GENERAL BIOLOGICAL RESOURCES ASSESSMENT

PHELAN, SAN BERNARDINO COUNTY, CALIFORNIA

APN: 3066-261-08, 10 & 3066-251-14

Prepared for:

Lilburn Corporation
1905 Business Center Drive
San Bernardino, CA 92408

Prepared by:

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

Principal Investigators:
Ryan Hunter, Environmental Scientist & Biologist
Lisa Cardoso, Wildlife Biologist
Randall Arnold, Principal Biologist

Project: #2020-78A

July 13, 2021

TITLE PAGE

Date Report Written:	**July 13, 2021**
Date Field Work Completed:	**June 28, 2021**
Report Title:	**General Biological Resources Assessment**
Project Location:	**Phelan, California** **APN: 3066-261-08, 10 & 3066-251-14**
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Principal Investigators:	**Ryan Hunter, Environmental Scientist & Biologist** **Lisa Cardoso, Wildlife Biologist** **Randall Arnold, Principal 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**

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1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on multiple parcels (APN: 3066-261-08, 10 & 3066-251-14) that is approximately 19-acres in size and located on the northeast corner of the intersection Warbler Road and Sahara Road in Phelan, California (Figures 1 and 2). The site is specifically located on the NW ¼ of Section 24, Township 4 North, Range 7 West in the USGS Phelan 7.5-minute California Quadrangle. The property is located in an area of Phelan zoned for general commercial use (PHCG). The project proponent is proposing on expanding Phelan Park.

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 June 28, 2021, during which the biological resources on the site and in the surrounding areas were documented by biologists from RCA Associates, Inc. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife or plant 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 the desert tortoise, burrowing owl, and Joshua tree. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property is approximately 19-acres located northeast of the intersection of Warbler Road and Sahara Road in the community of Phelan, San Bernardino County, California (Township 3 North, Range 5 East, Section 24, USGS Phelan California quadrangle) (Figures 1, 2, and 3). A residential development is located immediately east of the site, north of the property is the Phelan Elementary School, a takeout restaurant, and vacant land, and southwest of the parcels is a NAPA Auto Parts commercial business and Phelan Community Park (Figure 1).

The site is relatively flat, approximately 1,263 meters above sea level, and shows signs of heavy disturbance. The property consists of Tujunga sand which has a 2 to 9 percent slope, somewhat excessively draining, no occasional frequency of ponding or flooding and low water capacity. Vegetation community on site is Mojave desert scrub encompassing mainly native plants, non-native mustard, and some ornamental trees. Vegetation occurring on the site includes Joshua trees (*Yucca brevifolia*), beavertail cactus (*Opuntia basilaris*), Arizona cypress (*Cupressus arizonica*), Asian mustard (*Brassica tournefortii*), desert woollystar (*Erastrum eremicum*), rubber rabbitbrush (*Ericameria nauseosa*), fiddleneck (*Amsinckia tessellata*), and Nevada jointfir (*Ephedra nevadensis*). Other species of flora that are expected to occur on site and the surrounding area are discussed in section 5.0.

The site is expected to support some variety of wildlife species given its location being near the San Bernardino National Forest. Black-tailed jackrabbit (*Lepus californicus*), California ground squirrels (*Spermophilus beecheyi*), and desert cottontail (*Sylvilagus audubonii*) were the only mammals observed during the field investigations. Scat observed throughout the site was identified as coyote (*Canis latrans*), who may traverse the site during hunting activities.

Some birds observed on site during the field investigations included ravens (*Corvus corax*), house finch (*Haemorhous mexicanus*), brown-headed cowbird (*Molothrus ater*), Cooper's hawk (*Accipiter cooperii*), Bewick's wren (*Thryomanes bewickii*), Say's phoebe (*Sayornis saya*), cactus wren (*Campylorhynchus brunneicapillus*), California quail (*Callipepla californica*), and mourning dove (*Zenaida macroura*). Other avian species that were observed or expected to utilize the site and surrounding area are discussed in section 5.0.

Reptiles observed during the survey were limited to only the common side-blotched lizard (*Uta stansburiana*) and long-nosed leopard lizard (*Gambelia wislizenii*). A list of reptiles that could possibly inhabit the site or occur in the surrounding areas are discussed in section 5.0.

