



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*



July 29, 2025  
*Sent via email*

Dustin Strandberg  
Chief Maintenance Officer  
Victor Valley Transit Authority  
17150 Smoke Tree Street  
Hesperia, California 92345  
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Hydrogen Fueling Station and Hesperia Transfer Hub (Project)  
Mitigated Negative Declaration (MND)  
SCH# 2025070054

Dear Dustin Strandberg:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Victor Valley Transit Authority (Authority) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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.

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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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:** Victor Valley Transit Authority

**Objective:** The Project proposes the development of two projects, a transfer hub and a hydrogen fuel station (Fuel Station) in the vicinity of the Authority's existing Hesperia facility. The Hesperia Transit Hub (Hub) will enhance the performance and reliability of public transit routes, responding to the demand for transit services. The Hub will replace an existing facility located at the Hesperia Post Office. The Fuel Station will extend the current facility to allow for fueling of hydrogen fuel vehicles.

**Location:** Both the Hub and Fuel Station will be located directly adjacent to the existing Authority facility, at the corner of Smoke Tree Street and E Avenue in the central portion of the City of Hesperia, San Bernardino County. The Hub will be directly east of the existing Authority facility along Smoke Tree Street. The Fuel Station will be located north of the existing Authority facility along E Avenue. The Project site's latitude and longitude are 34.425149°N, -117.289230°W.

**Timeframe:** The Fuel Station project is scheduled to occur for seven months from November 2025 to May 2026. Construction of the Hub is anticipated to begin in October 2025 until August of 2026, for a total of 11 Months.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the Authority 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.

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### **COMMENT # 1: Nesting Birds**

**Issue:** The draft MND proposes mitigation measure (MM) 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 in the timing of birds nesting and have observed nesting behavior outside of traditional nesting seasons and for this reason, CDFW is concerned that MM BIO-2 only requires pre-construction nesting bird survey during the traditional nesting season.

**Specific impact:** Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from construction activities including grading and vegetation removal. CDFW is concerned with potential impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground disturbing activities and construction.

While MM 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 MM BIO-2, which requires a pre-construction survey for nesting birds. However, MM BIO-2 specifies that the pre-construction 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

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(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 MM BIO-2 (edits are in ~~strike through~~ and **bold**) for adoption in the final MND.

**Mitigation Measure: MM BIO-2 Pre-Construction Breeding Bird Survey (Revised)**

To maintain compliance with the Migratory Bird Treaty Act (MBTA) and Fish and Game Code, and to avoid impacts or take of migratory non-game breeding birds, their nests, young, and eggs, the following measures shall be implemented. The measures below will help to reduce direct and indirect impacts caused by construction on ~~migratory non-game breeding~~ birds to less than significant levels.

- Project activities that will remove or disturb potential nest sites, such as open ground, trees, shrubs, grasses, or burrows, during the breeding season would be a potential significant impact if ~~migratory non-game breeding~~ birds are present. Project activities that will remove or disturb potential nest sites shall be scheduled outside the **typical** breeding bird season to avoid potential direct impacts to ~~migratory non-game breeding~~ birds protected by the MBTA and Fish and Game Code. The breeding bird nesting season is typically from February 1 through September 15, but can vary ~~slightly~~ from year to year, usually depending on weather conditions. Removing all physical features that could potentially serve as nest sites will also help to prevent birds from nesting within the project site ~~during the breeding season and during construction activities.~~
- ~~If project activities cannot be avoided during February 1 through September 15, a~~ **A** qualified biologist shall conduct a pre-construction breeding bird survey for breeding birds and active nests or potential nesting sites within the limits of project disturbance. The survey shall be conducted ~~at least seven~~ **within three** days prior to the onset of scheduled activities, such as mobilization and staging. ~~It shall end no more than three days prior to vegetation, substrate, and structure removal and/or disturbance.~~
- If no breeding birds or active nests are observed during the pre-construction survey or they are observed and will not be impacted **as determined by a qualified biologist**, project activities may begin and no further mitigation will be required.
- If a breeding bird territory or an active bird nest is located during the pre-construction survey and will potentially be impacted, the site shall be mapped on engineering drawings and a no activity buffer zone shall be marked (fencing, stakes, flagging, orange snow fencing, etc.) a minimum of 100 feet in all

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directions or 500 feet in all directions for listed bird species and all raptors. The biologist shall determine the appropriate buffer size based on the type of activities planned near the nest and the type of bird that created the nest. Some bird species are more tolerant than others of noise and activities occurring near their nest. This no-activity buffer zone shall not be disturbed until a qualified biologist has determined that the nest is inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, or the young will no longer be impacted by project activities. Periodic monitoring by a biologist shall be performed to determine when nesting is complete. Once the nesting cycle has finished, project activities may begin within the buffer zone.

