

4.4 BIOLOGICAL RESOURCES

The following section analyzes the proposed project's potential impacts to biological resources based on a comprehensive Biological Resources Report (LSA Associates, Inc. [LSA], September 2004) contained in Appendix C and a Desert Tortoise Focused Survey Report (LSA, February 2005) contained in Appendix D. Although the Desert Tortoise Survey Report was completed in 2005, a Desert Tortoise Presence/Absence Survey (Thomas Leslie Corporation, May 2006) was completed to satisfy Desert Tortoise survey requirements. The updated Desert Tortoise Presence/Absence Survey is contained in Appendix E. Additionally, a Biological Reconnaissance Survey (Michael Brandman Associates, October 13, 2005) and Native Plant Survey (Michael Brandman Associates, May 22, 2006) were conducted for the project site in October 2005 and May 2006 respectively. The Biological Reconnaissance Survey is contained in Appendix F and the Native Plant Survey is contained in Appendix G.

The biological resources study presents the results of a literature review, a field survey, an analysis of potential impacts to biological resources, the identification of potential jurisdictional waters (if any), and the identification of needed focused sensitive species surveys. The desert tortoise focused survey was conducted subsequent to and in response to the findings contained in the biological resources study. The field reconnaissance information summarized in this section was collected during various site visits to the project site associated with the various biological studies conducted for the project site during the period from May 14, 2004 through May 24, 2006. The site reconnaissance consisted of walking the entire site recording information on the vegetation communities and wildlife present, in addition to searching for sensitive plant communities and evidence of special status species or habitats that could support such species. In addition, focused surveys for the desert tortoise (*Gopherus agassizii*) were conducted in February 2005 and May 2006.

4.4.1 Existing Setting

The elevation of the site ranges from approximately 3,190 to 3,230 feet above mean sea level (AMSL). The site is bordered by Avalon Avenue to the west with office/administrative uses to the west beyond Avalon Avenue. The site is bordered to the north by State Route 62. Beyond State Route 62 is vacant land and scattered residences. Land to the east and south of the project site is vacant. The project site is currently vacant and undeveloped. The project site is moderately disturbed due to unauthorized bike and foot trails and an abandoned segment of asphalt road.

Vegetation. LSA performed a general biological survey of the proposed project site on May 14, 2004, to verify and assess the potential for the site to contain special status plant species and habitats. Additional biological surveys conducted on the project site include the Desert Tortoise Survey, Desert Tortoise Presence/Absence Survey, and Native Plant Survey discussed previously. The surveys described the vegetation within and adjacent to the project site and assessed the potential occurrence of special-status plant species and habitats. Plant species were identified in the field in order to quantify and illustrate existing plant habitats. The predominant vegetation on the site is Joshua tree woodland containing Joshua tree, creosote bush, California jointfir, common Mediterranean schismus, redstem stork's bill, and cheat grass. All plant species observed on the project site during the surveys are summarized in Table 4.4.A.

Table 4.4.A – Plant Species Observed

Scientific Name	Common Name
<i>Acamptopappus sphaerocephalus</i>	Goldenhead
<i>Achnatherum hymenoides</i>	Indian rice grass
<i>Amaranthus fimbriatus</i>	Fringed amaranth
<i>Ambrosia acanthicarpa</i>	Annual bur-sage
<i>Ambrosia dumosa</i>	Burrobrush
<i>Amsinckia menziesii</i>	Fiddleneck
<i>Amsinckia tessellata</i>	Devil's lettuce
<i>Astragalus lentiginosus</i> var. <i>variabilis</i>	Freckled milkvetch
<i>Atriplex canescens</i>	Four-winged saltbrush
<i>Baileya pleniradiata</i>	Desert marigold
<i>Bromus diandrus</i> *	Ripgut brome
<i>Bromus madritensis</i> *	Foxtail chess
<i>Bromus tectorum</i> *	Cheat grass
<i>Camissonia campestris</i>	Field evening-primrose
<i>Chaenactis fremontii</i>	Pincushion
<i>Chaenactis stevioides</i>	Desert pincushion
<i>Chamaesyce polycarpa</i>	Desert spurge
<i>Cryptantha intermedia</i>	Popcorn flower
<i>Descurainia pinnata</i>	Western tansy mustard
<i>Encelia farinosa</i>	Desert brittlebush
<i>Ephedra californica</i>	Desert tea/California jointfir
<i>Eremocarpus setigerus</i>	Doveweed
<i>Eriastrum eremicum</i>	Desert eriastrum
<i>Eriogonum inflatum</i>	Desert trumpet
<i>Eriogonum plumatella</i>	Yucca buckwheat
<i>Eriophyllum pringlei</i>	Pringle's woolly sunflower
<i>Erodium cicutarium</i> *	Redstem stork's bill
<i>Helianthus annuus</i>	Annual sunflower
<i>Hirschfeldia incana</i> *	Short-pod mustard
<i>Krascheninnikovia lanata</i>	Winterfat
<i>Larrea tridentata</i>	Creosote bush
<i>Layia glandulosa</i>	Whitedaisy tidytips
<i>Loeseliastrum matthewsii</i>	Desert calico
<i>Lycium cooperi</i>	Box thorn
<i>Malacothrix glabrata</i>	Desert dandelion
<i>Mentzelia</i> sp.	Blazing star
<i>Mirabilis bigelovii</i>	Desert four o'clock

