

# GENERAL BIOLOGICAL RESOURCES ASSESSMENT

LANCASTER, LOS ANGELES COUNTY, CALIFORNIA

(Township 7 North, Range 12 West, Section 3)

APN: 3137-007-020

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Project: #2020-113

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## **TITLE PAGE**

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**Report Title:** General Biological Resources Assessment

**Assessor's Parcel Number:** 3137-007-020

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## 1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 10-acre parcel (approximately) located west of Division Street, east of Sierra Highway, and north of West Avenue G 8 in the city of Lancaster, California (Township 7 North, Range 12 West, Section 3, USGS Lancaster West, California Quadrangle, 1956) (Figures 1, 2, and 3). Focused surveys were also performed for the desert tortoise and burrowing owl. A habitat assessment was also performed for the Mohave ground squirrel. The site does not show signs of any past disturbance. The property supports a desert scrub community consisting of rubber rabbitbrush (*Ericameria nauseosa*), kelch grass (*Schismus barbatus*), Asian mustard (*Brassica tournefortii*), Joshua tree (*Yucca brevifolia*), tumbleweed (*Kali tragus subsp. tragus*), shadscale saltbush (*Atriplex confertifolia*), summer cypress (*Bassia scoparia*) and lotebush (*Sarcophagus obtusifolius*).

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 October 28, 2020, 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.

Focused surveys were also conducted for both desert tortoise and burrowing owl and a habitat assessment was performed for the Mohave ground squirrel. Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDB 2020), Mohave ground squirrels (*Xerospermophilus mohavensis*) have been documented within approximately four miles southwest of the property. 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 10-acres in size and is located West of Division Street, East of Sierra Highway, and North of West Avenue G 8 in the City of Lancaster, California (Township 7 North, Range 12 West, Section 3, USGS Lancaster West, California Quadrangle, 1956). The site shows little disturbance, and supports a desert scrub community consisting of mainly native plants and nonnative grasses. Vacant land borders the site to the west and south, east of the site is a drilling company yard, and to the north lies land being used for industrial purposes.

The property supports a desert scrub community consisting of rubber rabbitbrush (*Ericameria nauseosa*), kelch grass (*Schismus barbatus*), Asian mustard (*Brassica tournefortii*), tumbleweed (*Kali tragus subsp. tragus*), Joshua tree (*Yucca brevifolia*), California juniper (*Juniperus californica*), Shadscale saltbush (*Atriplex confertifolia*), lotebush (*Sarcophagus obtusifolius*), cheatgrass (*Bromus tectorum*), red brome (*Bromus rubens*), and broom snakeweed (*Gutierrezia sarothrae*). Section 5.0 provides a more detailed discussion of the various plant species observed during the surveys.

The site is expected to support a variety of wildlife species. Although no mammals were observed on site, tracks were observed on sight belonging to raccoon (*Procyon lotor*) and bobcat (*Lynx rufus*). Other mammalian species that are expected to inhabit the site and the surrounding area including jackrabbits (*Lepus californicus*), desert cottontails (*Sylvilagus auduboni*), California ground squirrel (*Otospermophilus beecheyi*), and coyote (*Canis latrans*).

Birds observed on site and in the surrounding area included ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), house sparrow (*Passer domesticus*), sagebrush sparrow (*Artemisiospiza nevadensis*), Loggerhead shrike (*Lanius ludovicianus*), Red-tail hawk (*Buteo jamaicensis*), mourning dove (*Zenaida macroura*), and rock pigeon (*Columba livia*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

There were no reptiles observed on site during the October 28, 2020 field investigations. Reptiles that occur in the surrounding area and probably occur on the site include side-blotched lizard (*Uta stansburiana*), western fence lizard (*Sceloporus occidentalis*), and desert spiny lizard (*Sceloporus magister*). 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 (2020) and none were observed during the field investigations.



### 3.0 METHODOLOGIES

General biological surveys were conducted on October 28, 2020, during which biologists from RCA Associates, Inc. initially walked meandering transects throughout the property site. 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). Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the high 60's (°F) (AM) with clear skies. The applicable methodologies are summarized below.

**General Plant and Animal Surveys:** Meandering transects were walked throughout the site and in the surrounding area (i.e., the zone of influence) at a pace that allowed for careful documentation of the plant and animal present on the site. All plants observed were identified in the field and wildlife was identified through visual observations and/or by vocalizations. Tables 1 and 2 (Appendix A) provides a comprehensive compendium of the various plant and animal; species observed during the field investigations.