- If listed bird species are observed within the project site during the pre-construction survey, the biologist shall immediately map the area and notify the appropriate resource agency (**e.g., CDFW**) to determine suitable protection measures and/or mitigation measures and to determine if additional surveys or focused protocol surveys are necessary. Project activities may begin within the area only when concurrence is received from the appropriate resource agency.
- Birds or their active nests shall not be disturbed, captured, handled or moved. Active nests cannot be removed or disturbed; however, nests can be removed or disturbed if determined inactive by a qualified biologist **and if necessary for Project construction.**

## **COMMENT # 2: Burrowing Owl (*Athene cunicularia*)**

**Issue:** The general wildlife surveys conducted for the Project documented suitable burrows for burrowing owl, as reported in the Initial Study (IS). The IS also reported that the Project area contains suitable habitat for nesting or overwintering by burrowing owl, but no burrowing owls were detected. Considering that surveys were conducted in 2021 and Project construction is scheduled to begin in Fall 2025, burrowing owl could occupy the Project area at the time of construction, either as overwintering or breeding individuals and additional focused surveys are needed prior to construction to confirm presence/absence.

**Specific impact:** The MND documents suitable burrows and habitat for burrowing owl, a CESA candidate species that has documented occurrences in the Project proximity.

**Why impact would occur:** The MND includes MM BIO-3, which details pre-construction surveys, creation of a relocation plan, and avoidance of burrows during the nesting season for burrowing owl. However, MM BIO-3 includes relocation of burrowing owl, which should only be conducted with appropriate take authorization (e.g., ITP).

**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 burrowing owl. On October 10, 2024, the Fish and Game Commission designated burrowing owl as a candidate species under CESA. CDFW

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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.

CDFW strongly recommends the following revisions to MM BIO-3 (edits are in ~~strikethrough~~ and **bold**) for adoption in the final MND.

### **Mitigation Measure: MM BIO-3 Focused Burrowing Owl Survey (Revised)**

Although BUOW was not observed on site during the general wildlife survey, the BSA contains suitable habitat to potentially support BUOW in the future. A qualified biologist shall conduct a focused BUOW survey in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFW, 2012).

- Following the completion of the survey, the biologist shall prepare a letter report summarizing the results of the survey. The report shall be submitted to Victor Valley Transit Authority (VVTA) prior to initiating any ground disturbance activities.
- If no BUOWs or signs of BUOW are observed during the survey and concurrence is received from CDFW, project activities may begin, and no further mitigation shall be required.
- If BUOW or signs of BUOW are observed during the survey, the site will be considered occupied **and impacts to BUOW shall be fully avoided. If impacts to BUOW are unavoidable, the biologist Project Proponent shall contact VVTA, City of Hesperia, and CDFW to inquire about attaining an Incidental Take Permit (ITP) and** assist in the development of avoidance, minimization, and mitigation measures **through an ITP**, prior to commencing project activities. The list of potential measures to avoid and minimize impacts to BUOWs described below shall be implemented.
  - ~~**BUOW Protection Measures.** If BUOWs or signs of BUOW are observed during the survey, then the site shall be considered occupied and the biologist shall contact VVTA, City, and CDFW to assist in the development of avoidance, minimization, and mitigation measures discussed below, prior to commencing project activities.~~ If no BUOW or signs of BUOW are observed during the focused surveys, the components of this measure (discussed below) would not be applicable.

~~**Planning BUOW Protection.** All Grading, construction, and other project activities on all grassland habitat shall be delayed until the qualified biologist has implemented burrow exclusion and closure. No ground-disturbing activities within 165 feet of an active BUOW burrow will be permitted until burrow exclusion and closure have been~~

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~~implemented. No destruction of foraging habitat shall be permitted until burrow exclusion and closure have been implemented.~~

- ~~○ **Preconstruction BUOW Protection.** Prior to the initiation of grading and construction activities, the biologist shall implement passive relocation of an active BUOW burrow by installing a one-way door and then permanently excluding the BUOW from returning once it is confirmed that no BUOW individuals remain in the burrow. A biological monitor shall visit the site daily to verify that the burrow is empty by monitoring and scoping the burrow.~~
- **Construction BUOW Protection Measures.** A biological monitor shall be onsite to monitor any BUOW or signs of BUOW. If any BUOW **not previously detected** are observed then the biologist shall consult with VVTA and CDFW to determine the appropriate measures **appropriate path forward**.

