

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

**YERMO, SAN BERNARDINO COUNTY, CALIFORNIA
APN: 0516-101-01**

Prepared for:

**Iron Planet
34550 Outer Highway 15
Yermo, CA 92398**

Prepared by:

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1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 50.13-acre parcel (approximately) located on the northeast corner of intersection of Old Yermo Cutoff Street and Outer Highway 15 in Yermo, San Bernardino County, California (Township 9 North, Range 1 West, Section 5, USGS Nebo, California Quadrangle, 1956) (Figures 1 and 2). The property is located in an unincorporated area of San Bernardino County, California northeast 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 January 29, 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 (CNDDDB 2024), the Mohave ground squirrels (*Xerospermophilus mohavensis*) range ends approximately 5 miles west of the project site. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property is a 50.13-acre parcel (approximately) located on the northeast corner of intersection of Old Yermo Cutoff Street and Outer Highway 15 in Yermo, San Bernardino County, California (Township 9 North, Range 1 West, Section 5, USGS Nebo, California Quadrangle, 1956) (Figures 1 and 2). Vacant undeveloped land borders the site to the north, south, and east with residential dwellings along the eastern border.

The site is relatively flat, approximately 600 meters above sea level, and has been completely graded for use as a storage yard for auction vehicles. The site has been graded in the past however sparse ruderal plant communities have revegetated portions of the site. The vegetation community on site is sparse desert scrub encompassing mainly native plants and a few non-native grasses. The site is dominated by Asian mustard (*Brassica tournefortii*), big saltbush (*Atriplex lentiformis*), white bursage (*Ambrosia dumosa*), desert sand verbena (*Abronia villosa*) and kelch grass (*Schismus barbatus*). Other species of flora that are expected to occur on site and the surrounding area are discussed in section 5.0.

The site is not expected to support a minimal variety of wildlife species due to the site having been completely graded and fenced in acting as barriers of entry for many mammalian species. One mammal was observed on site, being the desert cottontail (*Sylvilagus audubonii*). 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. No reptiles were observed on site during the January 2024 field investigations. A list of reptiles that could possibly inhabit the site are discussed in section 5.0.

In addition, no sensitive habitats (e.g., sensitive species critical habitats, etc.) have been documented in the immediate area according to the CNDDDB (2024) and none were observed during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on January 29, 2024, during which biologists from RCA Associates, Inc. initially walked ten meter 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. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the low 60'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 was conducted on January 29, 2024, for the desert tortoise and a survey was also performed by biologists from RCA Associates, Inc. for the presence of any potential tortoise burrows. Transects were walked in 10-meter intervals in an east-west 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. Comprehensive field investigations were conducted throughout the site during the biological surveys and no tortoise sign was identified on the site or in the zone of influence.

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. If tortoises are found to inhabit the site

in the future, a Section 10(a) incidental take permit from the USFWS and a Section 2081 permit from CDFW will be required to mitigate impacts to the species.

Burrowing Owl: A habitat assessment (Phase 1) was conducted for the burrowing owl in conjunction with the general biological surveys to determine if the site supports suitable habitat for the species on January 29, 2024. Following completion of the habitat assessment, it was determined that the site does not support suitable habitat for the burrowing owl. 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 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 a distance of 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. Due to the project location being completely graded and fenced in acting as barriers of entry, and low population levels with no recent observations in this area of the Mojave Desert, it is the opinion of RCA Associates, Inc. that the likelihood of a Mohave ground squirrel occurring on the proposed project site is extremely low.

