

# Virginia Highlands, LLC

## WILDLIFE REVIEW AND EVALUATION

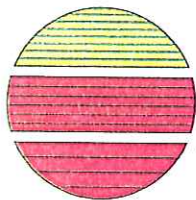
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# TABLE OF CONTENTS

1.0	INTRODUCTION .....	1
2.0.	PROJECT AREA.....	1
2.1	VEGETATION .....	1
2.2	SOILS .....	1
2.3	GEOLOGY .....	2
3.0	REGULATORY FRAMEWORK.....	2
3.1	ENDANGERED SPECIES ACT .....	2
3.2	MIGRATORY BIRD TREATY ACT.....	3
3.3	WILD FREE-ROAMING HORSE AND BURRO ACT AND NRS CHAPTER 569.....	3
3.4	NEVADA REVISED STATUTES AND ADMINISTRATIVE CODES.....	4
4.0	RESULTS AND RECOMMENDATIONS .....	4
4.1	COMPLIANCE WITH ENDANGERED SPECIES ACT .....	4
4.2	COMPLIANCE WITH MIGRATORY BIRD TREATY ACT (MBTA).....	4
4.3	COMPLIANCE WITH FREE-ROAMING WILD HORSE AND BURRO ACT AND NRS CHAPTER 569 .....	5
4.4	COMPLIANCE WITH STATE REGULATIONS (NRS AND NAC).....	5
	REFERENCES.....	6

## FIGURES

Figure 1 – Project Location Map

Figure 2 – Aerial Photograph

## ATTACHMENT

Attachment A – Nevada Natural Heritage Program Response to Database Request

## 1.0 INTRODUCTION

The purpose of this Wildlife Review and Evaluation is to review existing state and federal laws and regulations in sufficient detail to: (1) evaluate regulatory issues covering protected wildlife with potential to occur within the project areas, and (2) identify potential permits needed.

## 2.0. PROJECT AREA

The proposed project is located approximately 15 miles southeast of Reno, Nevada, in Storey County. The parcel is approximately 6,700 acres, and is located within Sections 31 and 32, T19N, R22E and Sections 4-6,7-9, and 16-17 of T18N, R22E. Site elevation ranges from 5200 to 6320 feet (Figures 1 and 2).

### 2.1 Vegetation

The project area is located in a pocket created by the Virginia Mountain Range to the north and west, and the Flowery Mountain Range to the south and east. The north end of the project area is situated on the gently rolling hills along the south-facing slope of the Virginia Mountain Range, becoming more mountainous toward the south as the property nears the north slope of the Flowery Mountain Range (Figure 2). The dominant vegetation consists of low sagebrush (*Artemisia tridentata*), rabbitbrush (*Chrysothamnus nauseosus*), antelope bitterbrush (*Purshia tridentata*), littleleaf horsebrush (*Tetradymia glabrata*), and Mormon tea (*Ephedra nevadensis*), with an understory of grasses and a wide variety of herbaceous forbs. Other common species found within this community are sandberg bluegrass (*Poa secunda*), lupine (*Lupinus* sp.), fiddleneck (*Amsinckia intermedia*) and common weed species such as blue mustard (*Chorispora tenella*), and tumble mustard (*Sisymbrium altissimum*).

In disturbed and low lying areas the vegetation was comprised almost entirely of fiddleneck (*Amsinckia intermedia*), cheatgrass (*Bromus tectorum*), and weedy mustards.

Toward the south end of the project area, along some of the higher ridge tops and north facing slopes occasional patches of singleleaf pinyon (*Pinus monophylla*) and Utah juniper (*Juniperus osteosperma*) were observed.

Erosional backslopes and rock outcroppings contained little to no vegetation.

### 2.2 Soils

Due to its size and location the project area contains many soil types; however, the majority of the soils are of volcanic origin and contain a great deal of stone and gravel.

The mountainous areas along the north end of the property are predominantly composed of the Devad-Olac-Old Camp association and the Olac-Old Camp-rock outcrop association. The Devada-Olac-Old Camp consists of shallow, well drained, gravely loams of volcanic origin. Olac-Old Camp-rock outcrop soils are formed in colluvium and residuum derived from andesite and basalt with a hard pan present at 10-20 inches. Approximately 10% of this association consists of rock outcrop.

The dominant soils of the central low lands are the Manogue-Hefed-rock outcrop association, the Manogue-Devada-rock outcrop association, and the Manogue very stony clay with 2-15% slopes. The Manogue-Hefed-rock outcrop is composed of moderately deep, very stony loams and clays formed from basic igneous rock. These soils have high shrink-swell potential and consist of approximately 10% rock outcrop.

