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Devore Gas Station, Convenience Store, and Drive-Thru Restaurant (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2025080303

Dear Maryn Mineo-Wells:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a MND from the County of San Bernardino 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: Geo-Cal, Inc.

Objective: The Project proponent has submitted a Minor Use Permit (MUP) application to the County of San Bernardino for the development of a gas station (including truck fueling), and an 1,848 square foot (sqft) convenience store with a connected 1,057 sqft drive-thru restaurant. The fueling area would feature six pump stations designated for passenger vehicles, and an additional six pump stations for trucking vehicles, all located beneath canopies with a maximum height of 22 feet and a combined footprint of approximately

[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.

4,455 square feet. The convenience store and restaurant buildings will have a maximum height of 35 feet. The site will include a parking lot and security lighting distributed throughout the property. Landscaping will be primarily installed along the perimeter and parking areas, covering approximately 15% of the site. Vehicular access will be provided via two driveways on Cajon Boulevard, measuring 75 ft and 26 ft in width respectively, and one 50 ft-wide driveway on Glen Helen Parkway.

Location: The 1.57 acre Project site is located at 18545 Cajon Boulevard, Devore, California, 92407 on the southeast corner of Cajon Boulevard and Glen Helen Parkway; Assessor's Parcel Number [APN] 0349-182-11.

Timeframe: Not Available.

COMMENTS AND RECOMMENDATIONS

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

COMMENT 1: Inadequacy of General Reconnaissance Surveys and Presence/Absence Surveys for Special Status Species

MND Page 27

Issue: The MND analysis and conclusion relies on the General Biological Resources Assessment (BRA), Appendix B, prepared by RCA Associates, Inc. (July 2022) to identify special status species, vegetation communities, and habitats that could support sensitive species. CDFW is concerned that the general biological survey conducted on June 17, 2022, and the BRA provided, were insufficient in timing, duration, survey methodology, and information provided.

Specific impact: Per the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW, March 2018)[2], botanical field survey visits should be spaced throughout the growing season and multiple visits to the project area are usually required to capture the floristic diversity at a level necessary to determine the presence of special-status plant species. Usually this is during flowering or fruiting. The general reconnaissance biological survey performed on June 17, 2022 is outside the bloom period for 3 of the 12 special-status plant species. Additionally, surveys were conducted either at the beginning or late end of bloom for 5 of the 12 plant species. It is also unacceptable to conduct presence/absence surveys using "meandering" transects throughout the site, as this does not provide 100 percent coverage, and multiple plant and wildlife species have protocol survey methods to determine presence. A focused plant survey should be conducted separately from a general biological survey to evaluate presence of special-status plant species. Wildlife species with specific survey protocols should also be surveyed separately and independently to ensure that impacts to the species are minimized.

CDFW notes that the general biological assessment survey was not carried out during the peak spring season, which is a peak time for blooming native vegetation and increased wildlife activity, such as migratory stopover for avian species, nesting/breeding season activities, and foraging. Nor was it surveyed during the winter to determine if any species utilize the site as it's wintering grounds. Given the proximity to the Cajon Wash, nighttime surveys are strongly recommended due to multiple nocturnal special-status species.

[2] California Department of Fish and Wildlife. March 20, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Special Status Native Plant Populations and Sensitive Natural Communities (ca.gov).

CDFW considers surveys to be valid for one year, an updated biological survey(s) is strongly recommended and should be performed during the appropriate times, throughout the year, to better assess how the Project site is being utilized. Survey information should include the survey(s) start and end time, and how long the survey occurred. If, for example, a survey was conducted for one hour during the hottest time of the day, very little wildlife activity is expected to occur or be seen. Surveys should be performed in the early morning and allow for multiple hours of observation/documentation.

Why impact would occur: The lack of spring and winter surveys may result in an inadequate biological baseline for the MND. Potential missing information from the lack of variable surveys includes: an accurate plant inventory, migratory bird observations, nesting, wintering, and breeding observations, and complete identification and evaluation of impacts to special-status species. The MND also lacks information on nighttime surveys and nocturnal species, such as bats and small mammals, that have the potential to utilize the site at night, which limits our understanding if bats or small mammals may possibly use or occupy the site. General resource assessment surveys can be used to gather general information about habitat, but it should not be used to determine the presence or absence of candidate, sensitive, or special status species.