4.0 LITERATURE SEARCH

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

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

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

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Nebo Quadrangle			
Emory’s crucifixion-thorn (<i>Castela emoryi</i>)	Federal: None State: None CNPS: 2B.2	Mojavean desert scrub, Sonoran Desert scrub, playas.	No suitable habitat, will not occur on site.
Mojave monkeyflower (<i>Diplacus mohavensis</i>)	Federal: None State: None CNPS: 1B.2	Joshua tree woodland, Mojavean desert scrub.	No suitable habitat, will not occur on site.
Barstow woolly sunflower (<i>Eriophyllum mohavense</i>)	Federal: None State: None CNPS: 1B.2	Chenopod scrub, Mojavean desert scrub, desert playas.	No suitable habitat, will not occur on site.
Mojave menodora (<i>Menodora spinescens</i> var. <i>mohavensis</i>)	Federal: None State: None CNPS: 1B.2	Mojavean desert scrub.	No suitable habitat, will not occur on site.
Creamy blazing star (<i>Mentzelia tridentata</i>)	Federal: None State: None CNPS: 1B.3	Mojavean desert scrub.	No suitable habitat, will not occur on site.
Beaver Dam breadroot (<i>Pediomelum castoreum</i>)	Federal: None State: None CNPS: 1B.2	Joshua tree woodland, Mojavean desert scrub.	No suitable habitat, will not occur 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: CNDDDB, 2024) or likely to occur in the region.

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ABSENCE ON PROPERTY
ANIMAL			
Within Nebo Quadrangle			
Golden eagle (<i>Aquila chrysaetos</i>)	Federal: None State: None	Rolling foothills, mountain areas, sage-juniper flats, and desert.	No suitable habitat, will not occur on site.
Townsend’s big-eared bat (<i>Corynorhinus townsendii</i>)	Federal: None State: None CDFW: SSC	Throughout California in a wide variety of habitats. Most common in mesic sites.	No suitable habitat, will not occur on site.
Burrowing owl (<i>Athene cunicularia</i>)	Federal: None State: None CDFW: SSC	Grasslands and desert habitats.	No suitable habitat, will not occur on site.
Prairie falcon (<i>Falco mexicanus</i>)	Federal: None State: None	Inhabits dry, open terrain, either level or hilly.	No suitable habitat, will not occur on site.

Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>)	Federal: None State: Threatened	Desert scrub.	No suitable habitat, will not occur on site.
Desert tortoise (<i>Gopherus agassizii</i>)	Federal: Threatened State: Threatened	Most common in desert scrub, desert wash, and Joshua tree habitats; occurs in almost every desert habitat.	No suitable habitat, will not occur on site.
Mohave tui chub (<i>Siphateles bicolor mohavensis</i>)	Federal: Endangered State: Endangered	Endemic to the Mojave River basin, adapted to alkaline, mineralized waters.	No suitable habitat, will not occur on site.
Le Conte's thrasher (<i>Toxostoma lecontei</i>)	Federal: None State: None CDFW: SSC	Desert resident; primarily of open desert wash, desert scrub, alkali desert scrub, and desert succulent scrub habitats.	No suitable habitat, will not occur on site.

5.0 RESULTS

5.1 General Biological Resources

The site a completely disturbed and graded with minimal native vegetation occurring throughout the site (Figure 3). Species present on the site included Asian mustard (*Brassica tournefortii*), big saltbush (*Atriplex lentiformis*), white bursage (*Ambrosia dumosa*), desert sand verbena (*Abronia villosa*) and kelch grass (*Schismus barbatus*). 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 not expected to support a variety of wildlife species due to it having been previously cleared of all vegetation and being surrounded by a fence that acts as a barrier for many species to cross. One mammal was observed during field surveys, the desert cottontail (*Sylvilagus audubonii*). Other mammalian species that are expected to inhabit the region include jackrabbits (*Lepus californicus*) and California ground squirrel (*Otospermophilus beecheyi*). 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.

