

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

**VICTORVILLE, SAN BERNARDINO COUNTY, CALIFORNIA
APN: 3096-351-02 & 03**

Prepared for:

**United Engineering Group
8885 Haven Avenue, Suite 195
Rancho Cucamonga, CA 91730**

Prepared by:

**RCA Associates, Inc.
15555 Main Street, #D4-235
Hesperia, California 92345
(760) 596-0017**

Principal Investigators:

**Ryan Hunter, Environmental Scientist/Biologist
Lisa Cardoso, Wildlife Biologist
Jessica Hensley, Environmental Scientist**



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8885 Haven Avenue, Suite 195
Rancho Cucamonga, CA 91730

Principal Investigators: Ryan Hunter, Environmental Scientist/Biologist
Lisa Cardoso, Wildlife Biologist
Randall Arnold, Senior Biologist
Jessica Hensley, Environmental Scientist

Contact Information: Randall C. Arnold, Jr.
RCA Associates, Inc.
15555 Main Street, #D4-235
Hesperia, California 92345
(760) 596-0017
rarnold@rcaassociatesllc.com
www.rcaassociatesllc.com

Table of Contents

1.0	INTRODUCTION AND SUMMARY	1
2.0	EXISTING CONDITIONS.....	2
3.0	METHODOLOGIES	4
4.0	LITERATURE SEARCH	6
5.0	RESULTS	8
5.1	General Biological Resources	8
5.2	Federal and State Listed Species	9
5.3	Wildlife 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	13
	CERTIFICATION	15
	REGULATORY CONTEXT	19

Appendix A – Tables and Figures

1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 40-acre parcel (APN: 3096-351-02 & 03) bounded by La Mesa Rd to the south, Mesa View Drive to the East, and Fremontia Road to the west in the city of Victorville, California (Figures 1 and 2). The property site is specifically located on the SE ¼ of the SW 1/4 of Section 28, Township 5 North, Range 5 West in the USGS Baldy Mesa 7.5-minute California quadrangle. The property is located in an area zoned for specific plan (SP).

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 7, 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.

Focused surveys were also conducted for desert tortoises, burrowing owls, Joshua trees, and a habitat assessment was performed for the 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 (2000) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property is approximately 40-acres in size and located on the northwest corner of La Mesa Road and Mesa View Drive in the city of Victorville, California (Township 5 North, Range 5 West, Section 28, USGS Baldy Mesa, California Quadrangle, 1956). Single-family residential developments and vacant land are located north and south of the site, and vacant land is located east and west (Figure 1 & 2).

The site is relatively flat, approximately 992 meters above sea level, and shows signs of having been previously graded. This observation is based on the density of vegetation and current conditions observed on site during the September 7, 2021, field investigations. The property consists of Cajon Sand, which has a 0-2 percent slope, somewhat excessive soil drainage, with no frequency of flooding, and low available water supply. The site is dominated by native vegetation that includes Joshua trees (*Yucca brevifolia*), creosote bush (*Larrea tridentata*), Nevada jointfir (*Ephedra nevadensis*), rubber rabbitbrush (*Ericameria nauseosa*), silver cholla (*Cylindropuntia echinocarpa*), California buckwheat (*Eriogonum fasciculatum*), and white bursage (*Ambrosia dumosa*) are the dominant perennials and the dominant annuals include brome grasses (*Bromus sp.*) and fiddleneck (*Ansickia tessellata*). Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

The site is expected to support a variety of wildlife species. The Antelope ground squirrel (*Ammospermophilus leucurus*) and bobcat (*Lynx rufus*) were the only mammals observed on site. Mammals which are expected to inhabit the site but were not observed include the black-tailed jackrabbit (*Lepus californicus*), desert cottontails (*Sylvilagus audubonii*), California ground squirrel (*Spermophilus beecheyi*) and coyote (*Canis latrans*), which are very common in the region and are expected to utilize the site for hunting activities.

