# GENERAL BIOLOGICAL RESOURCES ASSESSMENT

# RAIL LOOP PROJECT

# HINKLEY, SAN BERNARDINO COUNTY, CALIFORNIA

Prepared for:

LCM Development, LLC Hinkley, CA

Prepared by:

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#### 1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 115-acre parcel (approximately) located northwest of Santa Fe Avenue and Hinkley Road in Hinkley, San Bernardino County, California (Township 10 North, Range 3 West, Section 7; Township 10 North, Range 4 West, Section 12; Township 10 north, Range 4 West, Section 13; Township 10 North, Range 4 West, Section 13; Township 10 North, Range 4 West, Section 14; Township 10 North, Range 3 West, Section 18; Township 10 North, Range 4 West, Section 23; Township 10 North, Range 4 West, Section 24, USGS Twelve Guage Lake and Hinkley, California Quadrangles, 1956) (Figures 1 and 2). The property is located in an unincorporated area of San Bernardino County, California northwest of Barstow.

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 May 14, 2024, during which the biological resources on the site and in the surrounding areas were documented by biologists from RCA Associates, Inc. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife species. The property was also evaluated for the presence of sensitive habitats including wetlands, vernal pools, riparian habitats, and jurisdictional areas.

Focused surveys were also conducted for both desert tortoise and burrowing owl and a habitat evaluation was performed for the Mohave ground squirrel. Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDB 2024). Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980).

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#### 2.0 EXISTING CONDITIONS

The property is 115-acre parcel (approximately) located northwest of the intersection of Santa Fe Avenue and Hinkley Road, San Bernardino County, California (Township 10 North, Range 3 West, Section 7; Township 10 North, Range 4 West, Section 12; Township 10 north, Range 4 West, Section 13; Township 10 North, Range 4 West, Section 13; Township 10 North, Range 4 West, Section 14; Township 10 North, Range 3 West, Section 18; Township 10 North, Range 4 West, Section 23; Township 10 North, Range 4 West, Section 24, USGS Twelve Gauge Lake and Hinkley, California Quadrangles, 1956) (Figures 1 and 2). Vacant undeveloped land borders the site in all directions with the railroad adjacently south of the site within a portion of BLM land (Figures 7 & 8).

The site is relatively flat, approximately 660 meters above sea level, and is undisturbed. The vegetation community on site is native desert scrub encompassing mainly native plants and a few non-native grasses. The site is dominated by Mexican bladder sage (*Scutellaria mexicana*), water jacket (*Lycium andersonii*), white bursage (*Ambrosia dumosa*), pincushion flower (*Chaenactis fremontii*), turkshead (*Chorizanthe rigida*), creosote bush (*Larrea tridentata*), redstem stork's bill (*Erodium cicutarium*), Menzies fiddleneck (*Amsinckia menziesii*) and kelch grass (*Schismus barbatus*). Other species of flora that occur on site and in the surrounding area are discussed in section 5.0.

The site is expected to support a variety of wildlife species due to the site showing no signs of previous human disturbance and its remote location in the vastly uninhabited part of San Bernardino County. Mammals that were observed on site included the California ground squirrel (*Otospermophilus beecheyi*) and antelope ground squirrel (*Ammospermophilus leucurus*). Other mammalian species that are expected to occur on site include the desert cottontail (*Sylvilagus audubonii*), black-tailed jackrabbit (*Lepus californicus*) and coyote (*Canis latrans*). Some birds observed on site during the field investigations included ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), and horned lark (*Eremophila alpestris*). Other avian species that were observed or expected to utilize the site and surrounding area are discussed in section 5.0. Many of the species observed on site were reptilian species due to the high temperatures and time of day. Reptilian species observed on site during the May 2024 field investigations include desert tortoise

(Gopherus agassizii), red racer (Coluber flagellum piceus), long-nosed leopard lizard (Gambelia wislizenii) and western shovel-nosed snake (Chionactis occipitalis). While not observed in the survey area of the planned rail loop, signs of desert tortoise were observed at locations along portions of the haul road leading to the primary project area. A list of species that could Possibly inhabit the site are discussed in section 5.0.

#### 3.0 METHODOLOGIES

General biological surveys were conducted on May 14, 2024, during which biologists from RCA Associates, Inc. initially walked ten meter transects throughout the property and immediate surrounding areas. A special area of fucus was the southwestern portion of the project where the rail loop would extend down to the existing BNSF main line tracks through BLM land (Figure X). 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. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the high 60's to high 80's (°F) (AM) with 10% cloud cover. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980). The applicable methodologies are summarized below.

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

**Desert Tortoise:** A habitat assessment of the primary project area, the BLM easement area, and the 1-mile haul road leading to the planned rail loop area was conducted on May 14, 2024. All surveys were performed during the times recommended by CDFW and USFWS in the desert tortoise survey protocol. All surveys were performed by biologists from RCA Associates, Inc. for the presence of any tortoises or potential tortoise burrows. Transects were walked in 10-meter

intervals in an east-west direction inside and around the rail loop project. 10-meter transects were then walked along the proposed haul road in a northeast-southwest direction until the entire property had been checked for any tortoise sign (burrows, tracks, scats, etc.). Surveys in the zone of influence (ZOI) were also conducted surrounding the site out to 500 feet. Comprehensive field investigations were conducted throughout the primary rail loop project site, the BLM easement, and along the 1-mile haul road to the site and the related zones of influence. The only tortoise sign observed was along the 1-mile haul road and its zone of influence. No desert tortoise signs were identified or observed within the rail loop project area, BLM easement, or their zones of influence (Figure 9). During the field investigations there were two potential burrows found that had not been used in recent years along with two active burrows, one of which was occupied by an adult desert tortoise, all on the east side of the haul road (Figures 7 & 8). The two potential burrows were identified as class 2 and class 3 burrows while the two active burrows were identified as class 1 burrows. A class 1 burrow is a burrow that has a living tortoise occupying it or one that shows tracks and scats around it that is being clearly utilized. A class 2 burrow is one that is tortoise shaped and shows no signs of structural degradation internally or at the mouth of the burrow. Class 3 burrows show signs of heavy degradation of the burrow and typically are burrows that may have been tortoise burrows at one time but have been abandoned and partially caved in not allowing tortoises to go inside. In addition to the burrows, one adult desert tortoise carcass was found to the west of the haul road that was not intact. It is the professional opinion of RCA Associates, Inc. that no tortoises or signs were observed in the rail loop area due to a significant habitat change (Figure 6). The rail loop is a low-lying alkali scrub flats with sparse vegetation. Most all the haul road is located in a creosote bush habitat that is preferred by the desert tortoises. Figures 7 and 8 show the locations and photographs documenting the observances.

