



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 26, 2022
Sent via email

Steven Valdez, Planner III
County of San Bernardino
385 N. Arrowhead Ave. Land Use Services 1st Floor
San Bernardino, CA 92415



Subject: Initial Study and Mitigated Negative Declaration for Newberry Wine Rock Quarry; State Clearing House number 2022040035

Dear Mr. Valdez:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from the County of San Bernardino (County) for the Newberry Wine Rock Quarry Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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.

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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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.

ASSEMBLY BILL (AB) 819

Assembly Bill (AB) 819 was signed into law by Governor Gavin Newsom on July 16, 2021, and became effective January 1, 2022. AB 819 requires lead agencies to submit certain environmental documents and notices electronically to the State Clearing House (SCH) at Office of Planning and Research (OPR). Thus, as of January 1, 2022, lead agencies must take the following actions to comply with CEQA:

- File on CEQAnet – Draft Environmental Impact Reports (DEIR), proposed Negative Declarations (ND), proposed Mitigated Negative Declarations (MND) must be filed electronically on CEQAnet (<https://ceqanet.opr.ca.gov/>) – as opposed to submitting hard copies.
- Post on Agency website – Draft, proposed, and final environmental documents – including DEIRs, EIRs, NDs, MNDs – as well as any Notice of Preparation (NOP), Notice of Determination (NOD), Notice of Completion, or Notice of Scoping Meetings must be posted on the lead agency's website if it has one. Also, Notices of Availability (NOAs) and hearings related to the DEIR or ND are required to be posted on the lead agency's website, in addition to prior methods of giving notice.
- File and Post with County – NODs must be filed electronically with the county clerk if electronic filings are offered by the county. There is an option to post NODs either in the county clerk's office or on the county clerk's website for a period of 30 days. Additionally, NOPs and NOAs will need to be posted on the county clerk's website and physically, by hard copy, in the county clerk's office.
- Option to email NOPs – If an EIR is required, any NOP may be emailed, rather than mailed, to each entity requiring personal notice – the responsible agency, any public agency with jurisdiction over natural resources affected by the project, and OPR.

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- State Agency Filings – State lead agencies are required to file NODs and NOEs electronically on CEQAnet and no longer need to submit hard copies. The filed notice must be available for public inspection on the OPR website for not less than 12 months.
- Public Agency Notice of Completion – Public agencies must file notices of completion on CEQAnet, rather than mailing a paper copy.

PROJECT DESCRIPTION SUMMARY

The Project site is in the County of San Bernardino, California, just southwest of the City of Newberry Springs; Latitude 34.805522 N and Longitude -116.677373 W. The Project site is located approximately 1.5 miles south of the I-40 freeway in the foothills of the Newberry Mountains.

The Project proposes a rock mining operation on 24 acres adjacent to an existing 3.5-acre rock quarry. The Project will mine an exposed ridge of andesite rock using conventional drilling and blasting methods to create multi-layered rock benches measuring approximately 20 feet high by 40 feet wide with 70-degree slope faces. Some reclamation and revegetation will occur concurrent with mining. However, final reclamation and revegetation will begin at end of the mine life (30 years) in approximately 2051. Final reclamation, revegetation, and monitoring thereof will be completed within five (5) years of the completion of mining.

Timeframe: The Project is expected to have an approximately 30-year lifespan.

COMMENTS AND RECOMMENDATIONS

CDFW is concerned regarding the adequacy of the biological (BIO) mitigation measures (MM) proposed by the County to mitigate potential impacts to special-status species that may occur on-site. Additionally, the ISMND mentions a 2021 biological report by ELMT Consulting, Inc. being submitted, but this report was not included in the SCH submittal by the County of San Bernardino. Thus, to assist the County in adequately mitigating the Project's potentially significant impacts to special-status species, CDFW offers the comments and recommendations presented below, and in Attachment 1 "Mitigation Monitoring and Reporting Program", pursuant to the CEQA Guidelines, section 15097(f). CDFW requests that the County revise and/or adopt the following mitigation measures prior to finalizing the ISMND:

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Desert Tortoise (*Gopherus agassizii*)

