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GAVIN NEWSOM, Governor  
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May 12, 2025  
*Sent via email*

Ryan Standridge, Associate Planner  
Inyo County  
168 N Edwards Post Office Drawer L  
Independence, California 93526

Subject: Draft Mitigated Negative Declaration  
Draft Reclamation Plan 2023-01 Zurich/Caltrans Material Site #308  
(Zurich Pit) State Clearinghouse No. 2025040921

Dear Ryan Standridge:

The California Department of Fish and Wildlife (CDFW) received a draft Mitigated Negative Declaration (draft MND) from Inyo County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Inyo County

**Objective:** This Surface Mining and Reclamation Plan addresses the operation and reclamation of the Caltrans Material Site 308, also known as the Zurich Pit. The Zurich Pit is located near the community of Big Pine in Inyo County, California. The total Caltrans right-of-way (ROW) area is 54.26 acres, encompassing an extensive area of alluvial, aggregate materials that can serve as a source of sand and gravel to be used for road construction and maintenance. Of the total 54.26 acres, 14 acres of previously mined areas will be mined in two phases over a period of 59 years. This reclamation plan describes a process that will minimize environmental impacts during and resulting from mining, implement reclamation activities as soon as possible, and return the mined land to a condition suitable of supporting open space, wildlife habitat and designated end uses.

**Location:** The Project is in Inyo County, approximately 3 miles northeast of Big Pine at post-mile marker 21.5 along State Route 168 East in Inyo County. The Project site is located in Section 03, Township 9 South, and Range 34 East (Mount Diablo Base and Meridian [MDBM]) of the USGS “Uhlmeier Spring, California” 7.5-minute quadrangle. The approximate center of the pit is located at 37.191813° Latitude and -118.244390° Longitude. The APN is 018-070-10.

**Timeframe:** The draft MND does not provide a specific timeframe for construction. Phase 1 is estimated to span approximately 16 years from the start of the Project and Phase 2 is estimated to span approximately 43 years from the start of the Project. The total length of the Project is estimated to span 59 years from the start of the Project. CDFW recommends the inclusion of an anticipated start and end dates for this Project.

## **COMMENTS AND RECOMMENDATIONS**

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW is concerned the draft MND has not adequately identified and disclosed the Project’s impacts (i.e., direct, indirect, and cumulative) to biological resources, with sufficient supporting documentation whether those impacts are less than significant. CDFW offers the comments and

recommendations below to assist Inyo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

## **I. Project Description and Related Impact Shortcoming**

### **Comment #1: Identifying the Project Location and Impact Areas**

#### **Entire Draft MND**

**Issue:** The draft MND available on the Inyo County website and CEQAnet web portal does not identify the location of the 14-acre impact area within the larger 55-acre Highway Easement Deed. Additionally, it is unclear where the project impacts are in relation to the previously approved 22-acre BLM-ran community pit.

**Specific impact:** The draft MND indicates "the aggregate pit is located on BLM land approximately 3 miles northeast of Big Pine, California, in section 3, Township 9S, Range 34E, Mount Diablo Meridian, with Tax Assessor Parcel Number (APN) 018-070-10. This draft MND does not provide a map with the Project boundaries indicating the limits of disturbance.

**Evidence impact would be significant:** CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate proposed Project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the proposed Project description

**CDFW Recommendations:** A revised MND should be recirculated that clearly identifies the area and extent of the proposed Project, including maps that show the various impact areas.

## **II. Environmental Setting and Related Impact Shortcoming**

### **COMMENT #2: Assessment of Biological Resources**

#### **Draft MND document, Section 4 Biological Resources**

**Issue:** The draft MND does not adequately identify the Project's significant, or potentially significant, impacts to biological resources.

**Specific impact:** The draft MND bases its analysis of the Project site's existing biological resource conditions by referencing a NEPA review of unknown date and field surveys conducted by Caltrans on April 23, 2020. The draft MND does not include any supporting documentation regarding the field surveys, such as who conducted them, the surveyors qualifications, location of the surveys, results of the

surveys, constraints of the surveys, etc. CDFW is concerned about the potential for special-status species to occur on or near the Project site that may have been overlooked during the field survey and not addressed in the draft MND. The draft MND does not provide evidence that focused or protocol level surveys were performed for the detection of special-status species. The Project is surrounded by agricultural, disturbed land, and irrigation canals, and there is potential for special-status species to be impacted either directly or indirectly by Project activities. The California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of ESA-listed, CESA-listed, or other special-status species have been reported near the Project area.

Recent surveys during the appropriate times of the year are needed to inform and identify potential impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and to determine whether impacts to biological resources have been mitigated to a level that is less than significant. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years.

**Why impact would occur:** The Project includes a 59 year term of Project activities, partial remediation and reclamation of the Project area with long-term permanent impacts of at least 14 acres and up to 54.26 acres. The draft MND should have included a detailed Project impact analysis to biological resources with supporting documentation and include specific avoidance and minimization and mitigation measures to reduce the Project impacts to a less than significant level.

**Evidence impact would be significant:** Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting with respect to biological resources has not been adequately analyzed in the draft MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the draft MND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed.

Habitat loss, reduced reproduction, increased predation, increased energetic costs during foraging activities, and introduced risks posed by having to find and compete for available habitat. Some of these species listed above and in comments below are candidate and listed species, granted full protection of a threatened species under

CESA. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species, and the impacts must be minimized and fully mitigated.

## Comments and Recommendations

It is recommended that draft MND include an analysis of the Project’s impacts to biological resources and include specific detailed documentation that supports the analysis and determination of impacts. Without information regarding biological resources, with evidence to support the draft MND’s determinations, the draft MND may not be able to determine whether the project can mitigate its impacts to a less than significant level. CDFW recommends the draft MND be revised and recirculated to provide this information. However, if Inyo County chooses not to collect and disseminate this information, then CDFW recommends that the mitigation measure be updated, as provided below, to determine if the site is occupied by special-status species.

### Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant:

To establish the existing environmental setting with respect to biological resources, CDFW recommends that a revised MND include the following mitigation measure:

***Mitigation Measure BIO-(1) NEW: Assessment of Biological Resources Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project***

***is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.***

**III. Mitigation Measure or Alternative and Related Impact Shortcoming**  
**COMMENT #1: Preconstruction Surveys and Species Avoidance for Biological Resources**

**Section #2.5.2, Pages #12-13**

The draft MND provides insufficient analysis of project impact to species of special concern (SSC) for wildlife according to CNDDDB including: American badger (*Taxidea taxus*), Pale Kangaroo Mouse (*Microdipodops pallidus*), Chisel-Toothed Kangaroo Rat (*Dipodomys microps*); Northern Sagebrush Lizard (*Sceloporus graciosus graciosus*), Long-Nosed Leopard Lizard (*Gambelia wislizenii*), and Zebra-Tailed Lizard (*Callisaurus draconoides*); Morrison Bumble Bee (*Bombus morrisoni*) and San Emigdio Blue Butterfly (*Plebulina emigdionis*). This is only a partial listing. The draft MND should ensure that all SSC are included within the impact analysis and determination of avoidance/minimization and mitigation measures.

**Specific impact:** The draft MND does not identify the site of the Zurich Pit within the predicted range and suitability of the habitat for these species. The draft MND bases its analysis of the Project site's existing biological resource conditions by referencing a NEPA review of unknown date and field surveys conducted by Caltrans on April 23, 2020. The draft MND failed to include any supporting documentation regarding the field surveys, who conducted them, their qualifications, location of the surveys, results of the surveys, constraints of the surveys. The Project has the potential for the long-term loss of habitat, habitat destruction, habitat abandonment, disturbance from construction noise and activities, increased risk of predation and degradation of suitable habitat may occur from Project activities for these species for at least 59 years.

**Why impact would occur:** The Project includes a 59 year term of Project activities, partial remediation and reclamation of the Project area with long-term permanent impacts of at least 14 acres and up to 54.26 acres. The draft MND should have included a detailed Project impact analysis to biological resources with supporting documentation and include specific avoidance and minimization and mitigation measures to reduce the Project impacts to a less than significant level.

**Evidence impact would be significant:** CEQA provides protection not only for CESA listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These species meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). A SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually

exclusive) criteria: is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role; is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed; is experiencing, or formerly experienced, serious (nonscyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status. Impacts on SSC could require a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065). Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project.

CDFW is concerned that the assessment of the existing environmental setting with respect to biological resources has not been adequately analyzed in the draft MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the draft MND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a Project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed. Absent a thorough species impact analysis and mitigation strategy, it is unclear whether the Project's impacts can be adequately identified, disclosed, or mitigated. CDFW recommends the draft MND be revised and circulated to provide this information. However, if Inyo County chooses not to collect and disseminate this information, then the mitigation measure should be updated, as provided below, to address a scenario in which the site is determined to be occupied.

**Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant:** It is recommended that draft MND include an analysis of the Project's impacts to biological resources and include specific detailed documentation that supports the analysis and determination of impacts. Without information regarding biological resources, with evidence to support the draft MND's determinations, the MND may not be able to determine whether the project can mitigate its impacts to less than significant. CDFW recommends the MND be revised and circulated to provide this information. However, if Inyo County chooses not to collect and disseminate this information, then the mitigation measure should be updated, as provided below, to address a scenario in which the site is determined to be occupied.

CDFW recommends that prior to commencing Project activities, focused and pre-construction surveys for SSC be conducted by a qualified biologist in accordance

with CDFW protocols and for The surveys shall include 100 percent coverage of the Project site and 500-meter buffer in adjacent habitat. To support Inyo County in reducing impacts to these species to a level less than significant, CDFW offers the following new mitigation measures:

**Mitigation Measure BIO-(2): Preconstruction Surveys (New)**

***Three days prior to construction, preconstruction species of special concern, special status species, or listed species, rare plants, and sensitive natural community surveys must be conducted by the qualified biologist, up to the limits of the ROW and following current survey protocols. Sensitive natural communities and rare plants outside of the approved PIA and within Inyo County ROW must be flagged for visual identification to construction personnel for work avoidance. Sensitive Natural Communities and rare plants for avoidance detected shall be flagged or fenced off with ESA high visibility fencing. If any species of special concern, special status species, or listed species are found, or signs are found, other than what is described on the plans and specifications, are located, the Resident Engineer and Biologist must be contacted and additional measures and/or agency coordination shall be required, which shall include compensatory mitigation for impacts as determined by CDFW.***

**Mitigation Measure BIO-(3): Species Avoidance (NEW)**

***If during Project activities insect host plants, nesting birds, any species of special concern, special status species, or listed species are found, or signs are found, are discovered within the Project Site, all construction activities must stop within 10 feet for rare insect host plants, 100 feet for non-passerine nesting birds, 300 feet for nesting passerine species, 500 feet for raptors. The Biologist and Resident Engineer must be notified. Coordination with CDFW and USFWS shall be required prior to restarting activities.***

**Mitigation Measure BIO-(4) Small Mammal (New)**

***Prior to any ground disturbance, a survey for potential habitat suitability and presence of Pale Kangaroo Mouse (*Microdipodops pallidus*), or Chisel-Toothed Kangaroo Rat (*Dipodomys microps*), no more than 3 days prior to Project activities commencing shall be conducted by a qualified biologist. The surveys shall include 100 percent coverage and include a minimum 500-meter buffer in adjacent habitat. A report summarizing the pre-construction survey including all requirements for survey reports shall be submitted to CDFW for review.***

