



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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 Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 23, 2025
 Sent Via Email

Derek Newland, Planner
 San Bernardino County
 385 N. Arrowhead Avenue, 1st Floor
 San Bernardino, CA 92415-0182

The Lynx Cat Mountain Quarry Expansion Project (Project)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2025041056

Dear Derek Newland:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from San Bernardino County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.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 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: Lynx Cat Mine, MATCON Corporation

Objective: The objective of the Project is to extend mining activities for an additional 50 years and to expand the Lynx Cat Mine quarry from 48.2 acres to 161.7 acres, leading to a 113.5-acre quarry expansion. Additionally, expansion of crushing, screening, processing, and product stockpile areas is proposed on an additional 80 acres west of the expanded 161.7 acres quarry area. Lastly, the quarry depth will increase from 250 to 500 feet below the ground surface (bgs) with an average pit floor depth of +/- 485 feet bgs. Primary Project activities include mining, excavation, staging, stockpiling, construction and

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.

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maintenance of roads and pit benches, transportation of materials, drilling and the use of explosives.

Location: 19120 Linx Cat Road, Hinkley, California 92347; Assessor's Parcel Number(s): 0496-011-75 & 0496-011-76

Timeframe: December 31, 2025 to December 31, 2075

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Bernardino County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

COMMENT 1: Nesting Birds

Section 4, Page 28-31

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, Species of Special Concern (SSC), and common birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project as described could result in direct take associated with grading, vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, displacement, reduction of habitat and habitat quality associated with road infrastructure and mining activities. The Project as described would cause permanent and temporary impacts to avian species' foraging and nesting habitat.

Why impact would occur: Within the MND, MM-BIO-1 limits nesting bird surveys to only occur within the nesting bird season, CDFW would like to note that regardless of the time of year, a pre-construction clearance survey should be conducted to avoid potential impacts to nesting birds. This is considering that the timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In addition, MM-BIO-1 as outlined in the MND does not require that a qualified biologist monitor and determine whether a nest has been vacated in order to proceed without risking take of nesting birds and violation to state or federal laws. California Fish and Game Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".

On page 30, the MND states that the Project would result in loss of suitable habitat for LeConte's thrasher (SSC) and loggerhead strike (SSC) through vegetation removal. Further, construction while birds are nesting could result in a decrease in breeding success or otherwise lead to nest abandonment. For example, noise from road use, generators, drilling, explosives, and heavy equipment may disrupt mating, calls, or songs, which could impact reproductive success^{2&3}.

Evidence impact would be significant: 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 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

² Patricelli, G. L., & Blickley, J. L. 2006. Avian Communication in Urban Noise: Causes and Consequences of Vocal Adjustment. *The Auk*, 123(3), 639–649.

³ Halfwerk, W., L.J.M. Holleman, C. M Lessells, H. Slabbekoorn. 2011. Negative Impact of Traffic Noise on Avian Reproductive Success. *Journal of Applied Ecology* 48:210–219.

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amended (16 U.S.C. § 703 et seq.). 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.

Recommended potentially feasible mitigation measure(s): CDFW appreciates that the MND provides a measure to minimize the Project's impacts to nesting birds. CDFW offers the following revisions to MM-BIO-1 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final MND.

Mitigation Measure: MM-BIO-1; Revised

To the extent feasible, construction activities shall avoid the migratory season to reduce any potentially significant impacts to birds that may be nesting in the Project site. Prior to disturbing soil or vegetation, **regardless of the time of year,** ~~between February 1 and September 15,~~ a qualified biologist shall survey ~~all shrubs within~~ the Project Site **and within 500 feet of all impact areas** for nesting birds including loggerhead shrike and Le Conte's thrasher. Surveys shall end no more than three days prior to clearing. Documentation of surveys and findings shall be submitted to the California Department of Fish and Wildlife and County of San Bernardino Planning Division within ten days of the last survey. If no nesting birds are observed, project activities may begin. If an active bird nest is located, ~~the plant in which it occurs~~ **nest shall** ~~should~~ be left in place **and monitored by the qualified biologist** until the birds leave the nest. If active nests are found during nesting bird surveys, they shall be flagged ~~for avoidance.~~ **and a** A 250-foot buffer shall be marked around songbird nests, and a 500-foot buffer shall be marked around raptor nests.

