



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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 Ontario, CA 91764
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GAVIN NEWSOM, Governor
VALERIE TERMINI, Acting Director



February 10, 2026
 Sent via email.

John Hernandez, Project Manager
 San Bernardino County Department of Public Works
 222 West Hospitality Lane, 2nd Floor
 San Bernardino, CA 92415
John.Hernandez@dpw.sbcounty.gov

Dear John Hernandez:

PHASE II DESERT VIEW CONSERVATION AREA RECREATIONAL TRAILS (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2026010533

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from County of San Bernardino 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: San Bernardino County Department of Public Works

Objective: The Project proposes to construct 13 interpretive signs, four informational kiosks, two habitat shelters with seating areas, two viewing platforms, mileage posts, and picnic tables within the 605-acre Desert View Conservation Area. Additionally, the Project proposes to regrade and clear vegetation within three segments of existing trails that have eroded or become overgrown, no new trails are proposed to be constructed. Project construction will not require new lighting or relocation of utilities. Access to the Project site is proposed through existing routes.

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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Location: The Project site is approximately 1.5 miles south of the unincorporated community of Joshua Tree and approximately 1.4 miles south of State Route 62 at Assessor's Parcel Numbers 0589-311-25 and 0589-321-73, within San Bernardino County, State of California.

Timeframe: Project construction is anticipated to occur over approximately 160 days and is expected to occur Monday through Friday between 8:00 a.m. and 6:00 p.m.

COMMENTS AND RECOMMENDATIONS

CDFW appreciates that the MND conducted focused surveys for sensitive plants consistent with the 2018 CDFW *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*². CDFW also appreciates that the MND conducted surveys for desert tortoise during its active season. CDFW offers the comments and recommendations below to assist County of San Bernardino 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: Desert Tortoise (*Gopherus agassizii*)

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to desert tortoise habitat. 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: Potential impacts to desert tortoise from the Project include take of desert tortoise, their burrows, or eggs, or destruction of burrows, or foraging habitat, thus impacting desert tortoise populations. Impacts can result from grading, vegetation removal, burrow blockage, soil compaction, and crushing of burrows. Project disturbance (e.g., noise and vibration) has the potential to stress desert tortoises at occupied burrows as well.

Why impact would occur: The MND states that multiple desert tortoise scat was identified within the Project site during surveys, but no desert tortoise was identified. Therefore, desert tortoises have the potential to occupy the Project site or use the Project site for foraging or movement. The MND proposes mitigation measure BIO-8, which requires pre-construction surveys for desert tortoise within 14 days prior to initial ground-disturbing activities; however, desert tortoises are 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)³. Additionally, desert tortoises may move into the Project site 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 14 days prior to construction. For this reason, CDFW recommends that pre-construction surveys for desert tortoise be conducted within 48 hours of start construction to ensure desert tortoise have not moved into the Project site.

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)⁷. 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

² California Department of Fish and Wildlife (CDFW). (2018). *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*.

³ 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.

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Mojave Desert has declined by 90% since the 1980s. Furthermore, 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 draft MND includes a mitigation measure, BIO-8, to avoid and minimize the Project's impacts to desert tortoise. CDFW offers the following revisions to BIO-8 (edits are in ~~strike through~~ and **bold**) for inclusions in the final MND to reduce impacts to desert tortoise to less than significant.

Mitigation Measure: BIO-8 Desert Tortoise (Revised)