Birds identified by sight or sound included ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), red-tailed hawk (*Buteo jamaicensis*), rock pigeon (*Columba livia*), and horned lark (*Eremophila alpestris*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

The western whiptail lizard (*Cnemidophorus occidentalis*) and common side-blotched lizard (*Uta stansburiana*) were the only reptile observed during the survey, although common reptiles that are expected to inhabit the site include western fence lizard (*Sceloporus occidentalis*) and long-nosed leopard lizard (*Gambelia wislizenii*). Table 2 provides a compendium of wildlife species.

A potential jurisdictional channel is located along the southwest boundary of the site and a jurisdictional delineation may need to be conducted in the future.

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 7, 2021, during which biologists 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 consisted of wind speeds of 0 to 5 mph, temperatures in the low 90's to high 90's (°F) (AM) with 0% cloud cover skies. The applicable methodologies are summarized below.

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 plant and animal 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 September 7, 2021 for the desert tortoises and a survey was also performed for the presence of any potential tortoise burrows by biologists from RCA Associates, Inc. Ten-meter, parallel belt transects were walked in a north-south 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 area east and west of the property. Comprehensive field investigations were conducted throughout the site during the biological surveys and no tortoises or tortoise signs were identified on the site or zone of influence.

During the biological survey, all transects were walked 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. If tortoises are found to inhabit 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 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 on September 7, 2021. Following completion of the habitat assessment, it was determined that the site does support suitable habitat for the burrowing owl. This opinion was based on the observation of five suitable burrows within the site boundaries or zone of influence, with two of the five burrows being active and containing whitewash and/or castings, although no burrowing owls were observed. As part of the burrowing owl survey, meandering transects were walked throughout the site during which any suitable burrows were evaluated for owls and owl sign. Burrowing owls typically utilize burrows which have been excavated by other animals (squirrels, coyotes, foxes, dogs, etc.) with a minimum four inch burrow entrance, 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; therefore, the zone of influence (ZOI) surveys were performed in the area surrounding the site where accessible. If 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. Due to the low population levels and no recent observations in this area of the Mojave Desert, it is the opinion of RCA Associates, Inc. that the likelihood of a Mohave ground squirrel occurring on the proposed project site is extremely low. CDFW may choose to conduct a live-trapping survey to definitively determine the presence/absence of Mohave ground squirrels.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDDB, 2021) was performed. Based on this review, it was determined that eight special status species, six wildlife and two plant species, have been documented within the Baldy Mesa quad of the property. 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 Baldy Mesa Quadrangle			
Short-joint beavertail (<i>Opuntia basilaris</i> var. <i>brachyclada</i>)	Federal: None State: None CNPS: 1B.2	Chaparral, oak/pine woodland on sandy soils on slopes	The site does not support suitable habitat for the species; and no beavertail observed during field surveys.
Sagebrush loeflingia (<i>Loeflingia squarrosa</i> var. <i>artemisiarum</i>)	Federal: None State: None CNPS: 2B.2	Coastal sage scrub, chaparral, and valley grassland on sand, gravel of hills, mesas, dunes	The does not support suitable habitat, and no sagebrush loeflingia was observed.

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
ANIMAL			
Within Baldy Mesa Quadrangle			
Desert tortoise (<i>Gopherus agassizii</i>)	Federal: Threatened State: Threatened	Desert shrub	Suitable habitat. No tortoises observed on-site.
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 and will not occur on the site.
Burrowing owl (<i>Athene cunicularia</i>)	Federal: None State: None CDFW: SSC	Open grassland areas where the owls utilize abandoned mammal burrows.	Suitable habitat, with two active burrows that contained whitewash and/ or castings, although no burrowing owls were observed.
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	Suitable habitat, none observed on site
Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>)	Federal: None State: Threatened	Desert scrub	The site supports suitable habitat for the species. Although none observed on site.
Loggerhead shrike (<i>Lanius ludovicianus</i>)	Federal: None State: None CDFW: SSC	Open country with scattered shrubs and trees	The site does provide suitable habitat, however none observed on site

