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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

October 21, 2025
Sent via email.

Derek Newland, Land Use Planner II
San Bernardino County
385 N. Arrowhead Avenue, 1st Floor
San Bernardino, CA 92415
derek.newland@lus.sbcounty.gov

AGGREGATE LOADING FACILITY AND RAIL LOOP PROJECT (PROJECT)
INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND)
SCH# 2025090950

Dear Mr. Newland:

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 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 &

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G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Project Proponent: LCM Development, LLC

Objective: The Project includes the development of 131 acres of undeveloped land into an aggregate loading facility and rail loop. Project activities include grubbing, grading, trench digging, excavation, loading and stockpiling, railway construction and alignment, railroad crossing construction, road construction and maintenance, road relocation, fencing, and other activities. The haul road to the main Lynx Cat Mine quarry will be used to transfer materials to and from the loading facility. A "Y"-track is also being developed to transport materials to the rail line.

Location: The Project is located at 18800 Santa Fe Road, approximately three miles west of the town of Hinkley in the southwest ¼ of Section 13, Township 10 North, Range 4 West, on Assessor's Parcel Numbers 0496-011-07-000 and 496-14-101-0000, in San Bernardino County at latitude 34.964890°N and longitude -117.270864°W. The Project site is bounded by the Burlington Northern and Santa Fe Railway (BNSF) main rail line to the south, intersects with Santa Fe Road, and is bounded by Lynx Cat Road to the north.

Timeframe: No timeframe for construction or completion is listed in the MND.

COMMENTS AND RECOMMENDATIONS

CDFW appreciates that the Project Proponent has applied for a CESA incidental take permit (ITP) for Mohave ground squirrel (*Xerospermophilus mohavensis*) and desert tortoise (*Gopherus agassizii*). 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 to nesting birds and fur-bearing mammals. Editorial comments or other suggestions may also be included to improve the document.

COMMENT #1: Nesting Birds

Section #IV Biological Resources, Pages #29-31

Issue: CDFW appreciates that the MND included a mitigation measure for pre-construction surveys for nesting birds (i.e., BIO-3). However, BIO-3 only requires a pre-construction survey for nesting birds if construction occurs between February 1 to September 15, which is the general nesting bird season. CDFW recommends that disturbance to occupied nests of non-migratory birds, migratory birds, and raptors

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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). 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

Specific impact: As proposed BIO-3, will only detect nesting birds during the typical nesting bird season and may lead to birds nesting outside of February 1 to September 15 to be missed. If nesting birds are present outside of this timeframe and not identified, the Project could result in injury, mortality, or disturbance.

Why impact would occur: Without proper detection of nesting birds, impacts to nesting birds cannot be avoided and minimized. For example, take of nesting birds or failure of a nest may occur if buffers are not established to avoid Project activities occurring within an appropriate distance of nesting birds.

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 Mitigation Measure: CDFW recommends the following minor revisions (additions are in **bold** and deletions are in ~~strikethrough)~~ to BIO-3 for adoption in the final MND to avoid and minimize impacts to nesting birds:

Mitigation Measure BIO-3: Pre-construction Nesting Bird Surveys (Revised)

*~~If construction occurs between February 1st and September 15tht~~, **A** ~~a~~ 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 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*

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*activities **shall** ~~should~~ stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the ~~wildlife~~ **qualified** biologist based on on-site conditions **and the species nesting** (a **minimum** 250-foot buffer shall be marked around songbird nests**)**. 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. 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: American Badger (*Taxidea taxus*) and Desert Kit Fox (*Vulpes macrotis*)

Section #IV Biological Resources, Page #29

Issue: Due to their similar life history, desert kit fox and American badger are hereby addressed together. Desert kit fox and American badger are special status species and according to the California Natural Diversity Database (CNDDB), the Project is within predicted habitat for American badger (CDFW Species of Special Concern), and desert kit fox (fur bearing mammal) is found within four miles of the Project site. However, the MND did not consider desert kit fox in its analysis and stated that American badger has a nominal chance of occurring on-site due to a lack of food, but American badger are opportunistic predators and primarily eat small mammals such as Mohave ground squirrel, which are likely present on-site.

Specific impact: Impacts to desert kit fox and American badger could occur during the construction of the Project. For example, the Project could result in the collapse of occupied burrows, permanent loss of foraging and nesting habitat, and/or direct mortality or injury.

Why impact would occur: The MND did not include a pre-construction clearance survey for American badger and desert kit fox to ensure these species are absent from the Project site and that Project impacts to these species would not occur.

Evidence impact would be significant: Desert kit foxes are considered uncommon to rare, and permanent residents of arid regions of southern California. Desert kit fox is addressed in Title 14 of the California Code of Regulations. California Code of Regulations, Title 14, section 460 states that “Fisher, marten, river otter, desert kit fox and red fox may not be taken at any time”. Desert kit fox and the American badger are also found within Fish and Game Code section 4000: “Fur-bearing mammals enumerated. The following are fur-bearing mammals: pine marten, fisher, mink, river otter, gray fox, red fox, kit fox, raccoon, beaver, badger, and muskrat”. Further, Fish and Game Code section 4002 states, “Fur-bearing mammals may be taken only with a trap, a firearm, bow and arrow, poison under proper permit, and

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with the use of dogs." All other forms of take of fur-bearing mammals are not authorized.

Recommended Mitigation Measure: CDFW recommends the adoption of BIO-21 below in the final MND to avoid and minimize impacts to American badger and desert kit fox.

Mitigation Measure BIO-21: Pre-Construction American Badger and Desert Kit Fox Surveys (New)

No more than 30 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct a survey to determine if potential desert kit fox or American badger burrows are present in the Project site. If potential burrows are located, they shall be monitored by the qualified biologist. If the burrow is determined to be active, the qualified biologist shall verify there are suitable burrows outside of the Project site prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least fourteen days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5-day period. After the qualified biologist has determined there are no active burrows, the burrows shall be hand excavated to prevent re-use. No disturbance of active dens shall take place when juvenile desert kit fox and juvenile American badgers may be present and dependent on parental care. The qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

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 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.

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

Docusign Envelope ID: 242E913B-AD56-4D21-A7FA-BEA658063DF2

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

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:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
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Joe Mathewson, Project Proponent
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ATTACHMENT

A. Mitigation and Monitoring Reporting Plan

REFERENCES

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.

Docusign Envelope ID: 242E913B-AD56-4D21-A7FA-BEA658063DF2

Attachment A
Mitigation Monitoring and Reporting Plan

Measure Number	Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
BIO-3	A 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 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 stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the qualified biologist based on on-site conditions and the species nesting (a minimum 250-foot buffer shall be marked around songbird nests). 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. 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.	Prior to initiation of Project Activities	Project Proponent and Qualified Biologist
BIO-21	No more than 30 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct a survey to determine if	Prior to initiation of Project Activities	Project Proponent and Qualified Biologist

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	potential desert kit fox or American badger burrows are present in the Project site. If potential burrows are located, they shall be monitored by the qualified biologist. If the burrow is determined to be active, the qualified biologist shall verify there are suitable burrows outside of the Project site prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least fourteen days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5-day period. After the qualified biologist has determined there are no active burrows, the burrows shall be hand excavated to prevent re-use. No disturbance of active dens shall take place when juvenile desert kit fox and juvenile American badgers may be present and dependent on parental care. The qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.		