In addition, no sensitive habitats (e.g., sensitive species critical habitats, Joshua tree woodlandvernal pools, etc.) have been documented in the immediate area according to the CNDDB (2021) and none were observed during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on June 28, 2021, during which biologists from RCA Associates, Inc. walked 10 meter parallel belt transects throughout the property site in a north-south direction. During the surveys, data was collected on the plant and animal species present on the site. All plants and animals detected during the surveys were recorded and are provided in Tables 1 & 2 (Appendix A). The property was also evaluated for the presence of habitats which might support sensitive species. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000), and Whitaker (1980). Following completion of the initial reconnaissance survey, protocol surveys were conducted for the burrowing owl as per agency requirements. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the mid to high 80's (°F) (AM) with approximately 10% cloud cover. 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 plant and animal present on the site. All plants observed were identified in the field and wildlife was identified through visual observations and/or by vocalizations. Tables 1 and 2 (Appendix A) provides a comprehensive compendium of the various plant and animal; species observed during the field investigations on site or in the surrounding areas. The taxonomic nomenclature used in this study follows the California Native Plant Society (CNPS 2021).

Desert Tortoise: A habitat assessment was conducted on June 28, 2021 for the desert tortoises and a survey was also performed for the presence of any potential tortoise burrows by biologists from RCA Associates, Inc. Parallel 10 meter belt transects were walked in a north-south direction until the entire property had been checked for any tortoises or tortoise sign (burrows, tracks, scats, etc.). Surveys in the zone of influence (ZOI) were also conducted where accessible. Comprehensive field investigations were conducted throughout the site during the biological surveys and no tortoise sign was identified on the site or zone of influence.

During the biological survey, all transects were walked at a pace that allowed careful observations along the transect routes and in the immediate vicinity. Field notes were recorded regarding native plant assemblages, wildlife sign, and human effects in order to determine the presence or absence

of suitable tortoise foraging habitat. If tortoises are found to inhabit the site in the future, a Section 10(a) incidental take permit from the USFWS and a Section 2081 permit from CDFW will be required to mitigate impacts to the species.

Burrowing Owl: A habitat assessment (Phase 1) was conducted for the burrowing owl in conjunction with the general biological surveys to determine if the site supports suitable habitat for the species on June 28, 2021. Following completion of the habitat assessment, it was determined that the site does support suitable foraging habitat for the burrowing owl. As part of the burrowing owl survey, transects were walked throughout the site during which any suitable burrows were evaluated for owls and owl sign (e.g., white wash, feathers, or castings). After the field investigations it was determined that there are no suitable burrows on site for burrowing owls and no burrowing observed. Burrowing owls typically utilize burrows which have been excavated by other animals (squirrels, coyotes, foxes, dogs, etc.) since owls rarely dig their own burrows. CDFW protocol also requires surveys be conducted in the surrounding area out to a distance of about 500 feet where accessible; therefore, the zone of influence (ZOI) surveys were 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.

Aerial photography was reviewed prior to conducting the field investigations on June 28, 2021. The aerial photographs were used to locate and inspect any potential natural drainage features and water bodies that may be considered riparian/riverine habitat or which may be jurisdictional under either the U.S. Army Corps of Engineers (USACE) and/or CDFW. After the background review of aerial imagery, the site appeared to have a potential jurisdictional channel transecting it from the east to west boundary. In general, surface drainage features are typically indicated as blue-line streams on USGS maps, which are expected to exhibit evidence of water flow through the channel. Such areas are considered potentially riparian/riverine habitat and may be subject to State and federal regulatory authority as "Waters of the State" or "Waters" of the U.S. Riparian/riverine habitat is defined as lands which contain habitat dominated by trees, shrubs, persistent emergent, or emergent mosses and lichens, which occur close to or which depend upon soil moisture from a nearby freshwater source, or areas with freshwater flow during all or a portion of the year.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDB, 2021) search was performed. Based on this review, it was determined that six special status species, two animals, two invertebrates, and two plants, have been documented within the Phelan California quadrangle. 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 Phelan Quadrangle			
Short-joint beavertail (*Opuntia basilaris var. brachyclada*	Federal: None State: None CNPS: 1B.2	Joshua tree woodland, desert scrub, pinyon and juniper woodland, sandy soils of slopes just above the desert, mostly at 900-1800 m.	The site does not contain suitable habitat, none were observed on the site and are not expected to occur on the site given the lack of suitable habitat.
White pygmy-poppy (*Canbya candida*)	Federal: None State: None CNPS: 4.2	Joshua tree woodland, Mojave desert scrub, gravely, sandy habitat between 600-1350 m.	The site does not contain suitable habitat, none were observed on the site and are not expected to occur on the site given the lack of suitable habitat.