**Desert Tortoise:** A habitat assessment was conducted on October 28, 2020 for the desert tortoises and a protocol survey was also performed for the presence tortoise and potential tortoise burrows by biologists from RCA Associates, Inc. Ten-meter, parallel belt transects were walked in a north-south direction until the entire property had been checked for any tortoise sign (burrows, tracks, scats, etc.). Surveys in the zone of influence (ZOI) were also conducted in the area north, east, south, and west of the site. Comprehensive field investigations were conducted throughout the site during the biological surveys and no tortoise sign was identified on the site or zone of influence.

During the various biological surveys, all transects were walked at a pace that allowed careful observations along the transect routes and in the immediate vicinity. Field notes were recorded regarding native plant assemblages, wildlife sign, and human effects in order to determine the presence or absence of suitable tortoise foraging habitat. If tortoises are found to inhabit the site



in the future, a Section 10(a) incidental take permit from the USFWS and a Section 2081 permit from CDFW will be required to mitigate impacts to the species.

**Burrowing Owl:** A habitat assessment (Phase 1) was conducted for the burrowing owl in conjunction with the general biological surveys to determine if the site supports suitable habitat for the species on October 28, 2020. Following completion of the habitat assessment, it was determined that the site does support suitable habitat for the burrowing owl. As part of the burrowing owl survey, meandering transects were walked throughout the site during which any suitable burrows were evaluated for owls and owl sign. Burrowing owls typically utilize burrows which have been excavated by other animals (squirrels, coyotes, foxes, dogs, etc.) since owls rarely dig their own burrows. A few suitable (i.e., occupiable) burrows were observed on the site; however, no owls or owl sign (i.e., whitewash, feathers, or castings) were observed during the survey.

CDFW protocol also requires surveys be conducted in the surrounding area out to a distance of about 500 feet; therefore, zone of influence (ZOI) surveys were performed in the area surrounding the site. If owls are present on a site, CDFW typically requires the owls to be passively relocated during the non-breeding season.

**Mohave Ground Squirrel:** A habitat assessment was performed for the Mohave ground squirrel. The site was also evaluated for connectivity with habitats in the surrounding area which might support populations of the Mohave ground squirrel. Due to the low population levels in the region and no recent observations in this area of the Mojave Desert, it is the opinion of RCA Associates, Inc. that the likelihood of a Mohave ground squirrel occurring on the proposed project site is extremely low.

#### 4.0 LITERATURE SEARCH

As part of the environmental process, a search of the California Natural Diversity Database (CNDDB 2020) search was performed. Based on this review, it was determined that nine sensitive wildlife species, five sensitive plant species, and one sensitive invertebrate species 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;  
CNDDB = California Natural Diversity Data Base

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
<b>PLANTS</b>			
<b>Within Lancaster West Quadrangle</b>			
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 support suitable habitat; however, no milk-vetch plants were observed and are not expected to occur 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 support suitable habitat; however, no poppies were observed, and are not expected to occur on site.
Alkali mariposa-lily ( <i>Calochortus striatus</i> )	Federal: None State: None CNPS: 1B.2	Marshes and damp places	Not expected to occur 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 support suitable habitat, however no spineflowers were observed, and are not expected to occur on site.
Rosamund eriastrum ( <i>Eriastrum rosamondense</i> )	Federal: None State: None CNPS: 1B.1	Sandy vernal pool edges	No suitable habitat, not expected to occur 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: Special status wildlife and insects documented in the region (Source: CNDDB, 2020) or likely to occur in the region**

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ABSENCE ON PROPERTY
<b>ANIMAL</b>			
<b>Within Lancaster West Quadrangle</b>			
Crotch bumble bee ( <i>Bombus crotchii</i> )	Federal: None State: Candidate Endangered	Grasslands and shrublands.	No Crotch bumble bees were observed on the property, and the species not expected to occur on the 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	Grasslands and desert habitats.	Suitable habitat present but no sign or owls observed on site.
Coast horned lizard ( <i>Phrynosoma blainvillii</i> )	Federal: None State: None	Inhabits open areas of sandy soils and low vegetation in valleys, foothills, and semiarid mountains.	Suitable habitat present but none observed on site.
Mohave ground squirrel ( <i>Xerospermophilus mohavensis</i> )	Federal: None State: Threatened	Desert scrub.	Suitable habitat present but not expected to occur on the site due to low populations in the region.



