

THE WONDER INN JOSHUA TREE

SAN BERNARDINO COUNTY, CALIFORNIA

Habitat Assessment

Prepared For:

The Wonder Inn Joshua Tree
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Twentynine Palms, California 92277
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July 2021

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SAN BERNARDINO COUNTY, CALIFORNIA

(Assessor Parcel Numbers 0625-071-04, -05, -07, -08, -09, -10 and -14, Totaling 134 acres)

Habitat Assessment

The undersigned certify that the statements furnished in this report and exhibits present data and information required for this biological evaluation, and the facts, statements, and information presented is a complete and accurate account of the findings and conclusions to the best of our knowledge and beliefs.



Travis J. McGill
Director/Biologist



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July 2021

Table of Contents

Section 1	Introduction.....	1
1.1	Project Location	1
1.2	Project Description	1
Section 2	Methodology	5
2.1	Literature Review	5
2.2	Field Investigation	6
2.3	Soil Series Assessment	6
2.4	Plant Communities.....	6
2.5	Plants.....	6
2.6	Wildlife	6
2.7	Jurisdictional Drainages and Wetlands.....	7
Section 3	Existing Conditions.....	8
3.1	Local Climate.....	8
3.2	Topography and Soils	8
3.3	Surrounding Land Uses	8
Section 4	Discussion	9
4.1	Site Conditions.....	9
4.2	Vegetation.....	9
4.2.1	Creosote Bush Scrub.....	9
4.2.2	Agricultural.....	9
4.2.3	Disturbed.....	9
4.2.4	Developed	11
4.3	Wildlife	11
4.3.1	Fish	11
4.3.2	Amphibians.....	11
4.3.3	Reptiles	11
4.3.4	Birds.....	11
4.3.5	Mammals	12
4.4	Nesting Birds	12
4.5	Wildlife Corridors and Linkages	12
4.6	State and Federal Jurisdictional Areas.....	13
4.7	Special-Status Biological Resources.....	13

4.7.1 Special-Status Plants..... 14

4.7.2 Special-Status Wildlife 14

4.7.3 Special-Status Plant Communities..... 16

4.8 Critical Habitat..... 16

Section 5 Conclusion and Recommendations 19

Section 6 References..... 22

EXHIBITS

Exhibit 1: Regional Vicinity 2
Exhibit 2: Site Vicinity 3
Exhibit 3: Project Site 4
Exhibit 4: Vegetation 10
Exhibit 5: Critical Habitat 18

APPENDIX

Appendix A Site Photographs
Appendix B Potentially Occurring Special-Status Biological Resources
Appendix C Regulations

Section 1 Introduction

This report contains the findings of ELMT Consulting’s (ELMT) habitat assessment for The Wonder Inn Joshua Tree Project (Project) located at 78201 Amboy Road in an unincorporated area of San Bernardino County near the City of Twentynine Palms, California. The site encompasses APNs 0625-071-04, 05, 07, 08, 09, 10 and 14 and totals 134 acres. ELMT biologists Travis J. McGill conducted a field survey and evaluated the condition of the habitat within the project site and surrounding areas (survey area) on March 25, 2021.

The habitat assessment was conducted to characterize existing site conditions and to assess the probability of occurrence of special-status¹ plant and wildlife species that could pose a constraint to project implementation. This report provides an in-depth assessment of the suitability of the on-site habitat to support special status wildlife species, in particular desert tortoise (*Gopherus agassizii*) and burrowing owl (*Athene cunicularia*) as well as other special-status plant identified by the California Natural Diversity Data Base (CNDDDB), the California Native Plant Society’s (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California, as well as other electronic databases to identify species with the potential for occurring in the vicinity of the Project site.

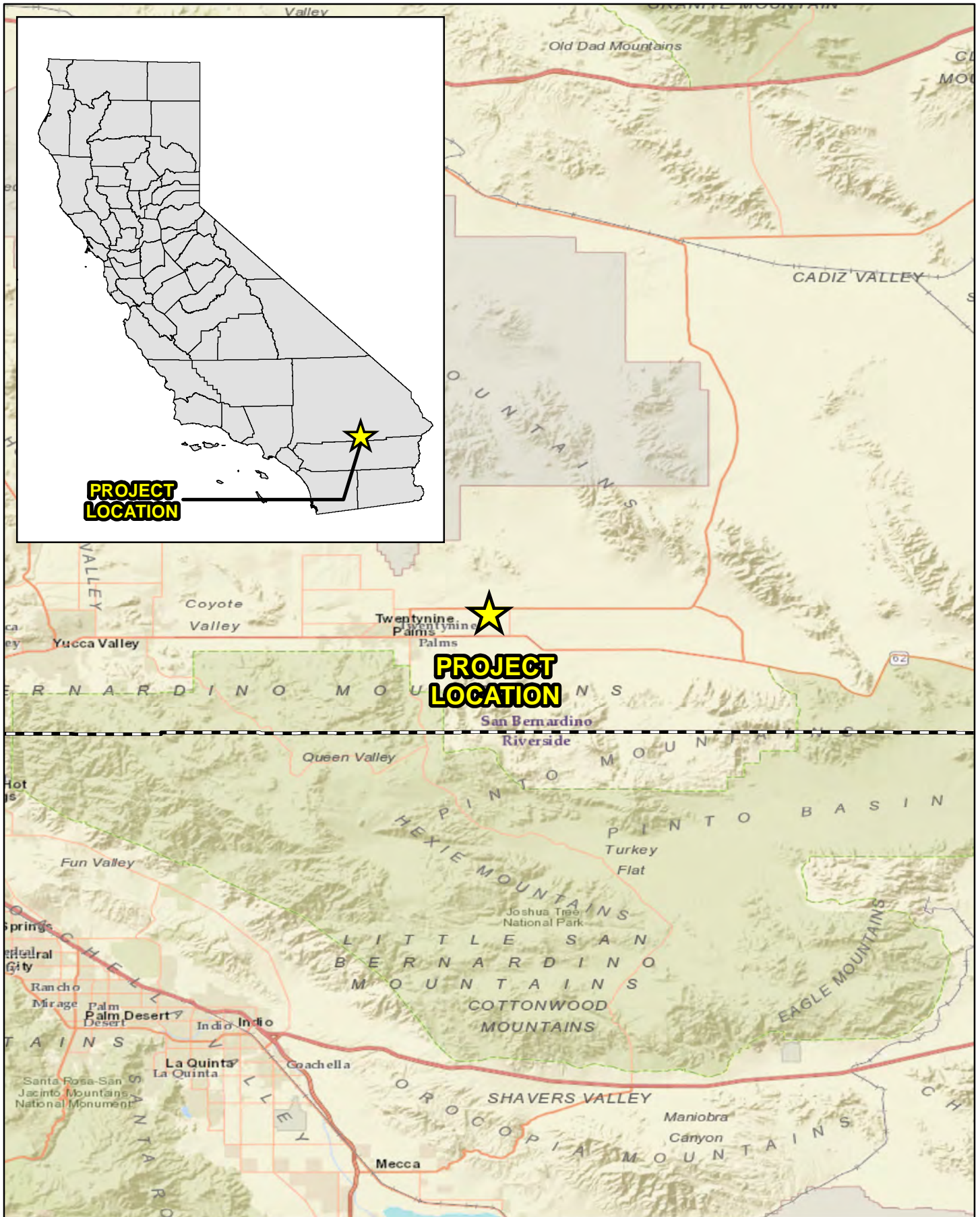
1.1 PROJECT LOCATION

The project site is generally located north of State Route 62, east of State Route 247, south of the Bullion Mountains, and west of United State Route 95 in the City of Twentynine Palms, San Bernardino County, California (Exhibit 1, *Regional Vicinity*). The project site is depicted on the Valley Mountain quadrangle of the United States Geological Survey’s (USGS) 7.5-minute topographic map series within Section 20 of Township 1 North, Range 10 East (Exhibit 2, *Site Vicinity*). Specifically, the site is bounded to the north by Amboy Road, to the east by Gammel Road, and roughly to the west by Pinto Mountain Road at 78201 Amboy Road in an unincorporated area of San Bernardino County near the City of Twentynine Palms, California within Assessor Parcel Numbers (APNs) 0625-071-04, -05, -07, -08, -09, -10 and -14 (Exhibit 3, *Project Site*).

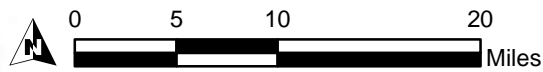
1.2 PROJECT DESCRIPTION

The proposed project consists of the development of a 106-bed destination resort hotel across 134 acres.