COMMENT 2: Desert Tortoise (*Gopherus agassizii*)

Section 4, Page 29-31

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to desert tortoise habitat. The Project may result in the take of desert tortoise, a CESA listed threatened and candidate endangered species, during construction of the Project and the life of the Project.

Specific impact: Project construction and related mining activities may cause direct take of desert tortoise and indirect take in the form of reducing habitat and species movement.

Why impact would occur: As shown in Figure 4 of Appendix C1 in the Biological Assessment, 7 suitable burrows were mapped throughout the Project site and were noted as in good condition for desert tortoise. One live tortoise was also found on-site during the focused survey. Lastly, desert tortoise scat and scutes were found scattered across the Project site. Impacts to desert tortoise would occur due to the presence of the species on site and the loss of habitat suitable for desert tortoise. Thus, impacts on individuals and the loss of desert tortoise habitat could result in significant impacts if not mitigated to a level of less than significant.

Evidence impact would be significant: Desert tortoise was recently uplisted from a threatened to endangered species under CESA, signifying the continued need to conserve the species and the importance to avoid impacts to the species and its habitat. Surveys indicate desert tortoise, suitable burrows, and sign of desert tortoise was found on-site. CDFW considers the take of a listed species and loss of the species habitat as a significant impact, unless mitigated to a level of less than significant.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the MND provides a measure to minimize the Project's impacts to desert tortoise. CDFW strongly recommends the following

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revisions to MM-BIO-2 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final MND.

Mitigation Measure: MM-BIO-2; Revised

~~To establish appropriate avoidance and minimization measures and/or mitigation measures for desert tortoise, the mine operator or its qualified biologist shall consult with the BLM, USFWS, and the CDFW prior to commencing any ground disturbing activities in the project area. (Note that an Incidental Take Permit (ITP) application for desert tortoise and Mojave ground squirrel has been submitted to CDFW in January 2025 and the CDFW determined that the application was complete on February 25, 2025.)~~ **An Incidental Take Permit (ITP) for desert tortoise (*Gopherus agassizii*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct and/or indirect impacts shall be fulfilled through conservation of suitable desert tortoise habitat through the purchase of mitigation bank credits or land acquisition as determined by CDFW in the ITP and as determined by BLM/USFWS. A pre-construction clearance survey in accordance with current U.S. Fish and Wildlife Service (USFWS) protocol⁴ shall be conducted to evaluate locations of potential desert tortoise burrows within the Project limits. The pre-construction clearance survey shall be conducted on the Project site 14 to 21 days prior to the start of construction activities; or alternatively, pre-construction clearance surveys may be conducted at any time following the installation of desert tortoise exclusionary fencing encompassing the entire Project site, which would ensure that tortoises cannot enter the Project after clearance surveys are completed. Should there be any faults following the installation of the desert tortoise exclusionary fence that would compromise the efficiency, additional pre-construction clearance surveys shall be conducted throughout the Project site. Temporary desert tortoise exclusionary fencing shall remain in place until Project construction is completed and shall be monitored by a qualified biologist in compliance with current USFWS protocols. Should desert tortoise be located during the clearance survey, all methods used for handling desert tortoises during the clearance surveys must be in accordance with the USFWS protocol and Project-specific guidance contained in a habitat conservation plan and the ITP. No take of desert tortoise shall occur without prior authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081 and a habitat conservation plan. The Project proponent shall adhere to measures and conditions set forth within the ITP. Anyone who handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS and CDFW. The area cleared and number of desert tortoises found within that area shall be reported to the local USFWS and CDFW. Notification shall be made in accordance with the conditions of the habitat conservation plan and ITP.**

COMMENT 3: American Badger (*Taxidea taxus*)

Section 4, Page 29-31

Issue: The Project may impact potentially suitable habitat for American Badger and MM-BIO-3 within the MND is not sufficient to avoid impacts to this species of special concern.