During the various biological surveys, all transects were walked at a pace that allowed for careful observations along the transect routes and in the immediate vicinity. Field notes were recorded regarding native plant assemblages, wildlife sign, and human effects in order to determine the presence or absence of suitable tortoise foraging habitat. Due to the presence of tortoises and tortoise sign on site, a Section 10(a) incidental take permit from the USFWS and a Section 2081 permit from CDFW will be required to mitigate impacts to the species.

**Burrowing Owl:** A habitat assessment (Phase 1) was conducted for the burrowing owl in conjunction with the general biological surveys to determine if the site supports suitable habitat for the species on May 14, 2024. Following completion of the habitat assessment, it was determined that the site does support suitable habitat for the burrowing owl, but no owls were observed. After the field investigations it was determined that there was no owl sign (e.g. whitewash, feathers, or castings) or inhabiting owls due to the lack of many suitable burrows on site or in the immediate vicinity. As part of the burrowing owl survey, meandering transects were walked throughout the site during which any suitable burrows were evaluated for owls and owl sign. Burrowing owls typically utilize burrows which have been excavated by other animals (squirrels, coyotes, foxes, dogs, etc.) since owls cannot dig their own burrows. CDFW protocol also requires surveys be conducted in the surrounding area out to about 500 feet; therefore, the zone of influence (ZOI) surveys was performed in the area surrounding the site. If present on a site, CDFW typically requires the owls to be passively relocated during the non-breeding season.

Mohave Ground Squirrel: An evaluation for suitable habitat of the Mohave ground squirrel was performed as per CDFW protocol including evaluation of local populations and an assessment of connectivity with habitats in the surrounding area which might support populations of the Mohave ground squirrel. Surveys yielded poor Mohave ground squirrel habitat quality of the project area, no recent sightings of Mohave Ground Squirrel in this general area in the past 10 years, and the low population levels. Due to these survey results, it is the opinion of RCA Associates, Inc. that the likelihood of a Mohave ground squirrel occurring on the proposed project site is extremely low.

#### 4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDB 2024) search was performed. Based on this review, it was determined that eight sensitive wildlife species and two sensitive plant species have been documented within the Twelve Guage Lake and Hinkley quadrangles of the property. The following tables provide data on each special status species which has been documented in the area.

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

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

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Hinkley & Twelve G	uage Lake Quadrangles		
Desert cymopterus (Cymopterus deserticola)	Federal: None State: None CNPS: 1B.2	Joshua tree woodland, Mojavean desert scrub. On fine to coarse, loose, sandy soil of flats in old dune areas with well-drained sand. 625-1220 m.	No suitable habitat, will not occur on site.
Barstow woolly sunflower (Eriophyllum mohavense)	Federal: None State: None CNPS: 1B.2	Chenopod scrub, Mojavean desert scrub, desert playas. Mostly in open, silty or sandy areas w/saltbush scrub, or creosote bush scrub. Barren ridges or margins of playas. 605- 1290 m.	Minimal suitable habitat, none observed on site.

#### **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, 2024) or likely to occur in the region.

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE OR ABSENCE ON PROPERTY
ANIMAL			
Within Hinkley & Twel	ve Guage Lake Quadr	angles	
Arroyo toad (Anaxyrus californicus)	Federal: Endangered State: None CDFW: SSC	Semi-arid regions near washes or intermittent streams, including valley-foothill and desert riparian, desert wash, etc. Rivers with sandy banks, willows, cottonwoods, and sycamores; loose, gravelly areas of streams in drier parts of range.	No suitable habitat, will not occur on site.
Loggerhead shrike (Lanius ludovicianus)	Federal: None State: None CDFW: SSC	Broken woodlands, savannah, pinyon- juniper, Joshua tree, and riparian woodlands, desert oases, scrub and washes. Prefers open country for hunting, with perches for scanning, and fairly dense shrubs and brush for nesting.	No suitable habitat, will not occur on site.
Burrowing owl (Athene cunicularia)	Federal: None State: None CDFW: SSC	Open, dry annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. Subterranean nester, dependent upon burrowing mammals, most notably, the California ground squirrel.	Minimal suitable habitat, likely will not occur due to the lack of sign and suitable burrows.
American badger (Taxidea taxus)	Federal: None State: None CDFW: SSC	Most abundant in drier open stages of most shrub, forest, and herbaceous habitats, with friable soils. Needs sufficient food, friable soils and open, uncultivated ground. Preys on burrowing rodents. Digs burrows.	Minimal suitable habitat, likely not to occur given the due to food being scarce.

Mohave ground squirrel (Xerospermophilus mohavensis)	Federal: None State: Threatened	Open desert scrub, alkali scrub and Joshua tree woodland. Also feeds in annual grasslands. Restricted to Mojave Desert. Prefers sandy to gravelly soils, avoids rocky areas. Uses burrows at base of shrubs for cover. Nests are in burrows.	Minimal suitable habitat but not prime habitat. Most likely will not occur due to low occurrence and observation levels in the area over the last 10 years.
Desert tortoise (Gopherus agassizii)	Federal: Threatened State: Threatened	Most common in desert scrub, desert wash, and Joshua tree habitats; occurs in almost every desert habitat. Require friable soil for burrow and nest construction. Creosote bush habitat with large annual wildflower blooms preferred.	Some suitable habitat along the haul road but none found within the primary project area. Signs and Species were observed along northern sections of the haul road but no signs of Species observed in the primary rail loop project area or along the BLM easement.
Mohave tui chub (Siphateles bicolor mohavensis)	Federal: Endangered State: Endangered	Endemic to the Mojave River basin, adapted to alkaline, mineralized waters. Needs deep pools, ponds, or slough-like areas. Needs vegetation for spawning.	No suitable habitat, will not occur on site.
Mojave fringe-toed lizard (Uma scoparia)	Federal: None State: None CDFW: SSC	Fine, loose, wind-blown sand in sand dunes, dry lakebeds, riverbanks, desert washes, sparse alkali scrub and desert scrub. Shrubs or annual plants may be necessary for arthropods found in the diet.	Some suitable habitat, none were observed during the field investigations.