A qualified biologist shall conduct pre-construction surveys no more than ~~44 days~~ **48 hours** prior to the start of ground-disturbing activities **consistent with the U.S. Fish and Wildlife Service 2019 Desert Tortoise Survey Protocol**⁴. Surveys shall cover the entire Project footprint and a 50-foot survey buffer to identify any active burrows or individuals. If a burrow is determined to be active, the Qualified Biologist shall establish a no-disturbance buffer of 50 feet or greater around the burrow. A Qualified Biologist shall be present during all ground-disturbing activities, vegetation removal, or when heavy equipment is being operated within desert tortoise habitat and shall stop work if a desert tortoise is detected at or within 50 feet of work activities, until the individual leaves on its own. Lastly, within desert tortoise habitat, vehicles shall not exceed 15 miles per hour on access roads during periods of increased desert tortoise activity (March 1 through October 31). If a vehicle is parked, the ground around and under the vehicle shall be inspected for desert tortoises before the vehicle is moved. If a desert tortoise is present, the equipment or vehicle shall remain place until the desert tortoise moves 50 feet from the equipment or vehicle. All field personnel shall immediately inform the Qualified Biologist if a desert tortoise is seen during the implementation of any Project activity. Lastly, no desert tortoise shall be handled or disturbed.

COMMENT #2: Nesting Birds

Issue: The Project may have impacts on nesting birds, including 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 Le Conte's thrasher (*Toxostoma lecontei*) (SSC), yellow warbler (*Setophaga petechia*) (SSC), loggerhead shrike (*Lanius ludovicianus*), prairie falcon (*Falco mexicanus*) (WL), and golden eagle (*Aquila chrysaetos*) (WL).

Why impact would occur: Mitigation measure BIO-9 proposes to conduct a pre-construction survey for nesting birds; however, BIO-9 limits pre-construction surveys to the typical bird nesting season (i.e., February 1st through August 15th). 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)⁵. 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. Additionally, BIO-9 requires avoidance buffers only for LeConte's thrasher and loggerhead shrike and not for any

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*).

⁵ 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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other nesting bird that may be present within the Project site. CDFW strongly recommends a disturbance free avoidance buffer determined by a qualified biologist to be delineated for any bird that may be nesting on the Project site.

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-9, to avoid and minimize the Project's impacts to nesting birds. CDFW offers the following revisions to BIO-9 (edits are in ~~strikethrough~~ and **bold**) for inclusions in the final MND to reduce impacts to nesting birds to less than significant.

Mitigation Measure: BIO-9 Nesting Birds (Revised)

Regardless of the time of year, if Project activities cannot occur outside the bird breeding season, then Pre-construction surveys for active bird nests shall be conducted on the Project site and within 500 feet of the Project site by a Qualified Avian Biologist, who is knowledgeable in the life histories and ecology of species, no more than three seven days before the initiation of construction and vegetation removal activities that would occur between February 1 and August 15. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If a nest is suspected, but not confirmed, the Qualified Avian Biologist shall establish a disturbance-free buffer until additional surveys or monitoring can be completed. The Qualified Avian Biologist shall not risk failure of the nest to determine the exact location or status and shall make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). Active nests must be monitored during construction and vegetation removal activities by a Qualified Avian Biologist or Biological Monitor. The Biological Monitor may provide assistance to the Qualified Avian Biologist with biological surveys and monitoring, if needed. The Qualified Avian Biologist shall establish a conservative buffer surrounding the nest based on their professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Qualified Avian Biologist shall document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Qualified Avian Biologist may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Qualified Avian Biologist or Biological Monitor shall be present onsite daily to monitor all existing nests, the efficacy of established buffers, and to document any new nesting occurrences. If Project activities disturb nesting, the Biological Monitor shall notify the construction manager,

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and halt activities within the vicinity of the nest. The **Qualified Avian Biologist Biological Monitor** has the authority to implement measures to reduce disturbance in the vicinity. If Loggerhead shrike and Le Conte's thrasher nests are found during the survey **or through on-going monitoring**, a 500-foot avoidance buffer shall be established **and monitored as described above**. The avoidance buffer shall be maintained until the young have fledged. ~~The frequency of the monitoring visits will be determined by the Biological Monitor.~~

COMMENT #3: Western Burrowing Owl (*Athene Cunicularia*)

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to western burrowing owl habitat. The Project may result in take of western burrowing owl, a candidate CESA listed species, during construction of the Project and the life of the Project. The MND did not conduct surveys consistent with the 2012 CDFW Staff Report (CDFW 2012)⁶; for example, only two surveys were conducted during May and the 2012 CDFW Staff Report requires at least four surveys be conducted between February 15 to July 15 using line transects spaced seven meters to twenty meters apart during appropriate weather conditions. Therefore, western burrowing owl may have been missed during surveys.

