



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 10, 2025
Sent via email

Nicole Montano
Assistant Planner
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, California 92307
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Dakota Warehouse (Project)
Mitigated Negative Declaration (MND)
SCH# 2025060656

Dear Nicole Montano:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Town of Apple Valley (Town) 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.

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.

Nicole Montano, Senior Planner
Town of Apple Valley
July 10, 2025
Page 2

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: Lecangs, LLC.

Objective: The Project proposes the development of a new 627,200 square-foot distribution warehouse on a 40.1-acre vacant parcel. The development will consist of a 613,760 square foot warehouse with a 13,400 square foot mezzanine, 714 car parking spaces and 260 truck trailer stalls, with a total of 92 loading docks.

Location: The Project is located in the northeast portion of the Town of Apple Valley, San Bernardino County, northeast of the corner of Dakota Road and Fresno Road, and south of Gustine Street. The Project site's latitude and longitude are 34.576950°N, -117.194267° W.

Timeframe: Not specified

COMMENTS AND RECOMMENDATIONS

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

COMMENT # 1: Burrowing Owl (*Athene cunicularia*)

Issue: The field assessment conducted for biological resources was general in nature and was conducted on a single day on July 3. This type of assessment limits the detectability of burrowing owl (and their sign), which are more detectable during the breeding season with detection probabilities being highest during the nestling stage. In California, the burrowing owl breeding season extends from 1 February to 31 August with some variances by geographic location and climatic conditions. While the field assessment was conducted during the burrowing owl breeding season, according to the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version), three or more survey visits during daylight hours are recommended and each visit

Nicole Montano, Senior Planner
Town of Apple Valley
July 10, 2025
Page 3

should occur at least three weeks apart during the peak of the breeding season, commonly accepted in California as between 15 April and 15 July.

Burrowing owl is a candidate species protected under CESA and the Project has the potential to result in permanent and temporary loss and degradation of burrowing owl habitat. The Project may result in take of burrowing owl during construction and the life of the Project. California Fish and Game Code section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”. If the Project, including Project construction or any Project related activity during the life of this Project, may result in take of a CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization (i.e., Incidental Take Permit [ITP]) prior to Project implementation.

Specific impact: The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of burrowing owl. The MND does not include avoidance, minimization, or mitigation measures for burrowing owl.

Why impact would occur: Construction activities have the potential to take burrowing owls by collapsing burrows and modifying foraging and nesting habitat.

Evidence impact would be significant: On October 10, 2024, the Fish and Game Commission designated burrowing owl as a candidate species under CESA. CDFW considers the take of burrowing owl and the loss of the species’ habitat as a significant impact, unless mitigated to a level of less than significant, which would occur through a CESA ITP. Further, burrowing owl is protected under Fish and Game Code section 3503.5 and the Migratory Bird Treaty Act.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW strongly recommends the adoption of the following new measure, **BIO-5**, for inclusion in the final MND to avoid and mitigate impacts to burrowing owl.

Mitigation Measure: BIO-5 (New)

Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), focused burrowing owl surveys shall be conducted by a qualified biologist according to the CDFW Staff Report on Burrowing Owl Mitigation (CDFG, 2012 or most recent version) for the Project site and surrounding 500 ft radius. In addition, to confirm findings from previous surveys, take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. Burrowing owls may re-colonize a site after only a few days, thus time lapses between Project activities shall require subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If any of the surveys confirm the presence of burrowing owls, impacts to burrowing owl shall be fully avoided. If impacts to burrowing owl are unavoidable, the Project Proponent should apply for a CESA ITP.

Nicole Montano, Senior Planner
Town of Apple Valley
July 10, 2025
Page 4

COMMENT # 2: Crotch's Bumble Bee (*Bombus crotchii*)

Issue: The draft MND proposed preconstruction surveys to avoid impacts to Crotch's bumble bee in mitigation measure BIO-1. However, the measure did not include any information on methodology to conduct the surveys and thus CDFW is concerned that Crotch's bumble bee may not be surveyed appropriately especially considering that it is a candidate species protected under CESA. CDFW proposes a revision to measure BIO-1 (see below) that includes CDFW's Crotch's bumble bee survey methodology to ensure detectability of bumble bees in the Project area.

