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July 10 2025
Sent via email

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

Subject: Resubmission of 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 notification of the resubmission of the draft Mitigated Negative Declaration (draft MND) from Inyo County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1] On May 12, 2025, CDFW submitted comments to the Draft MND (Attachment 1).

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

[1] 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.

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 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 "Uhlmeyer 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 4264-1.

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

I. 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 appreciates Inyo County addressing some of the comments that CDFW provided in Attachment 1, however CDFW is concerned that several of the comments were not addressed and 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.

II. 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

CDFW noted in the previous comments to the draft MND, and is concerned that the revised draft MND provides insufficient analysis of project impact to species of special concern (SSC) for wildlife according to CNDDB including MAMMALS: American badger (*Taxidea taxus*), Pale Kangaroo Mouse (*Microdipodops pallidus*), Chisel-Toothed Kangaroo Rat (*Dipodomys microps*): REPTILES: Northern Sagebrush Lizard (*Sceloporus graciosus graciosus*), Long-Nosed Leopard Lizard (*Gambelia wislizenii*), and Zebra-Tailed Lizard (*Callisaurus draconoides*); INVERTEBRATES: 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: According to the CNDDB, several species of special concern have the potential to occur within the project site. CDFW commented on the original draft MND regarding concerns that the MND does not address the potential for these species to be present, provide avoidance and minimization measures, nor

provide mitigation to reduce the projects impacts to less than significant. The revised MND did not address CDFW's comment letter nor provide supporting documentation to substantiate the determination that the projects impacts are less than significant. 59 years of Project activities and partial remediation and reclamation of the Project area with long-term permanent impacts of at least 14 acres and up to 54.26 acres.

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 (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). 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, nor the revised 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: 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 #2 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, nor the revised draft MND to avoid impacts the species of special concern. CDFW provided comments regarding the American Badger which was not included in the revised draft MND or in the biological assessment of Appendix D of the recirculated draft MND.

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 that 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 #3: 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 neither the draft MND nor

the recirculated draft MND sufficiently identifies Project impacts to burrowing owl. Page 2 of Appendix D of the recirculated MND states, "[t]he BSA is comprised of the adjacent desert shrubland and alluvial fan topography. The vegetation community surrounding the material site is dominated by shadscale scrub. Prominent plant species located within the BSA include: four-wing saltbush, Mojave indigo bush, budsage, winterfat, greasewood, Mojave woolyaster, and desert trumpet. Four-wing saltbush is dominant. The elevation within the BSA ranges from 4000 to 4200 feet." Page 3 of Appendix D: Environmental Documentation states the burrowing owl has "No [potential to occur within the BSA]; only nearby record is historic (1891). Current habitat is unlikely to support a nesting colony as ground squirrel sign, the species' most notable prey, was absent during field surveys, [.]" While the recirculated MND offers a determination, it lacks sufficient evidence such as surveys of suitable habitat.

Specific impact: The Draft MND and the recirculated draft MND do not identify the site of the Zurich Pit within the predicted range and suitability of the habitat. Zeiner, et al. (1999) state the burrowing owl is "[a] yearlong resident of open, dry grassland and desert habitats, and in grass, forb and open shrub stages of pinyon-juniper and ponderosa pine habitats...Found as high as 1600 m (5300 ft) in Lassen Co."[2] The Project has the signification 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. According to CNDDB, the Project Site is located within the predicted range and suitability of habitat.[3]

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 (CNDDB) 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

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[2] Zeiner, et al. (1999). *Life History Account B269: Western Burrowing Owl (Athene cunicularia).* California Wildlife Habitat Relationships System, California Department of Fish and Wildlife, California Interagency Wildlife Task Group. Retrieved from https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1871.
[3] CDFW. BIOS / CNDDB Government [ds45]: Dataset Draft Zurich Pit Reclamation Plan. 2025. California Department of Fish and Wildlife. Retrieved June 30, 2025, from https://tiledimageservices2.arcgis.com/Uq9r85Potqm3MfRV/arcgis/rest/services/biosds2184_cru/ImageServer.

