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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

August 07, 2025
Via email

Luis Rodriguez
Contract Planner
San Bernardino County
385 N. Arrowhead Ave, 1st Floor
San Bernardino, CA 92415-0187

Dear Mr. Rodriguez:

Tentative Parcel Map No. 20701 (PROJ-2023-00103) (Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2025070332

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from San Bernardino County (County) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: LMR LLC

Objective: The objective of the Project is to subdivide a 40-acre parcel into four 10-acre parcels, of which one will increase its lot-to-depth ratio under a Major Variance to the County's existing zoning ordinance. Primary Project phases of construction and their respective timeframes include:

- *Grading Phase*: To grade and prepare the project site for the construction. This phase would require two months to complete.

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

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- *Site Preparation Phase:* To install building footings, utility lines, and other underground infrastructure. This phase would require three months to complete.

- *Building Construction Phase.* To construct new buildings. This phase would take approximately 11 months to complete.

- *Landscaping, and Finishing Phase*. To complete the individual development sites. This phase will take approximately two months to complete.

Location: Assessor's Parcel Number (APN) 0454-81-50, located in Pioneertown, San Bernardino County at Latitude 34.218055º, Longitude -116.530000º.

Timeframe: The Project is expected to start in July 2025 and take approximately 18 months to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Bernardino County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment A, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Environmental Setting and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

Desert Tortoise

COMMENT #1: Desert Tortoise (*Gopherus agassizii*), Initial Study/Mitigated Negative Declaration (IS/MND) Section 4: Biological Resources, Page 28

Issue: Based on absence of suitable burrows and other sign, the IS/MND recommended no further desert tortoise-focused surveys despite presence of suitable foraging and burrowing habitat for desert tortoise. Therefore, the Project may impact desert tortoise, a CESA threatened species, proposed endangered, and result in take as defined in Fish and Game Code section 86.

The IS/MND recognizes that the Mojavean desert scrub and Joshua tree woodland plant communities within the Project site and adjacent open space provide suitable foraging and burrowing habitat for desert tortoise. Despite this likelihood of desert tortoise occurrence, only general pre-construction monitoring methods have been proposed to reduce potential impacts to less than significant levels.

ELMT Consulting conducted two field investigations on March 14, 2024, and May 28, 2025, which generally inventoried the plant and animal species present on site rather than a specific-specific survey for desert tortoise. Because protocol-level surveys specific to desert tortoise have not been conducted, a determination of desert tortoise presence/absence on the Project cannot be made.

Specific impact: The Project is located within the geographic range of the desert tortoise and the Project site provides suitable desert tortoise habitat.
This species is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat, due to development. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert tortoise. Project construction and grading phases may result in collision with, or crushing by, vehicles, heavy equipment; entrapment within open trenches

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and other underground infrastructure during installation, entrapment or entanglement within materials and equipment staged and moved, crushing or burial of individuals or eggs in burrows; destruction of burrows, an important refuge for tortoises from the desert heat and from predation (Zeiner et al. 1990); leading to increased mortality for the tortoises.

The Project also proposes to build a new access road through Parcels 1, 2, and 4, which essentially traverses the east length of the Project area. Roads have been shown to decrease desert tortoise populations regardless of speed limits or frequency of traffic (Hughson and Darby 2013). Roads can also increase the spread of invasive plant species (Greenberg et al. 1997, Gelbard and Belnap 2003, Ansong and Pickering 2013), decreasing habitat availability for desert tortoise.

Why impact would occur: The IS/MND does not provide sufficient information for CDFW to determine if a qualified biologist, experienced in locating desert tortoise individuals in all life stages and their sign, completed surveys specific to desert tortoise following CDFW-approved desert tortoise survey protocols. While CDFW appreciates the inclusion of *Biological Resources Mitigation Measure No. 4*, CDFW is concerned that the measure lacks sufficient detail on the methodology regarding surveys, avoidance, and adequate planning if avoidance is not achievable. Additionally, should desert tortoise presence be confirmed during surveys, the IS/MND lacks avoidance, minimization, and mitigation measures to avoid 'take' of desert tortoise. 'Take' is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

Evidence impact would be significant: Desert tortoise is a CESA-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

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

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends including the following changes to the proposed *Biological Resources Mitigation Measure No. 4* to ensure an adequate pre-construction clearance sweep is completed and CESA authorization obtained for desert tortoise, if needed (deletions are in strikethrough and additions are in bold):

> **Biological Resources Mitigation Measure No. 1: Focused and Pre-Construction Surveys for Desert Tortoise**
>
> ~~*Biological Resources Mitigation Measure No. 4*: Pre-construction surveys for burrowing owls, desert tortoise, 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. 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. 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.~~
>
> **Prior to ground disturbance or vegetation clearing within the proposed Project site, a CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no**

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more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service (USFWS) 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved fulltime biological monitor shall ensure desert tortoise do not enter the Project area during construction. If a special-status species enters the project area, (e.g., Mojave ground squirrel, desert tortoise, etc.) work shall cease and the animal will be allowed to safely leave the site. The project manager will be notified immediately, and work shall recommence upon approval from CDFW. CDFW shall be notified and consulted regarding the presence of any special-status wildlife species found on site during surveys prior to or during ground-disturbing construction activities. If a federally endangered species is found prior to or during ground disturbance of the site, the USFWS shall also be notified.

If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization such as a CESA ITP is obtained. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

Burrowing Owl

COMMENT #2: Burrowing owl (*Athene cunicularia*), IS/MND Section 4: Biological Resources, Page 28

Issue: The IS/MND recommended no further burrowing owl-focused surveys, based on absence of suitable burrows and recent sign (i.e. pellets, feathers, castings, or whitewash). However, portions of the Project site host a variety of low-growing plant species and a prey base favored by burrowing owls, as listed on Pages 27-28 of the IS/MND.

The Project may impact burrowing owl (BUOW), a candidate species under the California Endangered Species Act (CESA) and Project activities may result in take as defined in Fish and Game Code section 86.