Table 4.4.A – Plant Species Observed

Scientific Name	Common Name
<i>Nicolletia occidentalis</i>	Mojave hole-in-the-sand plant
<i>Oenothera californica</i> ssp. <i>avita</i>	California evening primrose
<i>Opuntia echinocarpa</i>	Silver cholla
<i>Opuntia basilaris</i> var. <i>basilaris</i>	Beavertail cactus
<i>Opuntia ramossisima</i>	Diamond cholla
<i>Pectocarya linearis</i>	Slender pectocarya
<i>Phacelia distans</i>	Common phacelia
<i>Pleuraphis rigida</i>	Big galleta
<i>Salsola tragus</i> *	Russian thistle
<i>Salvia columbariae</i>	Chia
<i>Schismus barbatus</i> *	Mediterranean grass
<i>Senna armata</i>	Spiny senna
<i>Stephanomeria exigua</i>	Small wreath-plant
<i>Xylorhiza tortifolia</i>	Desert aster
<i>Yucca brevifolia</i>	Joshua tree
<u><i>Yucca schidigera</i></u>	<u>Mojave yucca</u>

* indicates non-native plant

LSA Associates Inc., 2004; LSA Associates, 2005; Thomas Leslie Corporation, 2006.

Wildlife. LSA performed a general wildlife survey of the proposed project site on May 14, 2004, to verify and assess the potential for the site to contain special status wildlife species. In addition, LSA conducted a focused survey on the project site for the Desert Tortoise on February 2005 and an updated Desert Tortoise Survey was conducted by Thomas Leslie Corporation in May 2006. Wildlife species observed on the project site and within adjacent areas from these surveys are summarized in Table 4.4.B.

Table 4.4.B – Wildlife Species Observed

Scientific Name	Common Name
<i>Ammospermophilus leucurus</i>	Antelope ground squirrel
<i>Callisaurus draconoides</i>	Zebra-tailed lizard
<i>Campylorhynchus brunneicapillus cousei</i>	Northern cactus wren
<i>Canis familiaris</i>	Domestic dog
<i>Canis latrans</i>	Coyote
<i>Corvus corax</i>	Common raven
<i>Dipodomys</i> sp.*	Kangaroo rat
<i>Eremophila alpestris actia</i>	California horned lark
<i>Falco sparverius</i>	American kestrel
<i>Lanius ludovicianus</i>	Loggerhead shrike

Table 4.4.B – Wildlife Species Observed

Scientific Name	Common Name
<i>Lepus californicus deserticola</i>	Black-tailed jackrabbit
<i>Neotoma</i> sp.*	Woodrat
<i>Peromyscus</i> sp.*	Deer mouse
<i>Spermophilus</i> sp.	Ground squirrel
<i>Sylvilagus audubonii</i>	Desert cottontail
<i>Thomomys bottae</i>	Southern pocket gopher
<i>Uta stansburiana</i>	Side-blotched lizard
<i>Vulpes macrotis</i>	Kit fox
<i>Xantusia vigilis</i>	Common night lizard
<i>Zenaida macroura</i>	Mourning dove
<i>Zonotrichia leucophrys</i>	White-crowned sparrow

* Genus identification was based on physical makeup and appearance of burrows observed onsite.
 LSA Associates Inc., 2004; LSA Associates, 2005; Thomas Leslie Corporation, 2006.

Sensitive Biological Resources. Sensitive biological resources include those species listed by the federal or state government as endangered or threatened as well non listed species of concern. Federal and state endangered or threatened species lists are maintained by the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG), respectively. Species of concern represent non-listed species designated as such by CDFG, USFWS, local agencies, and special interest groups such as the California Native Plant Society (CNPS). These entities publish watch-lists of species whose numbers or habitats may be in decline for the purposes of including them as a species of concern. Sensitive biological resources also include habitats of limited occurrence or distribution such as riparian and riverine areas subject to Army Corps of Engineers (ACOE) or CDFG jurisdiction (Jurisdictional Waters).

The presence or likelihood of presence, of sensitive species is based on the following criteria (in descending order, from species determined to be present to those considered potentially present):

- Direct observation of the species or its sign in the study area of immediate vicinity during surveys conducted for this study or reported in previous biological studies;
- Sighting by other qualified observers;
- Record reported by the Natural Diversity Data Base (NDDB) published by CDFG;
- Presence or location of specific species lists provided by private groups (e.g., California Native Plant Society); or
- The study area lies within known distribution of a given species and contains appropriate habitat.

Endangered and Threatened Species. Three federal/state species listed as threatened or endangered were identified as having potential to occur on-site based on information contained in CDFG’s NDDB and the known range of the particular species habitat: Parish’s daisy (*Erigeron*

parishii), least Bell's vireo (*Vireo bellii pusillus*), and the desert tortoise (*Gopherus agassizii*). Parish's daisy (*Erigeron parishii*) and least Bell's vireo (*Vireo bellii pusillus*) are considered absent from the site due to lack of suitable habitat. (Suitable habitat consists of carbonates, rocky slopes, and/or washes, and riparian areas, respectively.)

Potential habitat occurs on-site for the third species, the desert tortoise (*Gopherus agassizii*). The Mojave population of the desert tortoise is listed as threatened under both the State and Federal Endangered Species Acts. Mojave desert tortoises primarily inhabit creosote bush scrub, saltbrush scrub, and Joshua tree woodland. Potential habitat for this species occurs throughout the project area; however, the habitat within the project site is only marginally suitable due to the degree of disturbance and its proximity to existing development. No desert tortoise individuals or signs of desert tortoises were observed during any of the field studies.

