

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

**PROPOSED TENTATIVE TRACT MAP
ADELANTO, SAN BERNARDINO COUNTY, CALIFORNIA
APN 0459-014-013**

Prepared for:

Synergy Consulting Ca

Prepared by:

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Lisa Cardoso, Wildlife Biologist
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Randall Arnold, Senior Biologist**



EST. 1990

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September 28, 2021

TITLE PAGE

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Report Title: General Biological Resources Assessment

Assessor's Parcel Number: 0459-014-13

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REGULATORY CONTEXT

1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on an approximately 42.2-acre parcel bounded by Vintage Road on the north, Koala Road to the west, and Chamberlaine Way to the south in the city of Adelanto, California (Figures 1 and 2). The Project site is specifically located on the SW¼ of the SW¼ of Section 19, Township 6 North, Range 5 West in the USGS Adelanto 7.5-minute California quadrangle. The project proponent is proposing a Tentative Tract Map that will consist of 171 lots, and be completed in 4 phases, to the City of Adelanto (Figure 4). The site is located in an area of Adelanto that is zoned for single-family residential (R-1).

As part of the environmental process, California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS) data sources were reviewed. Following the data review, surveys were performed on the site on September 27, 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 and flora 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, Joshua tree, and Mohave ground squirrel. Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDB, 2021). 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 42.2-acre in size and is located northeast of the intersection between Chamberlaine Way and Koala Road in the City of Adelanto, California (Section 19, Township 6 North, Range 5 West (USGS Adelanto, CA 7.5 minute quadrangle))(Figures 1 and 2). Vacant lands border the project site to the west, a single-family home to the south, and existing housing developments to the north and east (Figure 2).

The site is approximately 870 meters above sea level and relatively flat. The area within the project boundaries supports a moderately disturbed habitat consisting of Lavic Loamy fine sand and Cajon sand, which have 0 to 5 and 0 to 2 percent slopes, well drainage, a moderate available water capacity, and no frequency of flooding. The vegetation community on site is creosote bush scrub habitat encompassing mainly native plants and some non-native grasses. The site is dominated by creosote bush (*Larrea tridentata*), Nevada jointfir (*Ephedra nevadensis*), kelch grass (*Schismus barbatus*), rubber rabbitbrush (*Ericameria nauseosa*), and Asian mustard (*Brassica tournefortii*). Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

The site supports little wildlife, with many of them being birds. Mammals that were observed on site were limited to the Antelope Ground squirrel (*Ammospermophilus leucurus*) and black-tailed jackrabbit (*Lepus californicus*). Other mammals that are expected to occur in the area include California ground squirrel (*Otospermophilus beecheyi*), desert cottontails (*Sylvilagus audubonii*), and coyote (*Canis latrans*).

Birds observed included ravens (*Corvus corax*), mourning dove (*Zenaida macroura*), virden (*Auriparus flaviceps*), white crowned sparrow (*Zonotrichia leucophrys*), red tailed hawk (*Buteo jamaicensis*), house finch (*Haemorrhous mexicanus*), and rock pigeon (*Columba livia*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

Reptiles that were observed during the survey were limited to the western whiptail lizard (*Cnemidophorus tigris*) and side-blotched lizard (*Uta stansburiana*). Some reptile species that may occur on site or in the immediate surrounding area include the desert spiny lizard (*Sceloporus*

magister) and desert horned lizard (*Phrynosoma platyrhinos*). Table 2 provides a compendium of wildlife species.

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

3.0 METHODOLOGIES

General biological surveys were conducted on September 27, 2021, during which biologists from RCA Associates, Inc. initially walked 10-meter parallel 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, Joshua trees, and Mohave ground squirrel. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the low 70's to high 70's (°F) (PM) with 0% cloud cover, and a haze. 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, Joshua tree, and Mohave ground squirrel. Tables 1 and 2 (Appendix A) provides a comprehensive compendium of the various plant and animal; species observed during the field investigations.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDDB) search was performed. Based on this review, it was determined that five special status species have been documented within the Adelanto quad 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
Wildlife Species			
Within Adelanto Quadrangle			
Desert tortoise (<i>Gopherus agassizii</i>)	Federal: Threatened State: Threatened	Desert scrub	The site is located within the known distribution of the species. An evaluation of the area and property was conducted and no tortoises or suitable habitat was observed.
Burrowing owl (<i>Athene cunicularia</i>)	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, or suitable burrows, were observed during field surveys.
Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>)	Federal: None State: Threatened	Desert scrub	The site does not support suitable habitat for the species. Species has not been identified in the area; therefore, species is not likely to inhabit the site.
Swainson's Hawk (<i>Buteo swainsoni</i>)	Federal: None State: Threatened	Open grasslands	Site does not support suitable habitat for the species; and no Swainson's hawks were observed during the field survey.
Le Conte's thrasher (<i>Toxostoma lecontei</i>)	Federal: None State: None CDFW: SSC	Desert scrub	Site does not support suitable habitat for the species; and no thrashers were observed during the field survey.

