GENERAL BIOLOGICAL RESOURCES ASSESSMENT

APPLE VALLEY, SAN BERNARDINO COUNTY, CALIFORNIA
APN 0463-231-06

Prepared for:

Green Truck Solutions, LLC

Prepared by:

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Project: #2022-86 BA

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TITLE PAGE

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Date Field Work Completed: **May 10, 2022**

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1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on an 18.77-acre (approximate) parcel located on the north west corner of the intersection of Navajo Road and Lafayette Street in the City of Apple Valley, California (Township 6 North, Range 3 West, Section 21, USGS Apple Valley North, California Quadrangle, 1956) (Figures 1, 2, and 3). The property is located in an area of Apple Valley where the project proponent is proposing to construct a 385,000 square foot cold storage warehouse on the existing 18.77-acres parcel. The property is surrounded by commercial businesses in all directions aside from the north east where there is vacant land beyond Navajo road.

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 10, 2022, during which the biological resources on the site and in the surrounding areas were documented by biologists from RCA Associates, Inc. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife species. The property was also evaluated for the presence of sensitive habitats including wetlands, vernal pools, riparian habitats, and jurisdictional areas.

Habitat assessments were also conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel. Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDB, 2022). Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property is an 18.77-acre (approximate) parcel located on the north west corner of the intersection of Navajo Road and Lafayette Street in the City of Apple Valley, California (Township 6 North, Range 3 West, Section 21, USGS Apple Valley North, California Quadrangle, 1956). The site shows minimal signs of past human disturbance with native desert vegetation dominating the area.

The site is approximately 930 to 935 meters above sea level. The property consists of Helendale-Bryman Loamy Sands, which has a 2-5 percent slope. The project site's soil makeup has somewhat well drainage and has a very low to moderate water capacity, with no frequency of flooding, and high available water supply. The site shows minimal signs of disturbance with native vegetation and some non-native grass species. These species included creosote bush (*Larrea tridentata*), ephedra (*Ephedra nevadensis*), rubber rabbitbrush (*Ericameria nauseosa*), water-jacket (*Lycium andersonii)*, and Western Joshua tree (*Yucca brevifolia*). Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

Wildlife species observed during the field investigations consisted of a mainly avian species and a few mammalian species. Mammalian species observed on site include the black-tailed jackrabbit (*Lepus californicus*), California ground squirrel (*Spermophilus beecheyi*), and white-tailed antelope ground squirrel (*Ammospermophilus leucurus*). Species that were not observed but are expected to occur on site or in the surrounding area include the desert cottontail (*Sylvilagus audubonii*) and coyote (*Canis latrans*) given their widespread distribution throughout the region. Section 5.0 provides a more detailed discussion of mammals that might occur on site or in the surrounding area.

Birds observed included common ravens (*Corvus corax*), house finch (*Haemorhous mexicanus*), verdin (*Auriparus flaviceps*), horned lark (*Eremophila alpestris*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

No reptiles were observed during the survey but those that may occur include desert coast horned lizard (*Phrynosoma blainvillii*), side-blotched lizard (*Uta stansburiana*), and western whiptail lizard (*Cnemidophorus tigris*). Table 2 provides a compendium of wildlife species.

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

3.0 METHODOLOGIES

General biological surveys were conducted on May 10, 2022, during which biologists from RCA Associates, Inc. initially walked meandering transects throughout the property. During the surveys, data was collected on the plant and animal species present on the site. All plants and animals detected during the surveys were recorded and are provided in Tables 1 & 2 (Appendix A). The property was also evaluated for the presence of habitats which might support sensitive species. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980). Following completion of the initial reconnaissance survey, habitat assessments were conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the mid 60's (°F) (AM) with 0% cloud cover. The applicable methodologies are summarized below.