***If SSC are detected, the qualified biologist shall use visible flagging to mark the location where SSC was detected. The qualified biologist should take a photo of each location, map each location, and provide the specific species detected at that location. The qualified biologist shall provide a summary report of SSC surveys to Inyo County before any Project-related ground-disturbing activities. CDFW should be notified and consulted regarding the presence of any special status wildlife species found on site during surveys. If an Endangered Species Act-listed species is found prior to or during grading of the site, the USFWS should also be notified. Additional avoidance and minimization measures may need to be developed with CDFW/USFWS.***

**Mitigation Measure BIO-(5) Reptile (New)**

***Prior to any ground disturbance, a survey for potential habitat suitability and presence of Northern Sagebrush Lizard (*Sceloporus graciosus graciosus*), Long-Nosed Leopard Lizard (*Gambelia wislizenii*), and Zebra-Tailed Lizard (*Callisaurus draconoides*), no more than 3 days prior to Project activities commencing shall be conducted by a qualified biologist. The surveys shall include 100 percent coverage and include a minimum 500-meter buffer in adjacent habitat. A report summarizing the pre-construction survey including all requirements for survey reports shall be submitted to CDFW for review.***

**Mitigation Measure BIO-(6) Reptile: Authorized Biologist Clearance Surveys (Revised)**

***Clearance Northern Sagebrush Lizard, Long-Nosed Leopard Lizard, and Zebra-Tailed Lizard surveys must be conducted by the qualified biologist 3 days prior to Project activities within the Project footprint. If any of these lizard species are located, the Resident Engineer and Inyo County Biologist must be contacted, and additional measures and/or agency coordination may be required. Any special status reptiles or species of special concern removed from work areas may be moved from harm's way to the nearest suitable habitat or translocated, following most recent CDFW and USFWS guidelines. A CDFW 2081 permit may be required. Work in other areas of the Project site may continue if no special status reptiles are found within the Project footprint. An incidental take permit (ITP) for these reptiles shall be obtained prior to initiation of all ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts shall be fulfilled through conservation of suitable reptile habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and the California Department of Fish and Wildlife.***

***Mitigation Measure BIO-(7) Invertebrate-1 (New)***

***Prior to any ground disturbance, a survey for potential habitat suitability and presence of Morrison Bumble Bee (*Bombus morrisoni*) and San Emigdio Blue Butterfly (*Plebulina emigdionis*), no more than 3 days prior to Project activities commencing shall be conducted by a qualified biologist. The surveys shall include 100 percent coverage and include a minimum 500-meter buffer in adjacent habitat. A report summarizing the pre-construction survey including all requirements for survey reports shall be submitted to CDFW for review.***

***Comment #6 American Badger ( *Taxidea taxus* )***

**Issue:** The Project may impact potentially suitable habitat for American Badger and avoidance and minimization measures were not proposed within the draft MND to avoid impacts the species of special concern.

**Specific Impact:** The Project area within the range and is known to support suitable habitat for American Badger, a Species of Special Concern (SSC). The MND fails to address potential impacts to American badger. Additionally, the MND fails to propose avoidance and minimization measures to reduce project impacts to less than significant

**Why Impact Would Occur:** The Project occurs within the range of the American badger, a California species of special concern.

**Evidence impact would be significant:** Impacts on SSC could require a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065). A SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed; is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status.

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant**

***Mitigation Measure BIO-(8) American Badger (NEW)***

***The Project owner shall develop and implement a American Badger Mitigation and Monitoring Plan (plan). The objective of the plan shall be to avoid direct impacts to the American badger as a result of project activities. The final plan is subject to review, comment, revision, by the CDFW. The final plan shall include, but is not limited to, the following procedures and impact avoidance measures: Describe pre-construction survey and clearance field protocol, to determine the number and locations of single or paired badgers on the Project site that would need to be avoided or passively relocated and the number and locations of badger burrows or burrow complexes that would need to be collapsed to prevent re-occupancy by the animals.***

***Pre-Construction Surveys. Biological Monitors shall conduct pre-construction surveys for American badger no more than 30 days prior to initiation of construction activities, including pre-construction site mobilization. Surveys shall also address the potential presence of active dens within 100 feet of the Project boundary (including utility corridors and access roads). If dens are detected, each den shall be classified as inactive, potentially active, or active den.***

***Monitoring and Protection Measures, Passive Hazing, and Den Excavation: The plan will include details on monitoring requirements, types and methods of passive hazing, and methods and timing of den excavation, including, but not limited to the following:***

- ***Inactive dens. Inactive dens (e.g., inactive dens are dens that are mostly or entirely silted in and ones in which the back of the den can clearly be seen (e.g., the den isn't deep and doesn't curve) that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse.***
- ***Potentially and definitely active dens. Potentially and definitely active dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are***

***observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage the badger from continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand to ensure that no badgers are trapped in the den. If the den is proven inactive then den may be collapsed during whelping season.***

- ***Active natal/pupping dens. If an active natal den (a den with pups) is detected on the site during construction, the CDFW shall be contacted within 24 hours to determine the appropriate course of action to minimize the potential for animal harm or mortality. The course of action would depend on the age of the pups, location of the den on the site (e.g., is the den in a central area or in a perimeter location), status of the perimeter site fence (completed or not), and the pending construction activities proposed near the den. A 500-foot no-disturbance buffer shall be maintained around all active dens. If the den is active during the whelping season, even if pups are not seen, disturbance is not allowed. Active natal/pupping dens will not be excavated or passively relocated.***
- ***Address other factors and procedures that may affect the success of relocation offsite, such as: estimates of the distances badgers would need to travel across the Project site and across adjacent lands to safely access suitable habitat (including burrows) off-site; proposed scheduling of the passive relocation effort; and methods to minimize likelihood that the animals will return to the Project site during construction.***

**COMMENT #2: Burrowing Owl (*Athene cunicularia hypugaea*)**

**Section #2.5.2, Pages #12-13**

**Issue:** On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). During the candidacy period, western burrowing owl will be afforded the same protection as threatened and endangered species under CESA. The Project may impact burrowing owls and its habitat. CDFW is concerned that the draft MND does not sufficiently identify Project impacts to burrowing owl since no burrowing owl habitat assessments or focused surveys were conducted.

