

6.0 IMPACTS AND MITIGATION MEASURES

6.1 General Biological Resources

Future development of the site will impact the general biological resources present on the site, and most of the existing vegetation will be removed during future construction activities and replaced with various plants as part of on-site landscaping. Various wildlife species will also be impacted by development activities forcing many species into adjacent undeveloped areas. Larger mammals and birds utilize their mobility to move from the site; however, those species with limited mobility will likely experience increased mortality during grading activities. Loss of about 22-acres of a disturbed creosote bush community is not expected to have a significant cumulative impact on the overall biological resources in the region. No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

6.2 Federal and State Listed and Species of Special Concern

No desert tortoises, burrowing owls, or Mohave ground squirrels were observed during the field investigations, nor were any other federal or State-listed species were observed on the site. In addition, there are no documented observations of these species either on the site or in the immediate area (CNDDB, 2019). The site is not expected to support populations of the desert tortoise based on the results of the protocol survey (i.e., absence of any tortoise sign {burrows, scats, tracks, etc.]). Likewise, the site is not expected to support populations of the Mohave ground squirrel given the presence of disturbed vegetation and the fact the site is surrounded by developments on three sides.

No burrowing owls were observed and the site does not currently support any owls. As per CDFW protocol, the burrowing owl survey results are valid for only 30 days; therefore, CDFW will require a 30-day pre-construction survey be performed prior to any clearing/grading activities to determine if owls have moved on to the site since the October 2019 surveys.

7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities are expected to result in the removal of vegetation from the parcel; however, cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be minimal and not significant. This assumption is based on the presence of a disturbed plant community on the site and the fact that the plant community on the site (i.e., creosote bush) is common through the Mojave Desert. In addition, future development activities are not expected to have any impact on any State or federal listed species or any State special status plant or animal.

As discussed above, the site does not support any desert tortoises or burrowing owls, nor is the site expected to support Mohave ground squirrels or any other special status species. The only mitigation measure recommended is a pre-construction survey for burrowing owls which will be required 30-days prior to the start of any site clearing activities as per CDFW requirements.

If any sensitive species are observed on the property during future activities, CDFW and USFWS (as applicable) should be contacted to discuss specific mitigation measures which may be required for the individual species. CDFW and USFWS are the only agencies which can grant authorization for the "take" of any sensitive species and can approve the implementation of any applicable mitigation measures.

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CERTIFICATION

I hereby certify that the statements furnished above and in the attached exhibits, presents the data and information required for this biological evaluation, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief. Fieldwork conducted for this assessment was performed by Randall Arnold and other biologists under his direction. I certify that I have not signed a non-disclosure or consultant confidentiality agreement with the project applicant or applicant's representative and that I have no financial interest in the project.

Date: 10/11/2019 Signed: Randall Arnold

Field Work Performed By: Randall Arnold
President and Principal Biologist

Appendix A

Tables and Figures

Table 1 - Plants observed on the site and known to occur in the immediate surrounding area.

Common Name	Scientific Name	Location
Creosote bush	*Larrea tridentata*	On-site
Brome grass	*Bromus* sp.	"
Russian thistle	*Salsola tragus*	"
Yellow-green matchweed	*Gutierrezia sarothrae*	"
Brome grasses	*Bromus sp.*	"
Indian ricegrass	*Oryzopsis hymenoides*	Surrounding area
Rabbitbrush	*Chrysothamnus nauseosus*	"
Ephedra	*Ephedra nevadensis*	On-site and surrounding area
Mustard	*Descurainia pinnata*	"
Schismus	*Schismus barbatus*	"
Joshua tree	*Yucca brevifolia*	"
Paperbag plant	*Salazaria mexicana*	Surrounding area
Filaree	*Erodium cicutarium*	On-site and surrounding area
Buckwheat	*Eriogonum fasiculatum*	"
Anderson's thornbush	*Lycium andersonii*	"
Wild oats	*Avena fatua*	"

Note: The above list is not intended to be a comprehensive list of every plant which may occur on the site or in the zone of influence.

