



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



April 3, 2020
Sent via email

Governor's Office of Planning & Research

APR 03 2020

STATE CLEARINGHOUSE

Suzanne Peterson
Senior Planner
County of San Bernardino
Land Use Services Dept.
385 N. Arrowhead Ave. 1st Floor
San Bernardino, CA 92415

Lockheed Martin Aeronautics & Radar Test Facility Revisions (Project)
Mitigated Negative Declaration (MND)
SCH# 2020039003

Dear Ms. Peterson:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the County of San Bernardino for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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

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.

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: Lockheed Martin Aeronautics Company

Objective: The objective of the Project is to construct a 19,395 square foot warehouse. Primary Project activities include earthwork, grading, paving, and the construction of the pre-engineered building with attached offices, utility building, and bathroom. 16,209 cubic yards of stockpiled fill will be excavated, loaded, and transported along an existing dirt road for use during construction. The Project will result in temporary impacts to desert habitat through construction of the septic system, stormwater management and drainage, and other facilities. Approximately 1.96 acres of desert habitat will be permanently impacted.

Location: 17452 Wheeler Road, City of Helendale, San Bernardino County, north of Wheeler Road, west of Sundown Trail, 34.810308°, -117.297125° (Project Area)

Timeframe: 10 months

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment 1, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Mitigation Measure and Related Impact Shortcoming

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

COMMENT 1: BIO-1 and BIO-3, Desert Tortoise

Issue: Mitigation measure BIO-1 proposes a desert tortoise clearance survey prior to Project activities, and installation of desert tortoise exclusionary fencing after the survey is performed. The Proponent obtained a Biological Opinion issued in 2007 by the US Fish and Wildlife Service, and BIO-3 states the conservation measures identified in the Biological Opinion for certain activities will be adhered to during the Project. However, the environmental document does not mention obtaining a CESA incidental take permit (ITP).

Specific impact: Project activities and proposed mitigation measure have the potential to take desert tortoise, a CESA-listed species.

Why impact would occur: Desert tortoise sign was found in the Project Area. BIO-1 and BIO-3 propose actions, such as potentially handling tortoises for relocation and installation of exclusionary fencing, that are considered take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill).

Evidence impact would be significant: Take is prohibited unless authorized by state law (Fish and Game Code, §§ 2080 & 2085).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure:

To minimize significant impacts: CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP. Information on how to obtain an ITP can be found at <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>. Additionally, CDFW recommends the inclusion of the following new measure in the Final MND:

MM BIO-[X]: The Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities.

COMMENT 2: BIO-2, Burrowing Owl

Page 22 of MND

Issue: CDFW appreciated the inclusion of a mitigation measure for nesting burrowing owl, a Species of Special Concern. However, CDFW has concerns the mitigation measure lacks monitoring to ensure the efficacy of established buffers. Additionally, the proposed measure as written does not require the pre-construction survey along the road between the construction site and stockpile, where burrowing owls may be present. CDFW also has concerns with the mitigation measure as it does not address avoidance, minimization, and mitigation measures for impacting

burrows occupied during non-breeding season by migratory or non-migratory residents should they be within the Project Area.

Specific impact: The Project and Project-related activities have potential to take burrowing owl individuals and their nests and may result in loss of burrowing owl habitat.

Why impact would occur: Potentially significant impacts to burrowing owls are not mitigated to the extent feasible.

Evidence impact would be significant: Take of individual burrowing owls and their nests is defined by FGC section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in FGC Section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Collisions with vehicles are a significant source of mortality for burrowing owls that nest along roads (Haug et al., 1993; Gervaise et al., 2008).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure:

To minimize significant impacts: CDFW recommends modifying BIO-2 to the following measure in the Final MND:

MM BIO- [X]: Pre-construction Burrowing Owl Survey. Burrowing owl surveys shall be conducted at least 14 days prior to any Project activities, at any time of year. Surveys shall be completed following the recommendations and guidelines provided within the *Staff Report on Burrowing Owl Mitigation* (CDFG, March 2012) or most recent version by a qualified biologist. If an active burrowing owl burrow is detected within any Project disturbance area, or within a 500-foot buffer of the disturbance area(s), a 300-foot radius buffer zone surrounding the burrow shall be flagged, and no impacts to soils or vegetation or noise levels above 65 dBA shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area, a qualified biologist shall submit a burrowing owl exclusion plan to

CDFW for review and approval. Passive relocation shall take place outside the nesting season (1 February to 31 August).

