APPENDIX B

BIOLOGICAL RESOURCES ASSESSMENT & PROTECTED PLANT PRESERVATION PLAN

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

HESPERIA, SAN BERNARDINO COUNTY, CALIFORNIA
Guard Dog of Hesperia Expansion
(Township 4 North, Range 4 West, Section 10)
(APN 0410-011-32, 0410-011-33)

Prepared for:

Luis Rosas
RCH Group
11060 White Rock Road, Suite 150-A
Rancho Cordova, CA 95670

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

Project: #2021-12

February 9, 2021

TITLE PAGE

Date Report Written:	**February 9, 2021**
Date Field Work Completed: 2021	**February 8,**
Report Title:	**General Biological Resources Assessment**
Assessor's Parcel Number:	**0410-011-32, 0410-011-33**
Principal Investigators:	**Ryan Hunter, Environmental Scientist/Biologist** **Lisa Cardoso, Wildlife Biologist**
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 3
4.0 LITERATURE SEARCH 4
5.0 RESULTS 7
5.1 General Biological Resources 7
5.2 Federal and State Listed Species 7
5.3 Species of Special Concern 8
5.4 Jurisdictional Waters and Riparian Habitat 8
5.5 Protected Plants 9
6.0 IMPACTS AND MITIGATION MEASURES 10
6.1 General Biological Resources 10
6.2 Federal and State Listed and Species of Special Concern 10
7.0 CONCLUSIONS AND RECOMMENDATIONS 11
8.0 BIBLIOGRAPHY 13
CERTIFICATION 15

Appendix A - Tables and Figures
Appendix B - Regulatory Context

1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 5-acre parcel located south of Lemon Street, east of C Avenue, and west of E Avenue in the City of Hesperia, California (17147 Lemon St) (APN: 0410-011-32 & 0410-011-33) (Township 4 North, Range 4 West, Section 10, USGS Hesperia, California Quadrangle, 1956) (Figures 1, 2, and 3). The property is located in a business industrial area of Hesperia where the project proponent is proposing to expand his existing storage facility.

The site supports a heavily disturbed desert scrub community that previously consisted of native desert vegetation. The property currently supports sparse native vegetation that includes exceedingly low numbers of creosote bush (*Larrea tridentata*), silver cholla (*Cylindropuntia echinocarpa*), Asian mustard (*Brassica tournefortii*), Nevada joint-fir (*Ephedra nevadensis*), and thirteen Joshua trees (*Yucca brevifolia*) occupy 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 February 8, 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 (CNDDB, 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 5-acres and is located south of Lemon Street, east of C Avenue, and west of E Avenue in the City of Hesperia, California (Township 4 North, Range 4 West, Section 10, USGS Hesperia, California Quadrangle, 1956). The site is heavily disturbed and has been previously graded of all vegetation with the exception of those in the yucca and cacti families. The property supports a relatively flat topography, with the exception of the northern boundary where it slopes down to Lemon Street. Industrial businesses border property to the south and east as well as north beyond Lemon Street, with vacant land to the west.

The site has been completely graded with the exception of a few plant species such as Joshua tree (*Yucca brevifolia*), silver cholla (*Opuntia echinocarpa*), and the occasional desert scrub plants that were missed during previous clearing activities. Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

Only a few wildlife species were observed during the field investigations. No mammals were observed during the survey.

Birds observed included common ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), western meadowlark (*Sturnella neglecta*), 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*). No other reptiles are expected to occur on site due to the lack of suitable habitat. 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 CNDDB (2021) and none were observed during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on February 8, 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 5 to 10 mph, temperatures in the low to mid 60'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 (CNDDB) 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; CNDDB = California Natural Diversity Data Base

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Hesperia Quadrangle			
Short-joint beavertail (Opuntia basilaris var. brachyclada)	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 (*Eremothera boothii ssp. boothii*)	Federal: None State: Threatened CNPS: 2B.3	Joshua tree woodland, pinyon and juniper 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.
White pygmy-poppy (*Canbya candida*)	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: CNDDB, 2021) or likely to occur in the region

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
Wildlife Species			
Within Hesperia Quadrangle			
Yellow warbler (*Setophaga petechia*)	Federal: None State: None CDFW: SSC	Dense riparian vegetation.	The site does not support suitable habitat for the species.
Burrowing owl (*Athene cunicularia*)	Federal: None State: None CDFW: SSC	Open grassland areas where the owls utilize abandoned mammal burrows.	No suitable habitat present on the site. Not expected to occur on the site due to the highly disturbed area and lack of burrows, none observed during the survey. However, this mobile species occurs throughout Southern California and could potentially occur in the area in the future.
Cooper's hawk (*Accipiter cooperii*)	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. The mobile species occurs throughout southern California and can potentially occur in the future.
Pallid bat (*Antrozous pallidus*)	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 (*Asio otus*)	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 (*Phrynosoma blainvillii*)	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 (*Toxostoma lecontei*)	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 (*Vireo vicinior*)	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 (*Siphateles bicolor mohavensis*)	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 (*Xerospermophilus mohavensis*)	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