Evidence impact would be significant: Impacts to special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Without an accurate environmental baseline of present candidate, sensitive, or special status species and the delay in development of species avoidance, minimization, and mitigation measures, it is unclear if the mitigation measures proposed to be implemented by the Project Proponent will avoid, minimize, or mitigate the impacts to a level below significant adverse effect. Inadequate avoidance, minimization, and mitigation measures could result in substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: The IS/MND should include the presence/absence results from focused surveys for special status plants and wildlife species. With such information, the County of San Bernardino can identify and analyze the potential impacts to candidate, sensitive, or special status species in or adjacent to the Project area and develop mitigation measure that can avoid, minimize, or mitigate impacts to the species to less than significant with mitigation incorporated. CDFW recommends replacing Mitigation Measures BIO-1 with the recommended new BIO-1 mitigation measure (edits are in ~~strikethrough~~ and **bold**), for inclusion in the MND:

Mitigation Measure BIO-1: Biological Resource Surveys

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

COMMENT 2: Burrowing Owls

MND Section 5.3, Page 28-29

Issue: Western burrowing owl is a candidate species protected under CESA, and as such is granted the full protection of a threatened or endangered species under CESA. The Project has the potential to result in permanent and temporary loss and degradation of burrowing owl habitat and take of the species. CDFW is concerned that impacts to burrowing owls and how they utilize the Project site are not adequately identified nor fully defined in the MND.

Specific impact: The MND and BRA assert that the Project site lacks suitable habitat for burrowing owls, based on a single assessment indicating the absence of burrows, nesting signs, and adequate soil or vegetation. However, CDFW disagrees with this conclusion. Burrowing owls are notably adaptable and often utilize highly degraded or marginal habitats, even those with minimal vegetation and situated within urbanized areas, such as airports, vacant lots, and road embankments. Given that California ground squirrels were observed on-site, and the Project is located within the Burrowing Owl Predicted Habitat (CDFW 2025)[3] high potential of presence, this contradicts the MND's basis that burrowing owl habitat and presence is absent. This is further supported by the observation of burrowing owls as close as 0.60 miles of the Project site. It is important to recognize that much of the Inland Empire is comprised of habitat with some degree of disturbance, this does not equate that site no longer provides suitable habitat for burrowing owls or other sensitive species and should not be used as a concluding factor in determining species occupancy.

While the single survey conducted on June 17, 2022, did not detect any sign of burrowing owl, the survey was not performed in accordance with the protocols outlined in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012)[4]. As stated in the BRA, the survey was conducted as a habitat assessment and not a focused presence/absence survey designed to detect burrowing owls. As such, the results of this survey are not reliable indicators of burrowing owl presence or absence and should not be considered conclusive evidence of how the site is currently being used by the species. It is important to note that burrowing owls can remain within their burrows for extended periods of time, especially during the summer months, making them difficult to detect during a single survey, hence why one survey is not reliable in detecting presence.

Furthermore, site occupancy can vary annually, and the conditions observed during the 2022 survey may not accurately reflect current site usage. Project implementation, including grading, vegetation clearing and construction, may result in direct mortality, population declines, or local extirpation of burrowing owl not previously identified due to lack of sufficient surveys and habitat assessment. To properly detect presence or absence of burrowing owls, assess site usage, and determine scope of impacts, multiple focused surveys should be conducted during both the breeding and non-breeding seasons as outlined in the 2012 Staff Report.

Lastly, CDFW recommends updating the MND and BRA to reflect the recent change in status to burrowing owls. As of October 2024, burrowing owls have been uplisted as a candidate endangered species and are afforded protection under CESA.