Notes:

Status abbreviations:

CNPS List 1A: Plants presumed extirpated in California and either rare or extinct elsewhere
CNPS List 1B: Plants rare, threatened, or endangered in California and elsewhere
CNPS List 2A: Plants presumed extirpated in California, but more common somewhere else
CNPS List 2B: Plants rare, threatened, or endangered in California, but more common somewhere else
CNPS List 3: Plants about which more information is needed - a review list
CNPS List 4: Plants of limited distribution - a watch list

.1 Seriously threatened in California (over 80% of occurrences threatened/ high degree and immediacy of threat)
.2 Moderately threatened in California (20-80% occurrences threatened/ moderate degree and immediacy of threat)
.3 No very threatened in California (<20% of occurrences threatened/ low degree and immediacy of threat or no current threats known)

Table 4-2: Special status wildlife and insects documented in the region (Source: CNDDB, 2021) or likely to occur in the region

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
Wildlife Species			
Within Phelan Quadrangle			
Coast horned lizard (*Phrynosoma blainvillii*)	Federal: None State: None CDFW: SSC	Inhabits open areas of sandy soils and low vegetation in valleys, foothills, and semiarid mountains	Some suitable habitat, none observed on site and not expected to occur on site.
Le Conte's thrasher (*Toxostoma lecontei*)	Federal: None State: None CDFW: SSC	Desert flats and sparse growth of saltbush	No suitable habitat and none were observed on site.
Crotch bumble bee (*Bombus crotchii*)	Federal: None State: Candidate Endangered	Inhabits grasslands and shrublands, requires hotter temperatures in Mediterranean region, Pacific coast, western desert, and adjacent foothills throughout most of the state's southwestern region	Site does not support suitable habitat for the species. None observed on site.
Juniper metallic wood-boring beetle (*Juniperella mirabilis*)	Federal: None State: None	Inhabits California juniper	There are no California junipers on the property; therefore, the species is not expected to occur on site.

5.0 RESULTS

5.1 General Biological Resources

The site supports a desert scrub community that predominantly consists of native desert vegetation and non-native mustard and trees throughout the site and surrounding area. Plants observed on the site include Joshua tree (*Yucca brevifolia*), Nevada jointfir (*Ephedra nevadensis*), fiddleneck (*Amsinckia tessellata*), silver cholla (*Cylindropuntia echinocarpa*), desert woollystar (*Eriastrum eremicum*), rubber rabbitbrush (*Ericameria nauseosa*), Asian mustard (*Brassica tournefortii*), Iodinebush (*Allenrolfea occidentalis*), and flatspine ragweed (*Ambrosia acanthicarpa*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed included cactus wren (*Campylothynchus brunneicapillus*), mourning dove (*Zenaida macroura*), Say's phoebe (*Sayanoris saya*), red-tailed hawk (*Buteo jamaicensis*), Anna's hummingbird (*Calypte anna*), Turkey vulture (*Cathartes aura*), California quail (*Callipepla californica*), and Ladder-backed woodpecker (*Dryobates scalaris*). Table 2 provides a compendium of wildlife species observed during the various surveys and those likely to occur in the area.

Mammals observed on site were limited to the black tailed jackrabbit (*Lepus californicus*), California ground squirrel (*Spermophilus beecheyi*), and desert cottontail (*Sylvilagus auduboni*). Coyote scat was also observed on the site and coyotes are known to traverse the area when foraging. 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.

Reptiles observed during the field investigations June 28, 2021 included the common side-blotched lizard (*Uta stansburiana*) and long-nosed leopard lizard (*Gambelia wislizenii*). Reptiles common in the region which are expected to inhabit the site include alligator lizard (*Elgaria sp.*) and western whiptail lizard (*Cnemidophorus tigris*). 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.

5.2 Federal and State Listed Species

Crotch Bumble Bee: The Crotch's bumble bee is a state candidate endangered species that can be distinguished by its square-shaped face and rounded ankle on the midleg. Females have a black head and face and display black color on their mid and bottom thorax. Males display yellow hair on their face, a black stripe mid-thorax, and the abdomen should have a yellow coloring. They are active from April to August, with nests located underground in abandoned rodent nests or above ground in tufts of grass or old bird nests, and rely almost exclusively on milkweed to complete their life cycle. They inhabit grasslands and shrublands in hotter and drier areas of California's mediterrean region, Pacific coast, western desert, and adjacent foothills throughout southwestern region. The site lacks suitable habitat for the Crotch's bumble bee to occur on site in the foreseeable future.

5.3 Species of Special Concern

Sensitive Plants: There are two plant species that are of species of special concern, these species are the short-joint beavertail and white pygmy-poppy. Both species occur on Joshua tree woodland, and desert scrub habitat with sandy surface substrate. The species mentioned will not occur on the site due to lack of suitable habitat and none were observed on the site during the June 28, 2021 survey.