Given the habitat in the surrounding area, the site had once previously supported a desert scrub community, but has since been cleared of almost all vegetation with the exception of the Joshua trees, silver cholla, and a few missed species. Species present on the site included creosote bush (*Larrea tridentata*), silver cholla (*Cylindropuntia echinocarpa*), Joshua tree (*Yucca brevifolia*), Asian mustard (*Brassica tournefortii*) , 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*), rock pigeon (*Columba livia*), western meadowlarks (*Sturnella neglecta*), and mourning doves (*Zenaida macroura*). No mammals or mammal signs were observed, and only one reptile was found on site, the common side-blotched lizard (*Uta stansburiana*). 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 CNDDB (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 site does occur within the known distribution of the Mohave Ground Squirrel, but no recent observations of Mohave ground squirrels have occurred in the area. 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 Species of Special Concern

Sensitive Plants: There are three plant species that have been documented in the Hesperia quad, the short-joint beavertail cactus, Booth's evening-primrose, and white-pygmy-poppy. In recent years, only the short-joint beavertail has been seen within 20 years in the Hesperia quad, while Booth's evening-primrose and white pygmy-poppy have not been observed for over 20 years. The site currently does not support suitable habitat for all three species and none were observed on site during the February 8, 2021. 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, and pallid bat. The area has suitable habitat for coast horned lizards and burrowing owls, but given the high disturbance of the site and lack of burrows and vegetations, these two species are not expected to occur on site and were not observed on 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 or in the adjacent habitats.

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. There are thirteen standing Joshua Tree observed on site during the February 8, 2021 field investigations. Due to the presence of Joshua Trees, a "Protected Plant Plan" was conducted on the site alongside this survey on February 8, 2021. and any attempt to remove a Joshua tree from its current position may require an Incidental Take Permit (ITP).

6.0 IMPACTS AND MITIGATION MEASURES

6.1 General Biological Resources

Future development of the site will have minimal impact on the general biological resources present on site, because most of the vegetation has already been removed and the remaining few plants 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 5-acres of heavily 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 February 8, 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 5-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.

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.

8.0 BIBLIOGRAPHY

Baldwin, Bruce G, et. al.
2002. The Jepson Desert Manual. Vascular Plants of Southeastern California. University of California Press, Berkeley, CA.

Bureau of Land Management
January 2005. Final Environmental Impact Report and Statement for the West Mojave Plan. Vol. 1A.

California Burrowing Owl Consortium
1993. Burrowing Owl Survey Protocol and Mitigation Guidelines.

California Department of Fish and Game
1990. California Wildlife: Volume 1 (Amphibians and Reptiles), Volume II (Birds), and Volume III (Mammals).

California Department of Fish and Game
2003. Mohave Ground Squirrel Survey Guidelines.

California Department of Fish and Game
2014. Rarefind 3 Natural Diversity Database. Habitat and Data Analysis Branch. Sacramento, CA.

California Department of Fish and Game
March 7, 2013. Staff Report on Burrowing Owl Mitigation. 34 pp.

California Native Plant Society
2001. Inventory of Rare and Endangered Plants of California (sixth edition). Rare Plant Scientific Advisory Committee, David P. Tibor, Convening Editor. California Native Plant Society. Sacramento, CA x + 388 pp.

Ehrlich, P., Dobkin., Wheye, D.
Birder's Handbook. A Field Guide to the Natural History of North American Birds. Simon & Schuster Building Rockefeller Center 1230 Avenue of the Americas. New York, New York 10020.

Hickman, James C.
The Jepson Manual Higher Plants of California. University of California Press. Berkeley, CA. 3rd Edition. 1996.

Jaeger, Edmund C.
1969. Desert Wild Flowers. Stanford University Press, Stanford, California. 321 pp.

Kays, R. W. & Wilson, D. E.
Mammals of North America. Princeton University Press, Princeton, New Jersey. 2002.

Munz, Philip A.
1974. A Flora of Southern California. University of California Press, Berkeley, California. 1086 pp.

Tugel, Arlene J., Woodruff, George A.
Soil Conservation Service, 1978. Soil Survey of San Bernardino County California, Mojave River Area.

Sibley, David Allen.
Sibley Birds West: Field Guide to Birds of Western North America. Knopf. 2016

Stebbins, Robert C.
A Field Guide to Western Reptiles and Amphibians. Houghton Mifflin Company. 2003.

U.S. Fish and Wildlife Service
2010 Desert Tortoise Survey Protocol.

Whitaker, John O.
The Audubon Society Field Guide to North American Mammals. Alfred A Knopf, Inc. 1980.

