

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

**HESPERIA, SAN BERNARDINO COUNTY, CALIFORNIA
(APN:3064-371-12)**

Prepared for:

Varinder Paul Sangha Trucking

Prepared by:

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

Principal Investigators:

**Ryan Hunter, Senior Environmental Scientist, Wildlife Biologist
Brian Bunyi, Environmental Scientist, Wildlife Biologist**



Project: #2022-153 BA

October 21, 2022

TITLE PAGE

Date Report Updated: October 21, 2022

Date Field Work Completed: September 20, 2022

Report Title: General Biological Resources Assessment

Assessor's Parcel Number: 3064-271-12

Principal Investigators: Ryan Hunter, Senior Environmental Scientist &
Wildlife Biologist
Brian Bunyi, Environmental Scientist, Wildlife Biologist
Randall Arnold, Senior 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

Ryan D. Hunter
RCA Associates, Inc.
15555 Main Street, #D4-235
Hesperia, CA 92345
(760) 998-9165
rhunter@rcaassociatesllc.com
www.rcaassociatesllc.com

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REGULATORY CONTEXT

1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 4.37-acre parcel (Approximate), located Northwest of the intersection of Avenal Street and Highway 395 in the City of Hesperia, California (APN:3064-271-12) (Figures 1 and 2). The property site is located in Section 16, Township 4 North, Range 5 West (USGS Baldy Mesa, CA 7.5-minute quadrangle) (Figures 1 and 2).

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 20, 2022, 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, 2022). 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 4.37-acres and is located Northwest of the intersection of Avenal Street and Highway 395 in the City of Hesperia, California (APN:3064-271-12) (Figures 1 and 2). The property site is located in Section 16, Township 4 North, Range 5 West (USGS Baldy Mesa, CA 7.5-minute quadrangle). The property is located in an area zoned for commercial/industrial business park (CIBP). The site is bordered on its north and south boundaries with commercial businesses and homes. To the west of the site is vacant land and east of the site is Highway 395 with vacant land beyond.

The relatively flat site is approximately 1070 meters above sea level and contains no slope. The property consists of Cajon sand which has a zero to two percent slope, no frequency of flooding, well-draining, and has a low available water capacity. The vegetation community present on site supports a heavily disturbed ruderal plant community that has grown back from being graded in recent years and encompasses a few native plants and some non-native grasses. The site is dominated by western Joshua tree (*Yucca brevifolia*), tumbleweed (*Kali tragus subsp. tragus*), and Asian mustard (*Brassica tournefortii*). Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

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

Birds observed included common ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), house sparrow (*Passer domesticus*), Cactus Wren (*Campylorhynchus brunneicapillus*) and rock pigeon (*Columba livia*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

One reptile was observed during the field investigation, the western whiptail (*Aspidoscelis tigris*). Although unseen, the side-blotched lizard (*Uta stansburiana*) is common in the area. Table 2 provides a compendium of wildlife species.

In addition, no sensitive habitats (e.g., sensitive species, critical habitats, etc.) have been documented in the immediate area according to the CNDDDB (2022) and none were observed during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on September 20, 2022, 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 70's (°F) (AM), and 0% cloud cover. The applicable methodologies are summarized below.

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

4.0 LITERATURE SEARCH

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

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

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

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Baldy Mesa Quadrangle			
Short-joint beavertail (<i>Opuntia basilaris</i> var. <i>brachyclada</i>)	Federal: None State: None CNPS: 1B.2	Desert scrub Joshua tree woodland	The site does not support suitable habitat for the species; None were observed during field surveys.
Sagebrush loeflingia (<i>Loeflingia squarrosa</i> var. <i>artemisiarum</i>)	Federal: None State: None CNPS: 2B.2	Creosote bush scrub, sagebrush scrub, dunes	The site does not support suitable habitat, however 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, 2022) 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	No tortoises or tortoise sign observed on-site.
Yellow warbler (<i>Setophaga petechia</i>)	Federal: None State: None	Dense riparian vegetation.	The site does not support suitable habitat for the species and species is not expected to 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.	No suitable habitat present on the site. No owls or burrows observed during survey; however, this mobile species occurs throughout Southern California and could potentially occur in the area in the future.
Coast horned lizard (<i>Phrynosoma blainvillii</i>)	Federal: None State: None	Inhabits open areas of sandy soils and low vegetation in valleys, foothills, and semiarid mountains	No suitable habitat present and species not observed during field investigations.
Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>)	Federal: None State: Threatened	Desert scrub	Site does not support habitat for the species, and none were observed during field investigations.
Loggerhead shrike (<i>Lanius ludovicianus</i>)	Federal: None State: None	Open country with scattered shrubs and trees	Site does not support habitat for the species, and none were observed during field investigations.

