



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 11, 2025
Sent via email.

Derek Newland
Planner
San Bernardino County Department of Public Works
385 N. Arrowhead Avenue
San Bernardino, CA 92415

Subject: Initial Study/Mitigated Negative Declaration
Essex Overhead Quarry (Project)
State Clearinghouse No. 2025050552

Dear Derek Newland:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from San Bernardino County Department of Public Works (DPW) 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

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: San Bernardino County DPW

Objective: The objective of the Project is to construct and operate a sand and gravel quarry referred to as the Essex Overhead Pit. The Project proponent proposes to develop and utilize a long-term materials source and storage site for a 100-year period to provide construction aggregate materials for repair, maintenance, and fill for the local and regional roads, shoulders and wash crossings, to facilitate stockpiling and recycling of removed materials, and to support a soils management area. The Project includes the construction of two pits (North Pit and South Pit) that will make up approximately 47 acres of approximately 90 acres west of the BNSF railroad tracks. The remaining property (approximately 197 acres) east of the BNSF railroad tracks will remain as undisturbed desert lands. Primary Project activities include mining, excavation, staging, stockpiling, construction and maintenance of access roads, and transportation of materials. No blasting, screening or permanent crushing will occur as part of Project activities.

Location: The Project site is located thirty-five miles west of Needles, CA and south of I-40 between National Trails Hwy, and the BNSF Railroad at Goffs Road.

Timeframe: The IS/MND does not provide a timeframe for construction. CDFW recommends that the final IS/MND includes anticipated start and end dates for this Project.

COMMENTS AND RECOMMENDATIONS

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

Specific Comments

COMMENT #1: Mohave Desert Tortoise (*Gopherus agassizii*)

Issue: The Project may have impacts to Mohave Desert Tortoise, a California Endangered Species Act threatened species, proposed endangered. The IS/MND describes a process to install permanent desert tortoise fencing to preclude desert tortoise from entering the Project site. The process includes the installation of fence stakes and then a biologist conducting a clearance survey. If the clearance survey results in not finding desert tortoise, the Project will move forward with the installation of the permanent desert tortoise fencing. CDFW is concerned that there is the potential for desert tortoise to enter the Project site during the fence installation. Take is defined as by California Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

Specific Impact: Mohave Desert tortoise is a State and federally listed threatened species. This species is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat, due to development. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to Mohave desert tortoise. Project construction and related activities may result in collision with or crushing by vehicles or heavy equipment; entrapment within open trenches and pipes; entrapment or entanglement within materials and equipment staged and moved; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation. The installation of fencing may result in the crushing of occupied burrows, capture of Mohave desert tortoise and the need to relocate/translocate individuals out of the Project area. The handling of Mohave desert tortoise to relocate/translocate out of harm's way requires the authorization of take through a CESA incidental take permit or other state authorization.

Why Impact Would Occur: The IS/MND indicates that there is suitable habitat and soils for Mohave desert tortoise within Project site and there were sign of Mohave desert tortoise use in the area. The California Natural Diversity database includes several historical occurrences of Mohave desert tortoise in the area. Additionally, INaturalist includes several recent occurrences of Mohave desert tortoise in the immediate vicinity of the Project site. CDFW also strongly encourages the Project proponent to apply for a CESA incidental take permit (ITP) for take of Mohave desert tortoise.

Evidence impact would be significant: Mohave desert tortoise is a California Endangered Species Act (CESA)-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to project

implementation. This may include an incidental take permit or other take authorization from CDFW (Fish and Game Code, §§ 2080.1 & 2081).

Mohave desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive plant species (USFWS 2011). The Mohave desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Mohave desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant: CDFW recommends inclusion of the following changes to the mitigation measures for Mohave desert tortoise (edits are in strikethrough and additions are in bold):

BIO-3 Desert Tortoise (Revised)

The following mitigation measures are recommended to avoid potential impacts to desert tortoise. If at any time during the process desert tortoises are observed on the Project Site, the County shall not initiate construction and shall instead contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of desert tortoise.