Table 2 - Wildlife observed on the site during the field investigations.

Common Name	Scientific Name	Location
Common raven	*Corvus corax*	On-site and in the surrounding area.
California ground squirrel	*Spermophilus beecheyi*	"
Song sparrow	*Melospiza melodia*	Surrounding area
House sparrow	*Passer domesticus*	"
House finch	*Carpodacus mexicanus*	"
Northern mockingbird	*Mimus polyglottus*	"
Mourning dove	*Zenaida macroura*	On-site
Side-blotched lizard	*Uta stansburiana*	"
Western whiptail lizard	*Cnemidophorus tigris*	Surrounding area
Desert spiny lizard	*Sceloporus magister*	"
Antelope ground squirrel	*Ammospermophilus leucurus*	"
Desert cottontail	*Sylvilagus auduboni*	On-site
Jackrabbit	*Lepus Californicus*	"
Coyotes		"
Costa's hummingbird	*Calypte costae*	"
Horned lark	*Eremophila alpestris*	"
European starling	*Sturnus vulgaris*	"
Savannah sparrow	*Passerculus sandwinchensis*	"
Merriam's kangaroo rat	*Dipodomys merriamii*	"
American robin	*Turdus migratorius*	"
Sage sparrow	*Amphiaza belli*	"

Note: The above Table is not a comprehensive list of every animal species which may occur in the area, but is a list of those common species which were identified on the site or which have been observed in the region by biologists from RCA Associates, Inc.