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: 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 (CDFG 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 #4: Bats

Draft Reclamation Plan – revised draft MND

Issue: The Project may impact potentially suitable habitat for bats and avoidance and minimization measures were not proposed within the draft MND or the recirculated draft MND to avoid impacts to bats. Page 2 of Appendix D of the recirculated MND states, “[t]he BSA is comprised of the adjacent desert shrubland and alluvial fan topography. The vegetation community surrounding the material site is dominated by shadscale scrub. Prominent plant species located within the BSA include: four-wing saltbush, Mojave indigo bush, budsage, winterfat, greasewood, Mojave woolyaster, and desert trumpet. Four-wing saltbush is dominant. The elevation within the BSA ranges from 4000 to 4200 feet.” Additionally, page 3 of Appendix D: Environmental Documentation states the Pallid Bat has “No [potential to

occur within the BSA]; habitat absent within the BSA." To substantiate a determination made within a MND, either that impacts will be avoided or reduced to a less than significant level, sufficient evidence must be provided to support that determination. While the recirculated MND offers a determination, it lacks sufficient evidence such as surveys of suitable habitat.

Specific Impact: The Project area contains suitable habitat to support pallid bats (*Antrozous pallidus*), a Species of Special Concern (SSC). According to Harris, 1998, a "wide variety of habitats is occupied, including grasslands, shrublands, woodlands, and forests from sea level up through mixed conifer forests. The species is most common in open, dry habitats with rocky areas for roosting. A yearlong resident in most of the range."[4] 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. Additionally, in these habitats, the pallid bat "forages over open ground, usually 0.5-2.5 m (1.6-8 ft) above ground level. Foraging flight is slow and maneuverable with frequent dips, swoops, and short glides. Many prey are taken on the ground.[5] For habitat cover, "[d]ay roosts are in caves, crevices, mines, and occasionally in hollow trees and buildings. Roost must protect bats from high temperatures. Bats move deeper into cover if temperatures rise. Night roosts may be in more open sites, such as porches and open buildings. Few hibernation sites are known, but probably uses rock crevices.[6]

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;

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[4] Harris, J. (1988). *Life History Account M038: Pallid Bat (Antrozous pallidus)*. California Wildlife Habitat Relationships System, California Department of Fish and Wildlife, California Interagency Wildlife Task Group. Retrieved from https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2349.
[5] Harris. (1988).
[6] Harris. (1988).

- 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 that significant: CDFW offers the following Mitigation Measure.

Mitigation Measure 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.

III. Additional Comments

COMMENT #5: 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 **Mitigation Measure BIO-11:**

Mitigation Measure 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 #6: 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 **Mitigation Measure 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:

Mitigation Measure 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.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

CDFW recommends that Inyo County incorporate and give due consideration to CDFW's recommendations concerning the protection of native and sensitive plant species. These actions are required to ensure successful revegetation with native species and to mitigate the risk of future site closures, including but not limited to closures such as that which occurred in 1987 due to visual impacts and dust generation.

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.

CDFW recommends that Inyo County shall revise Section 4.3.0 Reclamation Schedule to have reclamation activities commenced no later than 6 months after Project activities commence and provide a monitoring plan to CDFW at this time.

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 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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 Scott Jakubowski, Senior Environmental Scientist (Specialist), at Scott.Jakubowski@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Brandy Wood
4D759253408941E...

Brandy Wood
Environmental Project Manager

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

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Attachment A: Mitigation and Monitoring Reporting Plan

Mitigation Measure		**Timing**	**Responsible Party**
BIO-Burrowing Owl-4	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). 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	Prior to commencing ground or vegetation disturbing activities	Project Proponent

	surveys shall follow the guidance of the Staff Report on Burrowing Owl Mitigation (CDFG, 2012). 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. 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. Should permanent loss of western burrowing owl habitat occur the ratio of acquisition		

	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.		
BIO-Bat-1: Bat Pre-Construction Surveys	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 adjacent land shall be surveyed throughout one year, prior to initial site	Prior to commencing ground or vegetation disturbing activities	Project Proponent

	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. IV. **If roosting bats, of any status, are found during the surveys, the bats and roosts shall be avoided to the maximum extent 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. ***V.*** **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 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.		
BIO-General-6: Species Avoidance	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 and 65 feet around clusters of American badger burrows. The Caltrans Biologist and	During Project activities	Project Proponent

	Resident Engineer must be notified. Coordination with CDFW and USFWS shall be required prior to restarting activities, if full avoidance is not achievable.		
BIO-Reptile-4: Authorized Biologist Clearance Surveys	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
BIO-General-18: Aquatic Resources Restoration	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 construction activities are complete, temporarily impacted aquatic resources	Prior to or after commencing Project depending on mitigation type	Project Proponent

	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.		