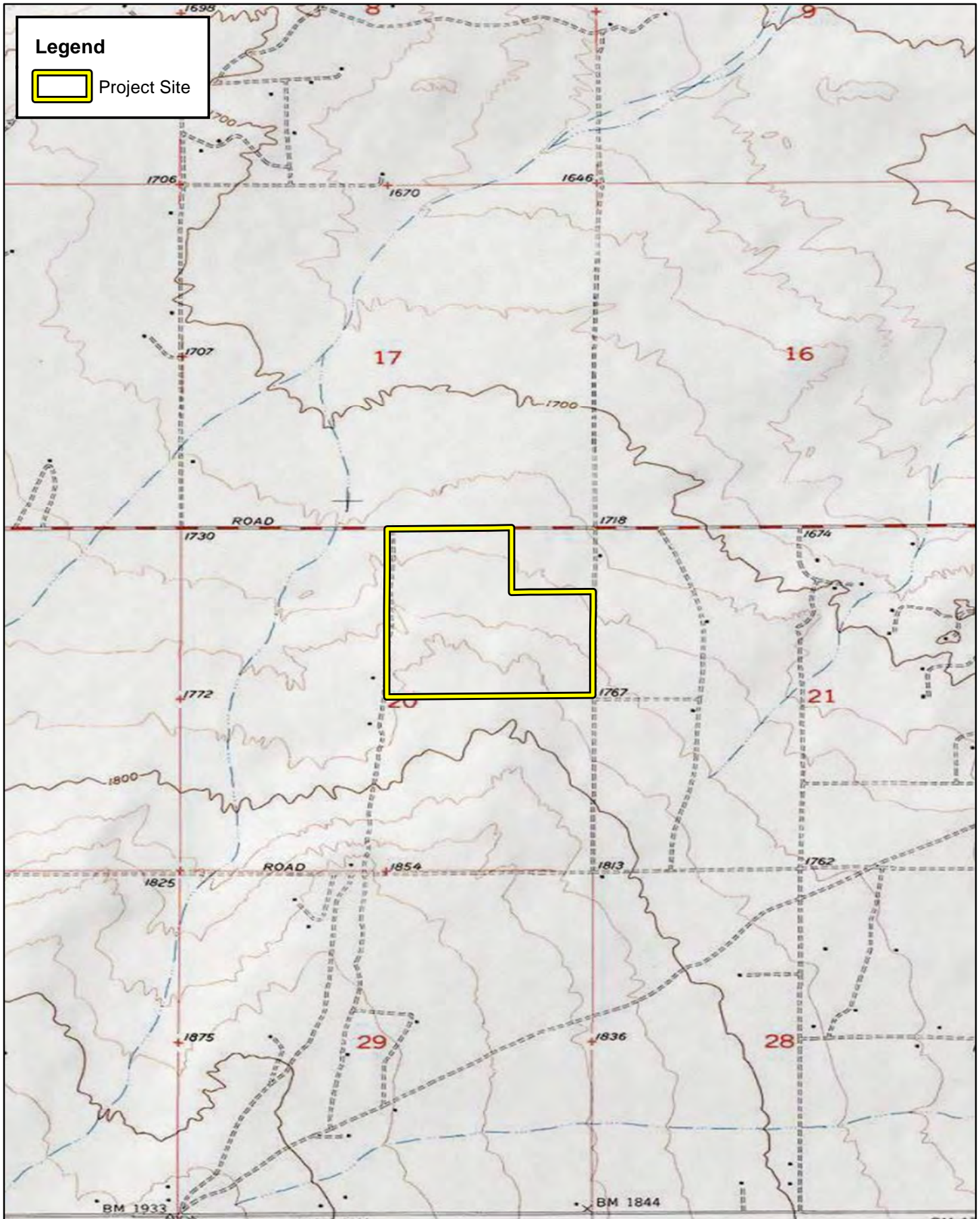
¹ As used in this report, “special-status” refers to plant and wildlife species that are federally or State listed, proposed, or candidates; plant species that have been designated a California Native Plant Society (CNPS) Rare Plant Rank; and wildlife species that are designated by the California Department of Fish and Wildlife (CDFW) as fully protected, species of special concern, or watch list species.



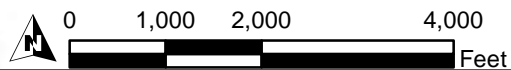
THE WONDER INN JOSHUA TREE
 HABITAT ASSESSMENT
Regional Vicinity



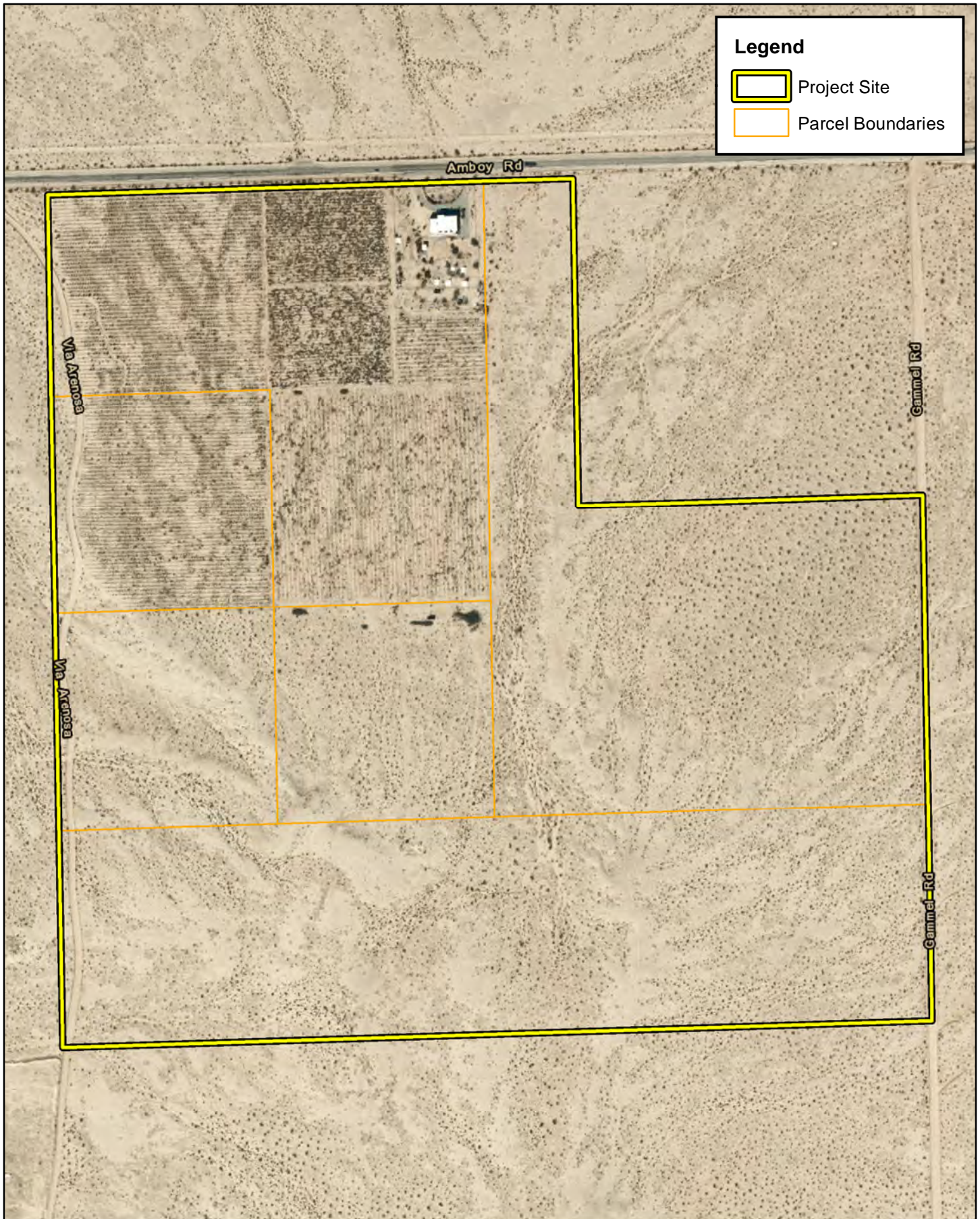
Source: World Street Map, San Bernardino County



THE WONDER INN JOSHUA TREE
 HABITAT ASSESSMENT
Site Vicinity



Source: USA Topographic Map, San Bernardino County



THE WONDER INN JOSHUA TREE
HABITAT ASSESSMENT

Project Site



Source: ESRI Aerial Imagery, San Bernardino County

Section 2 Methodology

A literature review and records search were conducted to determine which special-status biological resources have the potential to occur on or within the general vicinity of the project site. In addition to the literature review, a general habitat assessment or field investigation of the project site was conducted. The field investigation was conducted to document existing conditions within the project site and assess the potential for special-status biological resources to occur.

2.1 LITERATURE REVIEW

Prior to conducting the field investigation, a literature review and records search was conducted for special-status biological resources potentially occurring on or within the vicinity of the project site. Previously recorded occurrences of special-status plant and wildlife species and their proximity to the project site were determined through a query of the CDFW QuickView Tool in the Biogeographic Information and Observation System (BIOS), CNDDDB Rarefind 5, the California Native Plant Society's (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California, Calflora Database, compendia of special-status species published by CDFW, and the United States Fish and Wildlife Service (USFWS) species listings.

All available reports, survey results, and literature detailing the biological resources previously observed on or within the vicinity of the project site were reviewed to understand existing site conditions and note the extent of any disturbances that have occurred on the project site that would otherwise limit the distribution of special-status biological resources. Standard field guides and texts were reviewed for specific habitat requirements of special-status and non-special-status biological resources, as well as the following resources:

- Google Earth Pro historic aerial imagery (1985-2018);
- San Bernardino County General Plan;
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), Soil Survey²;
- USFWS Critical Habitat designations for Threatened and Endangered Species; and
- USFWS National Wetlands Inventory (NWI).

The literature review provided a baseline from which to inventory the biological resources potentially occurring on the subject property. The CNDDDB database was used, in conjunction with ArcGIS software, to locate the nearest recorded occurrences of special-status species and determine the distance from the project site.

² A soil series is defined as a group of soils with similar profiles developed from similar parent materials under comparable climatic and vegetation conditions. These profiles include major horizons with similar thickness, arrangement, and other important characteristics, which may promote favorable conditions for certain biological resources.

2.2 FIELD INVESTIGATION

ELMT biologist Travis J. McGill evaluated the extent and conditions of the plant communities found within the boundaries of the project site on March 25, 2021. Plant communities identified on aerial photographs during the literature review were verified in the field by walking meandering transects through the on-site plant communities and along boundaries between plant communities. The plant communities were evaluated for their potential to support special-status plant and wildlife species. In addition, field staff identified any natural corridors and linkages that may support the movement of wildlife through the area. Special attention was given to special-status habitats and/or undeveloped areas, which have higher potentials to support special-status plant and wildlife species.

All plant and wildlife species observed, as well as dominant plant species within each plant community, were recorded. Wildlife detections were made through observation of scat, trails, tracks, burrows, nests, and/or visual and aural observation. In addition, site characteristics such as soil condition, topography, hydrology, anthropogenic disturbances, indicator species, condition of on-site plant communities, and presence of potential jurisdictional drainage and/or wetland features were noted.

2.3 SOIL SERIES ASSESSMENT

On-site and adjoining soils were researched prior to the field survey using the USDA NRCS Soil Survey for San Bernardino County. In addition, a review of the local geological conditions and historical aerial photographs was conducted to assess the ecological changes that the project site has undergone.

2.4 PLANT COMMUNITIES

Plant communities were mapped using 7.5-minute USGS topographic base maps and aerial photography. The plant communities were classified in accordance with Sawyer, Keeler-Wolf and Evens (2009), CDFW (2010) and Holland (1986), delineated on an aerial photograph, and then digitized into ArcGIS. The ArcGIS application was used to compute the area of each plant community in acres.

2.5 PLANTS

Common plant species observed during the field survey were identified by visual characteristics and morphology in the field and recorded in a field notebook. Unusual and less-familiar plants were photographed in the field and identified in the laboratory using taxonomic guides. Taxonomic nomenclature used in this study follows the 2012 Jepson Manual (Hickman 2012). In this report, scientific names are provided immediately following common names of plant species (first reference only).