5.0 RESULTS

5.1 General Biological Resources

The site supports a relatively undisturbed desert scrub plant community which sparsely covers the property (Figure 3). Species present on the site included kelch grass (*Schismus barbatus*), creosote bush (*Larrea tridentata*), Asian mustard (*Brassica tournefortii*), Nevada jointfir (*Ephedra nevadensis*), white bursage (*Ambrosia dumosa*), common burrobrush (*Ambrosia salsola*), rubber rabbitbrush (*Ericameria nauseosa*), and fiddleneck (*Amsinckia tessellata*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed included ravens (*Corvus corax*), rock pigeon (*Columba livia*), house finch (*Haemorhous mexicanus*), mourning dove (*Zenaida macroura*), turkey vulture (*Cathartes aura*), northern mockingbird (*Mimus polyglottos*), white-throated swift (*Aeronautes saxatalis*), black-throated sparrow (*Amphispiza bilineata*), red-tailed hawk (*Buteo jamaicensis*), white-crowned sparrow (*Zonotrichia leucophrys*), verdin (*Auriparus flaviceps*), and European starling (*Sturnus vulgaris*). Table 2 provides a complete compendium of wildlife species occurring on site or in the surrounding area

Mammals observed on site included the black-tailed jackrabbit (*Lepus californicus*) and Antelope Ground squirrel (*Ammospermophilus leucurus*). Coyote (*Canis latrans*) scat and tracks were observed during the field investigations and the species is expected to traverse the site during hunting activities. Other wildlife species that may occur on site include desert cottontails (*Sylvilagus audubonii*) and California ground squirrels (*Otospermophilus beecheyi*), and Merriam's kangaroo rats (*Dipodomys merriami*) may also occur on the site given their wide-spread distribution in the region. 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 on site consisted of the Side-blotched lizard (*Uta stansburiana*), and the Western Whiptail Lizard (*Cnemidophorus tigris*).

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, a state and federal threatened species, habitat according to CNDDB (2021). The property supports marginal habitat for the desert tortoise based on the location of the site in a semi-developed area of Adelanto. No tortoises were observed anywhere within the property boundaries during the September 27, 2021 surveys. The species is not expected to move onto the site in the near future based on the absence of any potential burrows or sign, absence of any recent observations in the immediate area, and the presence of busy roadways and developments in the immediate area which may act as barriers to migration of tortoises. The protocol survey results are valid for one year as per CDFW and USFWS requirements.

Mohave Ground Squirrel: The Mohave ground squirrel is a California state threatened species that have a short, flat, furred, white, underside tail, uniformly brown (with no spots or stripes). They inhabit open desert scrub, alkali desert scrub, and annual grasslands on sandy to gravelly surfaces in the Mojave Desert. Occupiable burrows were found on the site, but no Mohave ground squirrels were detected. 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, that there have been two recent sightings, within 20 years, of the species in the Adelanto quadrangle.

Swainson's Hawk: The site is located within documented Swainson's hawk habitat, a state threatened raptor, according to CNDDB (2021). No hawks were seen on the property during the survey, and no suitable habitat was observed due to previous grading of the site. Swainson's hawks occupy grasslands and breed in trees that are the only ones seen for miles. Swainson's hawks are not expected to occur on the site due to lack of habitat and prime vegetation.

5.3 Wildlife Species of Special Concern

Burrowing Owl: The site is located within documented burrowing owl habitat according to CNDDDB (2021). No owls were seen on the property during the survey, and minimal suitable habitat was observed. Burrowing owls are not expected to occur on the site due to lack of suitable vegetation and burrows.

Le Conte's thrasher: Le Conte's thrashers have not been recently observed in the area according to CNDDDB (2021). 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 CNDDDB.

5.4 Jurisdictional Waters and Riparian Habitat

No riparian vegetation (e.g., cottonwoods, willows, etc.) exist on the site or in the adjacent habitats.

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. Several Joshua trees were observed on site during the September 27, 2021 field investigations. A Protected Plant Preservation Plan or Joshua tree survey will need to be prepared and 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 have minimal impact on the general biological resources present on 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 42.2-acres of desert vegetation is not expected to have a significant cumulative impact on the overall biological resources in the area 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 wildlife species were observed on the site during the field investigations. In addition, there were no signs of Desert Tortoises or Mohave ground squirrel burrows, and 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 habitat.

The Western Joshua tree (*Yucca brevifolia*), a candidate threatened species under the California Endangered Species Act (CESA), was the only Federal or State Listed and Species of Special Concern observed. Refer to section 5.5 for more information on the status and requirements on this species.

