GENERAL BIOLOGICAL RESOURCES ASSESSMENT

HESPERIA, SAN BERNARDINO COUNTY, CALIFORNIA

Tentative Tract Map 20637
(APN 3057-051- 25 & 26)

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Project Location:	**Tentative Tract Map 20637** **APN 3057-051-25 & 26** **Hesperia, California**
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1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 4.2-acre parcel (Approximate), located southwest of the intersection of Oak Valley Street and Fuente Avenue in the city of Hesperia, California (USGS Hesperia, California Quadrangle, 1956 (Figures 1, 2, and 3). The property is located in an area zoned for Medium Density Residential (MDR) in the city of Hesperia.

As part of the environmental process, California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS) data sources were reviewed. Following the data review, surveys were performed on the site on January 9, 2024, during which the biological resources on the site and in the surrounding areas were documented by biologists from RCA Associates, Inc. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife species. The property was also evaluated for the presence of sensitive habitats including wetlands, vernal pools, riparian habitats, and jurisdictional areas.

Habitat assessments were conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDB, 2023). Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2016) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property is approximately 4.2-acre in size and is located in the southern portion of the city of Hesperia, California. (Figures 1 and 2). Single family homes border the site to the north, east and west with vacant lands also located west and south of the property. The site is relatively flat and approximately 1000 meters above sea level. The site has been previously cleared of most vegetation; however, some revegetation has occurred. Shrubs observed included rubber rabbit bush (*Ericameria nauseosa*), white bursage (*Ambrosia dumosa*), tumble weed (*Kali tragus*), bladder sage (*Salazaria mexicanus*), mustard (*Brassica tourneforti*), cheat grass (*Bromus tectorum*) and kelch grass (*Schismus barbatus*). A few California junipers (*Juniperus californicus*) and Joshua trees (*Yucca brevifolia*) also occur on the site. Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

A few birds species were observed during the field investigations including mockingbird (*Mimus polyglottos*), raven (*Corvus corax*), pigeon (*Columba livia*), and house finch (*Carpodacus mexicanus*). No mammals were seen on site during the field investigations; however, species such as the desert cottontail (*Sylvilagus audubonii*), antelope ground squirrel (*Ammospermophilus leucurus*), California ground squirrel (*Otospermophilus beecheyi*), and black-tailed jackrabbit (*Lepus californicus*) may frequently occur on the site given their widespread distribution in the region. Section 5.0 provides a more detailed discussion of the various species observed during the surveys. No reptiles were observed, however. Species such as the desert spiney lizard (*Sceloporus magister*), side-blotched lizard (*Uta stansburiana*), western whiptail (*Aspidoscelis tigris*), and the western fence lizard (*Sceloporus occidentalis*) may occur on site given their widespread distribution in the region. Table 2 provides a compendium of wildlife species.

No sensitive habitats (e.g., sensitive species, critical habitats, etc.) have been documented in the immediate area according to the CNDDB (2023) and none were observed during the field Investigations. In addition, no areas which might be jurisdictional were noted.

3.0 METHODOLOGIES

General biological surveys were conducted on January 9, 2024, during which biologists from RCA Associates, Inc. initially walked meandering transects throughout the property. During the surveys, data was collected on the plant and animal species present on the site. All plants and animals detected during the surveys were recorded and are provided in Tables 1 & 2 (Appendix A). The property was also evaluated for the presence of habitats which might support sensitive species, and the property was also evaluated for the presence of sensitive habitats. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2016) and Whitaker (1980). Following completion of the initial reconnaissance survey, protocol surveys were conducted for the desert tortoise and burrowing owl. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the mid 40's (°F) (AM), and 10% cloud cover. The applicable methodologies are summarized below.

General Plant and Animal Surveys: Meandering transects were initially 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 or sampled and brought back for further identification. Wildlife was identified through visual observations and/or by vocalizations. Habitat assessments were conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel prior to the conducting protocol surveys for the tortoise and owl. Tables 1 and 2 (Appendix A) provide 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 (CNDDB) search was performed. Based on this review, it was determined that thirteen special status species (ten wildlife and three plant species) have been documented within the Hesperia quadrangle of the property. The following tables provide data on each special status species which has been documented in the area.

Table 4-1: Federal and State Listed Species and State Species of Special Concern.
E = Endangered; T = Threatened; SSC = Species of special concern; CNPS = California Native Plant Society.
CNDDB = California Natural Diversity Data Base

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Hesperia Quadrangle			
Short-joint beavertail (*Opuntia basilaris var. brachyclada*)	Federal: None State: None CNPS: 1B.2	Chaparral, Joshua tree woodland, pinyon and juniper woodland	None were observed on site.
Booth's evening-primrose (*Eremothera boothii ssp. boothii*)	Federal: None State: Threatened CNPS: 2B.3	Joshua tree woodland, pinyon and juniper woodland	The site does not contain suitable habitat, and the species is not expected to occur on the site due to previous disturbance activities.
White pygmy-poppy (*Canbya candida*)	Federal: None State: None CNPS: 4.2	Joshua tree woodland, Mojave Desert scrub, gravely, sandy habitat	The site does not contain suitable habitat and the species is not expected to occur on the site due to past disturbance activities.

Notes:

Status abbreviations:

CNPS List 1A: Plants presumed extirpated in California and either rare or extinct elsewhere
CNPS List 1B: Plants rare, threatened, or endangered in California and elsewhere
CNPS List 2A: Plants presumed extirpated in California, but more common somewhere else
CNPS List 2B: Plants rare, threatened, or endangered in California, but more common somewhere else
CNPS List 3: Plants about which more information is needed - a review list
CNPS List 4: Plants of limited distribution - a watch list
.1 Seriously threatened in California (over 80% of occurrences threatened/ high degree and immediacy of threat)
.2 Moderately threatened in California (20-80% occurrences threatened/ moderate degree and immediacy of threat)
.3 No very threatened in California (<20% of occurrences threatened/ low degree and immediacy of threat or no current threats known)

Table 4-2: Special status wildlife and insects documented in the region (Source: CNDDB, 2023) or likely to occur in the region.

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
Wildlife Species			
Within Hesperia Quadrangle			
Yellow warbler (*Setophaga petechia*)	Federal: None State: None CDFW: SSC	Dense riparian vegetation.	The site does not support suitable habitat for the species.
Burrowing owl (*Athene cunicularia*)	Federal: None State: None CDFW: SSC	Open grassland areas where the owls utilize abandoned mammal burrows.	Suitable habitat is present on site; however, no owls, occupiable burrows or owl sign was observed.
Cooper's hawk (*Accipiter cooperii*)	Federal: None State: None	Mature forests, open woodland, wood edges, river groves, mixed woods, suburbs	The site does not contain suitable habitat for the Cooper's hawk, and none were observed. This mobile species occurs throughout southern California and could potentially be observed flying over the site during foraging activities.
Pallid bat (*Antrozous pallidus*)	Federal: None State: None CDFW: SSC	Coniferous forests, woodlands, brushy terrain, rocky canyons, open farmland, and deserts	The site has no suitable habitat for the species. The species is not expected to occur on site.
Long-eared owl (*Asio otus*)	Federal: None State: None CDFW: SSC	Woodlands. areas with dense trees, open country, meadows, streamside groves in deserts	The site has no suitable habitat for the species. The species is not expected to occur on site.
Coast horned lizard (*Phrynosoma blainvillii*)	Federal: None State: None CDFW: SSC	Inhabits open areas of sandy soils and low vegetation in valleys, foothills, and semiarid mountains	Suitable habitat present on site, however, the species was not observed on site and it is unlikely to occur on the property given their low population levels in the region.
Le Conte's thrasher (*Toxostoma lecontei*)	Federal: None State: None CDFW: SSC	Desert scrub, open washes, desert shrub habitats, Joshua tree scrub, common in saltbush and cholla vegetation	The site has no suitable habitat for the Le Conte's thrasher, and the species is not expected to occur on the site.

Gray vireo (*Vireo vicinior*)	Federal: None State: None CDFW: SSC	Frequents chaparral dominated by chamise and manzanita, scrub oak	Site does not support suitable habitat for the species and not expected to occur on the site.
Mohave tui chub (*Siphateles bicolor mohavensis*)	Federal: Endangered State: Endangered CDFW: Fully protected	Three populations exist at Soda Springs, China Lake Naval Weapons Station, and Camp Cady Wildlife Area	The site does not contain suitable aquatic habitat for the species.
Mohave ground squirrel (*Xerospermophilus mohavensis*)	Federal: None State: Threatened	Desert scrub	The site does not support suitable habitat for the species, and it is not expected to occur on the site due to past disturbance activities.

5.0 RESULTS

5.1 General Biological Resources

The site has been previously disturbed and currently supports a ruderal plant community (Figure 3). Species present included Asian mustard (*Brassica tournefortii*), kelch grass (*Schismus barbatus*), rubber rabbit shrub (*Ericameria nauseosa*), tumble weed (*Kali tragus*), bladder sage (*Salazaria mexicana*), white bursage (*Ambrosia dumosa*), and cheat grass (*Bromus tectorum*). A few California junipers (*Juniperus californica*) and Joshua trees (*Yucca brevifoilia*) were also observed. Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

The only wildlife observed included four bird species: Common ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), northern mockingbird (*Mimus polyglottos*), and pigeon (*Columba livia)*. No mammals were observed on site during the January 2024 field investigations although, species such California ground squirrel (*Otospermophilus beecheyi*), antelope ground squirrel (*Ammospermophilus leucurus*). Jackrabbit (*Lepus californicus*), and desert cottontail (*Sylvilagus auduboni*) may occasionally occur on the site due to their wide distribution in the region.