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

Desert Tortoise: A habitat assessment was conducted on May 10, 2022 for the desert tortoises and a survey was also performed for the presence of any potential tortoise burrows by biologists from RCA Associates, Inc. Ten-meter, parallel belt transects were walked in a 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 in the areas directly adjacent to the property where accessible. Comprehensive field investigations were conducted throughout the site during the biological surveys and no tortoises or tortoise signs were 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 May 10, 2022. Following completion of the habitat assessment, it was determined that the site does support suitable habitat for the burrowing owl. This opinion was based on their widespread distribution throughout the region and how well they are able to survive in a variety of different habitats. 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.) with a minimum four-inch burrow entrance, 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; therefore, the zone of influence (ZOI) surveys were performed in the area surrounding the site where accessible. If present on a site, CDFW typically requires the owls to be passively relocated during the non-breeding season.

Mohave Ground Squirrel: A habitat assessment was performed for the Mohave ground squirrel as per CDFW protocol including an analysis of the on-site habitat, evaluation of local populations, and assessment of connectivity with habitats in the surrounding area which might support populations of the Mohave ground squirrel. Due to the low population levels and 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. CDFW may choose to conduct a live-trapping survey to definitively determine the presence/absence of Mohave ground squirrels.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDB) search was performed. Based on this review, it was determined that ten special status species have been documented within the Apple Valley North quadrangle of the property, seven wildlife species, two plant species, and 1 invertebrate. 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 Database

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Apple Valley North Quadrangle			
Desert cymopterus (*Cymopterus deserticola*)	Federal: None State: None CNPS: 1B.2	Creosote bush scrub, Joshua tree woodland, Mojave Desert scrub on sandy surfaces	The site does not support suitable habitat for the species; and none were observed during field surveys.
Mojave monkeyflower (*Diplacus mohavensis*)	Federal: None State: None CNPS: 1B.2	Joshua tree woodland, Mojavean desert scrub on sandy or gravelly (often in washes) surfaces	Site does not support suitable habitat for the species; and no species were observed during the field survey.

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, 2022) or likely to occur in the region

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
Wildlife Species			
Within Apple Valley North Quadrangle			
Golden eagle (*Aquila chrysaetos*)	Federal: None State: None	Grasslands, deserts savannahs, forest and shrub habitat	The site does support some suitable habitat, although no golden eagles were observed and are not likely to occur.
Burrowing owl (*Athene cunicularia*)	Federal: None State: None CDFW: SSC	Grasslands and desert habitats	The site does support suitable habitat for the species; however, no owls or owl sign was observed during field surveys.
Swainson's hawk (*Buteo swainsoni*)	Federal: None State: Threatened	Plains, dry grasslands, farmland, ranch country	The site supports marginal suitable habitat for the species, but no Swainson's hawks were observed during the field survey.
Prairie falcon (*Falco mexicanus*)	Federal: None State: None	Open hills, plains, prairies, deserts, open country	The site does support some suitable habitat, although no prairie falcons were observed and are not likely to occur.
Le Conte's thrasher (*Toxostoma lecontei*)	Federal: None State: None CDFW: SSC	Desert scrub	Site does support suitable habitat for the species; but no thrashers were observed during the field survey.
Desert tortoise (*Gopherus agassizii*)	Federal: Threatened State: Threatened	Desert scrub	Suitable habitat, no desert tortoises or tortoise signs observed on site during the field survey.
Mohave tui chub (*Siphateles bicolor mohavensis*)	Federal: Endangered State: Endangered	Three populations exist at Soda Springs, China Lake Naval Weapons Station, and Camp Cady Wildlife Area	No suitable habitat on site, and will not occur on site.
Crotch Bumble bee (*Bombus crotchii*)	Federal: None State: Candidate Endangered	Grass and shrubland	No Crotch bumble bees were observed on the property, and the species is not expected to occur on the site.