Sensitive Species. An additional thirteen sensitive (non-listed) plant and animal species were considered as part of the analysis. Of these, the following six are considered absent from the project site due to lack of suitable habitat:

- Little San Bernardino Mountains linanthus, (*Linanthus maculatus* [*Gilia maculate*]);
- Orcutt's linanthus (*Linanthus orcuttii*);
- Robinson's monardella (*Monardella robisonii*);
- Northern red diamond rattlesnake (*Crotalus ruber ruber*);
- California yellow warbler (*Dendroica petechia morcomi*; includes *D.p. brewsteri*); and
- Nelson's bighorn sheep (*Ovis canadensis nelsoni*).

Of the thirteen sensitive species identified as having the potential to occur, seven are considered to have a low probability of occurrence on the project site. The seven species identified with low probability for occurrence on the site include:

- Coast horned lizard (*Phrynosoma coronatum*);
- Cooper's hawk (*Accipiter cooperi*);
- Western burrowing owl (*Athene cunicularia hypugea*);
- Le Conte's thrasher (*Toxostoma lecontei*);
- Ferruginous hawk (*Buteo regalis*);
- Prairie falcon (*Falco mexicanus*); and
- Loggerhead shrike (*Lanius ludovicianus*).

Six of the seven species identified as having low probability of occurrence on the project site were not observed during site visits for various biological studies, which occurred between May 2004 and May 2006. The Loggerhead shrike was observed on-site during the Desert Tortoise Presence/Absence Survey in May 2006. In addition, two other special-status species were

observed on the project site during the Desert Tortoise Presence/Absence Survey – the California horned lark and the San Diego black-tailed jackrabbit.

These sensitive species have limited population distribution in southern California and development is further reducing their ranges and numbers. Although the horned lizard was reported in the project vicinity in the 1890s, there have been no reported sightings in the project vicinity over the past century. Based on the marginal and disturbed quality of the habitat present on the project site, the infrequency or lack of reported occurrences of these species from the project vicinity, and the relatively small project area, occurrences of these species are expected to involve relatively few individuals. These species have no official State or Federal listing status, but require consideration under the California Environmental Quality Act (CEQA). Appendix C (Biological Resources Report) describes in detail the potential for occurrence of each of these species, as well as other species identified in the literature review.

Jurisdictional Waters. The ACOE regulates discharges of dredged or fill material into *waters of the United States*. These *waters* include *wetlands* and non-wetland bodies of water that meet specific criteria, including a direct or indirect connection to interstate commerce. The ACOE regulatory jurisdiction pursuant to Section 404 of the Federal Clean Water Act is founded on a connection, or *nexus*, between the water body in question and interstate commerce. This connection may be direct (through a tributary system linking a stream channel with traditional navigable waters used in interstate or foreign commerce) or may be indirect (through a nexus identified in ACOE regulations). The ACOE typically regulates as *non-wetland* waters of the U.S. any body of water displaying an “ordinary high water mark” (OHWM). In order to be considered a jurisdictional *wetland* under Section 404, an area must possess three wetland characteristics: hydrophytic *vegetation*, hydric *soils*, and wetland *hydrology*. Each characteristic has a specific set of mandatory wetland criteria that must be satisfied in order for that particular wetland characteristic to be met.

The CDFG, through provisions of the California Fish and Game Code (Sections 1601-1603), is empowered to issue agreements for any alteration of a river, stream, or lake where fish or wildlife resources may be adversely affected. Streams (and rivers) are defined by the presence of a channel bed and banks, and at least an intermittent flow of water. CDFG regulates wetland areas only to the extent that those wetlands are part of a river, stream, or lake as defined by the CDFG.

No potential jurisdictional waters were identified on-site during the field survey conducted on May 14, 2004. The southeast portion of the project site contains a low topographic feature. The feature did not display evidence of an OHWM or other evidence of water transport, nor did it have a bed as characterized by CDFG. The feature is not part of a surface tributary system to navigable waters of the U.S., does not support hydrophytic or other riparian vegetation, and does not function as a natural stream. Therefore, this feature does not meet the definition of waters of the U.S., wetland, or streambed. The feature is not subject to ACOE or CDFG jurisdiction.

4.4.2 Existing Policies and Regulations

Federal Regulations

Federal Endangered Species Act (FESA). The FESA was promulgated to protect any species of plant or animal that is endangered or threatened with extinction. Section 9 of the FESA prohibits “take” of federally threatened or endangered wildlife. Take, as defined under the FESA, means to harass, harm, pursue, hunt, wound, kill, trap, capture, collect, or attempt to engage in any such conduct [16 U.S.C. 1532(19)]. Section 9 prohibits the removal and reduction of endangered plants from lands under Federal jurisdiction, and the removal, cutting, digging, damage, or destruction of endangered plants on any other area in “knowing violation of State law or regulation.” Section 7 of the FESA [16 U.S.C. 1531 et seq.] requires Federal agencies to enter into formal consultation with the USFWS on proposed Federal actions (actions authorized, funded, or carried out by Federal agencies) which may adversely affect currently listed (threatened or endangered) species or destroy or adversely modify designated critical habitat. Because they may become listed during the design or construction phases of a project, the USFWS recommends candidate species also are considered during the consultation process. Section 7 also requires Federal agencies to confer with the USFWS if the agency determines that its action is likely to jeopardize the continued existence of any proposed species or result in the destruction or significant modification of proposed critical habitat. Even if there is no Federal agency involvement in the proposed activity or project, Section 9 of the FESA [16 U.S.C. 1538] prohibits take of a federally listed endangered species of fish or wildlife except pursuant to a permit and Habitat Conservation Plan (HCP) approved under Section 10(a) of the FESA [16 U.S.C. 1539]. The FESA prohibitions and requirements are different, however, for endangered species of plants. Section 9 prohibits the take of endangered plants only from areas under Federal jurisdiction, or if such take would violate State law. In the absence of Federal agency involvement, no HCP is required for the take of listed plant species from private land.