Specific Impact: The Project area is within the range of occurrence of American badger and is known to support suitable habitat for American Badger. The MND fails to propose appropriate avoidance and minimization measures to reduce Project impacts to less than significant.

Why Impact Would Occur: The Project would eliminate potential habitat for American badger through the expansion of a quarry. Project activities that would eliminate

⁴ U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for any action that may occur within the range of the Mojave Desert Tortoise (*Gopherus agassizii*).

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potential habitat and potentially impact the species, include grading, trenching, excavation, drilling, and the use of dynamite.

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: CDFW appreciates that the MND provides a measure to minimize the Project's impacts to American badger. CDFW strongly recommends the following revisions to MM-BIO-3 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final MND.

Mitigation Measure: MM-BIO-3; Revised

A biological monitor shall be present on-site during all initial ground disturbing activities to ensure no impacts to American badger occur. If American badger is found on-site, the biological monitor shall stop all work and allow the sensitive wildlife to leave the site **and/or shall follow measures in the American Badger Mitigation and Monitoring Plan (plan). The Project proponent shall develop and implement an 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 shall be reviewed and approved by CDFW. The final plan shall include, but not be limited to the following procedures and impact avoidance measures:**

- 1) **Identification.** 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.
- 2) **Pre-Construction Surveys.** Biological Monitors shall conduct preconstruction 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.
- 3) **Monitoring and Protection Measures, and Den Excavation.** The plan will include details on monitoring requirements, types and methods of passive relocation, and methods and timing of den excavation, including, but not limited to the following:
- 4) **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)

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that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse.

- 5) **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.

- 6) **Active natal/pupping dens.** If an active natal den (a den with pups) is detected on the site during construction, 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.

- 7) **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 4: Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

Section 4, Page 29-31

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to Mohave ground squirrel habitat. The Project may result in the take of Mohave ground squirrel, a CESA listed threatened species, during construction of the Project and life of the Project.

Specific impact: Staging of construction equipment, vehicles, and other mining activities may result in the collapse of occupied burrows and result in direct mortality and/or injury to Mohave ground squirrel. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of Mohave ground squirrel habitat. Desert shrub vegetation such as creosote bush scrub (*Larrea tridentata*) is known to provide habitat for Mohave ground squirrel and will be removed.

Why impact would occur: Page 4.3-6 of the MND states that Mohave ground squirrel was determined to have a moderate potential to occur within the Project boundary. The MND states that focused surveys for Mohave ground squirrel were not conducted and no further analysis will be conducted. Additionally, within the MND, it is noted that the

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most recent occurrence for Mohave ground squirrel is from 2011 within 9 miles southwest of the Project site; however, this occurrence does not preclude the potential that Mohave ground squirrel could inhabit the area. Lastly, the MND states that suitable habitat is present for Mohave ground squirrel and CDFW considers the loss of suitable habitat to Mohave ground squirrel a significant impact.

Evidence impact would be significant: Consistent with CEQA Guidelines, Section 15380, the status of the Mohave ground squirrel as a threatened species under CESA (Fish & G. Code, § 2050 *et seq.*) qualifies it as an endangered, rare, or threatened species under CEQA.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the MND provides a measure to minimize the Project's impacts to Mohave ground squirrel. CDFW strongly recommends the following revisions to MM-BIO-4 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final MND.