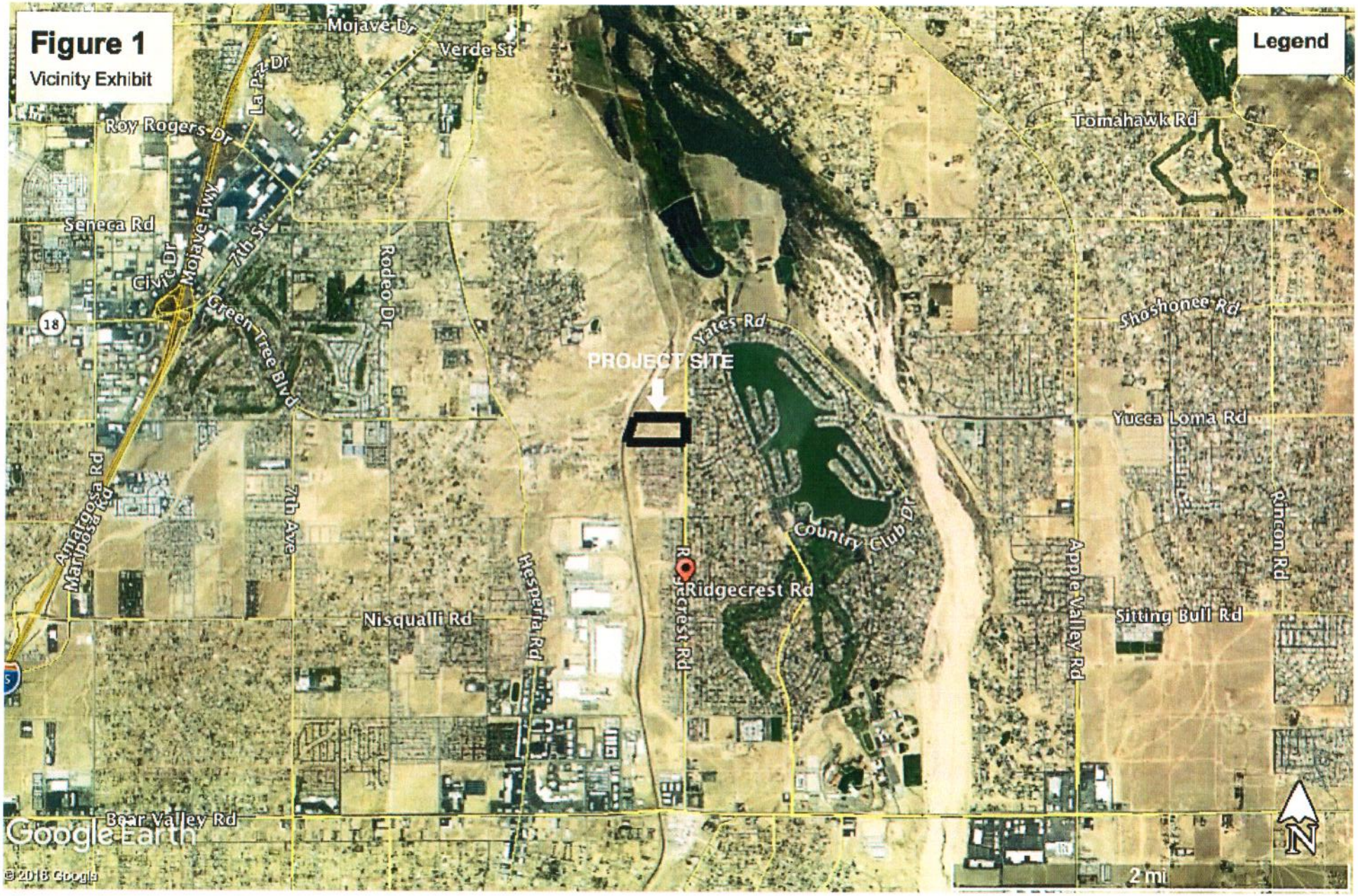
Figure 1
Vicinity Exhibit
Legend
Mojave Dr
Verde St
La Paz Dr
Roy Rogers Dr
Tomahawk Rd
Seneca Rd
Civic Dr
Mojave Fwy
7th St
Rodeo Dr
Green Tree Blvd
18
Yates Rd
PROJECT SITE
Shoshonee Rd
Yucca Loma Rd
