

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

**HESPERIA, SAN BERNARDINO COUNTY, CALIFORNIA
(Township 5 North, Range 4 West, Section 29)
(APN: 3092-401-01 & 02)**

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EST. 1980

Project: #2021-219 BA

October 13, 2021

TITLE PAGE

Date Report Written: October 13, 2021

Date Field Work Completed: September 30, 2021

Report Title: General Biological Resources Assessment

Assessor's Parcel Number: 3092-401-01 & 02

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Table of Contents

1.0	INTRODUCTION AND SUMMARY	1
2.0	EXISTING CONDITIONS.....	2
3.0	METHODOLOGIES	4
4.0	LITERATURE SEARCH	5
5.0	RESULTS	8
5.1	General Biological Resources	8
5.2	Federal and State Listed Species	9
5.3	Species of Special Concern	9
5.4	Jurisdictional Waters and Riparian Habitat.....	10
5.5	Protected Plants	10
6.0	IMPACTS AND MITIGATION MEASURES	11
6.1	General Biological Resources	11
6.2	Federal and State Listed and Species of Special Concern	11
7.0	CONCLUSIONS AND RECOMMENDATIONS	12
8.0	BIBLIOGRAPHY	14
	CERTIFICATION	16

Appendix A – Tables and Figures
REGULATORY CONTEXT

1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 11.44-acre parcel (Approximate), located north of Nisqualli Road and adjacently East of Balsam Avenue in the City of Victorville, California (APN: 3092-401-01 & 02) (Figures 1 and 2). The property is specifically located on the SW1/4 of the SW1/4 of Section 29, Township 5 North, Range 4 West, San Bernardino Principal Meridian (USGS Hesperia, CA 7.5-minute quadrangle) (Figures 1 and 2). The property is located in an area zoned for high density residential (R-4) in Victorville, California.

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 September 30, 2021, during which the biological resources on the site and in the surrounding areas were documented by biologists 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.

Habitat assessments were also conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel. Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDDB, 2021). Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2016) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property is approximately 11.44-acres and is located north of Nisqualli Road and adjacently East of Balsam Avenue in the City of Victorville, California (APN: 3092-401-01 & 02) (Figures 1 and 2). The property site is located in Section 29, Township 5 North, Range 4 West (USGS Hesperia, CA 7.5-minute quadrangle). The property is bordered to the north by vacant land that is transected by a drainage channel, east of the property is high density housing, south of the property is a convenience store that is under construction, and west of the property is a church beyond Balsam Avenue.

The relatively flat site is approximately 925 meters above sea level and contains no slope. The property consists of Cajon Loamy fine sand which has a 0 to 2 percent slope, no frequency of flooding, excessively well-draining, and has a high available water capacity. The vegetation community present on site supports a moderately disturbed desert scrub habitat encompassing mainly native plants and some non-native grasses. The site is dominated by creosote bush (*Larrea tridentata*), rubber rabbitbrush (*Ericameria nauseosa*), silver cholla (*Cylindropuntia echinocarpa*), Joshua trees (*Yucca brevifolia*), Nevada jointfir (*Ephedra nevadensis*), Asian mustard (*Brassica tournefortii*), and cheatgrass (*Bromus tectorum*). Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

The site supports a variety of wildlife, with many of them being birds. Three mammals were observed on site, California ground squirrel (*Otospermophilus beecheyi*), black-tailed jackrabbit (*Lepus californicus*), and desert cottontails (*Sylvilagus audubonii*). Although not seen, coyote signs were also observed on site, this included a coyote burrow and scat throughout the property. Other mammals that are expected to occur include the antelope ground squirrel (*Ammospermophilus leucurus*).

Birds observed included common ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), European starling (*Sturnus vulgaris*), mourning dove (*Zenaida macroura*), and rock pigeon (*Columba livia*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

Reptiles observed during the field investigation were limited to only the side-blotched lizard (*Uta stansburiana*). Table 2 provides a compendium of wildlife species.