No reptiles were observed on site, although the desert spiney lizard (*Sceloporus magister*), side-blotched lizard (*Uta stansburiana*), western whiptail (*Aspidoscelis tigris*), and western fence lizard (*Sceloporus occidentalis*) are common in the region. Tables 1 and 2 (Appendix A) provide a compendium of the various plant and animal species identified during the field investigations and those common to the area. No distinct wildlife corridors were identified on the site or in the immediate area, and no sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations. No potential jurisdictional areas were identified.

The following are listed and special status species that have been documented in the surrounding region. This information has been obtained from the California Natural Diversity Database and is using the most current version.

5.2 Federal and State Listed Species

Mohave Ground Squirrel: The Mohave ground squirrel is a California state threatened species that has 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. No occupiable burrows were found on the site, and as noted above, the site has been previous cleared and does not support suitable habitat for the species. It is the opinion of RCA Associates, Inc. that the site does not support populations of the Mohave ground squirrel.

Booth's Evening-Primrose: The Booth's evening primrose is a California threatened annual plant species that thrives in arid areas, and has hairy reddish-green stems, mottled foliage, with smaller flowers which have either white, red, or yellowish petals. The flower's optimal preferred habitat includes Joshua tree and pinyon/juniper woodland including sandy flats and steep loose slopes. It is the opinion of RCA Associates, Inc. that the site does not support habitat for the species due to past disturbance activities (i.e., clearing of vegetation).

Desert Tortoise: The desert tortoise, which is a State and federally threatened species, occurs throughout the Mojave Desert; however, population levels have significantly declined over the last several decades due to human disturbance and development in Southern California. The site has been significantly disturbed which has resulted in the elimination of most vegetation. No tortoises or sign (burrows, scats, etc.) were observed and the species is not expected to inhabit the site in the future.

5.3 Species of Special Concern

Sensitive Plants: There are two plant species that have been documented in the Hesperia quad, the short-joint beavertail cactus and white-pygmy-poppy. In recent years, only the short-joint beavertail has been seen within the Hesperia quad, while the white pygmy-poppy has not been observed for over 20 years. The site has been previously disturbed and is not expected to support populations of either species.

Sensitive Wildlife: Seven species that are listed as Species of Special Concern have been document in the Hesperia Quadrangle, including the yellow warbler, burrowing owl, pallid bat, long-eared owl, coast horned lizard, Le Conte's thrasher, and gray vireo. The property does not

contain suitable prime habitat for most of the species listed above; however, the site does contain marginal habitat for the burrowing owl. However, no owls, suitable burrows or owl sign (whitewash, casting, etc.) were observed during the field surveys.

5.4 Jurisdictional Waters and Riparian Habitat

No riparian vegetation (e.g., cottonwoods, willows, etc.) exist on the site and no potential jurisdictional areas were noted.

5.5 Protected Plants

As of July 10, 2023, California legislature passed and signed the Western Joshua Tree Conservation Act (WJTCA, Senate Bill 122) into effect listing the western Joshua tree (*Yucca brevifolia*) as an endangered species. The WJTCA authorizes CDFW to oversee the various permitting processes dealing with mitigation and/or removal of western Joshua trees. Therefore, any attempt to remove a Joshua tree from its current position will require a California Endangered Species Act Incidental Take Permit (CESA, ITP) or a Western Joshua Tree Conservation Act Incidental Take Permit (WJTCA, ITP). There are a few Joshua trees on the site; therefore, a ITP will be required prior to any future development activities.

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 given past disturbance which have occurred. The site is expected to support a few wildlife species which will be impacted by development activities. 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 4.2-acre of disturbed habitat is not expected to have a significant cumulative impact on the overall biological resources in the region given the presence of similar habitat throughout the surrounding area. No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) or potential jurisdictional areas were observed on the site during the field investigations.

6.2 Federal and State Listed and Species of Special Concern

No federal or State-listed species were observed on site during the field investigations including the Mohave ground squirrel and desert tortoise and neither species is expected to occur on the site given the past disturbance which has occurred (Figure 3). In addition, there are no documented observations of these species either on the site or in the immediate area.

No burrowing owls or owl sign (burrows, whitewash, etc.) were observed on the site. However, a pre-construction burrowing owl survey will be required by CDFW to determine if any owls have moved on to the site since the January 2024 survey. As stated in CDFW's *Staff Report on Burrowing Owl Mitigation*, the most effective method of completing a pre-construction survey (take avoidance survey) should be performed within 30 days of ground disturbance, followed by a final pre-construction survey within 24 hours of breaking ground.

7.0 CONCLUSIONS AND CONSIDERATIONS

Future development activities will include grading the property and removing vegetation from the approximate 4.2-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) in the region are expected to be negligible. This assumption is based on the disturbed conditions of the site and suitable habitat located in the surrounding areas of the region. In addition, future development activities are not expected to have any impact on any State or Federal listed or State special status plant or animal species. As discussed above, the site does not support desert tortoises or burrowing owls, and neither species is expected to be impacted given the absence of any suitable burrows. Mohave ground squirrels are not expected to inhabit the site due to past disturbance activities which have occurred. Additional pre-construction surveys may be required by CDFW as summarized below.

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. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event any 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. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.

2) If any sensitive species 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.

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CERTIFICATION

I hereby certify that the statements furnished above and in the attached exhibits, presents the data and information required for this biological evaluation, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief. Fieldwork conducted for this assessment was performed by Ryan Hunter and Brian Bunyi. I certify that I have not signed a non-disclosure or consultant confidentiality agreement with the project applicant or applicant's representative and that I have no financial interest in the project.

Date: 1/9/2024 Signed: Ryan Hunter

Brian Bunyi

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

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

Appendix A

Tables and Figures

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

Common Name	Scientific Name	Location
Asian mustard	*Brassica tournefortii*	On Site
Western Joshua tree	*Yucca brevifolia*	"
Rubber rabbitbrush	*Ericameria nauseosa*	"
Nevada jointfir	*Ephedra nevadensis*	Surrounding area
Menzies fiddleneck	*Amsinckia menziesii*	"
Manybristle chinchweed	*Pectis papposa*	"
Tumbleweed	*Kali tragus*	On-site
Cheatgrass	*Bromus tectorum*	"
Rattlesnake weed	*Euphorbia albomarginata*	Surrounding area
Kelch grass	Schismus barbatus	On-site
California buckwheat	*Erigonum fasciculatum*	Surrounding area
Bursage	*Ambrosia dumosa*	On-site
Short pod mustard	*Hirschfeldia incana*	"
Asian mustard	*Brassica tournefortii*	On-site
California juniper	*Juniperus californicus*	"

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

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

Common Name	Scientific Name	Location
Common raven	*Corvus corax*	On-site and in the surrounding area.
House finch	*Carpodacus mexicanus*	"
Anna's hummingbird	*Calypte anna*	Surrounding area
Eurasian collared dove	*Streptopelia decaocto*	"
Mourning dove	*Zenaida macroura*	"
Rock pigeon	*Columba livia*	On-site
Northern mockingbird	*Mimus polyglottos*	"
European starling	*Sturnus vulgaris*	Surrounding area
Desert cottontail	*Sylvilagus audubonii*	"
California ground squirrel	*Otospermophilus beecheyi*	"
Desert spiney lizard	*Sceloporus magister*	"
Common side-blotched lizard	*Uta stansburiana*	Common in region
Western whiptail	*Aspidoscelis tigris*	"
Western fence lizard	*Sceloporus occidentalis*	"
Black tailed jackrabbit	*Lepus californicus*	"

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.