Swainson's Hawk ( <i>Buteo swainsoni</i> )	Federal: None State: Threatened	Juniper sagebrush communities.	Species unlikely to utilize the site during hunting activities.
Ferruginous hawk ( <i>Buteo regalis</i> )	Federal: None State: None	Semi-arid to arid western plains.	Species unlikely to utilize the site during hunting activities
Merlin ( <i>Falco columbarius</i> )	Federal: None State: None	Open conifer woodland.	Species unlikely to utilize the site during hunting activities.
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	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 desert scrub community that has not been disturbed in the past, with native vegetation occurring throughout the site (Figure 3). Species present on the site included rubber rabbitbrush (*Ericameria nauseosa*), Asian mustard (*Brassica tournefortii*), tumbleweed (*Kali tragus subsp. tragus*), Joshua tree (*Yucca brevifolia*), California juniper (*Juniperus californica*), Shadscale saltbush, lotebush (*Sarcophagus obtusifolius*), cheatgrass (*Bromus tectorum*), red brome (*Bromus rubens*), and broom snakeweed (*Gutierrezia sarothrae*) and kelch grass (*Schismus barbatus*). Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed on site and in the surrounding area included ravens (*Corvus corax*), house finch (*Carpodacus mexicanus*), house sparrow (*Passer domesticus*), sagebrush sparrow (*Artemisiospiza nevadensis*), Loggerhead shrike (*Lanius ludovicianus*), Red-tail hawk (*Buteo jamaicensis*), mourning dove (*Zenaida macroura*), and rock pigeon (*Columba livia*). Table 2 provides a compendium of all wildlife species occurring on the site and/or in the immediate surrounding area.

The site is expected to support a variety of wildlife species. Although no mammals were observed on site common raccoon (*Procyon lotor*) and bobcat (*Lynx rufus*) tracks were observed. Other mammalian species expected to occur on site and the surrounding area include jackrabbits (*Lepus californicus*), desert cottontails (*Sylvilagus auduboni*), California ground squirrel (*Otospermophilus beecheyi*), and coyote (*Canis latrans*). Table 2 provides a compendium of all wildlife species occurring on the site and/or in the immediate surrounding area.

Merriam's kangaroo rats (*Dipodomys merriamii*) may also occur on the site given their widespread 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 Reptiles were observed during the survey on site or in the surrounding area. Some Species known to occur in the area which may also occur on the site include the western fence lizard



(*Sceloporus occidentalis*) and desert spiny lizard (*Sceloporus magister*). Table 2 provides a compendium of wildlife species observed during the various surveys and those likely to occur in the 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**

**Desert Tortoise:** The property supports marginal habitat for the desert tortoise based on the vegetation present on site. No tortoises or tortoise sign (burrows, scats, etc.) were observed anywhere within the property boundaries during the October 28, 2020 protocol surveys. The species is not expected to move onto the site in the near future based on the absence of any sign, absence of any recent observations in the immediate area, and the absence of suitable foraging habitat in the immediate area. The protocol survey results are valid for one year as per CDFW and USFWS requirements.

**Mohave Ground Squirrel:** There are no recent observations of Mojave ground squirrels within the area. 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:

1. Small size (10-acres);
2. No recent documented observations in the general region; and
3. No connectivity with habitat which may support the species.

## **5.3 Wildlife Species of Special Concern**

**Burrowing Owl:** No owls were seen on the property during the survey and no owl signs (whitewash, castings, etc.) was noted at any of the suitable (i.e., "occupiable") burrows present on



the site. Owls could potentially occur on the site in the future; however, a pre-construction survey will be required by CDFW prior to the start of future ground disturbance activities.

#### **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 approximately 20 Joshua Trees (*Yucca brevifolia*) observed on site during the October 28, 2020 field investigations. Due to the presence of Joshua Trees, a “protected plant plan” will be required by the City.

## **6.0 IMPACTS**

### **6.1 General Biological Resources**

Future development of the site will impact the general biological resources present on the site, and most 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 10-acres of desert scrub habitat is not expected to have a significant cumulative impact on the overall biological resources in the region given the amount of similar habitat in the surrounding desert region. However, Joshua trees, which were recently listed as threatened (candidate) by CDFW, are present on the site and appropriate mitigation measures for the trees may be required to minimize impacts.