**Specific impact:** The Draft Reclamation Plan does not identify the site of the Zurich Pit within the predicted range and suitability of the habitat. The Project has the significance potential for the long-term loss of nesting habitat, nest destruction, nest abandonment, disturbance from construction noise and activities, increased risk of predation and degradation of suitable burrowing owl habitat may occur from Project activities.

**Why impact would occur:** The Natural Environment Study (NES) prepared for the Project determined that burrowing owls do have the potential to occur within the PIA and in the vicinity of the Project. Impacts to vegetation communities that could provide suitable foraging habitat for burrowing owls and suitable burrows may occur in association with the Project due to disturbances associated with construction along with a permanent loss of foraging habitat. Additionally, the California Natural Diversity Database (CNDDDB) dataset, [Burrowing Owl Predicted Range](#) (CDFW 2024) display a high potential for burrowing owl presence within the Project area. Project construction may result in direct mortality, population decline, or local extirpation of burrowing owl not previously identified. Burrowing owls also have a high potential to move into disturbed areas since they are adapted to highly modified habitats (Chipman et al., 2008; Coulombe, 1971).

**Evidence impact would be significant:** Habitat loss is a threat to burrowing owls (CDFG, 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing owls are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species, and the impacts must be minimized and fully mitigated.

**Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant:** It is recommended that draft MND include an analysis of the Project’s impacts to biological resources, particularly western burrowing owl and include specific detailed documentation that supports the analysis and determination of impacts. Without information regarding biological resources, with evidence to support the draft MND’s determinations, the MND may not be able to determine whether the project can mitigate its impacts to less than significant. CDFW

recommends the MND be revised and circulated to provide this information. However, if Inyo County chooses not to collect and disseminate this information, then the mitigation measure should be updated, as provided below, to address a scenario in which the site is determined to be occupied.

CDFW recommends that prior to commencing Project activities, focused and pre-construction surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012 or most recent version). The surveys shall include 100 percent coverage of the Project site and 500-meter buffer in adjacent habitat. To support Inyo County in reducing impacts to burrowing owl to a level less than significant, CDFW offers the following mitigation measure:

***Mitigation Measure BIO-9 Burrowing Owl (New)***

***Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation shall be conducted by a qualified biologist according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012 or most recent version). The surveys shall include 100 percent coverage and include a minimum 500-meter buffer in adjacent habitat. Burrowing owls may recolonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFW 2012 or most recent version). If the surveys confirm the presence of burrowing owls, active burrows or signs thereof, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. If impacts to occupied burrowing owl habitat or burrow cannot be fully avoided, consultation with CDFW is warranted to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP prior to any ground disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b). Full mitigation often involves the permanent conservation of quality habitat benefiting the species through a conservation easement, along with habitat enhancement and ongoing management funded appropriately. Passive relocation, performed according to the Staff Report on Burrowing Owl***

***Mitigation (CDFG, 2012) may be authorized through the incidental take permit as a minimization measure.***

***Burrowing owl identified on site shall be mitigated per the guidance of the Staff Report on Burrowing Owl Mitigation (CDFG, 2012) such that (a) permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced with permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) sufficiently large acreage, and presence of fossorial mammals.***

### **COMMENT #3: Nesting Birds**

#### **Section #2.5.2, Pages #12-13**

**Issue:** The Project includes suitable habitat for several species of nesting birds, including species of special concern (SSC) and federally listed species including: bank swallow (*Riparia riparia*), southwestern willow flycatcher (*Empidonax traillii*), western burrowing owl (*Athene cunicularia*), greater sage-grouse (*Centrocercus urophasianus*), red-winged blackbird (*Agelaius phoeniceus*), golden eagle (*Aquila chrysaetos*). CDFW recommends the completion of a nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

**Specific impact:** The draft MND identifies the Project has the potential to directly impact special-status bird species and their habitats by the removal of suitable habitat for construction. Potential impacts to suitable nesting bird habitat may occur in association with the Project due to disturbances associated with vegetation removal, ground disturbance, shoulder backing, equipment staging areas, and driving/parking off pavement.

**Evidence impact would be significant:** It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures for all nests, all eggs, and any raptors or migratory birds as follows: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation

adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

**Recommended potentially feasible mitigation measure:** CDFW recommends the inclusion of the Mitigation Measure below, as revised (edits are in strikethrough and additions are in ***bold italics***) in the MND to ensure impacts to birds are mitigated to a level of less than significant.

**Mitigation Measure BIO-(2) Avian (New): Preconstruction Nesting Bird Surveys (Revised)**

***If Project activities cannot avoid the nesting season, generally regarded as February 1 through September 30, then a preconstruction nesting bird surveys must be conducted 3 days prior to construction by a qualified biologist to locate and avoid nesting birds for each breeding and nesting season. If an active avian nest is located, a no construction buffer shall be established and monitored by the qualified biologist daily until the young have fledged or the nest is deemed inactive. The Project site will need to be re-surveyed if there is a lapse in construction activities for more than 3 days.***

**COMMENT #4: Sensitive and Native Plant Species**

**Issue:** CDFW is concerned that the Project may affect sensitive plant species with the potential to occur within the Project area. CNDDDB and Calflora identify several sensitive plant species including coyote gilia (*Aliciella triodon*), Shockley's milk vetch (*Astragalus serenoii* var. *shockleyi*), King's eyelash grass (*Blepharidachne kingii*), Wheeler's dune-broom (*Chaetadelpa wheeleri*), MacDougal's lomatium (*Lomatium foeniculaceum* ssp. *macdougali*), intermontane lupine (*Lupinus pusillus* var. *intermontanus*), and Nevada oryctes (*Oryctes nevadensis*) that have potential suitable habitat in the Project area.