In addition, no sensitive habitats (e.g., sensitive species, critical habitats, etc.) have been documented in the immediate area according to the CNDDDB (2021) and none were observed during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on September 30, 2021, during which biologists from RCA Associates, Inc. initially walked meandering transects throughout the property. 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 (2016) and Whitaker (1980). Following completion of the initial reconnaissance survey, habitat assessments were conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the mid 60's to low 70's (°F) (AM), and 0% cloud cover. The applicable methodologies are summarized below.

General Plant and Animal Surveys: Meandering transects were walked on the site and in surrounding areas (i.e., the zone of influence) where accessible at a pace that allowed for careful documentation of the plant and animal species present on the site. All plants observed were identified in the field or sampled and brought back for further identification. Wildlife was identified through visual observations and/or by vocalizations. Habitat assessments were conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel. Tables 1 and 2 (Appendix A) provides a comprehensive compendium of the various plant and animal; species observed during the field investigations.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDDB) search was performed. Based on this review, it was determined that thirteen special status species, ten wildlife and three plant organisms, have been documented within the Hesperia quadrangle of the property, seven wildlife species and three plant species. The following tables provide data on each special status species which has been documented in the area.

Table 4-1: Federal and State Listed Species and State Species of Special Concern.

E = Endangered; T = Threatened; SSC = Species of special concern; CNPS = California Native Plant Society; CNDDDB = California Natural Diversity Data Base

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Hesperia Quadrangle			
Short-joint beavertail (<i>Opuntia basilaris</i> var. <i>brachyclada</i>)	Federal: None State: None CNPS: 1B.2	Desert scrub Joshua tree woodland	The site does not contain suitable habitat, none were observed on the site and are not expected to occur on the site given the high level of disturbance.
Booth's evening-primrose (<i>Eremothera boothii</i> ssp. <i>boothii</i>)	Federal: None State: Threatened CNPS: 2B.3	Joshua tree woodland, pinyon and juniper woodland	The site does contain some suitable habitat, none were observed on the site and are not expected to occur on the site given the high level of disturbance.
White pygmy-poppy (<i>Canbya candida</i>)	Federal: None State: None CNPS: 4.2	Joshua tree woodland, Mojave desert scrub, gravely, sandy habitat	The site does not contain suitable habitat, none were observed on the site and are not expected to occur on the site given the high level of disturbance.

Notes:

Status abbreviations:

- CNPS List 1A: Plants presumed extirpated in California and either rare or extinct elsewhere
- CNPS List 1B: Plants rare, threatened, or endangered in California and elsewhere
- CNPS List 2A: Plants presumed extirpated in California, but more common somewhere else
- CNPS List 2B: Plants rare, threatened, or endangered in California, but more common somewhere else
- CNPS List 3: Plants about which more information is needed - a review list
- CNPS List 4: Plants of limited distribution - a watch list
 - .1 Seriously threatened in California (over 80% of occurrences threatened/ high degree and immediacy of threat)

- .2 Moderately threatened in California (20-80% occurrences threatened/ moderate degree and immediacy of threat)
 .3 No very threatened in California (<20% of occurrences threatened/ low degree and immediacy of threat or no current threats known)

Table 4-2: Special status wildlife and insects documented in the region (Source: CNDDDB, 2021) or likely to occur in the region