5.0 RESULTS

5.1 General Biological Resources

The site supports a relatively undisturbed desert scrub community which covers the property (Figure 3). Species present on the site included creosote bush (*Larrea tridentata*), rubber rabbitbrush (*Ericameria nauseosa*), silver cholla (*Cylindropuntia echinocarpa*), pencil cholla (*Cylindropuntia leptocaulis*), kelch grass (*Schismus barbatus*), and western Joshua tree (*Yucca brevifolia*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed included common ravens (Corvus corax), rock pigeon (*Columba livia*), verdin (*Auriparus flaviceps*), house finch (*Haemorhous mexicanus*), and northern mockingbird (*Mimus polyglottos*). Wildlife species observed on site included the California ground squirrel (*Otospermophilus beecheyi*), white-tailed antelope ground squirrel (*Ammospermophilus leucurus*), and jack rabbit (*Lepus californicus*). Other possible wildlife species expected to occur on site or in the surrounding area include desert cottontails (*Sylvilagus audubonii*) and coyote (*Canis latrans*). Coyotes may frequent the site during hunting activities due to scat and tracks observed and their wide spread distribution throughout the region. No reptiles were observed during the survey but those that may occur include desert coast horned lizard (*Phrynosoma blainvillii*), side-blotched lizard (*Uta stansburiana*), and western whiptail lizard (*Cnemidophorus tigris*). Tables 1 and 2 (Appendix A) provides a compendium of the various plant and animal species identified during the field investigations and those common to the area. No distinct wildlife corridors were identified on the site or in the immediate area.

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

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

5.2 Federal and State Listed Species

Desert Tortoise: The site is located within the documented tortoise habitat according to CNDDB (2022) and supports marginal habitat for the desert tortoise based on the field investigations. No tortoises were observed anywhere within the property boundaries or within the zone of influence during the May 10, 2022 surveys. The species is not expected to move onto the site in the near future based on the absence of any sign, absence of suitable burrows, absence of any recent observations in the immediate area, and the presence of roadways in the immediate area which may act as barriers to migration of the tortoises. The protocol survey results are valid for one year as per CDFW and USFWS requirements.

Swainson's Hawk: The Swainson's hawk is a state threatened, slim, medium sized raptor that migrates in flocks. A migratory species, the Swainson's hawk spends the breeding season in North America where it occupies grasslands, farmlands, and open country, and nests in the only trees that may be seen for miles. The site does provide some suitable habitat for the Swainson's hawk for foraging and no suitable habitat for breeding. No Swainson's hawks were observed during the May 10, 2022 field survey but they may be seen flying over the site or in the surrounding area during hunting activities while migrating.

5.3 Wildlife Species of Special Concern

Burrowing Owl: The site is located within documented burrowing owl habitat according to CNDDB (2022) and does support suitable habitat for the species. No suitable (i.e., occupiable) burrows were observed during the May 2022 field investigations. No owls or owl sign (e.g., white wash, castings etc.) were observed on site or in the zone of influence during the survey (figures 4 & 5). A pre-construction survey may need to be done within 30 days of ground breaking activities.

Le Conte's thrasher: Le Conte's thrashers have not been recently observed in the area according to CNDDB (2022). Thrashers are not expected to occur on the site due to lack of critical vegetation used by the species, such as saltbush and catclaw acacia. Thrashers may be very infrequent in the area given the low population levels in the region as well as the lack of any recent sightings according to the CNDDB.

Plants: There are two species of plants in the Apple Valley North quadrangle, the desert cymopterus and Mojave monkeyflower, which both have a Rare Plant rank of 1B.2. Both species occupy desert scrub habitats with sandy surface substrate, which the property lacks. Therefore, the two species are not expected to occur on the property given the lack of suitable habitat.

5.4 Jurisdictional Waters and Riparian Habitat

No riparian vegetation (e.g., cottonwoods, willows, etc.) exist on the site. However, a channel that is off-site and borders the property to the north supports various riparian species. To the west is another man-made channel that diverts water through a wash between the properties in the area. On site is a drainage swale that has the potential to be considered jurisdictional, according to the U.S. Fish and Wildlife Service, that bisects the site from the north east to south west. It is the opinion of RCA Associates, Inc., that a comprehensive jurisdictional delineation may be required at a future date due to a possible downstream connection or nexus with a wash or drainage to definitely determine if the channel meets the criteria as Waters of the State (WoS) and/or Waters of the U.S. (WoUS).