Amargosa Rd
Manbosa Rd
7th Ave
Country Club Dr
Rincon Rd
Apple Valley Rd
Ridgecrest Rd
Hesperia Rd
Nisqualli Rd
Sitting Bull Rd
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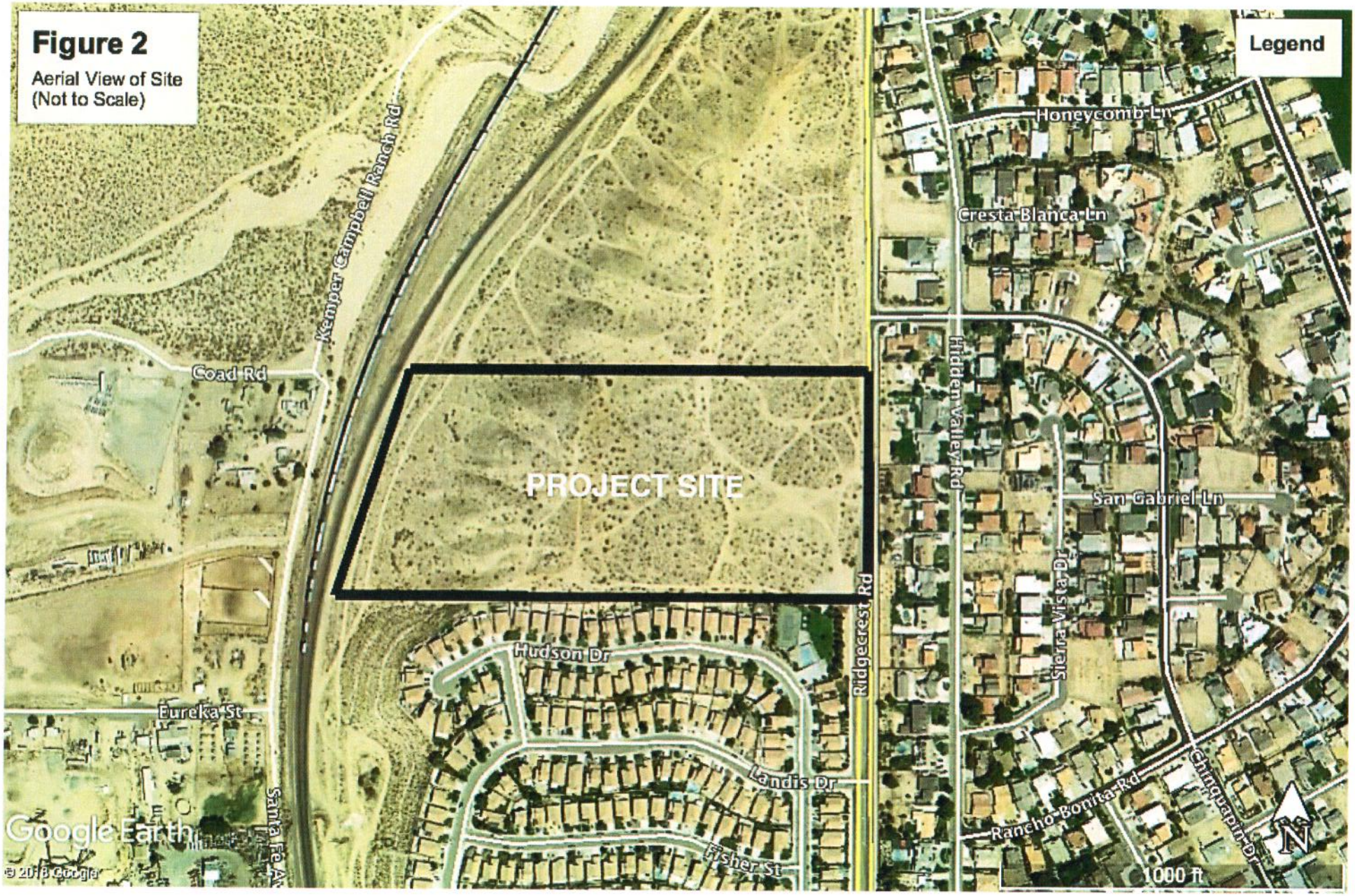
Figure 2