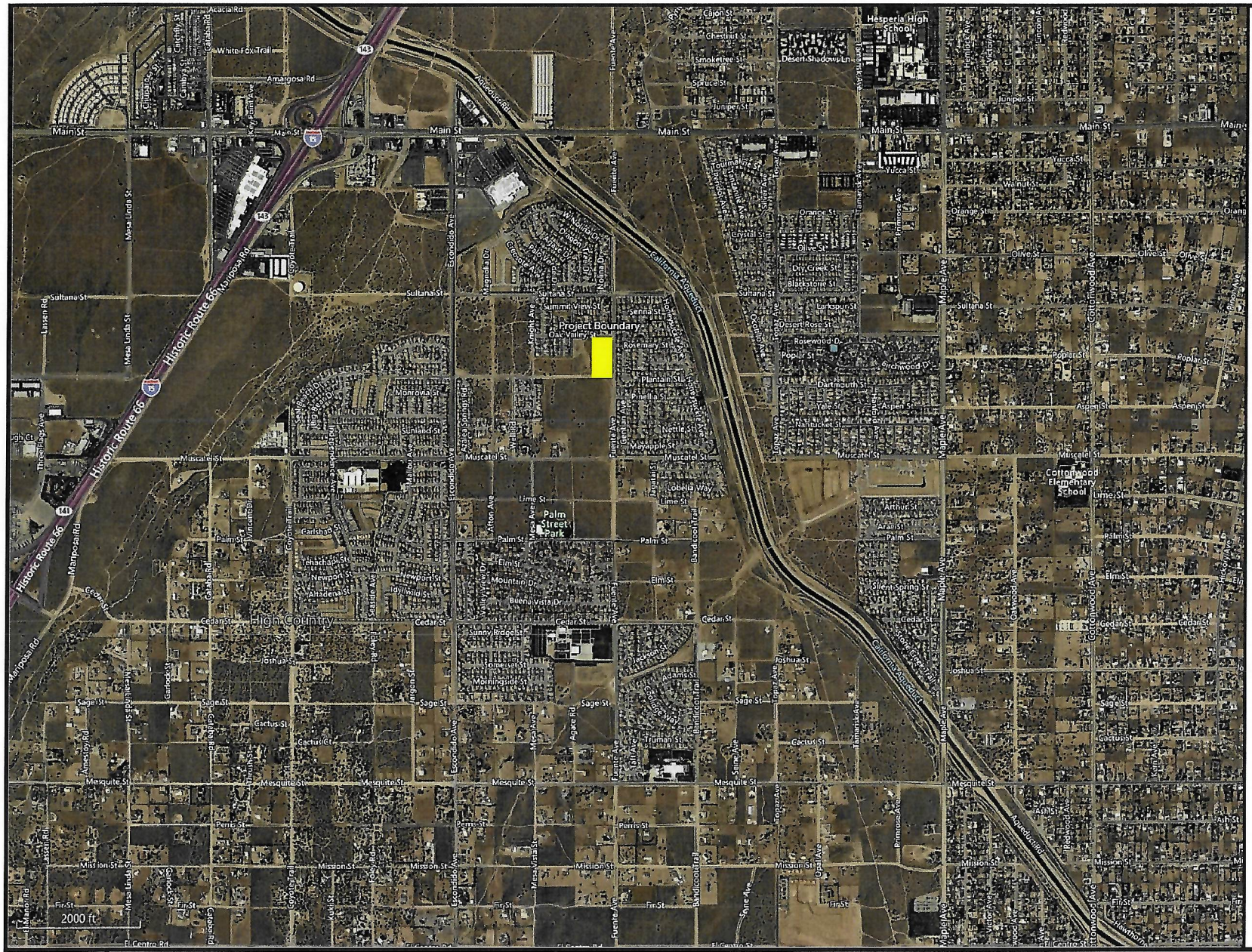


Figure 1: Regional Exhibit Produced By: RCA Associates Inc.	**SW of the Intersection of Fuente Ave and Oak Valley St. in the City of Hesperia, CA.**	Source:	Uinta Software
		Acreage:	4.2-Acre (Approximately)
		Project #:	2023-169

RCA ASSOCIATES INC

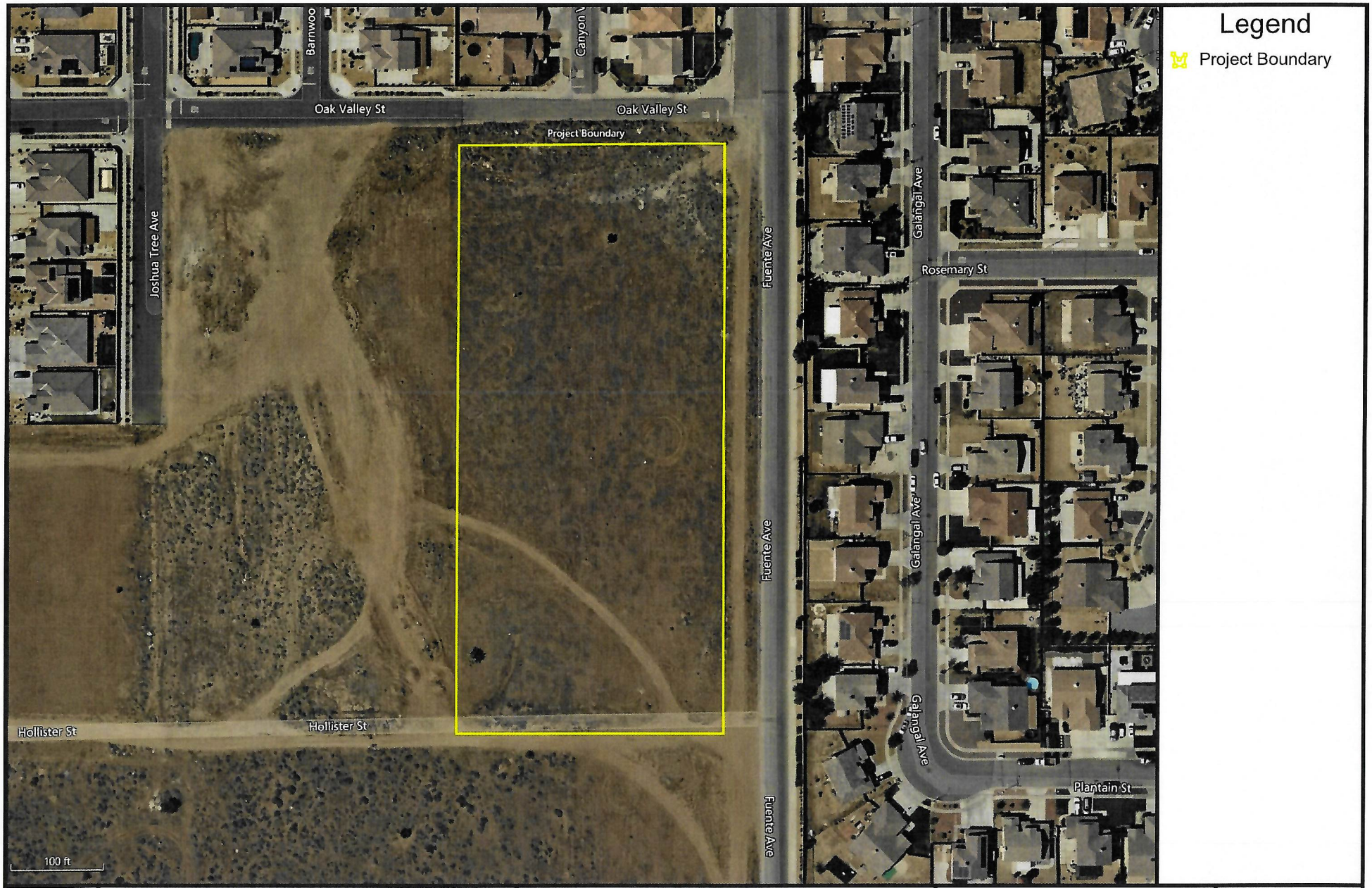


	Figure 2: Vicinity Exhibit Produced By: RCA Associates Inc.	**SW of the Intersection of Fuente Ave and Oak Valley St. in the City of Hesperia. CA.**	Source: Uinta Software Acreage: 4.2-Acre (Approximately) Project #: 2023-169	RCA ASSOCIATES, INC

CENTER OF SITE LOOKING NORTH



CENTER OF SITE LOOKING EAST



FIGURE 3: PHOTOGRAPHS OF SITE

CENTER OF SITE LOOKING SOUTH



CENTER OF SITE LOOKING WEST



FIGURE 3, cont: PHOTOGRAPHS OF SITE

REGULATORY CONTENT

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

Federal Endangered Species Act

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

Section10(a) of the ESA establishes a process for obtaining an incidental take permit that authorizes nonfederal entities to incidentally take federally listed wildlife or fish. Incidental take is defined by ESA as take that is "incidental to, and not the purpose of, the carrying out of another wise lawful activity." Preparation of a habitat conservation plan, generally referred to as an HCP, is required for all Section 10(a) permit applications. The USFWS and National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries Service) have joint authority under the ESA for administering the incidental take program. NOAA Fisheries Service has jurisdiction over anadromous fish species and USFWS has jurisdiction over all other fish and wildlife species.

Section 7 of the ESA requires all federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any species listed under the ESA,

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

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

California Endangered Species Act

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

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

Clean Water Act, Section 404

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

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

Clean Water Act, Section 401

Section 401 of the Clean Water Act requires water quality certification and authorization of placement of 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 orders Falconiformes (hawks, eagles, and falcons) or Strigiformes (owls). Take would include the disturbance of an active nest resulting in the abandonment or loss of young.

Migratory Bird Treaty Act

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

Sensitive Natural Communities

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

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

Protected Plants

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

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

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

WESTERN JOSHUA TREE CENSUS

CITY OF HESPERIA, CALIFORNIA

APN: 3057-051-25 & 26

Prepared for:

Hesperia Canyon, LLC
2714 Stingle Avenue
Rosemead, CA 91770

Prepared by:

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(760) 596-0017

Biologists:
Ryan D. Hunter, Principal Environmental Scientist & Wildlife Biologist
Brian S. Bunyi, Environmental Scientist & Wildlife Biologist

Project No: #2023-60 JT

February 8, 2024

TITLE PAGE

Date Report Prepared:	**February 8, 2024**
Field Work Completed:	**January 9, 2024**
Report Title:	**Western Joshua Tree Census**
Project Location:	**Hesperia, California** **APN: 3057-051-25 & 26** **NW Corner: 34.41752856°, -117.36522465°** **NE Corner: 34.41753171°, -117.36427904°** **SW Corner: 34.41580451°, -117.36522656°** **SE Corner: 34.41579663°, -117.36426949°**
Datum of Coordinates:	**World Geodetic System 1984 (WGS 84)**
Prepared for:	**Hesperia Canyon, LLC** **2714 Stingle Avenue** **Rosemead, CA 91770**
Principal Investigators:	**Ryan Hunter,** **Principal Environmental Scientist & Wildlife Biologist** **Brian Bunyi,** **Environmental Scientist & Wildlife Biologist**
Contact Information:	**Randall C. Arnold, Jr.** **RCA Associates, Inc.** **15555 Main Street, #D4-235** **Hesperia, CA 92345** **(760) 596-0017** **rarnold@rcaassociatesllc.com** **www.rcaassociatesllc.com** **Ryan D. Hunter** **RCA Associates, Inc.** **15555 Main Street, #D4-235** **Hesperia, CA 92345** **(760) 596-0017** **rhunter@rcaassociatesllc.com** **www.rcaassociatesllc.com**

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Appendix A – Figures

Appendix B – California Department of Fish and Game Code 1927

1.0 SUMMARY

At the request of the project proponent, RCA Associates, Inc. surveyed a 4.2-acre (approximate) property located on the southwest corner of Fuente Avenue and Oak Valley Street in the City of Hesperia, California (APN: 3057-051-25 & 26) (Figures 1 and 2). The properties corners are marked in figure 3 and coordinates are displayed on the title page under location. The property site is located in Section 23, Township 4 North, Range 5 West (USGS Hesperia, CA 7.5-minute quadrangle).