Mitigation Measure: MM-BIO-4; Revised

~~To establish appropriate avoidance and minimization measures and/or mitigation measures for Mohave ground squirrel focused surveys shall be performed by a qualified biologist in Expansion Area 3 during the appropriate season to determine presence or absence on-site. If this species is determined to be present on-site, Initial Study PROJ-2024-00173 Lynx Cat Mountain Quarry APN 0496-011-75 & 0496-011-76 April 2025 Page 32 of 82 consultation shall be initiated with the CDFW prior to commencing any ground disturbing activities in the project area. Any impacts to Mohave ground squirrel would require a CESA 2081 ITP. (Note that an ITP application for desert tortoise and Mojave ground squirrel has been submitted to CDFW in January 2025 and the CDFW determined that the application was complete on February 25, 2025.)~~ **An Incidental Take Permit (ITP) for Mohave ground squirrel (*Xerospermophilus mohavensis*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct, indirect, and/or cumulative impacts shall be fulfilled through conservation of suitable Mohave ground squirrel habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with, and approved by, CDFW. No more than thirty (3) calendar days prior to the start of ground disturbing activities a qualified biologist, approved by CDFW, shall perform a pre-construction survey for Mohave ground squirrel. These surveys shall cover the Project area and a 50-foot buffer zone. All known or suspected Mohave ground squirrel burrows within the work areas shall be flagged to alert biological and work crews to their presence. A report documenting the results of the preconstruction surveys shall be submitted to CDFW within 30 calendar days of completing the surveys. Should Mohave ground squirrel be located during the clearance survey, all methods used for handling Mohave ground squirrel during the clearance surveys must be in accordance with Project-specific guidance contained in the ITP. Anyone who handles Mohave ground squirrel during clearance activities must have the appropriate authorization from CDFW. No take of Mohave ground squirrel shall occur without prior authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081. The Project proponent shall adhere to measures and conditions set forth within the ITP.**

COMMENT 5: Special-Status Plant Species

Issue: CDFW is concerned that the Project may affect sensitive plant species with the potential to occur within the Project area. CNDDDB identifies several sensitive plant species including chaparral sand-verbena (*Abronia villosa var. aurita*), Lane Mountain milk-vetch (*Astragalus jaegerianus*), and Parish's phacelia (*Phacelia parishii*), that have the potential to occur in the Project area.

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Specific Impact: Vegetation removal, and other ground disturbances are likely 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 and Calflora, the Project has suitable habitat for at least 16 native and rare plant species. However, the rare plant surveys conducted were not conducted in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018)⁵.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW recommends the following mitigation measure, MM-BIO-5, for special-status plants be included in the Final MND.

Mitigation Measure: MM-BIO-5; Special-Status Plants (New)

Prior to Project implementation, focused sensitive plant surveys shall 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)⁵. The surveys shall be conducted by a qualified biologist 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 are both 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 proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging) determined by a qualified biologist. If complete avoidance is not feasible, the Project proponent 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 proponent should apply for a CESA ITP with CDFW.

COMMENT 6: Burrowing Owl (*Athene cunicularia*)

Section 4, Page 29-31

Issue: The Project has the potential to result in permanent and temporary

⁵ California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.

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loss, degradation, and impacts to burrowing owl habitat. The Project also has the potential to cause direct take of burrowing owl during Project activities and the life of the Project.

Specific impact: The Project has the potential to impact burrowing owl through the collapsing of burrows, entombment, displacement, direct take associated with vehicle and/or equipment strike(s), indirect take associated with Project activities such as attracting predators, reduction of habitat and habitat quality associated with the construction within the expansion area. The Project as described will cause permanent and temporary impacts to burrowing owl foraging and nesting habitat.

Why impact would occur: Multiple burrowing owl occurrences have been reported near the Project site according to CNDDDB. Although the Biological Assessment mentions a reconnaissance survey was conducted, a focused burrowing owl survey was not conducted. The MND mentions the Biological Assessment concluded that no burrowing owls are currently onsite, and this is concerning to CDFW considering that focused surveys were not conducted and not all portions of the Project location and adjacent areas were surveyed.

Evidence impact would be significant: Burrowing owls are regulated under Fish and Game Code section 3503.5, are a CDFW SSC, and have recently been petitioned for consideration to be listed as endangered or threatened under CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. However, because the MND does not include mitigation measures specific to burrowing owl, the MND does not adequately mitigate the potential impacts to burrowing owl to a level of less than significant. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (i.e., Fish and Game Code sections 3503.5, etc.) and Federal laws (i.e., Migratory Bird Treaty Act).