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 be performed prior to any clearing/grading activities to determine if owls have moved on to the site since the September 27, 2021, surveys.

7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities include the grading and removal of all vegetation from the 42.2-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 scarce vegetation of non-native species. 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 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.

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, Jessica Hensley, 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: 09/28/2021 Signed: *Ryan Hunter*
Lisa Cardoso
Jessica Hensley

Field Work Performed By: Lisa Cardoso
Wildlife Biologist

Ryan Hunter
Environmental scientist & Biologist

Jessica Hensley
Environmental Scientist

Appendix A
Tables and Figures

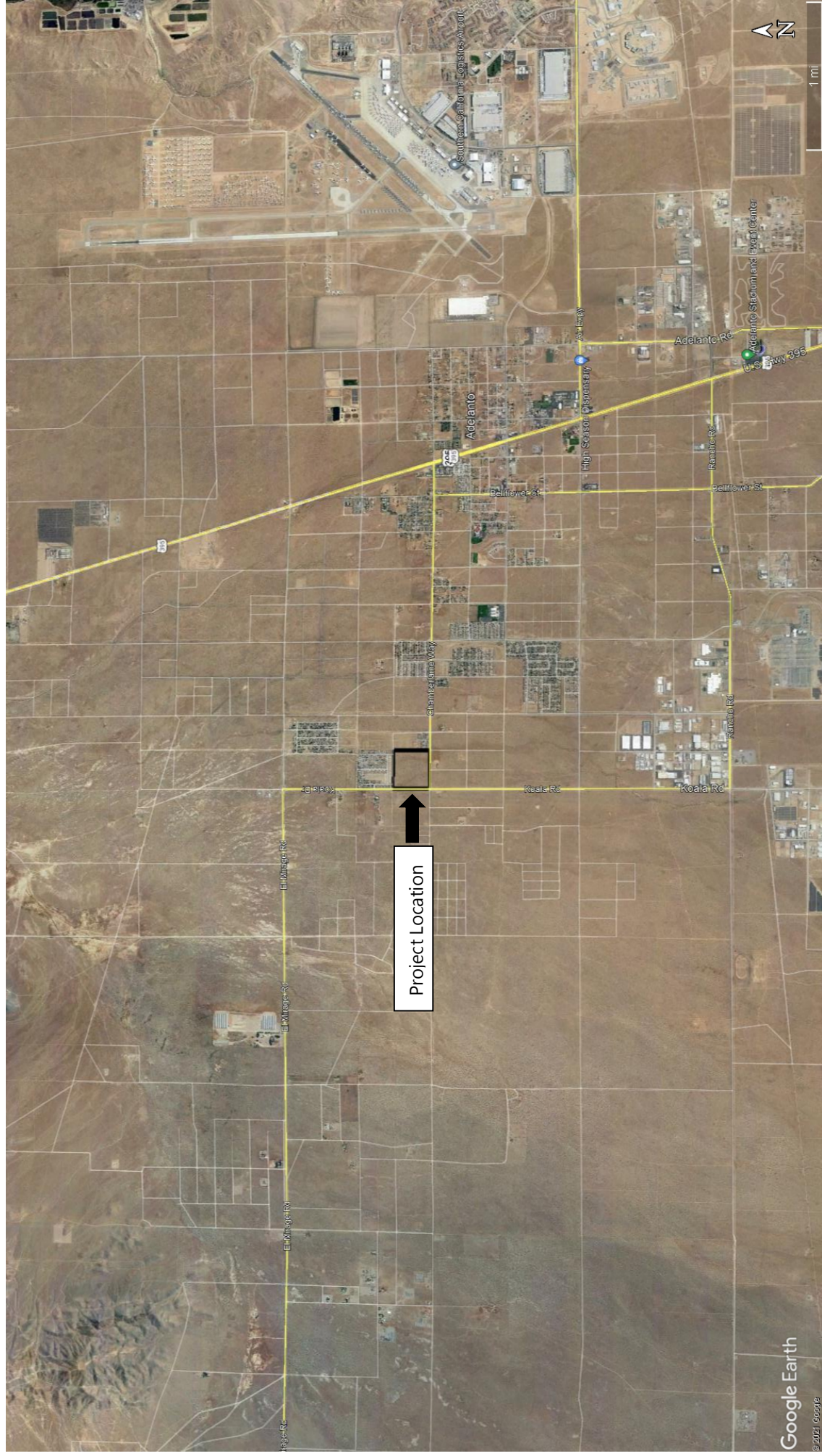
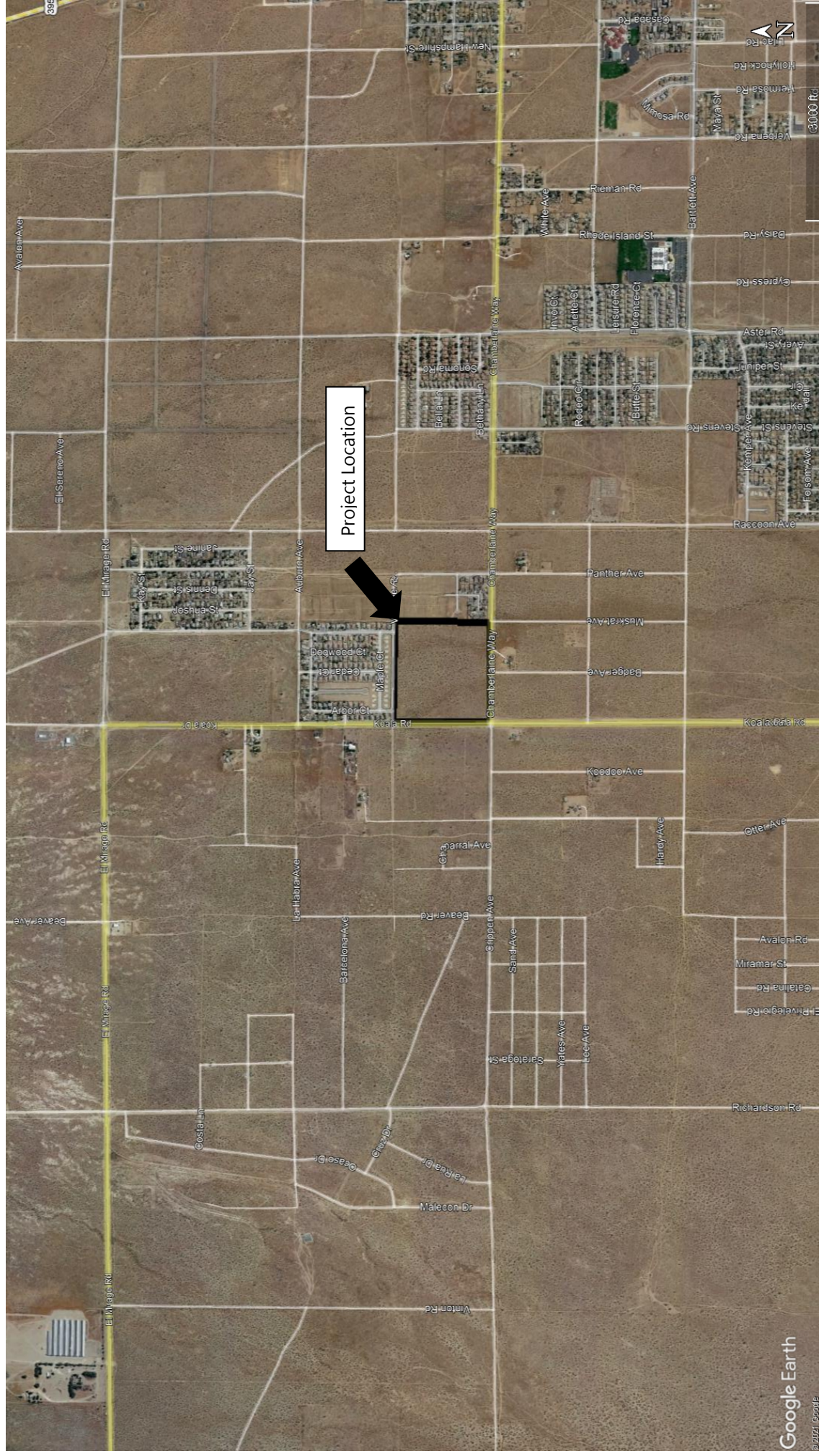


