



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 26, 2022

Governor's Office of Planning & Research

Steven Valdez, Senior Planner
San Bernardino County - Land Use Services
385 N. Arrowhead Ave.
San Bernardino, CA 92415-0187

Sep 26 2022

STATE CLEARINGHOUSE

Baxter Quarry Amended Reclamation Plan
MITIGATED NEGATIVE DECLARATION
SCH# 2022080603

Dear Mr. Valdez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from San Bernardino County - Land Use Services for the Baxter Quarry Amended Reclamation Plan Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. 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 California 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 California 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

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(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

The Project involves the amendment of CalPortland's existing reclamation plan, approved by the County in 1990 (90M-02), to include the reclamation of additional iron ore reserves within the vested quarry. CalPortland's vested quarry comprises of approximately 452 acres of private lands mostly in Section 12, Township 11 North, Range 6 East, SBBM. The existing reclamation plan currently covers approximately 130 acres. The Project would amend the existing reclamation plan to cover approximately 263 acres of the vested quarry, located within Assessor Parcel Numbers (APNs) 542-201-02 to 10; 14, 15, 16, 18, 35 & 36. **Location:** The Project is located 19 miles southwest of the community of Baker in the County of San Bernardino (County). The Project is located within Assessor Parcel Numbers (APNs) 542-201-02 to 10; 14, 15, 16, 18, 35 & 36. Specifically, the Project site is located 3.5 miles south of Interstate 15 off Basin Road, Latitude 35.055600, and Longitude -116.294335.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist San Bernardino County - Land Use Services 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.

Desert Tortoise (*Gopherus agassizii*)

Page 33 provides the information "Surveys were conducted for the desert tortoise in 2019, per latest USFWS protocols and determined that there are no desert tortoise occurrences on site or directly adjacent to it. Most of the proposed mine site is rocky outcrop/rugged hills not suitable for desert tortoise habitat. Desert tortoise[s] are documented to occur approximately 11.75 miles northwest of the Project Site." The surveys noted in the MND were conducted in June 2018 and December 2021. Desert tortoises regularly occur in "rocky outcrop/rugged hills," which is dismissed in the MND as unsuitable habitat. CDFW is concerned that the MND does not state that protocol desert tortoise surveys were conducted during the appropriate season and following the protocol methods. CDFW has provided a revision to Mitigation Measure BIO-1.

For the third bullet in Mitigation Measure BIO-1 "Disturbance shall be confined to the smallest practical areas", please provide additional details regarding what types of disturbance and where the disturbance will occur.

Because the Project is within the range of desert tortoise and in desert tortoise habitat, CDFW recommends that prior to start of Project activities, a focused survey for desert

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tortoise following the *Desert Tortoise (Mojave Population) Field Manual* should be conducted by a qualified biologist. CDFW recommends the County adopt the following mitigation measure, which includes both focused and pre-construction surveys in MM BIO-1 below.

Revised Mitigation Measure BIO-1:

- **Prior to any impacts to desert tortoise habitat, the Project proponent shall conduct complete protocol level surveys over all areas (i.e., 100 percent coverage) proposed to be directly or indirectly affected by the Project be conducted, using appropriately qualified biologists, following the USFWS Desert Tortoise Field Manual, accessible here: https://www.fws.gov/nevada/desert_tortoise/documents/field_manual/Desert-Tortoise-Field-Manual.pdf. To reduce the likelihood of nonconcurrence with proposed surveys, methodology, and qualifications of biologists, CDFW recommends working with the USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning your work (USFWS, 2018). ~~Preconstruction surveys should be conducted no more than 30 days prior to new ground disturbance within the Lillian Belle area and for roads in the wash areas to the east.~~**
- **If desert tortoise are found within the Project area during surveys or mining activities, and complete avoidance is not possible CDFW recommends the Project proponent acquire a CESA Incidental Take Permit (ITP) prior to any vegetation- or ground-disturbing activities. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080. The IS/MND should fully describe the impacts and mitigation measures, including compensatory mitigation sufficient to reduce impacts to less than significant.**
- Worker/employee desert tortoise education program prior to working on-site.
- Disturbance shall be confined to ~~the smallest practical areas~~ **specific areas identified in the IS/MND.**
- Vehicle speeds shall not exceed 25 miles per hour on-site.
- Cross-country travel with motorized vehicles outside of the Project Site by Project personnel is prohibited.
- Vehicles and equipment parked shall be inspected immediately prior to being moved.
- To the extent possible, new disturbances on undisturbed areas shall be scheduled when tortoises are inactive (November 1 - March 15) **and after**

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protocol surveys are completed to ensure that desert tortoise are fully avoided.