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW recommends the following mitigation measure, MM-BIO-6, be included in the Final MND to minimize potential impacts to burrowing owl.

Mitigation Measure: MM-BIO-6; Burrowing Owl (New)

Prior to any ground disturbance, a habitat assessment according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012 or most recent version) shall be conducted by a qualified biologist. Breeding season surveys of areas found to have suitable habitat for burrowing owl shall be conducted by a qualified biologist according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012 or most recent version) prior to any ground disturbance. 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, the Project proponent shall fully avoid impacts to burrowing or should obtain a CESA ITP if impacts to burrowing owl are unavoidable.

ADDITIONAL COMMENTS

COMMENT 7: Lake and Streambed Alteration Agreement Notification

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Based on review of aerial imagery, CDFW determined that ephemeral streams may occur within the Project area. Thus, CDFW recommends that the Project proponent adopt MM BIO-6 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. Thus, CDFW recommends the following mitigation measure (MM-BIO-7) be included in the Final MND.

Mitigation Measure: MM-BIO-7; Lake and Streambed Alteration Agreement Notification (New)

Prior to construction activities, mapping of stream resources on the Project site shall be conducted to identify streams on site. If Project construction activities occur within a stream or associated habitat, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.

I. Editorial Comments and/or Suggestions

CDFW recommends clearly titling the mitigation measures to help readers easily identify their purpose.

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 (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 MND to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Julia Karo, Senior Environmental Scientist Specialist at (909) 278-2950 or Julia.Karo@wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

Derek Newland, Planner
San Bernardino County
May 23, 2025
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ATTACHMENTS

(A) Mitigation Monitoring Reporting Plan

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**Attachment A
 Mitigation and Monitoring Reporting Plan**

CDFW recommends the following language to be incorporated into the final MND for the Project.

Biological Resources (BIO) Mitigation Measure		Timing	Responsible Party
BIO-1	To the extent feasible, construction activities shall avoid the migratory season to reduce any potentially significant impacts to birds that may be nesting in the Project site. Prior to disturbing soil or vegetation, regardless of the time of year, a qualified biologist shall survey the Project Site and within 500 feet of all impact areas for nesting birds including loggerhead shrike and Le Conte's thrasher. Surveys shall end no more than three days prior to clearing. Documentation of surveys and findings shall be submitted to the California Department of Fish and Wildlife and County of San Bernardino Planning Division within ten days of the last survey. If no nesting birds are observed, project activities may begin. If an active bird nest is located, the nest shall be left in place and monitored by the qualified biologist until the birds leave the nest. If active nests are found during nesting bird surveys, they shall be flagged for avoidance and a 250-foot buffer shall be marked around songbird nests, and a 500-foot buffer shall be marked around raptor nests.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
BIO-2	An Incidental Take Permit (ITP) for desert tortoise (<i>Gopherus agassizii</i>) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct and/or indirect impacts shall be fulfilled through conservation of suitable desert tortoise habitat through the purchase of mitigation bank credits or land acquisition as determined by CDFW in the ITP and as determined by BLM/USFWS. A pre-construction clearance survey in accordance with current U.S. Fish and Wildlife Service (USFWS) protocol shall be conducted to evaluate locations of potential desert tortoise burrows within the Project limits. The pre-construction clearance survey shall be conducted on the Project site 14 to 21 days prior to the start of construction activities; or alternatively, pre-construction clearance surveys may be conducted at any time following the installation of desert tortoise exclusionary fencing encompassing the entire Project site, which would ensure that tortoises cannot enter the Project after clearance surveys are completed. Should there be any faults following the installation of the desert tortoise exclusionary fence that would compromise the efficiency, additional pre-construction clearance surveys shall be conducted throughout the Project site.	Prior to commencing ground or vegetation disturbing activities	Project Proponent