Specific impact: Potential impacts to western burrowing owls from the Project include take of western burrowing owls, their nest, or eggs, or destruction of nesting, foraging, or overwintering habitat, thus impacting western burrowing owl populations. Impacts can result from grading, vegetation removal, burrow blockage, soil compaction, and crushing of burrows. Project disturbance, such as noise and vibrations has the potential to stress owls at occupied burrows as well.

Why impact would occur: The MND states that the Project site contains suitable habitat for western burrowing owl and the closest western burrowing owl observation is 6.5 miles southeast of the Project site. However, the California Natural Diversity Database (CNDDDB) has multiple records of western burrowing owl occurrences within four to five miles north of the Project site. Since the Project site contains suitable habitat and appropriate surveys were not conducted, CDFW is concerned that western burrowing owl may be present or may move into the Project site. CDFW appreciates that BIO-10 proposes to implement a pre-construction survey for western burrowing owl; however, CDFW recommends breeding or non-breeding season surveys to be conducted consistent with the 2012 CDFW Staff Report to ensure western burrowing owl and sign thereof is detected. Additionally, CDFW recommends take avoidance surveys be conducted prior to the start of construction to ensure no new western burrowing owl have moved into the Project site following a year or more from focused surveys. Additionally, BIO-10 proposes to implement a 150-foot avoidance buffer during the non-nesting season and a 500-foot buffer during the nesting season to avoid impacts to western burrowing owl. CDFW is concerned that these buffers may not be sufficient to fully avoid impacts to western burrowing owl regardless of the season, since western burrowing owls are dependent on burrows at all times of the year for survival (CDFW 2012) and juvenile western burrowing owls have been observed to use multiple satellite burrows after post-fledging dispersal (King 2001)⁷. CDFW recommends the Project Proponent fully avoid impacts to western burrowing owls and recommends the Project Proponent to obtain an incidental take permit for take of western burrowing owl if impacts cannot be fully avoided.

Evidence impact would be significant: On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under CESA (Fish & G. Code, § 2050 et seq.). During the candidacy period, western burrowing owl is afforded the same protection as a threatened and endangered species under CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce

⁶ California Department of Fish and Wildlife (CDFW). (2012). Staff Report on Burrowing Owl Mitigation.

⁷ King, A.R., and Belthoff J.R. (2001). Post-Fledging Dispersal of Burrowing Owls in Southwestern Idaho: Characterization of Movements and use of Satellite Burrows. *The Condor: Ornithological Applications*, Volume 103(1) pages 118-126.

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reproductive capacity of the species. CDFW considers the direct and indirect take of western 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).

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the draft MND provided a mitigation measure, BIO-10, to avoid and minimize the Project's impacts to western burrowing owl. CDFW offers the following revisions to BIO-10 (edits are in ~~strikethrough~~ and **bold**) for inclusions in the final MND to reduce impacts to western burrowing owl to less than significant.

Mitigation Measure: BIO-10 Burrowing Owl (Revised)

