



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



October 13, 2025

Travis Clark, Senior Planner
 City of Victorville
 14343 Civic Drive
 Victorville, CA 92393
TClark@victorvilleca.gov

CACTUS NORTH INDUSTRIAL DEVELOPMENT (PLAN23-00023) (Project)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2025090916

Dear Travis Clark:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Victorville for the Project pursuant to 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: 55555 Amargosa LLC

Objective: The Project proposes to construct and operate two warehouse buildings with a combined total of 173,990 square feet. Additionally, the Project will construct 144 parking spaces, 28 truck loading docks, landscaping, new water and sewer lines, and associated driveway connections on Cactus Road, Lassen Road, and Mesa Linda Avenue.

Location: The Project is located on an 8.48-acre property at Assessor's Parcel Numbers 3128-572 and 3128-571-08, at the northwest corner of Cactus Road and Mesa Linda Avenue within the City of Victorville, County of San Bernardino, State of California.

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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Timeframe: The Project is expected to take 15 months to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Victorville 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

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, Species of Special Concern (SSC), Watch List Species (WL), and birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project could result in direct take associated with grading, vegetation removal, and vehicle and equipment strike and indirect take associated with Project operations such as attracting predators and displacement. Further, the Project may lead to the reduction of habitat and habitat quality. For example, the Project is likely to permanently remove foraging and/or nesting habitat for avian species, such as but not limited to Cooper's hawk (*Accipiter cooperii*) (WL), prairie falcon (*Falco mexicanus*) (WL), loggerhead shrike (*Lanius ludovicianus*) (SSC), California horned lark (*Eremophila alpestris actia*) (WL), and LeConte's thrasher (*Toxostoma lecontei*) (SSC).

Why impact would occur: BIO-1 of the MND proposes to conduct pre-construction surveys for nesting birds; however, BIO-1 limits pre-construction surveys for nesting birds to the typical bird nesting season (i.e., February 1st to August 31st). Additionally, the Biological Resources Assessment stated that the Project site has the potential to provide nesting habitat for year-round and seasonal avian species. 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 season partially in response to higher temperatures influenced by climate change (Usui et. al. 2016)². 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.

Evidence impact would be significant: It is the Project Proponent's responsibility to avoid take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the draft MND provided a mitigation measure, BIO-1, to minimize the Project's impacts to nesting birds. CDFW offers the following revisions to BIO-1 (edits are in ~~strike through~~ and **bold**) for inclusions in the final MND to avoid and minimize impacts to nesting birds.

Mitigation Measure: BIO-1 Nesting Birds

² 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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Nesting birds are protected pursuant to the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (Sections 3503, 3503.5, 3511, and 3513 prohibit the take, possession, or destruction of birds, their nests or eggs). In order to protect migratory bird species, a nesting bird clearance survey ~~shall should~~ be conducted prior to any ground disturbance or vegetation removal activities that may disrupt the birds during the nesting season. ~~If construction occurs between February 1st and August 31st,~~ **The** pre-construction clearance survey for nesting birds ~~shall should~~ be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The **qualified** biologist conducting the clearance survey ~~shall should~~ document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities ~~shall should~~ stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the **qualified wildlife** biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor ~~shall should~~ be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

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

Issue: The Project may result in take of burrowing owl, a candidate species protected under CESA. 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". While a field investigation was conducted, and no burrowing owl, sign, or suitable burrows for nesting or roosting were observed and thus focused surveys were not conducted, the Biological Resources Assessment recommended that a pre-construction clearance survey be conducted to confirm absence of burrowing owl. Thus, the MND included BIO-2; however, BIO-2 proposes translocation, which could result in take and should only occur with a CESA incidental take permit (ITP).

Specific impact: Project related activities may result in direct or indirect take of burrowing owl by reducing/eliminating suitable habitat for the species, restricting species movement, or causing injury or mortality.

Why impact would occur: BIO-2 proposes translocation of burrowing owl and no CESA ITP; therefore, the Project could result in unauthorized take of burrowing owl and a CESA violation. If burrowing owl are detected during the pre-construction clearance surveys in BIO-2, impacts to burrowing owl need to be fully avoided or if impacts are unavoidable a CESA ITP should be obtained. Further, according to the California Natural Diversity Database (CNDDDB), multiple observations of burrowing owl have been observed within a 2-mile radius of the Project location. Additionally, CDFW is aware of breeding burrowing owls 0.5 miles away from the Project site. Please note that breeding season and wintering surveys for burrowing owl consistent with Appendix D of the CDFW 2012 Staff Report on Burrowing Owl Mitigation³ provide the most accurate assessment to determine whether the Project site provides habitat for burrowing owl. As such, CDFW recommends focused surveys as part of BIO-2.