The proposed project site is located on private land. For listed plants located on private land, formal consultation with the USFWS is required when a project has a Federal “nexus” (i.e., a Federal permit is required or Federal funding is involved). In the absence of a Federal nexus, a project does not require a permit under the FESA for impacts to listed plants on private lands.

Clean Water Act. The ACOE regulates discharges of dredged or fill material into waters of the U.S. These waters include waters that are navigable (in the traditional sense) as well as non-navigable waters that are connected to navigable waters (e.g., tributaries or adjacent wetlands) or that have a substantial connection to interstate commerce. In addition, in order for an adjacent wetland to be considered a jurisdictional wetland under Section 404, an area must possess three wetland characteristics: *hydrophytic* vegetation, *hydric* soils, and wetland *hydrology*. Each characteristic has a specific set of mandatory wetland criteria that must be satisfied in order for that particular wetland characteristic to be met.

State Regulations

California Endangered Species Act (CESA). The State of California has promulgated the California Endangered Species Act. CESA is similar to FESA in that its intent is to protect species of fish, wildlife, and plants that are in danger of, or threatened with, extinction because their habitats are

threatened with destruction, adverse modification, or severe curtailment, or because of overexploitation, disease, predation, or other factors.

Take as defined under CESA means hunt, pursue, capture, or kill, or attempt to hunt, pursue, capture, or kill. Under certain conditions, CESA has provisions for take through a 2081 permit or a 2081 Memorandum of Understanding. The impacts of the authorized take must be minimized and fully mitigated. No permit may be issued if the issuance of the permit would jeopardize the continued existence of the species.

California Fish and Game Code. The CDFG, through provisions of the California Fish and Game Code (Sections 1601–1603), is empowered to issue agreements for any alteration of a river, stream or lake where fish or wildlife resources may be adversely affected. Streams (and rivers) are defined by CDFG by the presence of a channel, bed, or banks, and at least an intermittent flow of water. CDFG regulates wetland areas only to the extent that those wetlands are part of a river, stream, or lake as defined by the CDFG.

California Environmental Quality Act. Section 15380(b) of the *CEQA Guidelines* provides that a species not listed on the Federal or State lists of protected species may be considered rare or endangered if the species can be shown to meet specified criteria. These criteria have been modeled after the definitions in FESA and CESA and the section of the California Fish and Game Code dealing with rare or endangered plants or animals. This section was included in the guidelines primarily to deal with situations in which a public agency is reviewing a project that may have a significant effect on a species that has not yet been listed by either the USFWS or CDFG.

Migratory Bird Treaty Act and California Fish and Game Code Section 3503. Section 3503 of the California Fish and Game Code prohibits the destruction of bird nests except as otherwise provided for in the code. The Migratory Bird Treaty Act similarly protects the nests of migratory birds. These regulations apply to the individual nests of these species, but do not regulate impacts to the species' habitats.

California Desert Native Plants Act. This regulation protects California desert native plants from unlawful harvesting on both public and private lands and sets forth the requirements necessary to legally harvest native plants in order to transport those plants with the greatest possible chance of survival.

Regional Regulations

The Desert Tortoise Recovery Plan. This plan was prepared by the Desert Tortoise Recovery Team for the U.S. Fish and Wildlife Service and was adopted in 1994 by the U.S. Fish and Wildlife Services Bureau of Land Management (BLM) and covers an area of 6 million acres. The Plan was designed to “achieve a 50% probability of survival for the tortoise for 500 years.” The Plan created six population units, referred to “recovery units” in the Mojave and Sonoran deserts. The specified goal for each recovery unit is to reach a target of 50,000 breeding adult tortoises. Within the recovery

units, the team recommended the establishment of 14 reserves or Desert Wildlife Management Areas (DWMAs), ranging from 415 to 3,367 square kilometers.

West Mojave Multi-Species Habitat Conservation Plan (WMMSHCP). The WMMSHCP is currently being developed to minimize impacts to sensitive plants and animals in the region as development occurs and the population expands. The goal of the WMMSHCP is to provide conservation solutions for a number of plants and animals in a single plan, while allowing development to occur “in a responsible manner.”