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 Lisa Cardoso . 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: 2/9/2021 Signed: Ryan Hunter

Lisa Cardoso

Field Work Performed By: Ryan Hunter
Environmental Scientist/Biologist

Field Work Performed By: Lisa Cardoso
Wildlife Biologist

Appendix A

Tables and Figures

FIGURE 1: REGIONAL EXHIBIT

RCA ASSOCIATES, INC.
SOURCE: GOOGLE EARTH

RCA
ASSOCIATES, INC.

FIGURE 2: VICINITY EXHIBIT

RCA ASSOCIATES, INC.
SOURCE: GOOGLE EARTH

RCA ASSOCIATES, INC.

CENTER OF SITE LOOKING EAST

CENTER OF SITE LOOKING NORTH

FIGURE 3
PHOTOGRAPHS OF SITE

CENTER OF SITE LOOKING SOUTH

CENTER OF SITE LOOKING WEST

FIGURE 3, cont.
PHOTOGRAPHS OF SITE

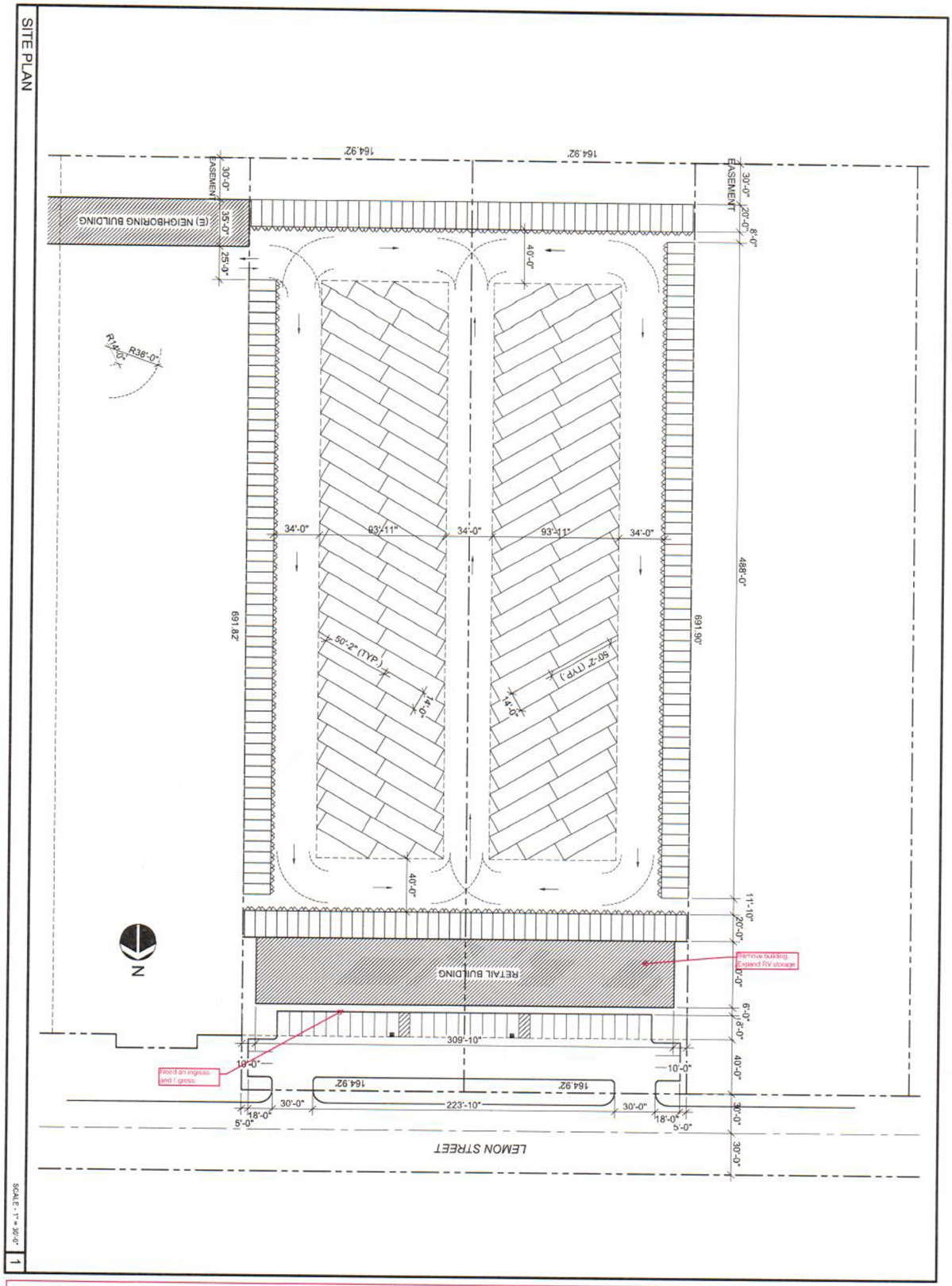

FIGURE 4
SITEPLAN

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

Common Name	Scientific Name	Location
Asian mustard	*Brassica tournefortii*	On Site
Joshua Tree	*Yucca brevifolia*	"
Mugwort	*Artemisia douglasiana*	"
Creosote bush	*Larrea tridentata*	"
Silver cholla	*Cylindropuntia echinocarpa*	"
Nevada jointfir	*Ephedra nevadensis*	"