#### 5.0 RESULTS

# 5.1 General Biological Resources

The site shows no signs of past human disturbance and consists of native vegetation occurring throughout the site (Figure 3, 4 & 5). Species present on the site included Asian mustard (*Brassica tournefortii*), big saltbush (*Atriplex lentiformis*), white bursage (*Ambrosia dumosa*), desert sand verbena (*Abronia villosa*) and rattlesnake weed (*Euphorbia albomarginata*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed on site and in the surrounding area included ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), and horned lark (*Eremophila alpestris*). Table 2 provides a compendium of all wildlife species occurring on site and/or in the immediate surrounding area.

The site is expected to support a variety of wildlife species due to it showing no signs of past human disturbance. Two mammals were observed during field surveys, the California ground squirrel (*Otospermophilus beecheyi*) and Antelope ground squirrel (*Ammospermophilus leucurus*). Other mammalian species that are expected to inhabit the region include jackrabbits (*Lepus californicus*), desert cottontail (*Sylvilagus audubonii*) and coyote (*Canis latrans*). Table 2 provides a compendium of all wildlife species occurring on the site and/or in the immediate surrounding area.

Merriam's kangaroo rats (*Dipodomys merriamii*) may also occur on the site given their wide-spread distribution in the region. Tables 1 and 2 (Appendix A) provide a compendium of the various plant and animal species identified during the field investigations and those common to the area. No distinct wildlife corridors were identified on the site or in the immediate area.

Reptilian species that were observed on site during the May 14, 2024, field investigations included the desert horned lizard (*Phrynosoma platyrhinos*), desert tortoise (*Gopherus agassizii*), red racer (*Coluber flagellum piceus*), long-nosed leopard lizard (*Gambelia wislizenii*) and western shovel-nosed snake (*Chionactis occipitalis*). Other reptiles that have the potential to occur in the surrounding area and that may occur on site include the side-blotched lizard (*Uta stansburiana*), Mohave rattlesnake (*Crotalus scutulatus*) and desert spiny lizard (*Sceloporus magister*). Table 2

provides a compendium of wildlife species observed during the various surveys and those likely to occur in the area.

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

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

#### 5.2 BLM Easement

This project are includes a 1500 LF x 100 ft. wide "Y"-Track easement from the BNSF Main rail line across BLM property and into the proposed rail loop area in Section 13 (Figures 5, 7, and 8). To satisfy BLM requirements this survey included this easement and its zone of influence. The survey was conducted in and along the planned rail track easement was conducted using all of the same protocols and procedures as performed on the main project area. The survey conducted by biologists from RCA Associates, Inc. came back as negative for any state or federally listed species. In addition, there were no desert tortoises or tortoise sign observed in this area (e.g. burrows, scat, etc.). Also, no CDFW Species of special concern were observed and identified in the focus area.

# **5.3** Federal and State Listed Species

**Desert Tortoise:** Neither the subject property nor the BLM easement supports suitable habitat for the desert tortoise. Only along the 1-mile haul zone of influence is suitable as it is a creosote bush habitat. The habitat in the area of and inside the planned rail loop and along the BLM easement is not considered suitable nor was there any sign of desert tortoise observed in these two areas. During the field investigations there were two potential burrows found that had not been used in recent years along with two active burrows, one of which was occupied by an adult desert tortoise, all on the east side of the haul road. The two potential burrows were identified as class 2 and class 3 burrows while the two active burrows were identified as class 1 burrows. A class 1

burrow is a burrow that has a living tortoise occupying it or one that shows tracks and scats around it that is being clearly utilized. A class 2 burrow is one that is tortoise shaped and shows no signs of structural degradation internally or at the mouth of the burrow. Class 3 burrows show signs of heavy degradation of the burrow and typically are burrows that may have been tortoise burrows at one time but have been abandoned and partially caved in not allowing tortoises to go inside. In addition to the burrows, one adult desert tortoise carcass was found to the west of the haul road that was not intact. The adult tortoise was in its burrow located along the eastern side of the haul road. Due to the presence of tortoises and tortoise sign on site, a Section 10(a) incidental take permit from the USFWS and a Section 2081 permit from CDFW will be required to mitigate impacts to the species. It is the opinion of RCA Associates, Inc. that with proper mitigation measures such as the installation of a tortoise fence the mortality of any tortoises can be avoided.

Mohave Ground Squirrel: There are no recent observations of Mohave ground squirrels within the area or zone of influence within the last 10 years. The most recent sighting occurrence of the species is occurrence 491 which happened a mile and a half to the south in the Twelve Guage Lake USGS Quadrangle. 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 critical habitat which may support the species.
- 3. Project site not having crucial habitat for survival.

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 Hinkley and Twelve Guage Lake quadrangle habitat according to CNDDB (2024). 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 not connected to the Mojave River, and no Mohave tui chub will occur on site.

# 5.4 Species of Special Concern

**Sensitive Plants:** There are two plant species that are of species of special concern, these are the: Barstow woolly sunflower and desert cymopterus. Of the two sensitive plant species, the Barstow

woolly sunflower has the potential to occur given the presence of creosote bush scrub habitat. No sign of this species was observed during the field surveys. The desert cymopterus will not occur on site due to the lack of crucial habitat present on the property.

Sensitive Wildlife: There are five wildlife species that are considered species of special concern, the burrowing owl, arroyo toad, loggerhead shrike, American badger, and the Mojave fringe-toed lizard. Three of the five species have a nominal chance to occur on site being the American badger, burrowing owl, and Mojave fringe-toed lizard. The site shows very little suitable habitat for these species, and they are most likely not to occur on site. The remaining two species, arroyo toad and loggerhead shrike do not have the potential to occur on site and will not occur on site given their specific habitat requirements. None of these species were observed on site or in the surrounding area during the May 2024 survey.