Local Regulations

Town of Yucca Valley Plant Protection and Management Ordinance. This ordinance requires the issuance of a permit for removal of mesquite (*Prosopis* spp.), Joshua tree and other yuccas (*Yucca* spp.), California juniper (*Juniperus californica*), desert willow (*Chilopsis linearis*), pinyon pine (*Pinus monophylla*), palo verde (*Cercidium* spp.), manzanita (*Arctostaphylos* spp.), and creosote bush rings 10 feet or greater in diameter; and requires compliance with the provisions of the California Desert Native Plants Act (State of California Food and Agricultural Code section 80001, *et seq.*). This act protects all native cacti (family Cactaceae), Joshua tree and other yuccas, century plants (*Agave* spp.), nolinias (*Nolina* spp.), ocotillo (*Fouquieria splendens*), mesquites, palos verdes (*Cercidium* spp.), elephant trees (*Bersura* sp.), crucifixion thorn (*Castela emoryi*), panamint dudleya (*Dudleya saxosa*), bristlecone pine (*Pinus longaeva*), California fan palm (*Washingtonia filifera*), catclaw (*Acacia greggii*), desert-holly (*Atriplex hymemelytra*), smoke tree (*Dalea spinosa*), and desert ironwood (*Olneya tesota*).

Town of Yucca Valley Comprehensive General Plan Policies. The Biological Resources Element of the General Plan defines goals and policies related to the preservation of biological resources in the Town. The specific policies of the Biological Resources Element that are relevant to the proposed project are as follows:

- Policy 3** All development proposals on vacant lands shall be reviewed and evaluated to ensure minimal impacts on existing habitat and wildlife.
- Policy 6** To the greatest extent practical, the Town shall require developers to salvage native Joshua trees and shrubs for incorporation into project landscaping or transplant trees to other sites.
- Policy 8** Developers and others required to submit landscape plans to the Town for approval shall be required to use native and approved, non-native, drought tolerant plant species which provide or enhance wildlife habitat and serve to extend the local desert environment into the urban design of the Town.

4.4.3 Thresholds of Significance

Based on Appendix G of the *CEQA Guidelines*, the effects of the project on vegetation and wildlife resources are considered to be significant if the proposed project will:

- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance;
- Have a substantial adverse effect, either directly or indirectly or through habitat modification, on any species listed as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFG or the USFWS;
- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native or resident migratory wildlife corridors, or impede the use of native wildlife nursery sites; or
- Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or State habitat conservation plan.

Methodology. A literature review was conducted to assist in determining the existence or potential occurrence of sensitive species on or in the vicinity of the project site. The literature review included a search of the *California Natural Diversity Data Base* (CNDDB; California Department of Fish and Game 2003) and the *Inventory of Rare and Endangered Vascular Plants of California* (California Native Plant Society 2003) for the *Yucca Valley North*, *Yucca Valley South*, *Joshua Tree North*, and *Joshua Tree South* U.S. Geological Survey (USGS) 7.5-minute quadrangles (covering an approximately 7-mile radius around the project area). The draft WMMSHCP, California Desert Native Plants Act, Town of Yucca Valley Plant Protection and Management Ordinance, and aerial photographs of the project site and vicinity were also reviewed.

In addition to a literature search, a general biological survey and focused surveys were conducted. The general survey of the project site was conducted on foot and covered the site sufficiently to determine the nature of vegetation communities and quality of wildlife habitat throughout the site and to determine whether any potential jurisdictional waters were present. During the survey, notes were taken on general site conditions, vegetation, potential jurisdictional waters of the U.S., and suitability of habitat for various sensitive species. Plant and animal species observed or otherwise detected were noted (previously referenced Tables 4.4.A and 4.4.B, and Appendix C, D, and E). A focused survey for the desert tortoise was conducted in February 2005. The survey was conducted in accordance with the survey protocol established by the USFWS. The results of the survey are contained in Appendix D. A Desert Tortoise Presence/Absence Survey was completed to satisfy Desert Tortoise survey requirements. The updated Desert Tortoise Presence/Absence Survey is contained in Appendix E. Additionally, a Biological Reconnaissance Survey (Michael Brandman Associates, October 13, 2005) and a Native Plant Survey (Michael Brandman Associates, May 22, 2006) were conducted for the project site in October 2005 and May 2006 and are contained in Appendix F and Appendix G.

4.4.4 Impacts and Mitigation

Less than Significant Impacts

The following impacts were determined to be less than significant. In each of the following issues, either no impact or a less than significant impact would occur (and, therefore, no mitigation would be required) or adherence to established regulations, standards, and policies would reduce potential impacts to a less than significant level.

Local Policies and Ordinances Conflicts

Threshold	Would the proposed project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
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Implementation of the proposed project would require compliance with the Town of Yucca Valley's Native Plant Protection and Management Ordinance. This ordinance requires the issuance of a permit for removal of mesquite, Joshua tree and other yuccas, California juniper, desert willow, pinyon pine, palo verde, manzanita, and creosote bush rings 10 feet or greater in diameter. It is required that a plot plan be approved by the Community Development Department indicating exactly which trees or plants are authorized to be removed or relocated. The ordinance requires compliance with the provisions of the California Desert Native Plants Act (State of California Food and Agricultural Code, Section 80001, *et seq.*). Plants observed on-site that would be protected by these regulations include silver cholla (*Opuntia echinocarpa*), beavertail cactus (*Opuntia basilaris* var. *basilaris*), diamond cholla (*Opuntia ramossissima*), and Joshua tree.

According to the Native Plant Survey (Michael Brandman Associates, May 2006) conducted on the project site, there are a total of 129 Joshua trees mapped within the project site. Of those 129 Joshua trees, approximately 92 trees were determined to have potential to be translocated successfully. The remaining 37 trees were determined to be unlikely to survive translocation. Compliance with the requirements of the Town's Native Plant Protection and Management Ordinance and any other applicable local policies or ordinances protecting biological resources would ensure potential impacts associated with this issue would remain less than significant.