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	<p>Temporary desert tortoise exclusionary fencing shall remain in place until Project construction is completed and shall be monitored by a qualified biologist in compliance with current USFWS protocols. Should desert tortoise be located during the clearance survey, all methods used for handling desert tortoises during the clearance surveys must be in accordance with the USFWS protocol and Project-specific guidance contained in a habitat conservation plan and the ITP. No take of desert tortoise shall occur without prior authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081 and a habitat conservation plan. The Project proponent shall adhere to measures and conditions set forth within the ITP. Anyone who handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS and CDFW. The area cleared and number of desert tortoises found within that area shall be reported to the local USFWS and CDFW. Notification shall be made in accordance with the conditions of the habitat conservation plan and ITP.</p>		
<p>BIO-3</p>	<p>A biological monitor shall be present on-site during all initial ground disturbing activities to ensure no impacts to American badger occur. If American badger is found on-site, the biological monitor shall stop all work and allow the sensitive wildlife to leave the site and/or shall follow measures in the American Badger Mitigation and Monitoring Plan (plan). The Project proponent shall develop and implement an 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 shall be reviewed and approved by CDFW. The final plan shall include, but not be limited to the following procedures and impact avoidance measures:</p> <ol style="list-style-type: none"> 1. <u>Identification</u>. 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. 2. <u>Pre-Construction Surveys</u>. Biological Monitors shall conduct preconstruction 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 	<p>Prior to commencing ground or vegetation disturbing activities.</p>	<p>Project Proponent</p>

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	<p>corridors and access roads). If dens are detected, each den shall be classified as inactive, potentially active, or active den.</p> <p>3. <u>Monitoring and Protection Measures, and Den Excavation</u>. 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:</p> <p>4. <u>Inactive dens</u>. 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.</p> <p>5. <u>Potentially and definitely active dens</u>. 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.</p> <p>6. <u>Active natal/pupping dens</u>. 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.</p>		
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	<p>Active natal/pupping dens will not be excavated or passively relocated.</p> <p>7. 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.</p>		
BIO-4	<p>An Incidental Take Permit (ITP) for Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct, indirect, and/or cumulative impacts shall be fulfilled through conservation of suitable Mohave ground squirrel habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with, and approved by, CDFW. No more than thirty (3) calendar days prior to the start of ground disturbing activities a qualified biologist, approved by CDFW, shall perform a pre-construction survey for Mohave ground squirrel. These surveys shall cover the Project area and a 50-foot buffer zone. All known or suspected Mohave ground squirrel burrows within the work areas shall be flagged to alert biological and work crews to their presence. A report documenting the results of the preconstruction surveys shall be submitted to CDFW within 30 calendar days of completing the surveys. Should Mohave ground squirrel be located during the clearance survey, all methods used for handling Mohave ground squirrel during the clearance surveys must be in accordance with Project-specific guidance contained in the ITP. Anyone who handles Mohave ground squirrel during clearance activities must have the appropriate authorization from CDFW. No take of Mohave ground squirrel shall occur without prior authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081. The Project proponent shall adhere to measures and conditions set forth within the ITP.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
BIO-5	<p>Prior to Project implementation, focused sensitive plant surveys shall 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</p>	<p>Before and During Project activities</p>	<p>Project Proponent</p>

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	<p>Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a qualified biologist 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 are both 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 proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging) determined by a qualified biologist. If complete avoidance is not feasible, the Project proponent 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 proponent should apply for a CESA ITP with CDFW.</p>		
<p>BIO-6</p>	<p>Prior to any ground disturbance, a habitat assessment according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012 or most recent version) shall be conducted by a qualified biologist. Breeding season surveys of areas found to have suitable habitat for burrowing owl shall be conducted by a qualified biologist according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012 or most recent version) prior to any ground disturbance. 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, the Project proponent shall fully avoid impacts to burrowing or should obtain a</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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	CESA ITP if impacts to burrowing owl are unavoidable.		
BIO-7	Prior to construction activities, mapping of stream resources on the Project site shall be conducted to identify streams on site. If Project construction activities occur within a stream or associated habitat, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.	Prior to commencing ground or vegetation disturbing activities	Project Proponent