The purpose of the survey was to evaluate the western Joshua trees present on the site to determine possible impacts to the population and to calculate approximate mitigation measures prior to site clearing activities. This report provides the results of the Western Joshua Tree Census performed on January 9, 2024. Following completion of the survey, RCA Associates, Inc. prepared this Western Joshua Tree Census to assist the project proponent with future planning regarding the possible relocation or removal of any Joshua trees and applying for an Incidental Take Permit (ITP). Information on the Joshua trees is provided in Section 4.0. The State of California's Fish and Game Code 1927 states the requirements of the Western Joshua Tree Conservation Act. The requirements of code 1927 are provided in Appendix B.

Based on the results of the background data search it was determined that the project site is located within the standard fee mitigation area for the Western Joshua Tree Conservation Act. Results of the field investigations yielded that there are 4 Joshua trees which occur within the boundaries of the property and 0 Joshua trees that occur within a 15-meter buffer surrounding the property (Figures 3 and 4). Based on the evaluation and analysis of each tree on-site it was determined that 0 (0.00%) Joshua trees were less than 1 meter in height, 3 (75.00%) Joshua trees were 1 meter or greater but less than 5 meters in height, and 1 (25.00%) Joshua trees were 5 meters or greater in height. A summary of the mitigation fees is located in Table 4-1 and the GPS locations and information on each tree are provided in Table 4-2-1 & 4-2-2.

2.0 INTRODUCTION AND PROJECT LOCATION

The area surveyed is located on the southwest corner of Fuente Avenue and Oak Valley Street in the City of Hesperia, California. Vacant land borders the property to the east and south. An existing housing development borders the site to the north across Oak Valley St. and to the west across Fuente Ave. The biological resources on the site consist of a desert scrub community typical of the area which include Joshua tree (*Yucca brevifolia*), rubber rabbitbrush (*Ericameria nauseosa*), fiddleneck (*Amsinckia tessellata*), kelch grass (*Schismus barbatus*) and red stem storksbill (*Erodium cicutarium*).

Joshua trees occur throughout the Mojave Desert in Southern California and are typically found at an elevation of 400 to 1,800 meters (~1,200 to ~5,400 feet). Joshua trees within the western portion of the Mojave Desert typically receive more annual precipitation during "normal" years; consequently, cloning occurs more often resulting in numerous trunks sprouting from the same root system (Rowland, 1978). Joshua tree habitats provide habitat for a variety of wildlife species including desert woodrats (*Neotoma* sp.) and night lizards (*Xantusia* sp.) both of which utilize the base of the trees. A variety of birds also utilize Joshua trees for nesting such as hawks, common ravens, and cactus wrens. CDFW consider Joshua tree woodlands as areas that support relatively high species diversity and as such are considered to be a sensitive desert community. Joshua trees are also considered a significant resource under the California Environmental Quality Act (CEQA) and are included in the Desert Plant Protection Act, Food and Agricultural Code (80001 – 80006).

3.0 METHODOLOGIES

Pedestrian surveys were walked throughout the site and biologists from RCA Associates, Inc. evaluated each Joshua tree to determine the height, life stage, and a general health assessment. Each Joshua tree withing the project boundaries received a metal numbered tag which was affixed on the north side of each tree for orientation purposes if future transplanting is required by CDFW. A piece of flagging was affixed to each tree while taking pictures to indicate the tree/trunk of focus. Photos of each tree can be obtained by request by contacting CDFW. The precise location, data and assessment of each tree was recorded using a Juniper Systems Cedar CT8X2 GPS tablet running Uinta software. A Nikon Forestry Pro II rangefinder was utilized to determine the extent of the property boundaries, buffer zone and accurate tree height. Those Joshua trees which occur on the property site are presented in Table 4-2-1 and the locations are provided in Figure 3. A 15-meter (~50 ft) is recommended as part of the census area surrounding the project site but was not physically walked and surveyed on foot due to landowner permission not being obtained. Trees that fall within the 15-meter (~50 foot) buffer were assessed from the property's boundary. Data on each tree within the buffer can be found in table 4-2-2 and the locations are provided in figure 4. A KML with geographic data on the positions of all trees will be provided to help locate trees in projects with significant tree density and for future mapping.

4.0 RESULTS

A total of 4 Joshua trees occur within the boundaries of the property and 0 Joshua trees occur within the 15-meter (~50 foot) buffer (Figures 3). Based on the evaluation and analysis of each tree within the boundaries of the property it was determined that 0 (0.00%) Joshua trees were less than 1 meter in height, 3 (75.00%) Joshua trees were 1 meter or greater but less than 5 meters in height, and 1 (25.00%) Joshua trees were 5 meters or greater in height. A summary of the mitigation fees for on-site trees is located in Table 4-1 and the GPS locations and information on each tree are provided in Table 4-2-1. There were no western Joshua trees located off-site therefore Table 4-2-2 will remain empty.

Table 4-1: Summary of mitigation fees for on-site trees based on "Western Joshua Tree Conservation Act Mitigation Fee Map" (https://experience.arcgis.com/experience/40690ac231124bccb07cbce42fc95ebd/)

Reduced Mitigation Fees (within blue area) [See Section 1927.3 (d)]:		**Number of trees per Size Class (A, B or C)**	**Approximate Cost per Size Class (A, B or C)**
(A) Trees less than 1 meter in height - $150		N/A	N/A
(B) Trees 1 meter or greater but less than 5 meters in height - $200		N/A	N/A
(C) Trees 5 meters or greater in height - $1,000		N/A	N/A
Total number of trees		N/A	N/A
Approximate total mitigation cost		N/A	N/A
Standard Fees (anywhere in State, outside blue area) [See Section 1927.3 (e)]:			
(A) Trees less than 1 meter in height - $340		0	$0
(B) Trees 1 meter or greater but less than 5 meters in height - $500		3	$1,500
(C) Trees 5 meters or greater in height - $2,500		1	$2,500
Total number of trees		4	
Approximate mitigation cost			$4,000

Table 4-2-1: Western Joshua Tree Census table showing on-site Joshua trees. (Note: The GPS locations of the Joshua trees are provided below along with the height and a general health assessment.) (Note: The JT numbers correspond to the tag numbers placed on the Joshua trees.)

Total Number of Joshua Trees On-site	Number of Live Joshua Trees On-site	Number of Dead Joshua Trees On-site	Number of Size Class "A" Joshua Trees	Number of Size Class "B" Joshua Trees	Number of Size Class "C" Joshua Trees	Number of Joshua Trees Off-site
4	4	0	0	3	1	0

Joshua Tree	Latitude (WGS 84)	Longitude (WGS 84)	Live or Dead	Height of Tree (meters)	Size Class	Mature Tree (Branched)	Flowering or Fruiting Stage (flowers, fruits, or none)	Impact to Tree (removal, trim, relocation, other or none)	Will project activities be within 15 meters of tree	Relocation	Additional Notes
JT 2813	34.4159835	-117.3650438	Live	1.3	B	No	None	Removal	Yes	Not Applicable	
JT 2814	34.41601508	-117.3651845	Live	6.2	C	Yes	None	Removal	Yes	Not Applicable	
JT 2815	34.41707567	-117.3650478	Live	2.2	B	Yes	None	Removal	Yes	Not Applicable	
JT 2816	34.41708083	-117.3650203	Live	2.1	B	No	None	Removal	Yes	Not Applicable	

Table 4-2-2: Western Joshua Tree Census table showing off-site Joshua trees. (Note: The GPS locations of the Joshua trees are provided below along with the height and a general health assessment.) (Note: Thes Joshua trees in this table were marked visually and no metal tag was affixed to the trees.)

Joshua Tree	Latitude (WGS 84)	Longitude (WGS 84)	Live or Dead	Height of Tree (meters)	Size Class	Mature Tree (Branched)	Flowering or Fruiting Stage (flowers, fruits, or none)	Impact to Tree (removal, trim, relocation, other or none)	Will project activities be within 15 meters of tree	Relocation	Additional Notes
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

5.0 CONCLUSIONS

The site is located within the standard mitigation fee area by CDFW for the Western Joshua Tree Conservation Act. A total of 4 Joshua trees occur within the boundaries of the property and 0 Joshua trees occur within the 15-meter buffer surrounding the site. (Figures 3 and 4). As stated above, based on the evaluation and analysis of each tree on-site it was determined that 0 (0.00%) Joshua trees are less than 1 meter in height and are categorized under size class "A". There are 3 (75.00%) Joshua trees 1 meter or greater but less than 5 meters in height categorized under size class "B". There are 1 (25.00%) Joshua trees 5 meters or greater in height categorized under size class "C". As indicated in Table 4-1, all of the Joshua trees are greater than 1 meters in height.

As of July 10, 2023, California legislature passed and signed the Western Joshua Tree Conservation Act (WJTCA, Senate Bill 122) into effect listing the western Joshua tree (*Yucca brevifolia*) as a candidate endangered species. The WJTCA authorizes CDFW to oversee the various permitting processes dealing with mitigation and/or removal of western Joshua trees. Therefore, any attempt to remove a Joshua tree from its current position will require a California Endangered Species Act Incidental Take Permit (CESA, ITP) or a Western Joshua Tree Conservation Act Incidental Take Permit (WJTCA, ITP). CDFW is the lead agency in the decision making of the projects forward progress pertaining to western Joshua trees.