Evidence impact would be significant: On October 10, 2024, the Fish and Game Commission determined that burrowing owl warrants protection as a candidate species under CESA (Fish & G. Code, § 2050 et seq.). During the candidacy period, burrowing owl is afforded the same protection as a threatened and endangered species under

³ California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

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CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.*, Fish & G. Code, § 3503.5, *etc.*) and Federal laws (*i.e.*, Migratory Bird Treaty Act). If Project activities could result in take, appropriate CESA authorization (*i.e.*, Incidental Take Permit under Fish & G. Code, § 2081) should be obtained prior to commencement of Project activities.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the MND provided a mitigation measure, BIO-2, to avoid and minimize the Project's impacts to burrowing owl. In consideration of the above-mentioned, CDFW offers the following revisions to BIO-2 (edits are in ~~strikethrough~~ and **bold**) for inclusions in the final MND.

Mitigation Measure: BIO-2 Burrowing Owl

Prior to the initiation of Project activities, a qualified biologist shall conduct breeding and wintering season surveys consistent with Appendix D of the 2012 Staff Report on Burrowing Owl Mitigation. If burrowing owls are detected during breeding or wintering season surveys, CDFW strongly recommends the Project Proponent obtain an incidental take permit (ITP) for burrowing owl prior to the commencement of any Project activities or fully avoid impacts to burrowing owl. A pre-construction burrowing owl clearance survey ~~shall~~ **is recommended to be** conducted in accordance with the CDFW's 2012 Staff Report on Burrowing Owl Mitigation to ensure that burrowing owl remains absent from the project site. **These take avoidance surveys shall be conducted by a qualified biologist no less than 14 days prior to initiation of ground disturbing activities, and again within 24 hours prior to ground disturbance.** If burrowing owls are found onsite during the pre-construction clearance survey **or anytime during Project construction, the Project Proponent shall not commence Project activities, contact CDFW immediately, and fully avoid impacts to burrowing owl** ~~a burrowing owl relocation plan will need to be prepared and approval by CDFW prior to the commencement of any ground disturbing activities. The burrowing owl relocation plan shall outline recommended methods proposed to relocate the burrowing owls from the project site and provide measures that will be implemented for the maintenance, monitoring, and reporting of the relocated burrowing owls to increase chances of survivorship and better ensure compliance with CDFW guidelines.~~ **If impacts to burrowing owl are unavoidable, the Project Proponent shall obtain an ITP from CDFW.**

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

Issue: The Project has the potential to result in permanent and temporary loss and degradation of desert tortoise habitat. Additionally, the Project may result in the take of desert tortoise, a CESA listed endangered species, during construction of the Project and the life of the Project. California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".

Specific Impact: Project related activities may result in direct or indirect take of desert tortoise by reducing/eliminating habitat for the species, restricting species movement, or causing injury or mortality.

Why impact would occur: While desert tortoise was found absent, a single field investigation was conducted on July 29, 2024, when desert tortoise is least active and therefore may have been missed. The USFWS 2019 Desert Tortoise Protocol⁴ states that surveys to detect desert tortoise should be conducted during the months desert tortoise are most active from April to May and September through October when temperatures are below 95°F to ensure detection. Nonetheless, CDFW appreciates that the MND proposes to conduct pre-constructions surveys for desert tortoise. However, the pre-construction survey will occur 30 days prior to construction activities

⁴ U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for Any Action that May Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*).

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and because desert tortoise is known to utilize multiple burrows that may be used over a span of a number of days and vary temporally and spatially (Grover and DeFalco 1995)⁵, desert tortoise may move into the Project area following pre-construction surveys conducted too far out from the start of construction. Therefore, desert tortoise may not be detected prior to the start of Project activities if pre-construction surveys occur 30 days prior to construction. For this reason, CDFW recommends that pre-construction surveys for desert tortoise be conducted within 48 hours of construction. Furthermore, BIO-3 as written, does not provide the methodology for the pre-construction desert tortoise surveys. The USFWS 2019 Desert Tortoise Protocol provides clear guidance on how to effectively survey and determine whether desert tortoises may be in the Project area. If desert tortoise is not properly surveyed for, they may not be detected during the pre-construction surveys and impacts to desert tortoise may occur.

Evidence impact would be significant: Desert tortoise was recently uplisted from a threatened to endangered species under CESA, signifying the continued need to conserve the species and the importance to avoid impacts to the species and its habitat. Desert tortoise populations have declined significantly in recent decades as a result of human activities in desert tortoise habitat including land development, off-road vehicle use, overgrazing, agricultural development, and military activities (USFWS 2011)⁶. In addition, predation from ravens and the spread of invasive plant species also pose a threat to desert tortoises. 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(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the MND provided a mitigation measure to avoid and minimize the Project's impacts to desert tortoise. CDFW offers the following revisions to BIO-3 (edits are in ~~strike through~~ and **bold**) for inclusions in the final MND to clarify when surveys should occur.