# 5.5 Jurisdictional Waters and Riparian Habitat

The United States Army Corps of Engineers (USACE) regulates discharges of dredged or fill material into waters of the United States, and the State of California also regulates waters of the State and streambeds under the preview of regional water quality boards and CDFW jurisdiction. These waters include wetlands and non-wetland bodies of water that meet specific criteria. No riparian habitats, streambeds, or drainages were observed during the field investigations on the project site or in the immediate surrounding area.

#### **5.6** Protected Plants

As of July 10, 2023, California legislature passed and signed the Western Joshua Tree Conservation Act (WJTCA, Senate Bill 122) into effect listing the western Joshua tree (*Yucca brevifolia*) as an endangered species. **During the May 2024 field investigations, no western Joshua trees were observed on the site or in the surrounding areas.** The WJTCA authorizes CDFW to oversee the various permitting processes dealing with mitigation and/or removal of western Joshua trees. Therefore, any attempt to remove a Joshua tree from its current position will require a California Endangered Species Act Incidental Take Permit (CESA, ITP) or a Western Joshua Tree Conservation Act Incidental Take Permit (WJTCA, ITP).

#### 6.0 IMPACTS AND MITIGATION MEASURES

# **6.1** General Biological Resources

Future development of the site will impact the general biological resources present on the site, and most of the vegetation will likely be removed during future construction activities. Wildlife will also be impacted by development activities and those species with limited mobility (i.e., small mammals and reptiles) will experience increases in mortality during the construction phase. However, more mobile species (i.e., birds, large mammals) will be displaced into adjacent areas and will likely experience minimal impacts. Therefore, loss of about 115-acres of non-disturbed desert scrub habitat is not expected to have a significant cumulative impact on the overall biological resources in the region given the amount of similar habitat in the surrounding desert region.

# 6.2 Federal and State Listed and Species of Special Concern

Only one federal or State-listed species was observed on the site during the field investigations, which was the desert tortoise. No Mohave ground squirrel or Mohave tui chub were observed on site and are not expected to occur on site or in the immediate surrounding area due to a lack of critical habitat for their existence. In addition, there are no documented observations of these species either on the site or in the immediate area within the last ten years.

Western Joshua trees were not observed on site. If trees are found on site in the future CDFW should be notified immediately and any attempt to move or displace a tree dead or alive will require an ITP.

As per CDFW *Staff Report on Burrowing Owl Mitigation*, a pre-construction survey is required to determine if any owls have moved on to the site since the May 2024 survey. As stated by CDFW's protocol, the most effective method of completing a pre-construction survey (take avoidance survey) should be performed no less than 14 days prior to ground disturbance, followed by a final pre-construction survey within 24 hours of breaking ground.

#### 7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development of this planned rail loop and aggregate loading facility is expected to remove most of the vegetation remaining within the 115-acre site. However, the cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be negligible. This assumption is based on the presence of ample suitable habitat in the surrounding areas. In addition, future development activities are expected to have minimal impact on any State or Federal listed or State special status plant or animal species. As discussed above neither the primary project site nor the BLM easement area supports desert tortoises, and none were observed. The 1-mile haul road and its zone of influence does support desert tortoises but with proper mitigation measures, such as desert tortoise fencing, the mortality rate of this species can be reduced to zero. In addition, burrowing owls do not inhabit the site and are not expected to be impacted given the lack suitable burrows and the lack of sign (whitewash, castings, etc.). The site does not contain western Joshua trees and will not require an ITP. 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.

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 s	sensitive species	and can	approve the	e implementation	of any applicable

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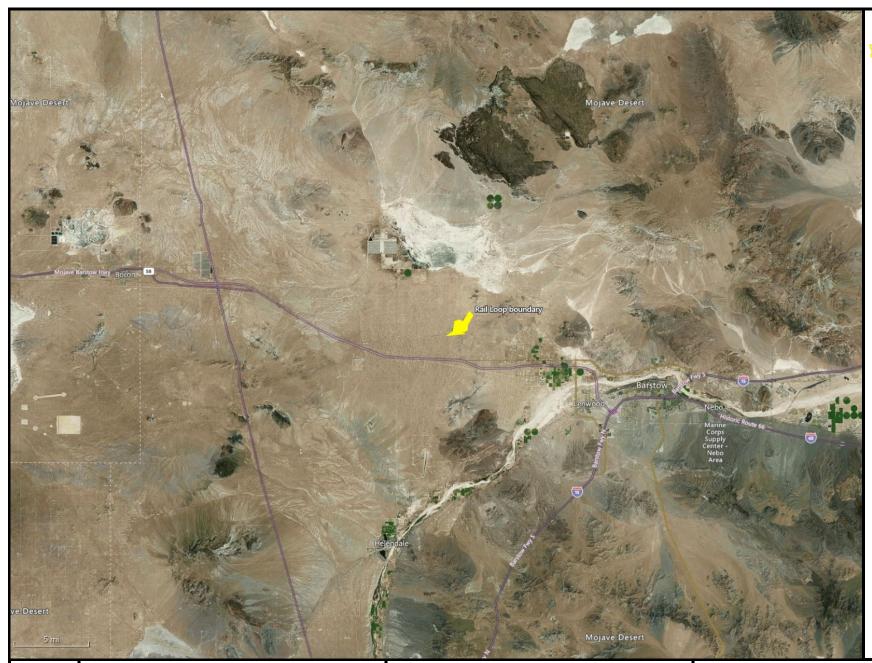
#### **CERTIFICATION**

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 D. Hunter, Brian S. Bunyi and Hayden Martois. 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: _	06/24/2024	_ Signed:	Ryan D. Hunter
			Brian S. Bunyi
			Hayden S. Martois

Field Work Performed By:	Ryan D. Hunter
	Principal Environmental Scientist & Biologist
Field Work Performed By:	Brian S. Bunyi
	Environmental Scientist & Wildlife Biologist
Field Work Performed By:	Hayden S. Martois
	Biological Field Technician





Legend

🔀 Project Boundary



Produced By: RCA Associates Inc.

