



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



September 25, 2025
Sent via email.

Alexander Lee
Land Use Planner II
San Bernardino County
385 N. Arrowhead Avenue, 1st Floor
San Bernardino, CA 92415
Alexander.Lee@lus.sbcounty.gov

Dear Mr. Lee:

O'REILLY AUTO PARTS RETIAL STORE (PROJECT)
INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND)
SCH# 2025081287

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an IS/MND from San Bernardino 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.

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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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: O'Reilly Auto Parts, LLC

Objective: The objective of the Project is to construct a 7,225-square foot auto parts retail store with a 20,577-square foot pavement area (with 39 parking spaces) on a vacant 1.94-acre parcel in the unincorporated community of Phelan/Piñon Hills in San Bernardino County.

Location: The Project is located at 3919 Phelan Road, Phelan, San Bernardino County, California, at the intersection of Phelan Road and Malpaso Road. Ingress and egress to the Project site will be from Malpaso Road. The Project is located on Assessor's Parcel Number 306622101 at latitude 34.425771°N and longitude -117.576326°W.

Timeframe: Construction of the Project is planned from late March 2026 until late August 2026.

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.

COMMENT #1: Nesting Birds

CDFW appreciates that the MND included a measure for a pre-construction survey for nesting birds (i.e., BIO-1). However, BIO-1 limits pre-construction surveys for nesting birds only during February to August. 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. This is in consideration that studies have shown that migratory bird species arrive earlier in the

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season partially in response to higher temperatures influenced by climate change (Usui et. al. 2016). In addition, in response to warming, birds have been reported to breed earlier and 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. As such, CDFW recommends the following revisions (additions are in **bold** and deletions are in ~~strikethrough~~) to BIO-1:

Mitigation Measure BIO-1: Pre-construction Nesting Bird Surveys (Revised)

Within 3 days prior to the commencement of **Project activities** ~~vegetation clearing or ground-disturbing activities during the nesting season (typically February through August, unless otherwise determined by a qualified biologist based on local observations)~~, a qualified biologist will determine the presence of active nests belonging to species protected under the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and California Fish and Game Codes 3503, 3503.5, and 3513 with full project site coverage including visual surveys extending to surrounding lands (up to 300 ft for raptors). In cases where ground disturbance activities are delayed, additional pre-disturbance must be conducted to ensure that no more than seven days have passed between the survey and the onset of ground disturbance activities. If active nests are identified, disturbance activities within **300 feet (for passerine birds) and 500 feet (for raptors)** of the nest ~~(or lesser distance if approved by United States Fish and Wildlife Service)~~ must be postponed or halted until the nest is vacated and the juveniles have successfully fledged, as determined by the biologist. **The biologist may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location.** To establish avoidance buffers in the field, highly visible construction fencing, or flagging must be used, and on-site personnel must be educated about the sensitivity of these nest areas. During periods when Project activities are scheduled to occur near active nests, a qualified biologist must be present as a biological monitor to ensure that inadvertent impacts on these nests are prevented **and that encroachment into the buffer area does not occur.**

COMMENT #2: Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

The MND states that the Project lies on the edge of the range of Mohave ground squirrel and is just outside the general population area and the predicted habitat occupied for the species. Thus, the MND concluded that Mohave ground squirrel is not expected to occur, but no surveys were conducted to determine absence/presence, and no avoidance and minimization measures were included in the MND.

CDFW noted that according to the California Natural Diversity Database, the Project is clearly within the range of Mohave ground squirrel and is therefore concerned with potential impacts to Mohave ground squirrel, which is a threatened species protected

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under CESA. As a result, CDFW strongly recommends the adoption of BIO-5 below in the final MND to assess potential presence of Mohave ground squirrel prior to construction.

Mitigation Measure BIO-5: Mohave Ground Squirrel (New)

Prior to ground disturbing activities commencing a visual survey according to CDFW's Mohave Squirrel Survey Guidelines (CDFW 2023) shall be conducted during the period of March 15 through April 15 to determine presence of Mohave ground squirrel. The survey shall be conducted in the Project site during daylight hours by a qualified biologist who can visually identify Mohave ground squirrel and white-tailed antelope squirrel and detect vocalization calls. If the survey or monitoring throughout the term of the Project confirms presence, the Project Proponent shall halt all Project activities and contact CDFW immediately (within 24 hours) and fully avoid all impacts to Mohave ground squirrel or should obtain a CESA ITP.

COMMENT #3: Desert Tortoise (*Gopherus agassizii*)

CDFW appreciates that a protocol level survey for desert tortoise, a CESA endangered species, was conducted in 2024 according to guidance from U.S. Fish and Wildlife. While no evidence, including live desert tortoise, scat, carcasses, eggshells, or burrows, were observed, CDFW is aware that desert tortoise habitat is present on the Project site and is therefore concerned with the potential presence of desert tortoise at the start of construction, given that desert tortoise may move into the Project site at any time. For this reason, CDFW strongly recommends adoption of BIO-6 below in the final MND to confirm presence/absence of desert tortoise prior to construction.