Figure 1: Regional Exhibit





CENTER OF SITE LOOKING NORTH



CENTER OF SITE LOOKING EAST

FIGURE 3
PHOTOGRAPHS OF SITE



CENTER OF SITE LOOKING SOUTH



CENTER OF SITE LOOKING WEST

FIGURE 3, cont.
PHOTOGRAPHS OF SITE

IN THE CITY OF ADELANTO,
COUNTY OF SAN BERNARDINO, CALIFORNIA

TENTATIVE TRACT MAP No. 20471

BEING A SUBDIVISION OF THE SOUTH 42.44 ACRES OF GOVERNMENT
LOT 2 OF SECTION 19, TOWNSHIP 6 NORTH, RANGE 5 WEST S.B.B. & M.

LUDWIG ENGINEERING

SEPTEMBER 2021

OWNER/DEVELOPER

JOSHUA TREE FUND, LLC
410 PATTI ANN WOODS DRIVE
HENDERSON, NV 89002
PH: (702) 330-1715

ENGINEER

LUDWIG ENGINEERING
109 E. THIRD STREET
SAN BERNARDINO, CA 92410
(909)884-8217

ASSESSOR'S PARCEL NO.

APN: 0459-014-13

ZONING & LAND USE

PRESENT: R-1 VACANT
PROPOSED: R-1 SINGLE FAMILY RESIDENTIAL

GENERAL PLAN DESIGNATION

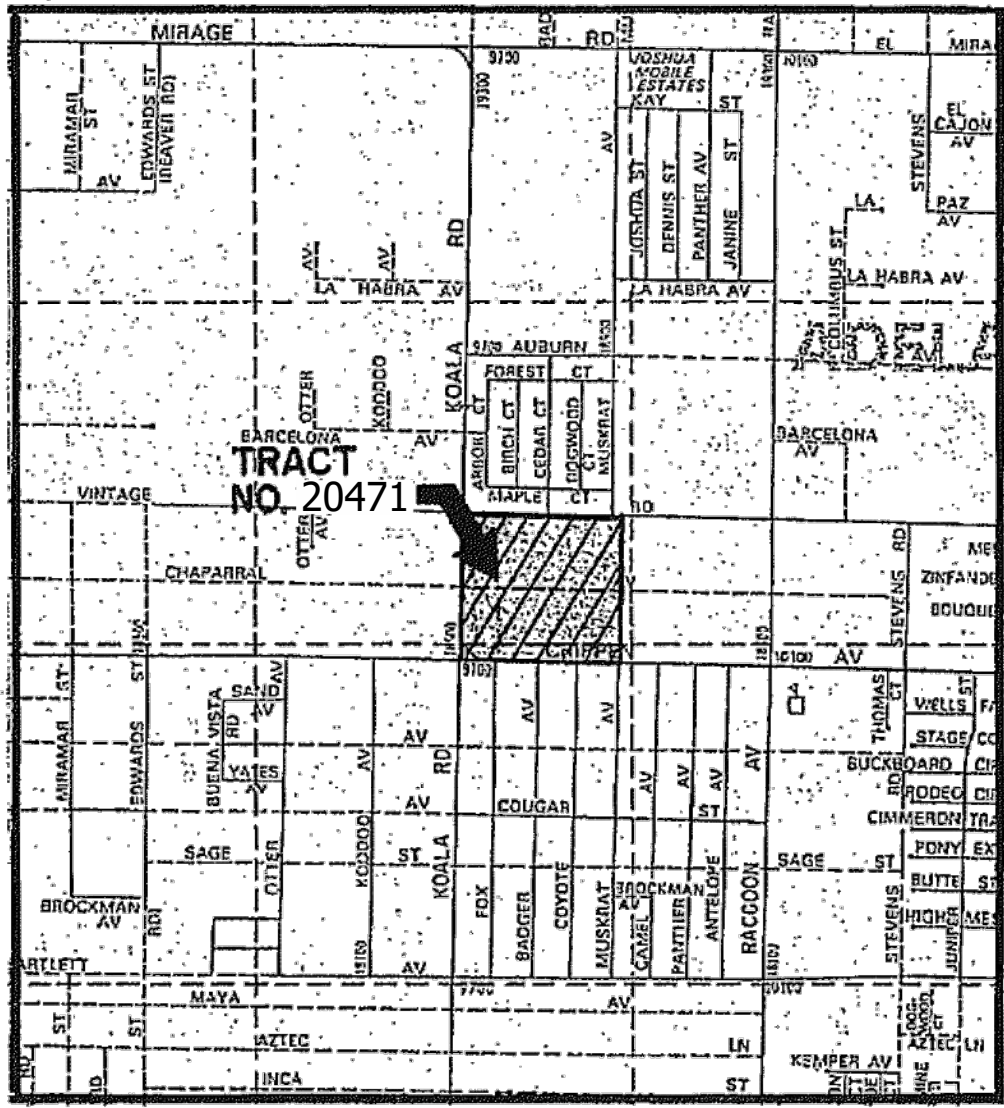
SINGLE FAMILY RESIDENTIAL

AREAS

TOTAL ACREAGE 42.44 AC
TOTAL NUMBERED LOTS 171 LOTS
UNITS PER ACRE RES. 4.03 U.P.A.
MINIMUM LOT SIZE RES. 7,200 S.F.
TOTAL LETTERED LOTS 2 LOTS