5.0 RESULTS

5.1 General Biological Resources

The site supports a desert scrub community dominated by creosote bush (*Larrea tridentata*) (Figures 3). Other vegetation present on the site included rubber rabbitbrush (*Ericameria nauseosa*), Joshua tree (*Yucca brevifolia*), California buckwheat (*Eriogonum fasciculatum*), silver cholla (*Cylindropuntia echinocarpa*), white bursage (*Ambrosia dumosa*), flatspine bur ragweed (*Ambrosia acanthicarpa*), broom snakeweed (*Gutierrezia sarothrae*), cheatgrass (*Bromus tectorum*), and Nevada jointfir (*Ephedra nevadensis*). 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*), cactus wren (*Campylorhynchus brunneicapillus*), red-tailed hawk (*Buteo jamaicensis*), vesper sparrow (*Pooecetes gramineus*), horned lark (*Eremophila alpestris*) and verdin (*Auriparus flaviceps*).

Mammals observed on sight included the Antelope ground squirrel (*Ammospermophilus leucurus*) and bobcat (*Lynx rufus*) during the September 7, 2021, survey. Other mammals that are expected to occur on the site include black-tailed jackrabbits (*Lepus californicus*), desert cottontails (*Sylvilagus audubonii*), and California ground squirrel (*Spermophilus beecheyi*). Merriam's kangaroo rats (*Dipodomys merriamii*) may also occur on the site given their wide-spread distribution in the region. 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.

The western whiptail lizard (*Cnemidophorus tigris*) and common side-blotched lizard (*Uta stansburiana*) were the only reptiles observed during the field investigations. Table 2 provides a compendium of wildlife species observed during the various surveys and those likely to occur in the 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

Two of the eight species are classified as threatened or endangered federally and or by the state, these species are:

Desert Tortoise: The desert tortoise is a federally and state threatened species that can be found in the Mojave Desert and occupy desert scrubs that may consist of shrub steppe, perennial grasses, Joshua trees, and open scrub areas consisting of creosote bush. The site does contain suitable habitat for the desert tortoise and is also located within the documented tortoise habitat according to CNDBB. As per the USFWS desert tortoise protocol, ten meter transects were walked during the September 7, 2021 survey to observe the site for any desert tortoises or desert tortoise signs (i.e., scat, active burrow, or carcasses). No tortoises or signs were observed on the site. The species is not expected to move onto the site in the near future based on the absence of any sign, and absence of any recent observations in the immediate area. The survey results are valid for one year as per CDFW and USFWS requirements.

Mohave Ground Squirrel: The Mohave ground squirrel is a state threatened species that occurs within the known distribution. There is no recent observation of Mohave ground squirrels within the area, and 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:

1. No recent documented observations in the general region.
2. No connectivity with habitat which may support the species.

5.3 Wildlife Species of Special Concern

Sensitive Plants: There are two plant species that have been documented in the Baldy Mesa quad, the short-joint beavertail cactus and sagebrush loeflingia. In recent years, only one observed sagebrush loeflingia and two observed short-joint beavertail cactus have been recorded in the Baldy Mesa quad. The site does not have suitable habitat for the two species and none were

observed on the site during the September 7, 2021 survey, and are not expected to occur in the foreseeable future. The project is not expected to impact any sensitive plant species.

Sensitive Wildlife: Within the Baldy Mesa quad, there are 4 species that are labeled as Species of Special Concern. These species are the burrowing owl, loggerhead shrike, coast horned lizard, and yellow warbler. The property does not contain suitable habitat for the yellow warbler, which occupies riparian habitats, and is therefore not expected to occur on the site. The loggerhead shrike and coast horned lizard could potentially occur on the site, but no signs of these three species were observed during the field investigations. The site does contain suitable burrows for burrowing owls, and two active burrows (burrows contained white wash and castings) were found on the property, although no burrowing owls were observed.