Due to presence of suitable nesting and overwintering habitat for western burrowing owl on the Project site, a Qualified Avian Biologist shall perform breeding season and non-breeding season surveys consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation. If performing both breeding season and non-breeding season surveys is infeasible, the Project Proponent shall coordinate with CDFW regarding whether to proceed with either breeding season surveys or non-breeding season surveys. Additionally, if there is a lapse of one year since focused burrowing owl surveys occurred, wWithin 14 days prior to the start of ground disturbing Project activities, a Qqualified Avian Bbiologist shall conduct western burrowing owl (BUOW) surveys within the Project site and 500 feet of the Project site and again within 24 hours prior to the start of ground disturbing Project activities. If an active burrow or western burrowing owl is detected on the Project site during any of the surveys, the Project Proponent shall fully avoid impacts to western burrowing owl and the Qualified Avian Biologist shall place a disturbance free avoidance buffer sufficient to ensure full avoidancea 500-foot avoidance buffer shall be established around each burrow during the nesting season (February 1 through August 31). If active BUOW burrows are observed outside of the nesting season, a minimum 150-foot no-disturbance buffer shall be established around each burrow. Occupied burrows shall not be disturbed at any time during Project activities during the breeding season (February 1 through August 31) unless an approved biologist verifies, through non-invasive methods, that both 1) the birds have not begun egg-laying and incubation, and 2) that juveniles from the occupied burrow are foraging independently and are capable of independent survival. If BUOW are present and have a potential to be impacted by the Project, Special Districts shall obtain an Incidental Take Permit from California Department of Fish and Wildlife.

COMMENT #4: Desert Bighorn Sheep (*Ovis canadensis nelsoni*)

Issue: The Project may have impacts on desert bighorn sheep, a fully protected species. Unless otherwise authorized pursuant to Fish and Game Code section 2081.15, fully protected species may not be taken or possessed at any time.

Specific impact: Potential impacts to desert bighorn sheep from the Project include take of desert bighorn sheep, introduction of pathogens and disease that reduces fitness and may result in mortality, destruction of lambing and foraging habitat, thus impacting big horn sheep populations. Impacts can result from vegetation removal, and introduction of pathogens from footwear, vehicles, and equipment. Project disturbance, such as noise and vibration has the potential to disrupt bighorn sheep and limit their abilities to hear potential predators.

Why impact would occur: The MND states that suitable habitat for desert big horn sheep is present on the Project site and that scat was observed at multiple locations within the survey area. The MND proposes to implement BIO-11 to minimize impacts to desert big horn sheep; however, BIO-11 does not include sanitization methods to prevent introduction of pathogens and disease within the range of desert big horn sheep as desert big horn sheep are susceptible to a variety of pathogens (Clark et. al.

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1985)⁸(Besser et. al., 2012)⁹. CDFW is concerned that the Project may introduce pathogens or diseases to desert big horn sheep populations if proper sanitization methods are not implemented.

Evidence impact would be significant: Desert bighorn sheep may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species,
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).
- Specified types of infrastructure projects may be eligible for an incidental take permit for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15).

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the draft MND provided a mitigation measure, BIO-11, to avoid and minimize the Project's impacts to desert big horn sheep. CDFW offers the following revisions to BIO-11 (edits are in ~~strikethrough~~ and **bold**) for inclusions in the final MND to reduce impacts to desert bighorn sheep to less than significant.

Mitigation Measure: BIO-11 Desert Bighorn Sheep (Revised)

If any desert bighorn sheep are observed during Project activities, work within a **minimum of 500 feet** of the sheep would be halted, and activities would resume after the animal moves away on its own **as determined by a Qualified Biologist or Biological Monitor**. Project activities shall also use noise-reducing construction methods as feasible and limit work to daylight hours to reduce disturbance. Lastly, Project activities that result in loud noises shall occur outside of the lambing season (January through June).

To prevent potential transmission of disease from domestic animals to desert bighorn sheep, Project Proponent shall require all workers who have had contact with livestock, such as goats and sheep to decontaminate work boots prior to entering the Project site. Decontamination shall involve scrubbing of the soles of work boots with a 10% bleach solution to remove all organic matter and kill pathogens. Alternatively, footwear may be changed to ensure that potentially contaminated footwear does not enter the Project site. Heavy equipment previously used in livestock operations, including, but not limited to, sheep and goat livestock operations, or where roadside clearing has occurred through grazing shall not be utilized for Project activities.