Worker Environmental Awareness Program

Prior to any construction activities or site development at the quarry, the County will implement a Worker Environmental Awareness Program (WEAP) to educate on-site workers about sensitive environmental issues associated with the Project. The program will be administered to all on-site personnel, including the County's personnel, contractors, and all subcontractors, on the first day of work prior to commencing work on the site. The WEAP will emphasize the protected species that have potential to occur on or near the Project Site, including the Mojave desert tortoise, burrowing owl, nesting birds, and desert kit fox, among other plant and wildlife species. The program will include the following elements:

- A presentation, developed by or in consultation with a qualified biologist, discussing the sensitive biological resources with potential to occur on-site, and explaining the reasons for protecting these resources and penalties for non-compliance.
- Contact information for the project biological monitor, and instructions to contact the monitor with any questions regarding the WEAP information.
- An acknowledgement form, to be signed by each worker indicating that they received WEAP training and will abide by the site rules protecting biological resources.

Mojave Desert Tortoise Exclusion Fencing and Monitoring

Prior to initiation of construction activities in each project Phase, a desert tortoise **pre-construction surveys for Mojave desert tortoise be conducted prior to construction in accordance with the USFWS 2019 Mojave desert tortoise survey methodology to avoid direct and indirect impacts to Mojave desert tortoise (USFWS 2019). If Mojave desert tortoise is found to be present, individuals should be fully avoided. If full avoidance is infeasible, the Project shall obtain an CESA Incidental Take Permit (ITP) and mitigate impacts to Mojave desert tortoise through the purchase of credits from a mitigation/conservation bank, and/or land acquisition and perpetual management and conservation thereof. A desert tortoise exclusion** fence shall be installed around the perimeter of the active quarry pit and staging area to exclude desert tortoise from entering the facility throughout the operation of the Phase. If at any time during the process desert tortoises are observed on the Project Site, the County shall not initiate construction and shall instead contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of desert tortoise under the federal and state Endangered Species Acts.

~~After the location of the desert tortoise exclusion fence is staked, a qualified biologist shall conduct a survey in all disturbance areas and along the fence line for desert tortoise. Immediately following the survey (assuming no tortoises are detected), a desert tortoise exclusion fence shall be installed around the quarry areas. If desert tortoise are not found during the preconstruction survey a~~ The exclusion fence shall be installed in accordance with the specifications set forth in Chapter 8 of the USFWS' Desert Tortoise Field Manual (USFWS 2009), and installation of the fence shall be monitored by a biologist familiar with the installation of tortoise exclusion fencing. Following the installation of the exclusion fencing and prior to construction-related ground clearing and/or grading, the County shall retain a qualified biologist to conduct clearance surveys for the Mojave desert tortoise within the fenced area. Surveys shall follow the current guidelines for conducting clearance surveys used by the USFWS. The surveys shall consist of conducting two consecutive surveys by walking five-meter-wide parallel belt transects in a north-south and then east-west direction to obtain 100 percent coverage of the survey area. Again, if any sign indicating the presence of Mojave desert tortoise is detected, the County shall not proceed with ground clearing. **If Mohave desert tortoise is found, work will cease, and the County shall contact USFWS and CDFW to seek authorization for incidental take of desert tortoise under the federal and state Endangered Species Acts.**

COMMENT #2 American badger (Taxidea taxus)

Issue: The Biological Resources Assessment (BRA) prepared for the Project identifies that American badger habitat is present within the Project site however avoidance and

minimization measures were not proposed within the draft IS/MND to avoid impacts to American badger.

Specific Impact: The Project is within the range and supports suitable habitat for American badger, a Species of Special Concern (SSC). The IS/MND fails to address potential impacts to American badger and provide avoidance and minimization measures.

Why Impact Would Occur: The Project would eliminate potential habitat for American badger through construction of a quarry. Project activities that would eliminate potential habitat and potentially impact the species, include grading, excavation and the use of heavy equipment.