Why impact would occur: According to the BRA, focused burrowing owl surveys were not conducted on the Project site. Burrowing owls are well-adapted to open, relatively flat expanses and vacant lots and prefer habitats with generally short sparse vegetation with few shrubs such as those occurring on the Project site. If burrowing owl burrows are not properly detected, prior to ground disturbance, site preparation, and grading could destroy habitat and result in take of burrowing owls.

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[3] California Natural Diversity Database (CNDDB) [ds2184]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System. Burrowing Owl Predicted Habitat.
[4] California Department of Fish and Game(CDFG). 2012 Staff report on burrowing owl mitigation. State of California, Natural Resource Agency. BUOW Staff Report Final 030712.pdf.

Evidence impact would be significant: Habitat loss is a threat to burrowing owls (CDFG 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction. Evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing owls are also dependent on adjacent habitat, and forage within 600 meters of nest burrows[5].

CEQA also provides protection for CESA-listed species. As of October 10, 2024, the California Fish and Game Commission accepted a petition to list Western Burrowing Owl as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. If Project activities could result in take, appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities. Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: The general meandering survey that was conducted during the BRA for the Project is not sufficient to provide a complete analysis of potential impacts to burrowing owls. CDFW recommends that prior to commencing Project activities, focused and preconstruction surveys for burrowing owls be conducted by a qualified biologist in accordance with the 2012 Staff Report (or most recent version). CDFW recommends removing Mitigation Measures BIO-1, and requests providing a separate and independent mitigation measure dedicated to burrowing owls, for inclusion in the final MND, that includes specific avoidance and minimization measures to ensure that impacts to are reduced to less than significant with mitigation.

Mitigation Measure BIO- ~~1~~ **2: Burrowing Owl**

~~Pre-Construction surveys for burrowing owls and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project related ground disturbance.~~

~~a. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.~~

~~b. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas. Focused plant surveys for all special status plant species that have the potential to occur on the site may be considered during the blooming season (April - June) (if warranted by CDFW) to determine the potential environmental effects of the proposed projects on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife.~~

~~If any sensitive species are observed on the property during future activities, CDFW and USFWS (as applicable) should be contacted to discuss specific mitigation measures which may be required for the individual species. CDFW and USFWS are the only agencies which can grant authorization for the "take" of any sensitive species and can approve the implementation of any applicable mitigation measures.~~

[5] Rosenberg, D. K., and K. L. Haley. 2004. The ecology of burrowing owls in the agroecosystem of the Imperial Valley, California. Studies in Avian Biology 27: 120-135.

Suitable burrowing owl habitat has been confirmed on site; therefore focused burrowing owl surveys shall be conducted by a qualified biologist, familiar and experienced in burrowing owls, in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version) prior to vegetation removal or ground-disturbing activities for all phases of Project construction and surrounding 500 ft radius.

Take avoidance surveys shall be conducted no less than 14 days prior to initiation of Project-related activities. Burrowing owls may re-colonize 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* (2012 or most recent version). Upon beginning ground-disturbing activities or vegetation removal, a biologist shall be on hand to perform monitoring during all construction activities every day to ensure no impacts occur to burrowing owls as a result of the Project.

Should burrowing owls, active burrows, or signs thereof be confirmed during any survey or biological monitoring, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures, if avoidance is proposed. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan.

If Project activities, including burrow exclusion and closure, could result in take of burrowing owl, the Project Proponent shall begin early coordination with CDFW for appropriate CESA authorization (i.e., Incidental Take Permit (ITP) under Fish and Game Code section 2081) prior to commencement of Project activities. Any request for consultation shall describe, at a minimum, project activities and equipment, proposed avoidance/buffers, temporary and permanent impacts, monitoring, relocation and/or translocation, and minimization and compensatory mitigation actions. ITP compensatory mitigation will be fulfilled by one or more of following options: 1) Conservation or Mitigation Bank credits (if available) or2) Permittee-responsible mitigation land acquisition.

