

# **GENERAL BIOLOGICAL RESOURCES ASSESSMENT**

**ADELANTO, SAN BERNARDINO COUNTY, CALIFORNIA  
APN 3128-421-01 and 05**

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## **1.0 INTRODUCTION AND SUMMARY**

Biological surveys were conducted on a 40-acre parcel (approximately) located on the north-east corner of the intersection of Aster Road and Cactus Road in the City of Adelanto, California (Township 5 North, Range 5 West, Section 8, USGS Adelanto, California Quadrangle, 1956) (Figures 1, 2, and 3). In addition, a 0.6-acre portion was surveyed just west of the northwest corner of the lot at a later date.

As part of the environmental process, California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS) data sources were reviewed. Following the data review, surveys were performed on the site on January 11, 2022 and July 19, 2022, during which the biological resources on the site and in the surrounding areas were documented by biologists from RCA Associates, Inc. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife species. The property was also evaluated for the presence of sensitive habitats including wetlands, vernal pools, riparian habitats, and jurisdictional areas.

Habitat assessments were also conducted for the desert tortoise, burrowing owl, and Mohave ground squirrel. Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDB, 2022). 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 north-east corner of the intersection of Cactus Road and Aster Road in the City of Adelanto, California (Township 5 North, Range 5 West, Section 8, USGS Adelanto, California Quadrangle, 1956) (Figures 1, 2, and 3). An additional area approximately 0.6 acres in size was surveyed on July 19, 2022 located west of the northwest corner of the property which will be used as an offsite drainage area. The property and offsite drainage area is bordered on all sides by vacant land.

The area is approximately 925 meters above sea level and relatively flat with no slope, and supports a moderately disturbed desert scrub habitat common in the region. The vegetation community on site is creosote bush scrub habitat encompassing mainly native plants and some non-native grasses. The site is dominated by Joshua tree (*Yucca brevifolia*), creosote bush (*Larrea tridentata*), rubber rabbitbrush (*Ericameria nauseosa*), Nevada jointfir (*Ephedra nevadensis*), kelch grass (*Schismus barbatus*), white bursage (*Ambrosia dumosa*), 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 a variety of wildlife, with many of them being birds. One mammal, the black-tailed jackrabbit (*Lepus californicus*), was observed on site. Other mammals that are expected to occur include desert cottontails (*Sylvilagus audubonii*), antelope ground squirrel (*Ammospermophilus leucurus*), California ground squirrel (*Otospermophilus beecheyi*), and coyote (*Canis latrans*).

Birds observed included ravens (*Corvus corax*), white-crowned sparrow (*Zonotrichia leucophrys*), and house finch (*Haemorhous mexicanus*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

No reptiles were observed during the survey due to temperature and time of year. Some reptilian species that may occur on the site include desert spiny lizard (*Sceloporus magister*), common side-blotched lizard (*Uta stansburiana*), the western whiptail lizard (*Cnemidophorus tigris*), and the long nose leopard lizard (*Gambelia wislizenii*). 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 (2022) and none were observed during the field investigations.

### 3.0 METHODOLOGIES

General biological surveys were conducted on January 11, 2022, during which biologists from RCA Associates, Inc. initially walked meandering transects throughout the property. A 0.6 Acre segment was surveyed offsite on July 19, 2022 which will be developed as an offsite drainage area. During the surveys, data was collected on the plant and animal species present. All plants and animals detected during the surveys were recorded and are provided in Tables 1 & 2 (Appendix A). The area 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 on January 11, 2022 consisted of wind speeds of 0 to 5 mph, temperatures in the mid 50's (°F) (AM) with clear skies, 0% cloud cover. During the July 19, 2022 survey the weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the mid 80's (°F) (AM) with clear skies, 0% cloud cover. The applicable methodologies are summarized below.