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
Wildlife Species			
Within Hesperia Quadrangle			
Yellow warbler (<i>Setophaga petechia</i>)	Federal: None State: None CDFW: SSC	Dense riparian vegetation.	The site does not support suitable habitat for the species.
Burrowing owl (<i>Athene cunicularia</i>)	Federal: None State: None CDFW: SSC	Open grassland areas where the owls utilize abandoned mammal burrows.	Some suitable habitat is present on the site. Due to the lack of burrows and none observed during the survey, owls are not expected to inhabit the site at this time. However, this mobile species occurs throughout Southern California and could potentially occur in the area in the future.
Cooper's hawk (<i>Accipiter cooperii</i>)	Federal: None State: None	Mature forests, open woodland, wood edges, river groves, mixed woods, suburbs	The site does not contain suitable habitat for the Cooper's hawk, none were observed on site.
Pallid bat (<i>Antrozous pallidus</i>)	Federal: None State: None CDFW: SSC	Coniferous forests, woodlands, brushy terrain, rocky canyons, open farmland, and deserts	The site has no suitable habitat for the species. The species is not expected to occur on site or in the area.
Long-eared owl (<i>Asio otus</i>)	Federal: None State: None CDFW: SSC	Woodlands. areas with dense trees, open country, meadows, streamside groves in deserts	The site has no suitable habitat for the species. There have been no recent sightings, and therefore is not expected to occur on site or in the area.
Coast horned lizard (<i>Phrynosoma blainvillii</i>)	Federal: None State: None CDFW: SSC	Inhabits open areas of sandy soils and low vegetation in valleys, foothills, and semiarid mountains	No suitable habitat, none observed on site and not expected to occur on site.

Le Conte's thrasher (<i>Toxostoma lecontei</i>)	Federal: None State: None CDFW: SSC	Desert scrub, open washes, desert shrub habitats, Joshua tree scrub, common in saltbush and cholla vegetation	The site has some habitat for the Le Conte's thrasher, but there has been no recent sightings of the species, and is therefore not expected to occur on the site or surrounding area.
Gray vireo (<i>Vireo vicinior</i>)	Federal: None State: None CDFW: SSC	Frequents chaparral dominated by chamise and manzanita, scrub oak	Site does not support suitable habitat for the species.
Mohave tui chub (<i>Siphateles bicolor mohavensis</i>)	Federal: Endangered State: Endangered CDFW: Fully protected	Three populations exist at Soda Springs, China Lake Naval Weapons Station, and Camp Cady Wildlife Area	The site does not contain suitable habitat for the species. A fully protected species, there are only three populations being maintained with the nearest population in Camp Cady, with an introducing population being carried in the Mojave River. This species will not occur on site.
Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>)	Federal: None State: Threatened	Desert scrub	The site does not support suitable habitat for the species, and is not expected to occur on the site.

5.0 RESULTS

5.1 General Biological Resources

The site supports a relatively disturbed desert scrub plant community that is dominated by native vegetation and non-native grasses. Species present include Joshua trees (*Yucca brevifolia*), water jacket (*Lycium andersonii*), winterfat (*Ceratoides lanata*), Nevada jointfir (*Ephedra nevadensis*), fiddleneck (*Amsinckia tessellata*), Asian mustard (*Brassica tournefortii*), and flatspine bur ragweed (*Ambrosia acanthicarpa*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed included ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), killdeer (*Charadrius vociferus*), horned lark (*Eremophila alpestris*), rock pigeon (*Columba livia*), and mourning doves (*Zenaidura macroura*). One mammal was observed on site, the black-tailed jackrabbit (*Lepus californicus*). Some other species that may occur on site or in the surrounding area include the California ground squirrel (*Otospermophilus beecheyi*), desert cottontails (*Sylvilagus audubonii*), and coyote (*Canis latrans*). One reptile was found on site, the common side-blotched lizard (*Uta stansburiana*) and some other reptiles that may occur include the western whiptail (*Aspidoscelis tigris*) and western fence lizard (*Sceloporus occidentalis*). Tables 1 and 2 (Appendix A) provides 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.

No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

The following are the listed and special status species that have the ability to occur on the project site. It is not a comprehensive list of all the species in the quad. This information has been taken from the California Natural Diversity Database and is using the most current version.

5.2 Federal and State Listed Species

Mohave Tui Chub: The Mohave Tui Chub is a federally and state endangered species that is fully protected. The site is located within the documented Hesperia quad habitat according to CNDDDB (2021). There are only three populations of Mohave tui chub, with a fourth population having been recently introduced to the Mojave river. The site however, does not contain or is connected to the Mojave River, and no Mohave tui chub will occur on site.