Desert tortoise is a state-threatened, proposed endangered species under the California Environmental Species Act (CESA). On page twenty-one (p. 21) the ISMND concludes that there is potential for multiple desert tortoises to occur on the Project site or in the near vicinity. The ISMND judges the potential presence of desert tortoise based on a biological survey for desert tortoise that CDFW is not purview to because survey results and methodology were not provided with the ISMND. Nonetheless, CDFW recognizes the potential for desert tortoise to occur on the Project site and thus appreciates the inclusion of MM BIO-1 to address the possibility of desert tortoises occurring on-site. CDFW recommends MM BIO-1 be amended to include the following language (edits are in ~~strike through~~ and **bold**):

MM BIO-1:

As approved **by CDFW**, the active mine site shall continue to fence all active mining areas with tortoise-proof fencing **in accordance with fencing guidelines in the U.S. Fish and Wildlife Service 2009 Desert Tortoise (Mojave Population) Field Manual**. Therefore, prior to expanding the operation, a **qualified** biologist ~~will~~ **shall** conduct a pre-construction survey for desert tortoise and areas with evidence of desert tortoise activity **as follows**:

During the desert tortoise active season (April to May or September to October) pre-construction surveys for desert tortoise shall be conducted no more than 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to construction start. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence of desert tortoise, the Project proponent shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and

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Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.

Additionally, mine personnel ~~should~~ **shall** be informed **through a Workers Environmental Awareness Program (WEAP; see MM BIO-11)** that tortoises occur in the area and that they ~~should~~ **shall** be watchful for tortoises crossing the access road while maintaining 15 mile per hour speed limits to and from the **Project** site. **If a tortoise is found on-site during Project operations, all Project activities likely to affect tortoises should shall** cease and the County and **CDFW shall be** contacted to determine the next appropriate steps, **including applying for a CESA Incidental Take Permit (ITP) if a tortoise is found on-site during project operations.**

Special-Status Plants

The ISMND states that no special-status plant species were observed on-site during a 2018 field survey, “which was conducted during the blooming period for *some* of special-status plant species”. CDFW is concerned that the field survey conducted to identify special-status plants on the Project site may have been inadequate to form a complete inventory of special-status plants occurring within the Project area, since the plant surveys were not comprehensive of all special-status plants with the potential to occur on-site and surveys results and methodology were not provided with the ISMND.

Please note that 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. According to a California Natural Diversity Database (CNDDDB) query using BIOS mapping software, creamy blazing star (*Mentzelia tridentata*, California Rare Plant Rank 1B.3) may occur within or in close proximity to the Project site. Furthermore, based on an evaluation of species habitat requirements, the ISMND concludes that the Project site has a moderate potential to support not only creamy blazing star, but also Darlington's blazing star (*Mentzelia puberula*, California Rate Plant Rank 2B.2). Consequently, CDFW appreciates the inclusion of MM BIO-2 and provides the following revisions (edits are in **bold** and ~~strikethrough~~) to specify the most up to date protocols for conducting pre-construction rare plant surveys, and avoidance of special-status plants or mitigation for impacts to special-status plants.

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MM BIO-2:

Prior to initiation of project activities, a focused special-status plant surveys ~~will need to~~ **shall** be conducted **by a qualified botanist** during the spring blooming season to determine if special-status plant species are present or absent from the ~~undisturbed portions of the Project Site~~. Surveys shall be conducted to coincide with the flowering periods of special-status plants known to occur in the general vicinity of the Project Site. The surveys shall follow protocols and guidelines that have been approved and recommended by the USFWS 1996 Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants; CDFW ~~2009 Guidelines for Assessing the Effects of Proposed Developments on Rare and Endangered Plants and Plant Communities~~ **2018 (or most recent version) *Protocols for Surveying and Evaluating Impacts to Special-status Native Plant Populations and Natural Communities***; and the CNPS 2001 Botanical Survey.

If special-status plants are identified, the Project proponent shall either fully avoid the plant(s), with an appropriate buffer established by the qualified botanist and marked in the field (i.e., fencing or flagging), or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or the acquisition and conservation of land approved by CDFW at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far from the Project site (i.e., within a separate watershed).

If the Project has the potential to impact a CESA-listed species, the Project proponent should apply for a CESA ITP with CDFW.