The soils of the southern mountainous areas are the Ister-Devada association, and the Olac-Old Camp-rock outcrop association. The Ister-Devada soils are very stony loams of volcanic origin. As stated previously, the Olac-Old Camp-rock outcrop soils are formed in colluvium and residuum derived from andesite and basalt with a hard pan present at 10-20 Inches. Approximately 10% of this association consists of rock outcrop.

### ***2.3 Geology***

The geology of the project area is dominated by Quaternary and Tertiary (up to 65 million years old) andesite flows and breccias of intermediate composition. There are also small pockets of Tertiary tuffaceous sedimentary rocks.

## **3.0 REGULATORY FRAMEWORK**

The evaluation of impacts to fisheries and wildlife communities within the project area are based on criteria set by federal, state, and local government agencies as presented below.

### ***3.1 Endangered Species Act***

Sections 7 and 10 of the Endangered Species Act (ESA) directs federal departments and agencies to ensure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of their critical habitat.

### *3.2 Migratory Bird Treaty Act*

The federal Migratory Bird Treaty Act (MBTA) of 1918 makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 CFR Part 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 CFR 21).

### *3.3 Wild Free-Roaming Horse and Burro Act and NRS Chapter 569*

In 1971 Congress passed the Wild Free-Roaming Horse and Burro Act, which provided federal protection and management for free-roaming horses and burros on public land. The majority of wild and free-roaming horses in Nevada fall under the jurisdiction of this federal law and the Bureau of Land Management (BLM) is charged with managing these wild horse and burro populations. In the Virginia Range of Nevada, which encompasses most of Storey County, there is very little federal land and management of the horses rests under the jurisdiction of the Nevada Department of Agriculture (Department) through the Department's administration of the "estrays" livestock provisions of Nevada Revised Statutes Chapter 569.

The Virginia Range Estray Horse Management Program was initiated by the Department in 1997. The Virginia Range herd area consists of an area approximately 283,769 acres bounded on the west by Highway 395, on the east by Alternate Highway 95, on the north by the Truckee River, and to the south by the Carson River.

Approximately 160,000 acres within this area is privately owned. Private landowners are permitted to maintain populations of wild horses on their own land provided that the animals are protected from harassment and that the animals are not willfully removed from public lands. If a landowner wishes to have estray horses removed from his or her land they may inform the Department, who will then arrange for the removal of the animals. Individual landowners may not remove the estray horses themselves. Fences can be constructed to keep estray horses off of private lands. Any estray horses enclosed within the fence, or return horses that become nuisances, can be removed by agents of the Department. Horses removed will be relocated or placed in the estray horse adoption program.

The Virginia Range Wildlife Protection Association (VRWPA) in Storey County was formerly recognized by the State of Nevada Department of Agriculture as an adoption agent for State of Nevada estray horses. In 2001 the Department of Agriculture officially voided its agreement with VRWPA. The VRWPA retains no legal authority over estray horse management, but continues to consult with the Department on wildlife protection and horse adoption issues.

### ***3.4 Nevada Revised Statutes and Administrative Codes***

The Nevada Division of Wildlife (NDOW) in the Department of Conservation and Natural Resources (DCNR) is the entity vested with statutory authority through the Nevada Revised Statutes (NRS) to protect and manage resident wildlife in the State. Through the Nevada Board of Wildlife Commissioners, NDOW establishes policy and regulation for the protection, propagation, transplanting, introduction, and management of wildlife (NRS 501.105, 501.181, 501.331, and 501.337).

Nevada Administrative Codes (NAC 503.090 and 503.093) sets specific regulations providing protection for all wildlife species classified as protected. Under NAC 503.050 all species of non-game birds that are protected by provisions of federal law (eg. MBTA) are also classified by the State as protected. NAC 503.093 states that a person shall not hunt or take any wildlife which is classified as protected without first obtaining the appropriate license, permit or written authorization from NDOW.

The Nevada Division of Forestry (NDF), a division of the DCNR, holds the statutory authority to protect plant species listed as critically endangered under NRS 527.272 and 527.050. The Nevada Division of Forestry also regulates the collection of cactus and yucca through permit requirements under NRS 527.070.