NOTES

- THIS TRACT CONTAINS 9,107 L.F. OF NEW STREETS.
- UNLESS OTHERWISE INDICATED THE SURROUNDING LAND USE IS "VACANT"
- CONTOUR SOURCE: CITY OF ADELANTO FLOWN TOPO
- EARTHWORK WILL BE BALANCED ON SITE.
- SETBACKS:
FRONT: 25'
SIDE: 5'
STREET SIDE YARD: 15'
REAR YARD: 15'
- THIS IS A CALCULATED MAP. LOT CLOSURES ARE AVAILABLE. THE DEVELOPER REQUESTS REVIEW FOR COMPLIANCE WITH CURRENT CODES AND POLICIES WITH REGARD TO GEOMETRICS.
- PE=70.0 INDICATES PAD ELEVATION.
- UNLESS OTHERWISE INDICATED THE SURROUNDING LAND USE IS "VACANT".
- DEVELOPMENT OF SITE WILL HAVE MINIMAL EFFECT ON EXISTING DRAINAGE PATTERNS. STORM WATER RUNOFF WILL FOLLOW EXISTING AND NATURAL DRAINAGE COURSES OR BE CARRIED IN PROPOSED STREETS AND DRAINAGE FACILITIES AS INDICATED ON THE MAP AND OUTLINED IN ACCOMPANYING DRAINAGE STUDY.
- SECONDARY ACCESS TO BE PROVIDED WHERE NECESSARY



VICINITY MAP
NOT TO SCALE

LEGEND

- TRACT BOUNDARY
- STREET CENTERLINE
- 3200--- EXIST. CONTOURS
- PHASE BOUNDARY

NOTES

ELECTRIC: SOUTHERN CALIFORNIA EDISON CO.
12353 HESPERIA RD.
VICTORVILLE, CA. 92392
PH: (800) 422-4950

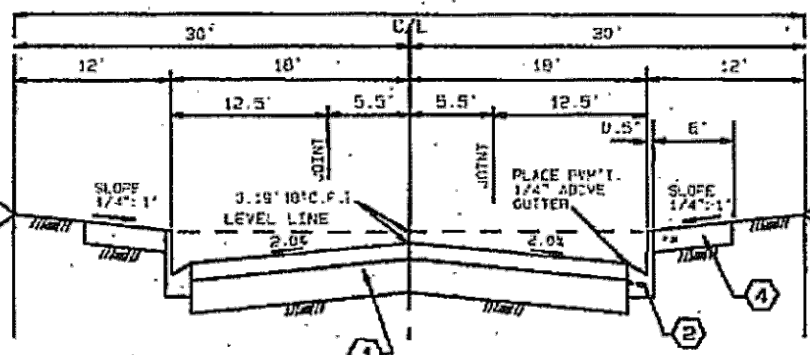
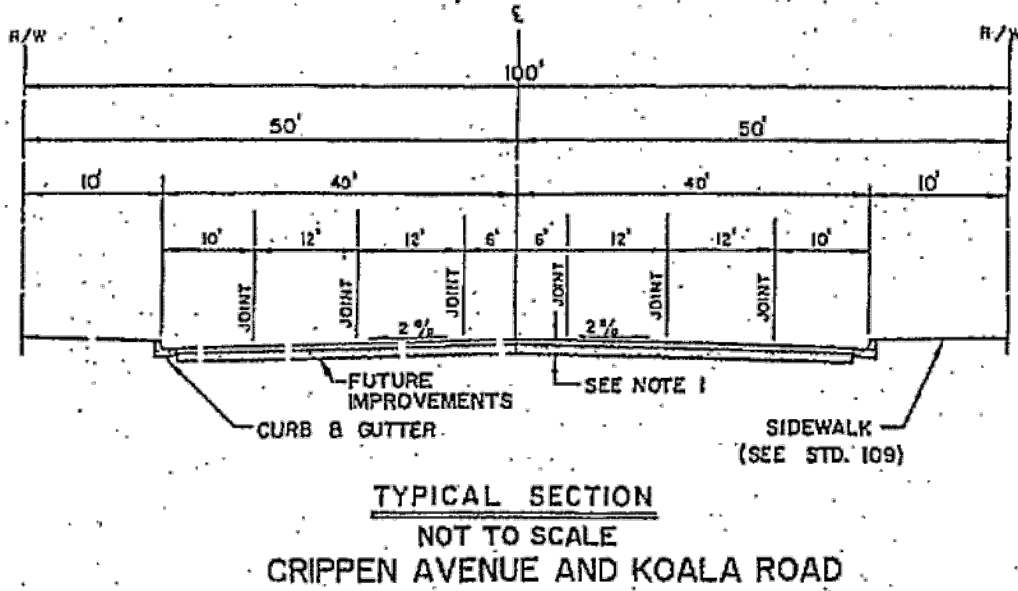
SEWER: ADELANTO PUBLIC UTILITIES AUTHORITY
11600 AIR EXPRESSWAY
ADELANTO, CA. 92301
PH: (760) 246-2300