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 CEQA threatened or endangered status.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant: CDFW recommends inclusion of the following changes to the mitigation measures for desert tortoise (edits are in strikethrough and additions are in bold):

BIO-7 American Badger (NEW)

Prior to initiation of Project Activities, an American badger Mitigation and Monitoring Plan (plan) shall be developed and implemented. 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, and revision by 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 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.

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 a CDFW approved 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, 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 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 Impacts to Nesting Birds

Section IV Biological Resources Page 35

Issue: The Project may have impacts on nesting birds that are a SSC, and common birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3515, 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 IS/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.).

On page 32, the IS/MND states that the loggerhead shrike (*Lanius ludovicianus*) a SSC was observed in the Project area and has a high probability of occurring. 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, and heavy equipment may disrupt mating, calls, or songs, which could impact reproductive success ².

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 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: CDFW recommends the inclusion of the Mitigation Measure below, as revised (edits are in ~~strike through~~ and additions are in **bold**) in the final IS/MND to ensure impacts to birds are mitigated to a level of less than significant.

BIO-1 Nesting Bird Surveys (Revised)

To ensure compliance with the MBTA and the California Fish and Game Code, to the extent feasible, there shall be no vegetation cutting, removal, clearing, and/or grading allowed during the nesting season (February 15 – August 15). ~~If work is to be conducted within the nesting season, then~~ **Regardless of the time of year**, a nesting bird survey shall be conducted by a qualified biologist within three days prior to disturbance. If nesting birds are not detected, no further action is necessary. If an active nest is detected and the qualified biologist determines that work activities may impact nesting, an appropriate buffer zone will be established around the nest. The buffer shall be established using highly visible construction fencing or flagging, and construction personnel shall be instructed on the sensitivity of nest areas. The size of the buffer may vary depending on site features, the sensitivity of the species, and the type of construction activity, but will be designed to prevent disruption of nesting activity. The nests and associated buffer zones shall be avoided until the nesting cycle is complete or it is determined by the qualified biologist that the nest has failed. **The Project site will need to be re-surveyed if there is a lapse in construction for more than 3 days.**

² 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.

COMMENT #4 Burrowing Owl (*Athene cunicularia*)

Section IV Biological Resources Page 37

Issue: Page 37 of the IS/MND concludes “Because no burrowing owl or their sign were present within the survey area and suitable habitat is present in the region, the loss of habitat due to the Project is not considered an adverse impact.” CDFW is concerned that this impact analysis is incorrect and the conclusions in the Biological Resources Assessment were not accurately conveyed into the IS/MND. According to the Project’s Biological Resources Assessment Report, in particular Table 5, there were 12 potential burrows suitable for burrowing owl within the Project site. According to the listing petition submitted to the California Fish and Game Commission from several entities, burrow availability is a major factor in defining burrowing owl habitat. Additionally, habitat loss due to development within the Western Mojave Desert poses a significant threat to burrowing owl populations. The mere presence of suitable habitat in the region is not sufficient justification to conclude that the project’s impacts do not require mitigation.

Within the 2012 Staff Report, the minimum habitat replacement recommendation was purposely excluded as it was shown to serve as a default, replacing any site-specific analysis and discounting the wide variation in natal area, home range, foraging area, and other factors influencing burrowing owls and burrowing owl population persistence in a particular area. It hypothesized that mitigation for permanent impacts to nesting, occupied, and satellite burrows and burrowing owl habitat should be on, adjacent or proximate to the impact site where possible and where habitat is sufficient to support burrowing owls present. If mitigation occurs offsite, it should include (a) 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) be sufficiently large acreage with the presence of fossorial mammals. Furthermore, the report noted that suitable mitigation lands should be based on a comparison of the habitat attributes of the impacted and conserved lands, including but not limited to: type and structure of habitat being impacted or conserved; density of burrowing owls in impacted and conserved habitat; and significance of impacted or conserved habitat to the species range-wide. CDFW recommends consultation prior to obtaining mitigation lands for the species.