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SB 122, Committee on Budget and Fiscal Review. Public resources trailer bill. SEC 5, Chapter 11.5. Western Joshua Tree Conservation Act.

7.0 CERTIFICATION

I hereby certify the statements furnished above and in the attached exhibits, present the data and information required for this Joshua tree survey and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief. Fieldwork conducted for this survey was performed by Ryan D. Hunter and Brian S. Bunyi.

Date: February 8, 2024 Signed: Ryan D. Hunter
Brian S. Bunyi

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

Brian S. Bunyi
Environmental Scientist & Wildlife Biologist

APPENDIX A

Figures

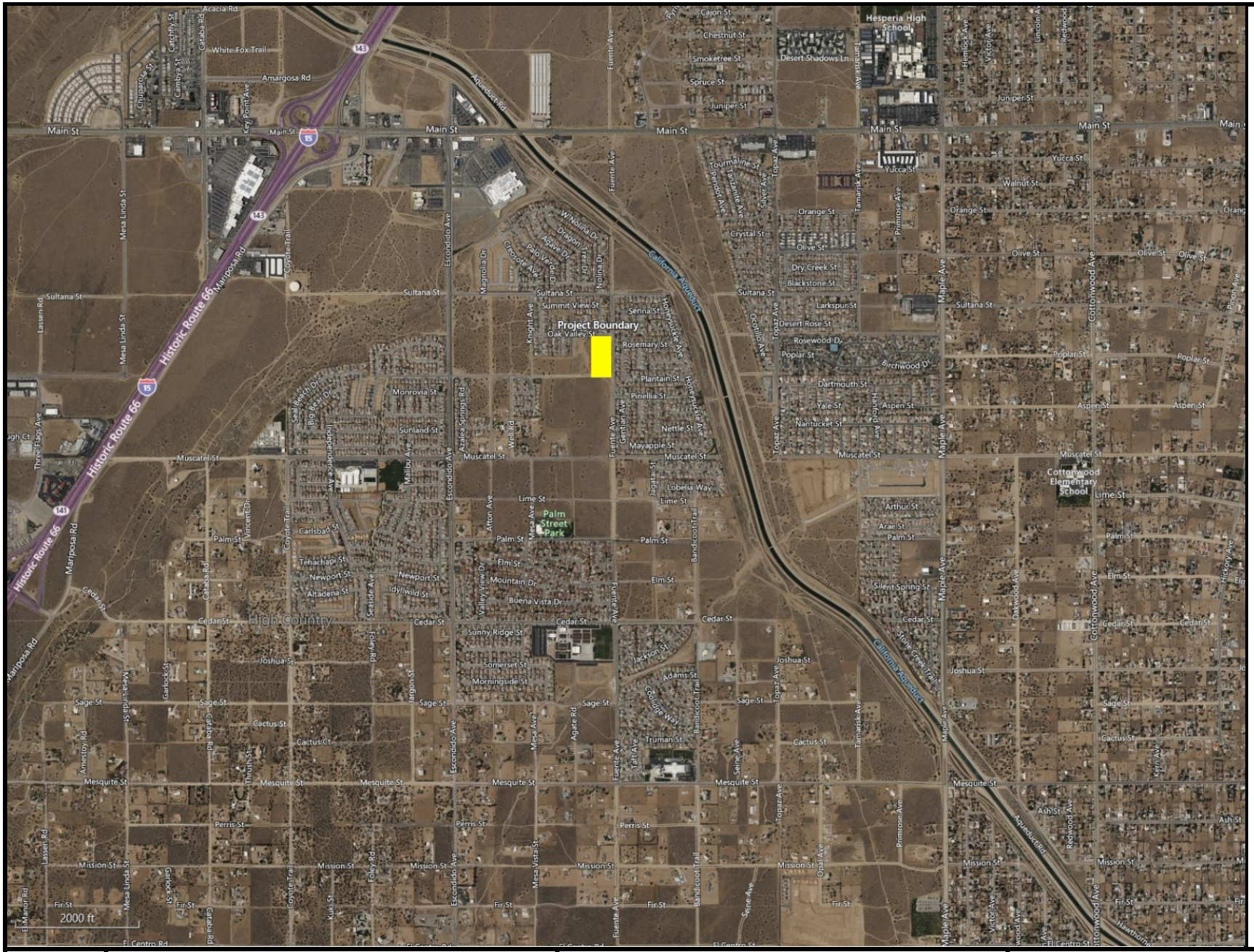


	Figure 1: Regional Exhibit Produced By: RCA Associates Inc.	**SW of the Intersection of Fuente Ave and Oak Valley St. in the City of Hesperia, CA.**	Source: Uinta Software Acreage: 4.2-Acre (Approximately) Project #: 2023-60

RCA ASSOCIATES,INC

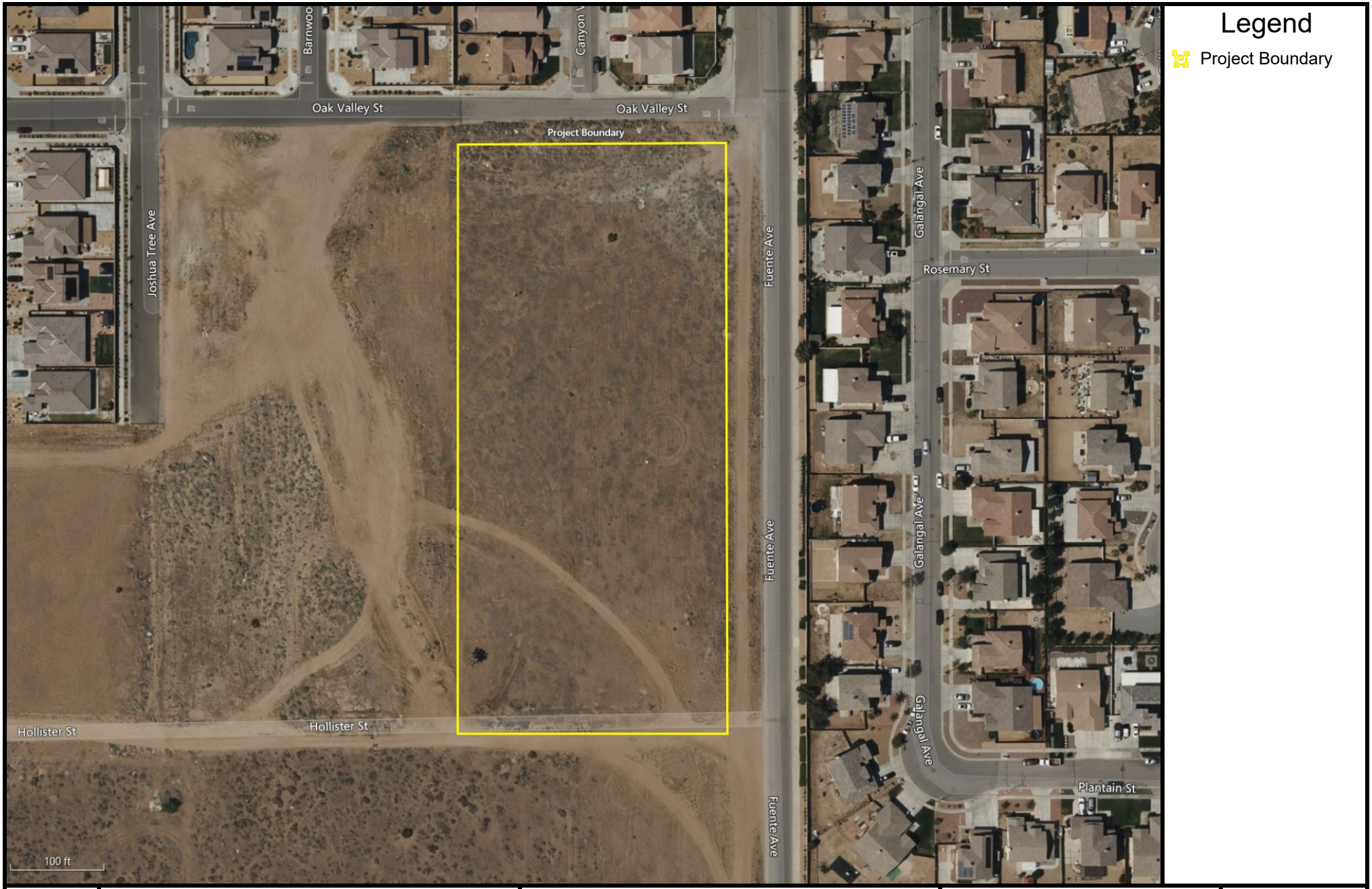


	Figure 2: Vicinity Exhibit Produced By: RCA Associates Inc.	**SW of the Intersection of Fuente Ave and Oak Valley St. in the City of Hesperia. CA.**	Source: Uinta Software Acreage: 4.2-Acre (Approximately) Project #: 2023-60