## **4.0 RESULTS AND RECOMMENDATIONS**

### ***4.1 Compliance with Endangered Species Act***

The U.S. Fish and Wildlife Service lists three federally protected species known to occur within Storey County. These species include the federally threatened bald eagle (*Haliaeetus leucocephalus*) and Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*), and the federally endangered cui-ui fish (*Chasmistes cujus*).

The project area contains no habitat for the bald eagle, Lahontan cutthroat trout or the cui-ui fish. These species will not be affected by development within the project area.

### ***4.2 Compliance with Migratory Bird Treaty Act (MBTA)***

The project area does provide habitat for several protected migratory birds. If construction occurs during breeding season, the removal of shrubs or ground disturbing activities could potentially disturb nesting migratory bird species. The Migratory Bird Treaty Act prohibits the take of migratory birds, or their nests, eggs or products. To avoid disturbance to nesting migratory birds, vegetation removal should occur between July 31 and March 1 to the greatest extent possible. Removal of vegetation during the breeding season may require surveys for nesting birds prior to the initiation of construction activity.

#### ***4.3 Compliance with Free-Roaming Wild Horse and Burro Act and NRS Chapter 569***

The stray horses currently found on the project area are a part of the Comstock Herd and are protected by state and federal law from capture, branding, harassment, or death. If it becomes necessary to remove these animals from all or part of the project area, the Nevada Department of Agriculture must be contacted and arrangements made for the removal of the animals by authorized personnel.

There is a long history of management of the horses found within the project area. For many years water within the pond near the western property line was maintained year-round by TRW Vissi for the benefit of the Comstock Herd, as well as for wildfire suppression. Currently, high water levels within the pond during the spring and summer attract the horses, which then head for the Highlands in the fall when water levels drop. However, the fall and winter of 2006 is expected to bring greater numbers of horses within the project area as wildfires have diminished potential habitat in the Highlands area. The Department is anticipating the removal of up to 150 horses this fall within and near the project area to maintain a sustainable herd population (Mike Holmes, NV Department of Agriculture, personal communication, July 11, 2006).

#### ***4.4 Compliance with State Regulations (NRS and NAC)***

NAC 503.020 – 503.080 list the species given protective status by the State of Nevada. The State further classifies protected species as state “threatened” or “sensitive”. The Nevada Natural Heritage Program (NNHP) tracks state threatened and sensitive species. The NNHP database was consulted to determine if known occurrences of state threatened or sensitive species are known to occur near the proposed project area. No known occurrences of state threatened or sensitive species have been reported within the project area (reference Attachment A).

