

GENERAL BIOLOGICAL RESOURCES ASSESSMENT

**KRAMER JUNCTION, SAN BERNARDINO COUNTY,
CALIFORNIA**

**(Township 11 North, Range 6 West, Section 32)
(APN: 0491-151-11)**

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Project Location: Kramer Junction, California
APN: 0491-151-11

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REGULATORY CONTEXT

1.0 INTRODUCTION AND SUMMARY

Biological surveys were conducted on a 38-acre parcel (Approximate), located on the northeast corner of the intersection of Highway 395 and Highway 58 in Kramer Junction, California (Township 11 North, Range 6 West, Section 31, USGS Saddleback Mountain, California Quadrangle, 1956) (Figures 1 and 2). The property is located on the eastern side of Highway 395 just north of Highway 58.

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 20, 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. **Additionally, the site was surveyed for Joshua trees and none occur on site or in a 180 ft buffer of the surrounding area.** Based on data from USFWS, CDFW, and a search of the California Natural Diversity Database (CNDDDB, 2022). 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 38-acres and is located on the northeast corner of the intersection of Highway 395 and Highway 58 in Kramer Junction, California (APN: 0491-151-11). The site is located in Section 31, Township 11 North, Range 6 West (USGS Saddleback Mountain, CA 7.5-minute quadrangle) (Figures 1 and 2). Vacant properties surround the site in all directions and the nearest commercial centers are located in the south about 750 meters away. Northwest of the property about 1500 meters is the Kramer Solar Plant.

The relatively flat site is approximately 750 meters above sea level and contains no slope. The vegetation community present on site supports a mildly disturbed desert scrub habitat encompassing a community of mainly native plants and some non-native grasses. The site is dominated by few species such as white bursage (*Ambrosia dumosa*), fiddleneck (*Amsinckia*), doveweed (*Croton setiger*), and cheatgrass (*Bromus tectorum*). 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. Species that were not observed but are expected to occur on site given their abundance in the surrounding areas include California ground squirrel (*Otospermophilus beecheyi*) and coyote (*Canis Latrans*).

Birds observed included common ravens (*Corvus corax*), white crowned sparrow (*Zonotrichia leucophrys*), horned lark (*Eremophila alpestris*), house sparrow (*Passer domesticus*) and rock pigeon (*Columba livia*). Section 5.0 provides a more detailed discussion of the various species observed during the surveys.

Reptiles observed include the common side-blotched lizard (*Uta stansburiana*). Species that are expected to occur on site include the western whiptail lizard (*Cnemidophorus tigris*) and western fence lizard (*Sceloporus occidentalis*). 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 (2022) and none were observed during the field investigations.

3.0 METHODOLOGIES

General biological surveys were conducted on January 20, 2022, 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, burrowing owl, and Mohave ground squirrel. Weather conditions consisted of wind speeds of 0 to 5 mph, temperatures in the low 40's to low 50'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, 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 2022) search was performed. Based on this review, it was determined that four special status species have been documented within the Saddleback Mountain quad of the property. The following tables provide data on each special status species which has been documented in the area.

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

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

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
PLANTS			
Within Saddleback Mountain Quadrangle			
white pygmy-poppy (<i>Canbya candida</i>)	Federal: None State: None CNPS: 1B.2	Creosote Bush Scrub, Joshua Tree Woodland	The site does not support suitable habitat for the species; None of the species were observed during field surveys.
Booth's evening-primrose (<i>Eremothera boothii</i> ssp. <i>boothii</i>)	Federal: None State: None CNPS: 2B.2	Desert washes, open plains, scrubland	The site does support suitable habitat; however no Booth's evening-primrose was observed.
Barstow woolly sunflower (<i>Eriophyllum mohavense</i>)	Federal: None State: None CNPS: 1B.2	Creosote bush scrub and saltbush scrub plant communities	The site does not support suitable habitat for the species; None of the species were observed during field surveys.

Table 4-2: Special status wildlife and insects documented in the region (Source: CNDDDB, 2022).

NAME	STATUS	HABITAT REQUIREMENTS	PRESENCE/ ABSENCE ON PROPERTY
Wildlife Species			
Within Saddleback Mountain Quadrangle			
Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>)	Federal: None State: Threatened	Desert scrub	The site does support suitable habitat for the species. Species has not been identified in the area; therefore, species is not likely to inhabit the site.

Notes:

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 elsewhere.

