

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

**SAN BERNARDINO COUNTY, CALIFORNIA
(APN:0570-061-26)**

Prepared for:

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1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 9.18-acre parcel (Approximate), located southeast of Interstate-15 and Halloran Summit Road in San Bernardino County, California (APN:0570-061-26) (Figures 1 and 2). The property site is located in Section 10, Township 15 North, Range 11 East (USGS Solomons knob, CA 7.5-minute quadrangle) (Figures 1 and 2).

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 July 2, 2024, during which the biological resources on the site and in the surrounding areas were documented by biologists from RCA Associates, Inc. As part of the surveys, the property and adjoining areas were evaluated for the presence of native habitats which may support populations of sensitive wildlife species. The property was also evaluated for the presence of sensitive habitats including wetlands, vernal pools, riparian habitats, and jurisdictional areas.

Habitat assessments were also conducted for the desert tortoise, and burrowing owl. Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDB, 2024). Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2016) and Whitaker (1980).

2.0 EXISTING CONDITIONS

The property is approximately 9.18-acres and is located southeast of Interstate-15 and Halloran Summit Road in San Bernardino County, California (APN: 0570-061-26) (Figures 1 and 2). The property site is located in Section 10, Township 15 North, Range 11 East (USGS Solomons Knob, CA 7.5-minute quadrangle). The property is located in an area of San Bernardino County that is vacant open desert with few if any structures nearby.

The relatively flat site is approximately 1271 meters above sea level. The vegetation community present on site supports a disturbed desert scrub habitat encompassing mainly native plants and some non-native grasses and the norther third of the site has been previously developed but has since degraded. Areas that were not previously developed are dominated by Eastern Joshua Tree (*Yucca jaegeriana*), common fiddleneck (*Amsinckia intermedia*), rubber rabbitbrush (*Ericameria nauseosa*), california buckwheat (*Eriogonum fasciculatum*), chamiso (*Atriplex canescens*), bladder sage (*Scutellaria mexicana*), and Indian rice grass (*Oryzopsis hymenoides*). 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. Only a single mammal, the desert cottontail (*Sylvilagus audubonii*), were observed on site during the July 2024 field investigation, however the California ground squirrel (*Otospermophilus beecheyi*) are quite common in the area. Black-tailed jackrabbit (*Lepus californicus*) was not observed but may be present due to their abundance in the area. Other mammals that are expected to occur include the antelope ground squirrel (*Ammospermophilus leucurus*) and coyote (*Canis latrans*).

Birds observed included common ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), Gambel's quail (*Callipepla gambelii*), mourning dove (*Zenaida macroura*), anna's hummingbird (*Calypte anna*), and rock pigeon (*Columba livia*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

Only a single reptile, western fence lizard (*S. occidentalis*), was observed during the field investigations on July 2, 2024. Some reptiles that may occur on site are the coast horned lizard (*Phrynosoma coronatum*) and common side-blotched lizard (*Uta stansburiana*) which are both common in the area. 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 (2024) and none were observed during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on July 2, 2024, during which biologists from RCA Associates, Inc. initially walked meandering transects throughout the property. During the surveys, data was collected on the plant and animal species present on the site. All plants and animals detected during the surveys were recorded and are provided in Tables 1 & 2 (Appendix A). The property was also evaluated for the presence of habitats which might support sensitive species. Scientific nomenclature for this report is based on the following references: Hickman (1993), Munz (1974), Stebbins (2003), Sibley (2016) and Whitaker (1980). Following completion of the initial reconnaissance survey, habitat assessments were conducted for the desert tortoise and burrowing owl. Weather conditions consisted of wind speeds of 5 to 10 mph, temperatures in the low to mid 80's (°F) (AM), 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 or sampled and brought back for further identification. Wildlife was identified through visual observations and/or by vocalizations. Habitat assessments were conducted for the desert tortoise and burrowing owl. Tables 1 and 2 (Appendix A) provide a comprehensive compendium of the various plant and animal species observed during the field investigations.