**General Plant and Animal Surveys:** Meandering transects were walked on the sites 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 species have been documented within the Adelanto 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
<b>Wildlife Species</b>			
<b>Within Adelanto Quadrangle</b>			
Desert tortoise ( <i>Gopherus agassizii</i> )	Federal: Threatened State: Threatened	Desert scrub	The site is located within the known distribution of the species. An evaluation of the area and property was conducted and no tortoises or suitable habitat was observed.
Burrowing owl ( <i>Athene cunicularia</i> )	Federal: None State: None CDFW: SSC	Grasslands and desert habitats	The site does support suitable habitat for the species; however, no owls or owl sign were observed during field surveys.
Mohave ground squirrel ( <i>Xerospermophilus mohavensis</i> )	Federal: None State: Threatened	Desert scrub	The site supports somewhat suitable habitat for the species. Species has not been identified in the area; therefore, species is not likely to inhabit the site.
Swainson's Hawk ( <i>Buteo swainsoni</i> )	Federal: None State: Threatened	Open grasslands	Site does not support suitable habitat for the species; and no Swainson's hawks were observed during the field survey.
Le Conte's thrasher ( <i>Toxostoma lecontei</i> )	Federal: None State: None CDFW: SSC	Desert scrub	Site does not support suitable habitat for the species; and no thrashers were observed during the field survey.



## 5.0 RESULTS

### 5.1 General Biological Resources

The area supports a slightly disturbed desert scrub plant community which sparsely covers the property (Figure 3). Species present on the site included kelch grass (*Schismus barbatus*), creosote bush (*Larrea tridentata*), rubber rabbitbrush (*Ericameria nauseosa*), Asian mustard (*Brassica tournefortii*), western tansy mustard (*Descurainia pinnata*), white bursage (*Ambrosia dumosa*), Nevada jointfir (*Ephedra nevadensis*), Russian thistle (*Salsola tragus*), flatspine bur ragweed (*Ambrosia acanthicarpa*), four-winged saltbush (*Atriplex canescens*), paper bag bush (*Salazaria mexicana*), silver cholla (*Cylindropuntia echinocarpa*), common burrobush (*Ambrosia salsola*), fiddleneck (*Amsinckia tessellata*), and Joshua tree (*Yucca brevifolia*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed were limited to common ravens (*Corvus corax*), white-crowned sparrow (*Zonotrichia leucophrys*), and house finch (*Haemorhous mexicanus*). No reptiles were observed during the survey, but some species that may occur on site include the common side-blotched lizard (*Uta stansburiana*), desert spiny lizard (*Sceloporus magister*), western whiptail lizard (*Cnemidophorus tigris*), and the long nose leopard lizard (*Gambelia wislizenii*). One mammal was observed on site, the black-tailed jackrabbit (*Lepus californicus*). Antelope ground squirrel burrows (*Ammospermophilus leucurus*) were also observed on site. California ground squirrel (*Otospermophilus beecheyi*), desert cottontails (*Sylvilagus audubonii*), and 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 during both field investigations.

No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed in the area during the both 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

**Desert Tortoise:** The project area is located within the documented tortoise, a state and federal threatened species, habitat according to CNDDDB (2022). The area supports very marginal habitat for the desert tortoise based on the location of the sites in a semi-developed area of Adelanto. No tortoises were observed anywhere within the property boundaries during the January 11, 2022 and July 19, 2022 surveys. The species is not expected to move onto the sites in the near future based on the absence of any sign, absence of any recent observations in the immediate area, and the presence of busy roadways and developments in the immediate area which may act as barriers to migration of tortoises. The protocol survey results are valid for one year as per CDFW and USFWS requirements.

**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 project is located within documented Swainson's hawk habitat, a state threatened raptor, according to CNDDDB (2022). No hawks were seen on the property or area during the survey, and no suitable habitat was observed. 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.

## 5.3 Wildlife Species of Special Concern

**Burrowing Owl:** The project area is located within documented burrowing owl habitat according to CNDDDB (2022). No owls were seen on the area during the survey, and minimal suitable habitat was observed. Burrowing owls are not expected to occur on the sites due to lack of suitable vegetation and burrows.

**Le Conte's thrasher:** Le Conte's thrashers have not been recently observed in the area according to CNDDDB (2022). Thrashers are not expected to occur on the site due to lack of critical vegetation used by the species, such as saltbush and catclaw acacia. Thrashers may be very infrequent in the area given the low population levels in the region as well as the lack of any recent sightings according to the CNDDDB.

#### **5.4 Jurisdictional Waters and Riparian Habitat**

A potentially jurisdictional channel was observed during the field investigations which transects the site entering from the southern boundary and running north before it runs off of the site at the northwestern corner onto Aster Road. It is the opinion of RCA Associates, Inc. that a comprehensive jurisdictional delineation may need to be completed at a future date. In addition, no riparian vegetation (e.g., cottonwoods, willows, etc.) exist on the site or in the adjacent habitats.