- All trash and food items shall be promptly contained within closed, common raven proofed containers; and
- Firearms, dogs, or other pets shall be prohibited at the work site.

Nesting Birds

The BRA states that the Project site and surrounding area provides foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that could occur in the area. Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is 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) or 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 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.). To address the above issues and help the Project applicant avoid unlawful take of nests and eggs, CDFW offers the following revisions to MM BIO-2.

Revised Mitigation Measure BIO-2

- New mining activities and/or the removal of any trees, shrubs, or any other potential nesting habitat ~~should be conducted outside the avian nesting season September 1st thorough January 31st.~~ **shall be conducted onsite and within 500 ft of the Project within three (3) days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction.**
- ~~If new~~ mining activities or ground clearing occurs in an area that has not been disturbed **within 2-weeks** inside the peak nesting season (between February 1 and August 31), **or within 30 days of the peak nesting season**, a pre-construction survey by a qualified-Biologist (Biologist) shall be conducted within ~~40~~ **3** days prior to Project activities to-identify any active nesting locations. If the Biologist does not find any active nests, the construction work shall be allowed to proceed. The biologist-conducting the clearance survey shall document a

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negative survey with a report-indicating that no impacts to active avian nests shall occur.

- If the Biologist finds an active nest within the pre-construction survey area and determines that the nest may be impacted, the Biologist shall delineate an appropriate buffer zone around the nest. The size of the buffer shall be determined by the Biologist and shall be based on the nesting species, its sensitivity to disturbance, expected types of disturbance, and location in relation to the construction activities. These buffers are typically 300 feet from the nests of non-listed species and 500 feet from the nests of raptors and listed species. Any active nests observed during the survey shall be mapped on an aerial photograph. Only construction activities (if any) that have been approved by the Biologist shall take place within the buffer zone until the nest is vacated. The Biologist shall also serve as a Construction Monitor when construction activities take place near active nest areas to ensure that no inadvertent impacts on these nests occur. Results of the pre-construction survey and any subsequent monitoring shall be provided to the **CDFW**, Property Owner/Developer and the City. The monitoring report shall summarize the results of the nest monitoring, describe construction restrictions currently in place, and confirm that construction activities can proceed within the buffer area without jeopardizing the survival of the young birds.

Golden Eagle (*Aquila chrysaetos*)

Page 33 of the MND states that “golden eagle (*Aquila chrysaetos*), a California fully protected and watch list species – has moderate potential to occur. Golden eagle has been documented approximately 1.7 miles northwest of the Project site. This location occurs on the northern portion of Cave Mountain. No golden eagle were observed within the Project site boundaries during survey” CDFW is concerned that the MND and Biological Resources Assessment (BRA) do not identify that the golden eagle surveys were conducted according to USFWS protocols (Pagel et. al. 2010) for golden eagle. Specifically, USFWS protocol for golden eagle nesting requires eagle nest surveys out to 2 miles from the boundary of the Project, to provide sufficient information to evaluate Project impacts to nearby nesting eagles. The MND states that surveys were conducted within the Project site and there is a moderate potential for them to occur. CDFW recommends the addition of the below Mitigation Measure to include protocol golden eagle surveys to accurately account for Project impacts to nesting golden eagles.

Mitigation Measure - Golden Eagle

- **Prior to any ground disturbance related to Project activities a qualified biologist, according to USFWS protocol (Pagel et.al. 2010), shall conduct protocol survey within 2 miles of Project related ground disturbance to identify areas occupied by golden eagles, provide a foundation to evaluate whether and which activities or conditions may be affecting golden eagles.**

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- **If an active eagle nest is found, Project disturbances will not occur within 0.5 mile of the active nest site during breeding season (December 30 through July 1) or any disturbance if that action is shown to disturb the nesting eagles. The 0.5 mile no disturbance buffer will be maintained throughout the breeding season or until the young have fledged and are no longer dependent on the nest or parental care for survival.**

Desert Kit Fox (*Vulpes macrotis arsipus*)

The MND fails to address potential impacts to desert kit fox. The Project occurs within the range of desert kit fox, a protected species pursuant to Title 14 of the California Code of Regulations Section 460, which prohibits the take of the species at any time. CDFW recommends that surveys, following CDFW-approved protocols, be conducted over all areas proposed to be directly or indirectly affected by the Project to determine the presence or absence of this species and the number of desert kit fox that are present. This information should be included in the MND for full disclosure.