**Specific Impact:** Vegetation removal, and other ground disturbances have the potential to result in direct mortality of sensitive plants.

**Why impact would occur:** Take of any CESA-listed plant species that results from the Project is prohibited, except as authorized by State law (Fish & Game Code, §§ 2080, 2085; California Code of Regulations, tit. 14, § 786.9). Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Likewise, CDFW considers State listed communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking

of S1, S2, and S3 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in the [California Native Plant Society Vegetation manual](#).

**Evidence impact would be significant:** According to a search on CNDDDB, Calscape, and Calflora, the Project has suitable habitat for at least 18 native and rare plant species. However, rare plant surveys have not been conducted in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018).

**Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant:** It is recommended that draft MND include an analysis of the Project's impacts to biological resources, particularly to sensitive native plant species and include specific detailed documentation that supports the analysis and determination of impacts. Without information regarding biological resources, with evidence to support the draft MND's determinations, the MND may not be able to determine whether the project can mitigate its impacts to less than significant. CDFW recommends the MND be revised and circulated to provide this information. However, if Inyo County chooses not to collect and disseminate this information, then the mitigation measure should be included, as provided below, to address a scenario in which the site is determined to be occupied.

**Mitigation Measure BIO-(2) Botanical Field Surveys (New)**

***Prior to Project implementation***, additional focused sensitive plant surveys will be conducted during peak blooming periods within the year prior to the start of each phase of the project. ***During the surveys, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not***

***feasible, the Project Applicant shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species, the Project Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.***

#### **COMMENT #5: Bats**

##### **Draft Reclamation Plan – draft MND**

**Issue:** The Project may impact potentially suitable habitat for bats and avoidance and minimization measures were not proposed within the draft MND to avoid impacts to bats.

**Specific Impact:** , The Project area contain suitable habitat to support pallid Bats (*Antrozous pallidus*), a Species of Special Concern (SSC). However, avoidance and minimization measures were not proposed within the draft MND.

**Why Impact Would Occur:** Pallid bats live in arid or semi-arid habitats and also found over open, sparsely vegetated scrublands. During the night, they prefer to use less protected roosts that are closer to their foraging grounds than their day roosts. Night roosts can include any structures on the Project site, as well as any nearby bridges and culverts, which could provide refuge and serve as potential roosting sites for the bats.

**Evidence impact would be significant:** Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Several bat species are considered SSC. A SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed; is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status.

Impacts on SSC could require a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065). Impacts on bats, either directly or indirectly through disturbances to roosts and loss of habitat, would be a significant impact. The Project's impact on bats has yet to be mitigated below a significant level. Accordingly, the Project continues to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species by CDFW.

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** It is recommended that draft MND include an analysis of the Project's impacts to biological resources, particularly bats and include specific detailed documentation that supports the analysis and determination of impacts. Without information regarding biological resources, with evidence to support the draft MND's determinations, the MND may not be able to determine whether the project can mitigate its impacts to less than significant. CDFW recommends the MND be revised and circulated to provide this information. However, if Inyo County chooses not to collect and disseminate this information, then the mitigation measure should be included, as provided below, to address a scenario in which the site is determined to be occupied.

***BIO-Bat-1: Bat Pre-Construction Surveys (New)***

***Pre-construction surveys for bats shall be conducted by a Qualified Biologist. The pre-construction survey shall focus on bat roosting habitat suitability of the structures and trees that may be removed, altered, or indirectly affected by the Project. If bat roosting habitat is determined to be present on the Project site, then nighttime surveys shall be performed during summer months (i.e. June-August). If the site supports maternity roosts or special status species during any stage of Project activity, the Project proponent will immediately halt project activities and contact CDFW.***

**IV. Additional Comments**

The California Department of Transportation shared the draft Reclamation Plan to CDFW during the public review process for the project. The draft Reclamation Plan was not posted onto websites nor appears to be publicly available. It is recommended that draft MND include the draft Reclamation Plan as part of the appendices and an analysis of the Project's impacts to biological resources, and include specific detailed documentation that supports the analysis and determination of impacts. CDFW is concerned that the draft MND is incomplete. The draft Reclamation plan and the supporting documentation necessary for thorough public review, should have been included as appendices with the circulated document. Without a clear complete project description, timeframes, biological resource

analysis, with evidence to support the draft MND's determinations, the MND may not be able to determine whether the project can mitigate its impacts to less than significant. CDFW recommends the MND be revised and circulated to provide this information. However, if Inyo County chooses not to collect and disseminate this information, then CDFW has drafted the following comments and recommendations for the draft Reclamation Plan.

#### **COMMENT #6: Revegetation Standards**

The reclamation plan specifies that revegetation will aim for at least 50% of pre-disturbance indigenous shrub cover (i.e., 12.5%) and maintain native species richness.

- Revegetation monitoring will include transect surveys and aerial photography.
- Remedial measures such as manual removal of invasive species (e.g., Russian thistle) and slope roughening will be used as needed.

#### 4. Erosion and Sediment Control

Inyo County shall maintain and monitor sediment basins and berms. Any erosion issues will be remedied promptly, balancing remediation actions with the potential impact on establishing native vegetation.

#### **COMMENT #7: Staging and Stockpiling Areas**

CDFW appreciates the incorporation of BIO-General-1, regarding equipment staging and storing, and stockpiling of materials. CDFW recommends the revisions below (edits are in strikethrough and **bold italics**) in consideration of Fish and Game Code section 1602.