Nesting Birds

CDFW is concerned that the ISMND mentions that four birds were observed during the biological survey, and no survey timing or protocol details are provided. Additionally, CDFW generally considers biological field assessments for wildlife valid for one year. The 2019 survey completed by Circle Mountain Biological Consulting (CMBC) falls outside the generally accepted timeframe for wildlife surveys and the 2021 addendum provided by ELMT Consulting (ELMT) suggests an evaluation of CMBC's surveys and not independent focused surveys. CDFW is unclear if the 2019 field surveys included nesting birds and the ISMND does not propose mitigation measures to avoid or minimize potentially significant impacts to nesting birds, including prairie falcon (*Falco mexicanus*;

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CDFW watchlist) and golden eagle (*Aquila chrysaetos*; CDFW fully protected species), both of which have CNDDDB reported occurrences in the vicinity of the Project site and may occur onsite. CDFW requests that pre-construction nesting bird surveys be conducted and recommends that MM BIO-4 below be added to the ISMND:

MM BIO-4:

All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. Bird nesting season generally extends from January 1 through September 15 for raptors and February 1 through September 1 for passerine birds. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.

If Project activities cannot begin outside of the bird nesting season, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to Project activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

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Desert Bighorn Sheep (*Ovis canadensis nelsoni*)

Desert Bighorn Sheep is a fully protected species as defined by state law. (See Fish & G. Code, §§ 4700). CDFW would like to advise the Project proponent that take of a fully protected species is prohibited and CDFW cannot authorize take for development. The Project must be designed to fully avoid impacts to fully protected species. The ISMND states on page 22 that scat from desert bighorn sheep (bighorn sheep) was found on-site within the Project area during a biological survey (survey not referenced or included). Further, the ISMND acknowledges that bighorn sheep move through the proposed mining expansion area and would be expected to continue to do so, but dismisses potential impacts to bighorn sheep from the Project, because: (1) “although bighorn sheep can be wary of mining activities, the species does coexist with mining operations throughout the Mojave Desert” and (2) “there is ample undisturbed mountainous habitat surrounding the proposed mining expansion area to continue to allow bighorn sheep movement opportunities through the immediate area”. As a result, no mitigation measures are in place to avoid or minimize impacts to bighorn sheep. Because the entire Project site is bighorn sheep habitat, CDFW recommends MM BIO-5 to MM BIO-9 to help the County avoid impacts to bighorn sheep:

MM BIO-5

Bighorn Sheep Conservation Fund. The Project proponent should contribute to a nonwasting endowment, designated as the Newberry Wine Rock Quarry Bighorn Sheep Conservation Fund (Fund). The amount of the Fund shall be determined by CDFW in coordination with the Project proponent. The Fund shall be administered by a CDFW approved entity, such as the National Fish and Wildlife Foundation (as a sub- account of the CDFW Master Mitigation Account). That Fund shall be managed as a long-term endowment dedicated to activities that aid in conservation and monitoring of bighorn sheep within the Newberry herd.

MM BIO-6

Bighorn Sheep Management Plan. To avoid impacts to the Newberry population of bighorn sheep, an adaptive management plan (Bighorn Sheep Management Plan) shall be provided to CDFW for review and approval. The Bighorn Sheep Management Plan shall include measures designed to address loss of suitable habitat, forage availability, and

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connectivity within the home range, and to avoid death or injury of bighorn sheep.

MM BIO-7

Blasting. Prior to blasting activities within the Project area, a designated mine employee, who has received training by CDFW, shall conduct a visual inspection (both naked eye and with binoculars) for a minimum of five minutes to ascertain the presence or absence of bighorn sheep. If bighorn sheep are located within the blast area, mine employees shall wait until bighorn sheep have moved from the area or may use sound, as from shouts, vehicle, or air horns, to move them out of the blast area prior to detonation of blasting materials. The designated mine employee will be trained by a CDFW bighorn sheep Wildlife Biologist to ensure a minimum skill level in detecting bighorn sheep. CDFW-trained mine employee(s) will be responsible for the completion of visual inspections for bighorn sheep and other wildlife within the area prior to the commencement of all blasting activities. The CDFW-trained mine employee(s) shall maintain a logbook detailing the location, date, time, and species observations of each visual inspection for each blasting activity. The log shall be available upon request to CDFW personnel.