If desert kit fox is found, or have the potential to occupy the Project site, CDFW recommends the lead agency require species-specific mitigation to offset impacts and avoidance, minimization, and monitoring measures aimed at avoiding direct impacts to the desert kit fox be incorporated into the MND. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided or passively relocated, and the burrows or burrow complexes that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

CDFW recommends the following Mitigation Measure be added to the MND:

Mitigation Measure – Desert Kit Fox and American Badger

- **The Project owner shall develop and implement a Desert Kit Fox, American Badger Mitigation and Monitoring Plan (plan). The objective of the plan shall be to avoid direct impacts to the desert kit fox and American badger as a result of project activities. The final plan is subject to review, comment, revision, by the CDFW. The final plan shall include, but is not limited to, the following procedures and impact avoidance measures: Describe pre-construction survey and clearance field protocol, to determine the number and locations of single or paired kit foxes or badgers on the Project site that would need to be avoided or passively relocated and the number and locations of desert kit fox/badger burrows or burrow**

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complexes that would need to be collapsed to prevent re-occupancy by the animals.

- **Pre-Construction Surveys.** Biological Monitors shall conduct pre-construction surveys for desert kit fox and American badger no more than 30 days prior to initiation of construction activities, including pre-construction site mobilization. Surveys shall also address the potential presence of active dens within 100 feet of the Project boundary (including utility corridors and access roads). If dens are detected, each den shall be classified as inactive, potentially active, or active den.
- **Monitoring and Protection Measures, Passive Hazing, and Den Excavation:** The plan will include details on monitoring requirements, types and methods of passive hazing, and methods and timing of den excavation, including, but not limited to the following:
 - **Inactive dens.** Inactive dens (e.g., inactive dens are dens that are mostly or entirely silted in and ones in which the back of the den can clearly be seen (e.g., the den isn't deep and doesn't curve) that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by kit fox.
 - **Potentially and definitely active dens.** Potentially and definitely active dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage the badger or kit fox from continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand to ensure that no badgers or kit fox are trapped in the den. If the den is proven inactive then den may be collapsed during whelping season.
 - **Active natal/pupping dens.** If an active natal den (a den with pups) is detected on the site during construction, the CDFW shall be contacted within 24 hours to determine the appropriate course of action to minimize the potential for animal harm or mortality. The course of action would depend on the age of the pups, location of the den on the site (e.g., is the den in a central area or in a

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perimeter location), status of the perimeter site fence (completed or not), and the pending construction activities proposed near the den. A 500-foot no-disturbance buffer shall be maintained around all active dens. The denning season for desert kit fox is approximately Mid-January to pup independence (typically by June). If the den is active during the whelping season, even if pups are not seen, disturbance is not allowed. Active natal/pupping dens will not be excavated or passively relocated.

- **Address other factors and procedures that may affect the success of kit fox relocation offsite, such as: estimates of the distances kit foxes would need to travel across the Project site and across adjacent lands to safely access suitable habitat (including burrows) off-site; proposed scheduling of the passive relocation effort; and methods to minimize likelihood that the animals will return to the Project site during construction.**

American Badger (*Taxidea taxus*)

The MND fails to address potential impacts to American badger. The Project occurs within the range of the American badger, a California species of special concern. CDFW recommends the CEQA lead agency complete surveys for American badger over the Project area proposed to be directly or indirectly affected by the Project and that the results of such surveys be included in the MND, along with avoidance, minimization, and mitigation measures, if appropriate.

If American badger are found, or have the potential to occupy the Project site, CDFW recommends the CEQA lead agency require species specific mitigation to offset impacts and avoidance, minimization and monitoring measures aimed at avoiding direct impacts to American badger be incorporated into the MND. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided or passively relocated, and the burrows or burrow complexes that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation. CDFW recommends the Mitigation Measure – Desert Kit Fox and American Badger (above) be added to the MND.

Ring-tailed cat (*Bassariscus astutus*)

CDFW is concerned that the MND fails to address Project related impacts to ring-tailed cat. The Project occurs within the range of the ring-tailed cat, a California species of special concern and fully protected species. CDFW recommends the CEQA lead

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agency complete surveys for ring-tailed cat over the Project area proposed to be directly or indirectly affected by the Project and that the results of such survey be included in the MND, along with measures to avoid all impacts to the species.