Specific impact: The IS/MND argues that the Project area has a low potential to support burrowing owl, based on absent individuals, their burrows, and recent sign. Although no burrowing owls or signs were observed during the field investigations on March 14, 2024 or May 28, 2025, CDFW notes that these two field investigations only generally inventoried the plant and animal species present on site. Neither a habitat assessment nor focused survey for burrowing owl following CDFW-approved guidelines, or similar approach, was conducted, despite presence of suitable habitat. The Project's construction phases may result in direct mortality, population declines, or local extirpation of burrowing owls not previously identified.

Why impact would occur: Burrowing owls have a high potential to move into disturbed sites prior to and during construction activities, including the grading and site preparation phases of the Project. Burrowing owls frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman, et al., 2008), (Coulombe, 1971). Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs or destroying nesting, foraging, or over-wintering habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to harass owls at occupied burrows, and other activities.

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Burrowing owls are well-adapted to open, relatively flat expanses and vacant parcels and prefer habitats with generally short low-growing vegetation such as those occurring on the Project site. If burrowing owl burrows are not properly detected, prior to ground disturbance, grading and site preparation could destroy habitat and result in take of burrowing owl.

Evidence impact would be significant: On 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. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that prior to commencing Project activities, focused and preconstruction surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). Because appropriate surveys were not conducted prior to circulation of the MND, the MND may not adequately identify potentially significant impacts. CDFW recommends the IS/MND include results from surveys conducted using appropriate methodology to inform specific avoidance and minimization measures to reduce impacts to burrowing owls to less than significant.

CDFW recommends including the following changes to the proposed *Biological Resources Mitigation Measure No. 4* to ensure an adequate assessment is completed and CESA authorization obtained for burrowing owls, if needed (edits are in strikethrough and additions are in bold):

> **Biological Resources Mitigation Measure No. 2: Focused and Pre-Construction Surveys for Burrowing Owl**
>
> ~~*Biological Resources Mitigation Measure No. 4*: Pre-construction surveys for burrowing owls, desert tortoise, 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. 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. 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.~~
>
> **Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version) prior to vegetation removal or ground-disturbing activities for all phases of Project construction. The Designated Biologist shall provide to CDFW a GIS or KMZ map of BUOW burrow complex(es) and atypical burrows (e.g. culverts, buckled concrete, etc.) The map shall be at a scale of 1:24,000 or finer to show details and shall show locations of all BUOW sightings and labeled if sightings were potential burrows, occupied burrows, satellite burrows, areas of concentrated burrows, and BUOW sign. Locations documented by use of GPS coordinates must be collected in NAD83 datum. The map shall include an outline**

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of the Project Area. The map shall include a title, north arrow, scale bar, and legend.

If burrowing owl occupancy is confirmed, and if Project activities may impact burrowing owl, including burrow exclusion and closure, 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. The ITP application 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) Permittee-responsible mitigation land acquisition or 2) Conservation or Mitigation Bank credits (if available).

Western Joshua Tree

COMMENT #3: Western Joshua tree (*Yucca brevifolia*), IS/MND Section 4: Biological Resources, Page 28

Issue: The IS/MND identifies the project site as Joshua tree woodland, with concentrations following on-site topography along alluvial fans, ridges, and slopes. Of the 383 western Joshua trees (WJT) observed during the November 2024 WJT survey, the IS/MND states that five were observed within 40ft of Parcels A and B; the two closest WJTs from either parcel being approximately 11ft away from the Project area.

CDFW appreciates that the IS/MND includes *Biological Resources Mitigation Measure No. 3* to seek an Incidental Take Permit (ITP) through the Western Joshua Tree Conservation Act (WJTCA) with CDFW prior to attempting removal of any WJT in the Project area.

WJT is a candidate threatened species under CESA and take of WJT is defined as any activity that results in the removal of WJT or any parts thereof (CDFW 2024). If any WJTs are to be relocated, removed, or otherwise taken, the Project Proponent should obtain an Incidental Take Permit (ITP) from CDFW under Fish and Game Code section 2081 or under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12) prior to the relocation, removal, replanting or any activity that may result in take of WJT onsite.

Specific Impacts: The IS/MND should address the presence of all dead and live WJTs within the Project site, as well as the Project's impact on any live WJTs within and adjacent to the Project site. Access and construction occurring adjacent to WJTs in the off-site parcels could impact WJTs as a result of ground disturbing activities, encroachment, compaction, trampling, or disturbance of the root zone and seedbank by heavy equipment, vehicles or foot traffic, and increased dust, water, and wind erosion during construction. Given that the Project occurs within a 40ft vicinity of WJT, the Project could impact vulnerable root balls, the root zone where tree roots could occur in the soil, and where living western Joshua trees seeds could be present in the seedbank.

The WJTCA requires the avoidance and minimization of impacts on western Joshua tree to the maximum extent practicable as a condition of obtaining a WJTCA ITP (Fish & G. Code, § 1927.3, subd. (a)(2)). The IS/MND references a Joshua Tree Report Summary that summarizes November 12, 2024 WJT survey data, though the Report was not provided in the IS/MND. For the prospect of an WJTCA ITP and its associated census, each WJT stem or trunk arising from the ground must be considered an individual tree requiring mitigation and the Project site is defined as the area(s) where Project activities are expected to occur (e.g., access, staging, construction etc.). The census area is defined as the Project site plus an additional 15-meter (~50 ft) census buffer around the Project site. If the census buffer area extends onto neighboring properties, landowner(s) permission should be obtained, whenever possible, to document any WJTs on adjacent properties. If landowner permission isn't available, WJT may be observed from the property boundary.