4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDDB) search was performed. Based on this review, it was determined that eight special status species have been documented within the Solomons Knob quadrangle of the property, three wildlife species and five plant species. 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 Solomons Knob Quadrangle			
Tidestrom's milk-vetch (<i>Astragalus tidestromii</i>)	Federal: None State: None CNPS: 2B.2	Mojavean desert scrub. Found in washes, in sandy or gravelly soil. On limestone. 765-1575 m.	The site does not support suitable habitat for the species. None were observed during the field investigations.
Lincoln rockcress (<i>Boechera lincolnensis</i>)	Federal: None State: None CNPS: 2B.3	Mojavean desert scrub. Found on limestone. 880-2410 m.	The site does not support suitable habitat for the species. None were observed during the field investigations.
Desert pincushion (<i>Escobaria chlorantha</i>)	Federal: None State: None CNPS: 2B.1	Mojavean desert scrub, Joshua tree woodland, pinyon and juniper woodland. Found in calcareous substrates; rocky and gravelly sites. 70-1790 m.	The site does not support suitable habitat for the species. None were observed during the field investigations.
Mormon needle grass (<i>Stipa arida</i>)	Federal: None State: None CNPS: 2B.3	Joshua tree woodland, pinyon-juniper woodland. Found in rocky limestone ridges. 500-2570 m.	The site does not support suitable habitat for the species. None were observed during the field investigations.
Jackass-clover (<i>Wislizenia refracta ssp. refracta</i>)	Federal: None State: None CNPS: 2B.2	Playas, desert dunes, Mojavean desert scrub, Sonoran desert scrub. Found in sandy washes, roadsides, alkaline flats. 380-1160 m.	The site supports marginal habitat for the species. However none were observed during the field investigations.

Notes:

Status abbreviations:

CNPS List 1A: Plants presumed extirpated in California and either rare or extinct elsewhere

CNPS List 1B: Plants rare, threatened, or endangered in California and elsewhere

CNPS List 2A: Plants presumed extirpated in California, but more common somewhere else

CNPS List 2B: Plants rare, threatened, or endangered in California, but more common somewhere else

CNPS List 3: Plants about which more information is needed - a review list

CNPS List 4: Plants of limited distribution - a watch list

.1 Seriously threatened in California (over 80% of occurrences threatened/ high degree and immediacy of threat)

.2 Moderately threatened in California (20-80% occurrences threatened/ moderate degree and immediacy of threat)

.3 No very threatened in California (<20% of occurrences threatened/ low degree and immediacy of threat or no current threats known)

Table 4-2: Special status wildlife and insects documented in the region (Source: CNDDDB, 2024) or likely to occur in the region.

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ABSENCE ON PROPERTY
ANIMAL			
Within Solomons Knob Quadrangle			
Desert tortoise (<i>Gopherus agassizii</i>)	Federal: Threatened State: Threatened	Most common in desert scrub, desert wash, and Joshua tree habitats; occurs in almost every desert habitat often in creosote bush scrub.	The site supports marginal suitable habitat. However, no signs or observations occurred during the field investigations.
Townsend's big-eared bat (<i>Corynorhinus townsendii</i>)	Federal: None State: None CDFW: SSC	Found throughout California. Roosts in the open, hanging from walls and ceilings. Roosting sites limiting. Extremely sensitive to human disturbance.	The site support marginal suitable habitat for the species. None were observed during the field investigations.
Bendire's thrasher (<i>Toxostoma bendirei</i>)	Federal: None State: None CDFW: SSC	Migratory; local spring/summer resident in flat areas of desert succulent shrub/Joshua tree habitats in Mojave Desert. Nests in cholla, yucca, palo verde, thorny shrub, or small tree, usually 0.5 to 20 feet above ground.	The site does support marginal suitable habitat for the species. None were observed during the field investigations.

Notes:

Status abbreviations:

SSC: Species of Special Concern

CDFW: California Department of Fish and Wildlife

5.0 RESULTS

5.1 General Biological Resources

The site supports a disturbed desert scrub plant community that is dominated by ruderal vegetation and non-native grasses. Species present include Eastern Joshua Tree (*Yucca jaegeriana*), common fiddleneck (*Amsinckia intermedia*), rubber rabbitbrush (*Ericameria nauseosa*), california buckwheat (*Eriogonum fasciculatum*), chamiso (*Atriplex canescens*), bladder sage (*Scutellaria mexicana*), and Indian rice grass (*Oryzopsis hymenoides*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed included common ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), Gambel's quail (*Callipepla gambelii*), mourning dove (*Zenaida macroura*), anna's hummingbird (*Calypte anna*), and rock pigeon (*Columba livia*). The only mammal observed on site during the July 2024 field survey was the desert cottontail (*Sylvilagus audubonii*). Other mammals such as the California ground squirrel (*Otospermophilus beecheyi*), coyote (*Canis latrans*) and black-tailed jackrabbit (*Lepus californicus*) are common in the area and are expected to occur on site. Only a single reptile was observed on site, western fence lizard (*S. occidentalis*) but some that are common in the region include the common side-blotched lizard (*Uta stansburiana*) and coast horned (*Phrynosoma coronatum*). Tables 1 and 2 (Appendix A) provide a compendium of the various plant and animal species identified during the field investigations and those common to the area. No distinct wildlife corridors were identified on the site or in the immediate area.

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

5.2 Federal and State Listed Species

The following are the listed and special status species that have the ability to occur on the project site or which are present. However, it is not a comprehensive list of all the special status species which have been documented in the immediate region (CNDDB, 2024).