Sensitive Wildlife: There are two wildlife species that are species of special concern in the Phelan quadrangle, the Le Conte's thrasher and coast horned lizard. There is no suitable habitat for the Le Conte's thrasher, who prefer hot, drier, open habitats that contain saltbushes. There is some suitable habitat for the coast horned lizard who inhabit open areas of sandy soils and low vegetation. both species were not observed during the June 28, 2021 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. After performing the field surveys on June 28, 2021, it was determined by biologists from RCA Associates, Inc. that there are no drainages or channels occurring on the property, and therefore does not meet federal or state jurisdictional requirements because no navigable water, interstate waters, nor waters, including wetlands, which could affect interstate commerce are present on the site. No riparian habitat was observed on the site, nor any riparian flora besides the Fremont cottonwood located on the southwest corner of the property.

5.5 Protected Plants

As of September 22, 2020, the California Department of Fish and Wildlife temporarily listed the western Joshua tree (*Yucca brevifolia*) as an endangered species for one year until a final decision is made in 2021. Therefore, a Joshua Tree Protected Plant Survey was performed on June 24 and 28, 2021, field investigations resulted in the findings of 162 Joshua trees observed and tagged on the site. The purpose of the survey was to evaluate the Joshua trees present on the site and determine which trees were suitable for relocation and which trees could be discarded prior to site clearing activities. The Protected Plant Preservation Plan (PPP), prepared under a separate cover, provides the results of the Joshua tree surveys performed. The PPP will assist the PHPCSD with future relocation of the Joshua trees. Information on the Joshua trees which will need to be relocated-transplanted in the future is provided in the report. Any attempt to remove a Joshua tree from its current position will require an Incidental Take Permit (ITP).

6.0 IMPACTS AND MITIGATION MEASURES

6.1 General Biological Resources

Future development of the site will impact the general biological resources present on the site, and most 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 19-acres of disturbed desert scrub vegetation is not expected to have a significant cumulative impact on the overall biological resources in the region given the presence of similar habitat throughout the surrounding desert region. 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 or signs were observed on the site during the field investigations. In addition, there are no documented observations of any listed or special status species on the site or in the immediate surrounding area according to the CNDDB (2021). Furthermore, the site is not expected to support populations of the desert tortoise based on the absence of any tortoise sign (e.g., burrows, scats, tracks, etc.), and although suitable habitat is present on the site, the probability of the species inhabiting the site is very low, given the lack of suitable burrows and disturbance of the site.

A pre-construction burrowing owl survey may be required by CDFW to determine if any owls have moved on to the site since the June 28, 2021 surveys. As stated in CDFW's *Staff Report on Burrowing Owl Mitigation*, the most effective method of completing a pre-construction survey (take avoidance survey) should be performed within 14 days of ground disturbance, followed by a final pre-construction survey within 24 hours of breaking ground.

7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities are expected to result in the complete removal of vegetation from the 19-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be negligible. This assumption is based on the presence of habitat on the site which is very common throughout the region. In addition, future development activities are not expected to have any impact on any State or Federal listed or State special status plant or animal species, besides the western Joshua tree which an Incidental Take Permit will be submitted to CDFW and those that are transplantable will be mitigated. 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 suitable burrows. The following mitigation measures are recommended:

1. Pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project-related ground disturbance.
    a. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are encountered, authorization from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.
    b. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.
2. If any sensitive species, such as those mentioned on the CNDDB Phelan quadrangle, 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 Hunter and Lisa Cardoso. I certify that I have not signed a non-disclosure or consultant confidentiality agreement with the project applicant or applicant's representative and that I have no financial interest in the project.