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

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

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

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

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

4.3: Not very threatened in California (less than 20% of occurrence threatened/low degree and immediacy of threat or no current threats known.)

SSC = Species of Special Concern

5.0 RESULTS

5.1 General Biological Resources

The site has been graded and cleared of all vegetation with the exception of a few ruderal plant species (Figure 3). Species present on the site include kelch grass (*Schismus barbatus*), creosote bush (*Larrea tridentata*), Asian mustard (*Brassica tournefortii*), western tansy mustard (*Descurainia pinnata*) and Russian thistle (*Salsola australis*). **No Joshua trees were found on site or in the 180 ft buffer surrounding the property.** Table 1 provides a compendium of all plants occurring on the site and/or in the immediate surrounding area.

Birds observed included ravens (*Corvus corax*), rock pigeon (*Columba livia*), sagebrush sparrow (*Artemisiospiza nevadensis*) and house sparrow (*Passer domesticus*). Table 2 provides a complete compendium of wildlife species occurring on site or in the surrounding area

Mammals were observed on site, which include Antelope Ground squirrel (*Ammospermophilus leucurus*), however we can assume that black-tailed jackrabbit (*Lepus californicus*) and coyote (*Canis latrans*) although not observed are present in the area due to current conditions. Other wildlife species that may occur on site include desert cottontails (*Sylvilagus audubonii*) and California ground squirrels (*Otospermophilus beecheyi*), 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.

Only one reptile species, the Side-blotched lizard (*Uta stansburiana*) was observed on site during the January 2022 field investigations. However, some reptiles that may inhabit the site include the western fence lizard (*Sceloporus occidentalis*), and the Western Whiptail Lizard (*Cnemidophorus tigris*).

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 site is located within the documented tortoise, a state and federal threatened species, habitat according to CNDDDB (2022). The property supports marginal habitat for the desert tortoise based on the location of the site in a semi-developed area of Kramer Junction. No tortoises were observed anywhere within the property boundaries during the January 20, 2022 surveys. The species is not expected to move onto the site in the near future based on the absence of any potential burrows or 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 area.

5.3 Species of Special Concern

None in the Saddleback Mountain Quadrangle.

5.4 Jurisdictional Waters and Riparian Habitat

No riparian vegetation (e.g., cottonwoods, willows, etc.) exist on the site, however a potential jurisdictional channel was observed on the northern boundary of the site that runs west to east along the northern boundary intersecting the site at numerous points, a comprehensive jurisdictional delineation maybe required.

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 until a final decision is made in 2022. No Joshua trees were observed on site or in the surrounding 180 foot buffer area bordering the property during the January 20, 2022 field investigations. A Protected Plant Preservation Plan or Joshua tree survey will not need to be prepared.

6.0 IMPACTS AND MITIGATION MEASURES

6.1 General Biological Resources

Future development of the site will impact the general biological resources present on site, because most if not all of the vegetation will be removed during future construction activities. The site is expected to support very few 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 38-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 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 habitat, suitable burrows, or signs.

The Western Joshua tree (*Yucca brevifolia*), a candidate threatened species under the California Endangered Species Act (CESA), a Federal or State Listed and Species of Special Concern was not observed. Refer to section 5.5 for more information on the status and requirements on this species.

A pre-construction burrowing owl survey may be required by CDFW to determine if any owls have moved on to the site since January 20, 2022 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 within 30 days of ground disturbance, followed by a final pre-construction survey within 24 hours of breaking ground.

7.0 CONCLUSIONS AND RECOMMENDATIONS

Future development activities include the grading and removal of all vegetation from the .9-acre parcel; however, cumulative impacts to the general biological resources (plants and animals) in the surrounding area are expected to be negligible. This assumption is based on the habitat containing scarce vegetation of non-native species. As discussed above, the site does not support any desert tortoises or burrowing owls due to the lack of suitable habitat and potential burrows. In addition, Joshua trees (a state candidate species) were not observed in the field investigations during January 2022. 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 focused plant survey is recommended for all special status plant species that have the potential to occur on the site to be performed during the blooming season (April - June) to determine the potential environmental effects of the proposed projects 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.