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More information regarding the WJTCA can be found here: https://wildlife.ca.gov/Conservation/Environmental-Review/WJT/Permitting

Why impacts would occur: The IS/MND determined that Project may require take authorization of five WJTs. The Project would disturb surrounding soils that may otherwise support the yucca moth's pupal stage. After feeding on fruits, yucca moth caterpillars drop onto the soil and retreat to pupate underground (Baker, 1986); (Bogler, Neff, & Simpson, 1995). The yucca moth is the sole pollinator of western Joshua trees. Fruit and seed production of western Joshua trees fluctuate yearly depending on factors that include availability of pollinators (Sirchia, Hoffmann, & Wilkening, 2018). Regional collapses of yucca moth populations have led to complete failure of fruit production in the closely related banana yucca (*Yucca baccata*) in the Mojave Desert (St. Clair & Hoines, 2018).

Evidence impacts would be significant: The western Joshua tree is a geographically and morphologically distinct species from the eastern Joshua tree (*Yucca jaegeriana*) (Sirchia, Hoffmann, & Wilkening, 2018). The western Joshua tree has specific habitat requirements, which in turn restricts the range of the species (Center for Biological Diversity, 2019). Currently, western Joshua trees are found in Joshua Tree National Park; northern slopes of the San Bernardino and San Gabriel Mountains; Antelope Valley; eastern flanks of the southern Sierra Nevada mountains; and the edges of Death Valley National Park (Center for Biological Diversity, 2019). Recent studies have indicated that the species' range is contracting at lower elevations; recruitment is limited; and mortality is increasing. These trends are driven by the collective pressures of habitat loss; increased fire frequency and intensity; and poorly regulated ground disturbing activities; and climate change (Center for Biological Diversity, 2019). One-third of suitable habitat for the western Joshua tree in California may be lost due to development over the coming decades, including over 40 percent of habitat in the species' southern California region. At this rate, western Joshua tree may be extirpated from all or most of California by the end of the century (Center for Biological Diversity, 2019).

On November 1, 2019, CDFW accepted a petition for western Joshua tree as a threatened species for listing under the CESA (CDFW, 2020). CDFW determined that listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process (CDFW, 2020a). On September 22, 2020, the California Fish and Game Commission determined that listing western Joshua tree as threatened under CESA may be warranted (CDFW, 2020b). As a CESA candidate species, western Joshua tree is granted full protection of a threatened species under CESA.

Recommended Potentially Feasible Mitigation Measure: CDFW recommends including the following changes to the *Biological Resources Mitigation Measure No. 3* for western Joshua tree (edits are in strikethrough and additions are in bold):

> **Biological Resources Mitigation Measure No. 3: Western Joshua Tree Incidental Take Coverage**
>
> ~~*Biological Resources Mitigation Measure No. 3*: Any attempt to remove the Joshua tree from its current position will require an Incidental Take Permit (ITP) from CDFW pursuant to the Western Joshua Tree Conservation Act (WJTCA, CDFW 2024). The WJTCA was passed in July 2023 providing a program that allows CDFW to issue ITPs for impacts to western Joshua trees. A western Joshua tree census is required to be conducted according to CDFW instructions. The streamlined ITP process includes the option for the payment of a mitigation fee rather than completing mitigation acts. Per the WJTCA Mitigation Fee Map, the project site is not within the reduced mitigation fee area; therefore, would be subject to standard mitigation fees for impacts to WJT per California Fish and Game Code Section 1927.3 (e). The standard mitigation fees are as follows: trees five meters or greater in height - $2,500; trees one meter or greater but less than five meters in height - $500; trees less than one meter in height - $340.~~
>
> **The western Joshua tree is a candidate threatened species under the California Endangered Species Act. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW)**

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under Section CDFW under §2081b of CESA, or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, 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 western Joshua tree, a Candidate for Threatened CESA-listed species. 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 western Joshua tree if all of the following conditions are met: (1) The permittee 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. C. Five meters or greater in height. (2) The permittee 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 permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For the current fees, please visit: Western Joshua Tree Conservation Act Incidental Take Permit. 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 permittee to relocate one or more of the western Joshua trees.

Parish's Daisy and the California Desert Native Plant Act

COMMENT #4: Parish's daisy (*Erigeron parishii*) and the California Desert Native Plants Act (CDNPA), IS/MND Section 4: Biological Resources, Page 27

Issue: The Project may impact Parish's daisy (*Erigeron parishii*), which is federally listed as threatened under the federal Endangered Species Act (ESA) and designated by the CNPS with the Rare Plant Rank 1B.1. As a CNPS 1B.1 plant, Parish's daisy qualifies as a rare, threatened, or endangered plant under CEQA based on the definitions given in the California Code of Regulations Section 15380, which indicates that a species does not need to be officially listed under CESA to qualify as a rare, threatened, or endangered species under CEQA.

Among the 62 Mojavean desert scrub plants observed at the Project site, the California Desert Native Plants Act (CDNPA) also protects seven of them from harvest: Silver cholla (*Cylindroppuntia echinocarpa*), hedgehog cactus (*Echinocereus engelmannii*), California barrel cactus (*Ferocactus cylindraceus*), beavertail (*Opuntia basilaris*), catclaw (*Senegalia greggii*), western Joshua tree (*Yucca brevifolia*), and Mohave yucca (*Yucca schidigera*) (CA Food & Agri Code § 80073). San Bernardino County Code of Ordinances Section 88.01.060 also adopts CDNPA's regulatory precedence over permitting removal or harvest of the regulated desert native plants mentioned above.

Specific impact: The Project is located within the geographic range of Parish's daisy, at an elevation and habitat which it is known to occur. The Project proposes to grade and prepare 40.27 acres of previously vacant or undisturbed desert landscape for residential development.
Parish's daisy is a perennial herb endemic to San Bernardino County, California and is known to occur along a belt of carbonate soils spanning approximately 35 miles along the northern edge of the San Bernardino Mountains and Little San Bernardino Mountains; northeast of Big Bear Lake and east toward Pioneertown and Joshua Tree National Park (USFWS, 2002). This species is known to occur at 2,625 to 6,560 feet above mean sea level and is commonly associated with Mojavean desert scrub and pinyon and juniper woodland plant communities (CNPS, 2025).