Specific impact: The MND does not specify protocols for pre-construction surveys for Crotch's bumble bee, a CESA candidate species.

Why impact would occur: Construction activities have the potential to take Crotch's bumble bees by crushing bumble bee nests and modifying foraging and nesting habitat. California Fish and Game Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".

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 Crotch's bumble bee. CDFW considers the take of Crotch's bumble bee the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant, which would occur through a CESA ITP.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW strongly recommends the following revisions to BIO-1 (edits are in ~~strikethrough~~ and **bold**) for adoption in the final MND.

Mitigation Measure: BIO-1 (Revised)

A pre-construction survey by qualified biologists ~~survey~~ shall be completed for Crotch bumblebee nests (~~if any~~) for avoidance. **The surveys shall be conducted in accordance with CDFW's Survey Considerations for CESA Candidate Bumble Bee Species (CDFW 2023) prior to the initiation of ground-disturbing activities.** Any bumblebee nest shall be avoided. If unavoidable, and determined to be occupied by Crotch bumblebees, the CDFW shall be consulted for guidance and potential incidental take permits, if impacts cannot be avoided.

COMMENT # 3: Nesting Birds

Issue: The MND proposed minimization measures (BIO-2) to avoid impacts to nesting birds that are subject to Fish and Game Code sections 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918. CDFW staff have observed changes to timing of bird nesting and have observed nesting behavior outside of traditional nesting seasons and for this reason, CDFW is concerned that BIO-2 only requires pre-construction nesting bird survey during the traditional nesting season.

Specific impact: CDFW is concerned about the impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground disturbing activities and

Nicole Montano, Senior Planner
 Town of Apple Valley
 July 10, 2025
 Page 5

construction especially considering the BIO-2 only considers pre-construction nesting bird surveys during the nesting season.

While BIO-2 considers conducting work outside the peak nesting season and CDFW considers that an important avoidance and minimization measure, CDFW recognizes that this is not always feasible, and thus recommends the completion of nesting bird surveys regardless of the time of year to ensure that impacts to nesting birds are avoided. This is also considering that the timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and this shift has led to a change in availability of resources (Socolar et al., 2017). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance to occupied nests of non-migratory passerine birds, migratory birds, and raptors within the Project site and surrounding area be avoided any time birds are nesting onsite. CDFW therefore recommends the completion of nesting bird surveys regardless of the time of year to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

Why impact would occur: The MND includes BIO-2, which requires a preconstruction survey for nesting birds. However, BIO-2 specifies that the preconstruction survey would only occur during a defined nesting season (i.e., February 1 -September 15), which may lead to impacts to birds that nest outside of this defined nesting season.

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 to reduce impacts to less than significant: CDFW strongly recommends the following revisions to BIO-2 (edits are in ~~strikethrough~~ and **bold**) for adoption in the final MND.

Mitigation Measure: BIO-2 (Revised)

~~Bird nesting season for resident birds in the Project area occurs between February 1 and September 15, and between March 15 and August 31 for migrating bird species.~~ To avoid impacts to resident and migratory nesting birds, all vegetation clearing, ground disturbance, and construction activity should be scheduled between September 16 and January 31 if possible. ~~If~~ **Prior to** ground disturbance ~~occurs during the nesting season,~~ a certified avian biologist must conduct a pre-construction nesting bird survey (NBS) ~~immediately~~ **no more than 3 days** prior to scheduled construction activity. If active

Nicole Montano, Senior Planner
Town of Apple Valley
July 10, 2025
Page 6

nests be identified, the biologist will demarcate a no-work buffer zone(s) around the active nest(s) and check the nest site(s) weekly until the young birds fledge and the nest(s) become inactive. The buffer zone size would be based on the nesting species, its sensitivity to disturbance, nesting stage and the expected intensity and duration of disturbance. No ground or vegetation disturbance shall occur within the nest site buffer zone(s) until the qualified biologist determines that the young have successfully fledged, and the nest is inactive. Per CDFW recommendations, a buffer of 500 feet shall be set for listed species and birds of prey, and a buffer of 100 to 300 feet shall be set for unlisted songbirds.