#### **BIO-General-1: Equipment Staging, Storing, and Borrow Sites (Revised)**

All staging, storing, and borrow sites require the approval of the Designated Biologist. ***Stockpiles shall be maintained to avoid the spread of invasive plants and shall not be placed at locations subject to Fish and Game Code section 1602. Materials, including spoils and equipment, shall not be placed at locations subject to Fish and Game Code section 1602.***

#### **COMMENT #8: Invasive Weed Control**

#### **Section #4.6.7 Plant Eradication Measures Pg. 22**

CDFW appreciates the incorporation of Bio-General-16, regarding the control of invasive plants. CDFW recommends the revisions below (edits are in strikethrough and **bold italics**) in consideration of fish and wildlife resources.

***BIO-General-16: Invasive Weed Control (Revised)***

If Russian thistle invades revegetated areas to the point that it is impacting the germination and/or growth of desired species, then this invasive exotic will be manually removed from the site as a primary remedial measure. A secondary remedial measure of herbicide spraying to contain large Russian Thistle blooms, while still young, may be requested of BLM if deemed a necessary control measure beyond hand pulling. ***A specific targeted approach shall be implemented for any herbicide application by avoiding species that are not intended to be removed and by reducing herbicide application to the smallest possible radius around plant species that are selected for application. All herbicides utilized adjacent to Fish and Game Code section 1602 resources and other sensitive aquatic habitat areas shall be registered for aquatic use by the California Department of Pesticide Regulation (CDPR). Herbicide sprays in these areas shall only be used when wind speeds measure less than 10 mph. The mixture shall contain a dye (registered for aquatic use by CDPR) to show overspray and shall be conducted in a manner to minimize overspray onto adjacent native vegetation***

**COMMENT #9: Natural Communities Mitigation**

CDFW suggests in consideration of fish and wildlife resources to preserve the integrity of and protect the long-term impacts on natural communities with the following measures:

***BIO-Mitigation-1: Natural Communities Mitigation (NEW)***

***Compensatory mitigation for permanent impacts to biological species is anticipated, with resource agency approval, through on-site restoration activities, suitable CDFW approved mitigation/conservation bank credits, suitable in-lieu fee program credits, and/or other mitigation acceptable to the resource agencies involved as applicable. and/or any other CDFW-approved mitigation. Native habitat less than 19 inches diameter-at-breast-height (DBH) shall be replaced in-kind at a minimum ratio of 3:1, mature trees (19 inches or greater DBH) shall be replaced in-kind at a ratio of at least 5:1, and heritage trees (24 inches or greater DBH) shall be replaced in-kind at a ratio of at least 10:1. All restored habitat shall be monitored and maintained until established.***

***BIO-Mitigation-2: Natural Communities Mitigation (New)***

***Compensatory mitigation for permanent impacts to biological species is anticipated, with resource agency approval, through on-site restoration activities, suitable CDFW approved mitigation/conservation bank credits, suitable in-lieu fee program credits, and/or other mitigation acceptable to the***

***resource agencies involved as applicable. and/or any other CDFW-approved mitigation. Native habitat less than 19 inches diameter-at-breast-height (DBH) shall be replaced in-kind at a minimum ratio of 3:1. All restored habitat shall be monitored and maintained until established.***

#### **COMMENT #10: Employee Awareness of Wildlife Resources**

The area surrounding the Project is mountain wilderness, thus Project development may bring biological hazards common to urban-wildland interface areas. Waste management must be a priority as accessible waste can encourage opportunistic species such as rats, ravens, and coyotes to become more prevalent, posing a substantial predation hazard to wildlife. Waste management plans should include waste receptacles with closing, lockable lids and a waste removal schedule that does not allow for excess waste to accrue. Increased traffic may also pose a hazard to species in the form of vehicle-animal collisions which often lead to the death of the animal.

Project activities, including expansion and routine work for the life of the Project, will affect local wildlife. Part of the Project proponent's responsibility is to educate individuals that will be on-site on the wildlife species that may be present and how to limit impacts to wildlife species in the area. CDFW recommends that a Workers Environmental Awareness Program (WEAP) be added to the draft MND, as per **MM BIO-11:**

#### ***MM BIO-11: Employee Awareness of Wildlife Resources (New)***

***A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site (Workers Environmental Awareness Program; WEAP). The WEAP shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the WEAP information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The WEAP should include, but not be limited to: (1) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area and (2) protected species that have the potential to occur on the Project site including species of special concern, listed species, rare and sensitive plants, and nesting birds. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.***

#### **COMMENT #11: Lake and Streambed Alteration (LSA) Agreement Notification**

CDFW determined that based on review of aerial photography from the California State Water Resources Control Board that up to three ephemeral streams occur within the Project area the active mining, staging, stockpiling, and truck loading areas occur within at least one ephemeral stream. Thus, CDFW recommends that the Project proponent adopt **MM BIO-12** below to either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or*, if notification under section 1602 of the Fish and Game Code is required for the Project, to obtain a CDFW-executed Lake and Streambed Alteration Agreement:

***MM BIO-12: LSA Agreement Notification (New)***

***Prior to construction and issuance of any grading permit, the Project proponent should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.***

**COMMENT #12: Preliminary Project Plans Not Provided**

CDFW determined that based on review of the draft MND, specific, detailed technical plan sheets for the proposed reclamation Project are referenced but not included as appendices from pg. 19-20.

**ADDITIONAL COMMENTS AND RECOMMENDATIONS**

CDFW recommends that Inyo County re-evaluate proposed dust control and air quality management measures and include all appendices. Additionally, Inyo County is advised to incorporate and give due consideration to CDFW's recommendations concerning the protection of native and sensitive plant species..

CDFW additionally advised that Inyo County incorporate long-term public safety measures to prevent further incidences of OHV staging and usage, illegal target shooting, illegal dumping, and unauthorized access into sensitive habitat areas of the Project.

**ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make

Ryan Standridge, Associate Planner  
Inyo County  
May 12, 2025  
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subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **ENVIRONMENTAL DOCUMENT FILING FEES**


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the draft MND to assist Inyo County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Scott Jakubowski, Senior Environmental Scientist (Specialist), at [Scott.Jakubowski@wildlife.ca.gov](mailto:Scott.Jakubowski@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
4D759253408941E...

Brandy Wood  
Environmental Project Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento

## **ATTACHMENTS**

### **Attachment A: Mitigation and Monitoring Reporting Plan**

## **REFERENCES**

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**Attachment A: Mitigation and Monitoring Reporting Plan**

<b>Mitigation Measure</b>		<b>Timing</b>	<b>Responsible Party</b>
<b>BIO-Burrowing Owl-4</b>	<p>To avoid construction-level impacts to unidentified burrowing owls on-site, qualified biologists shall conduct focused burrowing owl surveys during the breeding and non-breeding season in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG, 2012). The survey shall cover the Project site and a 500-meter buffer, where legally accessible. A preconstruction survey shall be conducted within 14 days prior to the start of construction activities (see below).</p> <p>Pre-construction take avoidance surveys for this species shall be conducted within 14 days prior to the start of ground disturbance and 24 hours prior to construction to determine the presence or absence of this species within the Project footprint. A report shall be submitted by a qualified and agency-approved biologist to CDFW. The Project footprint shall be clearly demarcated in the field by the Project engineers and biologist prior to the commencement of the pre-construction take avoidance surveys. The</p>	Prior to commencing ground or vegetation disturbing activities	Project Proponent

	<p>surveys shall follow the guidance of the Staff Report on Burrowing Owl Mitigation (CDFG, 2012).</p> <p>Depending on the Project activity type and associated disturbance, a minimum avoidance buffer distance of 50 meters (165 feet) to 100 meters (330 feet) during the nonbreeding season (September through January) and 100 meters (330 feet) to 250 meters (825 feet) during the breeding season (February through August) shall be maintained between active burrows and construction activities. A qualified biologist shall monitor the burrowing owls for any sign of distress and adjust the buffers as necessary to ensure no take occurs.</p> <p>If active burrows are present within the Project footprint and complete avoidance is infeasible, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization (i.e. CESA incidental take permit under the California Fish and Game Code § 2081) is obtained.</p> <p>Should permanent loss of western burrowing owl habitat occur the ratio of acquisition</p>		
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	<p>to loss must be at a minimum of 1:1. The ratio shall be higher for occupied and irreplaceable habitats. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land shall be established through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, and include development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</p>		
<p><b>BIO-Avian-1:          Preconstruction          Nesting Bird          Surveys</b></p>	<p>Regardless of the time of year, a pre-construction survey shall be performed to verify absence of nesting birds. Preconstruction nesting bird surveys must be conducted 3 days prior to construction by a qualified biologist to locate and avoid</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>nesting birds. If an active avian nest is located, a no construction buffer shall be established and monitored by the qualified biologist daily until the young have fledged or the nest is deemed inactive. The Project site will need to be re-surveyed if there is a lapse in construction activities for more than 3 days.</p>		
<p><b>BIO-Plant-1          Botanical Field          Surveys</b></p>	<p>Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting.</p>	<p>Prior to commencing ground or vegetation disturbing activities.</p>	<p>Project Proponent</p>

	<p>The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status.</p> <p>If special-status plant species are observed during the preconstruction rare plant survey(s) within the development area of the Project, the Project shall be designed to reduce impacts to these species through the establishment of buffers, to the extent feasible. Buffer distances will be determined by the qualified biologist, typically 50 feet or greater from an identified special-status plant species, unless the qualified biologist determines a reduced buffer would suffice to avoid impacts to the species.</p> <p>If avoidance of special-status plant species is not feasible, a Special-Status Plant</p>		
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	<p>Relocation Plan shall be developed and implemented. The Special-Status Plant Relocation Plan shall address mitigation for special-status plants, including but not limited to: topsoil salvage to preserve seed bank and management of salvaged topsoil; seed collection, storage, possible nursery propagation, and planting; salvage and planting of bulbs as feasible; location of onsite receptor sites; land protection instruments for receptor areas; and funding mechanisms. The Special-Status Plant Relocation Plan shall include methods, monitoring, reporting, success criteria, adaptive management, and contingencies for achieving success. The plan shall be prepared for CDFW's review, approval, and implementation prior to the commencement of initial site clearing activities. All special-status plant species identified on site shall be mapped onto a site-specific aerial photograph and topographic map and included on the construction, grading, fuel modification, and landscape plans.</p>		
<p><b>BIO-Bat-1: Bat Pre-Construction Surveys</b></p>	<p>All suitable roosting and foraging habitat for local or migratory bat species known to the Project area, including special-status species, found within the Project site and</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>adjacent land shall be surveyed throughout one year, prior to initial site clearing activities. The surveys shall be completed by a qualified bat biologist whose resume shall be reviewed and approved by CDFW. Surveys shall include determination of the approximate size of the colony(s) and species present. The surveys shall include a combination of nighttime emergence counts and acoustic techniques (full spectrum bat acoustic detectors) appropriate for the roosting habitat and time of year, visual and aural surveys (observation during foraging period), and inspection for suitable habitat and bat sign (e.g. guano). Surveys shall be conducted during the spring, summer, fall, and winter to determine how the habitat is being used by bats throughout the year, including foraging patterns and habitat, and the presence overwintering bats, with at least two surveys conducted during the maternity season to determine a pre and post-volant count of colonies present.</p> <p><b>V. If roosting bats, of any status, are found during the surveys, the bats and roosts shall be avoided to the maximum extent</b></p>		
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	<p><b>practicable with consideration of the most disturbing Project activities and their effect (e.g. demolition and night-time lighting). A Bat Management Plan prepared by the qualified bat biologist identifying situation-specific and species-specific avoidance and minimization measures to reduce impacts to roosting and foraging bats shall be prepared for CDFW's review, approval, and implementation prior to the commencement of initial site clearing activities.</b></p> <p><b>VI. The Bat Management Plan shall include, as appropriate to the findings of the surveys and roosting habitat affected, a construction schedule to avoid roosting season, spatial and temporal avoidance measures, non-disturbance buffers, passive exclusion of bats outside of the maternity season (if necessary), and identification of species-specific replacement or alternative habitat to mitigate for permanent maternity or night roosting habitat loss. If roosts cannot be avoided or it is determined that construction activities will</b></p>		
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	<p><b>cause roost abandonment, a mitigation plan addressing exclusion and passive relocation procedures and impact compensation will be developed. The mitigation plan will be developed in consultation with CDFW and the qualified bat biologist. Roost and foraging habitat shall be replaced in-kind prior to any exclusion or in a timing approved by CDFW. Any exclusion and passive relocation efforts shall avoid periods of sensitive activity (e.g. hibernation or maternity season) and may require several seasons for bats to discover alternative roosting sites.</b></p>		
<p><b>BIO-General-1: Equipment Staging, Storing, and Borrow Sites</b></p>	<p>All staging, storing, and borrow sites require the approval of the Caltrans Biologist. Stockpiles shall be maintained to avoid the spread of invasive plants and shall not be placed at locations subject to Fish and Game Code section 1602. Materials, including spoils and equipment, shall not be placed at locations subject to Fish and Game Code section 1602.</p>	<p>During Project activities</p>	<p>Project Proponent</p>
<p><b>BIO-General-16: Invasive Weed Control</b></p>	<p>To address impacts to natural communities of concern, desert tortoise critical habitat, and rare insect host plant species, a qualified biologist</p>	<p>During Project activities</p>	<p>Project Proponent</p>