### **COMMENT #3: Western Joshua Tree (*Yucca brevifolia*)**

**Issue:** Western Joshua tree (WJT) is present on the Project site, and it is likely that the Project will have impacts on western Joshua trees, which are protected under Fish and Game Code sections 1927-1927.12 and Fish and Game Code section 2081. The MND included MM BIO-7 which details that the Project should obtain a § 2081 FGC Incidental Take Permit (ITP) for Project activities. While obtaining a § 2081 ITP is an option for the Project, please note that the Project may also receive an ITP under Fish and Game Code section 1927 through the Western Joshua Tree Conservation Act (WJTCA), which will require a census of all trees dead or alive within the Project site and a 50-foot buffer. For further information, please visit [Western Joshua Tree Conservation Permitting](#). CDFW suggests revising MM BIO-7 to include a WJTCA ITP as an option.

**Specific impact:** Project implementation will likely result in the direct take of WJT and indirect take of WJT. Project activities, such as grubbing and grading may result in removal of WJTs or may impact their root system. Under Fish and Game Code section 1927, the take of WJTs and parts thereof, including roots, is prohibited. Damage to roots can lead to the death of the tree.

**Why impact would occur:** Excavation, trenching, and paving activities associated with construction of the Project will entail lethal take of WJT individuals. Additionally, these activities could impact root systems and change patterns of drainage, infiltration, and soil moisture that could impact and lead to the indirect take of WJT individuals.

**Evidence impact would be significant:** Field surveys for the Project were conducted in 2024 and presence of at least 31 WJT were documented within the Project survey area that could be directly and indirectly impacted by Project activities.

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**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** CDFW strongly recommends the following revisions to MM BIO-7 (edits are in ~~strike through~~ and **bold**) for adoption in the final MND.

**Mitigation Measure: MM BIO-7 §2081 FGC Incidental Take Permit (Revised)**

Western Joshua trees (**WJT**) are a state candidate for listing under CESA and will require a § 2081 FGC Incidental Take Permit (ITP) with compensatory mitigation for impacts **or a WJTCA ITP (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, encroachment, removal, or take (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") of WJT.** ~~The exceptions and permitting process under the California Desert Native Plants Act and the separate exceptions under the Native Plant Protection Act will not apply to western Joshua tree in any manner.~~ For projects where take is incidental to carrying out an otherwise lawful activity, an ITP may be obtained from CDFW.

**Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12). Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a WJT if all of the following conditions are met: (1) The Project Proponent submits to CDFW for its approval a census of all western Joshua trees on the Project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height, b. One meter or greater but less than five meters in height, and c. Five meters or greater in height. (2) The Project Proponent avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The Project Proponent mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem of trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the Project Proponent to relocate one or more of the western Joshua trees.**

The incidental take permit issued by CDFW will contain a description of the proposed project and avoidance and minimization measures to reduce the project's impact on WJTs. The applicant must satisfy all the conditions in the incidental take permit prior to implementing the project. Fees are required to be paid to ~~the~~ CDFW.

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## **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 Authority in identifying and mitigating Project impacts on biological resources.

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

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Sincerely,

DocuSigned by:

Alisa Ellsworth

84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento  
[state.clearinghouse@lci.ca.gov](mailto:state.clearinghouse@lci.ca.gov)

## ATTACHMENT

Attachment A: Mitigation Monitoring and Reporting Plan

## REFERENCES

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.

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## Attachment A

### Mitigation Monitoring and Reporting Plan

<b>Biological Resources (BIO)</b>		
<b>Mitigation Measure (MM)</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p><b>MM BIO 2</b></p> <p>To maintain compliance with the Migratory Bird Treaty Act (MBTA) and Fish and Game Code, and to avoid impacts or take of migratory non-game breeding birds, their nests, young, and eggs, the following measures shall be implemented. The measures below will help to reduce direct and indirect impacts caused by construction on-birds to less than significant levels.</p> <ul style="list-style-type: none"> <li>• Project activities that will remove or disturb potential nest sites, such as open ground, trees, shrubs, grasses, or burrows, during the breeding season would be a potential significant impact if birds are present. Project activities that will remove or disturb potential nest sites shall be scheduled outside the typical breeding bird season to avoid potential direct impacts to birds protected by the MBTA and Fish and Game Code. The breeding bird nesting season is typically from February 1 through September 15, but can vary from year to year, usually depending on weather conditions. Removing all physical features that could potentially serve as nest sites will also help to prevent birds from nesting within the project site.</li> </ul>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and Qualified Avian Biologist</p>