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The IS/MND notes that both field investigations were conducted outside of Parish's daisy's blooming season (May to August (Hickman, 1993)). Surveying outside of the blooming season for Parish's daisy, or any sensitive plant species, decreases the likelihood of detection, which would misinform appropriate subsequent avoidance or relocation strategies, as needed.

Why impact would occur: The timing of the March 14, 2024 and May 28, 2025 surveys noted in the IS/MND phenologically mismatch with the blooming season of Parish's daisy, which blooms from May to August. The Project area has not been surveyed for the majority of Parish's daisy's blooming period and therefore a presence/absence determination cannot be made.

Evidence impact would be significant: CNPS and CNDPA provide lawful protections to Parish's daisy and seven other Mojavean desert scrub species, under California Code of Regulations Section 15380 and California Food and Agricultural Code, Chapter 3, Section 80071-88075; respectively, as mentioned above.

Botanical field surveys following CDFW or CNPS botanical survey protocols are needed during each plants specific blooming season to further identify plants at a taxonomic level to determine rarity and inform listing status of other sensitive plants that may not have been identified.

Recommended Potentially Feasible Mitigation Measures: CDFW concurs with San Bernardino County's recommendation to conduct pre-construction surveys for Parish's daisy. Additionally, CDFW recommends adding the following botanical field survey measures to the *Biological Resources Mitigation Measures* proposed in Section 4 of the IS/MND:

> **Biological Resources Mitigation Measure No. 4: Focused Botanical Field Surveys**
>
> **Prior to Project implementation, and during the appropriate blooming season, the Project proponent shall conduct botanical field surveys following protocols set forth in the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018). Surveys for special-status plants will be conducted during times of year when plants are evident and identifiable (i.e., flowering or fruiting), and in a manner that maximizes the likelihood of locating special status plants and sensitive natural communities that may be present; potentially warranting multiple surveys to determine the presence or absence of special-status plants in the Project area. Botanical field surveys shall be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.**
>
> **Any special-status plants found will be identified, mapped, and flagged or fenced for avoidance, if feasible. Excluding CESA-listed species (i.e. WJT) if a special-status plant cannot be avoided, then an appropriate relocation strategy shall be developed and coordinated with the CDFW and/or USFWS prior to the start of construction. This relocation strategy also applies to special-status plants slated for transplanting or stockpiling during for future transplanting, as proposed in San Bernardino County Code of Ordinances § 88.01.050(e)(3)(A).**
>
> **The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting.**
>
> **If any rare plants or sensitive vegetation communities are identified, the Project proponent shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the**

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proposed mitigation lands are located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species.

If impacts to any State-listed plant species identified during botanical surveys cannot be fully avoided, the Project proponent should apply for a CESA ITP with CDFW.

Loggerhead Shrike and other Nesting Birds

COMMENT #5: Loggerhead shrike (*Lanius ludivicianus*) and other nesting birds, IS/MND Section 4: Biological Resources, Page 27

Issue: The IS/MND indicated that the Project site hosts a variety of wildlife, many of which are avian species. The two aforementioned field investigations documented 11 different avian species, including loggerhead shrike (*Lanius ludivicianus*), a California Species of Special Concern (SSC). Take of loggerhead shrike is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513.

Specific Impact: Potential take of nesting birds and loss of bird nesting and/or foraging habitat.

Why impact would occur: Project activities may disturb nesting birds, which can lead to failure of the nest or unauthorized take.

Evidence impact would be significant: Potential habitat for nesting birds and birds of prey is present within the Project area. The proposed Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the environmental document. Measures to avoid the impacts should include species specific work windows, biological monitoring, installation of noise attenuation barriers, etc.

The San Bernardino County is responsible for complying with Fish and Game Code sections 3503, 3503.5, and 3513, which state as follows: section 3503 states that is it unlawful to take, possess, or needlessly destroy the nest or eggs or any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by 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.).

Loggerhead shrike is a species of special concern. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Loggerhead shrike is an SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW recommends a qualified biologist survey the entire Project area, not only for nesting birds, but also all bird activity to observe behavior that could be related to nest building, incubation, feeding of young and/or possible behavior that could indicate agitation and/or nest abandonment caused by Project activities. CDFW recommends inclusion of the following changes to the proposed nesting bird pre-construction clearance survey to avoid take of nesting birds (edits are in strikethrough and additions are in bold):

Biological Resources Mitigation Measure No. 6: Nesting Bird Surveys

~~*Biological Resources Mitigation Measure No. 4*: Pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act~~

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~~and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of project-related ground disturbance. 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. 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.~~

Regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of the survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal should occur outside peak breeding season (typically February 1 through September 1).

All measures to protect nesting birds should be performance-based. While some birds may tolerate disturbance within 250 feet of construction activities, other birds may have a different disturbance threshold and take could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. A 250-foot exclusion buffer may be sufficient; however, that buffer may need to be increased based on the birds' tolerance level to the disturbance.

American Badger

COMMENT #6: American badger (*Taxidea taxus*), IS/MND Section 4: Biological Resources, Page 29

Issue: The IS/MND determined that the proposed project site has a high potential to support American badger (*Taxidea taxus*), a California Species of Special Concern. Take of American badger is defined by Fish and Game Code section 86.

Specific impact: Grading and site preparation phases of the Project may result in the collapse of occupied burrows or dens and result in direct mortality and/or injury and impact potentially suitable habitat present in washes with friable soils and their small mammal prey base.