II. Environmental Setting and Related Impact Shortcoming

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

COMMENT 3: Mohave Ground Squirrel

Page 20 of MND

Issue: CDFW has concerns that the Project is within the range of the threatened Mohave ground squirrel, and the MND confirms there is suitable habitat for the species. Mohave ground squirrel presence has been mapped less than three miles from the Project (CNDDDB, 2020). However, surveys were not performed to confirm presence.

Specific impact: Project activities have the potential to take Mohave ground squirrels, a CESA-listed species.

Why impact would occur: Protocol surveys were not performed during the appropriate time of year to determine Mohave ground squirrel presence, and the document lacks specific avoidance, minimization, and mitigation measures for the species.

Evidence impact would be significant: Take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) is prohibited unless authorized by state law (Fish and Game Code, §§ 2080 & 2085).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure:

To minimize significant impacts: If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP. CDFW recommends the inclusion of the following new measures in the Final MND:

MM BIO-[X]: Pre-Construction Mohave Ground Squirrel Survey. Pre-construction surveys following the *Mohave Ground Squirrel Survey Guidelines* (CDFG, 2010) or most recent version shall be performed by a qualified biologist authorized by a

Memorandum of Understanding issued by CDFW. The pre-construction surveys shall cover the Project Area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project Proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey.

MM BIO-[X]: Mohave Ground Squirrel Observations. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.

Comment 3: American Badger and Desert Kit Fox

Issue: The MND states suitable habitat for American badger is present, but does not address potential presence of the species. Additionally, the MND lacks evaluation of potential presence or impacts to desert kit fox.

Specific impact: Project activities have the potential to take American badger and desert kit fox individuals, and development may result in loss of habitat and/or foraging habitat.

Why impact would occur: The environmental document did not assess potential for presence of the species, therefore lacks avoidance, minimization, and mitigation measures for the species.

Evidence impact would be significant: American badger is a Species of Special Concern. Desert kit fox are a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure: CDFW recommends the inclusion of the following new measure in the Final MND:

MM BIO-[X]: Pre-Construction American Badger and Desert Kit Fox Survey. 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 Area. 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 Area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 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. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

Comment 4: Sensitive Plant Species

Issue: The Biological Reconnaissance Survey performed by Tetra Tech in September of 2019 was described as a field investigation to identify potential habitat in the Project Area that could support sensitive biological species. It is unclear if a botanical field survey to identify all plants to the taxonomic level necessary to determine rarity and listing status was performed.

Specific impact: The Project has potential to impact sensitive plant species that were not identified during the Biological Reconnaissance Survey, and the environmental document lacks avoidance, minimization, and mitigation measures should presence be confirmed.

Why impact would occur: Botanical field surveys should be conducted during times of year when plants are evident and identifiable (i.e. flowering or fruiting), which may warrant multiple surveys during the season to capture floristic diversity (CDFW, 2018). Habitats, such as desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment (CDFW, 2018).

Evidence impact would be significant: Sensitive plant species are listed under the CESA as threatened, or endangered, or proposed or candidates for listing; designated as rare under the Native Plant Protection Act; or plants that otherwise meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Fish and Game Code Sections 1900–1913 includes provisions that prohibit the take of endangered and rare plants from the wild and a salvage requirement for landowners.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure: If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an incidental take permit. CDFW recommends the inclusion of the following new measure in the Final MND:

MM BIO-[X]: Sensitive Plant Species. A thorough floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW, March 2018) or most recent version shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project Area, the Project Proponent shall obtain an ITP for those species prior to the start of Project activities. Should other special status plants or natural communities be present in the Project Area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.

Would the Project interfere substantially with movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede use of native wildlife nursery sites?

COMMENT 5: Nesting Birds

Issue: CDFW has concerns the environmental document lacks a mitigation measure for avoiding significant impacts to nesting birds. The Biological Reconnaissance Survey only surveyed the area where the warehouse will be constructed and states no shrubs suitable for nesting loggerhead shrike, Le Conte's thrasher, and raptors were present. It is unclear if nesting sites are available for all potential nesting bird species within all areas of the Project.