COMMENT 3: Nesting Birds

MND Section 5.3, Page 30

Issue: CDFW is concerned that Mitigation Measure BIO-3, as currently written, is not sufficient in timing or scope to prevent impacts to nesting birds and raptors. The Project may have impacts on nesting birds, including CESA-listed birds, Species of Special Concern, 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 of avian species through vehicle and equipment strike, and indirect take associated with Project operations such as attracting predators, displacement, loss of habitat and reduction of habitat quality associated with Project implementation. Furthermore, the single survey performed on the site was conducted during a time of year characterized with low bird activity, and neither the timing nor the duration of survey is specified. This raises concerns regarding sufficiency of survey efforts to accurately assess the Project site, as avian activity peaks during specific seasons and times of day. The Project area has the potential to be foraging ground for raptors, wintering grounds for migrating bird species, and nesting habitat for ground avian species such as horned lark and western meadowlark.

Why impact would occur: Mitigation measure BIO-1 does not adequately outline nesting bird pre-construction surveys to minimize and avoid impacts to nesting birds. It is important to remember that the timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. Species that nest outside the peak breeding season should also be considered (e.g., hummingbirds may nest year-round, and raptors may nest outside the peak breeding season). To adequately identify nesting bird presence in the Project area, nesting pre-constructions surveys should be conducted by a qualified biologist no more than three (3) days prior to the initiation of project activities, at the appropriate time of day/night, during appropriate weather conditions regardless of the time of the year. If nesting birds are detected during surveys, CDFW recommends that buffers be established around nest sites with the following distances: a minimum of 300 feet for songbirds, and 500 feet for raptors. Reductions in buffers may be appropriate based on screening vegetation, ambient levels of human activities, or other factors.

Evidence impact would be significant: The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential, and industrial land uses. The Project will involve grading and removal of existing vegetation to make way for the development. In addition to direct removal of habitat, construction noise, vibration, dust, or human disturbance could result in temporary or long-term disturbance of nesting birds on the Project site. 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 to reduce impacts to less than significant: To adequately address minimizations and avoidance measures and help the Project applicant avoid unlawfully taking of nests and eggs, CDFW recommends removal of Mitigation Measure BIO-1 and offers the following new mitigation measure (BIO-3) for inclusion in the final MND.

Mitigation Measure ~~BIO-1~~ **BIO-3: Nesting Birds**

~~Pre-Construction surveys for burrowing owls and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project related ground disturbance.~~

~~c. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.~~

~~d. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas. Focused plant surveys for all special status plant species that have the potential to occur on the site may be considered during the blooming season (April - June) (if warranted by CDFW) to determine the potential environmental effects of the proposed projects on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife.~~

~~If any sensitive species are observed on the property during future activities, CDFW and USFWS (as applicable) should be contacted to discuss specific mitigation measures which may be required for the individual species. CDFW and USFWS are the only agencies which can grant authorization for the "take" of any sensitive species and can approve the implementation of any applicable mitigation measures.~~

All Project related activities shall be conducted outside of the typical nesting bird season (January 15 through September 15) to the maximum extent feasible. Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist, during the appropriate time of day/night and weather conditions, no more than 3 days prior to all vegetation removal or ground disturbing activities throughout all and any phases of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations, nesting behavior, and all suitable nesting areas such as, but not limited to: trees, shrubs, bare ground, burrows, cavities, and structures. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a way that attracts predators. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the fledglings become independent or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. Documentation of surveys and findings should be submitted to the CDFW within 10 days of the last survey.

COMMENT 4: Small Mammals

MND Section 5.3, Page 27-29

Issue: The Project may result in take of listed and sensitive small mammals, given its proximity to the Cajon Wash.

Specific impact: The Project site is located adjacent to known occurrences of the state endangered San Bernardino kangaroo rat (SBKR), and two species of special concern - Los Angeles pocket mouse (LAPM) and northwestern San Diego pocket mouse (NSDPM). The Project site is largely disturbed with non-natives plant species being the dominant vegetation, so although presence of the SBKR and LAPM would be rare, it is not impossible, and of the three species, NSDPM has the highest probability of being located within the Project site. All three small mammals are nocturnal, therefore none would be observed during the habitat assessment survey. Small mammal trapping should be performed to determine which small mammals, if any, occupy the site and to better identify the total scope of impacts the Project would create.