Aerial View of Site
(Not to Scale)
Legend
Honeycomb Ln
Cresta Blanca Ln
Kemper Campbell Ranch Rd
Coad Rd
PROJECT SITE
Hidden Valley Rd
San Gabriel Ln
Sierra Vista Dr
Ridgecrest Rd
Hudson Dr
Eureka St
Landis Dr
Fisher St
Santa Fe Ave
Rancho Bonita Rd
Chinquapin Dr
Google Earth
© 2018 Google
1000 ft
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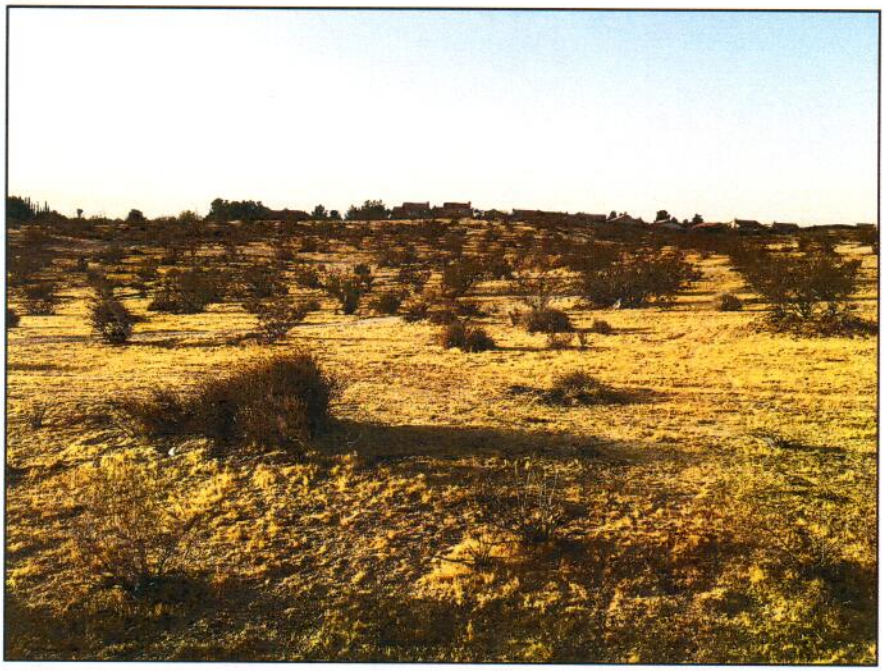
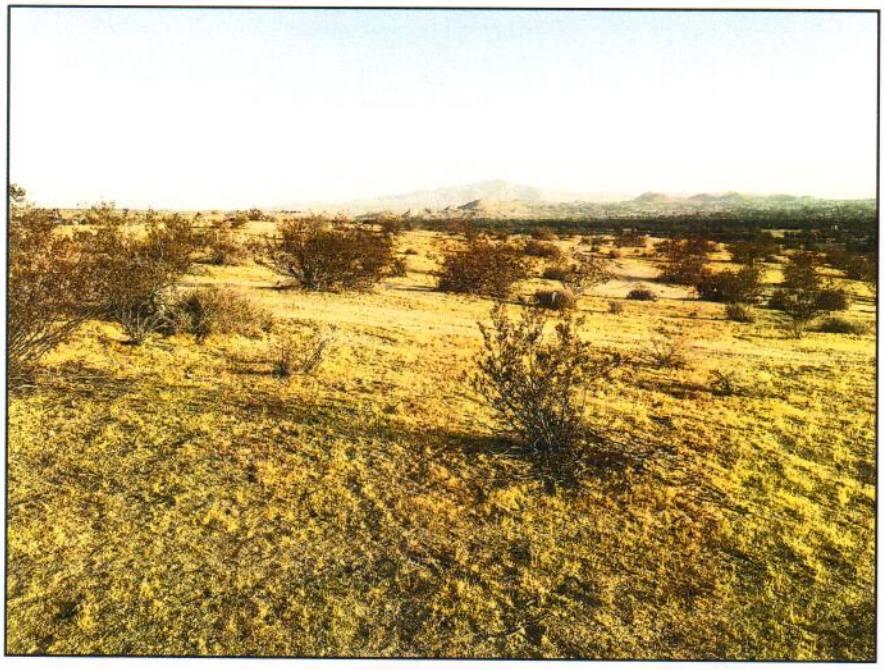
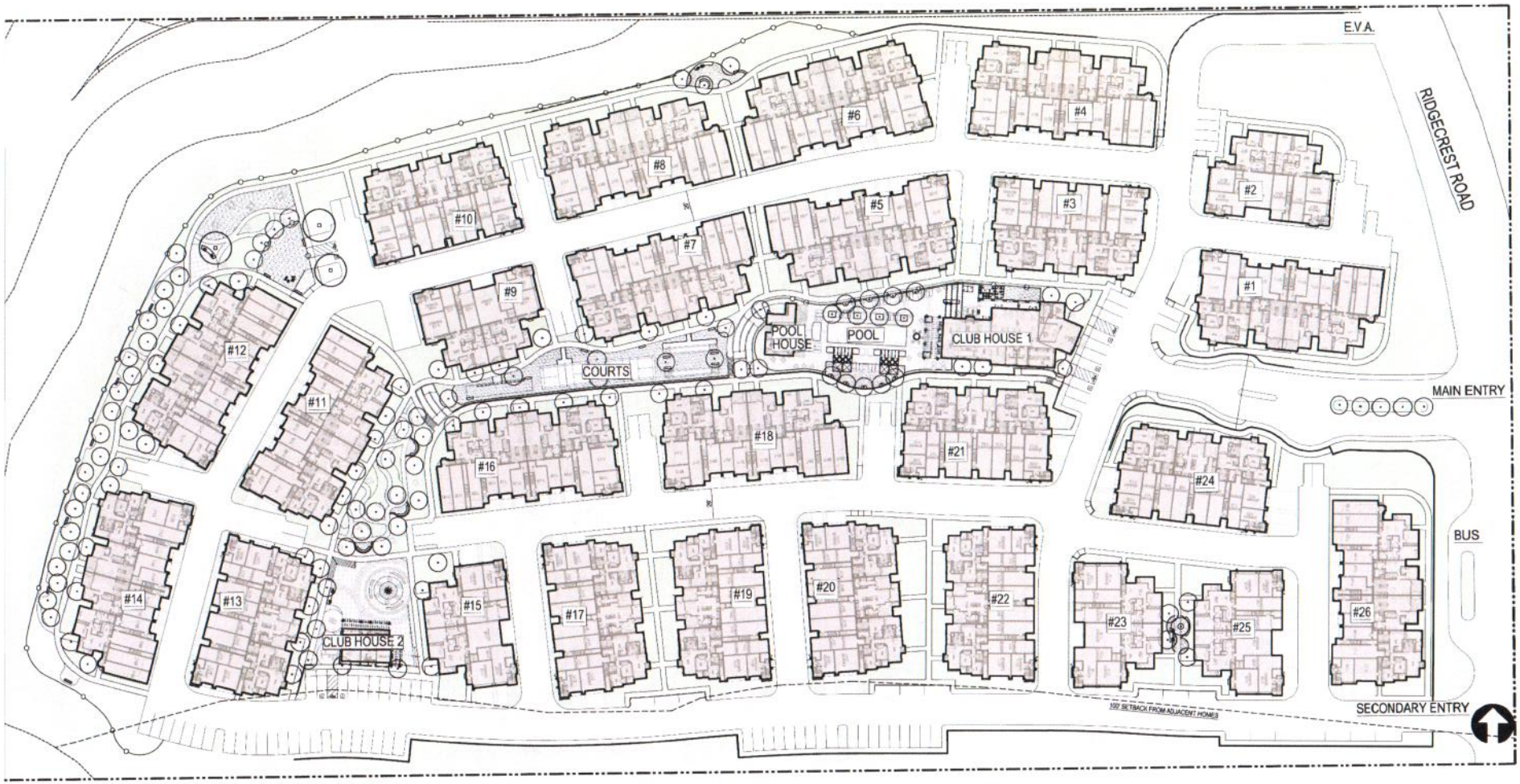