#### **5.5 Protected Plants**

**As of September 22, 2020, the California Department of Fish and Wildlife temporarily listed the western Joshua tree (*Yucca brevifolia*) as an endangered species for one year until a final decision is made in 2022. Due to the presence of Joshua trees on the site, the project proponent retained RCA Associates, Inc. to perform a "Protected Plant Plan". The survey was performed on January 13, 2022 and July 19, 2022 which resulted in a total of 158 Joshua trees tagged within the sites boundaries. Any attempt to remove a Joshua tree from its current position will require an Incidental Take Permit (ITP).**

## **6.0 IMPACTS AND MITIGATION MEASURES**

### **6.1 General Biological Resources**

Future development of the project area not will have minimal impact on the general biological resources present on itt, 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 including the Mohave ground squirrel and desert tortoise. In addition, there are no documented observations of these species either on the project area 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 January 11, 2022, surveys.

Joshua trees were the only listed plant species observed on site during the January 2022 and July 2022 field investigations. As per CDFW protocol, additional surveys may need to be performed as stated in section 5.5.

## 7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities are expected to grade the property and remove the vegetation from the 40-acre parcel and develop the 0.6-acre area west of the site as an offsite drainage area; 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 sites do not support any desert tortoises. In addition, burrowing owls do not inhabit the sites 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.
2. The Protected Plant Plan shall be followed and shall identify methods, locations, and criteria for transplanting those trees that would be removed during Project construction.
  - a. As required by the San Bernardino County Development Code, Joshua trees proposed for removal shall be transplanted or stockpiled for future transplanting wherever possible once an ITP has been granted by the CDFW.

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, Brian Bunyi, and Jessica Hensley. 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 Updated: 07/22/2022 Signed: *Ryan Hunter*  
*Brian Bunyi*  
*Jessica Hensley*

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**Appendix A**  
**Tables and Figures**

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

<b>Common Name</b>	<b>Scientific Name</b>	<b>Location</b>
Asian mustard	<i>Brassica tournefortii</i>	On Site
Creosote bush	<i>Larrea tridentata</i>	“
Rubber rabbitbush	<i>Ericameria nauseosa</i>	“
Nevada jointfir	<i>Ephedra nevadensis</i>	“
Tumbleweed	<i>Kali tragus ssp. tragus</i>	“
Kelch Grass	<i>Schismus barbatus</i>	“
Joshua tree	<i>Yucca brevifolia</i>	“
Cheatgrass	<i>Bromus tectorum</i>	“
Fiddleneck	<i>Ansickia tessellata</i>	“
Four-winged saltbush	<i>Atriplex canescens</i>	“
White bursage	<i>Ambrosia dumosa</i>	“
Flatspine bur ragweed	<i>Ambrosia acanthicarpa</i>	“
Western tansy mustard	<i>Descurainia pinnata</i>	“
Paper bag bush	<i>Salazaria mexicana</i>	“
Silver cholla	<i>Cylindropuntia echinocarpa</i>	“
Common Burrobush	<i>Ambrosia salsola</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.**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Location</b>
Common raven	<i>Corvus corax</i>	On-site and in the surrounding area.
White-crowned sparrow	<i>Zonotrichia leucophrys</i>	“
House finch	<i>Haemorhous mexicanus</i>	“
Black-tailed jackrabbit	<i>Lepus californicus</i>	“
Coyote	<i>Canis latrans</i>	“
Antelope ground squirrel	<i>Ammospermophilus leucurus</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 nonfederal entities to incidentally take federally listed wildlife or fish. Incidental take is defined by ESA as take that is “incidental to, and not the purpose of, the carrying out of another wise lawful activity.” Preparation of a habitat conservation plan, generally referred to as an HCP, is required for all Section 10(a) permit applications. The USFWS and National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA Fisheries Service) have joint authority under the ESA for administering the incidental take program. NOAA Fisheries Service has jurisdiction over anadromous fish species and USFWS has jurisdiction over all other fish and wildlife species.

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

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

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

### **California Endangered Species Act**

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

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

### **Clean Water Act, Section 404**

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

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

### **Clean Water Act, Section 401**

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

### **California Fish and Wildlife Code, Sections 1600-1616**

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

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

### **California Fish and Wildlife Code, Section 3503.5**

Under the California Fish and Wildlife Code, Section 3503.5, it is unlawful to take, possess, or destroy any birds in the 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.