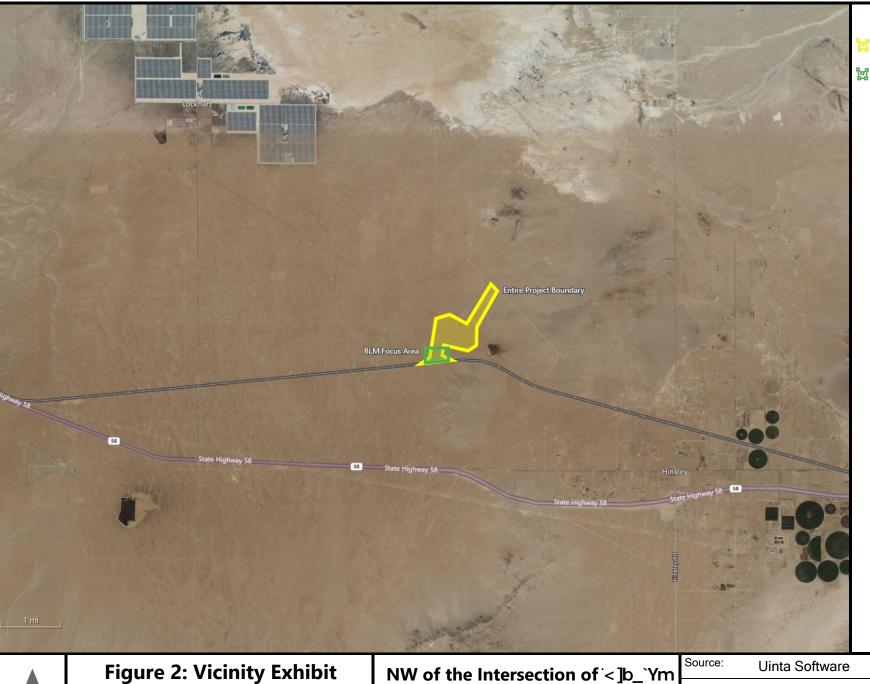
NW of the Intersection of Hinkley Rd. and State Highway 58 in San Bernardino County, CA.

Source: Uinta Software

115-Acres Acreage: (Approximately)

Project #: 2024-36 BA





Legend

Project Boundary

Mark BLM Focus Area

Produced By: RCA Associates Inc.

NW of the Intersection of < ]b\_`Ym Rd. and GtUtY'<][\k Um), in San **Bernardino County, CA.** 

115-Acres Acreage: (Approximately)