2.6 WILDLIFE

Wildlife species detected during field surveys by sight, calls, tracks, scat, or other sign were recorded during surveys in a field notebook. Field guides were used to assist with identification of wildlife species during the survey included *The Sibley Field Guide to the Birds of Western North America* (Sibley 2003), *A Field Guide to Western Reptiles and Amphibians* (Stebbins 2003), and *A Field Guide to Mammals of North*

America (Reid 2006). Although common names of wildlife species are fairly well standardized, scientific names are provided immediately following common names in this report (first reference only).

2.7 JURISDICTIONAL DRAINAGES AND WETLANDS

The project site was also evaluated for the presence of jurisdictional waters of the United States, waters of the State, and/or jurisdictional streambed. Prior to the field visit, aerial photographs of the site were viewed and compared with the surrounding USGS 7.5-minute topographic quadrangle maps to identify drainage features within the survey area as indicated from topographic changes, blue-line features, or visible drainage patterns. The EPA Water Program “My Waters” data layer was also reviewed to determine whether any hydrologic features had been documented within the vicinity of the site. Similarly, the USDA NRCS soil maps for San Bernardino County were used to identify the soil series in the area and to check these soils to determine whether they are regionally identified as hydric soils. The biologists carefully assessed the site for depressions, inundation, presence of hydrophytic vegetation, staining, cracked soil, ponding, and indicators of active surface flow and corresponding physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris. Suspected jurisdictional areas were checked for the presence of definable channels, soils, and hydrology.

Section 3 Existing Conditions

3.1 LOCAL CLIMATE

The Mojave Desert is found at elevations of 2,000 to 5,000 feet above mean sea level and is characterized by cool winter temperatures and warm summer temperatures, with its rainfall occurring almost entirely in the winter. Climatological data obtained for the nearby City of Twentynine Palms indicates the annual precipitation averages 4.46 inches per year. Almost all of the precipitation in the form of rain occurs in the months between July and April, with hardly any occurring between the months of May and June. The wettest month is August, with a monthly average total precipitation of 0.80 inches. The average minimum and maximum temperatures for the region are 39.7 and 102.7 degrees Fahrenheit (°F) respectively with December and January (monthly average 50.5° F) being the coldest months and July being the hottest (monthly average 89.4° F). Temperatures during the site visit were in the mid-70 to mid-80s (° F).

3.2 TOPOGRAPHY AND SOILS

On-site surface elevation ranges from approximately 1,720 to 1,770 feet above mean sea level. Topography on-site generally consists of shallow gently sloping hills and flat areas generally sloping south to north. Based on the NRCS USDA Web Soil Survey, the project site is not mapped. However, the greater area in the vicinity of the site is underlain by a Dune land-Cajon complex. The majority of soils within the survey area are relatively undisturbed, with the exception of those associated with roads and historic and ongoing disturbance.

3.3 SURROUNDING LAND USES

The survey area is located in a primarily undeveloped area, approximately 4.5 miles east of the City of Twentynine Palms and 9.1 miles south of the Bullion Mountains. Notable developments near the project site include Twentynine Palms Airport, which occurs approximately 1.5 miles to the south, and the Twentynine Palms Marine Corps Base, which occurs approximately 5.6 miles to the northeast. In addition, scattered residential, agricultural, commercial, and institutional developments occur throughout the area.

Section 4 Discussion

4.1 SITE CONDITIONS

The survey area supports a mixture of undeveloped, developed, and disturbed land. According to historic aerials and local records, the northern portion of the project site and existing development therein formerly supported a post office, a Southern California Edison substation, a jojoba farm, and most recently an artists' retreat and psychedelic meditation center. The remainder of the site supports undeveloped, vacant land. Refer to Appendix A, *Site Photographs*.

4.2 VEGETATION

During the field investigation one (1) plant community was observed within the boundary of the project site: creosote bush scrub (Exhibit 4, *Vegetation*). In addition, the site supports three (3) land cover types that would be classified as agricultural, disturbed and developed. The vegetation community and land cover types are described in further detail below.

4.2.1 Creosote Bush Scrub

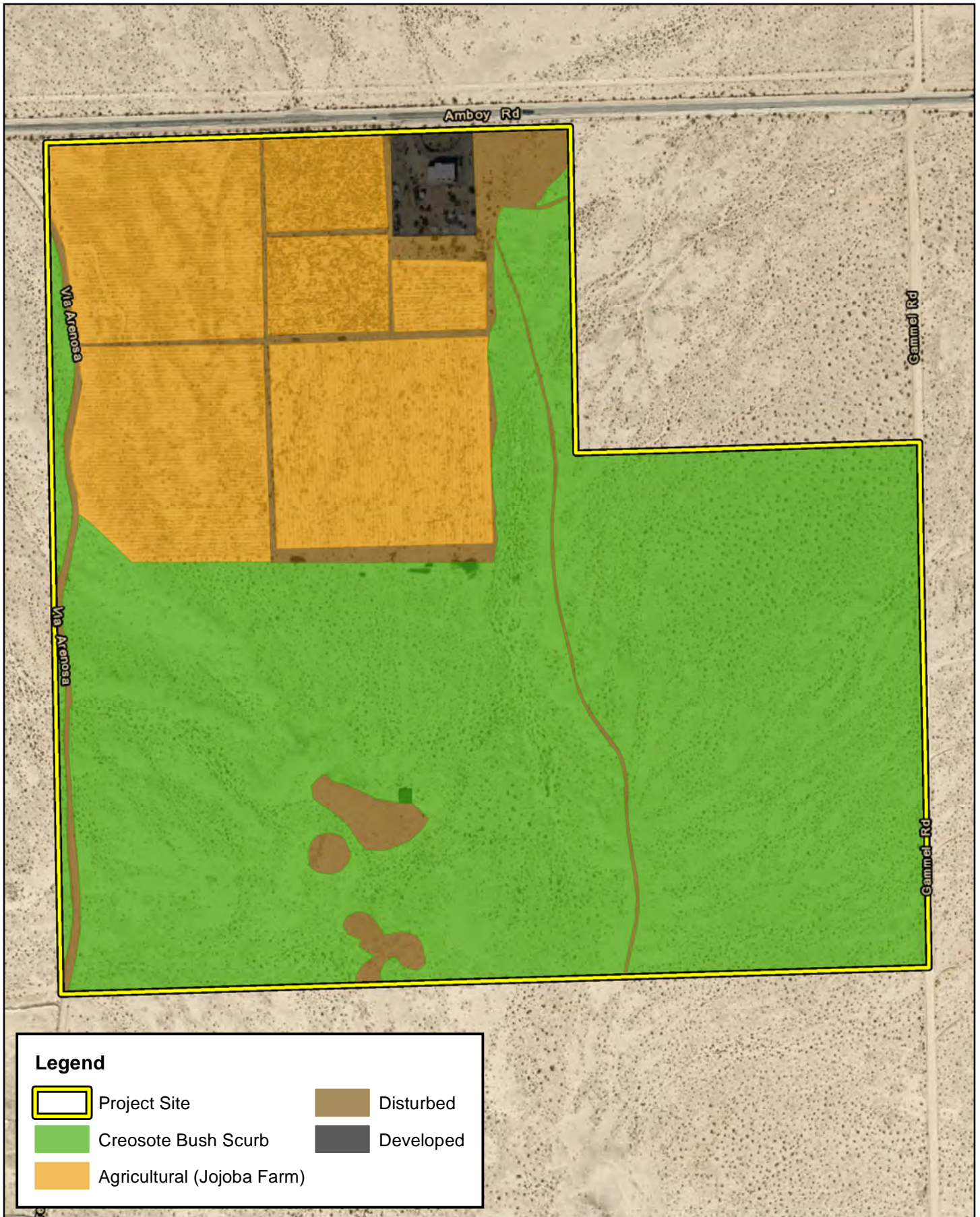
The creosote bush scrub plant community occurs consistently throughout the site, with the exception of the northwest corner, where it occurs in patches. This plant community supports very rocky soils and is dominated by creosote (*Larrea tridentata*). Common plant species observed in this plant community include cryptantha (*Cryptantha* sp.), fringedpod (*Thysanocarpus curvipes*), spineflower (*Chorizanthe rigida*), cotton thorn (*Tetradymia comosa*), Mojave suncup (*Camissonia campestris*), brown-eyed primrose (*Chylismia claviformes*), burro bush (*Ambrosia dumosa*), cheesebrush (*Ambrosia salsola*), golden cholla (*Cylindropuntia echinocarpa*), and California threeawn (*Aristida californica*).

4.2.2 Agricultural

The northern boundary of the project site, adjacent to the existing building, supports an existing jojoba (*Simmondsia chinensis*) farm. Existing water pipelines and drip systems were observed throughout this area that provided water to the jojoba plants. This agricultural area is dominated by existing jojoba plants, that are no longer actively cultivated.

4.2.3 Disturbed

Disturbed land generally refers to areas that have been subject to a high level of anthropogenic disturbances from farming activities, foot traffic, dumping, and activities associated with the former on-site artist retreat, and no longer comprise support a native plant community. Disturbed areas on-site include remnant jojoba fields, but are otherwise generally unvegetated or support ruderal/weedy plant species. Species observed in the disturbed areas of the site include jojoba, Mediterranean grass (*Schinus arabicus*), London Rocket (*Sisymbrium irio*), and Saharan mustard (*Brassica tournefortii*).



THE WONDER INN JOSHUA TREE
HABITAT ASSESSMENT

Vegetation



Source: ESRI Aerial Imagery, San Bernardino County

4.2.4 Developed

Developed areas generally encompass all buildings/structures and associated landscaping, parks, and paved or otherwise impervious surfaces. Within the project footprint, developed areas are confined to the northeast portion of the site and include an existing building, ornamental landscaping, paved driveways and walkways, and various outdoor meditation structures and art installations. Plant species supported by developed areas include ornamental species and ruderal/weedy annuals.

4.3 WILDLIFE

Plant communities provide foraging habitat, nesting and denning sites, and shelter from adverse weather or predation. This section provides a discussion of those wildlife species that were observed during the field survey or that are expected to occur within the project site. The discussion is to be used as a general reference and is limited by the season, time of day, and weather condition in which the field survey was conducted. Wildlife detections were based on calls, songs, scat, tracks, burrows, and direct observation.