Evidence impact would be significant: American badger is a species of special concern. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. American badger is an SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).
Recommended Potentially Feasible Mitigation Measures: CDFW recommends that the pre-construction surveys, follow CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided or passively relocated, and the burrows or burrow complexes that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to

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be conducted, and methods and timing of den excavation. CDFW recommends the Mitigation Measures for American Badger (below) be added to the IS/MND:

Biological Resources Mitigation Measure No. 7: American Badger Plan

The Project owner shall develop and implement an American Badger Mitigation and Monitoring Plan (Plan). The objective of the Plan shall be to avoid direct impacts to the American badger as a result of Project activities. The final Plan is subject to review, comment, and revision by CDFW. The final Plan shall include, but is not limited to, the following procedures and impact avoidance measures: Describe pre-construction survey and clearance field protocol, to determine the number and locations of single badgers on the Project site that would need to be avoided or passively relocated and the number and locations of desert kit fox/badger burrows or burrow complexes that would need to be collapsed to prevent re-occupancy by the animals.

Biological Resources Mitigation Measure No. 8: American Badger Pre-Construction Survey

Biological Monitors shall conduct pre-construction surveys for American badger no more than 30 days prior to initiation of construction activities, including pre-construction site mobilization. Surveys shall also address the potential presence of active dens within 100 feet of the Project boundary (including access roads). If dens are detected, each den shall be classified as inactive, potentially active, or active den.

Biological Resources Mitigation Measure No. 9: American Badger Monitoring and Protection Measures, Passive Hazing, and Den Excavation

The Plan will include details on monitoring requirements, types and methods of passive hazing, and methods and timing of den excavation, including, but not limited to the following:

- **Inactive dens. Inactive dens (e.g., inactive dens are dens that are mostly or entirely silted in and ones in which the back of the den can clearly be seen (e.g., the den isn't deep and doesn't curve) that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by American badger.**

- **Potentially and definitely active dens. Potentially and definitely active dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage the badger from continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand to ensure that no badgers are trapped in the den. If the den is proven inactive then den may be collapsed during whelping season.**

Coast horned lizard

COMMENT #7: Coast horned lizard (*Phrynosoma blainvillii*), IS/MND Section 4: Biological Resources, Page 29

Issue: The IS/MND determined that the proposed Project site has a high potential to support coast horned lizard (*Phrynosoma blainvillii*) a California Species of Special Concern. Take of coast horned lizard is defined by Fish and Game Code section 86.

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Specific impact: The Project area currently provides desert scrub and Joshua tree woodland habitat that suits coast horned lizards' macrohabitat needs. Coast horned lizards also prefer loose, fine soils for burrowing, open areas for thermoregulation, and shrub cover for refugia (Jennings & Hayes, 1994). Project construction would further degrade and diminish local coast horned lizards' macro- and microhabitat.

Coast horned lizard populations have suffered population declines in most of their range due to extensive habitat destruction from urbanization (Goldberg, 1983). Ants can make up 90% of coast horned lizards' diet, half of which have included native ant prey such as *Pogonomyrmex* ants as the preferred prey over other nonnative ant species and non-ant insects (Pianka & Parker, 1975). Introduced Argentine ants (*Linepithema humile*) have displaced native ant prey over parts of southern California and have spread largely as a commensal with human development (Holway, 1995).

Argentine ants will likely colonize within the proposed residential parcels and displace coast horned lizard preferred prey base. Furthermore, because coast horned lizards rely on crypsis as a defense mechanism, they are particularly sensitive to land uses that increase the likelihood direct mortality. Vehicular usage during Project construction and following buildout of the proposed access road traversing Parcels 1, 2, and 4 may also crush or kill proximate coast horned lizards.

Evidence impact would be significant: Coast horned lizards are a species of special concern. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Coast horned lizard is an SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW recommends adding the following pre-construction survey for coast-horned lizard to the *Biological Resources Mitigation Measures* proposed in Section 4 of the IS/MND:

> **Biological Resources Mitigation Measure No. 10: Pre-Construction Survey for Coast Horned Lizard**
>
> **To minimize significant impacts, the Project proponent should retain a qualified biologist with survey experience with native reptile species, such as coast horned lizard. Within 14 days prior to commencing any Project-related ground-disturbing activities, the qualified biologist should conduct focused surveys for SSC and suitable habitat. In addition, the qualified biologist should conduct daily biological monitoring during any activities involving vegetation clearing or modification of natural habitat. Positive detections of coast horned lizard and suitable habitat at the detection location should be mapped and photographed. The qualified biologist should provide a summary report of coast horned lizard surveys to the Project proponent prior to implementing any Project-related ground-disturbing activities and vegetation removal.**
>
> **Wildlife should be allowed to move away on their own (non-invasive, passive relocation) to adjacent appropriate habitat. Special status wildlife should be captured only by a qualified biologist with proper handling permits.**
>
> **If any coast horned lizards are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife should be documented. A formal report should be sent to CDFW and the Project proponent within three calendar days of the incident or finding. Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.**

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California cuckoo bee

COMMENT #8: California cuckoo bee (*Paranomada californica*), IS/MND Section 4: Biological Resources, Page 29

Issue: The IS/MND determined that the proposed project site has potential to support California cuckoo bee (*Paranomada californica*), which is state ranked S1[2] under the NatureServe—a ranking system developed procedurally by the California Natural Diversity Database (CNDDB) to describe the imperilment status for taxon within California's state boundaries.

Specific impact: The Project site occurs in one of the two known locations of California cuckoo bee occurrence in California. The two locations include one inexact known location near Yucca Valley in 1944 and a 1971 collection from 9.5 miles northwest of Pioneertown, on Burns Canyon Rd., made by T.J. Zavortink (CDFW, 2006).

Given its extreme rarity, California cuckoo bee qualifies as a rare, threatened, or endangered species under CEQA based on the definitions given in the California Code of Regulations Section 15380 subdivision (d), which indicates that a species does not need to be officially listed under CESA to qualify as a rare, threatened, or endangered species under CEQA.

Evidence impact would be significant: While a detailed habitat analysis for this bee species is currently unknown, numerous threats such as drought (Hung, Sandoval, Ascher, & Holway, 2021), pesticides (Hladik, Vandever, & Smalling, 2016), non-native honey bees, and habitat conversion generally threaten native bee populations (Mull, et al., 2023).