5.0 RESULTS

5.1 General Biological Resources

The site supports a highly disturbed desert scrub plant community that has been recently cleared of most vegetation and is dominated by a ruderal plant community consisting of native vegetation and non-native grasses. Species present include flatspine bur ragweed (*Ambrosia acanthicarpa*), tumbleweed (*Kali tragus sbsps. tragus*), bladder sage (*Scutellaria mexicana*), western Joshua tree (*Yucca brevifolia*) and waterjacket (*Lycium andersonii*). 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*), and Eurasian collared dove (*Streptopelia decaocto*). Although mammals were not observed, the California ground squirrel (*Otospermophilus beecheyi*), black-tailed jackrabbit (*Lepus californicus*), desert cottontails (*Sylvilagus audubonii*), and coyote (*Canis latrans*) are common in the area and may be observed traversing the site. Reptiles common in the surrounding area include the common side-blotched lizard (*Uta stansburiana*) and western whiptail (*Aspidoscelis tigris*). 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

The following are the listed and special status species that have the ability to occur on the project site or which are present. However, it is not a comprehensive list of all the special status species which have been documented in the immediate region (CNDDDB, 2022).

Desert Tortoise: The site is located within the documented tortoise habitat according to CNDDDB with the nearest documented sighting about 2-miles southwest of the property (CNDDDB, 2022). The property does not support suitable habitat for the desert tortoise; and, no tortoises or tortoise sign (burrows, scats, etc.) were observed anywhere within the property boundaries or in the surrounding area during the September 20, 2022, surveys. Based on the results of the survey and the low population levels of the species in the region, tortoises are not expected to move onto the site in the near future. In addition, there are several commercial developments in the area and relatively busy roadways in the immediate area which may act as barriers to migration of tortoises.

Mohave Ground Squirrel: The site does occur within the known distribution of the Mohave Ground Squirrels, and the nearest documented observation is about 2.5-miles to the northwest of the property. However, there are no recent observations of Mohave ground squirrels within the area, and it is the opinion of RCA Associates, Inc. that Mohave ground squirrels are unlikely to occur on the site based on the following criteria.

1. Relatively small size (4.37-acres);
2. No recent documented observations in the general region;
3. Lack of suitable habitat.

5.3 Species of Special Concern

The following is a list of special status wildlife species which have been documented in the region; however, only a few of these species could potentially occur on the site. Several of the species are not expected to occur on the property due to absence of suitable habitat but are included for clarity.

Burrowing Owl: The site is located within documented burrowing owl habitat according to CNDDDB with the nearest documented sighting less than 4-mile east of the property (CNDDDB, 2022). Limited habitat for the species is located on site due to it being void of suitable burrows. No owls or owl sign (whitewash, etc.) were seen on the property during the focused owl survey. There is a possibility of owls moving onto this site how it is unlikely based on the results of the field investigations and absence of suitable burrows for utilization. A pre-construction survey maybe necessary 30-days prior to the start of any ground disturbance activities.

Yellow warbler: Yellow warbler have been documented in the region (Occurrence #29, Hesperia, California Quad, 2021). Yellow warblers are unlikely to occur on the site since suitable habitat (i.e., dense riparian vegetation) is not present.

Short Joint Beavertail Cactus: Beavertail cactus are readily identifiable and if present on the site, would have been observed during the extensive field investigations conducted throughout the site. Short-joint beavertail has been observed in the region (Occurrence #20, Baldy Mesa, California Quad, 2022), with the most recent documented sighting (1989) in the region approximately one mile to the west (CNDDDB, 2022). The species is not expected to occur on the site in the near future.

Sagebrush Loefflingia: This plant species typically occurs in sagebrush habitats, chaparral and grassland areas and is unlikely to occur on the site given the absence of suitable habitat. The nearest observation is about four miles north of the site and was recorded in 2005 (Baldy Mesa, California Quad, CNDDDB 2022).

Coast horned lizard: Coast horned lizard have been documented in the region (Occurrence # 224, Baldy Mesa, California Quad, 2022). The use of the site by coast horned lizards may be very infrequent given the low population levels in the region as well as the lack of any recent sightings in the immediate region according to the CNDDDB (2022).

Loggerhead Shrike: Shrikes have been documented in the surrounding region (CNDDDB, 2022). Shrikes could potentially occur on the site; although, the use of the site by the species may be very infrequent given the low population levels in the region as well as the lack of any recent sightings according to the CNDDDB (2022).