	<p>must identify invasive species within the PIA during access road construction, shoulder backing, ground disturbance, and vegetation removal. Treatment and disposal methods must be approved by the Caltrans biologist prior to vegetation removal. A specific targeted approach shall be implemented for any herbicide application by avoiding species that are not intended to be removed and by reducing herbicide application to the smallest possible radius around plant species that are selected for application. All herbicides utilized adjacent to Fish and Game Code section 1602 resources and other sensitive aquatic habitat areas shall be registered for aquatic use by the California Department of Pesticide Regulation (CDPR). Herbicide sprays in these areas shall only be used when wind speeds measure less than 10 mph. The mixture shall contain a dye (registered for aquatic use by CDPR) to show overspray and shall be conducted in a manner to minimize overspray onto adjacent native vegetation</p>		
<p><b>BIO-General-4: Preconstruction Surveys</b></p>	<p>Three days prior to construction, preconstruction American badger, rare plants, and sensitive natural community surveys must be</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>conducted by the qualified biologist, up to the limits of the Caltrans Row and following current American badger survey protocols. Sensitive natural communities and rare plants outside of the approved PIA and within Caltrans ROW must be flagged for visual identification to construction personnel for work avoidance. Sensitive Natural Communities and rare plants for avoidance detected shall be flagged or fenced off with ESA high visibility fencing. If any bighorn sheep, mountain lion, desert kit fox, or American badger or signs of American badger, catclaw acacia – desert lavender – chuparosa scrub, Desert willow – smoketree wash woodland, or other Natural community, other than what is described on the plans and specifications, are located, the Resident Engineer and Caltrans Biologist must be contacted and additional measures and/or agency coordination shall be required, which could include compensatory mitigation for impacts to those species and/or habitats.</p> <p>Should permanent loss of sensitive species and/or habitats occur the ratio of acquisition to loss must be at a minimum of 1:1. The ratio</p>		
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	<p>shall be higher for occupied and irreplaceable habitats. Permanent protection of mitigation land shall be established through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, and include development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</p>		
<p><b>BIO-General-6: Species Avoidance</b></p>	<p>If during Project activities insect host plants, nesting birds, burrowing owl, desert tortoise, bighorn sheep, mountain lion, desert kit fox, or American badger burrows are discovered within the Project Site, all construction activities must stop within 10 feet for rare insect host plants, 100 feet for non-passerine nesting birds, 300 feet for nesting passerine species, 500 feet for raptors or federal/State listed birds, 265 feet for burrowing owls, 500 feet for desert kit fox, 500 feet for desert tortoises, and 16 to 25 feet around single American badger burrows</p>	<p>During Project activities</p>	<p>Project Proponent</p>

	and 65 feet around clusters of American badger burrows. The Caltrans Biologist and Resident Engineer must be notified. Coordination with CDFW and USFWS shall be required prior to restarting activities, if full avoidance is not achievable.		
<b>BIO-Reptile-4: Authorized Biologist Clearance Surveys</b>	Clearance desert tortoise surveys must be conducted by the qualified biologist 3 days prior to Project activities within the Project footprint before temporary desert tortoise fence is erected. If a desert tortoise is located, An incidental take permit (ITP) for desert tortoise shall be obtained prior to initiation of all ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts shall be fulfilled through conservation of suitable Mojave Desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and the California Department of Fish and Wildlife.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
<b>BIO-General-18: Aquatic Resources Restoration</b>	Caltrans shall notify CDFW pursuant to Fish and Game Code section 1602 and obtain authorization prior to initiating Project activities within any river, stream, or lake. After	Prior to or after commencing Project depending on mitigation type	Project Proponent

	<p>construction activities are complete, temporarily impacted aquatic resources will be restored to original and permanently impacted resources will be restored at a minimum 3:1 ratio through on-site restoration activities, suitable CDFW-approved mitigation/conservation bank credits, permittee-responsible mitigation, or through a combination of any of these.</p>		
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