Desert Tortoise: The site is located within the documented tortoise habitat according to CNDDDB (CNDDDB, 2024). The property supports minimal suitable habitat for the desert tortoise; however, no tortoises or tortoise sign (burrows, scats, etc.) were observed anywhere within the property boundaries or in the zone of influence during the July 2, 2024, surveys. Based on the results of the survey, lack of suitable burrow and signs and the interstate north of the site acting as a barrier, tortoises are not expected to move onto the site in the near future.

5.3 Species of Special Concern

The following is a list of special status wildlife species which have been documented in the region; however, only a few of these species could potentially occur on the site. Several of the species are not expected to occur on the property due to absence of suitable habitat but are included for clarity.

Townsend's big-eared bat: Townsend's big-eared bat is a medium-sized insectivorous bat with very large ears, which measure about half its body length and are connected at the base. There are two prominent lumps on either side of the nostrils which may function as sexual scent glands. Their wingspan ranges from 12 to 13 inches and they weigh one-third to one-half ounce, about the weight of one to two large marshmallows. Townsend's big-eared bat has been observed in the region once (Occurrence #320, Solomons Knob, California Quad, CNDDDB 2024), with the most recent documented sighting (1969) in the region approximately 2 miles to the southwest (CNDDDB, 2024). The species is not expected to occur on the site in the near future based on no recent observations of the species in the area.

Bendire's thrasher: The Bendire's thrasher is characterized by its dusty brown plume with long tail, found in shrubby deserts and grasslands. Its migratory nature often leads to the bird being overlooked in its typical range within California. The nearest observation is within a mile southwest of the site and was recorded in 1977 (Solomons knob, California Quad, CNDDDB 2024). Although marginal habitat is present none were observed or identified via call or song during the 2024 field survey.

5.4 Jurisdictional Waters and Riparian Habitat

The following sources were reviewed to determine the potential presence or absence of jurisdictional streams/drainages, wetlands, and their location within the watersheds associated with the Project site, and other features that might contribute to federal or state jurisdictional authority located within watersheds associated with the Project site:

- National Wetlands Inventory (NWI) maps (USFWS 2018b). The NWI database indicates potential wetland areas based on changes in vegetation patterns as observed from satellite imagery. This database is used as a preliminary indicator of wetland habitats because the satellite data are not precise;
- USGS National Hydrography Dataset (NHD) provides the locations of “blue-line” streams as mapped on 7.5-Minute Topographic Map coverage;
- Aerial Imagery (Google Earth) (Google 2024);
- USGS 7.5-Minute Topographic Maps; and
- Natural Resources Conservation Service (NRCS) Soil Survey.

Assessments of potential jurisdictional areas within the Project site were conducted by RCA Associates, Inc. biologists Ryan D. Hunter and Brian S. Bunyi on July 2, 2024, to determine the current site conditions. All areas with potential depressions or drainages were evaluated to determine if they may be considered jurisdictional waters, including jurisdictional wetlands. The site does not contain any potential channel.

It is the opinion of RCA Associates, Inc. that a comprehensive jurisdictional delineation will not be necessary in the future.

5.5 Protected Plants

As of July 10, 2023, California legislature passed and signed the Western Joshua Tree Conservation Act (WJTCA, Senate Bill 122) into effect listing the Western Joshua tree (*Yucca brevifolia*) as an endangered species. The WJTCA authorizes CDFW to oversee the various permitting processes dealing with mitigation and/or removal of Western Joshua trees. **No Western Joshua Trees were observed on the July 2024 field investigation. There are only Eastern**

Joshua trees on site which may require a basic protected plant plan but will not require an Incidental Take Permit or the payment of Mitigation fees to CDFW.

Eastern Joshua trees were observed on the project site. The Eastern Joshua tree (*Yucca jaegeriana*) has not been listed as a threatened or endangered species. The Eastern Joshua tree differs from the Western Joshua tree (*Yucca brevifolia*) by several characteristics which include, habitat range, differing pollinator species, overall shape and flower structure and a greater tendency for the Eastern Joshua tree to branch. A range map of both species as indicated in Figure 4 in relation to the project site shows the two distinct species of Joshua tree.

6.0 IMPACTS AND MITIGATION MEASURES

6.1 General Biological Resources

Future development of the site will have minimal impact on the general biological resources present on site, because a large portion of the vegetation has already been cleared and the remaining plants will most likely be removed during future construction activities. The site is expected to support various wildlife species which will be impacted by development activities. Those species with limited mobility (i.e., small mammals and reptiles) will experience increases in mortality during the construction phase. However, more mobile species (i.e., birds, large mammals) will be displaced into adjacent areas and will likely experience minimal impacts. Therefore, loss of about 9.18-acres of a relatively disturbed desert scrub habitat is not expected to have a significant cumulative impact on the overall biological resources in the region given the presence of similar habitat throughout the surrounding area. No sensitive habitats (e.g., wetlands, vernal pools, critical habitats for sensitive species, etc.) were observed on the site during the field investigations.