Date: 07/13/2021

Signed: Ryan Hunter

Signed: Lisa Cardoso

Field Work Performed By: Ryan Hunter
Environmental Scientist & Biologist

Field Work Performed By: Lisa Cardoso
Wildlife Biologist

Appendix A

Tables and Figures

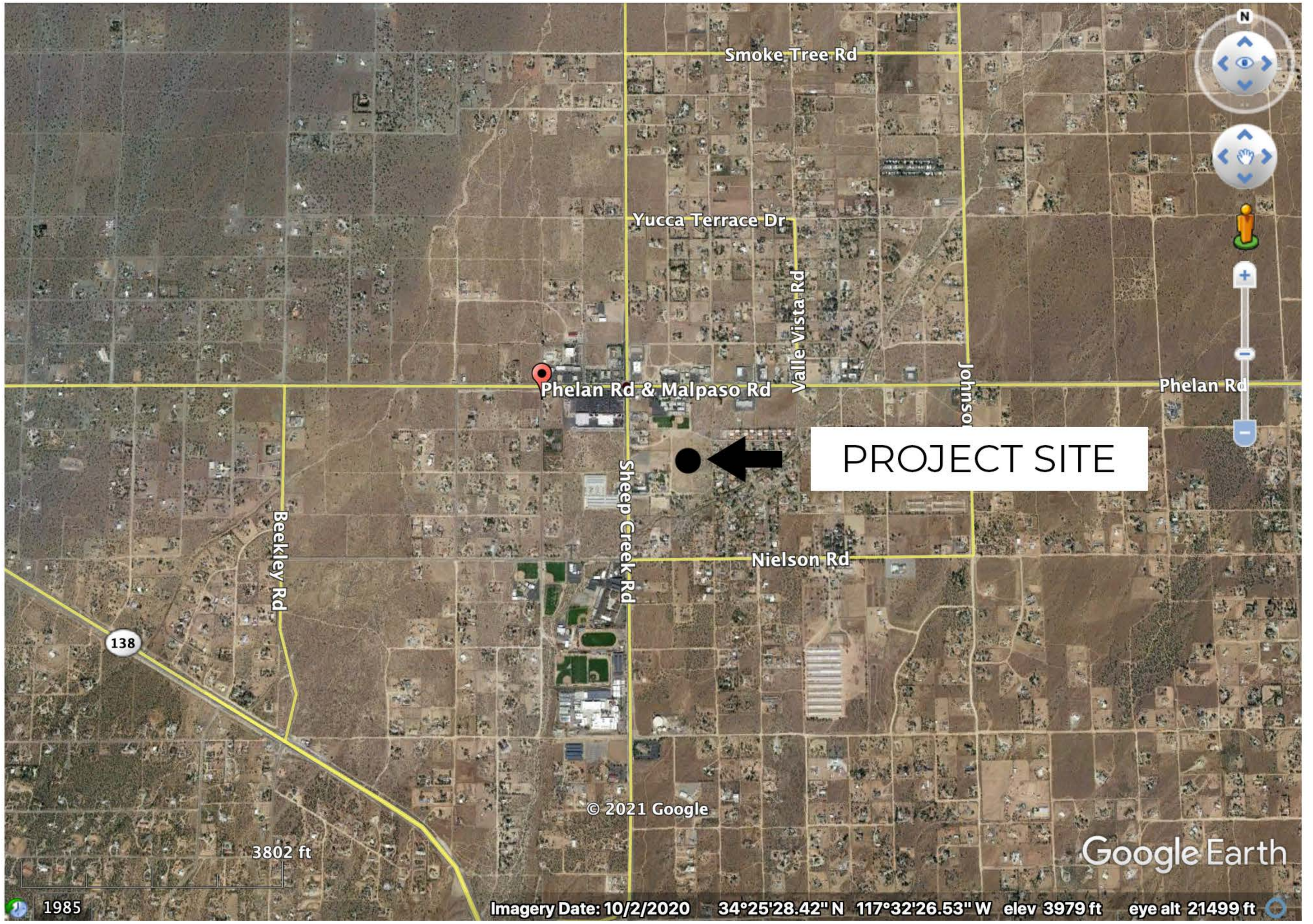


FIGURE 1: REGIONAL EXHIBIT

RCA ASSOCIATES, INC.
SOURCE: GOOGLE EARTH

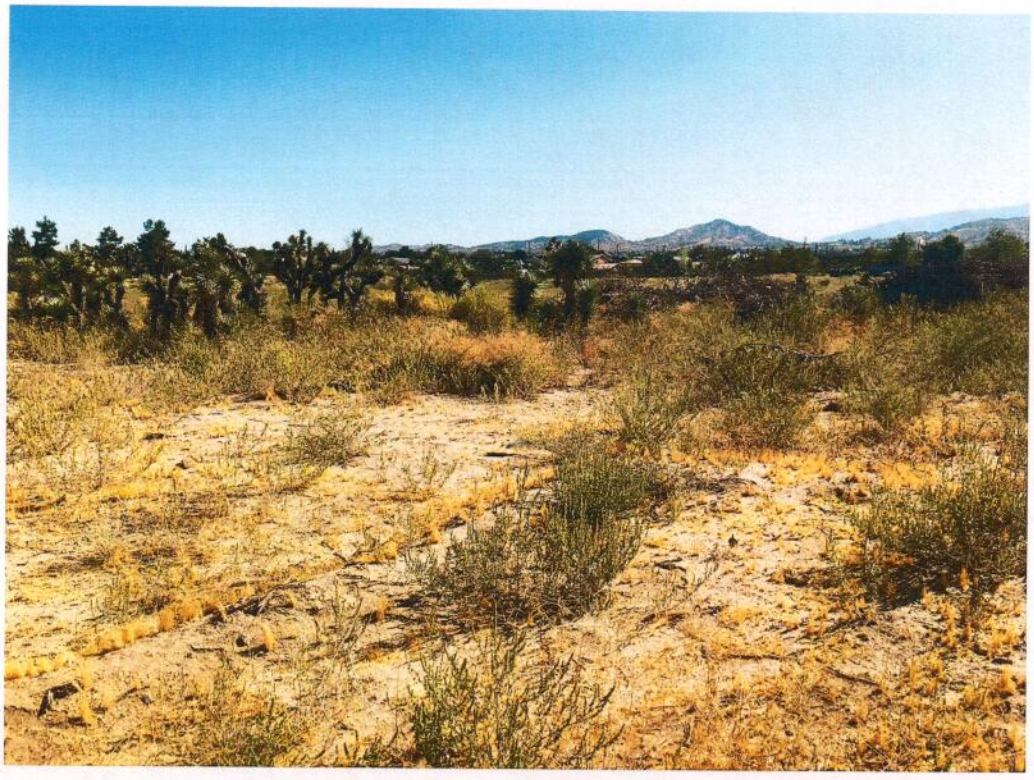
RCA
ASSOCIATES, INC.

