

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

**PACIFIC TOPAZ (TTM 53642)
LANCASTER, LOS ANGELES COUNTY, CALIFORNIA
APN 3204-009-11, 12 & 26**

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1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on an approximately 40-acre parcel located on the southeast corner of the 60th Street West and West Avenue K-4 in the city of Lancaster, California (Figures 1 and 2). The Project site is specifically located on the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26, Township 7 North, Range 13 West in the USGS Lancaster West 7.5-minute California quadrangle. The project proponent is proposing to construct a tentative tract map (TTM 53642) consisting of 156 single-family residential units (Figure 4). The site is located in an area of Lancaster zoned for single-family residential (R-7000).

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 August 2, 2021, during which the biological resources on the site and in the surrounding areas were documented by biologists from RCA Associates, Inc. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife and flora species. The property was also evaluated for the presence of sensitive habitats including wetlands, vernal pools, riparian habitats, and jurisdictional areas.

Habitat assessments were also conducted for the desert tortoise, burrowing owl, Joshua tree, and Mohave ground squirrel. Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDDB, 2021). Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property is approximately 40-acre in size and is located on the northeast corner intersection of 60th Street West and Avenue K-8 West in the city of Lancaster, California (Section 26, Township 7 North, Range 13 West (USGS Lancaster West, CA 7.5 minute quadrangle)(Figures 1 and 2). Single-family residential tract homes border the site north, west, and south across the strip of vacant land, and vacant lands are located west and south of the property (Figure 2).

The site is approximately 730 meters above sea level and relatively flat and supports a relatively disturbed habitat that had been previously graded. The property consists of Adelanto coarse sandy loam, which has a 2 to 5 percent slope, low runoff, well-draining, no frequency of flooding, and high available water capacity, and Cajon loamy sand, 0 to 2 present slope, negligible runoff, excessively drained, no frequency of flooding, and moderate available water capacity. The vegetation community on site is creosote bush scrub habitat encompassing mainly native plants and some non-native grasses. The site is dominated by creosote bush four-wing saltbush (*Atriplex canescens*), kelch grass (*Schismus barbatus*), rubber rabbitbrush (*Ericameria nauseosa*), winterfat (*Krascheninnikovia ceratoides subsp. lanata*), doveweed (*Croton setigerus*), tumbleweed (*Kali tragus subsp. tragus*), and Asian mustard (*Brassica tournefortii*). Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

The site supports some wildlife. The only mammal observed on site was California ground squirrel (*Otospermophilus beecheyi*), although rabbit scat belonging to either a black-tailed jackrabbit (*Lepus californicus*) or desert cottontails (*Sylvilagus audubonii*) was found on site. Other mammals expected to occur on the property include coyotes (*Canis latrans*) who may utilize the site for hunting purposes.

Birds observed included ravens (*Corvus corax*), House finch (*Haemorhous mexicanus*), rock pigeon (*Columba livia*), and mourning dove (*Zenaida macroura*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

No reptiles were observed during the survey, but those that may occur include desert spiny lizard (*Sceloporus magister*), side-blotched lizard (*Uta stansburiana*), and western whiptail lizard (*Cnemidophorus tigris*). Table 2 provides a compendium of wildlife species.

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

3.0 METHODOLOGIES

General biological surveys were conducted on August 2, 2021, 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. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2000) and Whitaker (1980). Following completion of the initial reconnaissance survey, habitat assessments were conducted for the desert tortoise and burrowing owl, and Mohave ground squirrel. Weather conditions consisted of wind speeds of 5 to 10 mph, temperatures in the low 90's to high 90's (°F) (PM) with clear skies, and 0% cloud cover. The applicable methodologies are summarized below.

General Plant and Animal Surveys: Meandering transects were walked on the site and in surrounding areas (i.e., the zone of influence) where accessible at a pace that allowed for careful documentation of the plant and animal species present on the site. All plants observed were identified in the field and wildlife was identified through visual observations and/or by vocalizations. Habitat assessments were conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel. Tables 1 and 2 (Appendix A) provides a comprehensive compendium of the various plant and animal; species observed during the field investigations.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDDB) search was performed. Based on this review, it was determined that five special status plants, nine wildlife species, and two invertebrates have been documented within the Lancaster West quad of the property. The following tables provide data on each special status species which has been documented in the area.

Table 4-1: Federal and State Listed Species and State Species of Special Concern.