Project #: 2024-36 BA







FIGURE 3: PHOTOGRAPHS OF RAIL LOOP





FIGURE 3, cont: PHOTOGRAPHS OF RAIL LOOP





FIGURE 4: PHOTOGRAPHS OF HAUL ROAD



FIGURE 4, cont: PHOTOGRAPHS OF HAUL ROAD





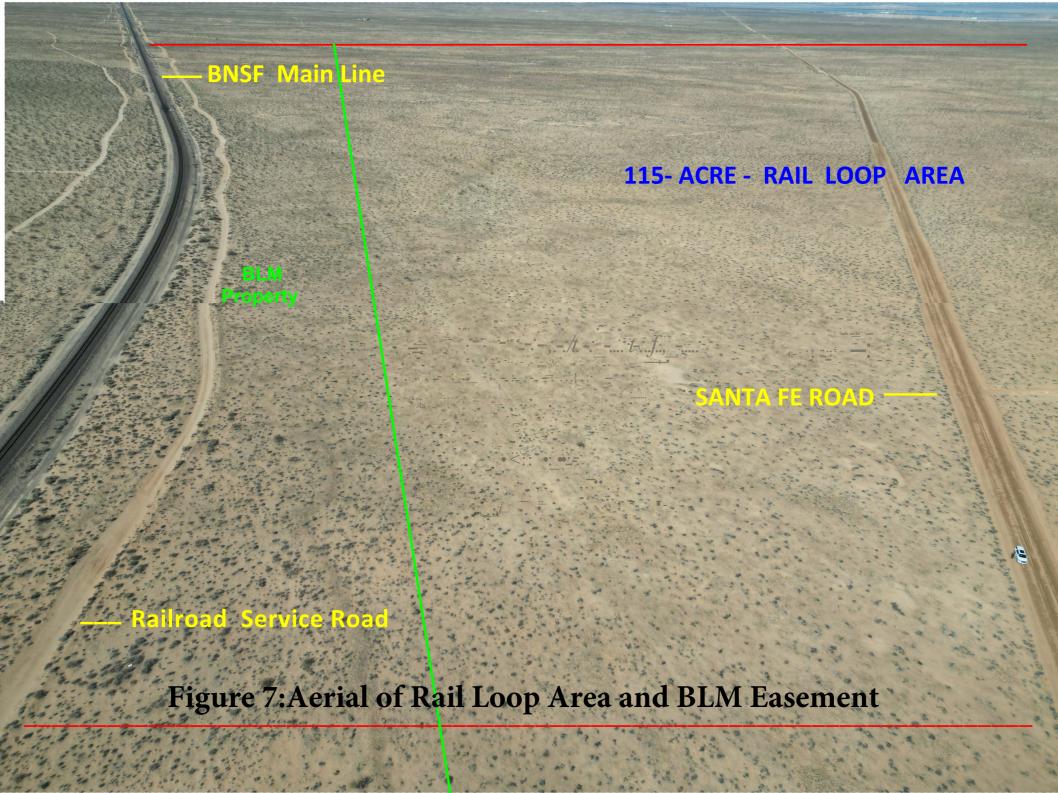
FIGURE 5: PHOTOGRAPHS OF BLM FOCUS AREA

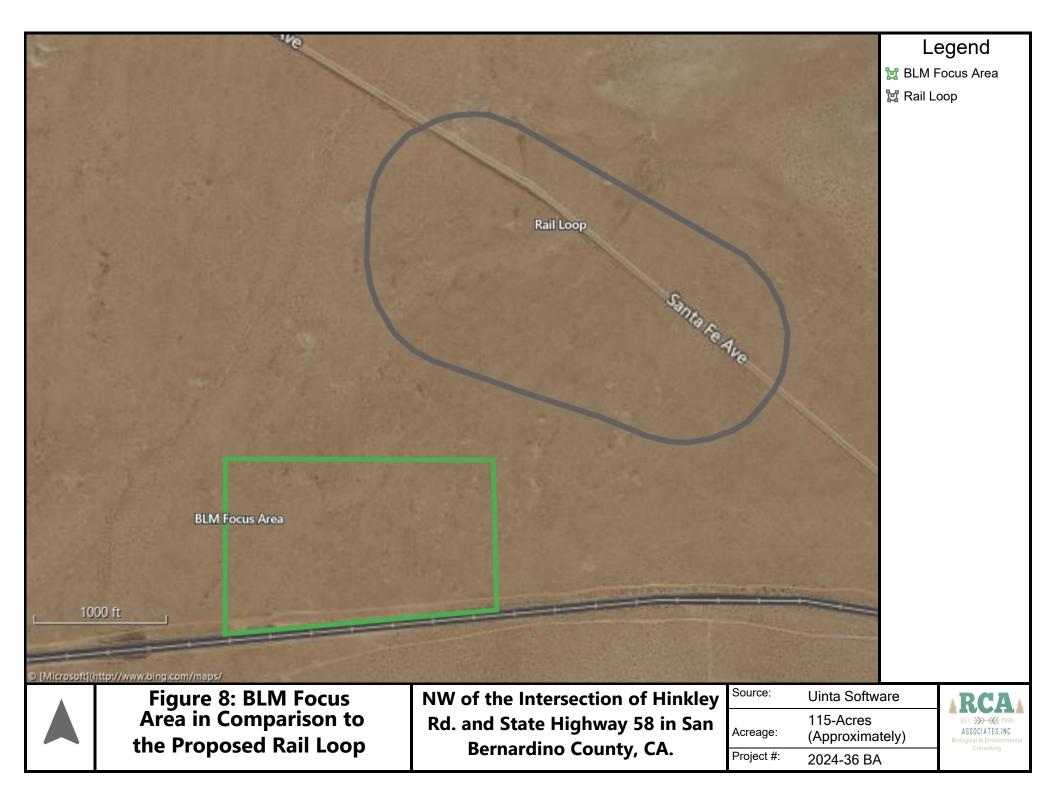


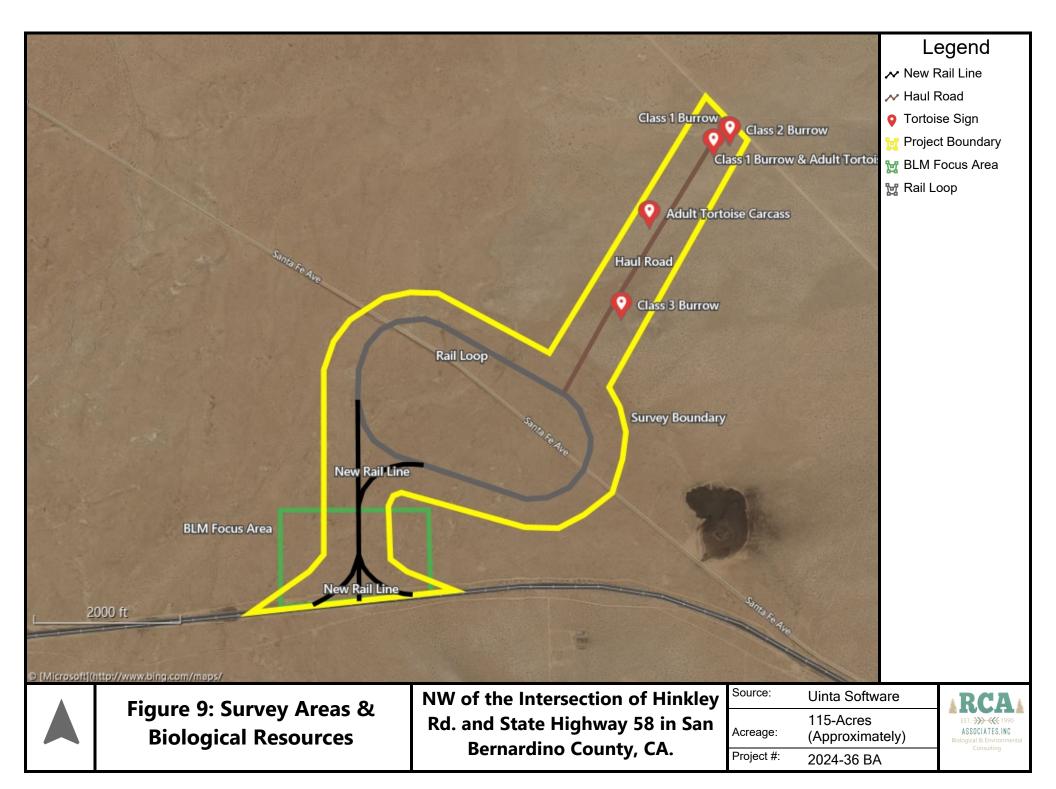


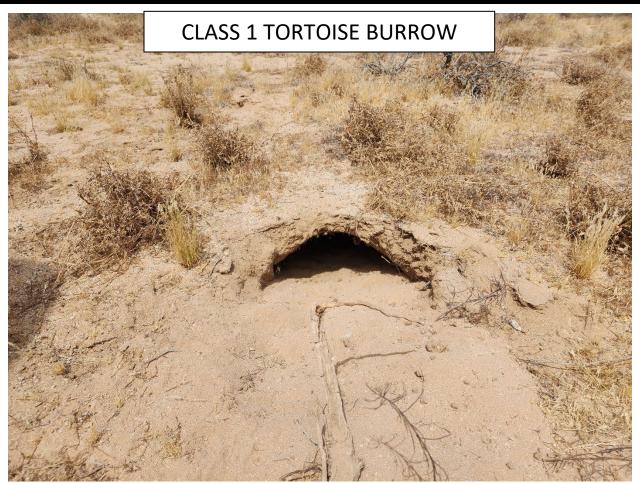
FIGURE 5, cont: PHOTOGRAPHS OF BLM FOCUS AREA