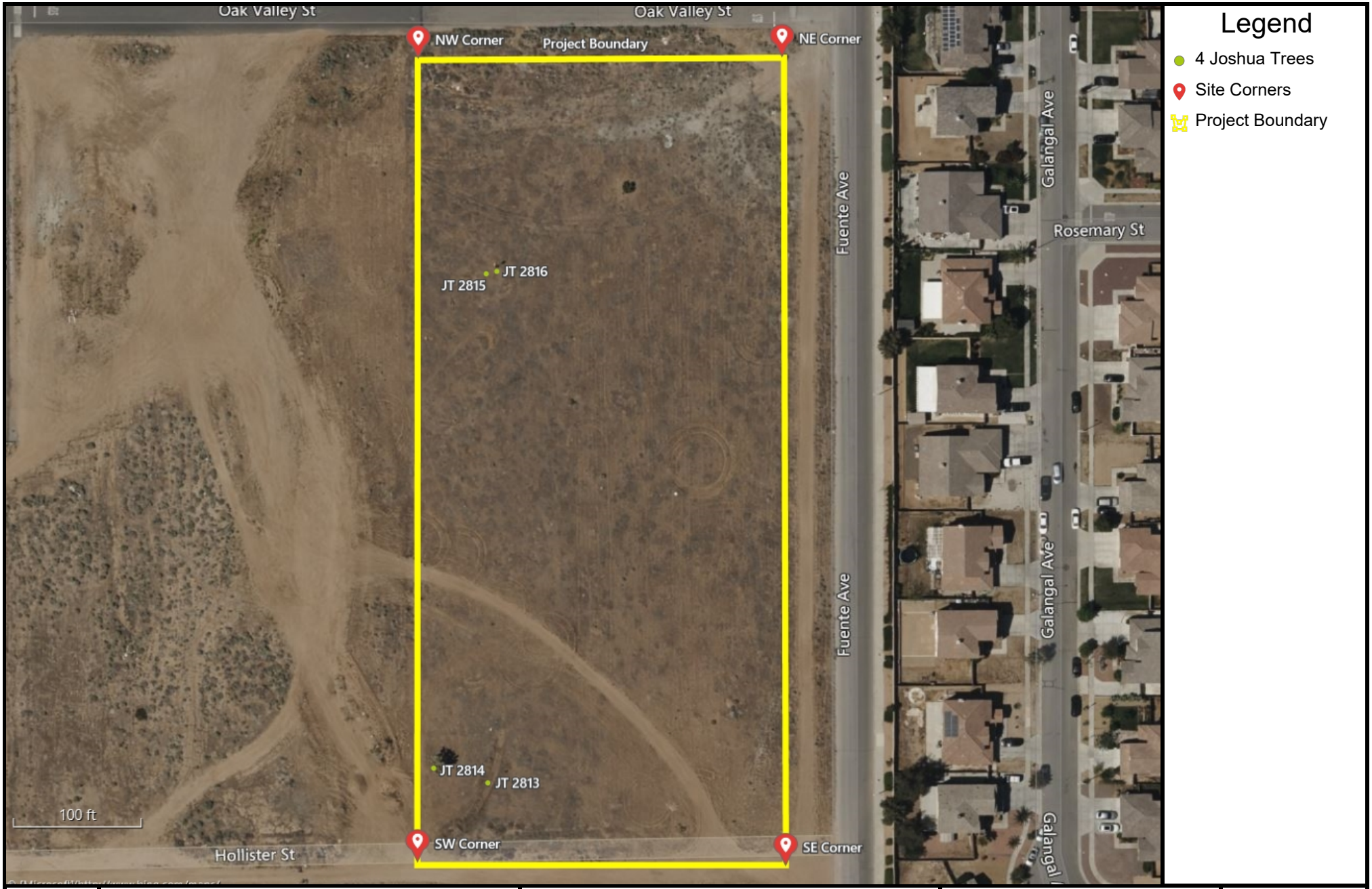


Figure 3: Locations of Onsite Western Joshua Tree

SW of the Intersection of Fuente Ave. and Oak Valley St. in Hesperia, CA.

Source:	Uinta Software
Acreage:	4.2-Acres (Approximately)
Project #:	2023-60 JT

RCA ASSOCIATES,INC

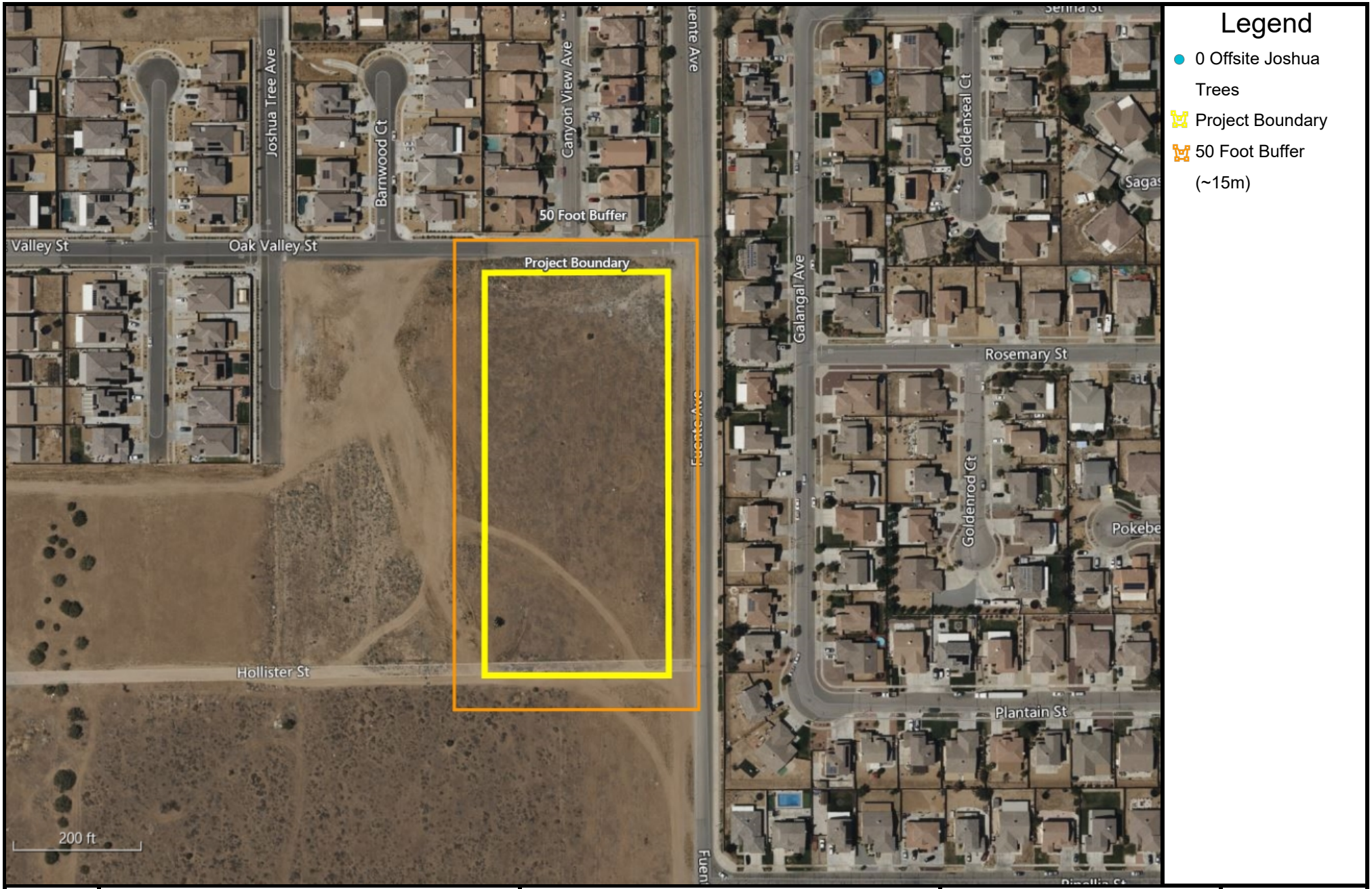


	Figure 4: Locations of Offsite Western Joshua Tree	**SW of the Intersection of Fuente Ave. and Oak Valley St. in Hesperia, CA.**	Source: Uinta Software Acreage: 4.2-Acres (Approximately) Project #: 2023-60 JT

RCA ASSOCIATES, INC

APPENDIX B

California Department of Fish and Game Code
1927

Chapter 11.5 (commencing with Section 1927) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 11.5. Western Joshua Tree Conservation Act

1927. This chapter shall be known, and may be cited as, the Western Joshua Tree Conservation Act.

1927.1. For purposes of this chapter, the following definitions apply:

(a) "Accessory structure" means a subordinate structure, the use of which is incidental to an existing or contemporaneously constructed single-family residence, including, an accessory dwelling unit, addition to an existing single-family residence, garage, carport, swimming pool, patio, greenhouse, storage shed, gazebo, septic tank, sewer connection, solar panels, fence, or gravel or paved driveway.

(b) "California Endangered Species Act" means the act established pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3.

(c) "Conserve" or "conservation" means to use, and the use of, methods and procedures that are necessary to bring species listed pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 to the point at which the measures provided pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 are no longer necessary, and for species that are not listed to maintain or enhance the condition of the species so that listing will not become necessary.

(d) "Dead western Joshua tree" means a western Joshua tree that meets at least one of the following criteria:

(1) Has not burned and has no green leaves, no new growth on the main stem, and no basal sprouts.

(2) Has partially or fully burned at least 18 months prior and otherwise satisfies paragraph (1).

(3) Has fallen and is completely detached from its roots or has fallen and its roots are no longer in contact with the soil.

(e) "Desert native plant specialist" means an arborist certified by the International Society of Arborists, or an individual with at least five years of professional experience with relocation or restoration of native California desert vegetation.

(f) "Fee" means the elective fee described in subdivisions (d) and (e) of Section

1927.3, which is to be deposited into the fund.

(g) "Fund" means the Western Joshua Tree Conservation Fund as described in Section 1927.5.

(h) "Multifamily residence" means an apartment building, rowhouse, town house, condominium, or manufactured building that consists of two or more attached dwelling units designed for occupancy by two or more families living independently of one another.

(i) "Public works project" means a project involving the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(j) "Relocated" or "relocation" means the removal of a living western Joshua tree and a sufficient portion of its root mass from the ground and transplanting it.

(k) "Single-family residence" means a single detached building that has been, or will be, constructed and used as living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the California Building Standards Code, for not more than one household.