No reptiles were observed on site during the January 29, 2024, field investigations. Reptiles that occur in the surrounding area and that are expected to occur on site include the side-blotched lizard (*Uta stansburiana*), western fence lizard (*Sceloporus occidentalis*) 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 Federal and State Listed Species

Desert Tortoise: The property does not support habitat for the desert tortoise based on the lack of vegetation present and the site being surrounded by a barrier. No tortoises or tortoise sign (burrows, scats, etc.) were observed anywhere within the property boundaries during the January 29, 2024, survey. The species is not expected to move onto the site in the near future based on the absence of any sign, absence of any recent observations in the immediate area, and the absence of suitable foraging habitat on site and in the surrounding area.

Mohave Ground Squirrel: There are no recent observations of Mohave ground squirrels within the area or zone of influence. 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.
3. Project site being fenced in and clear of almost all vegetation.

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 Nebo quad habitat according to CNDDDB (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.

5.3 Species of Special Concern

Sensitive Plants: There are Six plant species that are of species of special concern, these are the: Emory's crucifixion-thorn, Mojave monkeyflower, Barstow woolly sunflower, Mojave menodora, Creamy blazing star and Beaver Dam breadroot. Of the six sensitive plant species, none will occur on site due to no habitat present on the property and it having been completely graded.

Sensitive Wildlife: There are three wildlife species that are considered species of special concern, the burrowing owl, Le Conte's thrasher, and the Townsend's big-eared bat. None of these species are expected to occur on site due to the lack of vegetation and suitable habitat on the property. None of these species were observed on site or in the surrounding area during the January 2024 survey.

5.4 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.

5.5 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 January 2024 field investigations, western Joshua trees were observed and are present on the site. 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 50.13-acres of 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. 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 any tortoise sign (e.g., burrows, scats, tracks, etc.), due to the lack of suitable habitat in the surrounding area, the probability of the species inhabiting the site is very low.

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 is required to determine if any owls have moved on to the site since the January 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 activities are expected to result in the removal of remaining vegetation from the 50.13-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be negligible. This assumption is based on the lack of habitat currently on site. 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 presence of no 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 sensitive species and can approve the implementation of any applicable mitigation measures.

8.0 BIBLIOGRAPHY

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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 and Brian S. 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: 02/22/2024 Signed: *Ryan D. Hunter*
Brian S. Bunyi

Field Work Performed By: Ryan D. Hunter
Principal Environmental Scientist & Biologist

Field Work Performed By: Brian S. Bunyi
Environmental Scientist & Wildlife Biologist

Appendix A
Tables and Figures

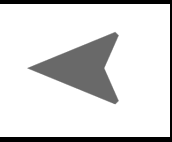
Legend
Project Boundary



Source:	Ujinta Software
Acreage:	50.13-Acre (Approximately)
Project #:	2023-170 BA