If ring-tailed cat are found, or has the potential to occupy the Project site, CDFW recommends the CEQA lead agency require species-specific mitigation to avoiding impacts to the ring-tailed cat be incorporated into the /MND. Avoidance measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be fully avoided.

Special Status Bats

CDFW is concerned that the MND fails to identify specific avoidance, minimization, and mitigation measures to reduce potential Project related impacts to bat species, particularly special status bats including Townsend big eared bat (*Corynorhinus townsendii*), pallid bat (*Antrozous pallidus*), spotted bat (*Euderma maculatum*) and fringed myotis (*Myotis thysanodes*). CDFW recommends the following Mitigation Measure be added to the MND.

Mitigation Measure- Special Status Bats

- **If suitable roosting habitat for special status bats will be affected by Project activities (e.g., removal of rocky outcrops) a qualified wildlife biologist will conduct surveys for special status bats during the appropriate time of day to maximize detectability to determine if bat species are roosting near the work area no less than 7 days and no more than 14 days prior to the beginning ground disturbance. Survey methodology may include visual surveys of bats (e.g., observation of bats during foraging period, inspection for suitable habitat, bat sign (e.g., guano) or use of ultrasonic detectors (e.g., Anabat, etc.). Visual surveys will include vegetation within 0.25 miles of the Project site. The type of survey will depend on the condition of the potential roosting habitat.**
- **If evidence of bat use is observed, the number and species of bats using the roost will be determined. Bat detectors may be used to supplement survey efforts.**
- **Avoidance of Maternity Roosts. Work within potential bat roosting habitat shall avoid the maternity roosting season (March 1 to July 31) to the extent feasible. If work must be conducted within the maternity roosting season, prior to the start of work within or near trees, bridges or other structures within the work area, a qualified bat biologist shall conduct a preconstruction survey to determine if bats are roosting within the Project**

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work area. If bats are not roosting, no further mitigation is required. If bats are roosting, all maternity roosts shall be avoided and an appropriate no-disturbance buffer shall be established at the discretion of a qualified biologist, based on the sensitivity of the bat species. If work within the buffer is deemed necessary, a qualified biologist shall monitor work activities to ensure no disturbance to the roost(s).

- **Exclusion Outside of Maternity Roosting Season. If roosts are determined to be present and must be removed, the bats will be excluded from the roosting site before the site is disturbed. A Bat Mitigation and Monitoring Plan addressing compensation, exclusion methods. And roost removal procedures will be developed and submitted to CDFW prior to implementation. Exclusion methods may include the use of one-way doors a roost entrances (bats may leave, but not re-enter, or sealing roost entrances with the site can be confirmed to contain no bats. Exclusion efforts shall not be conducted if the site is confirmed to be a maternity roost. Exclusion in the fall is recommended to avoid impacts to hibernating bats or a maternity roost (typically April through August in southern California) when flightless young are present.**
- **If roosts cannot be avoided or it is determined that Project activities may cause roost abandonment, such activities may not commence until permanent, elevated bat houses have been installed outside of, but near the Project area. Placement and height will be determined by a qualified wildlife biologist, but the height of the bat house will be at least 15-feet. Bat houses will be multi-chambered and be purchased or constructed in accordance with CDFW standards. The number of bat houses required will be dependent upon the size and number of colonies found at bat least one bat house will be installed for each pair of bats, (if occurring individually), or of sufficient number to accommodate each colony of bats to be relocated.**

Desert Bighorn Sheep

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. CDFW recommends the MND include the following Mitigation Measure to address potential impacts.

Mitigation Measure – Desert Bighorn Sheep

Bighorn Sheep Management Plan. To avoid significant impacts to desert bighorn sheep, an adaptive management plan (Desert Bighorn Sheep Management Plan)

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shall be provided to CDFW for review and approval. The Desert 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.

Special-Status Plants

Small-flowered androstephium (*Androstephium breviflorum*) is known to occur near the Project area and has a blooming period of March through April. Survey dates provided for this Project were in June and December, outside of the bloom period for this species and many other species with a potential to be present. The MND states creosote bush scrub plant community occurs throughout the undeveloped/undisturbed portions of the Project site and is the dominant plant community within the surrounding landscape, and overall underlying plant community in the area. Small-flowered androstephium occurs in creosote bush scrub plant communities, and in the habitat of the Project area.