E = Endangered; T = Threatened; SSC = Species of special concern; CNPS = California Native Plant Society; CNDDDB = California Natural Diversity Data Base

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Lancaster West Quadrangle			
Lancaster milk-vetch (<i>Astragalus preussii</i> var. <i>laxiflorus</i>)	Federal: None State: None CNPS: 1B.1	Dry flats and slope	The site does not support suitable habitat, and none were observed on site.
White-pygmy poppy (<i>Canbya candida</i>)	Federal: None State: None CNPS: 4.2	Joshua tree woodland, Mojavean desert scrub, gravely, sandy habitat	The site does not support suitable habitat, however no white-pygmy poppy was observed, and not expected to occur on site.
Alkali mariposa-lily (<i>Calochortus striatus</i>)	Federal: None State: None CNPS: 1B.2	Marshes and damp places	The site does not support suitable habitat, and none were observed on site.
Parry's spineflower (<i>Chorizanthe parryi</i> var. <i>parryi</i>)	Federal: None State: None CNPS: 1B.1	Chaparral, coastal sage scrub	The site does not support suitable habitat, and none were observed on site.
Rosamund eriastrum (<i>Eriastrum rosamondense</i>)	Federal: None State: None CNPS: 1B.1	Sandy vernal pool edges	The site does not support suitable habitat, and none were observed on site.

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: Federal and State Listed Species and State Species of Special Concern.

E = Endangered; T = Threatened; SSC = Species of special concern; CNPS = California Native Plant Society;
 CNDDDB = California Natural Diversity Data Base

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
Wildlife Species			
Within Lancaster West Quadrangle			
Crotch bumble bee (<i>Bombus crotchii</i>)	Federal: None State: Candidate Endangered	Grasslands and shrublands.	No Crotch bumble bee was observed on the property, and not expected to occur on the site.
Soledad shoulderband (<i>Helminthoglypta fontiphila</i>)	Federal: None State: None	Known to only occur from Little Rock Creek Canyon and Soledad Canyon	No suitable habitat, will not occur on site.
Tricolored blackbird (<i>Agelaius tricolor</i>)	Federal: None State: None	Wetlands and grasslands.	Site does not support suitable habitat for the species and no tricolored blackbirds were observed.
Burrowing owl (<i>Athene cunicularia</i>)	Federal: None State: None CDFW: SSC	Grasslands and desert habitats.	Suitable habitat, although no sign or owls observed on site.
Coast horned lizard (<i>Phrynosoma blainvillii</i>)	Federal: None State: None CDFW: SSC	Inhabits open areas of sandy soils and low vegetation in valleys, foothills, and semiarid mountains.	Some Suitable habitat, none observed on site.

Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>)	Federal: None State: Threatened	Desert scrub.	Suitable habitat, none observed on site.
Swainson's Hawk (<i>Buteo swainsoni</i>)	Federal: None State: Threatened	Juniper sagebrush communities.	Site does not support suitable habitat for the species.
Ferruginous hawk (<i>Buteo regalis</i>)	Federal: None State: None	Semi-arid to arid western plains.	Site does not support suitable habitat for the species.
Merlin (<i>Falco columbarius</i>)	Federal: None State: None	Open conifer woodland.	Site does not support suitable habitat for the species.
Least Bell's vireo (<i>Vireo bellii pusillus</i>)	Federal: Endangered State: Endangered	Riparian woodlands.	Site does not support suitable habitat for the species.
Northern California legless lizard (<i>Anniella pulchra</i>)	Federal: None State: None CDFW: SSC	Loose soil or by rocks with sufficient leaf litter for burrowing.	Site does not support suitable habitat for the species.