6.2 Federal and State Listed and Species of Special Concern

No federal or State-listed species were observed on the site during the field investigations including the desert tortoise. In addition, there are 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 habitat, suitable burrows, or signs. Please refer to section 5.5.

A pre-construction burrowing owl survey may be required by CDFW to determine if any owls have moved on to the site since July 2, 2024, surveys. As stated in CDFW's *Staff Report on Burrowing Owl Mitigation*, the most effective method of completing a pre-construction survey (take avoidance survey) should be performed no less than 14 days of ground disturbance, followed by a final pre-construction survey within 24 hours of breaking ground.

7.0 CONCLUSIONS AND CONSIDERATIONS

Future development activities include development of the property within the approximate 9.18-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) on site are expected to be negligible. This assumption is based on the suitable habitat located in the surrounding areas of the region. In addition, future development activities are not expected to have any impact on any State or Federal listed or State special status 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 potential or active burrows. Some mitigation measures that may be considered are:

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 a 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.
 - b. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.
2. Focused plant surveys for all special status plant species that have the potential to occur on the site. If focused plant surveys are considered, surveys should be performed during the blooming season (April - June) to determine the potential environmental effects of the proposed project on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife

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 D. Hunter and Brian S. Bunyi. I certify that I have not signed a non-disclosure or consultant confidentiality agreement with the project applicant or applicant’s representative and that I have no financial interest in the project.

Date: 07/18/2024 Signed: *Ryan D. Hunter*
Brian S. Bunyi

Field Work Performed By: Ryan D. Hunter
Principal Environmental Scientist/Biologist

Field Work Performed By: Brian S. Bunyi
Environmental Scientist/Wildlife Biologist

Appendix A
Tables and Figures

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

Common Name	Scientific Name	Location
Creosote bush	<i>Larrea tridentata</i>	On Site
Asian mustard	<i>Brassica tournefortii</i>	“
Eastern Joshua tree	<i>Yucca jaegeriana</i>	“
Fiddleneck	<i>Amsinckia intermedia</i>	“
California croton	<i>Croton californicus</i>	“
Rubber rabbitbrush	<i>Ericameria nauseosa</i>	“
Indian rice grass	<i>Oryzopsis hymenoides</i>	“
Oleander	<i>Nerium spp.</i>	“
Mulberry	<i>Morus spp.</i>	“
Rattlesnake weed	<i>Euphorbia albomarginata</i>	“
Desert wishbone	<i>Mirabilis laevis</i>	“
Pencil cholla	<i>Cylindropuntia leptocaulis</i>	“
Silver cholla	<i>Cylindropuntia echinocarpa</i>	“
Chamiso	<i>Atriplex canescens</i>	“
California buckwheat	<i>Eriogonum fasciculatum</i>	“
Nevada jointfir	<i>Ephedra nevadensis</i>	“
Beavertail cactus	<i>Opuntia basilaris</i>	“
Stinkwort	<i>Dittrichia graveolens</i>	“
Cheatgrass	<i>Bromus tectorum</i>	“
Mojave yucca	<i>Yucca schidigera</i>	“
Bladder sage	<i>Scutellaria mexicana</i>	“
Common stork's bill	<i>Erodium cicutarium</i>	“
Kelch grass	<i>Schismus barbatus</i>	“
Tumbleweed	<i>Kali tragus var. tragus</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>Carpodacus mexicanus</i>	“
Rock pigeon	<i>Columba livia</i>	“
Mockingbird	<i>Mimus polyglottos</i>	“
Gamble’s quail	<i>Callipepla gambelii</i>	“
Cottontail rabbit	<i>Sylvilagus audubonii</i>	“
Anna’s hummingbird	<i>Calypte anna</i>	“
Mourning dove	<i>Zenaida macroura</i>	“
Western fence lizard	<i>Sceloporus occidentalis</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 Lahontan Regional Water Quality Control Board (RWQCB). Any activity or facility that will discharge waste (such as soils from construction) into surface waters, or from which waste may be discharged, must obtain an NPDES permit or waiver from the RWQCB. The RWQCB evaluates an NPDES permit application to determine whether the proposed discharge is consistent with the adopted water quality objectives of the basin plan.

California Fish and Wildlife Code, Sections 1600-1616

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

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

California Fish and Wildlife Code, Section 3503.5

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

Migratory Bird Treaty Act

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

Sensitive Natural Communities

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

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

Protected Plants

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

- Dalea spinosa (smoketree)
- All species of the genus Prosopis (mesquites)
- All species of the family Agavaceae (century plants, 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.