COMMENT #5: Desert Kit Fox (*Vulpes macrotis arsipus*) and American Badger (*Taxidea taxus*)

Issue: The Project occurs within the range of desert kit fox (*Vulpes macrotis*), a protected species pursuant to Title 14 of the California Code of Regulations section 460, which prohibits the take of the species at any time, along with American badger (*Taxidea taxus*), which is also a SSC.

Specific impact: The staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in the direct mortality and/or injury

⁸ Clark, R. K., Jessup D. A., Kock M. D., and Weaver R. A. (1985). Survey of desert bighorn sheep in California for exposure to selected infectious diseases. *Journal of the American Veterinary Medical Association* 187:1175–1179

⁹ Besser, T. E., Highland M. A., Baker K., Cassirer E. F., Anderson N. J., Ramsey J. M., Mansfield K., Bruning D.L., Wolff P., Smith J.B., and Jenks J.A. (2012). Causes of pneumonia epizootics among bighorn sheep, Western United States, 2008–2010. *Emerging Infectious Diseases* 18:406–414.

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to desert kit fox and American badger. Project construction and activities may result in the injury or mortality of desert kit fox and American badger.

Why impact would occur: The MND states that suitable habitat is present on the Project site and desert kit fox and American badger have a moderate potential for occurrence within the Project site; however, the MND proposes to implement avoidance buffers, such as a 500-foot buffer during the breeding season and a 150-foot buffer outside the breeding season to minimize impacts. CDFW is concerned that these buffers may not be sufficient to ensure full avoidance of desert kit fox or American badger. Additionally, the MND did not propose to monitor any potential suitable dens within the Project site or adjacent habitat. Desert kit fox and American badger are most active at night (Arjo et. al. 2003)¹⁰(Harrison 2016)¹¹; therefore, CDFW strongly recommends nighttime monitoring be conducted if the entirety of a burrow cannot be seen.

Evidence impact would be significant: Desert kit fox is protected from take (See Cal. Code Regs., tit. 14, § 460). American badger is an SSC and protected from take without appropriate licensure (Fish & G. Code, § 4000; see Cal. Code Regs., tit. 14, § 461). CEQA provides protection for not only 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 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 appreciates that the draft MND provided a mitigation measure, BIO-12, to avoid and minimize the Project's impacts to desert kit fox and American badger. CDFW offers the following revisions to BIO-12 (edits are in ~~strike through~~ and **bold**) for inclusions in the final MND to reduce impacts to desert kit fox to less than significant.

Mitigation Measure: BIO-12 Kit Fox and Badger (Revised)

Within 14 days prior to the start of Project activities, a qualified biologist shall conduct surveys for desert kit fox and American badger, **including dens or sign (e.g., tracks, scat, prey remains)** within the Project site, ~~including and~~ a 500-foot survey buffer around the Project site. If an active desert kit fox **or American badger** den is identified, **the Project Proponent shall contact CDFW and fully avoid impacts to desert kit fox or American badger** ~~during the breeding season (January 15 through September 15), and a minimum 500-foot avoidance buffer shall be established by the Qualified Biologist based on their best professional judgement and experience~~ and no activities within the buffer will be allowed unless authorized by a Qualified Biologist **during the non-breeding season.** ~~If activities occur outside of the breeding season and an active den is identified, a 150-foot avoidance buffer will be established, and no MM activities will be allowed within the buffer unless authorized by a Qualified Biologist.~~ If an active American badger is identified, the den shall be protected with a 100-foot no-disturbance buffer. **If a den is suspected to be inactive but not confirmed; for example, the entirety of the den cannot be seen, the Qualified Biologist or Biological Monitor shall monitor the den for 3 consecutive nights using infrared camera stations at the entrance(s). If no tracks or sign are observed at the den or no photos of the desert kit fox or American badger are captured after 3 nights, then the den shall be excavated by hand and backfilled with handheld equipment or mechanized equipment by the Qualified Biologist.**

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

¹⁰ Arjo W.M., Bennett T.J., and Kozlowski A.J. (2003). Characteristics of current and historical kit fox (*Vulpes macrotis*) dens in the Great Basin Desert. *USDA National Wildlife Research Center – Staff Publications*. 192.