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 until a final decision is made in 2022. There was approximately one Joshua Tree (*Yucca brevifolia*) observed on site during the May 10, 2022 field investigations. Due to the presence of Joshua Trees, a "Protected Plant Plan" will be needed for this site, and any attempt to remove a living or dead Joshua tree, along with any remnants of 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 have minimal impact on the general biological resources present on the site, and most, if not all, 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 18.77-acres of moderately 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 area. No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

6.2 Federal and State Listed and Species of Special Concern

No federal or State-listed species were observed on the site during the field investigations including the Mohave ground squirrel and desert tortoise. In addition, there are no documented observations of these species either on the site or in the immediate area. The site is not expected to support populations of the desert tortoise based on the absence of suitable burrows and signs.

As per CDFW protocol, the burrowing owl survey results are valid for only 30 days; therefore, CDFW may require a 30-day pre-construction survey to be performed prior to any clearing/grading activities to determine if owls have moved on to the site since the May 10, 2022, surveys.

7.0 CONCLUSIONS AND CONSIDERATIONS

Future development activities include grading the property and removing the vegetation from the 18.77-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 habitat containing similar vegetation to the surrounding areas in the region. In addition, future development activities are not expected to have any impact on any State or Federal listed or State special status plant or animal species. As discussed above, the site does not support any desert tortoises. In addition, burrowing owls do not inhabit the site and are not expected to be impacted given the absence of any active burrows. The following mitigation measures should be considered:

1. Pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project-related ground disturbance.
    a. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are encountered, authorization from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.
    b. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.
2. A comprehensive jurisdictional delineation should be considered to determine if any permits may be required for the proposed project, including a California Department of Fish and Wildlife (CDFW) Section 1600 permit, a U.S. Army Corps of Engineers (COE) Section 404 Nationwide or Individual Permit, and a California Regional Water Quality Control Board (RWQCB) Section 401 Water Quality Certification.
3. A focused plant survey should be considered for all special status plant species that have the potential to occur on the site to be performed during the blooming season (April - June) to determine the potential environmental effects of the proposed projects on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife

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

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 Brian Bunyi. I certify that I have not signed a non-disclosure or consultant confidentiality agreement with the project applicant or applicant's representative and that I have no financial interest in the project.

Date: 06/13/2022 Signed: Ryan Hunter
Brian Bunyi

Field Work Performed By: Ryan Hunter
Senior Environmental Scientist & Wildlife Biologist