Specific impact: Project activities have the potential to take nesting bird individuals and their nest.

Why impact would occur: A potentially significant impact to nesting birds is not evaluated in the MND, therefore the impact is not mitigated to the extent feasible.

Evidence impact would be significant: Fish and Game Code 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 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. 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.).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure:

To minimize significant impacts: CDFW recommends the inclusion of the following new measure in the Final MND:

MM BIO-[X]: Nesting Birds. All Project activities shall be conducted outside of nesting season (January 15 to August 31) to the maximum extent feasible. During the nesting bird season, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work areas and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and may range from 15 to 100 feet for passerines and 50 to 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests shall be monitored until the biologist has determined the young have fledged or the Project is finished. The qualified biologist has the authority to stop work if nesting individuals or pairs exhibit signs of disturbance.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS; or have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool,

coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

COMMENT 6:

Section IV D, Page 22

Issue: The environmental document does not address the presence of ephemeral streambeds within the Project Area.

Specific impact: Aerial imagery confirms ephemeral streambeds traverse the stockpile location that may be impacted by Project activities.

Why impact would occur: The environmental document lacks avoidance, minimization, and mitigation measures for the biological resource. Project activities describe excavation of 16,209 cubic yards of fill. Use of equipment in the area and the action of excavation have the potential to impact the bed, bank, and channel of the ephemeral stream and associated riparian vegetation.

Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure:

To minimize significant impacts: Information on how to submit a Notification of Lake or Streambed Alteration can be found at <https://wildlife.ca.gov/conservation/lisa#55227761-paper-submittal>. CDFW requests that the County of San Bernardino include the following new mitigation measure in the Final MND:

MM BIO-[X]: Notification of Streambed Alteration. Prior to commencement of Project activities, the Project Proponent shall submit a Notification of Lake or Streambed Alteration to CDFW's Lake and Streambed Alteration Program. Upon receipt of a complete notification and associated fees, CDFW shall determine if Project activities may substantially adversely affect existing fish and wildlife resources. The Project Proponent shall obtain a CDFW-executed Lake or Streambed Alteration Agreement, authorizing impacts to resources associated with the Project, or a letter from CDFW stating an Agreement is not required.

III. Editorial Comments and/or Suggestions

Page 2 of MND

CDFW recommends that San Bernardino County adjust the Project Description in the environmental document to include the stockpile and dirt road as part of the Project Location. Biological resources have the potential to be impacted at these locations, and with such an editorial modification, the mitigation measures will be applied to these areas.

Section IV, Page 18 of MND

In response to the question, “Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?” the County selected “Less than Significant with Mitigation Incorporated”. CDFW agrees with this assessment if the mitigation measures recommended concerning special status species are incorporated in the Final MND.

In response to the question, “Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?”, the County selected “Less than Significant” in response to presence of creosote scrub habitat. The MND states no riparian habitat exists on the Project site. CDFW requests reconsideration of this selection due to presence of ephemeral streambeds that support riparian vegetation. Similarly, the County’s response to “Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?” was “No impact”. CDFW disagrees with the County’s selection due to presence of ephemeral streambeds and requests reconsideration.

In response to the question, “Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?” the County of San Bernardino selected “No impact”. CDFW would like to remind the County that bird nests, burrowing owl burrows during nesting bird season, desert tortoise eggs, and natal burrows of mammals may be considered native wildlife nursery sites. As such, CDFW disagrees with the County’s selection and requests reconsideration.

Additional Mitigation Measures

CDFW recommends the inclusion of the following new mitigation measures to reduce potential impacts to biological resources within the Project Area:

MM BIO-[X]: On-site Education. A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. Education should include but not be limited to desert tortoise, burrowing owl, desert kit fox, American badger, nesting birds, and special-status plants. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site.

MM BIO-[X]: Minimize Impacts on Other Species. A qualified biologist shall be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with authorization by CDFW shall move CESA-listed species.

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 found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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.)

Suzanne Peterson, Senior Planner
County of San Bernardino
April 3, 2020
Page 13 of 19

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County of San Bernardino in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ashley Rosales, Environmental Scientist at 909-980-8607 or Ashley.Rosales@Wildlife.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Scott Wilson".

