



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 17, 2020

Steven Valdez
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County of San Bernardino
385 North Arrowhead Avenue, First Floor
San Bernardino, California 92415-0187

Governor's Office of Planning & Research

Jul 23 2020

STATE CLEARINGHOUSE

Ocotillo Borrow Pit (Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2020069012

Dear Mr. Valdez:

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 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

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.

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: County of San Bernardino Department of Public Works (DPW)

Objective: The objective of the Project is to continue providing general fill material for various DPW sites for annual maintenance and/or emergency repairs. DPW is proposing to excavate up to a depth of 15 feet in order to annually remove up to 1,000 cubic yards of borrow material for a mining period of 100 years on approximately 20 acres.

Location: In the southeast corner of Ocotillo Way and Valley Vista Avenue; APN: 0438-082-01, Southeast of the Town of Apple, County of San Bernardino, State of California, San Bernardino Meridian, Section 24, Township 4N, Range 3W

Timeframe: 100 years

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, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Mitigation Measure or Alternative 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-X, Special Status Plant Species

Issue: The MND lacks analysis of potential impacts to special status plant species. A biological report was provided and mentioned the potential for 23 listed or special status plant species, but the MND does not include measures for them. As Joshua Tree woodlands may support a variety of special status species (CNDDDB, 2020; CNPS, 2020), CDFW has concerns sensitive plant species are present.

Specific impact: A botanical field survey to identify all plants to the taxonomic level necessary to determine rarity and listing status was not performed. The MND lacks analysis of potential impact, and avoidance, minimization, and mitigation measures for special status plant species.

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 Joshua Tree woodlands 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 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 Project Description and Related Impact Shortcoming)

Mitigation Measure 1:

To minimize significant impacts: To ensure that Project impacts to biological resources are fully analyzed, CDFW recommends the DPW require a thorough floristic-based assessment of special status plants and natural communities. The assessment should be performed by a qualified biologist 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.

- <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline=1>

Note that CDFW generally considers biological field assessments for rare plants valid for a period of up to three years. Should any special status plants be present, CDFW recommends the inclusion of the following mitigation measure:

MM-X: Special Status Plant Species. Should any CESA-listed plant species be present at the Project site, the Project Proponent shall obtain an incidental take permit for those species prior to the start of Project activities. Should any special status plants or natural communities be present in the Project area, a qualified biologist shall develop species specific avoidance, minimization, and mitigation measures to ensure there is no net reduction in the size or viability of the local population.

COMMENT 2: BIO-X, Burrowing Owl

Section IV, Page 25

Issue: CDFW appreciates the DPW's inclusion of an initial survey to identify the presence of burrowing owls, a Species of Special Concern. However, CDFW has concerns that the initial survey was not thorough enough to determine no presence, as burrowing owls have been mapped within 3 miles from the Project site (CNDBB 2020).

Additionally, there is no measure in place to address avoidance, minimization, or mitigation measures.

Specific impact: 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 Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code 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). Eviction of burrowing owls is a potentially significant impact under CEQA

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

Mitigation Measure 2:

To minimize significant impacts: CDFW recommends including the following new measure in the environmental document:

MM-X: Burrowing Owl. Pre-construction Burrowing Owl Survey. Burrowing owl surveys shall be conducted by a qualified biologist 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, 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 and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).

COMMENT 3: BIO-X, Desert Tortoise

Section IV, Page 25

Issue: CDFW appreciates the DPW inclusion of an initial survey for desert tortoise, a threatened species. However, there is no measure in place to address avoidance, minimization, or mitigation measures should desert tortoise enter the Project site during the life of the Project.

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

Why impact would occur: The MND does not ensure a qualified biologist, experienced in locating desert tortoise individuals in all life stages and their sign, completed the survey following CDFW approved protocols. Additionally, should desert tortoise presence be confirmed, during surveys or within the 100-year timeframe, the MND lacks avoidance, minimization and mitigation to avoid take.

Evidence impact would be significant: Desert tortoise is a CESA-listed species. 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).

Mitigation Measure 3:

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 incidental take permit (ITP). CDFW recommends adding the following measure:

MM BIO-X: Desert Tortoise Surveys. A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with the survey methodology described in U.S. Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities.

Focused surveys should be conducted for desert tortoises following this approved CDFW protocol:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=174633&inline>

- CDFW recommends DPW condition the environmental document to include on-site worker education about any sensitive wildlife species that may occur in the area
- Additionally, CDFW requests to be contacted immediately should sensitive wildlife species be present in the Project area.

II. Editorial Comments and/or Suggestions

CDFW also recommends DPW include the following mitigation measures should trenches be exposed to prevent potential impacts to biological resources:

MM-X: Escape Ramp in Trench. At the end of each work day, the Biological Monitor(s) shall place an escape ramp at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degree.

MM-X: Trench inspections and monitoring. A biological monitor should be present before, during and after ground disturbing activities. Additionally, inactive and active trenches should be surveyed (3) times a day for sensitive wildlife; before activities begin, after lunch and after activities have ceased for the day. If sensitive or protected wildlife are encountered during these surveys CDFW should be notified immediately.

MM-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, special status plant species, and nesting birds. 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.

Lastly, CDFW would like to note the Fish and Game Commission has received a petition to list Western Joshua Tree (*Yucca brevifolia*) as a threatened species under CESA. It is expected the Fish and Game Commission may make a decision in August 2020. CDFW recommends DPW review the listing status prior to finalizing the MND as it may affect the legality of the MND. 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.

Steven Valdez, Contract Planner
County of San Bernardino Department of Public Works (DPW)
July 17, 2020
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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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County of San Bernardino Department of Public Works in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Julia Karo, Environmental Scientist at Julia.Karo@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

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

Attachment 1

Steven Valdez, Contract Planner
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REFERENCES

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

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

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

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
<p>MM BIO-X: <u>Desert Tortoise Surveys</u>. A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with procedures described in Chapter 6 of the US Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>

<p>shall obtain an ITP for the species prior to the restarting Project activities</p>		
<p>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 <i>Staff Report on Burrowing Owl Mitigation</i> (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, 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. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the <i>Staff Report on Burrowing Owl Mitigation</i> such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>
<p>MM BIO-X: <u>Special Status Plant Species</u>. Should any CESA-listed plant species be present at the Project site, the Project Proponent shall obtain an incidental take permit for those species prior to the start of Project activities. Should any special status plants or natural communities be present in the Project Area, a qualified biologist shall develop species specific avoidance, minimization, and mitigation measures to ensure</p>	<p>Before commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>there is no net reduction in the size or viability of the local population.</p>		
<p>MM BIO-X: <u>Escape Ramp in Trench.</u> At the end of each work day, the Biological Monitor(s) shall place an escape ramp at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degree.</p>	<p>Entire Project</p>	<p>Project Proponent</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, special status plant species, and nesting birds. 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>