**NE Corner of Old Yermo Cutoff St.
and Outer Highway 15 in Yermo,
San Bernardino County, CA.**

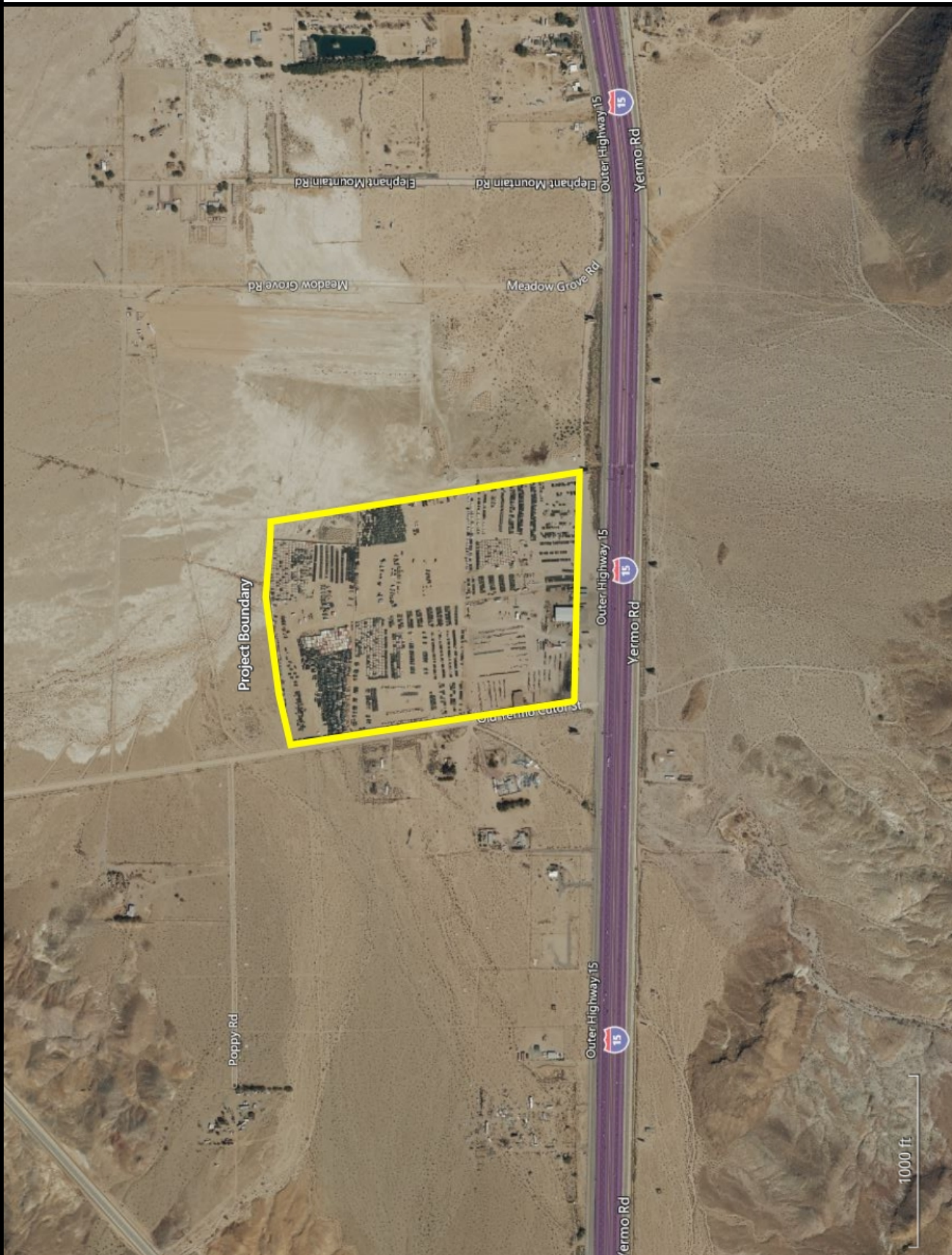
Figure 1: Regional Exhibit
Produced By: RCA Associates Inc.



1 mi

Legend

 Project Boundary

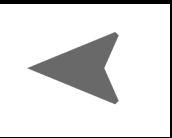


Source:	Ujnta Software
Acreage:	50.13-Acre (Approximately)
Project #:	2023-170 BA

NE Corner of Old Yermo Cutoff St. and Outer Highway 15 in Yermo, San Bernardino County, CA.

Figure 2: Vicinity Exhibit

Produced By: RCA Associates Inc.