FIGURE 2: VICINITY EXHIBIT

RCA ASSOCIATES, INC.
SOURCE: GOOGLE EARTH

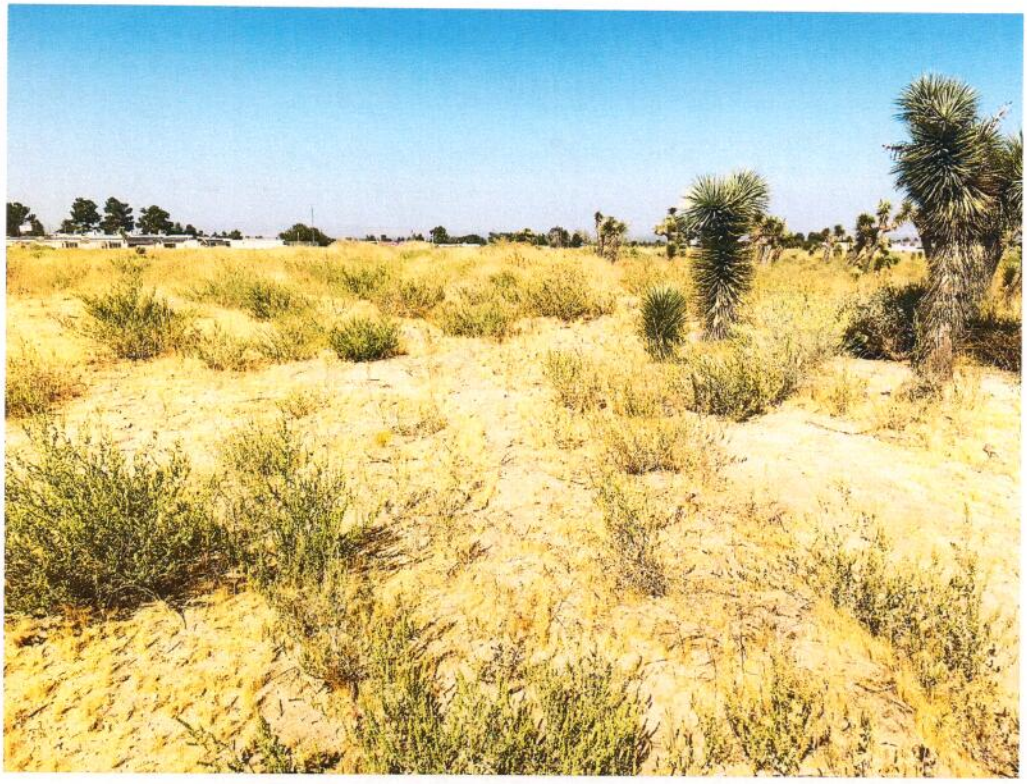
RCA ASSOCIATES, INC.