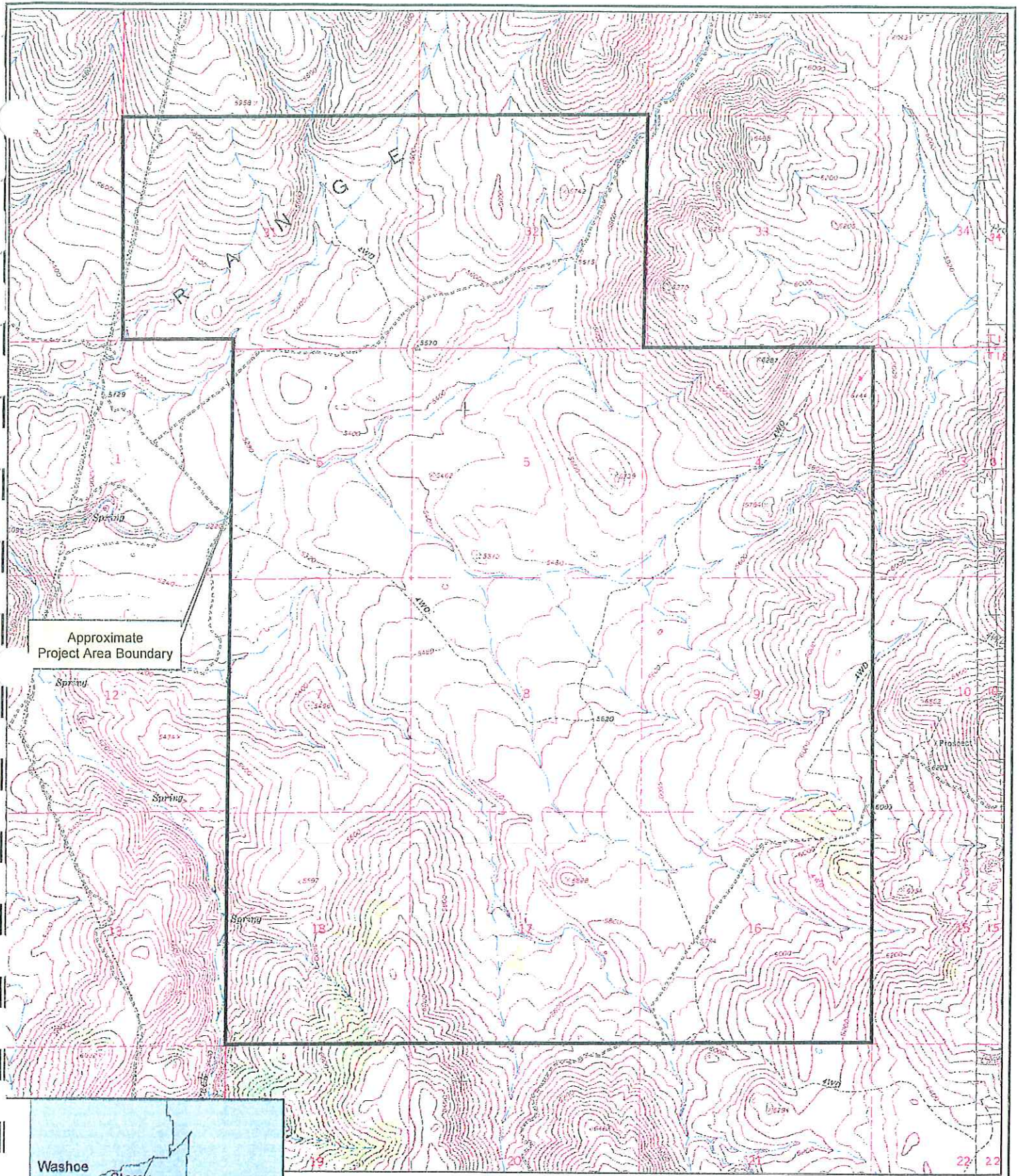
Several species of raptors and other sensitive birds are listed as protected by the State and may occur within the project area. This includes: Ferruginous hawk, Swainson’s hawk, golden eagle, prairie falcon, sage grouse, and loggerhead shrike. In order to avoid and minimize disturbance to these species, vegetation removal should occur during the non-breeding season.

## REFERENCES

- Holmes, Mike. NV Department of Agriculture, Reno, NV, personal communication, July 11, 2006.
- NatureServe Explorer: An online encyclopedia of life [web application]. 2001. Version 1.6. Arlington, Virginia, USA: NatureServe. Available: <http://www.natureserve.org/explorer>. (Accessed: June 14, 2006).
- Nevada Natural Heritage Program. 2005. Rare Species List. Available at <http://heritage.nv.gov>.
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- USDA-Natural Resource Conservation Service. 1990. *Soil Survey of Storey County Area, Nevada*.
- U.S. Fish and Wildlife Service. 1994. Lahontan Cutthroat Trout, *Oncorhynchus clarki henshawi*, Recovery Plan. Portland, OR. 147 p.