4.3.1 Fish

No fish or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) with frequent sources of water that would provide suitable habitat for fish were observed on or immediately adjacent to the survey area. Therefore, no fish are expected to occur and are presumed absent from the project site.

4.3.2 Amphibians

No amphibians or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for amphibian species were observed on or immediately adjacent to the survey area. Therefore, no amphibians are expected to occur on the project site and are presumed absent.

4.3.3 Reptiles

The creosote bush scrub plant community provides suitable foraging and nesting habitat for a variety of reptilian species adapted to conditions within the Mojave Desert. No reptilian species were observed during the field investigation. Common reptilian species that could be expected to occur include common side-blotched lizard (*Uta stansburiana elegans*), desert horned lizard (*Phrynosoma platyrhinos calidiarum*), Great Basin collard lizard (*Crotaphytus bicinctores*), Great Basin whiptail (*Aspidoscelis tigris tigris*), southwestern speckled rattlesnake (*Crotalus mitchellii pyrrhus*), northern Mohave rattlesnake (*Crotalus scutulatus scutulatus*) and Great Basin gopher snake (*Pituophis catenifer deserticola*).

4.3.4 Birds

The creosote bush scrub plant community provides suitable foraging and nesting habitat for a variety of resident and migrant bird species adapted to conditions within the Mojave Desert. Avian species observed during the field investigation include horned lark (*Eremophila alpestris*), mourning dove (*Zenaida macroura*), common raven (*Corvus corax*), and white-throated swift (*Aeronautes saxatalis*). Common avian species expected to occur on-site include lesser goldfinch (*Spinus psaltria*), Say's phoebe (*Sayornis*

saya), verdin (*Auripes flaviceps*), white-crowned sparrow (*Zonotrichia leucophrys*), and yellow-rumped warbler (*Setophaga coronata*).

4.3.5 Mammals

The creosote bush scrub plant community provides suitable foraging and nesting habitat for a variety of mammalian species adapted to conditions within the Mojave Desert. Most mammal species are nocturnal and are difficult to observe during a diurnal field visit. No mammalian species observed or detected during the field investigation. Common mammalian species that have the potential to occur on-site include black-tailed jackrabbit (*Lepus californicus*), white-tailed antelope ground squirrel (*Ammospermophilus leucurus*), coyote (*Canis latrans*), desert cottontail (*Sylvilagus audubonii*), kangaroo rat (*Dipodomys* sp.) and bats (*Myotis*, *Lasiurus*, and *Antrozous* sp.). While no rock faces or steep cliffs occur on the project site, the building and various structures in the northeast portion of the site provide suitable roosting opportunities for certain bat species that will roost in such conditions.

4.4 NESTING BIRDS

No active nests or nesting behaviors were observed during the field investigation. The creosote bush scrub plant community and various structures on-site provide suitable foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that have adapted to conditions in the Mojave Desert. A pre-construction nesting bird clearance survey shall be conducted within three (3) days prior to ground disturbance to ensure no nesting birds will be impacted from project implementation.

4.5 WILDLIFE CORRIDORS AND LINKAGES

Habitat linkages provide links between larger undeveloped habitat areas that are separated by development. Wildlife corridors are similar to linkages but provide specific opportunities for animals to disperse or migrate between areas. A corridor can be defined as a linear landscape feature of sufficient width to allow animal movement between two comparatively undisturbed habitat fragments. Adequate cover is essential for a corridor to function as a wildlife movement area. It is possible for a habitat corridor to be adequate for one species yet inadequate for others. Wildlife corridors are significant features for dispersal, seasonal migration, breeding, and foraging. Additionally, open space can provide a buffer against both human disturbance and natural fluctuations in resources.

According to the San Bernardino County General Plan, the project site has not been identified as occurring within a Wildlife Corridor or Linkage. The open and natural habitats on and surrounding the project site allow for local wildlife to move from the project site into the undeveloped areas surrounding the project site in search of food, shelter, or nesting habitat. As designated by the San Bernardino County General Plan Open Space Element, the nearest major open space documented within the vicinity of the project site occurs approximately 4.5 miles northeast of the site, within the foothills of the Bullion Mountains beyond Amboy Road.

The project site occurs in a largely undeveloped area on the outskirts of the City of Twentynine Palms, with the Bullion Mountains to the north and the Pinto Mountains to the south. The area immediately surrounding the site consists largely of undeveloped land with scattered residential and agricultural development. Due

to the openness of the habitats surrounding the site, it could be expected that the area supports wildlife movement between the Bullion and Pinto Mountains. However, the project footprint accounts for a minimal portion of the area and does not support riparian corridors or creeks or “stepping-stone” habitats commonly associated with wildlife movement. As such, implementation of the proposed project is not expected to have a significant impact to wildlife movement opportunities or prevent local wildlife movement through the area since there is ample habitat adjacent to the project site to support wildlife movement opportunities.

4.6 STATE AND FEDERAL JURISDICTIONAL AREAS

There are three key agencies that regulate activities within inland streams, wetlands, and riparian areas in California. The Corps Regulatory Branch regulates discharge of dredge and/or fill materials into “waters of the United States” pursuant to Section 404 of the Federal Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Of the State agencies, the Regional Board regulates discharges into surface waters pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act and the CDFW regulates alterations to streambed and associated plant communities pursuant to Section 1602 of the California Fish and Game Code.

The USFWS NWI and the USGS National Hydrography Dataset were reviewed to determine if any blue-line streams or riverine resources have been documented within or immediately surrounding the project site. Based on this review, one riverine resource was identified immediately west of the project site, outside of the proposed project boundary. However, based on the results of the Delineation of State and Federal Jurisdictional Waters Report, prepared under separate cover (ELMT Consulting 2021) several ephemeral jurisdictional drainage features were observed generally extending south to north across the project site. These features are ephemeral and follow onsite topography. Surface flows within with these features are only provided by direct precipitation from storm events. No surface water was observed during the field investigation.

The onsite drainage features do not have a surface hydrologic connection to downstream waters of the United States and would not be considered jurisdictional by the Corps. However, the onsite drainage features will fall under the regulatory authority of the Regional Board as waters of the State, and CDFW as jurisdictional streambed. Any impacts to onsite jurisdictional areas will require a Regional Board Report of Waste Discharge permit, and a CDFW Section 1602 Lake or Streambed Alteration Agreement prior to project implementation.

4.7 SPECIAL-STATUS BIOLOGICAL RESOURCES

The CNDDDB Rarefind 5, CNDDDB Quickview Tool in BIOS and the CNPS Electronic Inventory of Rare and Endangered Vascular Plants of California were queried for reported locations of special-status plant and wildlife species as well as special-status natural plant communities in the Twentynine Palms, Valley Mountain, and East of Valley Mountain USGS 7.5-minute quadrangles. These three quadrangles were used due to the proximity of the project site to quadrangle boundaries and regional topography. The habitat assessment evaluated the conditions of the habitat(s) within the boundaries of the project site to determine if the existing plant communities, at the time of the survey, have the potential to provide suitable habitat(s) for special-status plant and wildlife species.

The literature search identified ten (10) special-status plant species, fifteen (15) special-status wildlife and one (1) special-status plant community as having the potential to occur within the Twentynine Palms, Valley Mountain, and East of Valley Mountain quadrangles. Special-status plant and wildlife species were evaluated for their potential to occur within the project boundaries based on habitat requirements, availability and quality of suitable habitat, and known distributions. Species determined to have the potential to occur within the general vicinity are presented in *Table B-1: Potentially Occurring Special-Status Biological Resources*, provide in Appendix B. Refer to Table B-1 for a determination regarding the potential occurrence of special-status plant and wildlife species within the project site.

4.7.1 Special-Status Plants

According to the CNDDDB and CNPS, ten (10) special-status plant species have been recorded in Twentynine Palms, Valley Mountain, and East of Valley Mountain quadrangles (refer to Appendix B). No special-status plant species were observed on-site during the field investigation, which was conducted during the blooming period for some of the special-status plant species. Based on habitat requirements for the identified special-status species, and known distributions, it was determined that the support the creosote bush scrub plant community supported by the project site has a low potential to support Alverson's foxtail cactus (*Coryphantha alversonii*; CNPS Rare Plant Rank 4.3) and Utah vine milkweed (*Funastrum utahense*, CNPS Rare Plant Rank 4.3). Further, it was determined that the project site does not have potential to support any of the other special-status species documented as occurring within the vicinity of the project site.

None of the aforementioned special-status plant species are federally or State listed as endangered or threatened and have only been listed by the CNPS as Rare Plant Rank species. These species are not regulated under the federal or state Endangered Species Acts. In an effort to increase coverage for unlisted but regionally sensitive plants under the California Environmental Quality Act (CEQA), the CNPS began publishing sensitivity rankings for special-status plant species. These species, therefore, do not rise to the level of a species of concern under CEQA. Project impacts to the aforementioned species, if found, would therefore be less than significant, and no mitigation is required. No focused surveys are recommended.

4.7.2 Special-Status Wildlife

According to the CNDDDB, fifteen (15) special-status wildlife species have been reported in the Twentynine Palms, Valley Mountain, and East of Valley Mountain quadrangles (refer to Appendix B). No special-status wildlife species were observed on-site during the habitat assessment. Based on habitat requirements for specific species and the availability and quality of onsite habitats, it was determined that the proposed project site has a moderate potential to support loggerhead shrike (*Lanius ludovicianus*) and a low potential to support burrowing owl, pallid bat (*Antrozous pallidus*), spotted bat (*Euderma maculatum*), prairie falcon (*Falco mexicanus*), desert tortoise (*Gopherus agassizii*), and LeConte's thrasher (*Toxostoma lecontei*). It was further determined that the project site does not provide suitable habitat for any of the other special-status wildlife species known to occur in the vicinity of the site.

In order to ensure impacts to loggerhead shrike, prairie falcon, LeConte's thrasher pallid bat, spotted bat do not occur from implementation of the project, pre-construction nesting bird and bat clearance surveys shall

be conducted prior to ground disturbance. With implementation of the pre-construction clearance surveys, impacts to these special-status species will be less than significant and no mitigation will be required.

Based on regional significance, the potential occurrence of burrowing owl and desert tortoise within the project site are described in further detail below.