CDFW is also concerned about the potential effects of new nighttime lighting the Project may create on small mammals occupying areas adjacent to the site. Artificial lighting risks disrupting behavioral functions such as movement, foraging, hormones, breeding, and increase risk of predation.

Why impact would occur: No detailed nocturnal small mammal analysis was performed on site to determine if any sensitive species occur on site. The MND provides no mitigation measures to minimize and or avoid impacts to small mammals.

Evidence impact would be significant: The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the small mammal species.

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: To minimize and avoid impacts to small mammals species, CDFW strongly encourages the adoption of BIO-4 for inclusion in the final MND.

Mitigation Measure BIO-4: Small Mammal Surveys

The Applicant shall ensure that impacts to small mammals are avoided and/or minimized through the implementation of pre-project surveys, ongoing monitoring, and establishment of minimization measures if small mammals are present. The Applicant, within 12 months prior to the start of project activities, shall designate a small mammal biologist (Designated Biologist) to conduct small mammal trapping for San Bernardino kangaroo rat (SBKR) and other small mammal species of special concern likely to inhabit the site (e.g., Los Angeles pocket mice (LAPM)) within the project area.

If LAPM are present, the Applicant shall prepare a small mammal relocation/translocation plan for CDFW review and approval. The Designated Biologists(s) shall relocate/translocate all captured LAPM to a CDFW-approved site(s). In addition, appropriate, permanent mitigation shall be provided by the Applicant within 6 months of initiating project activities, in coordination with CDFW, to offset the loss of occupied LAPM habitat.

If SBKR are present, the Applicant shall suspend all project activities within areas potentially occupied by SBKR and shall seek appropriate authorization prior to project implementation. This includes an incidental take permit (ITP) or other CESA authorization.

COMMENT 5: Crotch's Bumble Bee

MND Section 5.3

Issue: The MND and BRA fail to address and analyze direct and indirect impacts the Project may create to Crotch's Bumble Bee. The Project has the potential to result in permanent and temporary loss, degradation of, and impact Crotch's bumble bee and Crotch's bumble bee habitat. The Project may result in take of Crotch's bumble bee, a candidate status species for listing under CESA, during the construction and life of the Project.

Specific impact: The Project is located within Crotch's bumble bee habitat range and has the potential for take of the species due to collapsing burrows, entombment, displacement, dust from Project operations, and vegetation removal that reduces foraging and nesting habitat and habitat quality. No habitat assessment or survey efforts were conducted for Crotch's bumble bee nor is the species discussed in the MND. To identify for presence, multiple Crotch's bumble bee nesting survey should be conducted during the appropriate time of year (April through August), by a qualified biologist familiar with the species, following the guidelines provided in CDFW's *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species*[6].

Why impact would occur: Crotch's bumble bee occurs primarily in California, including the Mediterranean region, Pacific Coast, Western Desert, Great Valley and adjacent to foothills through most of southwestern California[7] (Williams et. al 2014). Crotch's bumble bee are generalist foragers and have been reported visiting a wide

[6] California Department of Fish and Wildlife (CDFW). 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. Survey Considerations for Candidate Bumble Bee Species.
[7] Williams, P. H., et al. 2014. The Bumble Bees of North America: An Identification Guide. Princeton University Press, Princeton.

variety of flower plants. The plant families most commonly associated with Crotch's bumble bee observations or collections from California include Fabaceae, Apocynaceae, Asteraceae, Lamiaceae, Boraginaceae and Asclepiadaceae. This is not a comprehensive list, and the species has been observed foraging and utilizing areas with high amounts of disturbance and non-natives plant species. Failure to properly analyze and detect the species could result in take.

Evidence impact would be significant: Crotch's bumble bee is a candidate species for listing under CESA; therefore, it receives the same legal protection afforded to endangered or threatened species under CESA pursuant to Fish & Game Code §§ 2074.2 & 2085. If found on-site, the Project could result in crushing or killing Crotch's bumble bees, reduction in sufficient food resources such as nectar and pollen, and/or removal of nesting and overwintering sites. Many bumble bees are threatened with extinction due primarily to reductions in habitat from urbanization, intensive agriculture, and invasive species introductions. If Crotch's bumble bee occurs at the Project site and Project impacts to Crotch's bumble bee occur, this could result in a substantial reduction in the species' population, which would be a significant impact.