¹¹ Harrison R.L. (2016). Badger Behavior at Anthropogenic Water sources in the Chihuahuan Desert. *Western North American Naturalist* 76(1) pages1-5.

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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 County of San Bernardino 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:

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

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ATTACHMENTS

A. Mitigation and Monitoring Reporting Plan and Draft Recommendations

REFERENCES

Arjo W.M., Bennett T.J., and Kozlowski A.J. (2003). Characteristics of current and historical kit fox (*Vulpes macrotis*) dens in the Great Basin Desert. *USDA National Wildlife Research Center – Staff Publications*. 192.

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Attachment A

Draft Mitigation Monitoring and Reporting Plan and Draft Recommendations

| Biological Resources (BIO) | | |
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| Mitigation Measure (MM) | Implementation Schedule | Responsible Party |
| <p>MM BIO-8 Desert Tortoise</p> <p>A qualified biologist shall conduct pre-construction surveys no more than 48 hours prior to the start of ground-disturbing activities consistent with the U.S. Fish and Wildlife Service 2019 Desert Tortoise Survey Protocol. Surveys shall cover the entire Project footprint and a 50-foot survey buffer to identify any active burrows or individuals. If a burrow is determined to be active, the Qualified Biologist shall establish a no-disturbance buffer of 50 feet or greater around the burrow. A Qualified Biologist shall be present during all ground-disturbing activities, vegetation removal, or when heavy equipment is being operated within desert tortoise habitat and shall stop work if a desert tortoise is detected at or within 50 feet of work activities, until the individual leaves on its own. Lastly, within desert tortoise habitat, vehicles shall not exceed 15 miles per hour on access roads during periods of increased desert tortoise activity (March 1 through October 31). If a vehicle is parked, the ground around and under the vehicle shall be inspected for desert tortoises before the vehicle is moved. If a desert tortoise is present, the equipment or vehicle shall remain place until the desert tortoise moves 50 feet from the equipment or vehicle. All field personnel shall immediately inform the Qualified Biologist if a desert tortoise is seen during the implementation of any Project activity. Lastly, no desert tortoise shall be handled or disturbed.</p> | <p>Forty-eight hours prior to the start of ground-disturbing activities</p> | <p>Qualified Biologist</p> |
| <p>MM BIO-9 Nesting Birds</p> <p>Regardless of the time of year, pre-construction surveys for active bird nests shall be conducted on the Project site and within 500 feet of the Project site by a Qualified Avian Biologist, who is knowledgeable in the life histories and ecology of species, no more than three days before the initiation of construction and vegetation removal activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If a nest is suspected, but not confirmed, the Qualified Avian Biologist shall establish a disturbance-free buffer until additional surveys or monitoring can be completed.</p> | <p>No more than three days before the initiation of construction and vegetation removal activities</p> | <p>Qualified Biologist and Biological Monitor</p> |