Mitigation Measure BIO-6: Desert Tortoise (New)

A qualified biologist shall conduct a protocol level presence or absence survey within the Project site, and 50-foot buffer zone no more than 48 hours prior to Project activities commencing in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology (USFWS 2019). The survey shall utilize survey routes that provide 100-percent visual coverage for desert tortoise and their sign. If desert tortoise may be impacted by the Project, Permittee shall fully avoid impacts to desert tortoise or should obtain a CESA ITP if impacts are unavoidable.

COMMENT #6: Crotch's Bumble Bee (*Bombus crotchii*)

The MND states that only one of the typical food plant species (i.e., buckwheat) for Crotch's bumble bee was observed within the Project site in low density; therefore,

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Crotch's bumble bee is not expected to occur. CDFW appreciates that a habitat assessment was conducted for Crotch's bumble bee, a CESA candidate species, but since habitat is present on-site, surveys provide the most valuable information for determining potential Project impacts and subsequently developing measures to avoid or minimize take of the species. Thus, CDFW recommends adoption of BIO-7 below in the final MND to avoid and minimize impacts to Crotch's bumble bee:

Mitigation Measure BIO-7: Crotch's Bumble Bee (New)

Crotch's bumble bee focused surveys shall be conducted within the Project site and within 100-feet of the Project site prior to the start of Project activities. Surveys shall be conducted using survey guidance in the 2023 Survey Considerations for Candidate Bumble Bee Species. If Crotch's bumble bee is detected through surveys, Permittee shall fully avoid impacts to Crotch's bumble bee or should obtain a CESA ITP.

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

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Questions regarding this letter or further coordination should be directed to Scott Jakubowski, Senior Environmental Scientist (Specialist), at (909) 354-0919 or Scott.Jakubowski@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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Alisa Ellsworth
Environmental Program Manager

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ATTACHMENT

A. Mitigation and Monitoring Reporting Plan

REFERENCES

California Department of Fish and Wildlife. (2023, October). *Mohave ground squirrel survey guidelines* (October 2023 revision).

California Department of Fish and Wildlife (CDFW). 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species.

U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*).

Usui, T., Butchart, S.H.M., and Philmore A.B., (2016). Temporal Shifts and Temperature Sensitivity of Avian Spring Migratory Phenology: a Phylogenetic Meta-analysis. *Journal of Animal Ecology* 86(2): 250-261.

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Attachment A Mitigation Monitoring and Reporting Plan

Measure Number	Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
BIO-1	Within 3 days prior to the commencement of Project activities, a qualified biologist will determine the presence of active nests belonging to species protected under the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and California Fish and Game Codes 3503, 3503.5, and 3513 with full project site coverage including visual surveys extending to surrounding lands (up to 300 ft for raptors). In cases where ground disturbance activities are delayed, additional pre-disturbance must be conducted to ensure that no more than seven days have passed between the survey and the onset of ground disturbance activities. If active nests are identified, disturbance activities within 300 feet (for passerine birds) and 500 feet (for raptors) of the nest must be postponed or halted until the nest is vacated and the juveniles have successfully fledged, as determined by the biologist. The biologist may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. To establish avoidance buffers in the field, highly visible construction fencing, or flagging must be used, and on-site personnel must be educated about the sensitivity of these nest areas. During periods when Project activities are scheduled to occur near active nests, a qualified biologist must be present as a biological monitor	Prior to Project initiation	Project Proponent and Qualified Biologist

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	to ensure that inadvertent impacts on these nests are prevented and that encroachment into the buffer area does not occur.		
BIO-5	Prior to ground disturbing activities commencing a visual survey according to CDFW's Mohave Squirrel Survey Guidelines (CDFW 2023) shall be conducted during the period of March 15 through April 15 to determine presence of Mohave ground squirrel. The survey shall be conducted in the Project site during daylight hours by a qualified biologist who can visually identify Mohave ground squirrel and white-tailed antelope squirrel and detect vocalization calls. If the survey or monitoring throughout the term of the Project confirms presence, the Project Proponent shall halt all Project activities and contact CDFW immediately (within 24 hours) and fully avoid all impacts to Mohave ground squirrel or should obtain a CESA ITP.	Prior to Project initiation	Project Proponent and Qualified Biologist
BIO-6	A qualified biologist shall conduct a protocol level presence or absence survey within the Project site, and 50-foot buffer zone no more than 48 hours prior to Project activities commencing in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology (USFWS 2019). The survey shall utilize survey routes that provide 100-percent visual coverage for desert tortoise and their sign. If desert tortoise may be impacted by the Project, Permittee shall fully avoid impacts to desert tortoise or should obtain a CESA ITP if impacts are unavoidable.	Prior to Project initiation	Project Proponent and Qualified Biologist

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BIO-7	Crotch’s bumble bee focused surveys shall be conducted within the Project site and within 100-feet of the Project site prior to the start of Project activities. Surveys shall be conducted using survey guidance in the <i>2023 Survey Considerations for Candidate Bumble Bee Species</i> . If Crotch’s bumble bee is detected through surveys, Permittee shall fully avoid impacts to Crotch’s bumble bee or should obtain a CESA ITP.	Prior to Project initiation	Project Proponent and Qualified Biologist
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