MM BIO-8

Work Boot Decontamination. To prevent potential transmission of disease from domestic animals to bighorn sheep, all quarry workers who have potential contact with domesticated sheep or goats or their feces (for example walking in a yard where those livestock are kept, or have been kept, after visiting farms, fairs, etc.) shall decontaminate work boots prior to entering the Project area. Decontamination shall involve scrubbing 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 any quarry area.

MM BIO-9

Movement Through Quarries. Termination of active mining of each mining bench of the Newberry Wine Rock Quarry (hereafter “reclamation benches”) design shall include creation of angled pathways (i.e., ramps)

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and interlacing reclamation benches in order to facilitate the movement of bighorn sheep and other terrestrial wildlife through quarries. Reclamation benches are created as the mining sequence is completed and prior to reclamation and revegetation. CDFW recommends that movement to and from reclaimed benches be facilitated by design of ramps allowing ascent and descent to and from reclamation benches spaced at 250 to 300-foot intervals wherever feasible, with a maximum allowable spacing between ramps of 500 feet. Ramps shall be designed in coordination with CDFW and Bureau of Land Management biologists.

Desert Kit Fox (*Vulpes macrotis arsipus*)

The ISMND assessed the potential for desert kit fox to occur on-site; however, CDFW is not purview to the details of the assessment, including survey timing and protocol, as they were not provided with the ISMND. Through the assessment, the ISMND concludes that there are no active or inactive desert kit fox dens within the proposed mining area, but diagnostic scat was present peripheral to the mine site, and thus desert kit fox occurs in the vicinity of the Project site. Despite desert kit fox occurring in the vicinity of the Project site, the ISMND does not include any mitigation measures to avoid or minimize potentially significant impacts to desert kit fox. This is concerning to CDFW, as desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, § 460) and may not be taken at any time. BIOS data layers showing connectivity modeling for the California Desert Linkage Network indicate that the Project site falls within core breeding habitat for kit fox, and CDFW's California Wildlife Habitat Relationship model indicates the Project site is within habitat that is highly suitable for desert kit fox. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found on-site during breeding season, it could delay Project activities until appropriate vegetation and construction buffers can be established on the Project site. Therefore, CDFW recommends that the County conduct both focused and pre-construction surveys for desert kit fox as follows:

MM BIO-10:

Prior to commencing Project activities, a qualified biologist shall conduct a focused survey for desert kit fox, including assessment of all burrows in the Project area. If potential burrows are located, they should be monitored

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by the qualified biologist. If a burrow is determined to be active, the qualified biologist shall immediately notify CDFW to determine appropriate avoidance, minimization, and mitigation measures.

No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100 percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.

Employee Awareness of Wildlife Resources

The area surrounding the Project is mountain wilderness, thus Project development may bring biological hazards common to urban-wildland interface areas. Waste management must be a priority as accessible waste can encourage opportunistic species such as rats, ravens, and coyotes to become more prevalent, posing a substantial predation hazard to wildlife. Predators like ravens and coyotes (likely to occur in the area) are both known to prey on desert tortoise. Waste management plans should include waste receptacles with closing, lockable lids and a waste removal schedule that does not allow for excess waste to accrue. Increased traffic may also pose a hazard to species in the form of vehicle-animal collisions which often lead to the death of the animal. For slow moving species like desert tortoise, busy roads in their territory can have a significant impact on populations.

Project activities, including expansion and routine work for the life of the Project, will affect local wildlife. Part of the Project proponent's responsibility is to educate individuals that will be on-site on the wildlife species that may be present and how to limit impacts to wildlife species in the area. CDFW recommends that a Workers Environmental Awareness Program (WEAP) be added to the ISMND, as per MM BIO-11:

MM BIO-11:

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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 (Workers Environmental Awareness Program; WEAP). The WEAP 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 WEAP 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. The WEAP should include, but not be limited to: (1) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area and (2) protected species that have the potential to occur on the Project site including desert tortoise, desert bighorn sheep, desert kit fox, rare and sensitive plants, and nesting birds. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.