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: To address minimization and avoidance measures for Crotch's bumble bee, CDFW strongly recommends the adoption of BIO-4 for inclusion in the final MND**.**

Mitigation Measure BIO-5: Crotch's Bumble Bee

BIO-5A: If Crotch's bumble bee is no longer a candidate or listed species under CESA at the time of project construction, then these mitigation measures shall not be required. Within one year prior to ground disturbing activities an approved qualified Designated biologist shall conduct active Crotch's bumble bee nest surveys during the typical colony active period (April – August) following survey guidelines provided in the CDFW's Survey Considerations for CESA Candidate Bumble Bee Species within the Project site and areas adjacent to the Project site where suitable habitat exists. The qualified biologist shall be familiar with Crotch's bumble bee identification and life history. Survey results including negative findings shall be submitted to CDFW at least 30 days prior to vegetation removal and/or ground disturbing activities.

BIO-5B: If suspected or active Crotch's bumble bee nests are present, a qualified biologist shall establish an appropriate non-disturbance buffer around each nest immediately prior to initiation of construction activities using stakes and/or brightly colored flagging to avoid disturbance or incidental take of the species. If avoidance buffers are not feasible, or if complete avoidance of Crotch's bumble bee cannot be achieved, Project activities shall be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.

BIO-5C: Within one year prior to ground disturbing activities, the approved designated biologist shall survey suitable nectar plants for foraging Crotch's bumble bee during the typical flight season (February – October), within the Project site and areas adjacent to the Project site where suitable habitat exists, following survey guidelines provided in the CDFW's Survey Considerations for CESA Candidate Bumble Bee Species. The qualified biologist shall be familiar with Crotch's bumble bee identification and life history. Survey results including negative findings shall be submitted to CDFW at least 30 days prior to vegetation removal and/or ground disturbing activities.

COMMENT 6: Artificial Nighttime Lighting

Issue: The MND does not mention in the Project description or analyze impacts to biological resources from artificial nighttime lighting and includes no mitigation measures to avoid or reduce impacts to biological resources.

Specific impact: The proposed Project is situated adjacent to the Cajon Wash and intact Riversidian alluvial fan sage scrub habitat, areas that support several sensitive species. The Project would introduce new sources of artificial nighttime illumination, which may potentially cause both direct and indirect impacts on wildlife. The MND lacks specifics regarding the type of lighting to be used, number of lighting fixtures, and whether any shielding will be implemented. It does not assess potential impacts to biological resources during either construction (including any nighttime work) or operational phases, and no mitigation strategies are identified.

To address these issues, the MND should be revised to include detailed lighting plans for both the construction and operational phases, specifying fixture types, shielding approaches, intensity levels, and timing controls. The revised MND should include an analysis that evaluates potential effects of artificial lighting on wildlife, such as migratory birds, bats, and other nocturnal and crepuscular species, and appropriate avoidance and minimization measures to reduce impacts to less than significant with mitigation, such as light shielding, wildlife-friendly color temperature, dimming schedule, and other adaptive lighting controls.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife[8]. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation[9]. Many species use photoperiod cues for communication (e.g., bird song[10]), determining when to begin foraging[11], behavior thermoregulation[12], and migration[13]. Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.