WATER: ADELANTO PUBLIC UTILITIES
AUTHORITY
11600 AIR EXPRESSWAY
ADELANTO, CA. 92301
PH: (760) 246-2300

GAS: SOUTHERN CALIFORNIA GAS COMPANY
13471 MARIPOSA RD.
VICTORVILLE, CA. 92392
PH: (760) 241-9321

TELEPHONE: FRONTIER COMMUNICATIONS
PH: (855) 504-4913

CABLE TV: CHARTER COMMUNICATIONS
12180 RIDGECREST RD #102
VICTORVILLE, CA. 92392
PH: (866) 438-2427



TYPICAL SECTION*
NOT TO SCALE
INTERIOR STREETS AND VINTAGE ROAD

* THE MINIMUM PAVEMENT STRUCTURAL SECTION FOR THIS STREET IS 2" OF ASPHALTIC CONCRETE ON 6" OF AGGREGATE BASE PER MINIMUM STREET PAVEMENT STANDARDS ADOPTED JULY 8, 1990, UNLESS OTHERWISE APPROVED BY THE CITY ENGINEER.

FIGURE 4: SITE PLAN

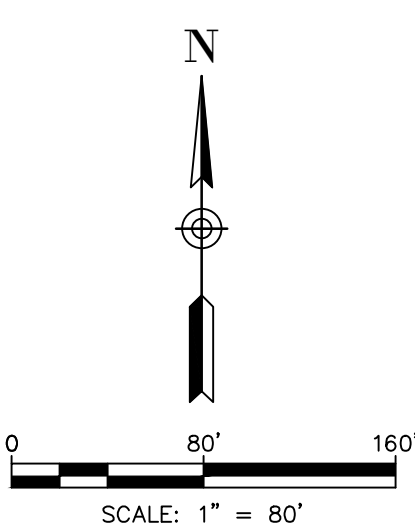
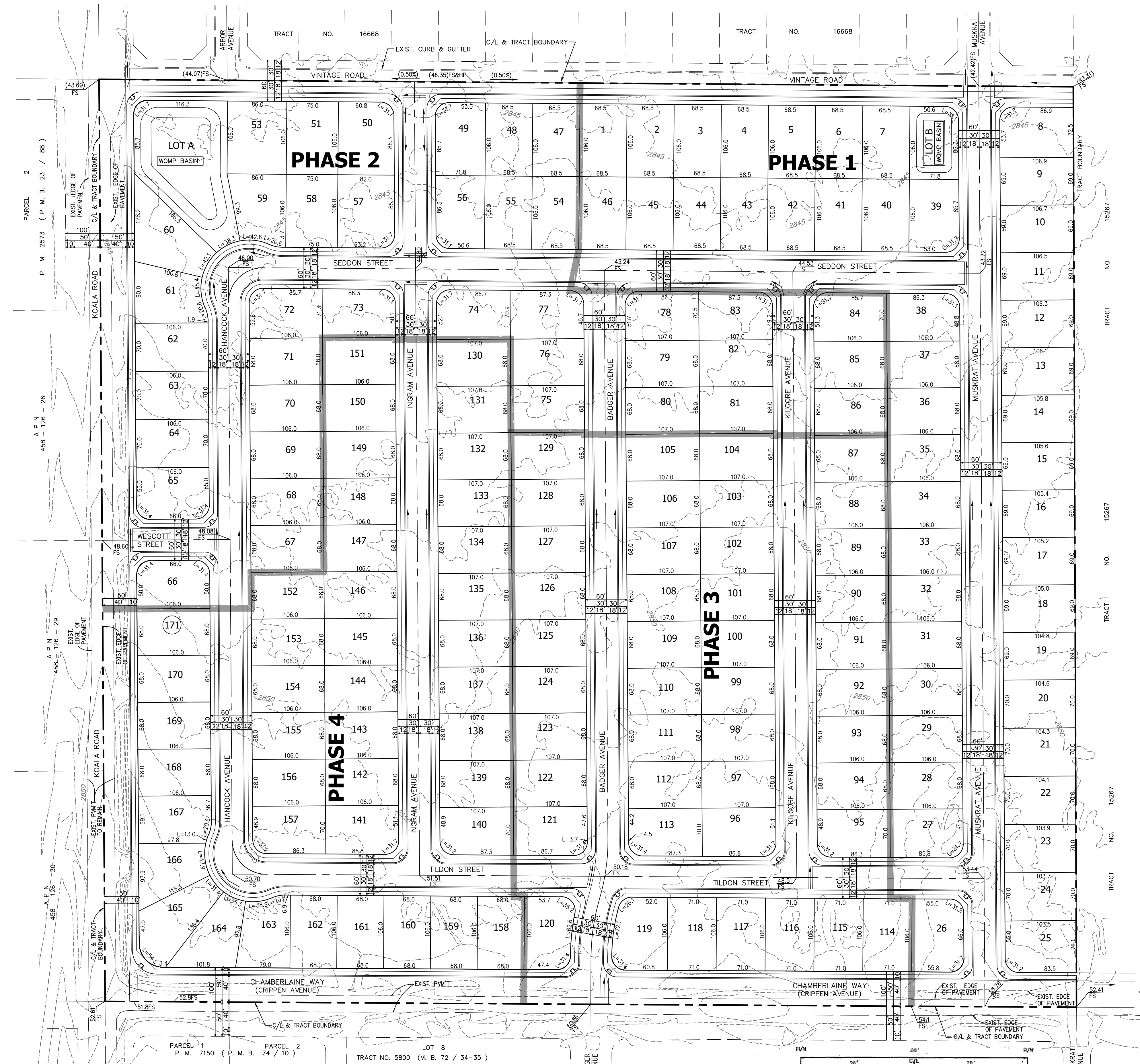