Burrowing Owl

The burrowing owl is currently listed as a California Species of Special Concern. It is a grassland specialist distributed throughout western North America where it occupies open areas with short vegetation and bare ground within shrub, desert, and grassland environments. Burrowing owls use a wide variety of arid and semi-arid environments with well-drained, level to gently-sloping areas characterized by sparse vegetation and bare ground (Haug and Didiuk 1993; Dechant et al. 1999). Burrowing owls are dependent upon the presence of burrowing mammals (such as ground squirrels) whose burrows are used for roosting and nesting (Haug and Didiuk 1993). The presence or absence of colonial mammal burrows is often a major factor that limits the presence or absence of burrowing owls. Where mammal burrows are scarce, burrowing owls have been found occupying man-made cavities, such as buried and non-functioning drain pipes, stand-pipes, and dry culverts. Burrowing mammals may burrow beneath rocks and debris or large, heavy objects such as abandoned cars, concrete blocks, or concrete pads. They also require open vegetation allowing line-of-sight observation of the surrounding habitat to forage as well as watch for predators.

No burrowing owls or recent sign (i.e., pellets, feathers, castings, or whitewash) was observed during the field investigation. Portions of the project site are unvegetated and/or vegetated with a variety of low-growing plant species that allow for line-of-sight observation favored by burrowing owls. However, the project site lacks suitable burrows (>4 inches in diameter) capable of providing roosting and nesting opportunities. Further, the site supports tall structures, electrical towers, and power lines which decrease the likelihood that burrowing owls would occur on the project site as these features provide perching opportunities for larger raptor species (i.e., red-tailed hawk [*Buteo jamaicensis*]) that prey on burrowing owls. Therefore, it was determined that the project site does not have potential to provide suitable habitat for burrowing owls and focused surveys are not recommended.

Desert Tortoise

The Mojave population of the desert tortoise was listed as Threatened on April 2, 1990 and a recovery plan was published in June 1994 (revised May 2011) to describe a strategy for recovering the Mojave population of the desert tortoise including the identification of five recovery units, recommendations for a system of Desert Wildlife Management Areas (DWMAs) within the recovery units, and development and implementation of specific recovery actions, especially within DWMAs. The establishment of recovery units and DWMAs was intended to facilitate an ecosystem approach to land management and desert tortoise recovery. Based on the 2018 Revised Recovery Plan, the survey area is located within the Western Mojave Recovery Unit, but is not located within any designated DWMAs. Additionally, the survey area is not located within designated Critical Habitat for the desert tortoise and no desert tortoise have been recorded on the project site.

The Mojave population of the desert tortoise inhabits areas north and west of the Colorado River in the Mojave Desert of California, Nevada, Arizona, and southwestern Utah, and in the Sonoran Desert in

California. Throughout the majority of the Mojave Desert, desert tortoises occur most commonly on gentle sloping soils characterized by an even mix of sand and gravel and sparsely vegetated low-growing vegetation where there is abundant inter-shrub space. Typical habitat for the Mojave desert tortoise has been characterized as creosote bush scrub below 5,500 feet in elevation with a high diversity of perennial and ephemeral plants. The dominant shrub commonly associated with desert tortoise habitat is creosote bush (*Larrea tridentata*); however, other shrubs including burrobush (*Ambrosia dumosa*), Mojave yucca (*Yucca schidigera*), cheesebush (*Ambrosia salsola*), and Mojave prickly-pear (*Opuntia mojavensis*) also provide suitable habitat. The desert tortoise spends 95 percent of its life underground and will opportunistically utilize burrows of various lengths, deep caves, rock and caliche crevices, or overhangs for cover. Therefore, a moderately friable soil is required to allow for burrow construction and ensure that burrows do not collapse.

The undeveloped portions of the project site are dominated by creosote bush scrub plant communities that have the potential to provide suitable habitat for desert tortoise. Despite a systematic search of the project site, no live tortoises, suitable burrows or signs was observed on the project site during the site investigation. Based on the results of the field investigation and lack of suitable burrows and no observed sign, desert tortoise was determined to have a low potential to occur onsite. However, out of an abundance of caution, a pre-construction desert tortoise clearance surveys shall be conducted prior to ground disturbing activities to ensure desert tortoise remain absent from the project site.

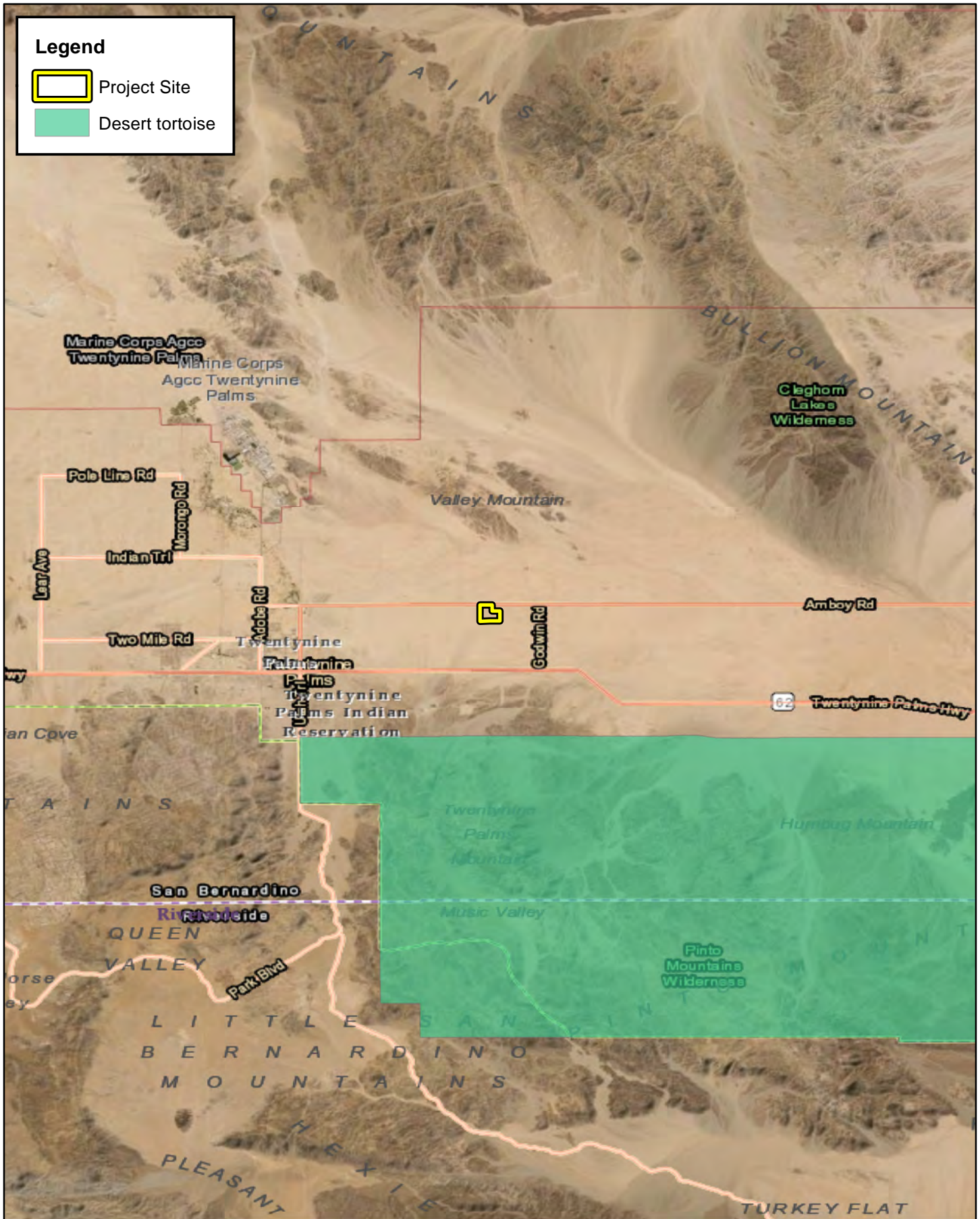
4.7.3 Special-Status Plant Communities

According to the CNDDDB, one (1) special-status plant community has been reported in the Twentynine Palms, Valley Mountain, and East of Valley Mountain quadrangles (refer to Appendix B): Desert Fan Palm Oasis Woodland. Based on the results of the field investigation, no special-status plant communities were observed on-site. Therefore, no special-status plant communities will be impacted by implementation of the proposed project.

4.8 CRITICAL HABITAT

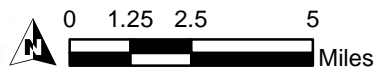
Under the federal Endangered Species Act, “Critical Habitat” is designated at the time of listing of a species or within one year of listing. Critical Habitat refers to specific areas within the geographical range of a species at the time it is listed that include the physical or biological features that are essential to the survival and eventual recovery of that species. Maintenance of these physical and biological features requires special management considerations or protection, regardless of whether individuals or the species are present or not. All federal agencies are required to consult with the United States Fish and Wildlife Service (USFWS) regarding activities they authorize, fund, or permit which may affect a federally listed species or its designated Critical Habitat. The purpose of the consultation is to ensure that projects will not jeopardize the continued existence of the listed species or adversely modify or destroy its designated Critical Habitat. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing is on federal lands, uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highways Administration or a CWA Permit from the Corps). If there is a federal nexus, then the federal agency that is responsible for providing the funding or permit would consult with the USFWS.

The project site is not located within federally designated Critical Habitat. The nearest Critical Habitat designation is located approximately 3.5 miles south of the site for desert tortoise (Exhibit 5, *Critical Habitat*). Therefore, no loss or adverse modification of federally designated Critical Habitat will occur from implementation of the proposed project.



THE WONDER INN JOSHUA TREE
HABITAT ASSESSMENT

Critical Habitat



Source: ESRI Aerial Imagery, USFWS Critical Habitat, San Bernardino County

Section 5 Conclusion and Recommendations

The project site is located at 78201 Amboy Road in an unincorporated area of San Bernardino County near the City of Twentynine Palms, California, encompassing APNs 0625-071-04, 05, 07, 08, 09, 10 and 14 and totals 134 acres. Areas surrounding the site consist of vacant, undeveloped land with scattered residential, commercial, agricultural, and institutional developments. The site is primarily undeveloped, with the exception of existing structures and paved driveways and walkways, and a jojoba farm in the northern portion. One (1) plant community and three (3) land cover types were observed onsite.

Special-Status Plant Species

No special-status plant species were observed on-site during the field investigation. Further, based on habitat requirements for the identified special-status species and known distributions, it was determined that the creosote bush scrub plant community has a low potential to support Alverson's foxtail cactus and Utah vine milkweed. Further, it was determined that the site does not have the potential to support any of the other special-status species documented as occurring within the vicinity of the project site are presumed absent.