CDFW recommends that prior to start of Project activities, a botanical field survey be conducted according to the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). This protocol-level surveys will be conducted during the appropriate time of year to adequately identify special status plant species.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

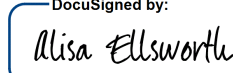
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CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Julian Potier at 909-938-6112 or Julian.Potier@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

Attachments:

Mitigation Monitoring and Reporting Program (MMRP) for CDFW-Proposed Mitigation Measures

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

REFERENCES

Pagel, J.E., D.M. Whittington, and G.T. Allen. 2010. Interim Golden Eagle inventory and monitoring protocols; and other recommendations. Division of Migratory Bird Management, U.S. Fish and Wildlife Service.

United States Fish and Wildlife Service. 2018. Mojave Desert Tortoise Pre-project Survey Protocol. 2019.

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR CDFW-PROPOSED MITIGATION MEASURES

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) Description	Implementation Schedule	Responsible Party
<p>Revised Mitigation Measure BIO-1</p> <ul style="list-style-type: none"> Prior to any impacts to desert tortoise habitat, the Project proponent shall conduct complete protocol level surveys over all areas (i.e., 100 percent coverage) proposed to be directly or indirectly affected by the Project be conducted, using appropriately qualified biologists, following the USFWS Desert Tortoise Field Manual, accessible here: https://www.fws.gov/nevada/desert_tortoise/documents/field_manual/Desert-Tortoise-Field-Manual.pdf. To reduce the likelihood of nonconcurrency with proposed surveys, methodology, and qualifications of biologists, CDFW recommends working with the USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning your work (USFWS, 2018). Preconstruction surveys should be conducted no more than 30 days prior to 	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>new ground disturbance within the Lillian Belle area and for roads in the wash areas to the east.</p> <ul style="list-style-type: none">• If desert tortoise are found within the Project area during surveys or mining activities, and complete avoidance is not possible CDFW recommends the Project proponent acquire a CESA Incidental Take Permit (ITP) prior to any vegetation- or ground-disturbing activities. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080. The IS/MND should fully describe the impacts and mitigation measures, including compensatory mitigation sufficient to reduce impacts to less than significant.• Worker/employee desert tortoise education program prior to working on-site.• Disturbance shall be confined to the smallest practical areas specific areas identified in the IS/MND.• Vehicle speeds shall not exceed 25 miles per hour on-site.• Cross-country travel with motorized vehicles outside of the Project Site by Project personnel is prohibited.• Vehicles and equipment parked shall be inspected immediately prior to being moved.• To the extent possible, new disturbances on undisturbed areas shall be scheduled when tortoises are inactive (November 1 - March 15) and after protocol surveys are completed to ensure that desert tortoise are fully avoided.		
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<ul style="list-style-type: none"> All trash and food items shall be promptly contained within closed, common raven proofed containers; and Firearms, dogs, or other pets shall be prohibited at the work site. 		
<p>Revised Mitigation Measure BIO-2</p> <ul style="list-style-type: none"> New mining activities and/or the removal of any trees, shrubs, or any other potential nesting habitat should be conducted outside the avian nesting season September 1st through January 31st. shall be conducted onsite and within 500 ft of the Project within three (3) days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. •If new mining activities or ground clearing occurs in an area that has not been disturbed within 2-weeks inside the peak nesting season (between February 1 and August 31), or within 30 days of the peak nesting season, a pre-construction survey by a qualified-Biologist (Biologist) shall be conducted within 10 3 days prior to Project activities to-identify any active nesting locations. If the Biologist does not find any active nests, the construction work shall be allowed to proceed. The biologist-conducting the clearance survey shall document a negative survey with a report-indicating that no impacts to active avian nests shall occur. •If the Biologist finds an active nest within the pre-construction survey area and determines that the nest may be impacted, the Biologist shall delineate an appropriate buffer zone around the nest. The size of the buffer shall be determined by the Biologist and shall be based on the nesting species, 	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>its sensitivity to disturbance, expected types of disturbance, and location in relation to the construction activities. These buffers are typically 300 feet from the nests of non-listed species and 500 feet from the nests of raptors and listed species. Any active nests observed during the survey shall be mapped on an aerial photograph. Only construction activities (if any) that have been approved by the Biologist shall take place within the buffer zone until the nest is vacated. The Biologist shall also serve as a Construction Monitor when construction activities take place near active nest areas to ensure that no inadvertent impacts on these nests occur. Results of the pre-construction survey and any subsequent monitoring shall be provided to the CDFW, Property Owner/Developer and the City. The monitoring report shall summarize the results of the nest monitoring, describe construction restrictions currently in place, and confirm that construction activities can proceed within the buffer area without jeopardizing the survival of the young birds.</p>		