8.0 BIBLIOGRAPHY

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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, Jessica Hensley, and Brian 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: 01/25/2022 Signed: *Ryan Hunter*
Jessica Hensley
Brian Bunyi

Field Work Performed By: Ryan Hunter
Environmental Scientist/Biologist

Field Work Performed By: Jessica Hensley
Environmental Scientist/Biologist

Field Work Performed By: Brian Bunyi
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Appendix A
Tables and Figures

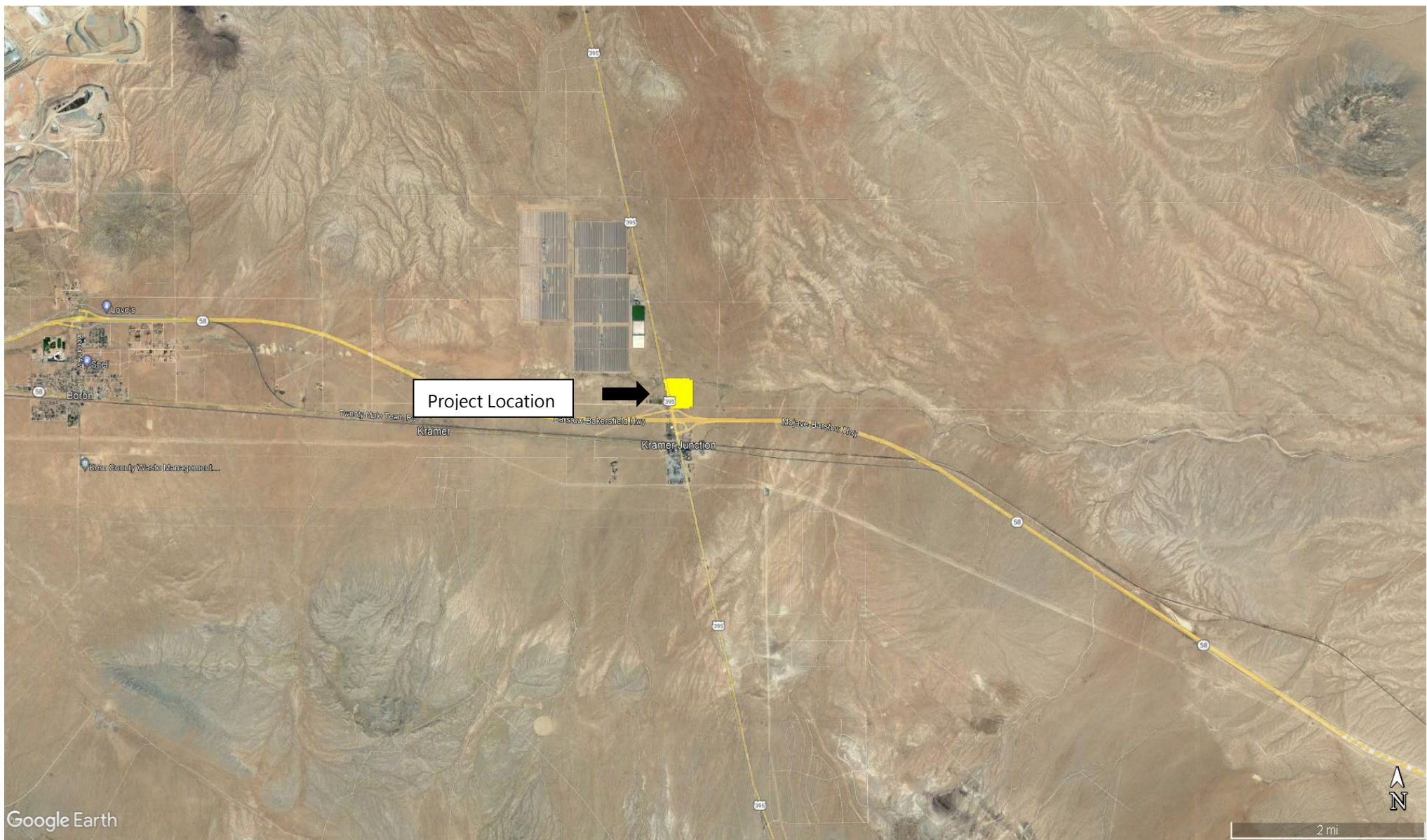


Figure 1: Regional Exhibit

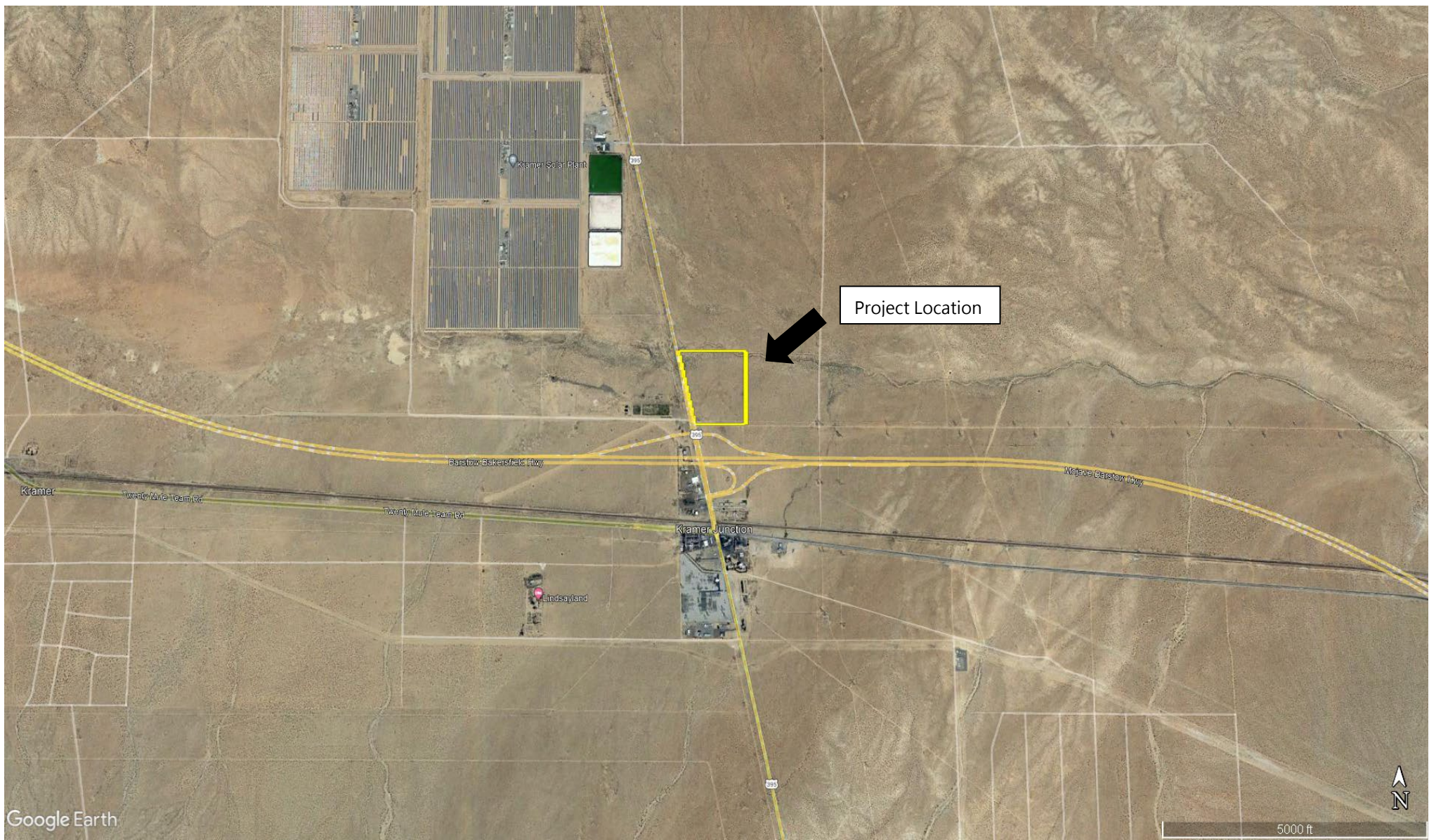


Figure 2: Vicinity Exhibit

CENTER OF SITE LOOKING NORTH



CENTER OF SITE LOOKING EAST



FIGURE 3: PHOTOGRAPHS OF SITE

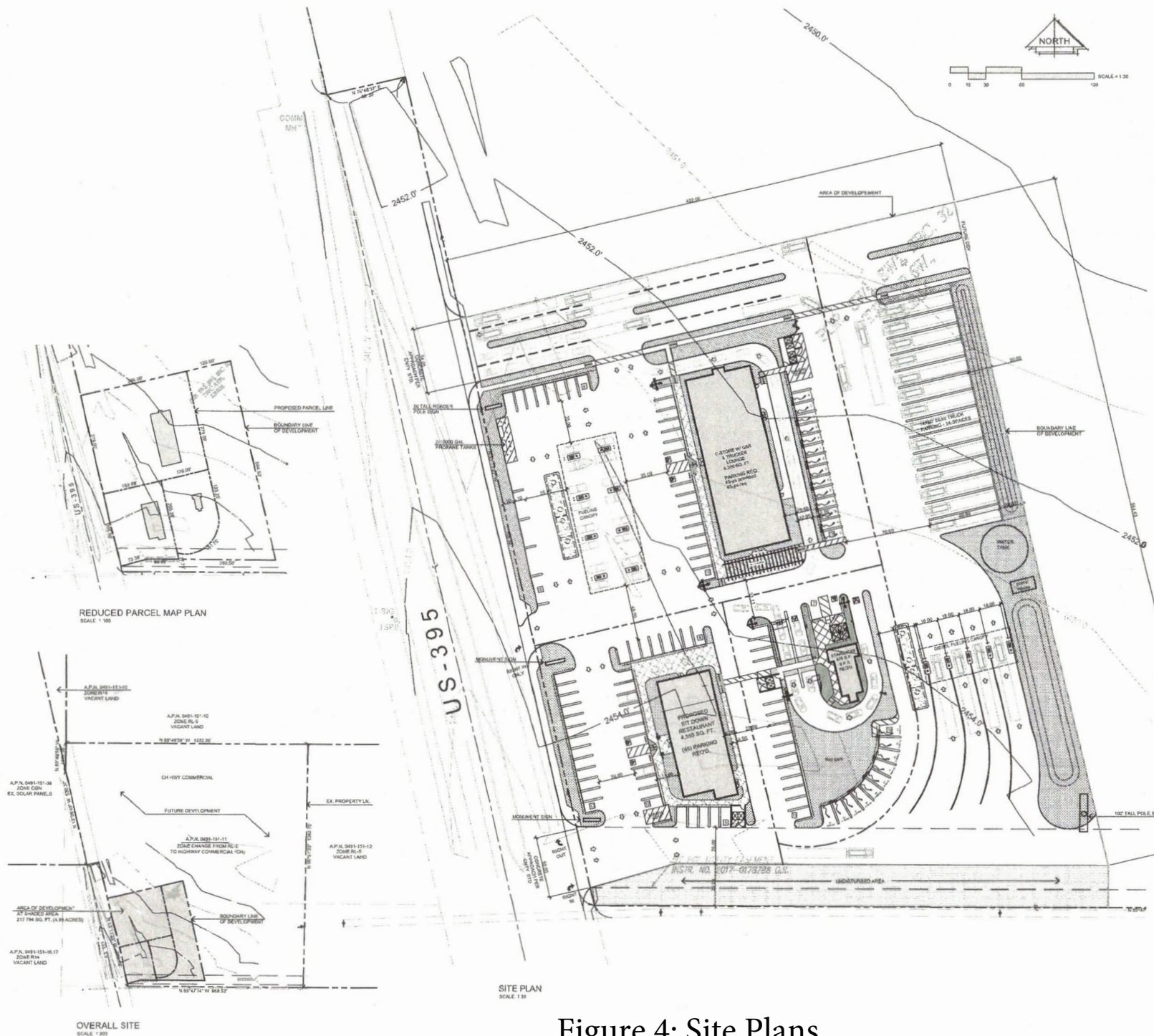
CENTER OF SITE LOOKING SOUTH



CENTER OF SITE LOOKING WEST



FIGURE 3, cont: PHOTOGRAPHS OF SITE



VICINITY MAP

A vicinity map showing the project location. The map features a north arrow pointing upwards. Two main roads are shown: Barton Bakersfield Hwy running horizontally and Mojave Barton Hwy running vertically. The project location is marked with a black dot at the intersection. A street named Trenton Blvd is shown running horizontally below the intersection. The map also shows some surrounding land parcels and a small area labeled 'PROJECT LOCATION'.

SITE DATA

A.P.N.
001-151-110-000
LEGAL DESCRIPTION
THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 11 NORTH, RANGE 8 WEST, SAN BERNARDINO BASIN AND MESA IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND ON FILE IN THE DISTRICT LAND OFFICE.