In accordance with Policy 3 of the Biological Resources Element of the General Plan, development within the Specific Plan area has been reviewed and evaluated through several biological surveys and reports to ensure minimal impacts on existing habitat and wildlife, reducing impacts associated with this issue to less than significant.

In accordance with Policy 6 of the Biological Resources Element of the General Plan, the Specific Plan includes a Native Plant Survey consistent with the Town's Native Plant Protection and Management Ordinance (Ordinance No. 140). The Native Plant Survey identified 92 Joshua trees and two Mojave yuccas as candidates for incorporating into project landscaping or for transplanting to other sites. A Joshua Tree Salvage Plan will be required as a condition of approval prior to the issuance of a grading permit. The salvage plan will ensure that all suitable candidate trees are incorporated into project landscaping or transplanted off-site, in accordance with the Native Plant Protection and Management Ordinance, reducing impacts associated with this issue to less than significant.

In accordance with Policy 8 of the Biological Resources Element of the General Plan, the Specific Plan prescribes a palette of plants to be used in the landscaping plans within the project area. The overall emphasis of the plant palette is to utilize drought-tolerant and native plant types reflective of the surrounding desert environment, reducing impacts associated with this issue to less than significant.

Jurisdictional Waters/Wetland Communities

Threshold	Would the proposed project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the <i>Clean Water Act</i> (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?
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No potential jurisdictional waters, wetlands, blue-line streams or other water features were identified during the field reconnaissance of the proposed site. As such, no impacts related to jurisdictional waters or wetlands are anticipated to occur with the construction or operation of the proposed on-site uses. As a result, no mitigation is needed or required for this issue.

Habitat Fragmentation/Wildlife Movement

Threshold	Would the proposed project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?
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Wildlife movement and habitat fragmentation are important issues in assessing impacts to wildlife. Habitat fragmentation occurs when a proposed action results in a single, unified habitat area being divided into two or more areas, such that the division isolates the two new areas from each other. Isolation of habitat occurs when wildlife cannot move freely from one portion of the habitat to another or from one habitat type to another. An example is the fragmentation of habitats within and around clustered residential development. Habitat fragmentation can also occur when a portion of one or more habitats is converted into another habitat, as when scrub habitats are converted into annual grassland habitat because of frequent burning.

Habitat fragmentation results in a reduction in the amount of habitat available to local wildlife populations and generally results in a reduction in wildlife populations because remaining areas are too small to support pre-fragmentation population levels. If the fragmentation is too great, wildlife populations would not be able to persist and some or all of the species in a fragmented habitat area would disappear. This can occur on a local or regional scale, depending upon the degree and type of fragmentation occurring.

The project site lies in the immediate vicinity of developed areas and roadways to the north, east, and west. These existing buildings and roads serve as barriers to regional wildlife movement. Additionally, habitat quality on-site has been reduced due to the moderate level of disturbance. Although the project would result in a small incremental loss of Joshua tree woodland, the project would not result in significant habitat fragmentation or substantially affect established wildlife

corridors or impede the movement of wildlife in the project area. Impacts associated with habitat fragmentation and wildlife movement are considered less than significant.

Adopted Habitat Conservation Plans

Threshold	Would the proposed project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan?
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The project area is not covered by any adopted habitat conservation plan. The West Mojave Plan is currently being reviewed and, if approved, would include the project area. The project site is not within any conservation area delineated in the draft West Mojave Plan. The project may be subject to provisions of the Plan (e.g., payment of fees) depending upon the timing of adoption of the Plan relative to implementation of the project; however, the project would not conflict with provisions of the draft Plan. Impacts associated with habitat conservation plans are considered less than significant.

According to the Desert Tortoise Recovery Plan¹ the project area is within the Western Mojave Recovery Unit of the Desert Tortoise Recovery Plan. Wildlife management areas have been established within the recovery units, although the project site is not located in a management area. Therefore, there are no Desert Tortoise Recovery Plan requirements for this project.

Potentially Significant Impacts

The following impacts were determined to be potentially significant. In each of the following issues, a potential impact would occur and mitigation would be required.

Impact 4.4.1 Non-listed Sensitive Species

Threshold	Would the proposed project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations; or by the California Department of Fish and Game; or by the U.S. Fish and Wildlife Service?
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As previously stated, seven non-listed sensitive species have a low potential of occurring on-site. Of these seven, the San Diego horned lizard has been reported once as occurring near the project vicinity. The San Diego horned lizard typically inhabits coastal sage scrub, chaparral, or other non-desert communities. The Joshua tree woodland on the project site is not considered suitable habitat for this species and is also outside the known range of the species. The CDFG's Natural Diversity Data Base has no records of this species in the general project vicinity except for one reported observation from the 1890s attributed to a location (Warrens Well) about 1 mile west of the site. This record is suspect due to its nonspecific date, incorrect elevation (the record states an elevation of 2,225 feet, while the elevation at the specified location is approximately 3,220 feet) and location in unlikely habitat outside the known range of the species. In addition, the biological surveys conducted

¹ http://ecos.fws.gov/docs/recovery_plans/1994/940628.pdf, website accessed June 9, 2006.

for the project site yielded no observations of the horned lizard. As such, no impacts related to the San Diego horned lizard are anticipated to occur with the implementation of the proposed project.