5.4 Jurisdictional Waters and Riparian Habitat

The following sources were reviewed to determine the potential presence or absence of jurisdictional streams/drainages, wetlands, and their location within the watersheds associated with the Project site, and other features that might contribute to federal or state jurisdictional authority located within watersheds associated with the Project site:

- National Wetlands Inventory (NWI) maps (USFWS 2018b). The NWI database indicates potential wetland areas based on changes in vegetation patterns as observed from satellite imagery. This database is used as a preliminary indicator of wetland habitats because the satellite data are not precise.
- USGS National Hydrography Dataset (NHD) provides the locations of “blue-line” streams as mapped on 7.5-Minute Topographic Map coverage.
- Aerial Imagery (Google Earth) (Google 2022).
- USGS 7.5-Minute Topographic Maps; and
- Natural Resources Conservation Service (NRCS) Soil Survey.

Assessments of potential jurisdictional areas within the Project site were conducted by RCA Associates, Inc. biologists Ryan Hunter and Brian Bunyi on September 20, 2022, to determine the current site conditions. All areas with potential depressions or drainages were evaluated to determine if they may be considered jurisdictional waters, including jurisdictional wetlands. The site does not contain any riparian species (e.g., cottonwoods, willows, mule fat) within the boundaries or immediate surrounding area which are common in potentially jurisdictional channels on site. It was determined that the site does not have any potential jurisdictional water features on site. It is the opinion of RCA Associates, Inc. that a comprehensive jurisdictional delineation will not be necessary, nor will any additional permits (e.g., 1602, 401 and 404) 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 2022. Due to the presence of Joshua Trees on the site, a “Protected Plant Plan” was performed on October 29, 2021. Joshua trees are scattered around the site, and any attempt to remove a Joshua tree, dead or alive, from its current position will require an Incidental Take Permit (ITP).

6.0 IMPACTS AND MITIGATION MEASURES

6.1 General Biological Resources

Future development of the site will 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 4.37-acres of a 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 September 20, 2022 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 CONSIDERATIONS

Future development activities include partial development of the property within the approximate 4.37-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. Some mitigation measures that may be considered are:

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. Focused plant surveys for all special status plant species that have the potential to occur on the site. If focused plant surveys are considered, surveys should be performed during the blooming season (April - June) to determine the potential environmental effects of the proposed project on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife

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

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CERTIFICATION

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

Date: 10/21/2022 Signed: *Ryan Hunter*
Brian Bunyi

Field Work Performed By: Ryan Hunter
Senior Environmental Scientist/Biologist

Field Work Performed By: Brian Bunyi
Environmental Scientist/Wildlife Biologist

Appendix A
Tables and Figures



FIGURE 1: REGIONAL EXHIBIT

RCA ASSOCIATES, INC.
SOURCE: GOOGLE EARTH

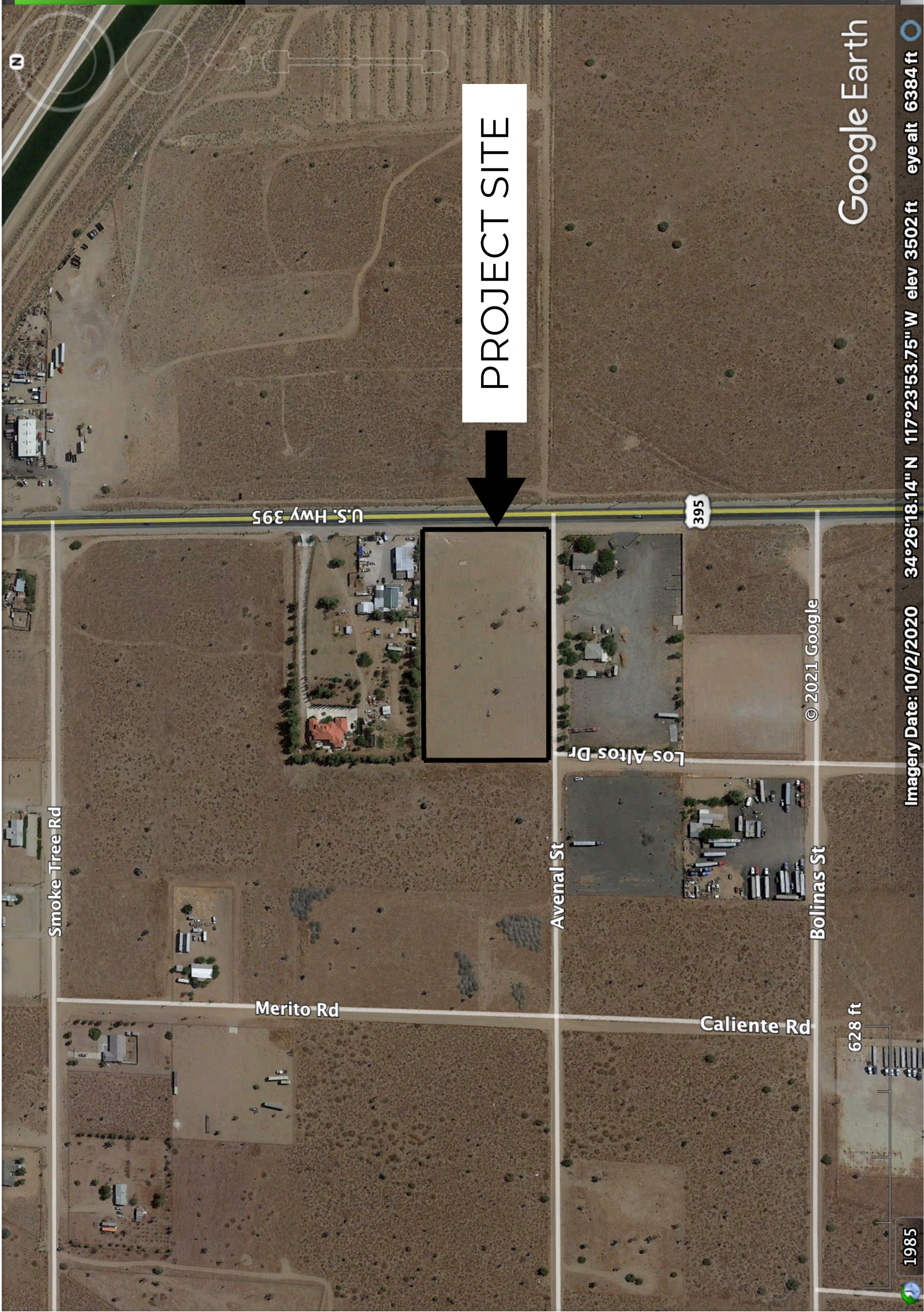


FIGURE 2: VICINITY EXHIBIT

CENTER OF SITE LOOKING NORTH



CENTER OF SITE LOOKING EAST



FIGURE 3: PHOTOGRAPHS OF SITE

CENTER OF SITE LOOKING SOUTH



CENTER OF SITE LOOKING WEST



FIGURE 3, cont: PHOTOGRAPHS OF SITE

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

Common Name	Scientific Name	Location
Asian mustard	<i>Brassica tournefortii</i>	On Site
Joshua Tree	<i>Yucca brevifolia</i>	“
Rubber rabbitbrush	<i>Ericameria nauseosa</i>	“
Nevada jointfir	<i>Ephedra nevadensis</i>	“
White bursage	<i>Ambrosia Dumosa</i>	“
Red brome	<i>Bromus rubens</i>	“
Cheatgrass	<i>Bromus tectorum</i>	“
Common stork's bill	<i>Erodium cicutarium</i>	“
Water jacket	<i>Lycium andersonii</i>	“
Kelch grass	<i>Schismus barbatus</i>	“
Tumbleweed	<i>Kali tragus var. tragus</i>	“
Flatspine bur ragweed	<i>Ambrosia acanthicarpa</i>	“

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

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

Common Name	Scientific Name	Location
Common raven	<i>Corvus corax</i>	On-site and in the surrounding area.
House finch	<i>Carpodacus mexicanus</i>	“
Rock pigeon	<i>Columba livia</i>	“
House sparrow	<i>Passer domesticus</i>	“
Mockingbird	<i>Mimus polyglottos</i>	“
Cactus Wren	<i>Campylorhynchus brunneicapillus</i>	“
Red-tailed hawk	<i>Buteo jamaicensis</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 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 nonfederal entities to incidentally take federally listed wildlife or fish. Incidental take is defined by ESA as take that is “incidental to, and not the purpose of, the carrying out of another wise lawful activity.” Preparation of a habitat conservation plan, generally referred to as an HCP, is required for all Section 10(a) permit applications. The USFWS and National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA Fisheries Service) have joint authority under the ESA for administering the incidental take program. NOAA Fisheries Service has jurisdiction over anadromous fish species and USFWS has jurisdiction over all other fish and wildlife species.

Section 7 of the ESA requires all federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any species listed under the ESA, or result in the destruction or adverse modification of its habitat. Federal agencies are also required

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

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

California Endangered Species Act

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

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

Clean Water Act, Section 404

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

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

Clean Water Act, Section 401

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

California Fish and Wildlife Code, Sections 1600-1616

Under the California Fish and Wildlife Code, Sections 1600-1616 CDFW regulates projects that divert, obstruct, or change the natural flow or bed, channel, or bank of any river, stream, or lake. Proponents of such projects must notify CDFW and enter into a streambed alteration agreement with them.

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

California Fish and Wildlife Code, Section 3503.5

Under the California Fish and Wildlife Code, Section 3503.5, it is unlawful to take, possess, or destroy any birds in the 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.