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.
House finch	*Carpodacus mexicanus*	"
Mourning dove	*Zenaida macroura*	"
Rock pigeon	*Columba livia*	"
Western meadowlark	*Sturnella neglecta*	"
Common side-blotched lizard	*Uta stansburiana*	"

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.

Appendix B

Regulatory Context

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).

Section10(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, nolinas, 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.

PROTECTED PLANT PRESERVATION PLAN

CITY OF HESPERIA, CALIFORNIA
APN: 0410-011-32 and 0410-011-33

Prepared for:

Luis Rosas

RCH Group
11060 White Rock Road, Suite 150-A
Rancho Cordova, CA 95670

Prepared by:

RCA Associates, Inc.
15555 Main Street, #D4-235
Hesperia, CA 92345
(760) 956-9212

Biologists:
Ryan Hunter
Lisa Cardoso

Project No: RCA#2021-13 JT

February 8, 2021

TITLE PAGE

Date Report Prepared:	**February 8, 2021**
Field Work Completed:	**February 8, 2021**
Report Title:	**Protected Plant Preservation Plan**
Project Location:	**Hesperia, California** **APN: 0410-011-32 and 0410-011-33**
Prepared for:	**Luis Rosas** **RCH Group** **11060 White Rock Road, Suite 150-A** **Rancho Cordova, CA 95670**
Principal Investigators:	**Ryan Hunter, Environmental Scientist, Biologist** **Lisa Cardoso, Wildlife Biologist**
Contact Information:	**Randall C. Arnold, Jr.** **RCA Associates, Inc.** **15555 Main Street, #D4-235** **Hesperia, CA 92345** **(760) 956-9212** **rarnold@rcaassociatesllc.com** **www.rcaassociatesllc.com**

Table of Contents

Section		Page
1.0	Summary	1
2.0	Introduction and Project Description	2
3.0	Methodologies	3
4.0	Results	4
5.0	Conclusions	6
6.0	References	8
7.0	Certification	9

Appendix A – Figures

Appendix B – City of Hesperia Municipal Code: Chapter 16.24
City of Hesperia Protected Plant Plan

1.0 SUMMARY

At the request of the project proponent, RCA Associates, Inc. surveyed a 5-acre property located south of Lemon Street, east of C Avenue, and west of E Avenue in the City of Hesperia, California (APN: 0410-011-32 & 0410-011-33) (Figures 1 and 2). The property site is located in Section 10, Township 4 North, Range 4 West (USGS Hesperia, CA 7.5-minute quadrangle).

The purpose of the survey was to evaluate the Joshua trees present on site and determine which trees were suitable for relocation and which trees could be discarded prior to site clearing activities. This report provides the results of the Joshua tree survey performed on February 8, 2021. Following completion of the survey, RCA Associates, Inc. prepared this Protected Plant Preservation Plan to assist the project proponent with future relocation of any Joshua trees. Information on the Joshua trees which will need to be relocated-transplanted in the future if deemed transplantable is provided in Section 4.0. The City of Hesperia Municipal Code has a chapter (Chapter 16.24) stating the purpose of the Protected Plant Plan, the importance of preserving the Joshua Tree as an important native desert vegetation, and the consequences of removing a tree without authorization. The requirements of the Ordinance (Chapter 16.24) and the City of Hesperia's Protected Plant Plan are provided in Appendix B.

Based on the results of the field investigations there are 13 Joshua trees which occur within the boundaries of the property (Figures 1, 2 and 3). Based on the evaluation and analysis of each tree it was determined that 1 of the 13 Joshua trees (7.7%) are suitable for transplanting. These trees are marked in red in Table 4-1. The remaining 12 Joshua trees (92.3%) were determined to be unsuitable for transplanting due to a variety of factors such as size, condition, damage, dying, excessive leaning, possibly disease, clonal, etc.

2.0 INTRODUCTION AND PROJECT LOCATION

The area surveyed is located south of Lemon Street, east of C Avenue, and west of E Avenue in the City of Hesperia, California. The property has been previously graded and is heavily disturbed. The site had previously supported a desert scrub community, given the few stranded plants observed on site. The few plants observed on the site include ephedra (*Ephedra nevadensis*), creosote bush (*Larrea tridentata*), silver cholla (*Cylindropuntia echinocarpa*), Asian mustard (*Brassica tournefortii*), and mugwort (*Artemisia douglasiana*). The property is surrounded all around by business and industrial structures.