Scott Wilson
Environmental Program Manager

Attachment 1: Draft Mitigation Monitoring and Reporting Program for CDFW-proposed Mitigation Measures.

ec: Office of Planning and Research, State Clearinghouse, Sacramento

HCPB CEQA Coordinator
Habitat Conservation Planning Branch

RESOURCES

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>)

California Department of Fish and Game (CDFG). 2010. Mohave Ground Squirrel Survey Guidelines.
(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>)

California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities.
(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>)

California Natural Diversity Database (CNDDDB) Government [ds45]. 2020. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System.

Haug, E. A., B. A. Millsap, and M. S. Martell. 1993. Burrowing owl (*Speotyto cunicularia*), in A. Poole and F. Gill, editors, *The Birds of North America*, The Academy of Natural Sciences, Philadelphia, Pennsylvania, and The American Ornithologists' Union, Washington, D.C., USA

Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. *California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California*. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.

ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

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

TABLE OF MITIGATION MEASURES

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

Mitigation Measure	Implementation Schedule	Responsible Party
MM BIO-[X]: The Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities.	Before commencing ground- or vegetation-disturbing activities	Project Proponent
MM BIO- [X]: <u>Pre-construction Burrowing Owl Survey.</u> Burrowing owl surveys shall be conducted at least 14 days prior to any Project activities, at any time of year. Surveys shall be completed following the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation (CDFG, March 2012) or most recent version by a qualified biologist. If an active burrowing owl burrow is detected within any Project disturbance area, or within a 500-foot buffer of the disturbance area(s), a 300- foot radius buffer zone surrounding the burrow shall be flagged, and no impacts to soils or vegetation or noise levels above 65 dBA shall be permitted while the burrow remains active or occupied.	Before commencing ground- or vegetation-disturbing activities/Entire Project	Project Proponent

<p>Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. Passive relocation shall take place outside the nesting season (1 February to 31 August).</p>		
<p>MM BIO- [X]: <u>Pre-Construction Mohave Ground Squirrel Survey.</u> Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG, 2010) or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project Area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project Proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey.</p>	<p>Before commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO- [X]: <u>Mohave Ground Squirrel Observations.</u> If a Mohave ground squirrel is observed during Project Activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire project</p>	<p>Project Proponent</p>
<p>MM BIO- [X]: <u>Pre-Construction American Badger and Desert Kit Fox and Survey.</u> 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 Area. If potential burrows are located, they shall be monitored by the qualified biologist.</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire project</p>	<p>Project Proponent</p>

<p>If the burrow is determined to be active, the qualified biologist shall verify there are suitable burrows outside of the Project Area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 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. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.</p>		
<p>MM BIO- [X]: Sensitive Plant Species. Should any state-listed plant species be present in the Project Area, the Project Proponent shall obtain an ITP for those species prior to the start of Project activities. Should other special status plants or natural communities be present in the Project Area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from annual species to a natural site as a conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project/Post Construction</p>	<p>Project Proponent</p>

<p>years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.</p>		
<p>MM BIO- [X]: Nesting Birds. All Project activities shall be conducted outside of nesting season (January 15 to August 31) to the maximum extent feasible. During the nesting bird season, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and may range from 15 to 100 feet for passerines and 50 to 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests shall be monitored until the biologist has determined the young have fledged or the Project is finished. The qualified biologist has the authority to stop work if nesting individuals or pairs exhibit signs of disturbance.</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>
<p>MM BIO-[X]: Notification of Streambed Alteration. Prior to commencement of Project activities, the Project Proponent shall submit a Notification of Lake or Streambed Alteration to CDFW's Lake and Streambed Alteration Program. Upon receipt of a complete notification, CDFW shall determine if Project activities may substantially adversely affect existing fish and wildlife resources. The Project Proponent shall obtain a CDFW-executed Lake or Streambed Alteration Agreement, authorizing impacts to resources associated with the Project, or a letter</p>	<p>Before commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>from CDFW stating an Agreement is not required</p>		
<p>MM BIO- [X]: <u>On-site Education</u>. A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. Education should include but not be limited to desert tortoise, burrowing owl, desert kit fox, American badger, nesting birds, and special-status plants. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site.</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>
<p>MM BIO- [X]: <u>Minimize Impacts on Other Species</u>. A qualified biologist shall be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with authorization by CDFW shall move CESA-listed species.</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>