Mitigation Measure: BIO-3 Desert Tortoise

A pre-construction clearance survey **consistent with the U.S. Fish and Wildlife Service 2019 Desert Tortoise Protocol** shall be conducted **by a qualified biologist no more than forty-eight (48) hours** ~~thirty (30) days~~ prior to ground disturbing **Project activities within the Project area** ~~areas in undeveloped areas~~ to confirm the absence of desert tortoise within the boundaries of the **Project survey area**. **The survey shall utilize perpendicular survey routes and ensure 100% visual coverage for desert tortoise and their sign (e.g., scat, tracks, burrows)**. All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets. Although not anticipated, if desert tortoise are found onsite during the pre-construction clearance survey, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures can be implemented to avoid any direct or indirect impacts to desert tortoise, or if "Take" permits will need to be obtained prepared and approved by the USFWS and CDFW.

Editorial Comments and/or Suggestions

Invasive and Special Status Species Awareness Education Program

Through the implementation of the Project, invasive species may be introduced to the surrounding undeveloped areas and may encroach on native plant species. Therefore, CDFW suggests the incorporation of a worker awareness education program to educate

⁵ Grover M.C., and DeFalco L.A., (1995). Desert Tortoise (*Gopherus agassizii*): Status-of-Knowledge Outline with References. U.S. Department of Agriculture, Forest Service, Intermountain Research Station.

⁶ U.S. Fish and Wildlife Service (USFWS). 2011. Revised Recovery Plan for Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

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everyone, prior to working on the Project site, regarding invasive species as well as special status species that occur or may occur on site, and any measures required to address these species if found.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Emily Leon, Environmental Scientist, at Emily.Leon@wildlife.ca.gov or at (760) 644-5976.

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@lci.ca.gov

Marc Blodgett, Principal Planner
Blodgett Baylosis Environmental Planning
Blodgett.marc@gmail.com

Simon Bouzaglou, Project Applicant
55555 Amargosa LLC
Simon@55555-amargosa.com

ATTACHMENTS

Attachment A: Mitigation Monitoring Reporting Plan

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REFERENCES

California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

Grover M.C., and DeFalco L.A., (1995). Desert Tortoise (*Gopherus agassizii*): Status-of-Knowledge Outline with References. U.S. Department of Agriculture, Forest Service, Intermountain Research Station.

U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for Any Action that May Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*).

U.S. Fish and Wildlife Service (USFWS). 2011. Revised Recovery Plan for Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

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

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
<p>Mitigation Measure: BIO-1 Nesting Birds</p> <p>Nesting birds are protected pursuant to the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (Sections 3503, 3503.5, 3511, and 3513 prohibit the take, possession, or destruction of birds, their nests or eggs). In order to protect bird species, a nesting bird clearance survey shall be conducted prior to any ground disturbance or vegetation removal activities that may disrupt birds. The pre-construction clearance survey for nesting birds shall be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The qualified biologist conducting the clearance survey shall document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities shall stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the qualified biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.</p>	<p>Within three (3) days of the start of any vegetation removal or ground disturbing activities</p>	<p>Qualified Biologist</p>
<p>Mitigation Measure: BIO-2 Burrowing Owl</p> <p>Prior to the initiation of Project activities, a qualified biologist shall conduct breeding and wintering season surveys consistent with Appendix D of the 2012 Staff Report on Burrowing</p>	<p>Prior to initiation of Project activities</p>	<p>Qualified Biologist</p>

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<p>Owl Mitigation. If burrowing owls are detected during breeding or wintering season surveys, CDFW strongly recommends the Project Proponent obtain an incidental take permit (ITP) for burrowing owl prior to the commencement of any Project activities or fully avoid impacts to burrowing owl. A pre-construction burrowing owl clearance survey shall be conducted in accordance with the CDFWs 2012 Staff Report on Burrowing Owl Mitigation to ensure that burrowing owl remains absent from the project site. These take avoidance surveys shall be conducted by a qualified biologist no less than 14 days prior to initiation of ground disturbing activities, and again within 24 hours prior to ground disturbance. If burrowing owls are found onsite during the pre-construction clearance survey or anytime during Project construction, the Project Proponent shall not commence Project activities, contact CDFW immediately, and fully avoid impacts to burrowing owl. If impacts to burrowing owl are unavoidable, the Project Proponent shall obtain an ITP from CDFW.</p>		
<p>Mitigation Measure: BIO-3 Desert Tortoise</p> <p>A pre-construction clearance survey consistent with the U.S. Fish and Wildlife Service 2019 Desert Tortoise Protocol shall be conducted by a qualified biologist no more than forty-eight (48) hours prior to ground disturbing Project activities within the Project area to confirm the absence of desert tortoise within the boundaries of the Project area. The survey shall utilize perpendicular survey routes and ensure 100% visual coverage for desert tortoise and their sign (e.g., scat, tracks, burrows). All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets. Although not anticipated, if desert tortoise are found onsite during the pre-construction clearance survey, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures can be implemented to avoid any direct or indirect impacts to desert tortoise, or if "Take" permits will need to be obtained prepared and approved by the USFWS and CDFW.</p>	<p>No more than forty-eight (48) hours prior to ground disturbing Project activities</p>	<p>Qualified Biologist</p>