California cuckoo bee is a cleptoparasite (nest parasite) species of solitary, ground-nesting bees, as evidenced by the lack of pollen-collecting structures on the female. Cuckoo bees (*Nomanidae)* do not excavate their own nests or collect pollen for their larvae but instead lay their eggs in nests of pollen-collecting species. The two specimens were found and collected flying in the same immediate vicinity of two different genera of *Exomalopsis* (CDFW, 2006), which is one of several host species known to host cuckoo bees (Rozen, Roig-Alsina, & Alexander, 1997); both of which were observed flying near flowering sticky snakeweed (*Gutierrezia microcephala*), a dry land floral resource from which *Exomalopsis* collect their pollen.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW recommends adding the following avoidance and minimization measures for California cuckoo bees and their associated host species *Exomalopsis* to the *Biological Resources Mitigation Measures* proposed in Section 4 of the IS/MND:

> **Biological Resources Mitigation Measure No. 11: California Cuckoo Bee Habitat Assessment**
>
> **A qualified biologist shall be retained to conduct a habitat assessment well in advance of Project implementation. The qualified biologist shall determine if the Project area or its immediate vicinity contain habitat suitable to support California cuckoo bee and *Exomalopsine* bees. If suitable California cuckoo bee or *Exomalopsine* bee habitat is present and may be impacted by Project implementation further mitigation measures will be required to prevent potential significant impacts.**
>
> **Biological Resources Mitigation Measure No. 12: California Cuckoo Bee Surveys and Monitoring**
>
> **A qualified biologist shall conduct focused surveys for California cuckoo bees and *Exomalopsine* bees in potential habitat within the Project area. The surveys shall be conducted prior to Project implementation to evaluate impacts resulting**

[2] **S1: Critically Imperiled** – At very high risk of extirpation in the state due to very restricted range, very few populations or occurrences, very steep declines, severe threats, or other factors.

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from potential ground and vegetation-disturbance associated with the Project. During the surveys, the biologist shall flag inactive small mammal burrows and other potential nest sites to reduce the risk of take. Once Project activities begin, the qualified biologist shall continuously monitor potential nest sites California cuckoo bees and floral resources for *Exomalopsine* bee activity for the duration of construction. If California cuckoo bee is detected, the qualified biologist shall notify CDFW immediately as further coordination will be required to avoid or mitigate significant impacts.

Biological Resources Mitigation Measure No. 13: California Cuckoo Bee Take Avoidance

Inactive small mammal burrows and thatched/bunch grasses shall be avoided whenever feasible. If an inactive burrow may be disturbed by project activities, it should be resurveyed for California cuckoo bee presence within seven (7) days prior to the scheduled disturbance.

Biological Resources Mitigation Measure No. 14: California Cuckoo Bee No Disturbance Buffer Zones

If California cuckoo bees are present, the qualified biologist shall identify the location of all nests in or adjacent to the Project site. If nests are identified, 15-meter no disturbance buffer zones shall be established around nests to reduce the risk of disturbance or accidental take. If Project activities may result in disturbance or potential take, the qualified biologist shall expand the buffer zone as necessary to prevent disturbance or take.

Biological Resources Mitigation Measure No. 15: Replacement of Floral Resources for *Exomalopsis*

Any floral resource associated with *Exomalopsis* that will be removed or damaged by Project implementation should be replaced in a 1:1 ratio. Floral resources shall be replaced as close to their original location as is feasible. If active California cuckoo bee or *Exomalopsine* bee nests have been identified and floral resources cannot be replaced within 200-meters of their original location, floral resources should be planted in the most centrally available location relative to identified nests. This location shall be no more than 1.5-kilometers from any identified nest. Replaced floral resources may be split into multiple patches to meet distance requirements for multiple nests. These floral resources shall be maintained in perpetuity and should be replanted and managed as needed to ensure the habitat is preserved.

Lake and Streambed Alterations

COMMENT #9: Lake and Streambed Alterations, IS/MND Section 4: Biological Resources, Page 31

Issue: An intermittent stream traverses the central portion of the Project site, and the IS/MND identifies this stream as an ephemeral drainage called Drainage A. The Project, including its easement and access roads, proposes work within Drainage A.

CDFW appreciates that the IS/MND includes *Biological Resources Mitigation Measure No. 5* which considers the potential for the Project to impact fish and wildlife resources subject to Fish and Game Code section 1600 et seq.

Specific Impact: The IS/MND does not address or evaluate Project impacts to Fish and Game Code section 1600 resources in the form of ephemeral streams within the Project area. Rather, the IS/MND asserts that Drainage A does not have a significant nexus to downstream waters such as Pipes Wash, based on its lack of surface water during a field investigation conducted on an undisclosed date.

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Why Impact Would Occur: The IS/MND states that upstream and downstream portions of Drainage A convey flows from the hills to the northeast towards the Project site, towards Pipes Wash. Project-related activities could potentially alter drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site. Regardless of constancy of flow, Drainage A may interact with alluvial material and sediment upstream; and this interaction can affect great distances downstream at Pipes Wash.

Evidence Impact Would Be Significant: The Project may substantially adversely affect the existing stream pattern and geomorphologic processes of the Project site through the deposition of debris, waste or other materials that could pass into any river, stream or lake. Depending on how the Project is designed and constructed, it is likely that LMR LLC will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that “any river, stream or lake” includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

Recommended potentially feasible mitigation measures: CDFW recommends inclusion of the following changes to the *Biological Resources Mitigation Measure No. 5* for jurisdictional waters (edits are in strikethrough and additions are in bold):

Biological Resources Mitigation Measure No. 5: Jurisdictional Waters

Biological Resources Mitigation Measure No. 5: Any impacts to on-site jurisdictional areas will [have] an Approved Jurisdictional Determination (AJD) or waiver from the Corps to confirm that Drainage A will not qualify as waters of the United States and will require a Regional Board Report of Waste Discharge permit prior to project implementation~~, and a CDFW Section 1602 Lake or Streambed Alteration Agreement~~.