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

Appendix A

Tables and Figures

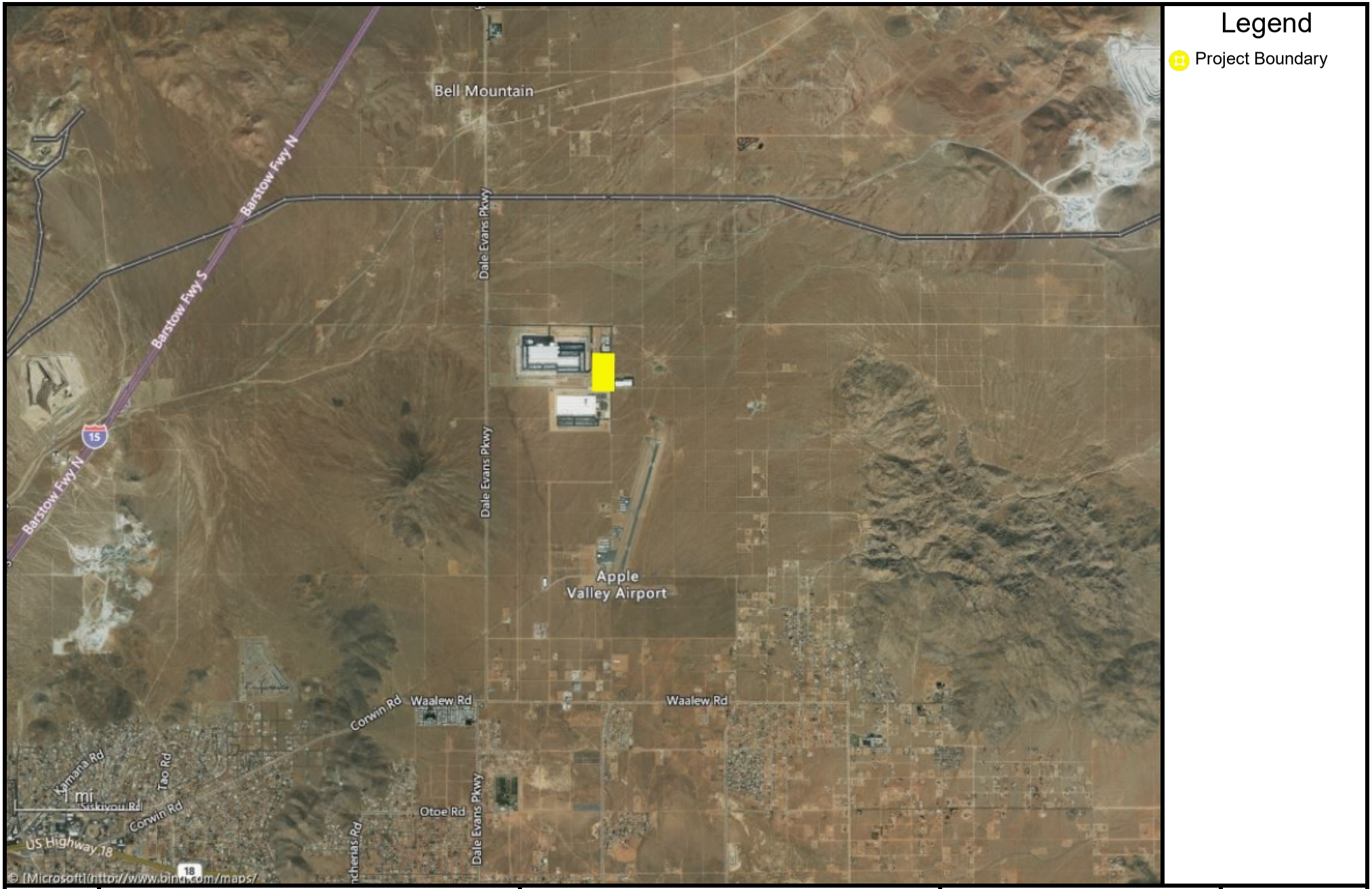

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Figure 1: Regional Exhibit

Produced By: RCA Associates, Inc.

NW Corner of Navajo Road and Lafayette Street, Apple Valley, CA.