None of the aforementioned special-status plant species are federally or State listed as endangered or threatened, and are not regulated under the federal or state Endangered Species Acts. They are only listed by the California Native Plant Society as a Rare Plant Rank 4 plant species, and impacts to this species do not rise to the level of a species of concern under CEQA and no mitigation would be required.

Special-Status Wildlife Species

No special-status wildlife species were observed on-site during the field investigation. Based on habitat requirements for specific species and the availability and quality of on-site habitats, it was determined that the proposed project site has a moderate potential to support loggerhead shrike, and a low potential to support burrowing owl pallid bat, spotted bat, prairie falcon, desert tortoise, and LeConte's thrasher. It was further determined that the project site does not provide suitable habitat for any of the other special-status wildlife species known to occur in the vicinity of the site.

Migratory Bird Treaty Act and Fish and Game Code Compliance

A pre-construction nesting bird clearance survey shall be conducted prior to ground disturbance. With implementation of the pre-construction clearance survey, impacts to loggerhead shrike, burrowing owl, prairie falcon, and LeConte's thrasher will be less than significant and no mitigation will be required.

BIO-1: Pre-Construction Nesting Bird Clearance Survey

All construction activities shall comply with the federal Migratory Bird Treaty Act of 1918 (MBTA) and California Fish and Game Code Sections 3503, 3511 and 3513. The MBTA governs the taking and killing of migratory birds, their eggs, parts, and nests and prohibits the take of any migratory bird, their eggs, parts, and nests. Compliance with the MBTA shall be accomplished by completing the following:

Construction activities involving vegetation removal shall be conducted between September 1 and January 31. If construction occurs inside the peak nesting season (between February 1 and August 31), a pre-construction survey by a qualified Biologist shall be conducted within 72 hours prior to construction activities to identify any active nesting locations. If the Biologist does not find any active nests, the construction work shall be allowed to proceed. The biologist conducting the clearance survey shall document a negative survey with a report indicating that no impacts to active avian nests shall occur.

If the Biologist finds an active nest within the pre-construction survey area and determines that the nest may be impacted, the Biologist shall delineate an appropriate buffer zone around the nest. The size of the buffer shall be determined by the Biologist and shall be based on the nesting species, its sensitivity to disturbance, expected types of disturbance, and location in relation to the construction activities. These buffers are typically 300 feet from the nests of non-listed species and 500 feet from the nests of raptors and listed species. Any active nests observed during the survey shall be mapped on an aerial photograph. Only construction activities (if any) that have been approved by a Biological Monitor shall take place within the buffer zone until the nest is vacated. The Biologist shall serve as a Construction Monitor when construction activities take place near active nest areas to ensure that no inadvertent impacts on these nests occur. Results of the pre-construction survey and any subsequent monitoring shall be provided to the Property Owner/Developer and the City. The monitoring report shall summarize the results of the nest monitoring, describe construction restrictions currently in place, and confirm that construction activities can proceed within the buffer area without jeopardizing the survival of the young birds.

Desert Tortoise

Out of abundance of caution and to ensure desert tortoise remain absent from the project site, a pre-construction clearance survey be conducted prior to ground disturbance.

BIO-2: Pre-Construction Desert Tortoise Clearance Survey

A pre-construction clearance survey be conducted thirty (30) days prior to ground disturbing activities in undeveloped areas to confirm the absence of desert tortoise within the boundaries of the survey area. Survey transects should be spaced at 10-meter (33-foot) intervals throughout the undeveloped portions of the project area to provide 100 percent visual coverage and increase the likelihood of locating desert tortoise and/or sign. All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets.

Although not anticipated, if desert tortoise are found onsite during the pre-construction clearance survey, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures can be implemented to avoid any direct or indirect impacts to desert tortoise, or if "Take" permits will need to be obtained prepared and approved by the USFWS and CDFW.

Riparian Habitat and Special-Status Natural Communities

Several ephemeral jurisdictional drainage features were observed generally extending south to north across the project site. These features are ephemeral and follows onsite topography and flow immediately following storm events. The onsite drainage features do not have a surface hydrologic connection to downstream waters of the United States and would not be considered jurisdictional by the Corps. However, the onsite drainage features will fall under the regulatory authority of the Regional Board as waters of the State, and CDFW as jurisdictional streambed. Any impacts to onsite jurisdictional areas will require a Regional Board Report of Waste Discharge permit, and a CDFW Section 1602 Lake or Streambed Alteration Agreement prior to project implementation

Further, no sensitive natural communities will be impacted from project implementation.

Wildlife Corridors

The site was not identified as occurring within or adjacent to a recognized wildlife corridor. The site occurs in a largely undeveloped area between the Bullion and Pinto Mountains that could be expected to support local wildlife movement; however, implementation of the proposed project is not expected to have a significant impact to wildlife movement opportunities or prevent local wildlife movement through the area since there is ample habitat adjacent to the project site to support wildlife movement opportunities. Due to the lack of any identified impacts to wildlife movement, migratory corridors or linkages or native wildlife nurseries, no mitigation is required.

Local, Regional, and State Plans

The project site is not located within an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state Habitat Conservation Plan. Therefore, impacts to any local, regional, or state habitat conservation plans are not expected to occur from development of the proposed project, and mitigation is not required.

Certain desert plant species (i.e. smoke trees, cacti. Mojave yuccas (*Yucca schidigera*)) are regulated pursuant to Section 88.01.060 of the San Bernardino County Development Code and Section 80073 of the California Desert Native Plant Act. Therefore, impacts to these species should be avoided in all instances. In the event that avoidance is not feasible, the project applicant will be required to obtain a Tree or Plant Removal Permit from the County of San Bernardino, prior to removal of any regulated tree or plant.

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Appendix A Site Photographs



Photograph 1: From the northeast corner of the project site looking south along the eastern boundary.



Photograph 2: From the northeast corner of the project site looking west along the northern boundary.



Photograph 3: Looking northeast towards various structures and developments in the northeast portion of the project site.



Photograph 4: From the middle of the eastern boundary of the project site looking south.



Photograph 5: From the southeast corner of the project site looking north along the eastern boundary.



Photograph 6: From the southeast corner of the project site looking west along the southern boundary.



Photograph 7: From the southwest corner of the project site looking east along the southern boundary.



Photograph 8: From the southwest corner of the project site looking north along the western boundary.



Photograph 9: From the northwest corner of the project site looking south along the western boundary.



Photograph 10: From the northwest corner of the project site looking east along the northern boundary.

**Appendix B Potentially Occurring Special-Status
Biological Resources**

Table B-1: Potentially Occurring Special-Status Biological Resources

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
WILDLIFE SPECIES				
<i>Antrozous pallidus</i> pallid bat	Fed: None CA: SSC	Locally common species of low elevation in California. Occurs in grasslands, shrublands, woodlands, and forests from sea level up through mixed conifer forests. Most common in open, dry habitats with rocky areas for roosting.	No	Low Suitable foraging habitat is present within the project site. On-site structures provide marginal roosting opportunities.
<i>Athene cunicularia</i> burrowing owl	Fed: None CA: SSC	Occurs in open, annual or perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. Dependent upon fossorial mammals for burrows, most notably ground squirrels.	No	Low The project site provides line-of-site opportunities favored by burrowing owls. However, the site does not support suitable burrows (>4 inches in diameter).
<i>Chaetodipus fallax pallidus</i> pallid San Diego pocket mouse	Fed: None CA: SSC	Occurs in desert and coastal habitats in southern California, Mexico, and northern Baja California, from sea level to at least 1,400 meters above msl. Found in a variety of temperate habitats ranging from chaparral and grasslands to scrub forests and deserts. Requires low growing vegetation or rocky outcroppings, as well as sandy soils for burrowing.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
<i>Crotalus ruber</i> red-diamond rattlesnake	Fed: None CA: SSC	It can be found from the desert, through dense chaparral in the foothills (it avoids the mountains above around 4,000 feet), to warm inland mesas and valleys, all the way to the cool ocean shore. It is most commonly associated with heavy brush with large rocks or boulders. Dense chaparral in the foothills, cactus or boulder associated coastal sage scrub, oak and pine woodlands, and desert slope scrub associations are known to carry populations of the northern red-diamond rattlesnake; however, chamise and red shank associations may offer better structural habitat for refuges and food resources for this species than other habitats.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
<i>Euderma maculatum</i> spotted bat	Fed: None CA: SSC	Occurs in a range of habitats from arid desert and grasslands through mixed conifer forests. This species forages near open water. Known roosting habitat for this species consists of rock crevices, which naturally limit their distribution. Although more widespread in the deserts of Southern California, the range of the spotted bat includes parts of the coastal slope of the Transverse and Peninsular mountain ranges from Ventura County to San Diego County.	No	Low Suitable foraging habitat is present within the project site. On-site structures provide marginal roosting opportunities.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Eumops perotis californicus</i> western mastiff bat	Fed: None CA: SSC	Primarily a cliff-dwelling species, roost generally under exfoliating rock slabs. Roosts are generally high above the ground, usually allowing a clear vertical drop of at least 3 meters below the entrance for flight. In California, it is most frequently encountered in broad open areas. Its foraging habitat includes dry desert washes, flood plains, chaparral, oak woodland, open ponderosa pine forest, grassland, and agricultural areas.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
<i>Falco mexicanus</i> prairie falcon	Fed: None CA: WL	Commonly occur in arid and semiarid shrubland and grassland community types. Also occasionally found in open parklands within coniferous forests. During the breeding season, they are found commonly in foothills and mountains which provide cliffs and escarpments suitable for nest sites.	No	Low The open area in the southern portion of the site offers suitable foraging habitat. The Bullion Mountains to the north and Pinto Mountains to the south provide suitable nesting opportunities.
<i>Gopherus agassizii</i> desert tortoise	Fed: THR CA: THR	Widely distributed in the Mojave, Sonoran, and Colorado deserts from below sea level to 7,220 feet. Most common in desert scrub, desert wash, and Joshua tree habitats, but occurs in almost every desert habitat except those on the most precipitous slopes.	No	Low The uninterrupted creosote bush scrub in the southern portion of the project site provides suitable foraging habitat for this species; however, soils on-site are very rocky and tend to be unsuitable for burrow construction.. No desert tortoises or sign (i.e. scat, burrows, carapaces) were observed on-site.
<i>Lanius ludovicianus</i> loggerhead shrike	Fed: None CA: SSC	Often found in broken woodlands, shrublands, and other habitats. Prefers open country with scattered perches for hunting and fairly dense brush for nesting.	No	Moderate Suitable habitat is present within the project site.
<i>Lasiurus xanthinus</i> western yellow bat	Fed: None CA: SSC	Roosts in palm trees in foothill riparian, desert wash, and palm oasis habitats with access to water for foraging.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
<i>Ovis canadensis nelsoni</i> Peninsular bighorn sheep	Fed: None CA: FP	Preferred habitat is near mountainous terrain above the desert floor that is visually open, as well as steep and rocky. Most Mojave Desert mountain ranges satisfy these requirements well. Surface water is another element that is considered important to population health. Found mainly in the Peninsular Ranges.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Salvadora hexalepis virgultea</i> coast patch-nosed snake	Fed: None CA: SSC	Found in brushy or shrubby vegetation along the coast and requires small mammal burrows for refuge and overwintering.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
<i>Toxostoma lecontei</i> LeConte's thrasher	Fed: None CA: SSC	An uncommon to rare, local resident in southern California deserts from southern Mono Co. south to the Mexican border, and in western and southern San Joaquin Valley. Occurs primarily in open desert wash, desert scrub, alkali desert scrub, and desert succulent shrub habitats; also occurs in Joshua tree habitat with scattered shrubs.	No	Low Marginal habitat is present within the project site.
<i>Uma scoparia</i> Mojave fringe-toed lizard	Fed: None CA: SSC	Restricted to sparsely vegetated, windblown sand in dunes, flats, riverbanks and washes. It requires fine, loose sand for burrowing and lays its eggs in subsurface burrows. Vegetation is typically scant and often consists of creosote bush scrub or other scrub.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site. The undisturbed portions of the project site supports rocky soils unsuitable for burrowing.
<i>Xanthocephalus xanthocephalus</i> yellow-headed blackbird	Fed: None CA: SSC	Occurs in freshwater emergent wetlands, and moist, open areas along croplands and mud flats of lacustrine habitats. Prefers to nest in dense wetland vegetation characterized by tules, cattails, or other similar plant species along the border of lakes and ponds.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
PLANT SPECIES				
<i>Allium parishii</i> Parish's onion	Fed: None CA: None CNPS: 4.3	Occurs in rocky soils in Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland. Found at elevations ranging from 2,953 to 5,693 feet. Blooming period is from April to May.	No	Presumed Absent Marginal habitat is present; however, the project site occurs outside of the known elevation range for this species.
<i>Calochortus striatus</i> alkali mariposa-lily	Fed: None CA: None CNPS: 1B.2	Grows in seasonally moist alkaline soils in meadows, seeps, and ephemeral washes, especially within chaparral, chenopod scrub, and Mojavean desert scrub. Blooming period is from April to June. Grows in elevation from 230 to 5,233 feet.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
<i>Castilleja montigena</i> Heckard's paintbrush	Fed: None CA: None CNPS: 4.3	Grows within lower montane coniferous forest, pinyon and juniper woodland, and upper montane coniferous forest habitats. Found at elevations ranging from 6,400 to 9,200 feet. Blooming period is from May to August.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.