Recommended Potentially Feasible Mitigation Measure: Due to the potential for artificial nighttime light to adversely affect wildlife, CDFW recommends that the MND includes detailed specifications of proposed lighting measures for both construction and operation of the Project. It is further advised that Project implements a timer-controlled dimming mechanism during periods of infrequent use to reduce wattage. The MND should also incorporate an analysis of wildlife impacts and identify specific avoidance and minimization strategies to ensure that, with mitigation, impacts to biological resources are reduced to less-than-significant levels with mitigation. CDFW recommends that the County include the following mitigation measure in a revised MND:

Mitigation Measure BIO-5: Artificial Nighttime Lighting Plan

During Project construction and the lifetime operations of the Project, the County and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The County and Project proponent shall ensure that lighting for Project operations and construction activities utilizes wildlife friendly LED lighting/luminaires with a color correlated temperature between 570 Kelvin (K) and 1700K. Lighting shall be shielded, cast downward, and directed away from surrounding open-space and

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[8] Longcore, T. 2023. Effects of LED Lighting on Terrestrial Wildlife. Prepared under Contract #65A0766 between California Department of Transportation and Regents of the University of California. UCLA Institute of the Environment and Sustainability.
[9] Gatson , K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. Biological Reviews.
[10] Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139.
[11] Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. Current Biology 19:1123–1127. Elsevier Ltd.
[12] Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. Ecology 58:98–108.
[13] Longcore, T., and C. Rich. 2004. Ecological light pollution – Review. Frontiers in Ecology and the Environment 2:191–198.

sensitive areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare (sidelight) into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The County and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Native Landscaping

To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species, and installing water efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at: Calscape. Water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species. Additionally, some facilities display drought tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County of San Bernardino in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Lisa Cardoso, Environmental Scientist, at (805) 712-0346 or Lisa.Cardoso@Wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...

Kim Freeburn
Environmental Program Manager

ec:

Eric Kawamura-Chan, Senior Environmental Scientist Supervisor, CDFW
Eric.Chan@Wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
State.Clearinghouse@opr.ca.gov

Attachments

Attachment A: MMRP for CDFW – Proposed Mitigation Measures

Attachment A

Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) Description	**Implementation Schedule**	**Responsible Party**
MM-BIO-1: Biological Resource Surveys **Prior to Project construction activities, a complete and recent inventory, including rare, threatened, endangered, and other sensitive species, located within the Project footprint with the potential to be affected, including Species of Special Concern (SSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380) for which suitable habitat is present within or adjacent to the Project. The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.**	**Timing:** Prior to vegetation removal or ground disturbing activities.	**Implementation:** Project Proponent and Qualified Biologist
MM-BIO-2: Burrowing Owls **Suitable burrowing owl habitat has been confirmed on site; therefore focused burrowing owl surveys shall be conducted by a qualified biologist, familiar and experienced in burrowing owls, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version) prior to vegetation removal or ground-disturbing activities for all phases of Project construction and surrounding 500 ft radius.** **Take avoidance surveys shall be conducted no less than 14 days prior to initiation of Project-related activities. Burrowing owls may re-colonize 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 (2012 or most recent version). Upon beginning ground-disturbing activities or vegetation removal, a biologist shall be on hand to perform monitoring during all construction activities every day to ensure no impacts occur to burrowing owls as a result of the Project.** **Should burrowing owls, active burrows, or signs thereof be confirmed during any survey or biological monitoring, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed**	**Timing:** **Focused Survey:** Prior to vegetation removal or ground disturbing activities. **Pre-Construction Surveys**: No less than 14 days prior to start of Project-related activities and withing 24 hours prior to ground disturbance.	**Implementation:** Project Proponent and Qualified Biologist