CENTER OF SITE LOOKING WEST

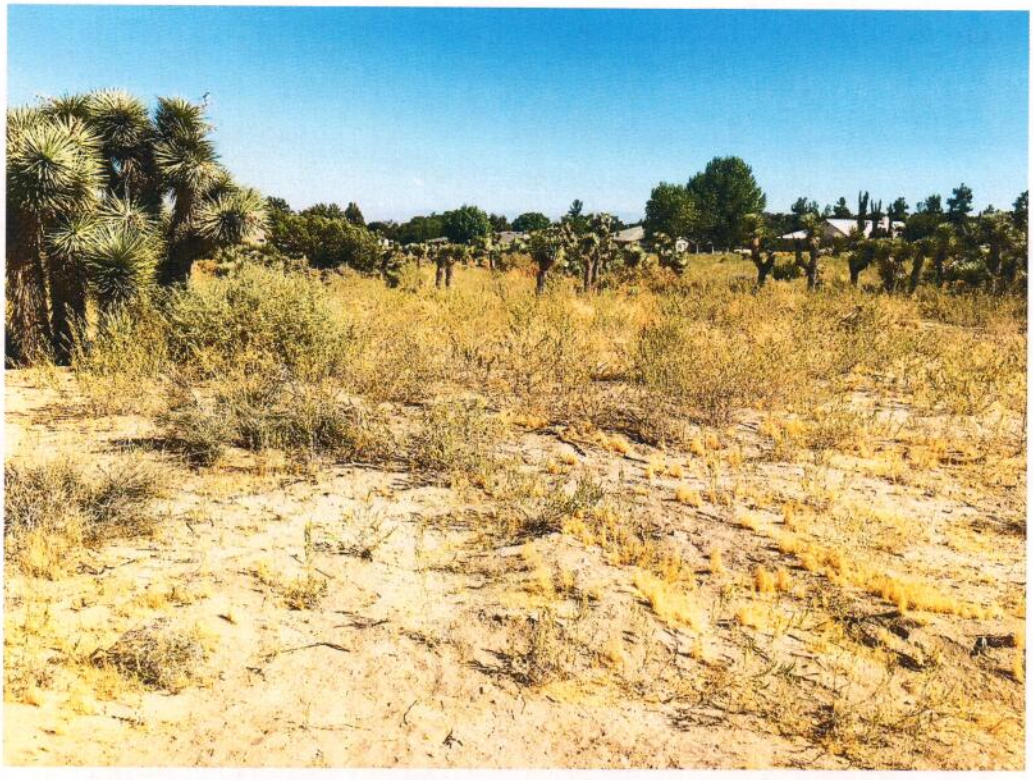


CENTER OF SITE LOOKING SOUTH

FIGURE 3
PHOTOGRAPHS OF SITE



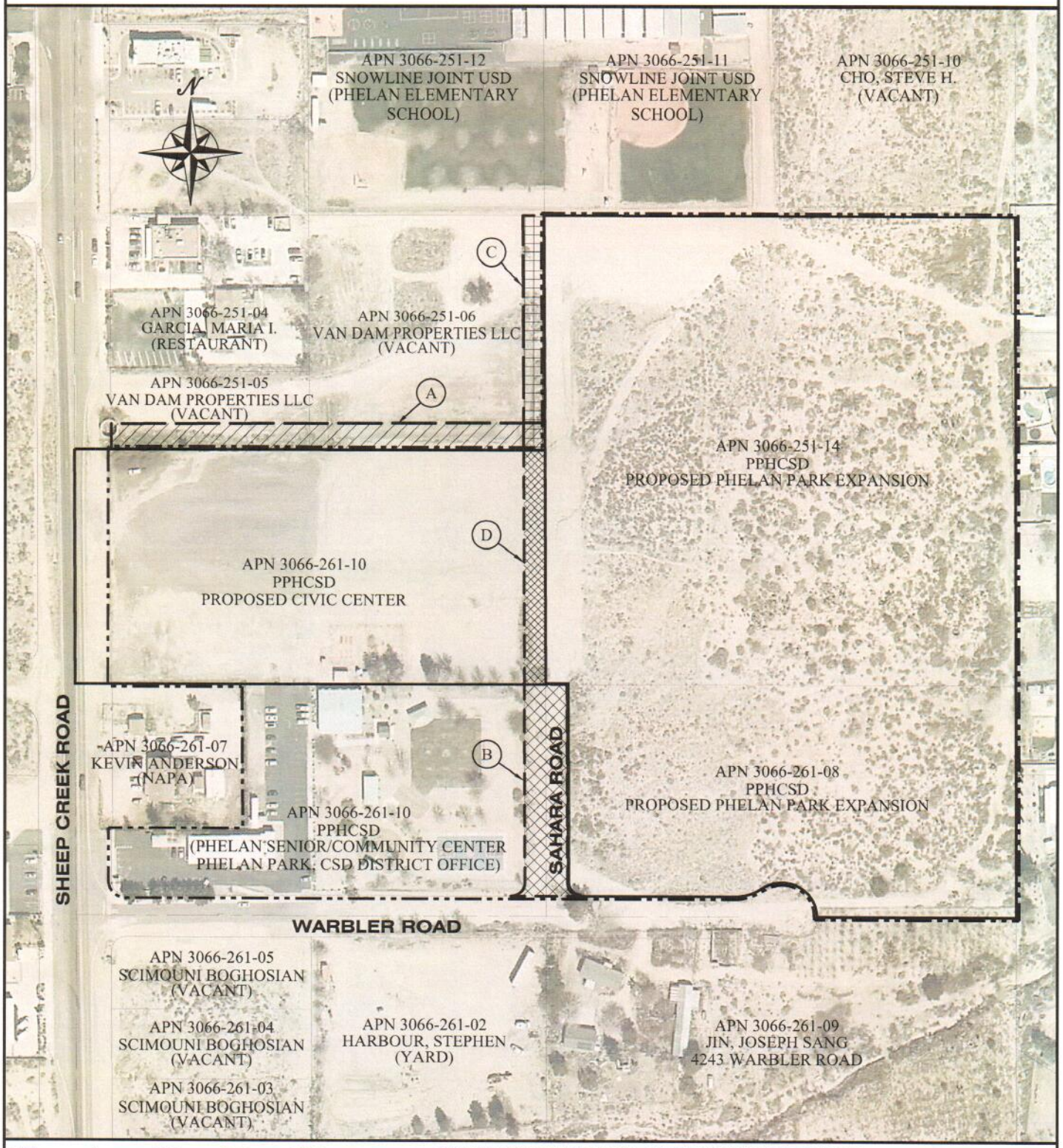
CENTER OF SITE LOOKING NORTH



CENTER OF SITE LOOKING EAST

FIGURE 3, cont.
PHOTOGRAPHS OF SITE

EXHIBIT "B"



100 0 100 200 300

SCALE IN FEET
1"=200'

PROPOSED MERGED PARCELS BOUNDARY

PROPOSED PROJECT BOUNDARIES

(A) PROPOSED 35' WIDE EGRESS/INGRESS EASEMENT - ±22,151 SQ. FT.

(B) EXISTING 60' WIDE RIGHT-OF-WAY VACATION - ±18,225 SQ. FT.

(C) EXISTING 30' WIDE RIGHT-OF-WAY VACATION - ±9,930 SQ. FT.

(D) PROPOSED, PER C.U.P., VACATION OF PROPOSED 30-FOOT R/W DEDICATION - ±9,931 SQ. FT.

PHELAN PIÑON HILLS COMMUNITY SERVICE DISTRICT

CIVIC CENTER DEVELOPMENT PROJECT
BOUNDARY MAP

EXHIBIT "B"

Figure 4

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

Common Name	Scientific Name	Location
Tumbleweed	*Kali tragus subsp. tragus*	On Site
Tree of Heaven	*Ailanthus altissima*	"
Beavertail cactus	*Opuntia basilaris*	"
Kelch grass	*Schismus barbatus*	"
Black lotus tree	*Robina pseudoacacia*	"
Silver cholla	*Cylindropuntia echinocarpa*	"
Asian mustard	*Brassica tournefortii*	"
Arizona cypress	*Cupressus arizonica*	"
Desert woollystar	*Eriastrum eremicum*	"
Common tarweed	*Deinandra fasciculata*	"
Joshua tree	*Yucca brevifolia*	"
Rubber rabbitbrush	*Ericameria nauseosa*	"
Flatspine ragweed	*Ambrosia acanthicarpa*	"
Fiddleneck	*Amsinckia tessellata*	"
Manybristle chinchweed	*Pectis papposa*	"
Nevada jointfir	*Ephedra nevadensis*	"