Scientific Name Common Name	Status	Habitat	Observed On-site	Potential to Occur
<i>Coryphantha alversonii</i> Alverson's foxtail cactus	Fed: None CA: None CNPS: 4.3	Occurs usually in granitic sandy and rocky soils within Mojavean desert scrub and Sonoran desert scrub. Found at elevations ranging from 250 to 5,000 feet above msl. Blooming period is from April to June.	No	Low Marginal habitat is present within the project site.
<i>Funastrum utahense</i> Utah vine milkweed	Fed: None CA: None CNPS: 4.2	Occurs in sandy or gravelly soil in Mojavean desert scrub and Sonoran desert scrub. Found at elevations ranging from 328 to 4,708 feet. Blooming period typically ranges from April to June but can begin as early as March and end as late as October.	No	Low Marginal habitat is present within the project site.
<i>Johnstonella costata</i> ribbed cryptantha	Fed: None CA: None CNPS: 4.3	Occurs in sandy soils within desert dunes and Mojavean and Sonoran desert scrub. Found at elevations ranging from -197 to 1,640 feet. Blooming period is from February to May.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
<i>Lasthenia glabrata ssp. coulteri</i> Coulter's goldfields	Fed: None CA: None CNPS: 1B.1	Prefers playas, vernal pools, and coastal salt marshes and swamps. Found at elevations ranging from 3 to 4,003 feet. Blooming period is from February to June.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
<i>Sidalcea neomexicana</i> Salt Spring checkerbloom	Fed: None CA: None CNPS: 2B.2	Grows in alkaline and mesic soils within chaparral, coastal scrub, lower montane coniferous forest, playas, and Mojavean desert scrub habitats. Found at elevations ranging from 49 to 5,020 feet. Blooming period is from March to June.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site.
<i>Streptanthus bernardinus</i> Laguna Mountains jewelflower	Fed: None CA: None CNPS: 4.3	Grows in chaparral and lower montane coniferous forest on clay or decomposed granite soils. It is sometimes found in disturbed areas such as streamsides or roadcuts. From 4,724 to 8,202 feet in elevation. Blooming period is from May to August.	No	Presumed Absent No suitable habitat is present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
<i>Wislizenia refracta ssp. refracta</i> jackass-clover	Fed: None CA: None CNPS: 2B.2	Grows within desert dunes, Mojavean desert scrub, playas, and Sonoran desert scrub habitats. Found at elevations ranging from 1,970 to 2,620 feet. Blooming period is from April to November.	No	Presumed Absent Marginal habitat is present; however, the project site occurs outside of the known elevation range for this species.

PLANT COMMUNITIES				
Desert Fan Palm Oasis Woodland	CDFW Sensitive Habitat	Found within canyons and along the San Andreas Fault Zone, where water occurs naturally. Generally characterized by open to dense groves of native desert fan palms, which are the most massive native palm in North America, growing more than 66 feet.	No	Absent.

U.S. Fish and Wildlife Service (Fed) - Federal
 END- Federal Endangered
 THR- Federal Threatened

California Department of Fish and Wildlife (CA) - California
 END- California Endangered
 THR- California Threatened
 Candidate- Candidate for listing under the California Endangered Species Act
 FP- California Fully Protected
 SSC- Species of Special Concern
 WL- Watch List

California Native Plant Society (CNPS)
California Rare Plant Rank
 1B Plants Rare, Threatened, or Endangered in California and Elsewhere
 2B Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere
 3 Plants About Which More Information is Needed – A Review List
 4 Plants of Limited Distribution – A Watch List

CNPS Threat Ranks
 0.1- Seriously threatened in California
 0.2- Moderately threatened in California
 0.3- Not very threatened in California

Appendix C Regulations

Special status species are native species that have been afforded special legal or management protection because of concern for their continued existence. There are several categories of protection at both federal and state levels, depending on the magnitude of threat to continued existence and existing knowledge of population levels.

Federal Regulations

Endangered Species Act of 1973

Federally listed threatened and endangered species and their habitats are protected under provisions of the Federal Endangered Species Act (ESA). Section 9 of the ESA prohibits “take” of threatened or endangered species. “Take” under the ESA is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any of the specifically enumerated conduct.” The presence of any federally threatened or endangered species that are in a project area generally imposes severe constraints on development, particularly if development would result in “take” of the species or its habitat. Under the regulations of the ESA, the United States Fish and Wildlife Service (USFWS) may authorize “take” when it is incidental to, but not the purpose of, an otherwise lawful act.

Critical Habitat is designated for the survival and recovery of species listed as threatened or endangered under the ESA. Critical Habitat includes those areas occupied by the species, in which are found physical and biological features that are essential to the conservation of an ESA listed species and which may require special management considerations or protection. Critical Habitat may also include unoccupied habitat if it is determined that the unoccupied habitat is essential for the conservation of the species.

Whenever federal agencies authorize, fund, or carry out actions that may adversely modify or destroy Critical Habitat, they must consult with USFWS under Section 7 of the ESA. The designation of Critical Habitat does not affect private landowners, unless a project they are proposing uses federal funds, or requires federal authorization or permits (e.g., funding from the Federal Highway Administration or a permit from the U.S. Army Corps of Engineers (Corps)).

If USFWS determines that Critical Habitat will be adversely modified or destroyed from a proposed action, the USFWS will develop reasonable and prudent alternatives in cooperation with the federal institution to ensure the purpose of the proposed action can be achieved without loss of Critical Habitat. If the action is not likely to adversely modify or destroy Critical Habitat, USFWS will include a statement in its biological opinion concerning any incidental take that may be authorized and specify terms and conditions to ensure the agency is in compliance with the opinion.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) (16 U.S. Government Code [USC] 703) makes it unlawful to pursue, capture, kill, possess, or attempt to do the same to any migratory bird or part, nest, or egg of any such bird listed in wildlife protection treaties between the United States, Great Britain, Mexico, Japan, and the countries of the former Soviet Union, and authorizes the U.S. Secretary of the Interior to protect and regulate the taking of migratory birds. It establishes seasons and bag limits for hunted species and protects migratory birds, their occupied nests, and their eggs (16 USC 703; 50 CFR 10, 21).

The MBTA covers the taking of any nests or eggs of migratory birds, except as allowed by permit pursuant to 50 CFR, Part 21. Disturbances causing nest abandonment and/or loss of reproductive effort (i.e., killing or abandonment of eggs or young) may also be considered “take.” This regulation seeks to protect migratory birds and active nests.

In 1972, the MBTA was amended to include protection for migratory birds of prey (e.g., raptors). Six families of raptors occurring in North America were included in the amendment: Accipitridae (kites, hawks, and eagles); Cathartidae (New World vultures); Falconidae (falcons and caracaras); Pandionidae (ospreys); Strigidae (typical owls); and Tytonidae (barn owls). The provisions of the 1972 amendment to the MBTA protects all species and subspecies of the families listed above. The MBTA protects over 800 species including geese, ducks, shorebirds, raptors, songbirds and many relatively common species.