Joshua trees occur throughout the Mojave Desert in Southern California and are typically found at an elevation of 400 to 1,800 meters (~1,200 to ~5,400 feet). Joshua trees within the western portion of the Mojave Desert typically receive more annual precipitation during "normal" years; consequently, cloning occurs more often resulting in numerous trunks sprouting from the same root system (Rowland, 1978). Joshua tree habitats provide habitat for a variety of wildlife species including desert wood rats (*Neotoma* sp.) and night lizards (*Xantusia* sp.) both of which utilize the base of the trees. A variety of birds also utilize Joshua trees for nesting such as hawks, common ravens, and cactus wrens. CDFW consider Joshua tree woodlands as areas that support relatively high species diversity and as such are considered to be a sensitive desert community. Joshua trees are also considered a significant resource under the California Environmental Quality Act (CEQA) and are included in the Desert Plant Protection Act, Food and Agricultural Code (80001 – 80006).

3.0 METHODOLOGIES

Pedestrian surveys were walked throughout the site and biologists from RCA Associates, Inc. evaluated each Joshua tree to determine which trees were suitable for relocation/transplanting based on a general health assessment. Each Joshua tree received a metal numbered tag which was affixed on the north side of each tree for orientation purposes during future transplanting. Surveyor flagging was also placed around those trees suitable for transplanting to facilitate future identification. The precise location of each tree was recorded using a Garmin GPS unit and a Bushnell Yardage Pro rangefinder was utilized to determine the extent of the property boundaries. Those Joshua trees which occur on the property site are presented in Table 4-1 and the locations are provided in Figure 2.

The factors utilized to determine which Joshua trees were suitable for transplanting include the following factors:

1. Trees from about 1 foot in height up to approximately 12 feet,
2. No visible signs of damage to the tree such as absence of bark due to rodent or other animals,
3. Minimal number of branches (No more than 2 or 3 branches),
4. No excessive leaning of the tree,
5. No yellow or brown fronds,
6. Proximity to other Joshua trees (i.e., clonal), and
7. No exposed roots at the base of the tree.

4.0 RESULTS

There are 13 Joshua trees on the property and the GPS locations of the Joshua trees are provided in Table 4-1. A total of 1 Joshua tree (7.7%) are suitable for relocation/transplanting based on the seven factors listed in Section 3.0 (Table 4-1). The Joshua trees suitable for transplanting should be relocated/transplanted on-site, which is the preferable option, or to an off-site area approved by the City of Hesperia. Those Joshua trees that are not suitable for relocation/transplanting due to size, health of the tree, presence of damage, excessive branches, excessive leaning, clonal, and exposed roots should be disposed of as per City requirements.

Table 4-1: Joshua tree census. (Note: The GPS locations of the Joshua trees are provided below and those trees which are suitable for transplanting on-site as part of project landscaping are highlighted in red.)

Total Number of Joshua Trees On Site	Joshua Trees to be Transplanted	Number of Clonal Trees	Number of Non-Clonal Trees
13	1	3	10

Tag	Height (ft)	Location	Condition	Panicles Branches	Clonal	Transplantable
1996	12	N 34°26.579 W 117°17.401	Good- Multiple Branches	9P 4B		No
1997	18	N 34°26.569 W 117°17.425	Good- Tall	11P 2B		No
1998	16	N 34°26.544 W 117°17.420	Good- Tall	7P 3B		No
1999	13	N 34°26.563 W 117°17.426	Good- Multiple Branches	9P 2B		No
2000	10	N 34°26.538 W 117°17.418	Good	0P 1B	X	No
2701	5	N 34°26.536 W 117°17.418	Good	0P 0B	X	No

Tag	Height (ft)	Location	Condition	Panicles Branches	Clonal	Transplantable
2702	2	N 34°26.528 W 117°17.437	Good- Leaning	9P 4B		No
2703	5	N 34°26.528 W 117°17.443	Good	0P 0B		Yes
2704	14	N 34°26.515 W 117°17.455	Good- Tall	0P 1B		No
2705	17	N 34°26.511 W 117°17.462	Good- Tall	8P 2B		No
2706	5	N 34°26.513 W 117°17.437	Good	0P 0B	X	No
2707	13	N 34°26.512 W 117°17.428	Good- Multiple Branches	0P 4B		No
2708	22	N 34°26.510 W 117°17.411	Good- Leaning	28P 3B		No

(Note: The Tag numbers correspond to the numbers placed on the Joshua trees.)