To ensure compliance with Fish and Game Code section 1602 CDFW recommends that prior to the start of Project activities, the Project proponent shall notify CDFW for all Project activities that could impact Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement or written documentation from CDFW that a Streamed Alteration Agreement is not needed.

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.

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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 Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Bryant Luu, Environmental Scientist at (760) 923-8666 or bryant.luu@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Jeff Brandt
6BBFAB19FE504F9...

For Alisa Ellsworth
Environmental Program Manager

ec: California department of Fish and Wildlife
Graham Meese, Senior Environmental Scientist (Supervisor)

Office of Planning and Research, State Clearinghouse, Sacramento

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ATTACHMENT A: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR CDFW-PROPOSED MITIGATION MEASURES

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure

Biological Resources (BIO)		
Biological Resources Mitigation Measure Description	**Implementation Schedule**	**Responsible Party**
Biological Resources Mitigation Measure No. 1: Focused and Pre-Construction Surveys for Desert Tortoise Prior to ground disturbance or vegetation clearing within the proposed Project site, a CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service (USFWS) 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved fulltime biological monitor shall ensure desert tortoise do not enter the Project area during construction. If a special-status species enters the project area, (e.g., Mojave ground squirrel, desert tortoise, etc.) work shall cease and the animal will be allowed to safely leave the site. The project manager will be notified immediately, and work shall recommence upon approval from CDFW. CDFW shall be notified and consulted regarding the presence of any special-status wildlife species found on site during surveys prior to or during ground-disturbing construction activities. If a federally endangered species is found prior to or during ground disturbance of the site, the USFWS shall also be notified. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project	Prior to and during ground- or vegetation disturbing activities	Project proponent

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activities and Project activities shall be postponed until the appropriate authorization such as a CESA ITP is obtained. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.		
Biological Resources Mitigation Measure No. 2: Focused and Pre-Construction Surveys for Burrowing Owl Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version) prior to vegetation removal or ground-disturbing activities for all phases of Project construction. The Designated Biologist shall provide to CDFW a GIS or KMZ map of BUOW burrow complex(es) and atypical burrows (e.g. culverts, buckled concrete, etc.) The map shall be at a scale of 1:24,000 or finer to show details and shall show locations of all BUOW sightings and labeled if sightings were potential burrows, occupied burrows, satellite burrows, areas of concentrated burrows, and BUOW sign. Locations documented by use of GPS coordinates must be collected in NAD83 datum. The map shall include an outline of the Project Area. The map shall include a title, north arrow, scale bar, and legend. If burrowing owl occupancy is confirmed, and if Project activities may impact burrowing owl, including burrow exclusion and closure, 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. The ITP application 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) Permittee-responsible mitigation land acquisition or 2) Conservation or Mitigation Bank credits (if available).	Prior to and during ground- or vegetation disturbing activities	Project proponent
Biological Resources Mitigation Measure No. 3: Western Joshua Tree Incidental Take Coverage The western Joshua tree is a candidate threatened species under the California Endangered Species Act. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) under Section CDFW under §2081b of CESA, or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, 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 western Joshua tree, a Candidate for Threatened CESA-listed species. 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 western Joshua tree if all of the following	Prior to ground- or vegetation disturbing activities	Project proponent

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conditions are met: (1) The permittee 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. C. Five meters or greater in height. (2) The permittee 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 permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For the current fees, please visit: Western Joshua Tree Conservation Act Incidental Take Permit. 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 permittee to relocate one or more of the western Joshua trees.		
Biological Resources Mitigation Measure No. 4: Focused Botanical Field Surveys Prior to Project implementation, and during the appropriate blooming season, the Project proponent shall conduct botanical field surveys following protocols set forth in the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018). Surveys for special-status plants will be conducted during times of year when plants are evident and identifiable (i.e., flowering or fruiting), and in a manner that maximizes the likelihood of locating special status plants and sensitive natural communities that may be present; potentially warranting multiple surveys to determine the presence or absence of special-status plants in the Project area. Botanical field surveys shall be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. Any special-status plants found will be identified, mapped, and flagged or fenced for avoidance, if feasible. Excluding CESA-listed species (i.e. WJT) if a special-status plant cannot be avoided, then an appropriate relocation strategy shall be developed and coordinated with the CDFW and/or USFWS prior to the start of construction. This relocation strategy also applies to special-status plants slated for transplanting or stockpiling during for future transplanting, as proposed in San Bernardino County Code of Ordinances § 88.01.050(e)(3)(A). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. If any rare plants or sensitive vegetation communities are identified, the Project proponent shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence through the purchase of mitigation credits from a	Prior to ground- or vegetation disturbing activities	Project proponent

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CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species. If impacts to any State-listed plant species identified during botanical surveys cannot be fully avoided, the Project proponent should apply for a CESA ITP with CDFW.		
Biological Resources Mitigation Measure No. 5: Jurisdictional Waters To ensure compliance with Fish and Game Code section 1602 CDFW recommends that prior to the start of Project activities, the Project proponent shall notify CDFW for all Project activities that could impact Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement or written documentation from CDFW that a Streamed Alteration Agreement is not needed.	Prior to ground- or vegetation disturbing activities	Project proponent
Biological Resources Mitigation Measure No. 6: Nesting Bird Surveys Regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of the survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal should occur outside peak breeding season (typically February 1 through September 1). All measures to protect nesting birds should be performance-based. While some birds may tolerate disturbance within 250 feet of construction activities, other birds may have a different disturbance threshold and take could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. A 250-foot exclusion buffer may be sufficient; however, that buffer may need to be increased based on the birds' tolerance level to the disturbance.	Prior to and during ground- or vegetation disturbing activities	Project proponent