CENTER OF SITE LOOKING NORTH



CENTER OF SITE LOOKING SOUTH

FIGURE 3
PHOTOS OF SITE



A-2

LAKE VIEW APARTMENTS
SPRING VALLEY, CALIFORNIA
HPA# 2018411

CONCEPTUAL SITE PLAN, 1" = 40' (24X36)
June 27, 2019

HUMPHREYS & PARTNERS ARCHITECTS, L.I
5339 Alpha Rd., Suite 300, Dallas, TX 75240 | 972.701.9636 | www.humphreys.com

APPENDIX B

REGULATORY

REGULATORY CONTEXT

The following provides a summary of federal and state regulatory jurisdiction over biological and wetland resources. Although most of these regulations do not directly apply to the site, given the general lack of sensitive resource, they provide important background information.

Federal Endangered Species Act

The USFWS has jurisdiction over federally listed threatened and endangered plant and animal species. The federal Endangered Species Act (ESA) and its implementing regulations prohibit the take of any fish or wildlife species that is federally listed as threatened or endangered without prior approval pursuant to either Section 7 or Section 10 of the ESA. ESA defines "take" as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Federal regulation 50CFR17.3 defines the term "harass" as an intentional or negligent act that creates the likelihood of injuring wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns such as breeding, feeding, or sheltering (50CFR17.3). Furthermore, federal regulation 50CFR17.3 defines "harm" as an act that either kills or injures a listed species. By definition, "harm" includes habitat modification or degradation that actually kills or injures a listed species by significantly impairing essential behavior patterns such as breeding, spawning, rearing, migrating, feeding, or sheltering (50CFR217.12).

Section10(a) of the ESA establishes a process for obtaining an incidental take permit that authorizes nonfederal entities to incidentally take federally listed wildlife or fish. Incidental take is defined by ESA as take that is "incidental to, and not the purpose of, the carrying out of another wise lawful activity." Preparation of a habitat conservation plan, generally referred to as an HCP, is required for all Section 10(a) permit applications. The USFWS and National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries Service) have joint authority under the ESA for administering the incidental take program. NOAA Fisheries Service has jurisdiction over anadromous fish species and USFWS has jurisdiction over all other fish and wildlife species.

Section 7 of the ESA requires all federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any species listed under the ESA,

or result in the destruction or adverse modification of its habitat. Federal agencies are also required to minimize impacts to all listed species resulting from their actions, including issuance or permits or funding. Section 7 requires consideration of the indirect effects of a project, effects on federally listed plants, and effects on critical habitat (ESA requires that the USFWS identify critical habitat to the maximum extent that it is prudent and determinable when a species is listed as threatened or endangered). This consultation results in a Biological Opinion prepared by the USFWS stating whether implementation of the HCP will result in jeopardy to any HCP Covered Species or will adversely modify critical habitat and the measures necessary to avoid or minimize effects to listed species.

Although federally listed animals are legally protected from harm no matter where they occur, Section 9 of the ESA provides protection for endangered plants by prohibiting the malicious destruction on federal land and other "take" that violates State law. Protection for plants not living on federal lands is provided by the California Endangered Species Act.

California Endangered Species Act

CDFW has jurisdiction over species listed as threatened or endangered under Section 2080 of the California Fish and Wildlife Code. Section 2080 prohibits the take of a species listed by CDFW as threatened or endangered. The state definition of take is similar to the federal definition, except that Section 2080 does not prohibit indirect harm to listed species by way of habitat modification. To qualify as take under the state ESA, an action must have direct, demonstrable detrimental effect on individuals of the species. Impacts on habitat that may ultimately result in effects on individuals are not considered take under the state ESA but can be considered take under the federal ESA.

Proponents of a project affecting a state-listed species must consult with CDFW and enter into a management agreement and take permit under Section 2081. The state ESA consultation process is similar to the federal process. California ESA does not require preparation of a state biological assessment; the federal biological assessment and the CEQA analysis or any other relevant information can provide the basis for consultation. California ESA requires that CDFW coordinate consultation for joint federally listed and state-listed species to the extent possible; generally, the state opinion for the listed species is brief and references provisions under the federal opinion.

Clean Water Act, Section 404

The COE and the U.S. Environmental Protection Agency regulate the placement of dredged or fill material into "Waters of the United States" under Section 404 of the Clean Water Act. Waters of the United States include lakes, rivers, streams, and their tributaries, and wetlands. Wetlands are defined for regulatory purposes as "areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (33 Code of Federal Regulations [CFR] 328.3, 40 CFR 230.3).

The COE may issue either individual permits on a case-by-case basis or general permits on a program level. General permits are pre-authorized and are issued to cover similar activities that are expected to cause only minimal adverse environmental effects. Nationwide permits (NWP's) are general permits issued to cover particular fill activities. All NWP's have general conditions that must be met for the permits to apply to a particular project, as well as specific conditions that apply to each NWP.