Three unlisted special-status wildlife species were observed on the project site during the Desert Tortoise Presence/Absence Survey conducted in May 2006. These species include the Loggerhead shrike, the California horned lark, and the San Diego black-tailed jackrabbit. Construction of the proposed project would result in the displacement of any individuals present on-site; however, due to the relative abundance of these species in other areas, the moderately disturbed nature of the proposed project site, and the expected low numbers of individuals that may be present on-site, and as these species are not being proposed for listing by any state or federal agency, impacts associated with these species are considered less than significant. However, construction within the Specific Plan area is required to comply with the MBTA, which protects raptors and other migratory birds during the nesting season. The MBTA governs development activity that may affect nesting activities of the Loggerhead shrike and California horned lark. This is considered a significant impact and mitigation is required.

Grasslands, agricultural areas, and other open habitats characterized by low or sparse vegetation are suitable habitat for the burrowing owl, a sensitive species. The burrowing owl is a migratory bird species protected by international treaty under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-711) and is protected under Section 3503 of California Fish and Game Code. The CDFG is currently reviewing a petition to list the burrowing owl as a threatened or endangered species. There is a low possibility of occurrence of this species on the project site due to the marginal quality of habitat located on-site (i.e. lack of burrows). Additionally, the species was not detected on the site during both field reconnaissance surveys conducted for the biological resource reports. However, to avoid significant impacts to the burrowing owl as marginally suitable habitat is present within the proposed project site for the burrowing owl, and as the species is highly mobile, focused surveys are recommended prior to construction for a conclusive determination of presence or absence of this species.

Other non-listed special interest species were identified as having a low potential of occurring on-site. Due to the infrequency or lack of reported occurrences of these species from the project vicinity, the relatively small project area, the marginal and disturbed quality of the project site, and the lack of suitable habitat, any occurrences of these species on the project site would be expected to involve relatively few individuals. Impacts to other sensitive species (i.e., non-listed special status species) are not considered to be significant due to the conditions on the site resulting in limited habitat value.

Mitigation Measures. The following mitigation measures would reduce impacts to non-listed sensitive species to less than significant.

4.4.1A Prior to site grading, a focused survey for the burrowing owl shall be conducted on the project site by a qualified biologist to determine on-site presence/absence of this species. The focused burrowing owl survey shall be conducted during the appropriate breeding season (February 1 to August 31) and/or within 30 days prior to the commencement of grading activities. If the survey determines that the burrowing owl is present, Mitigation Measure

- 4.4.1B shall apply. Conversely, if the burrowing owl is absent from the project site, no further mitigation is required.
- 4.4.1B** Any burrowing owls identified during on-site focused surveys shall be relocated by a qualified biologist prior to the commencement of grading activities. The relocation of any specimen shall be conducted per applicable CDFG ~~and/or~~ and USFWS procedures. Relocation of on-site burrowing owls shall not be permitted during the nesting season for this species.
- 4.4.1C** In accordance with the MBTA, the removal of vegetation or other potential nesting habitat shall be conducted outside of the avian nesting season (February through August). If construction occurs during the avian nesting season, a pre-construction nesting bird survey shall be conducted seven days prior to any ground disturbing activities. If birds are found to be nesting inside, or within 250 feet (500 feet for raptors) of the impact area, construction will need to be postponed until it is determined by a qualified biologist that the nest is no longer active.

Level of Significance after Mitigation. Implementation of the above-listed mitigation measure would reduce impacts to the burrowing owl to a level below significance by determining whether the burrowing owls are present and then removing and relocating them if present.

Impact 4.4.2 Riparian Habitat or Other Sensitive Natural Communities

Threshold	Would the proposed project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations; or by the California Department of Fish and Game; or by the U.S. Fish and Wildlife Service?
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Riparian habitat refers to the trees, other vegetation, and physical features normally found on the banks and floodplains of rivers, streams, and other bodies of fresh water. No potential jurisdictional waters or riparian habitat were identified on the proposed site; however, the implementation of the proposed project's plant palette may affect sensitive natural communities within the area. While the plant palette includes the addition of many non-native plants, one non-native plant is of concern. In particular, the plant palette calls for the planting of Mexican palo verde trees (*Parkinsonia aculeate*). The Mexican palo verde tree should not be confused with the blue palo verde tree (*Cercidium floridum* ssp. *floridum*) or the yellow palo verde tree (*Cercidium microphyllum*) both of which are native plants and protected under the Town of Yucca Valley's Plant Protection and Management Ordinance.

The Mexican palo verde is fast-growing, drought-tolerant, able to grow in different soil types, and able to produce seeds that remain viable for many years. The California Invasive Pest Plant Council (Cal-IPC) compiles an annual list of non-native plants that are serious problems in native ecosystems. According to the 2005 list, the Mexican palo verde tree was found under non-native plants that are

currently under review and consideration.¹ Because of the potential of the Mexican palo verde to affect sensitive natural communities, impacts are considered to be significant.

Mitigation Measure. The following mitigation measure would reduce the Mexican palo verde tree impacts to riparian habitat or other sensitive natural communities.

4.4.2A Exclude the Mexican Palo Verde tree (*Parkinsonia aculeate*) from the plant palette proposed in the landscaping plan.