Iodinebush	*Allenrolfea occidentalis*	"
Jimsonweed	*Datura wrightii*	"
Fremont cottonwood	*Populus fremontii*	"
Foothill pine	*Pinus sabiniaba*	"
Desert bird of paradise	*Caesalpinia gilliesii*	"

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
Rock Pigeon	*Columba livia*	On site
House finch	*Haemorhous mexicanus*	“
Common raven	*Corvus corax*	“
Mourning dove	*Zenaida macroura*	“
Eurasian collared dove	*Streptopelia decaocto*	“
Cactus wren	*Campylorhynchus brunneicapillus*	“
California thrasher	*Toxostoma redivivum*	“
Red-tailed hawk	*Buteo jamaicensis*	“
European starling	*Sturnis vulgaris*	“
Northern mockingbird	*Mimus polyglottos*	“
Turkey vulture	*Cathartes aura*	“
Anna’s hummingbird	*Calypte anna*	“
House sparrow	*Passer domesticus*	“
Brown-headed cowbird	*Molothrus ater*	“
California scrub jay	*Aphelocoma californica*	“
Cooper’s hawk	*Accipiter cooperii*	“
Say’s Phoebe	*Sayornis saya*	“
California quail	*Callipepla californica*	“
Ladder-backed woodpecker	*Dryobates scalaris*	“
Bewick’s wren	*Thryomanes bewickii*	“
Black tailed Jackrabbit	*Lepus californicus*	“

Common Name	Scientific Name	Location
Coyote (scat)	*Canis latrans*	“
California ground squirrel	*Spermophilus beecheyi*	“
Desert cottontail	*Sylvilagus auduboni*	“
Common side-blotched lizard	*Uta stansburiana*	“
Long-nosed leopard lizard	*Gambelia wislizenii*	“

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 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 order 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.