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| <p>The Qualified Avian Biologist shall not risk failure of the nest to determine the exact location or status and shall make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). Active nests must be monitored during construction and vegetation removal activities by a Qualified Avian Biologist or Biological Monitor. The Biological Monitor may provide assistance to the Qualified Avian Biologist with biological surveys and monitoring, if needed. The Qualified Avian Biologist shall establish a conservative buffer surrounding the nest based on their professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Qualified Avian Biologist shall document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Qualified Avian Biologist may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Qualified Avian Biologist or Biological Monitor shall be present onsite daily to monitor all existing nests, the efficacy of established buffers, and to document any new nesting occurrences. If Project activities disturb nesting, the Biological Monitor shall notify the construction manager, and halt activities within the vicinity of the nest. The Qualified Avian Biologist has the authority to implement measures to reduce disturbance in the vicinity. If Loggerhead shrike and Le Conte’s thrasher nests are found during the survey or through on-going monitoring, a 500-foot avoidance buffer shall be established and monitored as described above. The avoidance buffer shall be maintained until the young have fledged.</p> | | |
| <p>MM BIO-10 Burrowing Owl</p> <p>Due to presence of suitable nesting and overwintering habitat for western burrowing owl on the Project site, a Qualified Avian Biologist shall perform breeding season and non-breeding season surveys consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation. If performing both breeding season and non-breeding season surveys is infeasible, the Project Proponent shall coordinate with CDFW regarding whether to proceed with either breeding season surveys or non-breeding season surveys. Additionally, if there is a lapse of one year since focused burrowing owl surveys occurred, within 14 days prior to the start of ground disturbing Project activities, a Qualified Avian Biologist shall conduct western burrowing owl (BUOW) surveys within the Project site and 500 feet of the Project site and again within 24 hours prior to the start of ground disturbing Project activities. If an active burrow or western burrowing owl is detected on the Project site during any of the surveys, the Project Proponent shall fully avoid</p> | <p>Breeding season and non-breeding season surveys consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation and within 14 days prior to the start of ground disturbing Project activities and again within 24 hours.</p> | <p>Qualified Avian Biologist</p> |

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| <p>impacts to western burrowing owl and the Qualified Avian Biologist shall place a disturbance free avoidance buffer sufficient to ensure full avoidance. Occupied burrows shall not be disturbed at any time during Project activities. If BUOW are present and have a potential to be impacted by the Project, Special Districts shall obtain an Incidental Take Permit from California Department of Fish and Wildlife.</p> | | |
| <p>MM BIO-11 Desert Bighorn Sheep</p> <p>If any desert bighorn sheep are observed during Project activities, work within a minimum of a 500 feet of the sheep would be halted, and activities would resume after the animal moves away on its own as determined by a Qualified Biologist or Biological Monitor. Project activities shall also use noise-reducing construction methods as feasible and limit work to daylight hours to reduce disturbance. Lastly, Project activities that result in loud noises shall occur outside of the lambing season (January through June).</p> <p>To prevent potential transmission of disease from domestic animals to desert bighorn sheep, Project Proponent shall require all workers who have had contact with livestock, such as goats and sheep to decontaminate work boots prior to entering the Project site. Decontamination shall involve scrubbing of the soles of work boots with a 10% bleach solution to remove all organic matter and kill pathogens. Alternatively, footwear may be changed to ensure that potentially contaminated footwear does not enter the Project site. Heavy equipment previously used in livestock operations, including, but not limited to, sheep and goat livestock operations, or where roadside clearing has occurred through grazing shall not be utilized for Project activities.</p> | <p>During Project and prior to entering Project site</p> | <p>Project Proponent & Qualified Biologist or Biological Monitor</p> |
| <p>MM BIO-12 Kit Fox and Badger</p> <p>Within 14 days prior to the start of Project activities, a qualified biologist shall conduct surveys for desert kit fox and American badger, including dens or sign (e.g., tracks, scat, prey remains) within the Project site and a 500-foot survey buffer around the Project site. If an active desert kit fox or American badger den is identified, the Project Proponent shall contact CDFW and fully avoid impacts to desert kit fox or American badger, and a minimum 500-foot avoidance buffer shall be established by the Qualified Biologist based on their best professional judgement and experience and no-activities within the buffer will be allowed unless authorized by a Qualified Biologist during the non-breeding season. If a den is suspected to be inactive but not confirmed; for example, the entirety of the den cannot be seen, the Qualified Biologist or Biological Monitor shall monitor the den for 3 consecutive nights using infrared camera stations at the entrance(s). If no tracks or sign are observed at the den or no photos of the desert kit fox or American badger are captured after 3 nights, then the den shall be excavated by hand and backfilled with handheld equipment or mechanized equipment by the Qualified Biologist.</p> | <p>Within 14 days prior to the start of Project activities</p> | <p>Qualified Biologist</p> |

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