Level of Significance after Mitigation. Implementation of the above-listed mitigation measure would reduce potential impacts of Mexican palo verde trees to sensitive natural communities in the area to a less than significant level.

Impact 4.4.3 Endangered and Threatened Species

Threshold	Would the proposed project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as endangered or threatened in local or regional plans, policies, or regulations; or by the California Department of Fish and Game; or by the U.S. Fish and Wildlife Service?
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A literature review identified three threatened/endangered species that may occur on the project site. These include Parish's daisy, desert tortoise, and least Bell's vireo. Least Bell's vireo is considered absent from the project site because the site does not contain riparian forests or willow thickets. Parish's daisy is considered absent from the project site as suitable habitat (i.e., rocky slopes, carbonates, or washes) is not present. Because the literature review and site reconnaissance conclude that suitable habitat for these two species is not present on the project site, no impacts to these species would occur with implementation of the proposed project.

Based on the focused field survey and the presence/absence survey performed on the proposed project site and in the site vicinity in accordance with USFWS protocol, it was determined that the desert tortoise does not currently occur on-site and it does not exist in the vicinity of the project site. However, because a known population of the desert tortoise is located in the project vicinity and a member of the species could migrate to or otherwise occupy the project area subsequent to the protocol and presence surveys and prior to construction within the project area, impacts are considered significant and mitigation is required.

Mitigation Measures. The following mitigation measures would reduce impacts to the desert tortoise.

4.4.3A In compliance with the USFWS 1992 Field Survey Protocol for desert tortoise, a pre-construction clearance survey is required in addition to the focused protocol survey. A pre-construction clearance survey shall be conducted within 30 days prior to any ground

¹ Calflora, http://www.calflora.org/cgi-bin/species_query.cgi?&special=calflora&where-calreclnum=6069&one=T, website accessed February 6, 2006.

- disturbing activities. If the clearance survey is positive, incidental take permits will be required from the USFWS and the CDFG prior to any ground disturbing activities. The permits would stipulate required actions such as relocation of the tortoises, installation of a tortoise proof fence, etc.
- 4.4.3B** Pursuant to the USFWS 1992 Field Survey Protocol, focused presence/absence surveys, which must be conducted during the activity period of the tortoise between March 25 and May 31, are valid for one year. Therefore, if construction is not initiated prior to March 25, 2007, another focused protocol survey will be required between March 25 and May 31 to determine presence/absence of desert tortoise within the project site impact area. If the focused protocol survey is positive, incidental take permits will be required from the USFWS and the CDFG.
- 4.4.3C** In order to minimize impacts due to increased numbers of common ravens on desert tortoise, all trash containers shall be securely covered. In addition, to reduce littering, signage shall ~~should~~ be posted throughout the project site stating fines for trash dumping in open areas.
- 4.4.3D** Prior to the initiation of grading activities, all construction personnel shall participate in an education program. The program will be taught by a qualified biologist and will inform personnel of the status of the tortoise under the Endangered Species Act, that desert tortoise are not to be handled or otherwise harassed, that if a desert tortoise is encountered all construction must cease until proper action is taken, and provide the contact information of a biologist qualified to handle desert tortoise in the unlikely event that a desert tortoise is encountered.
- 4.4.3E** If a desert tortoise is encountered during ground-disturbing activities, the qualified biologist shall be contacted. The qualified biologist will take appropriate actions to avoid take of the tortoise. All actions will be coordinated with the USFWS and CDFG.

4.4.5 Cumulative Impacts

Cumulative projects are shown in Chapter 2, Table 2.A and Figure 2.1. For the reasons that follow, no significant cumulative impact to biological resources would occur as a result of the project. The development of the project site in tandem with other proposed projects in the vicinity (Home Depot site), would result in the removal of Joshua Trees. However, the proposed project along with other projects within the vicinity of the project site would be required to adhere to the Town's Plant Protection and Management Ordinance, which includes the incorporation of Joshua Trees into the landscaping. The project site is moderately disturbed and provides only marginal habitat for desert tortoises and for seven special status species. A protocol survey and a presence/absence survey determined that desert tortoises were absent from the site and the proposed project would not affect the desert tortoise. No cumulatively considerable reduction of habitat would occur. Because of the site's disturbed condition, resulting limited habitat value, and the absence of any endangered or threatened species, the project would not make a cumulatively considerable contribution to an impact on endangered or threatened species. Although other non-listed special interest species were identified as potentially occurring on-site, due to the marginal and disturbed quality of habitat on-site, no cumulative reduction of prime habitat for these species would occur.

The construction and implementation of the proposed project in conjunction with other planned projects in the Yucca Valley area could have a significant cumulative impact related to the individual

loss of plant and wildlife species and habitat. Although marginally habitat exists for the burrowing owl and Desert Tortoise on the project site itself, other development projects in the Yucca Valley could have prime habitat for these species. As development within the Town of Yucca Valley continues with similar developments, cumulative effects on the burrowing owl and Desert Tortoise and their continued existence could occur as previously vacant land is converted into urban uses. Although the proposed project would create a potentially significant impact related to the loss of plant and wildlife species and habitat ~~a non-listed sensitive species~~, such impacts are reduced to a less than significant level with implementation of the mitigation measures identified in this section ~~Mitigation Measure 4.4.1A~~. The site is not considered an essential component of any wildlife corridor, so development of the site would not make a cumulatively considerable contribution to loss of any such corridor.