5.0 CONCLUSIONS

There are 13 Joshua trees located on the property and only 1 of the trees is suitable for relocation/transplanting. This conclusion was based on: (1) trees which were one foot or greater in height and less than twelve feet tall (approximate); (2) in good health; (3), two branches or less; (4) density of trees (i.e., no clonal trees); no exposed roots; and (6) trees that are not leaning over excessively. As indicated in Table 4-1, the majority of the Joshua trees which were not suitable for relocation are relatively large ranging from about 15 to 35 feet in height.

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. Therefore, any attempt to remove the Joshua tree from its current position will require an Incidental Take Permit (ITP).

The City of Hesperia's Municipal Code (Chapter 16.24) requires preservation of Joshua trees given their importance in the desert community. A qualified City-approved biologist or arborist should be retained to conduct any future relocation/transplanting activities and should follow the protocol of the City's Municipal Code and Protected Native Vegetation Plan provided by the City's Planning Division. The following criteria will be utilized by the contractor when conducting any future transplanting activities.

A. The Joshua trees will be retained in place or replanted somewhere on the site where they can remain in perpetuity or will be transplanted to an off-site area approved by the City where they can remain in perpetuity. Joshua trees which are deemed not suitable for transplanting will be cut-up and discarded as per City requirements.

B. Earthen berms will be created around each tree by the biologist prior to excavation and the trees will be watered approximately one week before transplanting. Watering the trees prior to excavation will help make excavation easier, ensure the root ball will hold together, and minimize stress to the tree.

C. Each tree will be moved to a pre-selected location which has already been excavated and will be placed and oriented in the same direction as their original direction. The hole will be backfilled with native soil, and the transplanted tree will be immediately watered. As noted in Section 3.0, a numbered metal tag was placed on the north side of the trees and the trees were also flagged with surveyor's flagging. The biologist will develop a watering regimen to ensure the survival of the transplanted trees. The watering regimen will be based upon the needs of the trees and the local precipitation.

6.0 REFERENCES

Brittingham, S. and W. Lawrence.
2000. Facilitation of *Yucca brevifolia* Recruitment by Mojave Desert Shrubs. Western North American Naturalist 60(4), pp. 374-383.

City of Hesperia.
1990. Native Desert Vegetation Ordinance, Municipal Code: Chapter 16.24.

Hickman, James C.
The Jepson Manual Higher Plants of California. University of California Press. Berkeley, CA. 3rd Edition. 1996.

Holland, Robert F.
1986 Preliminary Description of the Terrestrial Natural Communities of California. Prepared for the California Natural Diversity Data Base. California Department of Fish and Game. Sacramento, California. 160 pp.

Johnson, H.
1976 vegetation and Plant Communities of Southern California Deserts- a functional view. In Symposium proceedings: Plant communities of Southern California. June Latting, editor. California Native Plant Society, Spec. No. 2 Berkeley, CA.

Munz, Philip A.
1974. A Flora of Southern California. University of California Press, Berkeley, California. 1086 pp.

7.0 CERTIFICATION

I hereby certify the statements furnished above and in the attached exhibits, present the data and information required for this Joshua tree survey and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief. Field work conducted for this survey was performed by Lisa Cardoso and Ryan Hunter.

Date: February 8, 2021 Signed: Lisa Cardoso
Ryan Hunter

Field Work Performed by:

Ryan Hunter
Environmental Scientist/Biologist

Lisa Cardoso
Wildlife Biologist

APPENDIX A

Figures

FIGURE 1: REGIONAL EXHIBIT

RCA ASSOCIATES, INC.
SOURCE: GOOGLE EARTH

RCA
ASSOCIATES, INC.

FIGURE 2: VICINITY EXHIBIT

RCA ASSOCIATES, INC.
SOURCE: GOOGLE EARTH

RCA ASSOCIATES, INC.