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Biological Resources Mitigation Measure No. 7: American Badger Plan The Project owner shall develop and implement an American Badger Mitigation and Monitoring Plan (Plan). The objective of the Plan shall be to avoid direct impacts to the American badger as a result of Project activities. The final Plan is subject to review, comment, and revision by CDFW. The final Plan shall include, but is not limited to, the following procedures and impact avoidance measures: Describe pre-construction survey and clearance field protocol, to determine the number and locations of single badgers on the Project site that would need to be avoided or passively relocated and the number and locations of desert kit fox/badger burrows or burrow complexes that would need to be collapsed to prevent re-occupancy by the animals.	Prior to ground- or vegetation disturbing activities	Project proponent
Biological Resources Mitigation Measure No. 8: American Badger Pre-Construction Survey Biological Monitors shall conduct pre-construction surveys for American badger no more than 30 days prior to initiation of construction activities, including pre-construction site mobilization. Surveys shall also address the potential presence of active dens within 100 feet of the Project boundary (including access roads). If dens are detected, each den shall be classified as inactive, potentially active, or active den.	Prior to ground- or vegetation disturbing activities	Project proponent
Biological Resources Mitigation Measure No. 9: American Badger Monitoring and Protection Measures, Passive Hazing, and Den Excavation The Plan will include details on monitoring requirements, types and methods of passive hazing, and methods and timing of den excavation, including, but not limited to the following: • Inactive dens. Inactive dens (e.g., inactive dens are dens that are mostly or entirely silted in and ones in which the back of the den can clearly be seen (e.g., the den isn't deep and doesn't curve) that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by American badger. • Potentially and definitely active dens. Potentially and definitely active dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage the badger from continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand to ensure that no badgers are trapped in the den. If the den is proven inactive then den may be collapsed during whelping season.	Prior to ground- or vegetation disturbing activities	Project proponent

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Biological Resources Mitigation Measure No. 10: Pre-Construction Survey for Coast Horned Lizard To minimize significant impacts, the Project proponent should retain a qualified biologist with survey experience with native reptile species, such as coast horned lizard. Within 14 days prior to commencing any Project-related ground-disturbing activities, the qualified biologist should conduct focused surveys for SSC and suitable habitat. In addition, the qualified biologist should conduct daily biological monitoring during any activities involving vegetation clearing or modification of natural habitat. Positive detections of coast horned lizard and suitable habitat at the detection location should be mapped and photographed. The qualified biologist should provide a summary report of coast horned lizard surveys to the Project proponent prior to implementing any Project-related ground-disturbing activities and vegetation removal. Wildlife should be allowed to move away on their own (non-invasive, passive relocation) to adjacent appropriate habitat. Special status wildlife should be captured only by a qualified biologist with proper handling permits. If any coast horned lizards are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife should be documented. A formal report should be sent to CDFW and the Project proponent within three calendar days of the incident or finding. Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.	Prior to and during ground- or vegetation disturbing activities	Project proponent
Biological Resources Mitigation Measure No. 11: California Cuckoo Bee Habitat Assessment A qualified biologist shall be retained to conduct a habitat assessment well in advance of Project implementation. The qualified biologist shall determine if the Project area or its immediate vicinity contain habitat suitable to support California cuckoo bee and *Exomalopsine* bees. If suitable California cuckoo bee or *Exomalopsine* bee habitat is present and may be impacted by Project implementation further mitigation measures will be required to prevent potential significant impacts.	Prior to ground- or vegetation disturbing activities	Project proponent
Biological Resources Mitigation Measure No. 12: California Cuckoo Bee Surveys and Monitoring A qualified biologist shall conduct focused surveys for California cuckoo bees and *Exomalopsine* bees in potential habitat within the Project area. The surveys shall be conducted prior to Project implementation to evaluate impacts resulting from potential ground and vegetation-disturbance associated with the Project. During the surveys, the biologist shall flag inactive small mammal burrows and other potential nest sites to reduce the risk of take. Once Project activities begin, the qualified biologist shall continuously monitor potential nest sites California cuckoo bees and floral resources for *Exomalopsine* bee activity for the duration of construction. If California cuckoo bee is detected, the qualified biologist shall notify CDFW immediately as further	Prior to ground- or vegetation disturbing activities	Project proponent

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coordination will be required to avoid or mitigate significant impacts.		
Biological Resources Mitigation Measure No. 13: California Cuckoo Bee Take Avoidance Inactive small mammal burrows and thatched/bunch grasses shall be avoided whenever feasible. If an inactive burrow may be disturbed by project activities, it should be resurveyed for California cuckoo bee presence within seven (7) days prior to the scheduled disturbance.	Prior to ground- or vegetation disturbing activities	Project proponent
Biological Resources Mitigation Measure No. 14: California Cuckoo Bee No Disturbance Buffer Zones If California cuckoo bees are present, the qualified biologist shall identify the location of all nests in or adjacent to the Project site. If nests are identified, 15-meter no disturbance buffer zones shall be established around nests to reduce the risk of disturbance or accidental take. If Project activities may result in disturbance or potential take, the qualified biologist shall expand the buffer zone as necessary to prevent disturbance or take.	Prior to and during ground- or vegetation disturbing activities	Project proponent
Biological Resources Mitigation Measure No. 15: Replacement of Floral Resources for *Exomalopsis* Any floral resource associated with *Exomalopsis* that will be removed or damaged by Project implementation should be replaced in a 1:1 ratio. Floral resources shall be replaced as close to their original location as is feasible. If active California cuckoo bee or *Exomalopsine* bee nests have been identified and floral resources cannot be replaced within 200-meters of their original location, floral resources should be planted in the most centrally available location relative to identified nests. This location shall be no more than 1.5-kilometers from any identified nest. Replaced floral resources may be split into multiple patches to meet distance requirements for multiple nests. These floral resources shall be maintained in perpetuity and should be replanted and managed as needed to ensure the habitat is preserved.	During and following ground- or vegetation disturbing activities	Project proponent