Mohave Ground Squirrel: The Mohave ground squirrel is a California state threatened species that have a short, flat, furred, white, underside tail, uniformly brown (with no spots or stripes). They inhabit open desert scrub, alkali desert scrub, and annual grasslands on sandy to gravelly surfaces in the Mojave Desert. Occupiable burrows were found on the site, but no Mohave ground squirrels were detected. It is the opinion of RCA Associates, Inc. that the habitat is not prime Mohave ground squirrel habitat and is very unlikely to support populations of the species based on the following criteria, that there have been two recent sightings, within 20 years, of the species in the Hesperia quadrangle.

Booth's Evening-Primrose: The Booth's evening primrose is a California threatened annual plant species that thrives in arid areas, and has hairy reddish-green stems, mottled foliage, with smaller flowers which have either white, red, or yellowish petals. The flower's optimal preferred habitat includes Joshua tree and pinyon/juniper woodland that have sandy flats and steep loose slopes. Although the site contains California juniper, Joshua trees, and little areas of sandy areas, it is the opinion of RCA Associates, Inc. that the habitat is no prime habitat for the Booth's evening primrose given the lack of recent sightings, and the little sandy areas occurring on the site.

5.3 Species of Special Concern

Sensitive Plants: There are two plant species that have been documented in the Hesperia quad, the short-joint beavertail cactus and white-pygmy-poppy. In recent years, only the short-joint beavertail has been seen within 20 years in the Hesperia quad, while the white pygmy-poppy has not been observed for over 20 years. The site currently does not support suitable habitat for the two species and none were observed on site during the September 30, 2021 field investigations. These species are not expected to occur on the site in the foreseeable future based on the length of

time they have been observed in the area and lack of suitable habitat, and therefore the project is not expected to impact any sensitive species

Sensitive Wildlife: Within the Hesperia Quad, seven species are listed as Species of Special Concern. These are the yellow warbler, burrowing owl, pallid bat, long-eared owl, coast horned lizard, Le Conte's thrasher, and gray vireo. The property does not contain suitable habitat for the yellow warbler, Le Conte's thrasher, long-eared owls, gray vireo, or pallid bat. The area has suitable habitat for coast horned lizards and burrowing owls, but given the disturbance of the site and its location, these two species are not expected to inhabit the property. The site also does not contain any suitable burrows for burrowing owls, and no signs of owls (e.i. scat, feathers) were found on the property and are unlikely to inhabit the site in the future given the lack of occupiable burrows.

5.4 Jurisdictional Waters and Riparian Habitat

No riparian vegetation (e.g., cottonwoods, willows, etc.) exist on the site. One channel is located to the north of the site on vacant land.

5.5 Protected Plants

As of September 22, 2020, the California Department of Fish and Wildlife temporarily listed the western Joshua tree (*Yucca brevifolia*) as an endangered species for one year until a final decision is made in 2021. Due to the presence of Joshua Trees on the site, a "Protected Plant Plan" has already been planned. The site contains multiple Joshua trees, and any attempt to remove a Joshua tree, dead or alive, from its current position will require an Incidental Take Permit (ITP).

6.0 IMPACTS AND MITIGATION MEASURES

6.1 General Biological Resources

Future development of the site will impact the general biological resources present on site, because most if not all of the vegetation will be removed during future construction activities. The site is expected to support very few wildlife species which will be impacted by development activities. Those species with limited mobility (i.e., small mammals and reptiles) will experience increases in mortality during the construction phase. However, more mobile species (i.e., birds, large mammals) will be displaced into adjacent areas and will likely experience minimal impacts. Therefore, loss of about 11.44-acres of a relatively disturbed desert scrub habitat is not expected to have a significant cumulative impact on the overall biological resources in the region given the presence of similar habitat throughout the surrounding area. 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 federal or State-listed species were observed on the site during the field investigations including the Mohave ground squirrel and desert tortoise. In addition, there are no documented observations of these species either on the site or in the immediate area. The site is not expected to support populations of the desert tortoise based on the absence of habitat, suitable burrows, or signs.