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<ul style="list-style-type: none"><li>• A qualified biologist shall conduct a pre-construction breeding bird survey for breeding birds and active nests or potential nesting sites within the limits of project disturbance. The survey shall be conducted within three days prior to the onset of scheduled activities, such as mobilization and staging.</li><li>• If no breeding birds or active nests are observed during the pre-construction survey or they are observed and will not be impacted as determined by a qualified biologist, project activities may begin and no further mitigation will be required.</li><li>• If a breeding bird territory or an active bird nest is located during the pre-construction survey and will potentially be impacted, the site shall be mapped on engineering drawings and a no activity buffer zone shall be marked (fencing, stakes, flagging, orange snow fencing, etc.) a minimum of 100 feet in all directions or 500 feet in all directions for listed bird species and all raptors. The biologist shall determine the appropriate buffer size based on the type of activities planned near the nest and the type of bird that created the nest. Some bird species are more tolerant than others of noise and activities occurring near their nest. This no-activity buffer zone shall not be disturbed until a qualified biologist has determined that the nest is inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, or the young will no longer be impacted by project activities. Periodic monitoring by a biologist shall be performed to determine when nesting is complete. Once the nesting cycle has finished, project activities may begin within the buffer zone.</li><li>• If listed bird species are observed within the</li></ul>		
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<p>project site during the pre-construction survey, the biologist shall immediately map the area and notify the appropriate resource agency (e.g., CDFW) to determine suitable protection measures and/or mitigation measures and to determine if additional surveys or focused protocol surveys are necessary. Project activities may begin within the area only when concurrence is received from the appropriate resource agency.</p> <ul style="list-style-type: none"> <li>• Birds or their active nests shall not be disturbed, captured, handled or moved. Active nests cannot be removed or disturbed; however, nests can be removed or disturbed if determined inactive by a qualified biologist and if necessary for Project construction.</li> </ul>		
<p><b>MM BIO-3</b></p> <p>Although BUOW was not observed on site during the general wildlife survey, the BSA contains suitable habitat to potentially support BUOW in the future. A qualified biologist shall conduct a focused BUOW survey in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFW, 2012).</p> <ul style="list-style-type: none"> <li>• Following the completion of the survey, the biologist shall prepare a letter report summarizing the results of the survey. The report shall be submitted to VVTA prior to initiating any ground disturbance activities.</li> <li>• If no BUOWs or signs of BUOW are observed during the survey and concurrence is received from CDFW, project activities may begin, and no further mitigation shall be required.</li> <li>• If BUOW or signs of BUOW are observed during the survey, the site will be considered occupied and impacts to BUOW shall be fully avoided. If impacts to BUOW are</li> </ul>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and Qualified Avian Biologist</p>

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<p>unavoidable, Project Proponent shall contact CDFW to inquire about attaining an Incidental Take Permit (ITP) and assist in the development of avoidance, minimization, and mitigation measures through an ITP, prior to commencing project activities. The list of potential measures to avoid impacts to BUOWs described below shall be implemented.</p> <ul style="list-style-type: none"> <li>○ Construction BUOW Protection Measures. Construction BUOW Protection Measures. A biological monitor shall be onsite to monitor any BUOW or signs of BUOW. If any BUOW not previously detected are observed then the biologist shall consult with VVTA and CDFW to determine the appropriate path forward.</li> </ul>		
<p><b>MM BIO-7</b></p> <p>Western Joshua trees (WJT) are a state candidate for listing under CESA and will require a § 2081 FGC Incidental Take Permit (ITP) with compensatory mitigation for impacts or a WJTCA ITP (Fish &amp; G. Code, §§ 1927-1927.12), prior to the relocation, encroachment, removal, or take (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") of WJT.-For projects where take is incidental to carrying out an otherwise lawful activity, an ITP may be obtained from CDFW.</p> <p>Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 &amp; 2085 and §§ 1927-1927.12). Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a WJT if all of the following conditions are met: (1) The Project</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent</p>

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<p>Proponent submits to CDFW for its approval a census of all western Joshua trees on the Project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height, b. One meter or greater but less than five meters in height, and c. Five meters or greater in height. (2) The Project Proponent avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The Project Proponent mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem of trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the Project Proponent to relocate one or more of the western Joshua trees.</p> <p>The incidental take permit issued by CDFW will contain a description of the proposed project and avoidance and minimization measures to reduce the project's impact on western Joshua trees. The applicant must satisfy all the conditions in the incidental take permit prior to implementing the project. Fees are required to be paid to CDFW.</p>		
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