Clean Water Act, Section 401

Section 401 of the Clean Water Act requires water quality certification and authorization of placement of dredged or fills material in wetlands and Other Waters of the United States. In accordance with Section 401 of the Clean Water Act, criteria for allowable discharges into surface waters have been developed by the State Water Resources Control Board, Division of Water Quality. As such, proponents of any new project which may impair water quality as a result of the project are required to create a post construction storm water management plan to insure offsite water quality is not degraded. The resulting requirements are used as criteria in granting National Pollution Discharge Elimination System (NPDES) permits or waivers, which are obtained through the Central Valley Regional Water Quality Control Board (RWQCB). Any activity or facility that will discharge waste (such as soils from construction) into surface waters, or from which waste may be discharged, must obtain an NPDES permit or waiver from the RWQCB. The RWQCB evaluates an NPDES permit application to determine whether the proposed discharge is consistent with the adopted water quality objectives of the basin plan.

California Fish and Wildlife Code, Sections 1600-1616

Under the California Fish and Wildlife Code, Sections1600-1616, CDFW regulate projects that divert, obstruct, or change the natural flow or bed, channel, or bank of any river, stream, or lake. Proponents of such projects must notify CDFW and enter into streambed alteration agreement with them.

Section 1602 of the California Fish and Wildlife Code requires a state or local government agency, public utility, or private entity to notify CDFW before it begins a construction project that will: (1) divert, obstruct, or change the natural flow or the bed, bank, channel, or bank of any river, stream, or lake; (2) use materials from a streambed; or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake. Once the notification is filed and determined to be complete, CDFW issues a streambed alteration agreement that contains conditions for construction and operations of the proposed project.

California Fish and Wildlife Code, Section 3503.5

Under the California Fish and Wildlife Code, Section 3503.5, it is unlawful to take, possess, or destroy any birds in the orders Falconiformes (hawks, eagles, and flacons) or Strigiformes (owls). Take would include the disturbance of an active nest resulting in the abandonment or loss of young.

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits the taking, hunting, killing, selling, purchasing, etc. of migratory birds, parts of migratory birds, or their eggs and nests. As used in the MBTA, the term "take" is defined as "to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill, unless the context otherwise requires." Most bird species native to North America are covered by this act.

Sensitive Natural Communities

The California Office of Planning and Research and the Office of Permit Assistance (1986) define project effects that substantially diminish habitat for fish, wildlife, or plants, or that disrupt or divide the physical arrangement of an established community as significant impacts under CEQA.

This definition applies to certain natural communities because of their scarcity and ecological values and because the remaining occurrences are vulnerable to elimination. For this study, the term "sensitive natural community" includes those communities that, if eliminated or substantially degraded, would sustain a significant adverse impact as defined under CEQA. Sensitive natural communities are important ecologically because their degradation and destruction could threaten populations of dependent plant and wildlife species and significantly reduce the regional distribution and viability of the community. If the number and extent of sensitive natural communities continue to diminish, the status of rare, threatened, or endangered species could become more precarious, and populations of common species (i.e., not special status species) could become less viable. Loss of sensitive natural communities also can eliminate or reduce important ecosystem functions, such as water filtration by wetlands and bank stabilization by riparian woodlands for example.

Protected Plants

The California Desert Native Plant Act was passed in 1981 to protect non-listed California desert native plants from unlawful harvesting on both public and privately-owned lands. Harvest, transport, sale, or possession of specific native desert plants is prohibited unless a person has a valid permit. The following plants are under the protection of the California Desert Native Plants Act:

- Dalea spinosa (smoketree)
- All species of the genus Prosopis (mesquites)
- All species of the family Agavaceae (century plants, nolinas, yuccas)
- All species of Cactus
- Creosote Rings, ten feet in diameter or greater
- All Joshua Trees

Approximately 25 Joshua trees are present on the site; therefore, the site will be subject to the California Desert Native Plant Act and the City's Protected Plant Ordinance.