A pre-construction burrowing owl survey may be required by CDFW to determine if any owls have moved on to the site since September 30, 2021 surveys. As stated in CDFW's *Staff Report on Burrowing Owl Mitigation*, the most effective method of completing a pre-construction survey (take avoidance survey) should be performed within 14 days of ground disturbance, followed by a final pre-construction survey within 24 hours of breaking ground.

7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities include completely grading the property and removing the remaining vegetation from the approximate 11.44-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) on site are expected to be negligible. This assumption is based on the suitable habitat located in the surrounding areas of the region. In addition, future development activities are not expected to have any impact on any State or Federal listed or State special status plant or animal species. As discussed above, the site does not support any desert tortoises. In addition, burrowing owls do not inhabit the site and are not expected to be impacted given the absence of any active burrows. The following mitigation measures are recommended:

1. Pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project-related ground disturbance.
 - a. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are encountered, authorization from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.
 - b. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.
2. A Protected Plant Plan shall be developed and shall identify methods, locations, and criteria for transplanting those trees that would be removed during Project construction.
 - a. As required by the San Bernardino County Development Code, Joshua trees proposed for removal shall be transplanted or stockpiled for future transplanting wherever possible.
3. A focused plant survey is recommended for all special status plant species that have the potential to occur on the site to be performed during the blooming season (April - June) to determine the potential environmental effects of the proposed projects on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife

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 Ryan Hunter and Jessica Hensley. 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: 10/13/2021 Signed: *Ryan Hunter*