(l) "Western Joshua tree" means Yucca brevifolia, an evergreen, tree-like plant that has been treated as a member of the asparagus family (Asparagaceae).

1927.2. (a) No person or public agency shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, a western Joshua tree or any part or product of the tree, except as authorized pursuant to any of the following, as applicable:

(1) This chapter.

(2) The California Endangered Species Act.

(3) The Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3).

(b) During any period in which the western Joshua tree has been designated by the commission as a candidate for listing under the California Endangered Species Act, any person or public agency seeking a take authorization for the western Joshua tree may obtain a take authorization as provided by the California Endangered Species Act or by electing to pay the fees set forth in Section 1927.3.

(c) (1) This chapter is a change in state law, within the meaning of paragraph (1) of subdivision (c) of Section 2075.5, that has a direct and significant impact on the commission's determination as to whether the petitioned action is warranted. Pursuant to subdivision (c) of Section 2075.5, the commission shall reopen the administrative record for the commission's determination for the purpose of assessing the impact of the conservation program established by this chapter.

(2) In making the assessment described in paragraph (1), the commission shall consider all of the following:

(A) The effectiveness of any conservation measures funded through expenditures of fees by the department pursuant to Section 1927.5.

(B) The conservation plan developed by the department and approved by the commission pursuant to Section 1927.6.

(C) Any annual reports submitted to the commission by the department pursuant to Section 1927.7.

(D) Any recommendations submitted to the commission by the department pursuant to subdivision (a) of Section 1927.8.

(E) The fee adjustments, if any, adopted by the department pursuant to subdivision (b) of Section 1927.8.

(F) An updated status review to be submitted to the commission by the department no later than January 1, 2033, unless the commission directs the department to submit the updated status review sooner.

(d) If the commission determines that listing the western Joshua tree as endangered or threatened pursuant to the California Endangered Species Act is not warranted, this chapter shall remain operative and the authorization of take of a western Joshua tree shall be pursuant to this chapter.

(e) If the commission determines that listing the western Joshua tree as endangered or threatened pursuant to the California Endangered Species Act is warranted, this chapter shall become inoperative and the authorization of take of a western Joshua tree shall only be pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 or pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3).

(f) Upon the approval of a natural community conservation plan that provides for

the conservation of the western Joshua tree as a covered species, the authorization of take of a western Joshua tree for any project or activity covered by the plan shall only be pursuant to Chapter 10 (commencing with Section 2800) of Division 3.

(g) The provisions of the Native Plant Protection Act (Chapter 10 (commencing with Section 1900)), and the California Desert Native Plants Act (Division 23 (commencing with Section 80001) of the Food and Agricultural Code), shall not apply to the western Joshua tree.

(h) This section shall not preclude the department from authorizing, by permit or memorandum of understanding, the taking, possession, purchase, or sale within the state of a western Joshua tree to aid the conservation and recovery of the western Joshua tree, or entering into memoranda of understanding with California Native American tribes to provide for the taking and possession of western Joshua trees for tribal cultural purposes, or as otherwise required by applicable law.

(i) Any authorization issued by the department pursuant to Section 2081 or 2084, before the enactment of this chapter, to import, export, take, possess, purchase, or sell a western Joshua tree shall be valid and remain in effect after the enactment of this chapter pursuant to the terms of the authorization.

1927.3. (a) The department may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met:

(1) The permittee submits to the department for its approval a census of all western Joshua trees on the project site, including size information and photographs, that categorize the western Joshua trees according to the following size classes:

(A) Less than one meter in height.

(B) One meter or greater but less than five meters in height.

(C) Five meters or greater in height.

(2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to a western Joshua tree.

(3) The permittee mitigates all impacts to, and taking of, the western Joshua tree. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking of the species. When various measures are

available to meet this obligation, the measures required shall maintain the permittee's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. The permittee shall ensure adequate funding to implement the mitigation measures. In lieu of completing the mitigation obligation on its own, the permittee may elect to satisfy this mitigation obligation by paying fees, pursuant to the fee schedule in subdivision (d) or (e), for deposit into the fund.

(4) (A) The department may include permit conditions that require the permittee to relocate one or more of the western Joshua trees. If relocation is required, the permittee shall implement measures to assist the survival of relocated trees, and to comply with any other reasonable measures required by the department to facilitate the successful relocation and survival of the western Joshua trees. These relocation measures shall include, but are not limited to, all of the following:

(i) A requirement that the relocated western Joshua tree is placed in a location and with proper orientation to improve its survival.

(ii) A requirement that western Joshua trees are relocated at a time that maximizes their survival when feasible.

(iii) A requirement that a desert native plant specialist be onsite to oversee relocation.

(B) The department may limit relocation to certain size classes of trees.

(C) By July 1, 2024, the department shall adopt guidelines and relocation protocols, based on the best available science, to relocate western Joshua trees successfully. The department shall consult with desert native plant specialists as part of the development of these guidelines and relocation protocols. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to the development, adoption, or amendment of guidelines and relocation protocols pursuant to this subparagraph.

(b) For purposes of this section, each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of its proximity to any other western Joshua tree stem or trunk.

(c) The department may enter into an agreement with any county or city to delegate to the county or city the ability to authorize the taking of a western Joshua tree associated with developing single-family residences, multifamily

residences, accessory structures, and public works projects concurrent with its approval of the project, if all of the following conditions are met:

(1) The county or city adopts an ordinance that requires as a condition of any approval or permit issued under the authority of an agreement entered into pursuant to this subdivision satisfaction of the requirements of this chapter.

(2) Except as provided otherwise in this subdivision, the county or city ensures that the permittee satisfies all of the requirements of subdivision (a) of this section.

(3) The project will take no more than 10 individual western Joshua trees on the project site where the project proponent proposes to construct a single-family residence, multifamily residence, or accessory structure, or no more than 40 individual western Joshua trees on the project site on which a public agency proposes to undertake a public works project. Before authorizing the take of more than 20, but no more than 40, individual western Joshua trees for a public works project, the county or city shall obtain the department's written concurrence that the project has avoided and minimized the take of western Joshua trees to the maximum extent practicable.

(4) The county or city shall collect any fees for permits issued and remit them quarterly to the fund as directed by the department.

(5) The county or city entering into an agreement pursuant to this subdivision may impose a reasonable fee to cover the administrative costs of issuing the permit.

(6) (A) The department retains express authority to suspend or revoke the county or city's take authorization in the event the department determines the county or city has violated the terms of the agreement, or this chapter, the county or city fails to implement or enforce the terms of the agreement or this chapter, or the department determines that the local population of western Joshua trees within, or in the vicinity of, that county or city needs further protection. The county or city shall conduct an annual assessment of the status of the local population within the county or city and submit the assessment to the department. The department shall determine if the population needs further protection to provide for the conservation of the species.

(B) The department shall adopt standardized survey and assessment methods for the annual assessment required pursuant to subparagraph (A), including requiring that a desert native plant specialist conduct the assessment. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government

Code shall not apply to the development, adoption, or amendment of standardized survey and assessment methods pursuant to this subparagraph.

(7) The county or city shall be required to submit to the department quarterly reports documenting the number of permits issued, photographs and other evidence demonstrating that take and other impacts were avoided and minimized to the maximum extent practicable, the number and size class of western Joshua trees authorized to be taken, the number of western Joshua trees encroached upon, the number of western Joshua trees lethally removed, the number and location of western Joshua trees relocated, the amount of fees collected, and other information required by the department in the agreement.

(d) Any person or public agency receiving a take authorization pursuant to this chapter for a project that meets the criteria set forth in paragraph (1) may elect, in lieu of satisfying the mitigation obligation provided for in paragraph (3) of subdivision (a), to pay fees in the amounts provided in paragraph (2) for deposit into the fund.

(1) (A) Any project in the area bounded by the intersection of Highway 99 and Highway 58, then east along Highway 58 to the intersection of Interstate 15, then north along Interstate 15 to the intersection of Highway 247, then south along Highway 247 to the intersection of Highway 18, then west along Highway 18 to the intersection of Highway 138, then west and north along Highway 138 to the intersection of Interstate 5, then north along Interstate 5 to the intersection of Highway 99, then north along Highway 99 to Highway 58.

(B) Any project receiving a permit issued by a county or city pursuant to an agreement with the department pursuant to subdivision (c), regardless of location.

(2) (A) One thousand dollars ($1,000) for each western Joshua tree five meters or greater in height.

(B) Two hundred dollars ($200) for each western Joshua tree one meter or greater but less than five meters in height.

(C) One hundred fifty dollars ($150) for each western Joshua tree less than one meter in height.

(e) Any person or public agency receiving a take authorization pursuant to this chapter for a project that meets the criteria set forth in paragraph (1) may elect, in lieu of satisfying the mitigation obligation provided for in paragraph (3) of

subdivision (a), to pay fees in the amounts provided in paragraph (2) for deposit into the fund.

(1) (A) Notwithstanding paragraph (1) of subdivision (d), any project within two miles of Joshua Tree National Park, or any unit of the state park system.

(B) Any project that does not meet the criteria set forth in paragraph (1) of subdivision (d).

(2) (A) Two thousand five hundred dollars ($2,500) for each western Joshua tree five meters or greater in height.

(B) Five hundred dollars ($500) for each western Joshua tree one meter or greater but less than five meters in height.

(C) Three hundred forty dollars ($340) for each western Joshua tree less than one meter in height.

(f) Upon request, the department may authorize a reduction in the amount of the fees prescribed by subdivisions (d) and (e) for any western Joshua tree conserved by a project proponent through the acquisition of compensatory habitat mitigation land otherwise required by law for the project.

(g) (1) The permittee shall bear responsibility for implementing measures to assist the survival of western Joshua trees relocated pursuant to paragraph (4) of subdivision (a).