5.0 RESULTS

5.1 General Biological Resources

The site supports a relatively disturbed desert scrub plant community which had been previously graded (Figure 3). Species present on the site included kelch grass (*Schismus barbatus*), Asian mustard (*Brassica tournefortii*), Rubber rabbitbrush (*Ericameria nauseosa*), Desert bird of paradise (*Caesalpinia gilliesii*), four-wing saltbush (*Atriplex canescens*), Dove weed (*Croton setigerus*), Brownplume wirelettuce (*Stephanomeria pauciflora*), Winterfat (*Krascheninnikovia ceratoides subsp. lanata*), and fiddleneck (*Amsinckia tessellata*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed included ravens (*Corvus corax*), rock pigeon (*Columba livia*), and house finch (*Haemorhous mexicanus*). No reptiles were observed on the property. One mammal was observed on site, the California ground squirrel (*Otospermophilus beecheyi*), although rabbit scat belonging to either a black-tailed jackrabbit (*Lepus californicus*) or desert cottontails (*Sylvilagus audubonii*) was found on site. Other mammals expected to occur on the property include coyotes (*Canis latrans*) who may utilize the site for hunting purposes. Merriam's kangaroo rats (*Dipodomys merriami*) may also occur on the site given their wide-spread distribution in the region. Tables 1 and 2 (Appendix A) provides a compendium of the various plant and animal species identified during the field investigations and those common to the area. No distinct wildlife corridors were identified on the site or in the immediate area.

No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

The following are the listed and special status species that have the ability to occur on the project site. It is not a comprehensive list of all the species in the quad. This information has been taken from the California Natural Diversity Database and is using the most current version.

5.2 Federal and State Listed Species

Mohave Ground Squirrel: The Mohave ground squirrel is a California state threatened species that have a short, flat, furred, white, underside tail, uniformly brown (with no spots or stripes).

They inhabit open desert scrub, alkali desert scrub, and annual grasslands on sandy to gravelly surfaces in the Mojave desert. Occupiable burrows were found on the site, but no Mohave ground squirrels were detected. It is the opinion of RCA Associates, Inc. that the habitat is not prime Mohave ground squirrel habitat and is very unlikely to support populations of the species based on the following criteria, that there have been two recent sightings, within 20 years, of the species in the Adelanto quadrangle.

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

Crotch Bumble bee: The Crotch bumble bee is a state candidate endangered invertebrate species with a black square head and face, and black abdomen, the males vary slightly by having some yellow coloring in their abdomen and head. They are active between the months of April through August and inhabits grasslands and shrublands in hotter, drier environments. It's dominant food sources include phacelias, poppies, buckwheats, lupines, and milkweeds. The site has no suitable plants and habitat, and no Crotch's bumblebee bee was observed and is not expected to occur given the lack of observation and no recently sighted bees.

Least Bell's Vireo: The Least Bell's Vireo is a federally and state endangered songbird. They have short round wings, short round bill, a faint eye ring, and have gray drab feathers. They are a migratory species that breed in Southern California during spring and early summer and occupy riparian habitats. Due to the lack of suitable habitat on the site, i.e. no riparian habitat, the least Bell's vireo will not occur on site.

5.3 Wildlife Species of Special Concern

Sensitive Plants: There are four plant species that are species of special concern. These species are the Lancaster milk-vetch, Alkali mariposa-lily, Parry's spineflower, and Rosamund eriastrum. The Lancaster milk-vetch and Rosamund eriastrum can be found in sandy areas/slopes, Parry's spineflower is found in chaparral and coastal sage scrub, and Alkali mariposa-lily occupies marshes and damp places. None of these habitats can be found on the previously disturbed site,

and no sensitive plant species is expected to occur on the site, nor were any observed during the August 2, 2021 field survey.

Sensitive Wildlife: There are three wildlife species that are species of special concern in the Lancaster West quadrangle, the burrowing owl, coast horned lizard, and northern California legless lizard. There is no suitable habitat for the Northern California legless lizard, who prefer loose soil with sufficient leaf litter. There is some suitable habitat for the coast horned lizard, and although burrowing owls occupy grasslands and deserts with little vegetation, there are no suitable burrows on site. Both species were not observed during the August 2, 2021 survey.

5.4 Jurisdictional Waters and Riparian Habitat

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

5.5 Protected Plants

There were no protected plants observed during the August 2, 2021, field survey.

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 the site, and most, if not all, of the vegetation will likely be removed during future construction activities. Wildlife will also be impacted by development activities and those species with limited mobility (i.e., small mammals and reptiles) will experience increases in mortality during the construction phase. However, more mobile species (i.e., birds, large mammals) will be displaced into adjacent areas and will likely experience minimal impacts. Therefore, loss of about 40-acres of desert vegetation 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 desert region. No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

6.2 Federal and State Listed and Species of Special Concern

No federal or State-listed wildlife species were observed on the site during the field investigations. In addition, there were no signs of Desert Tortoises or Mohave ground squirrels burrows, and no documented observations of these species either on the site or in the immediate area. The site is not expected to support populations of the desert tortoise based on the absence of suitable habitat.