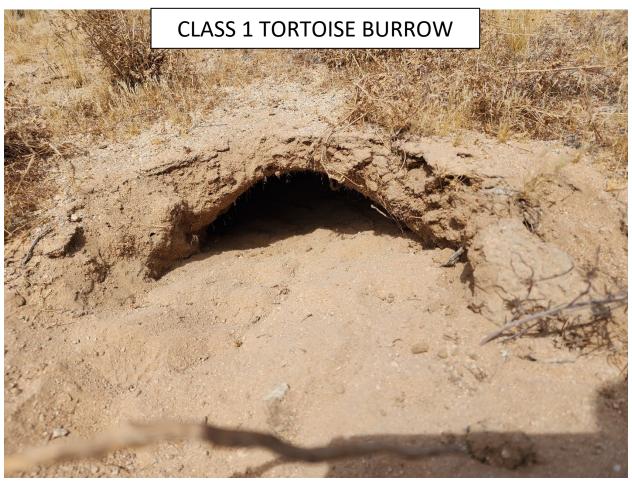


FIGURE 10: TORTOISE SIGN



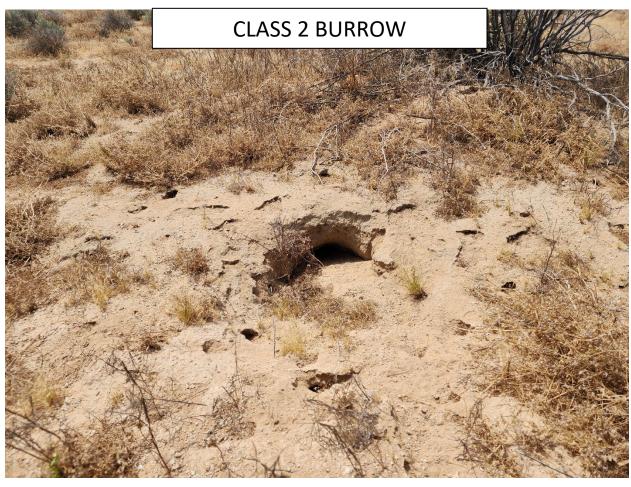
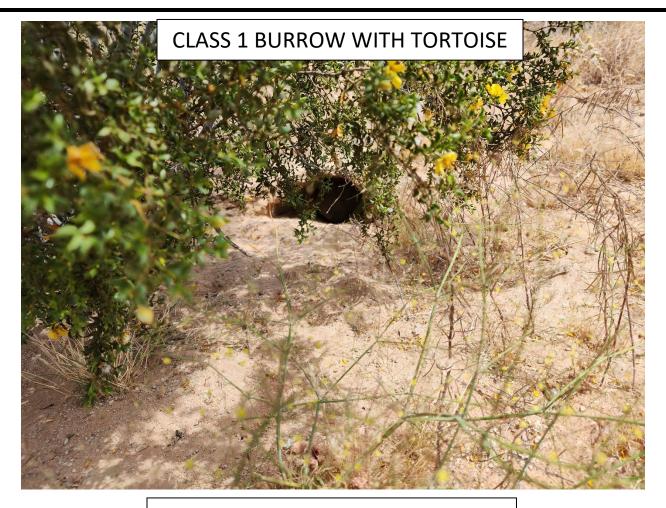