Source:	Uinta Software
Acreage:	18.77-Acres (Approximate)
Project #:	2022-86 BA

RCA ASSOCIATES,INC

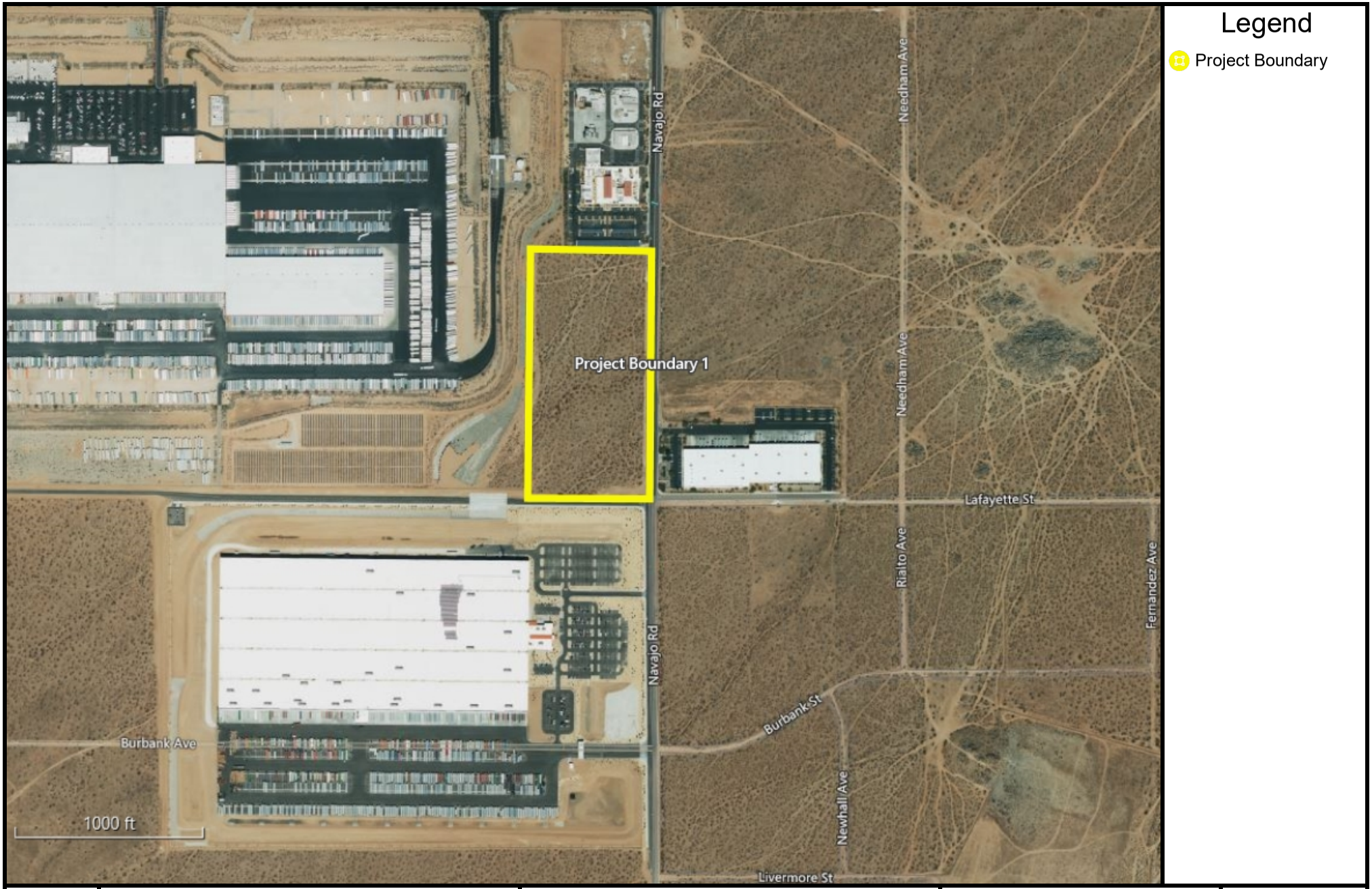
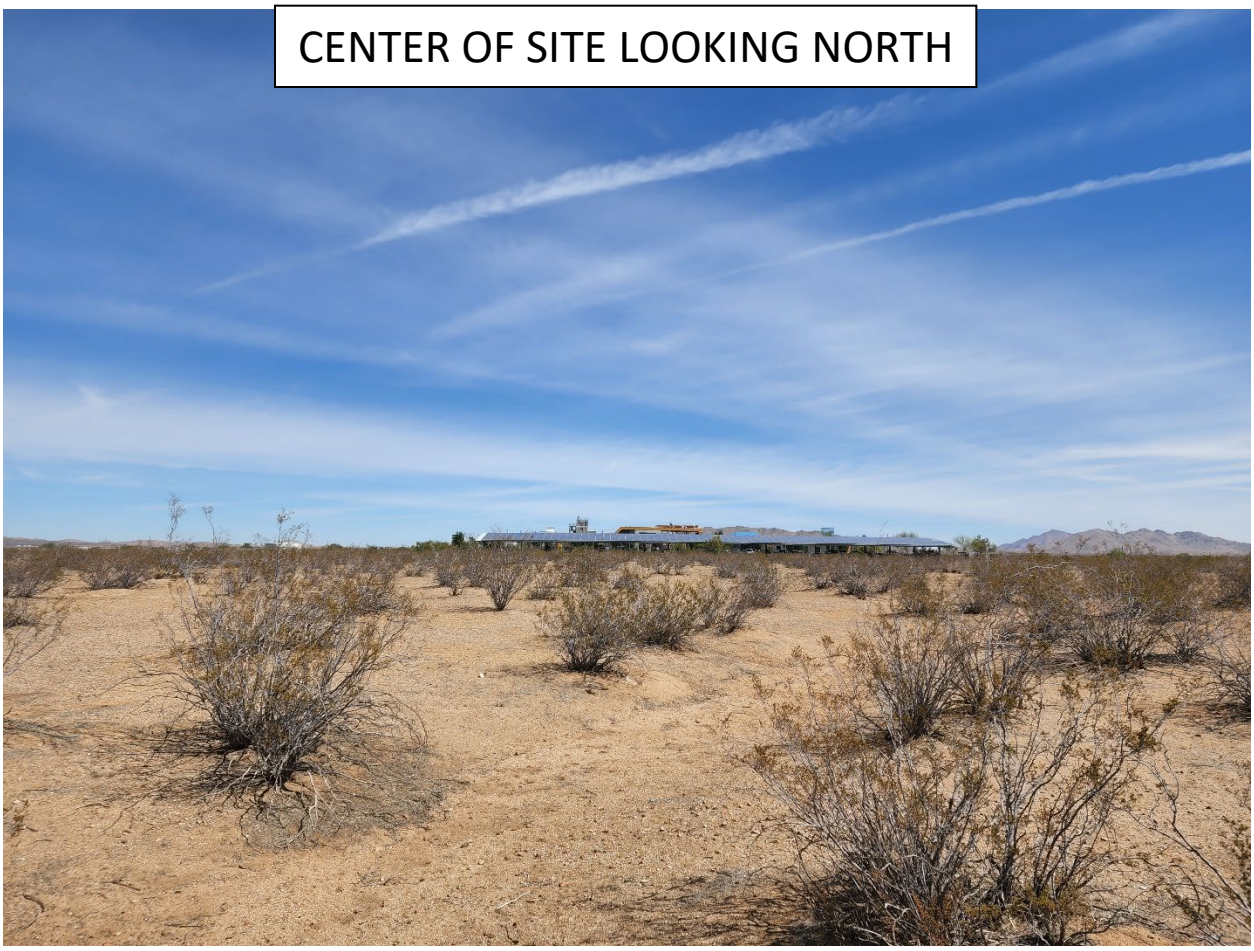