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
Tumbleweed	<i>Kali tragus subsp. tragus</i>	On site and surrounding area
California Buckwheat	<i>Eriogonum fasciculatum</i>	“
Creosote bush	<i>Larrea tridentata Plant</i>	“
Desert sand verbena	<i>Abronia villosa</i>	“
White bursage	<i>Ambrosia dumosa</i>	“
Big saltbush	<i>Atriplex lentiformis</i>	“
Asian mustard	<i>Brassica tournefortii</i>	“
Fiddleneck	<i>Amsinckia intermedia</i>	“
Kelch grass	<i>Schismus barbatus</i>	“
Five stem tamarisk	<i>Tamarix chinensis</i>	“
Western tansymustard	<i>Descurainia pinnata</i>	“
Silver cholla	<i>Cylindropuntia echinocarpa</i>	“
Redstem stork’s bill	<i>Erodium cicutarium</i>	“
Common burrobrush	<i>Ambrosia salsola</i>	“
Panamint cryptantha	<i>Cryptantha angustipholia</i>	“
Emory’s rockdaisy	<i>Perityle emoryi</i>	“
California primrose	<i>Eulobus californicus</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
House finch	<i>Carpodacus mexicanus</i>	“
Say’s phoebe	<i>Sayornis saya</i>	“
Horned lark	<i>Eremophila alpestris</i>	“
Eurasian collared dove	<i>Streptopelia decaocto</i>	“
White crowned sparrow	<i>Zonotrichia leucophrys</i>	“
Desert cottontail	<i>Sylvilagus audubonii</i>	“

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

REGULATORY CONTEXT

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

Federal Endangered Species Act

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

Section 10(a) of the ESA establishes a process for obtaining an incidental take permit that authorizes non federal entities to incidentally take federally listed wildlife or fish. Incidental take is defined by ESA as take that is “incidental to, and not the purpose of, the carrying out of another wise lawful activity.” Preparation of a habitat conservation plan, generally referred to as an HCP, is required for all Section 10(a) permit applications. The USFWS and National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA Fisheries Service) have joint authority under the ESA for administering the incidental take program. NOAA Fisheries Service has jurisdiction over anadromous fish species and USFWS has jurisdiction over all other fish and wildlife species.

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

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

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

California Endangered Species Act

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

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

Clean Water Act, Section 404

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

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

Clean Water Act, Section 401

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

California Fish and Wildlife Code, Sections 1600-1616

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

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

California Fish and Wildlife Code, Section 3503.5

Under the California Fish and Wildlife Code, Section 3503.5, it is unlawful to take, possess, or destroy any birds in the orders Falconiformes (hawks, eagles, and falcons) or Strigiformes (owls). Take would include the disturbance of an active nest resulting in the abandonment or loss of young.

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits the taking, hunting, killing, selling, purchasing, etc. of migratory birds, parts of migratory birds, or their eggs and nests. As used in the MBTA, the term “take” is defined as “to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill, unless the context otherwise requires.” Most bird species native to North America are covered by this act.

Sensitive Natural Communities

The California Office of Planning and Research and the Office of Permit Assistance (1986) define project effects that substantially diminish habitat for fish, wildlife, or plants, or that disrupt or

divide the physical arrangement of an established community as significant impacts under CEQA. This definition applies to certain natural communities because of their scarcity and ecological values and because the remaining occurrences are vulnerable to elimination. For this study, the term “sensitive natural community” includes those communities that, if eliminated or substantially degraded, would sustain a significant adverse impact as defined under CEQA. Sensitive natural communities are important ecologically because their degradation and destruction could threaten populations of dependent plant and wildlife species and significantly reduce the regional distribution and viability of the community. If the number and extent of sensitive natural communities continue to diminish, the status of rare, threatened, or endangered species could become more precarious, and populations of common species (i.e., not special status species) could become less viable. Loss of sensitive natural communities also can eliminate or reduce important ecosystem functions, such as water filtration by wetlands and bank stabilization by riparian woodlands for example.

Protected Plants

The California Desert Native Plant Act was passed in 1981 to protect non-listed California desert native plants from unlawful harvesting on both public and privately-owned lands. Harvest, transport, sale, or possession of specific native desert plants is prohibited unless a person has a valid permit. The following plants are under the protection of the California Desert Native Plants Act:

- Dalea spinosa (smoketree)
- All species of the genus Prosopis (mesquites)
- All species of the family Agavaceae (century plants, nolinias, yuccas)
- All species of Cactus
- Creosote Rings, ten feet in diameter or greater
- All Joshua Trees

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