The ISMND shall propose mitigation for permanent loss of western burrowing owl habitat. 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 through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, 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. The ratio of acquisition to loss must in most cases exceed 1:1 for any species, particularly burrowing owl. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats.

The Project has the potential to result in permanent and temporary 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 and reduction in habitat quality associated with Project activities. The Project as described will cause permanent and temporary impacts to burrowing owl foraging and nesting habitat.

Why impact would occur: Although the BRA prepared for this Project states that a habitat assessment and burrow survey were conducted in December 2022, no focused burrowing owl surveys were conducted. The BRA concluded that no burrowing owls are currently onsite, and this is concerning to CDFW considering the surveys are over three years old and the burrow survey was conducted during the non-breeding season (September 1- January 31). Burrowing owls and their sign are more difficult to detect during the non-breeding season.

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. 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).

As a candidate species for listing, burrowing owl is granted the same protection as threatened or endangered species under CESA. Take of any CESA-listed species is prohibited except as authorized by State law (Fish and Game Code § 2080 and § 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project, results in the take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit or a consistency determination (California Fish and Game Code § 2080.1 and § 2081).

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW recommends the revision of MM-BIO 4 to minimize potential impacts to burrowing owl. Edits are in ~~strike through~~ and additions in **bold**.

BIO-4 Burrowing Owl (Revised)

~~Because no burrowing owls or their sign were present within the survey area and suitable habitat is present in the region, the loss of habitat due to the Project is not considered an adverse impact. However, b~~**Burrowing owls could move onto the site prior to Project development, therefore prior to any ground disturbance, take avoidance pre-construction breeding season surveys for burrowing owl should be completed according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012 or most recent version) by a qualified biologist. CDFG guidelines with In addition to the breeding season surveys, one survey will be being conducted within 14 days of planned construction and a second survey conducted within 24 hours of grading. 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 will trigger subsequent take avoidance surveys. Depending on the results of those surveys, a Burrowing Owl Management Plan may be prepared in consultation with CDFW that will outline protection and avoidance and minimization measures that will be implemented for the project, including methods for avoidance, exclusion and burrow excavation, and passive relocation.**

If burrowing owl, active burrowing owl burrows, or sign thereof are found and there is potential for take, the project proponent shall submit an incidental take permit application and the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be reviewed and approved by CDFW for comment prior to commencing Project activities. The plan shall propose avoidance and minimization measures and a mitigation proposal at a minimum 3:1 ratio (3 acres of mitigation for every acre of impact) for permanent loss of occupied burrow(s) and habitat. 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 through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, with development and implementation of a mitigation land management plan to address longterm 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. Such plan may be superseded by any condition of approval more stringent in the obtained incidental take permit.

Additional Comments

COMMENT #5: Lake and Streambed Alteration (Agreement) Notification

Based on review of aerial imagery, CDFW determined that ephemeral streams may occur within the Project area. Thus, CDFW recommends that the Project proponent revise **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. Additions are in **bold**.

BIO-6 Jurisdictional Waters (Revised)

Based on Jurisdictional Delineation assessment, impact to potential jurisdictional waters is minimal. However, the following BMP measures are recommended to address any potential impacts:

- Drainage from the development areas includes runoff of water, soil, as well as inorganic and organic matter. NRAI recommends standard water quality measures required for all projects be implemented for this Project. Project design shall incorporate measures, including measures required through the National Pollutant Discharge Elimination System (NPDES) requirements, to ensure that all measures shall be put in place to avoid discharge of untreated surface runoff from developed and paved areas. Stormwater systems shall be designed to prevent the release of toxins, chemicals, petroleum products, exotic plant materials or other elements that might degrade or harm biological resources or ecosystem processes in adjacent areas.
- Operation of motor vehicles near adjacent undeveloped lands may introduce undesirable petroleum products and solvents into the natural environment. All activity involving hazardous substances should be conducted in accordance with applicable local, State, and Federal safety standards.
- **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.**

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

Questions regarding this letter or further coordination should be directed to Gabriella Tolley, Environmental Scientist at Gabriella.Tolley@wildlife.ca.gov.