	Figure 2: Vicinity Exhibit Produced By: RCA Associates, Inc.	**NW Corner of Navajo Road and Lafayette Street, Apple Valley, CA.**	Source:	Uinta Software	RCA ASSOCIATES,INC
			Acreage:	18.77-Acres (Approximate)	
			Project #:	2022-86 BA	

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
Joshua tree	*Yucca brevifolia*	On Site
Silver cholla	*Cylindropuntia echinocarpa*	“
Pencil cholla	*Cylindropuntia leptocaulis*	“
Asian mustard	*Brassica tournefortii*	“
Cheatgrass	*Bromus tectorum*	“
White ratany	*Krameria grayi*	“
California buckwheat	*Eriogonum fasciculatum*	“
Common burrowbrush	*Ambrosia salsola*	“
Desert wirelettuce	*Stephanomeria pauciflora*	“
Big sagebrush	*Artemesia tridentata*	“
Creosote bush	*Larrea tridentata*	“
Fiddleneck	*Ansickia tessellata*	“
Kelch grass	*Schismus barbatus*	“
Western tansy mustard	*Descurainia pinnata*	“
Shortpod mustard	*Hirschfeldia incana*	“
Rubber rabbitbrush	*Ericameria nauseosa*	“
Ephedra	*Ephedra nevadensis*	“
Rattlesnake weed	*Euphorbia albomarginata*	”
White bursage	*Ambrosia dumosa*	“
Fourwing saltbush	*Atriplex canescens*	“

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

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

Common Name	Scientific Name	Location
Common raven	*Corvus corax*	On-site and in the surrounding area.
Verdin	*Auriparus flaviceps*	"
Mourning dove	*Zenaida macroura*	"
House finch	*Haemorhous mexicanus*	"
European starling	*Sturnus vulgaris*	"
Northern mockingbird	*Mimus polyglottos*	"
Horned lark	*Eremophila alpestris*	"
Lark sparrow	*Chondestes grammacus*	"
Rock pigeon	*Columba livia*	"
California ground squirrel	*Otospermophilus beecheyi*	"
Black-tailed jackrabbit	*Lepus californicus*	"
White-tailed antelope ground squirrel	*Ammospermophilus leucurus*	"

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 nonfederal entities to incidentally take federally listed wildlife or fish. Incidental take is defined by ESA as take that is "incidental to, and not the purpose of, the carrying out of another wise lawful activity." Preparation of a habitat conservation plan, generally referred to as an HCP, is required for all Section 10(a) permit applications. The USFWS and National Oceanic and

Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries Service) have joint authority under the ESA for administering the incidental take program. NOAA Fisheries Service has jurisdiction over anadromous fish species and USFWS has jurisdiction over all other fish and wildlife species.

Section 7 of the ESA requires all federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any species listed under the ESA, or result in the destruction or adverse modification of its habitat. Federal agencies are also required to minimize impacts to all listed species resulting from their actions, including issuance or permits or funding. Section 7 requires consideration of the indirect effects of a project, effects on federally listed plants, and effects on critical habitat (ESA requires that the USFWS identify critical habitat to the maximum extent that it is prudent and determinable when a species is listed as threatened or endangered). This consultation results in a Biological Opinion prepared by the USFWS stating whether implementation of the HCP will result in jeopardy to any HCP Covered Species or will adversely modify critical habitat and the measures necessary to avoid or minimize effects to listed species.

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

California Endangered Species Act

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

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

Clean Water Act, Section 404

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

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

Clean Water Act, Section 401

Section 401 of the Clean Water Act requires water quality certification and authorization of placement of dredge or fill material in wetlands and Other Waters of the United States. In accordance with Section 401 of the Clean Water Act, criteria for allowable discharges into surface waters have been developed by the State Water Resources Control Board, Division of Water Quality. As such, proponents of any new project which may impair water quality as a result of the

project are required to create a post construction stormwater management plan to ensure offsite water quality is not degraded. The resulting requirements are used as criteria in granting National Pollution Discharge Elimination System (NPDES) permits or waivers, which are obtained through the Central Valley Regional Water Quality Control Board (RWQCB). Any activity or facility that will discharge waste (such as soils from construction) into surface waters, or from which waste may be discharged, must obtain an NPDES permit or waiver from the RWQCB. The RWQCB evaluates an NPDES permit application to determine whether the proposed discharge is consistent with the adopted water quality objectives of the basin plan.

California Fish and Wildlife Code, Sections 1600-1616

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

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

California Fish and Wildlife Code, Section 3503.5

Under the California Fish and Wildlife Code, Section 3503.5, it is unlawful to take, possess, or destroy any birds in the orders Falconiformes (hawks, eagles, and flacons) 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.