SITE AREA

AREA	SQ. FOOTAGE
GROSS LAND AREA - 35.07 ACRES	1,566,881 S.F.
NET LAND AREA - 35.07 ACRES	1,524,808 S.F.
AREA OF DEVELOPMENT - 4.89 ACRES	217,794 S.F.

PROPOSED LAND AREA & COVERAGE

AREA	SQ. FOOTAGE	% COVERAGE
C-STORE W/ GAS AND TRUCKER LOUNGE	8,300 S.F.	5.8%
ST DOWN RESTAURANT	4,800 S.F.	2.1%
STARBUCKS	870 S.F.	0.4%
AC PAVING	185,655 S.F.	85.3%
CONCRETE LANDSCAPE & CURBING	8,688 S.F.	4.0%
LANDSCAPED AREA	26,743 S.F.	12.4%
TOTAL DEVELOPED LAND AREA COVERAGE	217,794 S.F.	100%
LANDSCAPED AREA (BEYOND PROPERTY LINE)	14,580 S.F.	NOT A PART

PARKING DATA

REQUIRED PARKING PER G.F.A.

AREA	RATIO	S.F.	SPACES
C-STORE W/ GAS			
C-STORE	1:250	6,300	32
GBR	1:100	2,000	20
ST DOWN RESTAURANT	1:100	4,800	48
STARBUCKS DRIVE-THRU	1:100	870	9
SEATING, DINING (EST. REQUIREMENTS)			
TOTAL REQUIRED			109

PROVIDED PARKING:

8'x16' ACCESSIBLE PARKING STALLS	=	6 SPACES
8'x16' STANDARD PARKING STALLS	=	87 SPACES
8'x16' PARALLEL PARKING STALLS	=	3 SPACES
TOTAL PROVIDED		96 SPACES
THRU-TRUCK PARKING	=	13 SPACES

SCOPE OF WORK

TO DEVELOP 4.89 ACRES OF VACANT LAND OUT OF 35.07 ACRES GROSS LAND AREA INTO A COMMERCIAL DEVELOPMENT WHICH INCLUDES CONSTRUCTION OF 1,524,808 S.F. OF C-STORE WITH GAS AND TRUCKER LOUNGE, GAS STATION WITH A DOUBLE SIDED FUEL DISPENSERS, A DIESEL FUELING STATION WITH FUELING DISPENSERS, 4,300 S.F. OF RETAIL RESTAURANT AND 870 S.F. OF DRIVE-THRU EATING AND DRINKING ESTABLISHMENT.

Figure 4: Site Plans

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

Common Name	Scientific Name	Location
Asian mustard	<i>Brassica tournefortii</i>	On Site and in the surrounding area.
Kelch grass	<i>Schismus barbatus</i>	“
White Bursage	<i>Ambrosia dumosa</i>	“
Cheatgrass	<i>Bromus tectorum</i>	“
Russian Thistle	<i>Kali tragus var. tragus</i>	“
Flatspine bur ragweed	<i>Ambrosia acanthicarpa</i>	“
Shortpod mustard	<i>Hirschfeldia incana</i>	“
Silver cholla	<i>Cylindropuntia echinocarpa</i>	“
Mojave cottonthorn	<i>Tetradymia stenolepis</i>	“
California buckwheat	<i>Eriogonum fasciculatum</i>	“
Beavertail cactus	<i>Opuntia basilaris</i>	“
Doveweed	<i>Murdannia nudiflora</i>	“
Water jacket	<i>Lycium andersonii</i>	“
Western tansy mustard	<i>Descurainia pinnata</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
House sparrow	<i>Passer domesticus</i>	On-site and in the surrounding area.
Sagebrush sparrow	<i>Artemisiospiza nevadensis</i>	“
Antelope ground squirrel	<i>Ammospermophilus</i>	“
White crowned sparrow	<i>Zonotrichia leucophrys</i>	“
Horned lark	<i>Eremophila alpestris</i>	“
Common side-blotched lizard	<i>Uta stansburiana</i>	“
Coyote (scat)	<i>Canis latrans</i>	“

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

REGULATORY CONTEXT

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

Federal Endangered Species Act

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

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

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

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

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

California Endangered Species Act

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

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

Clean Water Act, Section 404

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

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

Clean Water Act, Section 401

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

California Fish and Wildlife Code, Sections 1600-1616

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

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

California Fish and Wildlife Code, Section 3503.5

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

Migratory Bird Treaty Act

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

Sensitive Natural Communities

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

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

Protected Plants

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

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

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