5.4 Jurisdictional Waters and Riparian Habitat

No riparian vegetation (e.g., cottonwoods, willows, etc.) exist on the site or in the adjacent habitats. A potential jurisdictional channel is located along the southwest boundary of the site and enters the property along the western vacant parcel and continues south to the adjacent vacant land, flowing in a northeast to south direction. A jurisdictional delineation may need to be conducted in the future.

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. A Desert Protected Plant Plan was performed on September 9, 2021 for the Joshua trees observed on site, and resulted in 33 total Joshua trees with 1 of the 33 trees being transplantable. Any attempt to remove a Joshua tree 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 the site, and most, if not all, of the vegetation will likely be removed during future construction activities. Wildlife will also be impacted by development activities and 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 40-acres of relatively disturbed desert vegetation 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 desert region. The only sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) observed on site was a potential jurisdictional channel located in the southeastern boundary of the site.

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, except for the Joshua trees, 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 any tortoise sign (e.g., burrows, scats, tracks, etc.), and although suitable habitat is present on site, the probability of the species inhabiting the site is very low.

A pre-construction burrowing owl survey may be required by CDFW to determine if any owls have moved on to the site since the September 7, 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 are expected to result in the removal of vegetation from the 40-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be negligible. This assumption is based on the presence of habitat on the site which is very common throughout 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, except for the Joshua trees. As discussed above, the site does not support any desert tortoises. 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. 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, Lisa Cardoso, 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: 09/9/2021 Signed:

Signed: Ryan Hunter

Signed: Lisa Cardoso

Signed: Jessica Hensley

Field Work Performed By: Ryan Hunter
Environmental Scientist/Biologist

Field Work Performed By: Lisa Cardoso
Wildlife Biologist

Field Work Performed By: Jessica Hensley
Environmental Scientist

Appendix A
Tables and Figures

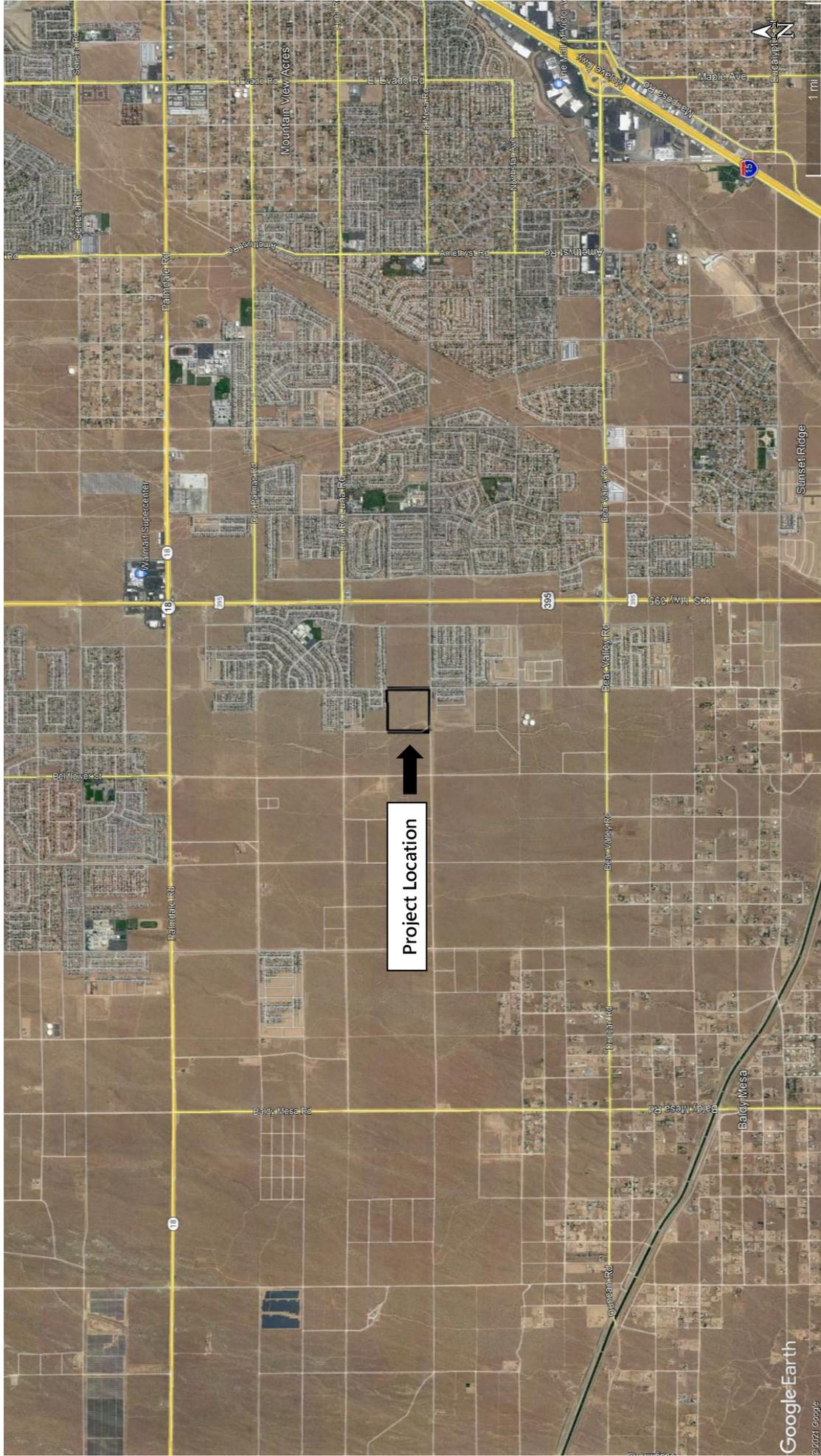


Figure 1: Regional Exhibit

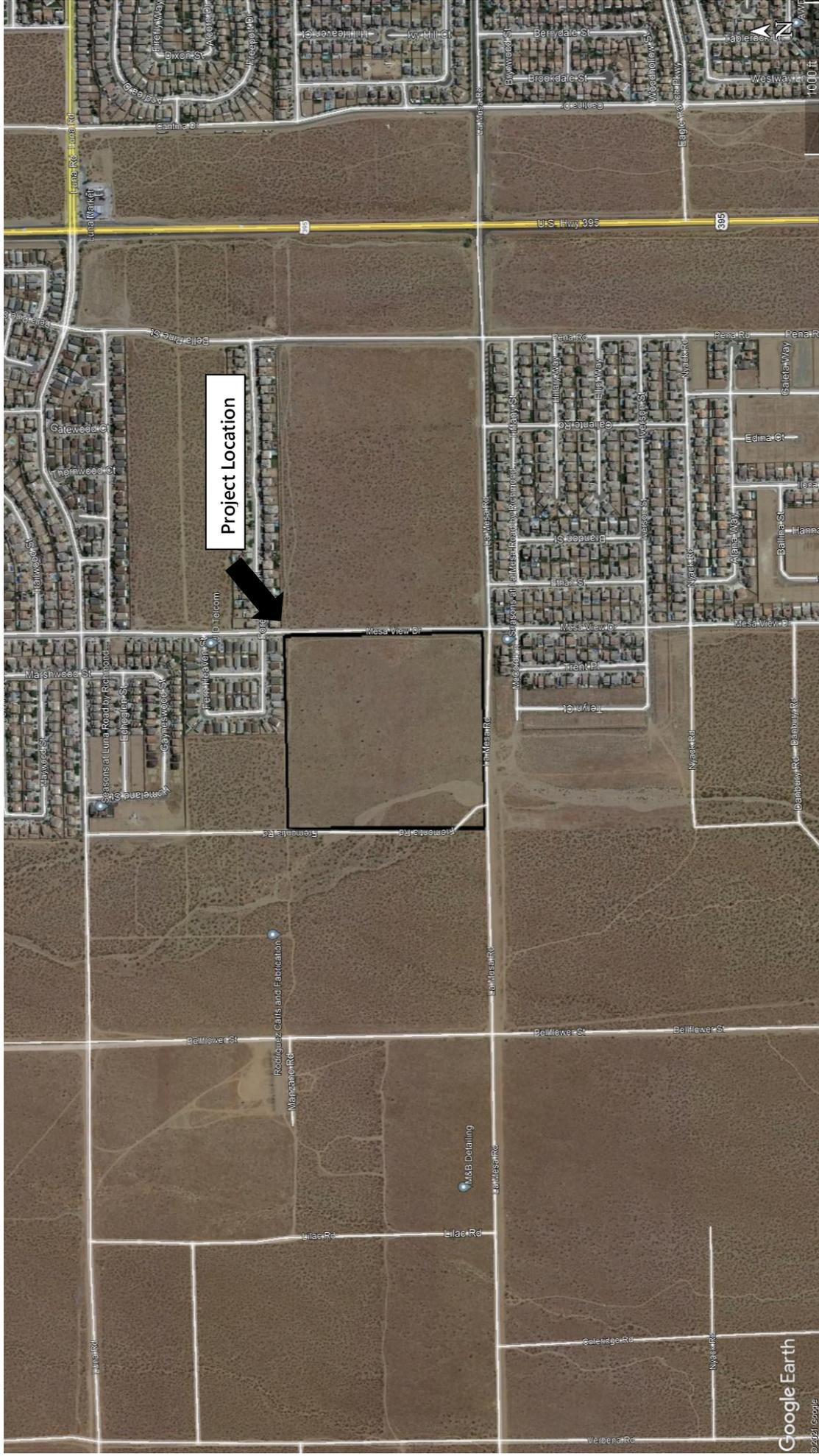


Figure 2: Vicinity Exhibit

RCA Associates, Inc.
Source: Google Earth





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
Joshua Tree	<i>Yucca brevifolia</i>	On site and Surrounding Area
Creosote bush	<i>Larrea tridentata</i>	“
California buckwheat	<i>Eriogonum fasciculatum</i>	”
Cheatgrass	<i>Bromus tectorum</i>	”
Rubber rabbitbrush	<i>Chrysothamnus nauseosus</i>	”
Nevada jointfir	<i>Ephedra nevadensis</i>	”
Paper bag Bush	<i>Salazaria mexicana</i>	“
White bursage	<i>Ambrosia dumosa</i>	”
Red brome	<i>Bromus ruben</i>	“
Kelch grass	<i>Schismus barbatus</i>	“
Silver cholla	<i>Cylindropuntia echinocarpa</i>	“
Broom snakeweed	<i>Gutierrezia sarothrae</i>	“
Tumbleweed	<i>Kali tragus ssp. tragus</i>	“
Asian mustard	<i>Brassica tournefortii</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 surrounding area.
Rock Pigeon	<i>Columba livia</i>	“
Horned Lark	<i>Eremophila alpestris</i>	“
House finch	<i>Carpodacus mexicanus</i>	”
Vesper Sparrow	<i>Pooecetes gramineus</i>	“
Cactus wren	<i>Campylorhynchus brunneicapillus</i>	“
Red-Tailed Hawk	<i>Buteo jamaicensis</i>	“
Verdin	<i>Auriparus flaviceps</i>	“
Western whiptail	<i>Cnemidophorus tigris</i>	“
Common side-blotched lizard	<i>Uta stansburiana</i>	“
Bobcat	<i>Lynx rufus</i>	“
Antelope ground squirrel	<i>Ammospermophilus leucurus</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 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, 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 orders 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.