Sincerely,

DocuSigned by:

4D759253408941E...

Brandy Wood
Environmental Project Manager

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

Derek Newland, Planner
San Bernardino County Department of Public Works
June 11, 2025
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Attachment A: Mitigation and Monitoring Reporting Plan

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

Mitigation Measure		Timing	Responsible Party
BIO-3 Desert Tortoise	<p>The following mitigation measures are recommended to avoid potential impacts to desert tortoise. If at any time during the process desert tortoises are observed on the Project Site, the County shall not initiate construction and shall instead contact the USFWS and CDFW to develop an avoidance strategy and/or seek authorization for incidental take of desert tortoise.</p> <p><u>Worker Environmental Awareness Program</u> Prior to any construction activities or site development at the quarry, the County will implement a Worker Environmental Awareness Program (WEAP) to educate on-site workers about sensitive environmental issues associated with the Project. The program will be administered to all on-site personnel, including the County's personnel, contractors, and all subcontractors, on the first day of work prior to commencing work on the site. The WEAP will emphasize the protected</p>	Prior to commencing ground or vegetation disturbing activities	Project Proponent

	<p>species that have potential to occur on or near the Project Site, including the Mojave desert tortoise, burrowing owl, nesting birds, and desert kit fox, among other plant and wildlife species. The program will include the following elements:</p> <ul style="list-style-type: none">• A presentation, developed by or in consultation with a qualified biologist, discussing the sensitive biological resources with potential to occur on-site, and explaining the reasons for protecting these resources and penalties for non-compliance.• Contact information for the project biological monitor, and instructions to contact the monitor with any questions regarding the WEAP information.• An acknowledgement form, to be signed by each worker indicating that they received WEAP training and will abide by the site rules protecting biological resources. <p><u>Mojave Desert Tortoise Exclusion Fencing and Monitoring</u></p>		
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	<p>Prior to initiation of construction activities in each project Phase, a desert tortoise pre-construction surveys for Mojave desert tortoise be conducted prior to construction in accordance with the USFWS 2019 Mojave desert tortoise survey methodology to avoid direct and indirect impacts to Mojave desert tortoise (USFWS 2019). If Mojave desert tortoise is found present, individuals should be fully avoided. If full avoidance is infeasible, the Project shall obtain an CESA Incidental Take Permit (ITP) and mitigate impacts to Mojave desert tortoise through the purchase of credits from a mitigation/conservation bank, and/or land acquisition and perpetual management and conservation thereof. A desert tortoise exclusion fence shall be installed around the perimeter of the active quarry pit and staging area to exclude desert tortoise from entering the facility throughout the operation of the Phase. If at any time during the process desert tortoises are observed on the Project Site, the County shall not initiate construction and shall instead contact the USFWS and CDFW to develop an</p>		
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	<p>avoidance strategy and/or seek authorization for incidental take of desert tortoise under the federal and state Endangered Species Acts.</p> <p>If desert tortoise are not found during the preconstruction survey a exclusion fence shall be installed in accordance with the specifications set forth in Chapter 8 of the USFWS' Desert Tortoise Field Manual (USFWS 2009), and installation of the fence shall be monitored by a biologist familiar with the installation of tortoise exclusion fencing. Following the installation of the exclusion fencing and prior to construction-related ground clearing and/or grading, the County shall retain a qualified biologist to conduct clearance surveys for the Mojave desert tortoise within the fenced area. Surveys shall follow the current guidelines for conducting clearance surveys used by the USFWS. The surveys shall consist of conducting two consecutive surveys by walking five-meter-wide parallel belt transects in a north-south and then east-west direction to obtain 100 percent coverage of the survey area. Again, if any sign indicating the presence</p>		
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	<p>of Mojave desert tortoise is detected, the County shall not proceed with ground clearing. If Mohave desert tortoise is found, work will cease and the County shall contact USFWS and CDFW to seek authorization for incidental take of desert tortoise under the federal and state Endangered Species Acts.</p>		
<p>BIO-7 American Badger</p>	<p>Prior to initiation of Project Activities, an American badger Mitigation and Monitoring Plan (plan) shall be developed and implemented. 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, and revision by 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.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>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.</p> <p>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:</p> <ul style="list-style-type: none">• 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		