FIGURE 10, cont: TORTOISE SIGN



**CLASS 1 BURROW WITH TORTOISE** 

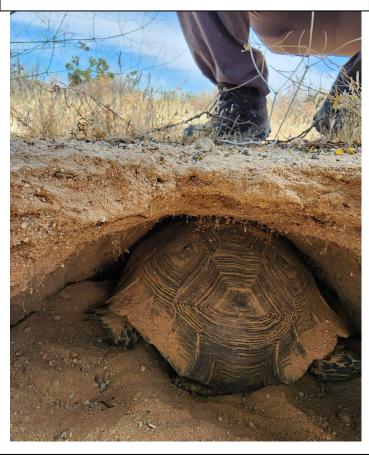


FIGURE 10, cont: TORTOISE SIGN

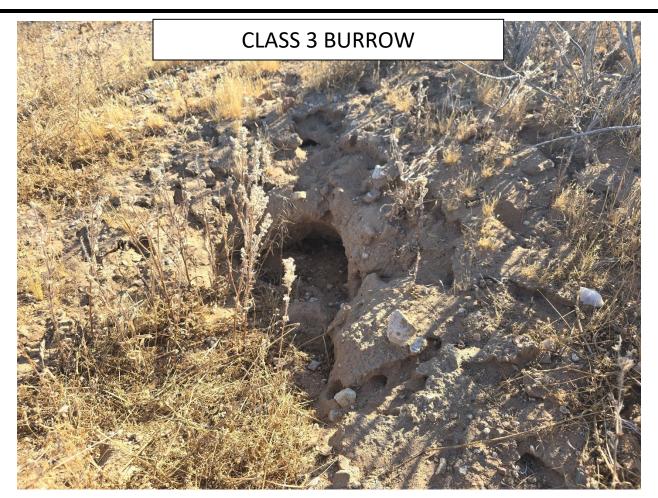




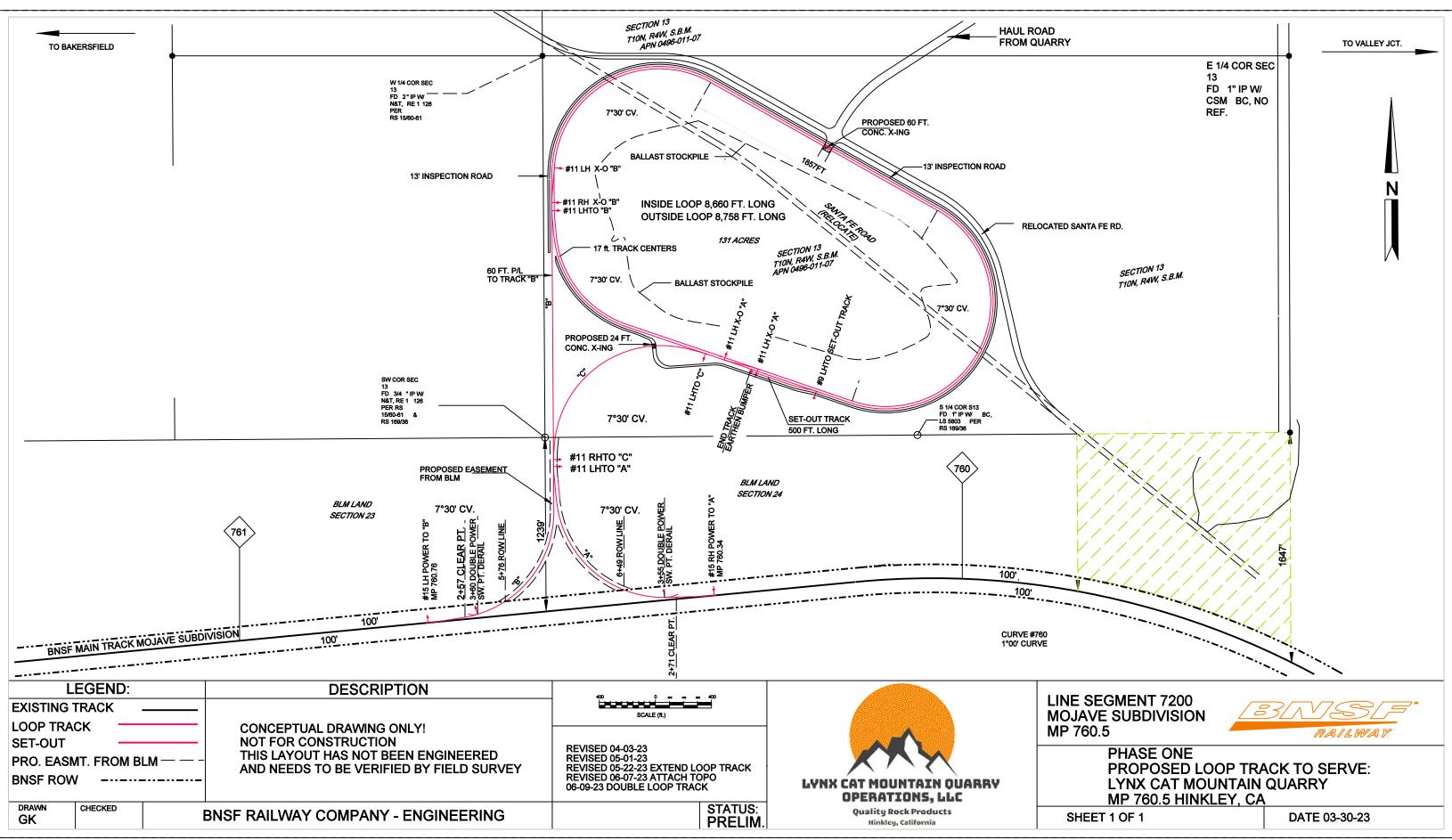
FIGURE 10, cont: TORTOISE SIGN

# **ADULT TORTOISE CARCASS**





FIGURE 10, cont: TORTOISE SIGN



...\Lynx\_Cat\_6\_7\_23.dgn Jun. 12, 2023 13:46:56

Figure 11: Rail Loop Layout

 $\label{thm:continuous} \textbf{Table 1 - Plants observed on the site and known to occur in the immediate surrounding area.}$ 

Common Name	Scientific Name	Location
Mexican bladder sage	Scutellaria mexicana	On site and surrounding area
White bursage	Ambrosia Dumosa	
Cheat grass	Bromus tectorum	
California mustard	Caulanthus lasiophyllus	
Red brome	Bromus rubens	"
Four-winged salt bush	Atriplex hymenelytra	"
Menzies fiddleneck	Amsinckia menziesii	"
Creosote bush	Larrea tridentata	"
Smooth Desertdandelion	Malacothrix glabrata	"
California buckwheat	Eriogonum fasciculatum	"
Silver chollq	Cylindropuntia echinocarpa	"
Desert Indian wheat	Plantago ovata	"
Turkshead	Chorizanthe rigida	"
Pincushion flower	Chaenactis fremontii	"
Water jacket	Lycium andersonii	"
Tumbleweed	Kali tragus subsp. tragus	"
Silver lupine	Lupinus albifrons	"
Redstem stork's bill	Erodium cicutarium	"
Texas bluebonnet	Lupinus taxensis	"

Rough menodora	Menodora scabra	
California croton	Croton californicus	
Rattlesnake weed	Euphorbia albomarginata	
Stemless evening primrose	Oenothera triloba	٠.
Devils lettuce	Amsinckia tessellata	٠.
Mojave cotton thorn	Tetradymia stenolepis	٠.
Yellow sundrops	Oenothera serrulata	
Common burrowbrush	Ambrosia salsola	٠.
Brownplume wirelettuce	Stephanomeria pauciflora	٠.
Asian mustard	Brassica tournefortii	٠.
Desert sand verbena	Ambronia villosa	٠.
Little Desert trumpet	Eriogonum trichopes	
Desert marigold	Baileya multiradiata	٠.
Prickly lettuce	Lactuca serriola	

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
Horned lark	Eremophila alpestris	On-site
Desert tortoise	Gopherus agassizii	
Western shovel-nosed snake	Chionactis occipitalis	
Lark sparrow	Chondestes grammacus	
Red racer	Coluber flagellum piceus	
Song sparrow	Melospiza melodia	
Long-nosed leopard lizard	Gambelia wislizenii	
Desert Horned lizard	Phrynosoma platyrhinos	
Turkey vulture	Cathartes aura	
Antelope Ground squirrel	Ammospermophilus leucurus	
Western whiptail	Cnemidophorus tigris	
Western fence lizard	Sceloporus occidentalis	
California Ground Squirrel	Otospermophilus beecheyi	
House finch	Haemorhous mexicanus	66
Common raven	Corvus corax	"
Black-tailed jackrabbit	Lepus californicus	"
Desert cottontail	Sylvilagus audubonii	66
Coyote	Canis latrans	"

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

### REGULATORY CONTEXT

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

## **Federal Endangered Species Act**

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

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.