Jessica Hensley

Field Work Performed By: Ryan Hunter
Environmental Scientist/Biologist

Field Work Performed By: Jessica Hensley
Environmental Scientist

Appendix A
Tables and Figures

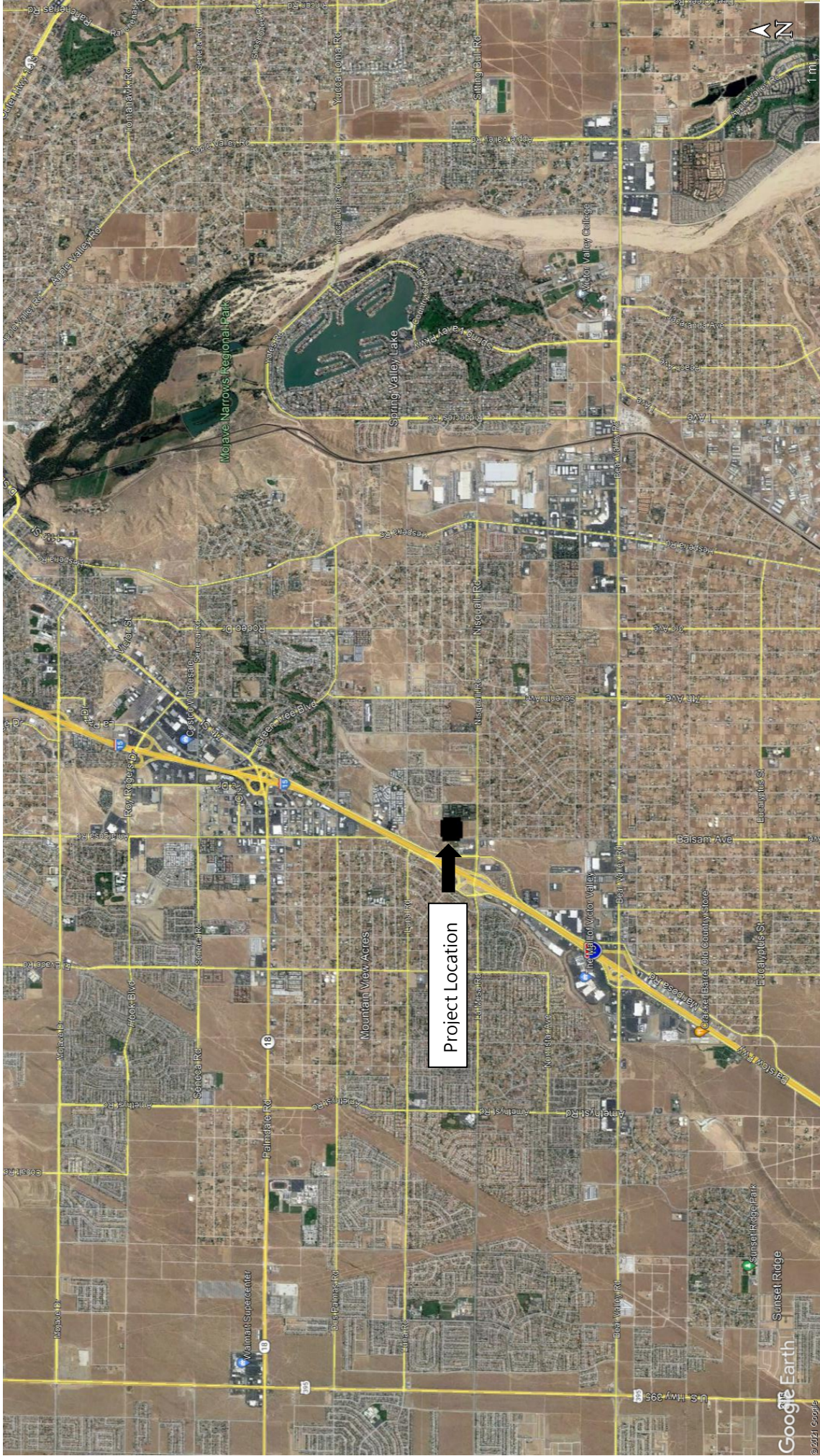


Figure 1: Regional Exhibit

RCA Associates, Inc.
Source: Google Earth





Figure 2: Vicinity Exhibit



CENTER OF SITE LOOKING NORTH



CENTER OF SITE LOOKING EAST

FIGURE 3
PHOTOGRAPHS OF SITE



CENTER OF SITE LOOKING SOUTH



CENTER OF SITE LOOKING WEST

FIGURE 3, cont.
PHOTOGRAPHS OF SITE

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

Common Name	Scientific Name	Location
Asian mustard	<i>Brassica tournefortii</i>	On Site and in the surrounding area.
Joshua Tree	<i>Yucca brevifolia</i>	“
Rubber rabbitbrush	<i>Ericameria nauseosa</i>	“
Silver cholla	<i>Cylindropuntia echinocarpa</i>	“
Nevada jointfir	<i>Ephedra nevadensis</i>	“
Fiddleneck	<i>Amsinckia tessellata</i>	“
Red brome	<i>Bromus rubens</i>	“
Cheatgrass	<i>Bromus tectorum</i>	“
Tumbleweed	<i>Kali tragus var. tragus</i>	“
Flatspine bur ragweed	<i>Ambrosia acanthicarpa</i>	“

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	<i>Corvus corax</i>	On-site and in the surrounding area.
House finch	<i>Carpodacus mexicanus</i>	“
Mourning dove	<i>Zenaida macroura</i>	“
Rock pigeon	<i>Columba livia</i>	“
Red-tailed hawk	<i>Buteo jamaicensis</i>	“
Northern mockingbird	<i>Mimus polyglottos</i>	“
House sparrow	<i>Passer domesticus</i>	“
Desert cottontail	<i>Sylvilagus audubonii</i>	“
Jackrabbit	<i>Lepus californicus</i>	“
Common side-blotched lizard	<i>Uta stansburiana</i>	“

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.

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 resources, 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).

Section 10(a) of the ESA establishes a process for obtaining an incidental take permit that authorizes non federal 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 fill 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 stormwater management plan to ensure 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, Sections 1600-1616 CDFW regulates 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 a 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 order Falconiformes (hawks, eagles, and falcons) 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, nolinias, yuccas)
- All species of Cactus
- Creosote Rings, ten feet in diameter or greater
- All Joshua Trees

The project would be required to comply with the County of San Bernardino Desert Native Plant Protection Ordinance. The removal of any trees listed under Section 88.01.060 would be required to comply with Section 88.01.050, which requires the project applicant to apply for a Tree or Plant Removal Permit prior to removal from the project site.