(2) Unless specifically required by written agreement, a landowner that agrees in writing to allow western Joshua trees to be relocated onto land it owns shall not be liable for the continued survival of the western Joshua trees, shall not be required to manage or maintain the translocated western Joshua trees, and shall not be required to change existing land use practices, provided that the land use practices do not result in the taking, possession, sale, or further translocation of the western Joshua trees.

1927.4. (a) The department may issue a permit to authorize either the removal or trimming of dead western Joshua trees or the trimming of live western Joshua trees.

(1) Upon receipt of a permit and payment of any applicable administrative fees, a property owner or its agent may remove a detached dead western Joshua tree or the detached limb of a western Joshua tree. All other removals and all trimming of western Joshua trees authorized by permits issued pursuant to this subdivision shall

be completed by a desert native plant specialist.

(2) The department may issue permits pursuant to this section, without payment of fees or other mitigation, provided that the dead western Joshua trees or any limbs to be removed meet one of the following:

(A) Have fallen over and are within 30 feet of a structure.

(B) Are leaning against an existing structure.

(C) Create an imminent threat to public health or safety.

(3) A property owner seeking a permit pursuant to this subdivision shall submit a permit request to the department on a form to be provided by the department that requires the following information:

(A) The name, telephone number, mailing address, and email address of the property owner seeking the permit.

(B) The street address of the property on which the western Joshua trees to be removed or trimmed are located. If no street address is available, the property owner shall include the assessor's parcel number.

(C) Photographs of the western Joshua trees that visually depict the dead trees or the trees to be trimmed and that demonstrate that the western Joshua tree meets one or more of the requirements of paragraph (2).

(D) A signed attestation from the property owner or signed certification by a desert native plant specialist that the tree meets the definition of a dead western Joshua tree.

(4) (A) Within 30 days of receipt of a request for a permit pursuant to subparagraph (A) or (B) of paragraph (2), the department shall either issue a permit allowing for the removal or trimming, or deny the request if the request does not demonstrate a permit can be issued pursuant to this section.

(B) Within 10 days of receipt of a request for a permit pursuant to subparagraph (C) of paragraph (2), the department shall either issue a permit allowing for the removal or trimming, or deny the request if the request does not demonstrate a permit can be issued pursuant to this section.

(C) If the department issues a permit, it shall provide the property owner 60 days in which to complete the removal or trimming. The department may extend this 60-

day period in writing at its discretion.

(D) If the department denies the permit request, the property owner may resubmit the request with additional information and photographs. Resubmissions pursuant to this subdivision shall be processed as new permit requests.

(5) Within 30 days of completing the removal or trimming of one or more western Joshua trees in accordance with a permit issued pursuant to this section, the property owner shall submit, by mail or email, photographs of the site at which the western Joshua trees were removed or trimmed pursuant to the permit.

(b) The department may enter into an agreement with any county or city to delegate to the county or city the ability to authorize the removal or trimming of dead western Joshua trees or the trimming of live western Joshua trees, provided that the county or city ensures that all permits issued satisfy the requirements of subdivision (a). The county or city shall be required to submit to the department quarterly reports documenting the number of permits issued, the number and size class of western Joshua trees authorized to be removed or trimmed, and any other information specified in the agreement with the department. A county or city entering into an agreement pursuant to this subdivision may impose a reasonable fee to cover the administrative costs of issuing the permit.

(c) (1) The department retains express authority to suspend or revoke an agreement with any county or city to delegate to the county or city the ability to authorize the removal or trimming of dead western Joshua trees or the trimming of live western Joshua trees in the event the department determines the county or city has violated the terms of the agreement or this chapter, the county or city fails to implement or enforce the terms of the agreement or this chapter, or the local population of western Joshua trees within, or in the vicinity of, that county or city needs further protection. A county or city that has entered into an agreement with the department shall conduct an annual assessment of the status of the local population of western Joshua trees within the county or city and submit the assessment to the department. The department shall determine if the population needs further protection to provide for the conservation of the species.

(2) The department shall adopt standardized survey and assessment methods for the annual assessment required pursuant to paragraph (1), including requiring that a desert native plant specialist conduct the assessment. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to the development, adoption, or amendment of standardized survey and

assessment methods pursuant to this paragraph.

1927.5. (a) The Western Joshua Tree Mitigation Fund, created by the commission pursuant to Section 749.10 of Title 14 of the California Code of Regulations, is hereby continued in existence by this chapter, and is renamed the Western Joshua Tree Conservation Fund. Notwithstanding Section 13340 of the Government Code, any moneys in the fund are continuously appropriated to the department solely for the purposes of acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree.

(b) All fees remitted to the department pursuant to this chapter shall be deposited into the fund.

(c) The fund may also receive other funding to support the conservation of the western Joshua tree.

1927.6. (a) The department shall develop and implement a western Joshua tree conservation plan in collaboration with the commission, governmental agencies, California Native American tribes, and the public. The conservation plan shall incorporate a description of management actions necessary to conserve the western Joshua tree and objective, measurable criteria to assess the effectiveness of such actions. The conservation plan shall also include guidance for the avoidance and minimization of impacts to western Joshua trees and protocols for the successful relocation of western Joshua trees. The department shall present a complete draft conservation plan at a public meeting of the commission, for its review and approval, by December 31, 2024. The commission shall take final action on the conservation plan by June 30, 2025. The department and commission shall, if necessary, periodically update the conservation plan to ensure the conservation of the species.

(b) When developing the conservation plan, the department shall consult with California Native American tribes, include co-management principles in the plan, provide for the relocation of western Joshua trees to tribal lands upon a request from a tribe, and ensure traditional ecological knowledge is incorporated into the plan.

(c) The department, pursuant to Section 1927.5, shall use any fees deposited into the fund for the purpose of addressing threats to the western Joshua tree, including, but not limited to, acquiring, conserving, and managing western Joshua tree

conservation lands. Acceptable expenditures from the fund may include, but are not limited to, land acquisition or conservation easement costs, monitoring costs, restoration costs, transaction costs, costs of endowments for land management or easement stewardship consistent with Chapter 4.6 (commencing with Section 65965) of Division 1 of Title 7 of the Government Code and Part 7 (commencing with Section 18501) of Division 9 of the Probate Code, and other reasonable expenditures to implement the conservation plan. The department shall prioritize actions and acquiring and managing lands that are identified as appropriate for western Joshua tree conservation in any department-approved conservation plan, including, but not limited to, the conservation plan required by subdivision (a), a regional conservation assessment, a regional conservation investment strategy, or a conceptual area protection plan.

(d) (1) The department may retain one or more consultants to assist in locating, acquiring, conserving, and managing conservation lands and completing other mitigation actions to implement subdivision (c).

(2) Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, Part 5.5 (commencing with Section 14600) of Division 3 of Title 2 of the Government Code, and Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to any action by the department to implement subdivision (c).

1927.7. (a) Beginning in 2025, by January 31 of each calendar year, the department shall submit an annual report to the commission and the Legislature assessing the conservation status of the western Joshua tree, including, but not limited to, by detailing the number of permits issued, the number and size class of western Joshua trees authorized to be taken, the number of western Joshua trees lethally removed, the number and location of western Joshua trees relocated, the number and location of acres of western Joshua tree woodlands developed, the type, scope, and scale of mitigation measures undertaken by permittees, the number and location of acres of western Joshua tree woodlands conserved, the quality of the acres conserved, the amount of fees paid, the amount of all expenditures from the fund, the projects and actions funded by expenditures from the fund, the adequacy of the fees to conserve the western Joshua tree, actions taken pursuant to the conservation plan, and other relevant information. The department's annual report shall summarize the information provided by counties and cities pursuant to

agreements entered into pursuant to subdivision (c) of Section 1927.3 and subdivision (b) of Section 1927.4.

(b) The report to the Legislature pursuant to subdivision (a) shall be submitted in accordance with Section 9795 of the Government Code.

1927.8. (a) Beginning in 2026, and at least every two years thereafter, the commission shall review the status of the western Joshua tree and the effectiveness of the conservation plan in conserving the species at a public meeting to be held prior to August 31. Concurrent with each review conducted pursuant to this section, the department shall make recommendations to the commission, as necessary, for amendments to the conservation plan to ensure the conservation of the western Joshua tree.

(b) The department shall annually adjust the fees provided for in Section 1927.3 pursuant to Section 713. By December 31, 2026, and every three years thereafter, the department shall adopt and subsequently amend regulations pursuant to Section 702 adjusting the fees as necessary to ensure the conservation of the species. The department shall utilize total cost accounting when determining the adequacy of the fees for ensuring conservation of the species, including ensuring sufficient funds for land acquisition or conservation easement costs, monitoring costs, restoration costs, transaction costs, and the amount of endowments for land management or easement stewardship costs consistent with Chapter 4.6 (commencing with Section 65965) of Division 1 of Title 7 of the Government Code and Part 7 (commencing with Section 18501) of Division 9 of the Probate Code.

1927.9. No later than January 1, 2033, the department shall submit to the commission an update to the status review previously submitted pursuant to Section 2074.6 for the western Joshua tree that incorporates any new scientific information relevant to the status of the species and includes an evaluation of the impact of the conservation and management efforts pursuant to this chapter. The commission shall consider the updated status review in making its findings pursuant to subdivision (e) of Section 2075.5.

1927.10. This chapter is not intended to be construed as, or to be, a general project approval. It shall be the responsibility of each project proponent receiving approval from the department under this chapter to obtain all necessary permits and approvals and to comply with all applicable federal, state, and local laws.

1927.11. This chapter does not preclude a county or city from adopting and

enforcing ordinances that require as a condition of approving a project more protective measures designed to conserve the western Joshua tree.

1927.12. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.