As per CDFW protocol, the burrowing owl survey results are valid for only 30 days; therefore, CDFW may require a 30-day pre-construction survey be performed prior to any clearing/grading activities to determine if owls have moved on to the site since the August 2, 2021, surveys.

7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities are expected to grade the property and remove the vegetation from the 40-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be negligible. This assumption is based on the habitat containing scarce vegetation of non-native species. In addition, future development activities are not expected to have any impact on any State or Federal listed or State special status plant or animal species. As discussed above, the site does not support any desert tortoises. In addition, burrowing owls do not inhabit the site and are not expected to be impacted given the absence of any suitable burrows. The following mitigation measures are recommended:

1. Pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project-related ground disturbance.
 - a. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are encountered, authorization from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.

If any sensitive species are observed on the property during future activities, CDFW and USFWS (as applicable) should be contacted to discuss specific mitigation measures which may be required for the individual species. CDFW and USFWS are the only agencies which can grant authorization for the “take” of any sensitive species and can approve the implementation of any applicable mitigation measures

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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 Lisa Cardoso. I certify that I have not signed a non-disclosure or consultant confidentiality agreement with the project applicant or applicant's representative and that I have no financial interest in the project.

Date: 08/5/2021 Signed: *Ryan Hunter*
Lisa Cardoso

Field Work Performed By: Ryan Hunter
Environmental Scientist/Biologist

Field Work Performed By: Lisa Cardoso
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	<i>Brassica tournefortii</i>	On Site
Rubber rabbitbrush	<i>Ericameria nauseosa</i>	“
Desert bird of paradise	<i>Caesalpinia gilliesii</i>	“
Tumbleweed	<i>Kali tragus ssp. tragus</i>	“
Kelch Grass	<i>Schismus barbatus</i>	“
Four-wing saltbush	<i>Atriplex Canesens</i>	“
Cheatgrass	<i>Bromus Tectorum</i>	“
Flatspine bur ragweed	<i>Ambrosia acanthicarpa</i>	“
Dove weed	<i>Croton setigerus</i>	“
Winterfat	<i>Krascheninnikovia ceratoides</i> <i>subsp. lanata</i>	“
Fiddleneck	<i>Ansickia tessellata</i>	“
Sonoran sandmat	<i>Euphorbia micromera</i>	“
Brownplume wirelettuce	<i>Stephanomeria pauciflora</i>	“
Stinkwort	<i>Dittrichia graveolens</i>	“

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

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

Common Name	Scientific Name	Location
Common raven	<i>Corvus corax</i>	On-site and in the surrounding area.
House finch	<i>Haemorhous mexicanus</i>	“
Rock pigeon	<i>Columba livia</i>	“
Black-tailed jackrabbit	<i>Lepus californicus</i>	“
Coyote (scat)	<i>Canis latrans</i>	“
California ground squirrel	<i>Otospermophilus beecheyi</i>	“
Desert cottontail	<i>Sylvilagus audubonii</i>	“
Antelope ground squirrel	<i>Ammospermophilus leucurus</i>	Known to occur in the area
Desert spiny lizard	<i>Sceloporus magister</i>	“
Side-blotched lizard	<i>Uta stansburiana</i>	“
Western whiptail	<i>Cnemidophorus tigris</i>	“

Note: The above Table is not a comprehensive list of every animal species which may occur in the area, but is a list of those common species which were identified on the site or which have been observed in the region by biologists from RCA Associates, Inc.

REGULATORY CONTEXT

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

Federal Endangered Species Act

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

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

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

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

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

California Endangered Species Act

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

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

Clean Water Act, Section 404

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

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

Clean Water Act, Section 401

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

California Fish and Wildlife Code, Sections 1600-1616

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

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

California Fish and Wildlife Code, Section 3503.5

Under the California Fish and Wildlife Code, Section 3503.5, it is unlawful to take, possess, or destroy any birds in the order Falconiformes (hawks, eagles, and falcons) or Strigiformes (owls). Take would include the disturbance of an active nest resulting in the abandonment or loss of young.

Migratory Bird Treaty Act

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

Sensitive Natural Communities

The California Office of Planning and Research and the Office of Permit Assistance (1986) define project effects that substantially diminish habitat for fish, wildlife, or plants, or that disrupt or divide the physical arrangement of an established community as significant impacts under CEQA.

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

Protected Plants

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

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

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