State Regulations

California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) provides for the protection of the environment within the State of California by establishing State policy to prevent significant, avoidable damage to the environment through the use of alternatives or mitigation measures for projects. It applies to actions directly undertaken, financed, or permitted by State lead agencies. If a project is determined to be subject to CEQA, the lead agency will be required to conduct an Initial Study (IS); if the IS determines that the project may have significant impacts on the environment, the lead agency will subsequently be required to write an Environmental Impact Report (EIR). A finding of non-significant effects will require either a Negative Declaration or a Mitigated Negative Declaration instead of an EIR. Section 15380 of the CEQA Guidelines independently defines “endangered” and “rare” species separately from the definitions of the California Endangered Species Act (CESA). Under CEQA, “endangered” species of plants or animals are defined as those whose survival and reproduction in the wild are in immediate jeopardy, while “rare” species are defined as those who are in such low numbers that they could become endangered if their environment worsens.

California Endangered Species Act (CESA)

In addition to federal laws, the state of California implements the CESA which is enforced by CDFW. The CESA program maintains a separate listing of species beyond the FESA, although the provisions of each act are similar.

State-listed threatened and endangered species are protected under provisions of the CESA. Activities that may result in “take” of individuals (defined in CESA as; “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) are regulated by CDFW. Habitat degradation or modification is not included in the definition of “take” under CESA. Nonetheless, CDFW has interpreted “take” to include the destruction of nesting, denning, or foraging habitat necessary to maintain a viable breeding population of protected species.

The State of California considers an endangered species as one whose prospects of survival and reproduction are in immediate jeopardy. A threatened species is considered as one present in such small numbers throughout its range that it is likely to become an endangered species in the near future in the

absence of special protection or management. A rare species is one that is considered present in such small numbers throughout its range that it may become endangered if its present environment worsens. State threatened and endangered species are fully protected against take, as defined above.

The CDFW has also produced a species of special concern list to serve as a species watch list. Species on this list are either of limited distribution or their habitats have been reduced substantially, such that a threat to their populations may be imminent. Species of special concern may receive special attention during environmental review, but they do not have formal statutory protection. At the federal level, USFWS also uses the label species of concern, as an informal term that refers to species which might be in need of concentrated conservation actions. As the Species of Concern designated by USFWS do not receive formal legal protection, the use of the term does not necessarily ensure that the species will be proposed for listing as a threatened or endangered species.

Fish and Game Code

Fish and Game Code Sections 3503, 3503.5, 3511, and 3513 are applicable to natural resource management. For example, Section 3503 of the Code makes it unlawful to destroy any birds' nest or any birds' eggs that are protected under the MBTA. Further, any birds in the orders Falconiformes or Strigiformes (Birds of Prey, such as hawks, eagles, and owls) are protected under Section 3503.5 of the Fish and Game Code which makes it unlawful to take, possess, or destroy their nest or eggs. A consultation with CDFW may be required prior to the removal of any bird of prey nest that may occur on a project site. Section 3511 of the Fish and Game Code lists fully protected bird species, where the CDFW is unable to authorize the issuance of permits or licenses to take these species. Pertinent species that are State fully protected by the State include golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*). Section 3513 of the Fish and Game Code makes it unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Native Plant Protection Act

Sections 1900–1913 of the Fish and Game Code were developed to preserve, protect, and enhance Rare and Endangered plants in the state of California. The act requires all state agencies to use their authority to carry out programs to conserve Endangered and Rare native plants. Provisions of the Native Plant Protection Act prohibit the taking of listed plants from the wild and require notification of the CDFW at least ten days in advance of any change in land use which would adversely impact listed plants. This allows the CDFW to salvage listed plant species that would otherwise be destroyed.

California Native Plant Society Rare and Endangered Plant Species

Vascular plants listed as rare or endangered by the CNPS, but which have no designated status under FESA or CESA are defined as follows:

California Rare Plant Rank

- 1A- Plants Presumed Extirpated in California and either Rare or Extinct Elsewhere
- 1B- Plants Rare, Threatened, or Endangered in California and Elsewhere

- 2A- Plants Presumed Extirpated in California, But More Common Elsewhere
- 2B- Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere
- 3- Plants about Which More Information is Needed - A Review List
- 4- Plants of Limited Distribution - A Watch List

Threat Ranks

- .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- Not very threatened in California (<20% of occurrences threatened / low degree and immediacy of threat or no current threats known).

Local Regulations

San Bernardino County Development Code

Section 88.01.060 of the County of San Bernardino Development Code provides regulations for the removal or harvesting of specified desert native plants in order to preserve and protect the plants and to provide for the conservation and wise use of desert resources. The provisions are intended to coincide with the Desert Native Plants Act (Food and Agricultural Code Section 8001 et seq.) and the State Department of Food and Agriculture to implement and enforce the Act.

Pursuant to Section 88.01.060 of the Development Code, the following desert native plants or any part of them, except the fruit, shall not be removed except under a Tree or Plant Removal Permit:

- 1) The following desert native plants with stems two inches or greater in diameter or six feet or greater in height:
 - (A) *Dalea spinosa* (smoke tree)
 - (B) All species of the genus *Prosopis* (mesquites)
- 2) All species of the family *Agavaceae* (century plants, nolinias, yuccas)
- 3) Creosote Rings, 10 feet or greater in diameter
- 4) All Joshua trees
- 5) Any part of any of the following species, whether living or dead:
 - (A) *Olneya tesota* (desert ironwood)
 - (B) All species of the genus *Prosopis* (mesquites)
 - (C) All species of the genus *Cercidium* (palos verdes)

There are three key agencies that regulate activities within inland streams, wetlands, and riparian areas in California. The Corps Regulatory Branch regulates activities pursuant to Section 404 of the Federal Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Of the State agencies, the CDFG regulates activities under the Fish and Game Code Section 1600-1616, and the Regional Board regulates activities pursuant to Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act.

Federal Regulations

Section 404 of the Clean Water Act

Since 1972, the Corps and EPA have jointly regulated the filling of waters of the United States, including wetlands, pursuant to Section 404 of the CWA. The Corps has regulatory authority over the discharge of dredged or fill material into the waters of the United States under Section 404 of the CWA. The Corps and EPA define “fill material” to include any “material placed in waters of the United States where the material has the effect of: (i) replacing any portion of a water of the United States with dry land; or (ii) changing the bottom elevation of any portion of the waters of the United States.” Examples include, but are not limited to, the placement of sand, rock, clay, construction debris, wood chips, and “materials used to create any structure or infrastructure in the waters of the United States.”

In April of 2020, the Corps and the EPA provided a new definition for *waters of the United States* [Federal Register, Vol. 85, No. 77 (April 21, 2020)] which encompass:

- The territorial seas and traditional navigable waters;
- Perennial and intermittent tributaries that contribute surface water flow to such waters;
- Certain lakes, ponds, and impoundments of jurisdictional waters; and
- Wetlands adjacent to other jurisdictional waters.

Additionally, the new definition identifies 12 categories of those waters and features that are excluded from the definition of “waters of the United State, such as features that only contain water in direct response to rainfall (e.g., ephemeral features), groundwater, many ditches, prior converted cropland, and waste treatment systems. The final rule excludes from the definition of “waters of the United States” all waters or features not mentioned above. In addition to this general exclusion, the final rule specifically clarifies that waters of the United States do not include the following:

- Groundwater, including groundwater drained through subsurface drainage systems;
- Ephemeral features that flow only indirect response to precipitation, including ephemeral streams, swales, gullies, rills, and pools;
- Diffuse stormwater runoff and directional sheet flow over upland;
- Ditches that are not traditional navigable waters, tributaries, or that are not constructed in adjacent wetlands, subject to certain limitations;
- Prior converted cropland;
- Artificially irrigated areas that would revert to upland if artificial irrigation ceases;
- Artificial lakes and ponds that are not jurisdictional impoundments and that are constructed or excavated in upland or non-jurisdictional waters;

- Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel;
- Stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff;
- Groundwater recharge, water reuse, and wastewater recycling structures constructed or excavated in upland or in non-jurisdictional waters; and
- Waste treatment systems.

Section 401 of the Clean Water Act

Pursuant to Section 401 of the CWA, any applicant for a federal license or permit to conduct any activity which may result in any discharge to waters of the United States must provide certification from the State or Indian tribe in which the discharge originates. This certification provides for the protection of the physical, chemical, and biological integrity of waters, addresses impacts to water quality that may result from issuance of federal permits, and helps insure that federal actions will not violate water quality standards of the State or Indian tribe. In California, there are nine Regional Water Quality Control Boards (Regional Board) that issue or deny certification for discharges to waters of the United States and waters of the State, including wetlands, within their geographical jurisdiction. The State Water Resources Control Board assumed this responsibility when a project has the potential to result in the discharge to waters within multiple Regional Boards.

State Regulations

Fish and Game Code

Fish and Game Code Sections 1600 et. seq. establishes a fee-based process to ensure that projects conducted in and around lakes, rivers, or streams do not adversely impact fish and wildlife resources, or, when adverse impacts cannot be avoided, ensures that adequate mitigation and/or compensation is provided.

Fish and Game Code Section 1602 requires any person, state, or local governmental agency or public utility to notify the CDFW before beginning any activity that will do one or more of the following:

- (1) substantially obstruct or divert the natural flow of a river, stream, or lake;
 - (2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake;
- or
- (3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake.

Fish and Game Code Section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the State. CDFW's regulatory authority extends to include riparian habitat (including wetlands) supported by a river, stream, or lake regardless of the presence or absence of hydric soils and saturated soil conditions. Generally, the CDFW takes jurisdiction to the top of bank of the stream or to the outer limit of the adjacent riparian vegetation (outer drip line), whichever is greater. Notification is generally required for any project that will take place in or in the vicinity of a river, stream, lake, or their tributaries. This includes rivers or streams that flow at least periodically or permanently through a bed or channel with banks

that support fish or other aquatic life and watercourses having a surface or subsurface flow that support or have supported riparian vegetation. A Section 1602 Streambed Alteration Agreement would be required if impacts to identified CDFW jurisdictional areas occur.

Porter Cologne Act

The California *Porter-Cologne Water Quality Control Act* gives the State very broad authority to regulate waters of the State, which are defined as any surface water or groundwater, including saline waters. The Porter-Cologne Act has become an important tool in the post SWANCC and Rapanos regulatory environment, with respect to the state’s authority over isolated and insignificant waters. Generally, any person proposing to discharge waste into a water body that could affect its water quality must file a Report of Waste Discharge in the event that there is no Section 404/401 nexus. Although “waste” is partially defined as any waste substance associated with human habitation, the Regional Board also interprets this to include fill discharged into water bodies.