# FIGURES



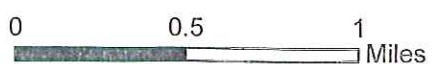
Approximate  
Project Area Boundary

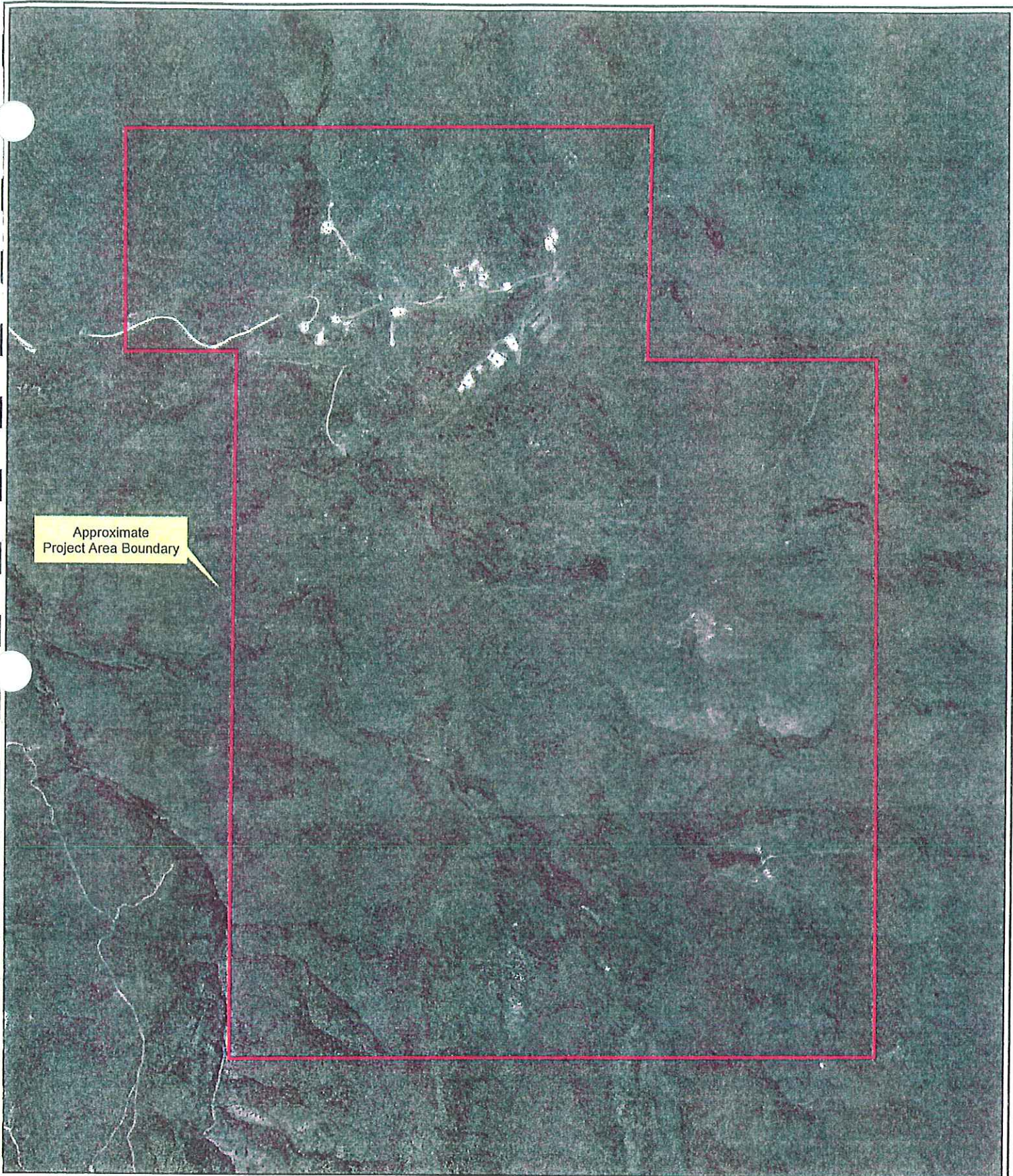


Figure 1  
Virginia Highlands, LLC.  
Project Location Map



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Approximate  
Project Area Boundary

**Legend**



Project Boundary

Figure 2  
Virginia Highlands, LLC.  
Aerial Photography



1:35,000



ATTACHMENT



Nevada Natural Heritage Program  
Nevada Department of Conservation and Natural Resources  
Richard H. Bryan Building



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02 May 2006

JoAnne Michael  
Resource Concepts, Inc.  
340 N. Minnesota Street  
Carson City, NV 89703

RE: Data request received 24 April 2006

Dear Ms. Michael:

We are pleased to provide the information you requested on endangered, threatened, candidate, and/or At Risk plant and animal taxa recorded within or near the TRW Vssi Development Project area. We searched our database and maps for the following, a five kilometer radius around:

Township 18N Range 22E Sections 4-9 and 16-18  
Township 19N Range 22E Sections 31 and 32

There are no at risk taxa recorded within the given area. However, habitat may be available for the Margaret's rushy milkvetch, *Astragalus convallarius* var. *margaretiae*, a Taxon determined to be Imperiled by the Nevada Natural Heritage Program. We do not have complete data on various raptors that may also occur in the area; for more information contact Ralph Phenix, Nevada Division of Wildlife at (775) 688-1565. Note that all cacti, yuccas, and Christmas trees are protected by Nevada state law (NRS 527.060-.120), including taxa not tracked by this office.

Please note that our data are dependent on the research and observations of many individuals and organizations, and in most cases are not the result of comprehensive or site-specific field surveys. Natural Heritage reports should never be regarded as final statements on the taxa or areas being considered, nor should they be substituted for on-site surveys required for environmental assessments.

Thank you for checking with our program. Please contact us for additional information or further assistance.

Sincerely,

Eric S. Miskow  
Biologist III/Data Manager