RCA ASSOCIATES, INC

South of Lemon Street, East of C Avenue, and West of E Avenue in Hesperia, CA

5-acres

RCA ASSOCIATES, INC.
SOURCE: GOOGLE EARTH

#2021-13 JT

FIGURE 3: LOCATION OF JOSHUA TREES

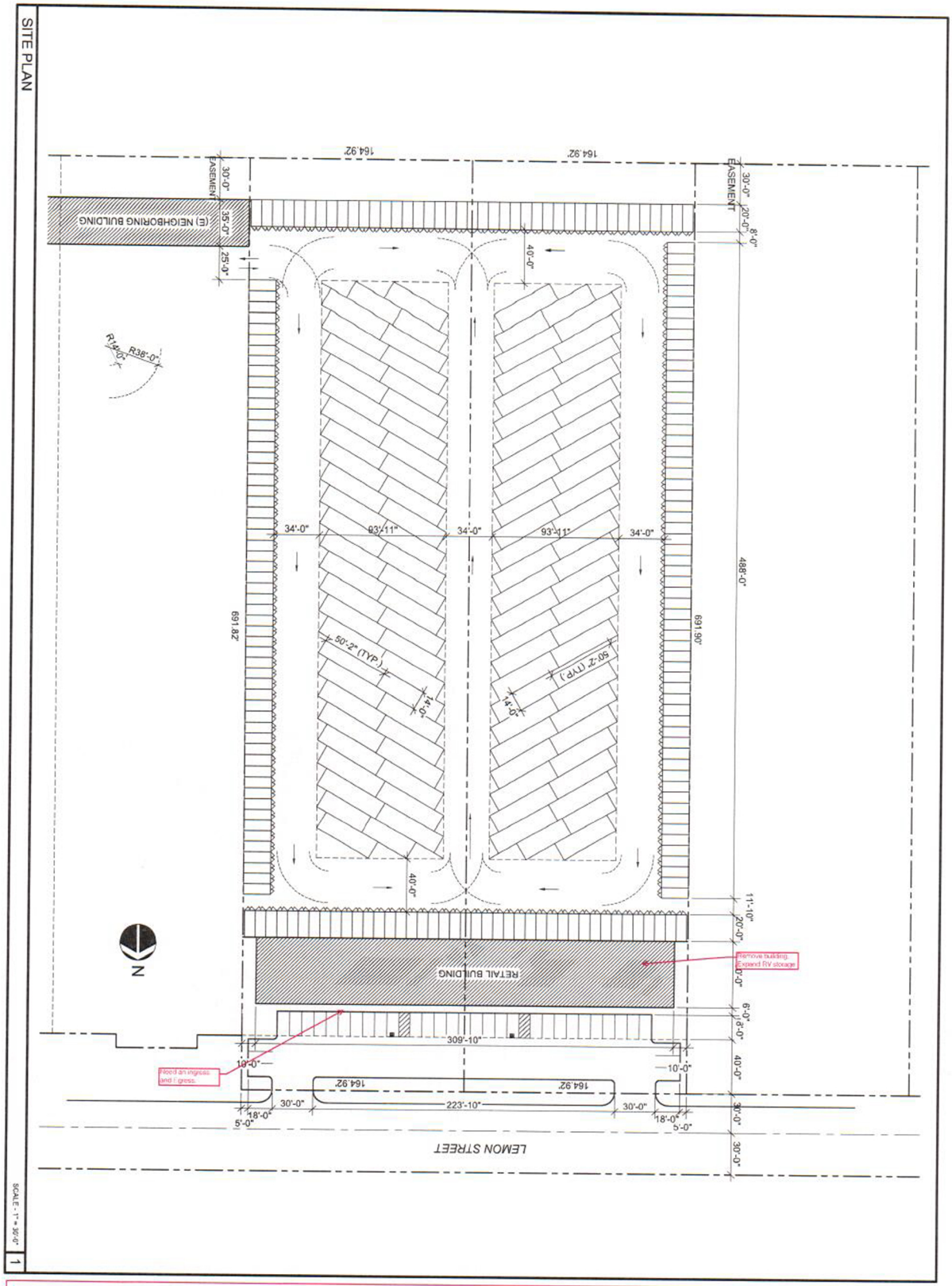

FIGURE 4
SITEPLAN

APPENDIX B

City of Hesperia
Municipal Code: Chapter 13.33

ARTICLE II. - DESERT NATIVE PLANT PROTECTION

16.24.110 - Purpose of provisions.

The city finds that it is in the public interest to preserve and protect specified desert native plants and provide for the conservation and wise use of our desert resources, through regulation, guidelines and enforcement that manage the removal or harvesting of such plants. They are also necessary to augment and coordinate with the State Department of Food and Agriculture in its efforts to implement and enforce the Desert Native Plant Act.

(Ord. 250 (part), 1997; SBCC § 811.0401)

16.24.120 - Scope of provisions.

A. The provisions of this article shall apply to all desert native plants growing on private land within the city and to desert native plants growing on public land owned by the city, county of San Bernardino or the state of California, except as specified by Article I of this chapter and as specified by this section.

B. Except as otherwise provided by this chapter, any person who willfully removes, or harvests or transplants a living desert native plant shall first obtain approval from the county to do so in accordance with the procedures set forth in Sections 16.24.040 or 16.24.110 et seq.

(Ord. 250 (part), 1997; SBCC § 811.0405)

16.24.130 - Commercial harvesting or transplanting of desert native plants.

A. The commercial harvesting of desert native plants shall be prohibited, except as permitted and authorized by the State Department of Food and Agriculture and as specified in the Desert Native Plant Act of 1983, as amended. The San Bernardino County Agricultural Commissioner shall be responsible for the issuance of the appropriate tags, seals and permits required by the state.