LSA Notification

CDFW determined that based on review of aerial photography from the California State Water Resources Control Board at least five ephemeral streams occur within the Project area and according to Figure 3 “Mining and Reclamation Plot Area”, the active mining, staging, stockpiling, and truck loading areas occur within at least one ephemeral stream. Thus, CDFW recommends that the Project proponent adopt MM BIO-9 below to either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or*, if notification under section 1602 of the Fish and Game Code is required for the Project, to obtain a CDFW-executed Lake and Streambed Alteration Agreement:

MM BIO-12:

Prior to construction and issuance of any grading permit, the Project proponent should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent should obtain a CDFW-executed Lake and

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Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

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 online field survey form, along with the types of information reported to CNDDDB, can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

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 requests that the County include in the final ISMND the suggested mitigation measures (Attachment 1) offered by CDFW to reduce Project impacts.

CDFW appreciates the opportunity to comment on the ISMND for the Newberry Wine Rock Quarry (SCH No. 2022040035) and hopes our comments assist the County of San Bernardino in identifying and mitigating Project impacts on biological resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Kevin Francis, Environmental Scientist at Kevin.Francis@wildlife.ca.gov.

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearing House, Sacramento
state.clearinghouse@opr.ca.gov

REFERENCES

California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts Special-status Native Plant Populations and Natural Communities. State of California, Natural Resources Agency. Available for download at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

U.S. Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*).

U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.

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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. 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 (MM)	Implementation Schedule	Responsible Party
<p>MM BIO-1</p> <p>As approved by CDFW, the active mine site shall continue to fence all active mining areas with tortoise-proof fencing in accordance with fencing guidelines in the U.S. Fish and Wildlife Service 2009 Desert Tortoise (Mojave Population) Field Manual. Therefore, prior to expanding the operation, a qualified biologist shall conduct a pre-construction survey for desert tortoise as follows:</p> <p>During the desert tortoise active season (April to May or September to October) pre-construction surveys for desert tortoise shall be conducted no more than 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to construction start. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence of desert tortoise, the Project proponent shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.</p> <p>Additionally, mine personnel shall be informed through a Workers Environmental Awareness Program (WEAP; see MM BIO-11) that tortoises occur in the area and that they shall be watchful for tortoises crossing the access road while maintaining 15 mile per hour speed limits to and from the Project site. If a tortoise is found on-site during Project operations, all Project activities shall cease and the County and CDFW shall be contacted to determine the next appropriate steps, including applying for a CESA Incidental Take Permit (ITP).</p>		
<p>MM BIO-2</p> <p>Prior to initiation of project activities, focused special-status plant surveys shall be conducted by a qualified botanist</p>	<p>Prior to commencing ground- or vegetation disturbing</p>	<p>Project Proponent</p>

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<p>during the spring blooming season to determine if special-status plant species are present or absent from the Project Site. Surveys shall be conducted to coincide with the flowering periods of special-status plants known to occur in the general vicinity of the Project Site. The surveys shall follow protocols and guidelines that have been approved and recommended by the USFWS 1996 Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants; CDFW 2018 (or most recent version) <i>Protocols for Surveying and Evaluating Impacts to Special-status Native Plant Populations and Natural Communities</i>; and the CNPS 2001 Botanical Survey.</p> <p>If special-status plants are identified, the Project proponent shall either fully avoid the plant(s), with an appropriate buffer established by the qualified botanist and marked in the field (i.e., fencing or flagging), or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or the acquisition and conservation of land approved by CDFW at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far from the Project site (i.e., within a separate watershed).</p> <p>If the Project has the potential to impact a CESA-listed species, the Project proponent should apply for a CESA ITP with CDFW.</p>	<p>activities</p>	
<p>MM BIO-4</p> <p>All Project activities on-site shall be conducted outside of the nesting bird</p>	<p>Prior to commencing ground- or</p>	<p>Project Proponent</p>