Table 1 - Plants observed on the site and known to occur in the immediate surrounding area.

Common Name	Scientific Name	Location
Asian mustard	<i>Brassica tournefortii</i>	On Site
Creosote bush	<i>Larrea tridentata</i>	“
Nevada jointfir	<i>Ephedra nevadensis</i>	“
Tumbleweed	<i>Kali tragus ssp. tragus</i>	“
Kelch Grass	<i>Schismus barbatus</i>	“
Common burrobrush	<i>Ambrosia salsola</i>	“
Fiddleneck	<i>Ansickia tessellata</i>	“
Joshua Tree	<i>Yucca brevifolia</i>	“
California croton	<i>Croton californicus</i>	“
Four-wing saltbush	<i>Atriplex canescens</i>	
California buckwheat	<i>Eriogonum fasciculatum</i>	“
Maltese star thistle	<i>Centaurea melitensis</i>	“
Western Jimson weed	<i>Datura wrightii</i>	“
Anderson thornbush	<i>Lycium andersonii</i>	“
Silver cholla	<i>Cylindropuntia echinocarpa</i>	“
Rubber rabbitbrush	<i>Ericameria nauseosa</i>	“
Flatspine bur ragweed	<i>Ambrosia acanthicarpa</i>	“
Broom snakeweed	<i>Gutierrezia sarothrae</i>	“
Indian rice grass	<i>Eriocoma hymenoides</i>	“
White bursage	<i>Ambrosia dumosa</i>	“
Winterfat	<i>Krascheninnikovia ceratoides subsp. lanata</i>	“

Cheatgrass	<i>Bromus tectorum</i>	“
Chia	<i>Salvia columbariae</i>	“
Russian Thistle	<i>Salsola tragus</i>	“

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

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

Common Name	Scientific Name	Location
Common raven	<i>Corvus corax</i>	On-site and in the surrounding area.
House finch	<i>Haemorhous mexicanus</i>	“
Rock pigeon	<i>Columba livia</i>	“
Turkey vulture	<i>Cathartes aura</i>	“
Northern mockingbird	<i>Mimus polyglottos</i>	“
European starling	<i>Sturnus vulgaris</i>	“
Mourning dove	<i>Zenaida macroura</i>	“
White-crowned sparrow	<i>Zonotrichia leucophrys</i>	“
Red-tailed hawk	<i>Buteo jamaicensis</i>	“
Black-throated sparrow	<i>Amphispiza bilineata</i>	“
Virden	<i>Auriparus flaviceps</i>	“
Western whiptail	<i>Cnemidophorus tigris</i>	“
Side-blotched lizard	<i>Uta stansburiana</i>	“
Black-tailed jackrabbit	<i>Lepus californicus</i>	“
Coyote (scat)	<i>Canis latrans</i>	“
Antelope ground squirrel	<i>Ammospermophilus leucurus</i>	“
California ground squirrel	<i>Otospermophilus beecheyi</i>	“
White-throated Swift	<i>Aeronautes saxatalis</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 nonfederal entities to incidentally take federally listed wildlife or fish. Incidental take is defined by ESA as take that is “incidental to, and not the purpose of, the carrying out of another wise lawful activity.” Preparation of a habitat conservation plan, generally referred to as an HCP, is required for all Section 10(a) permit applications. The USFWS and National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA Fisheries Service) have joint authority under the ESA for administering the incidental take program. NOAA Fisheries Service has jurisdiction over anadromous fish species and USFWS has jurisdiction over all other fish and wildlife species.

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

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

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

California Endangered Species Act

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

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

Clean Water Act, Section 404

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

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

Clean Water Act, Section 401

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

California Fish and Wildlife Code, Sections 1600-1616

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

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

California Fish and Wildlife Code, Section 3503.5

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

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.