avoidance and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. **If Project activities, including burrow exclusion and closure, could result in take of burrowing owl, the Project Proponent shall begin early coordination with CDFW for appropriate CESA authorization (i.e., Incidental Take Permit (ITP) under Fish and Game Code section 2081) prior to commencement of Project activities. Any request for consultation shall describe, at a minimum, project activities and equipment, proposed avoidance/buffers, temporary and permanent impacts, monitoring, relocation and/or translocation, and minimization and compensatory mitigation actions. ITP compensatory mitigation will be fulfilled by one or more of following options: 1) Conservation or Mitigation Bank credits (if available), or2) Permittee-responsible mitigation land acquisition.**		
MM-BIO-3: Nesting Birds **All Project related activities shall be conducted outside of the typical nesting bird season (January 15 through September 15) to the maximum extent feasible. Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist, during the appropriate time of day/night and weather conditions, no more than 3 days prior to all vegetation removal or ground disturbing activities throughout all and any phases of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations, nesting behavior, and all suitable nesting areas such as, but not limited to: trees, shrubs, bare ground, burrows, cavities, and structures. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a way that attracts predators. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the fledglings become independent or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. Documentation of surveys and findings should be submitted to the CDFW within 10 days of the last survey.**	**Timing:** Prior to commencing ground or vegetation disturbing activities	**Implementation:** Project Proponent and Qualified Biologist
MM-BIO-4: Small Mammals **The Applicant shall ensure that impacts to small mammals are avoided and/or minimized through the implementation of pre-project surveys, ongoing monitoring, and establishment of minimization measures if small mammals are present. The Applicant, within 12 months prior to the start of project activities, shall designate a small mammal biologist (Designated Biologist) to**	**Timing:** Prior to commencing ground or vegetation disturbing activities	**Implementation:**

conduct small mammal trapping for San Bernardino kangaroo rat (SBKR) and other small mammal species of special concern likely to inhabit the site (e.g., Los Angeles pocket mice (LAPM)) within the project area. **If LAPM are present, the Applicant shall prepare a small mammal relocation/translocation plan for CDFW review and approval. The Designated Biologists(s) shall relocate/translocate all captured LAPM to a CDFW-approved site(s). In addition, appropriate, permanent mitigation shall be provided by the Applicant within 6 months of initiating project activities, in coordination with CDFW, to offset the loss of occupied LAPM habitat.** **If SBKR are present, the Applicant shall suspend all project activities within areas potentially occupied by SBKR and shall seek appropriate authorization prior to project implementation. This includes an incidental take permit (ITP) or other CESA authorization.**		Project Proponent and Qualified Biologist
MM-BIO-5: Crotch's Bumble Bee **BIO-5A: If Crotch's bumble bee is no longer a candidate or listed species under CESA at the time of project construction, then these mitigation measures shall not be required. Within one year prior to ground disturbing activities an approved qualified Designated biologist shall conduct active Crotch's bumble bee nest surveys during the typical colony active period (April – August) following survey guidelines provided in the CDFW's Survey Considerations for CESA Candidate Bumble Bee Species within the Project site and areas adjacent to the Project site where suitable habitat exists. The qualified biologist shall be familiar with Crotch's bumble bee identification and life history. Survey results including negative findings shall be submitted to CDFW at least 30 days prior to vegetation removal and/or ground disturbing activities.** **BIO-5B: If suspected or active Crotch's bumble bee nests are present, a qualified biologist shall establish an appropriate non-disturbance buffer around each nest immediately prior to initiation of construction activities using stakes and/or brightly colored flagging to avoid disturbance or incidental take of the species. If avoidance buffers are not feasible, or if complete avoidance of Crotch's bumble bee cannot be achieved, Project activities shall be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.** **BIO-5C: Within one year prior to ground disturbing activities, the approved designated biologist shall survey suitable nectar plants for foraging Crotch's bumble bee during the typical flight season (February – October), within the Project site and areas adjacent to the Project site where suitable habitat exists, following survey guidelines provided in the CDFW's Survey Considerations for CESA Candidate Bumble Bee Species. The qualified biologist shall be familiar with Crotch's bumble bee identification and life history. Survey results including negative findings shall be submitted to CDFW at least 30 days prior to vegetation removal and/or ground disturbing activities.**	**Timing:** Prior to commencing ground or vegetation disturbing activities.	**Implementation:** Project Proponent and Qualified Biologist
MM-BIO-6: Artificial Nighttime Lighting Plan **During Project construction and the lifetime operations of the Project, the County and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The County and Project**	**Timing:** Prior to commencing ground	**Implementation:** Project Proponent

proponent shall ensure that lighting for Project operations and construction activities utilizes wildlife friendly LED lighting/luminaires with a color correlated temperature between 570 Kelvin (K) and 1700K. Lighting shall be shielded, cast downward, and directed away from surrounding open-space and sensitive areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare (sidelight) into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The County and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.		