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<p>season to the maximum extent feasible. Bird nesting season generally extends from January 1 through September 15 for raptors and February 1 through September 1 for passerine birds. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.</p> <p>If Project activities cannot begin outside of the bird nesting season, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to Project activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active.</p>	vegetation disturbing activities	
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<p>Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>MM BIO-5</p> <p>Bighorn Sheep Conservation Fund. The Project proponent should contribute to a nonwasting endowment, designated as the Newberry Wine Rock Quarry Bighorn Sheep Conservation Fund (Fund). The amount of the Fund shall be determined by CDFW in coordination with the Project proponent. The Fund shall be administered by a CDFW approved entity, such as the National Fish and Wildlife Foundation (as a sub- account of the CDFW Master Mitigation Account). That Fund shall be managed as a long-term endowment dedicated to activities that aid in conservation and monitoring of bighorn sheep within the Newberry herd.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>
<p>MM BIO-6</p> <p>Bighorn Sheep Management Plan. To avoid impacts to the Newberry population of bighorn sheep, an adaptive management plan (Bighorn Sheep Management Plan) shall be provided to CDFW for review and approval. The Bighorn Sheep Management Plan shall include measures designed to address loss of suitable habitat, forage availability, and connectivity within the home range, and to avoid death or injury of bighorn sheep.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>MM BIO-7</p> <p>Blasting. Prior to blasting activities within the Project area, a designated mine employee, who has received training by CDFW, shall conduct a visual inspection (both naked eye and with binoculars) for a minimum of five minutes to ascertain the presence or absence of bighorn sheep. If bighorn sheep are located within the blast area, mine employees shall wait until bighorn sheep have moved from the area or may use sound, as from shouts, vehicle, or air horns, to move them out of the blast area prior to detonation of blasting materials. The designated mine employee will be trained by a CDFW bighorn sheep Wildlife Biologist to ensure a minimum skill level in detecting bighorn sheep. CDFW-trained mine employee(s) will be responsible for the completion of visual inspections for bighorn sheep and other wildlife within the area prior to the commencement of all blasting activities. The CDFW-trained mine employee(s) shall maintain a logbook detailing the location, date, time, and species observations of each visual inspection for each blasting activity. The log shall be available upon request to CDFW personnel.</p>	<p>Prior to initiating any blasting activities</p>	<p>Project Proponent</p>
<p>MM BIO-8</p> <p>Work Boot Decontamination. To prevent potential transmission of disease from domestic animals to bighorn sheep, all quarry workers who have potential contact with domesticated sheep or goats or their feces (for example walking in a yard where those livestock are kept, or have been kept, after visiting farms, fairs, etc.) shall decontaminate work boots prior to entering the Project area. Decontamination shall involve scrubbing</p>	<p>Throughout the life of the Project</p>	<p>Project Proponent</p>

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<p>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 any quarry area.</p>		
<p>MM BIO-9</p> <p>Movement Through Quarries. Termination of active mining of each mining bench of the Newberry Wine Rock Quarry (hereafter “reclamation benches”) design shall include creation of angled pathways (i.e., ramps) and interlacing reclamation benches in order to facilitate the movement of bighorn sheep and other terrestrial wildlife through quarries. Reclamation benches are created as the mining sequence is completed and prior to reclamation and revegetation. CDFW recommends that movement to and from reclaimed benches be facilitated by design of ramps allowing ascent and descent to and from reclamation benches spaced at 250 to 300-foot intervals wherever feasible, with a maximum allowable spacing between ramps of 500 feet. Ramps shall be designed in coordination with CDFW and Bureau of Land Management.</p>	<p>Throughout the life of the Project</p>	<p>Project Proponent</p>
<p>MM BIO-10</p> <p>Prior to commencing Project activities, a qualified biologist shall conduct a focused survey for desert kit fox, including assessment of all burrows in the Project area. If potential burrows are located, they should be monitored by the qualified biologist. If a burrow is determined to be active, the qualified biologist shall immediately notify CDFW to determine</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>appropriate avoidance, minimization, and mitigation measures.</p> <p>No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100 percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.</p>		
<p>MM BIO-11</p> <p>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 (Workers Environmental Awareness Program; WEAP). The WEAP 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 WEAP 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. The WEAP should include, but not be limited to: (1) best practices for managing waste</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area and (2) protected species that have the potential to occur on the Project site including desert tortoise, desert bighorn sheep, desert kit fox, rare and sensitive plants, and nesting birds. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.</p>		
<p>MM BIO-12</p> <p>Prior to construction and issuance of any grading permit, the Project proponent should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>