1. Protected desert native plants as specified by Section 16.24.150(B) may only be removed by a scientific or educational institution which has obtained a permit from the county agricultural commissioner for a specified number and species of these plants.
2. Written permission must be obtained from and signed by the owner of the property on which the plants are located. A copy of the document granting such permission shall be submitted to the county agricultural commissioner prior to issuance of the permit.

B. An application for a desert native plant commercial harvesting permit shall be filed with the county agricultural commissioner for review and processing. If it is determined that the proposed harvesting would not require an environmental impact report, the agricultural commissioner shall process the permit application in accordance with the provisions of this article. If an environmental impact report is required, the agricultural commissioner shall proceed only after an environmental impact report is certified, the concerns and issues are addressed, and findings made pursuant to law.

(Ord. 250 (part), 1997; SBCC § 811.0410)

16.24.140 - Findings for commercial harvesting or transplanting of desert native plants.

The county agricultural commissioner or other reviewing authority shall only authorize the commercial harvesting or transplanting of desert native plants listed in Section 16.24.150(B) subject to the provisions of this article only if one or more of the following findings are made:

A. The desert native plants are to be transplanted or harvested in a manner approved by the county agricultural commissioner or other reviewing authority, including any requirement for the issuance of plant tag seals and/or wood receipts;

B. The desert native plant is to be transplanted to another property within the same plant habitat under the supervision of a desert native plant expert and the removal of such plant will not adversely affect the desert environment on the subject site;

C. Any desert native plant on the site which is determined by the agricultural commissioner or other reviewing authority as requiring transplanting has or will be transplanted or stockpiled for transplanting in accordance with methods approved by the county agricultural commissioner. A desert native plant expert shall supervise and manage any required transplanting of desert native plants;

D. The harvesting operation has incorporated all mitigation measures, if any, establish by the environmental review action;

E. The harvesting operator has been notified of the availability of all known plants that are proposed to be removed by construction

activity within the vicinity so that these may be used in lieu of those proposed to be harvested.

(Ord. 250 (part), 1997; SBCC § 811.0415)

16.24.150 - Subject desert native plants.

The following desert native plants are subject to the regulations specified by this chapter. In all cases the botanical names shall govern the interpretation of this article.

A. Regulated Desert Native Plants. The following desert native plants, or any part thereof except the fruit, shall not be harvested or removed except under a permit issued by the agricultural commissioner or other applicable reviewing authority:
   1. The following desert native plants with stems two inches or greater in diameter or six feet or greater in height:
      a. Dalea, Spinosa (smoketree);
      b. All species of the family Agavaceae (century plants, nolinas, yuccas);
      c. All species of the genus Prosopis (mesquites).
   2. Creosote Rings, ten feet or greater in diameter.
   3. All Joshua trees (mature and immature).

B. All plants protected or regulated by the State Desert Native Plants Act (i.e., Food and Agricultural Code 80001 et seq.) shall be required to comply with the provisions of those statues prior to the issuance of any county development permit or land use application approval. The county agricultural commissioner is the responsible agency for the issuance of any required wood tags, seals or permits.

(Ord. 250 (part), 1997; SBCC § 811.0420)

16.24.160 - Subject area.

This article is applicable only within the city in which these desert native plants grow in a natural habitat.

(Ord. 250 (part), 1997; SBCC § 811.0425)

16.24.170 - Enforcement.

In addition to the enforcement provisions and penalties prescribed in Article I of this chapter and/or the State Food and Agricultural Code, Division 23, Chapter 7, the following shall apply:

A. Upon conviction of a violation of this article, all desert native plant harvesting permits issued to the person convicted shall be revoked and the permittee shall be required to surrender any unused tags and seals or wood receipts to the agricultural commissioner and no new or additional permits shall be issued to the permittee for a period of one year from the date of conviction.

B. Upon the second conviction, all permits issued to the person convicted shall be revoked and the permittee shall be required to surrender any unused tags and seals or wood receipts to the agricultural commissioner and no new or additional permits shall be issued to the permittee at any time in the future from the date of such second conviction.

C. The reviewing authority may revoke any permit, tags, or seals issued for the purpose of harvesting if the permittee willfully fails to comply with all of the conditions or stipulations of the permit.

D. Each permit authorizing the harvesting, or possessing of desert native plants or live or dead mesquite, palo verde, or ironwood species of trees which are harvested for wood shall be accompanied by a sufficient number of tags and seals or wood receipt. Such tags, seals, or wood receipts shall be issued, transported, and may be transferred to other parties in accordance with the California Desert Native Plant Act, as amended.

(Ord. 250 (part), 1997; SBCC § 811.0430)

16.24.180 - Definitions.

Terms and phrases used within this article shall be defined by Chapter 16.08 and/or as defined by the Food and Agricultural Code. The Food and Agricultural Code definition, if one exists, shall prevail over a conflicting definition in this code.

(Ord. 250 (part), 1997; SBCC § 811.0435)