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 site or in the immediate area. The site is not expected to support populations of the desert tortoise based on the absence of any tortoise sign (e.g., burrows, scats, tracks, etc.) during the protocol survey. Mohave ground squirrels are unlikely to inhabit the site given the small size of the site (10-acres) and the very low populations levels in the region.

As per CDFW protocol, the burrowing owl survey results are valid for only 30 days; therefore, CDFW will 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 October 28, 2020, surveys.



## 7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities are expected to result in the removal of vegetation from the 10-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be minimal. This assumption is based on the presence of habitat on the site which is very common throughout 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. However, Joshua trees, which were recently listed as a threatened species (candidate) by CDFW may be impacted by the project; therefore, appropriate mitigation measures will need to be implemented to minimize impacts to the species.

As discussed above, no desert tortoises or observed during the protocol survey. In addition, burrowing owls do not inhabit the site and are not expected to be impacted given the absence of the species and the absence of any owl sign at the few suitable burrows present on the site.

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.
  - 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. A Protected Plant Plan should be prepared and shall identify methods, locations, and criteria for transplanting those trees that would be removed during Project construction.



CDFW should be contacted prior to the start of any transplanting activities to discuss the potential need for an Incidental Take Permit.

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 Randall Arnold and other biologists under his direction. 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: 11/4/2020 Signed: Randall Arnold

Field Work Performed By: Randall Arnold  
President and Senior Biologist

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
Tumbleweed	<i>Kali tragus subsp. tragus</i>	On site and surrounding area
Shadescale saltbush	<i>Atriplex confertifolia</i>	"
California buckwheat	<i>Eriogonum fasciculatum</i>	"
Wild oat	<i>Avena fatua</i>	"
Asian mustard	<i>Brassica tournefortii</i>	"
Desert holly saltbush	<i>Atriplex hymenelytra</i>	"
Fiddleneck	<i>Amsinckia intermedia</i>	"
Kelch grass	<i>Schismus barbatus</i>	"
Rubber rabbitbrush	<i>Ericameria nauseosus</i>	"
Ephedra	<i>Ephedra nevadensis</i>	"
Red brome	<i>Bromus rubens</i>	"
Cheatgrass	<i>Bromus tectorum</i>	"
California juniper	<i>Juniperus californica</i>	"
Broom snakeweed	<i>Gutierrezia sarothrae</i>	"
Summer cypress	<i>Bassia scoparia</i>	"
Sand golden-heather	<i>Hudsonia tomentosa</i>	"
Big saltbush	<i>Atriplex lentiformis</i>	"
desert salt-grass	<i>Distichlis spicata</i>	"
Joshua tree	<i>Yucca brevifolia</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
House finch	<i>Carpodacus mexicanus</i>	"
House sparrow	<i>Passer domesticus</i>	"
Sagebrush sparrow	<i>Artemisiospiza nevadensis</i>	"
Loggerhead shrike	<i>Lanius ludovicianus</i>	"
Common Raccoon	<i>Procyon lotor</i>	Tracks seen on site
Bobcat	<i>Lynx rufus</i>	"
Mourning dove	<i>Zenaida macroura</i>	Surrounding area
Red-tailed hawk	<i>Buteo Jamaicensis</i>	"
Side-blotched lizard	<i>Uta Stansburiana</i>	"
Desert cottontail	<i>Sylvilagus auduboni</i>	"
Jackrabbit	<i>Lepus Californicus</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.



FIGURE 1: REGIONAL EXHIBIT





Imagery Date: 4/29/2017 34°43'40.31" N 118°08'04.84" W elev 2325 ft eye alt 8327 ft

RCA  
ASSOCIATES, INC.  
SOURCE: GOOGLE EARTH

FIGURE 2: VICINITY EXHIBIT





CENTER OF SITE LOOKING WEST



CENTER OF SITE LOOKING EAST

FIGURE 3  
PHOTOGRAPHS OF SITE





CENTER OF SITE LOOKING SOUTH



CENTER OF SITE LOOKING NORTH

FIGURE 3, cont.  
PHOTOGRAPHS OF SITE



## **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 storm water management plan to insure 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 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
- Joshua Trees

The project would be required to comply with the appropriate Desert Native Plant Protection Ordinance and the recent listing of the Joshua tree as a threatened species (candidate) by CDFW.