Additional Comments and Suggestions

CDFW strongly recommends the Project proponent submits data to the California Natural Diversity Database at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>, regarding any special status species such as but not limited to: desert tortoise, Bendire's thrasher, burrowing owl, Cooper's hawk, golden eagle, LeConte's thrasher, loggerhead shrike, northern harrier, prairie falcon, Swainson's hawk observed within or adjacent to the Project area.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

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

Nicole Montano, Senior Planner
Town of Apple Valley
July 10, 2025
Page 7

Questions regarding this letter or further coordination should be directed to Jason Bill, Senior Environmental Scientist (Specialist) at Christopher.Bill@wildlife.ca.gov

Sincerely,

DocuSigned by:

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For Alisa Ellsworth
Environmental Program Manager

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ATTACHMENT

Attachment A: Mitigation Monitoring and Reporting Plan

REFERENCES

California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. Available for download at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: [Microsoft Word - BUOW Staff Report_final_030712 REV 1.doc \(ca.gov\)](#)

Socolar JB, Epanchin PN, Beissinger SR and Tingley MW. 2017. Phenological shifts conserve thermal niches. Proceedings of the National Academy of Sciences 114(49): 12976-12981.

Nicole Montano, Senior Planner
 Town of Apple Valley
 July 10, 2025
 Page 8

Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
<p><u>BIO-5</u></p> <p>Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), focused burrowing owl surveys shall be conducted by a qualified biologist according to the CDFW Staff Report on Burrowing Owl Mitigation (CDFG, 2012 or most recent version) for the Project site and surrounding 500 ft radius. In addition, to confirm findings from previous surveys, take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. Burrowing owls may re-colonize a site after only a few days, thus time lapses between Project activities shall require subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If any of the surveys confirm the presence of burrowing owls, impacts to burrowing owl shall be fully avoided. If impacts to burrowing owl are unavoidable, the Project Proponent should apply for a CESA ITP.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and Qualified Avian Biologist</p>
<p><u>BIO-1</u></p> <p>A pre-construction survey by qualified biologists shall be completed for Crotch bumblebee nests for avoidance. The surveys shall be conducted in accordance with CDFW's Survey Considerations for CESA Candidate Bumble Bee Species (CDFW 2023) prior to the initiation of ground-disturbing activities. Any bumblebee nest shall be avoided. If</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and Qualified Biologist</p>

Nicole Montano, Senior Planner
 Town of Apple Valley
 July 10, 2025
 Page 9

<p>unavoidable, and determined to be occupied by Crotch bumblebees, the CDFW shall be consulted for guidance and potential incidental take permits, if impacts cannot be avoided.</p>		
<p><u>BIO-2</u></p> <p>To avoid impacts to resident and migratory nesting birds, all vegetation clearing, ground disturbance, and construction activity should be scheduled between September 16 and January 31 if possible. Prior to ground disturbance, a certified avian biologist must conduct a pre-construction nesting bird survey (NBS) no more than 3 days prior to scheduled construction activity. If active nests are identified, the biologist will demarcate a no-work buffer zone(s) around the active nest(s) and check the nest site(s) weekly until the young birds fledge and the nest(s) become inactive. The buffer zone size would be based on the nesting species, its sensitivity to disturbance, nesting stage and the expected intensity and duration of disturbance. No ground or vegetation disturbance shall occur within the nest site buffer zone(s) until the qualified biologist determines that the young have successfully fledged, and the nest is inactive. Per CDFW recommendations, a buffer of 500 feet shall be set for listed species and birds of prey, and a buffer of 100 to 300 feet shall be set for unlisted songbirds.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and Qualified Avian Biologist</p>