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	<p>hand and backfilled to prevent reuse.</p> <ul style="list-style-type: none">• Potentially and definitely active dens. Potentially and definitely active dens that would be directly impacted by construction activities shall be monitored by a CDFW approved 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		
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	<p>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> <ul style="list-style-type: none">• 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 whelping season, even if pups are not seen,		
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	<p>disturbance is not allowed. Active natal/pupping dens will not be excavated or passively relocated.</p> <ul style="list-style-type: none"> • 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-1 Nesting Bird Surveys</p>	<p>To ensure compliance with the MBTA and the California Fish and Game Code, to the extent feasible, there shall be no vegetation cutting, removal, clearing, and/or grading allowed during the nesting season (February 15 – August 15). Regardless of the time of year, a nesting bird survey shall be conducted by a qualified biologist within three days prior to disturbance. If</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>nesting birds are not detected, no further action is necessary. If an active nest is detected and the qualified biologist determines that work activities may impact nesting, an appropriate buffer zone will be established around the nest. The buffer shall be established using highly visible construction fencing or flagging, and construction personnel shall be instructed on the sensitivity of nest areas. The size of the buffer may vary depending on site features, the sensitivity of the species, and the type of construction activity, but will be designed to prevent disruption of nesting activity. The nests and associated buffer zones shall be avoided until the nesting cycle is complete or it is determined by the qualified biologist that the nest has failed. The Project site will need to be re-surveyed if there is a lapse in construction for more than 3 days.</p>		
<p>BIO-4 Burrowing Owl</p>	<p>Burrowing owls could move onto the site prior to Project development, therefore prior to any ground disturbance, breeding season surveys for burrowing owl should be completed according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>or most recent version) by a qualified biologist. In addition to the breeding season surveys, one survey will be conducted within 14 days of planned construction and a second survey conducted within 24 hours of grading. 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 will trigger subsequent take avoidance surveys.</p> <p>If burrowing owl, active burrowing owl burrows, or sign thereof are found and there is potential for take, the project proponent shall submit an incidental take permit application and the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be reviewed and approved by CDFW for comment prior to commencing Project activities. The plan shall propose avoidance and minimization measures and a mitigation proposal at a minimum 3:1 ratio (3 acres of mitigation for every acre of impact) for permanent loss of occupied burrow(s) and habitat. The mitigation lands</p>		
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	<p>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 through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, with development and implementation of a mitigation land management plan to address longterm 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. Such plan may be superseded by any condition of approval more stringent in the obtained incidental take permit.</p>		
<p>BIO-6 Jurisdictional Waters</p>	<p>Based on Jurisdictional Delineation assessment, impact to potential jurisdictional waters is minimal. However, the following BMP measures are recommended to address any potential impacts:</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<ul style="list-style-type: none">• Drainage from the development areas includes runoff of water, soil, as well as inorganic and organic matter. NRAI recommends standard water quality measures required for all projects be implemented for this Project. Project design shall incorporate measures, including measures required through the National Pollutant Discharge Elimination System (NPDES) requirements, to ensure that all measures shall be put in place to avoid discharge of untreated surface runoff from developed and paved areas. Stormwater systems shall be designed to prevent the release of toxins, chemicals, petroleum products, exotic plant materials or other elements that might degrade or harm biological resources or ecosystem processes in adjacent areas.• Operation of motor vehicles near adjacent undeveloped lands		
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	<p>may introduce undesirable petroleum products and solvents into the natural environment. All activity involving hazardous substances should be conducted in accordance with applicable local, State, and Federal safety standards.</p> <ul style="list-style-type: none">• 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.		
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