<p>Mitigation Measure - Golden Eagle</p> <ul style="list-style-type: none"> • Prior to any ground disturbance related to Project activities a qualified biologist, according to USFWS protocol (Pagel et.al. 2010), , shall conduct protocol survey within 2 miles of Project related ground disturbance to identify areas occupied by golden eagles, provide a foundation to evaluate whether and which activities or conditions may be affecting golden eagles. • If an active eagle nest is found, Project disturbances will not occur within 0.5 mile of the active nest site during breeding season (December 30 through July 1) or any disturbance if that action is 	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>shown to disturb the nesting eagles. The 0.5 mile no disturbance buffer will be maintained throughout the breeding season or until the young have fledged and are no longer dependent on the nest or parental care for survival.</p>		
<p>Mitigation Measure – Desert Kit Fox and American Badger</p> <ul style="list-style-type: none"> • The Project owner shall develop and implement a Desert Kit Fox, American Badger Mitigation and Monitoring Plan (plan). The objective of the plan shall be to avoid direct impacts to the desert kit fox and American badger as a result of project activities. The final plan is subject to review, comment, revision, by the CDFW. The final plan shall include, but is not limited to, the following procedures and impact avoidance measures: Describe pre-construction survey and clearance field protocol, to determine the number and locations of single or paired kit foxes or badgers on the Project site that would need to be avoided or passively relocated and the number and locations of desert kit fox/badger burrows or burrow complexes that would need to be collapsed to prevent re-occupancy by the animals. • Pre-Construction Surveys. Biological Monitors shall conduct pre-construction surveys for desert kit fox and American badger no more than 30 days prior to initiation of construction activities, 	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>including pre-construction site mobilization. Surveys shall also address the potential presence of active dens within 100 feet of the Project boundary (including utility corridors and access roads). If dens are detected, each den shall be classified as inactive, potentially active, or active den.</p> <ul style="list-style-type: none">• Monitoring and Protection Measures, Passive Hazing, and Den Excavation: The plan will include details on monitoring requirements, types and methods of passive hazing, and methods and timing of den excavation, including, but not limited to the following:<ul style="list-style-type: none">○ Inactive dens. Inactive dens (e.g., inactive dens are dens that are mostly or entirely silted in and ones in which the back of the den can clearly be seen (e.g., the den isn't deep and doesn't curve) that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by kit fox.○ Potentially and definitely active dens. Potentially and definitely active dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the		
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<p>den shall be excavated and backfilled by hand. If tracks are observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage the badger or kit fox from continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand to ensure that no badgers or kit fox are trapped in the den. If the den is proven inactive then den may be collapsed during whelping season.</p> <ul style="list-style-type: none">○ Active natal/pupping dens. If an active natal den (a den with pups) is detected on the site during construction, the CDFW shall be contacted within 24 hours to determine the appropriate course of action to minimize the potential for animal harm or mortality. The course of action would depend on the age of the pups, location of the den on the site (e.g., is the den in a central area or in a perimeter location), status of the perimeter site fence (completed or not), and the pending construction activities proposed near the den. A 500-foot no-disturbance buffer shall be maintained around all active dens. The denning season for desert kit fox is approximately Mid-January to pup independence (typically by June). If the den is active during		
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<p>the whelping season, even if pups are not seen, disturbance is not allowed. Active natal/pupping dens will not be excavated or passively relocated.</p> <ul style="list-style-type: none"> ○ Address other factors and procedures that may affect the success of kit fox relocation offsite, such as: estimates of the distances kit foxes would need to travel across the Project site and across adjacent lands to safely access suitable habitat (including burrows) off-site; proposed scheduling of the passive relocation effort; and methods to minimize likelihood that the animals will return to the Project site during construction. 		
<p>Mitigation Measure- Special Status Bats</p> <ul style="list-style-type: none"> ● If suitable roosting habitat for special status bats will be affected by Project activities (e.g., removal of rocky outcrops) a qualified wildlife biologist will conduct surveys for special status bats during the appropriate time of day to maximize detectability to determine if bat species are roosting near the work area no less than 7 days and no more than 14 days prior to the beginning ground disturbance. Survey methodology may include visual surveys of bats (e.g., observation of bats during foraging period, inspection for suitable habitat, bat sign (e.g., guano) or use of ultrasonic detectors (e.g., Anabat, etc.). Visual surveys will include vegetation within 0.25 miles of the Project site. The type of 	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>survey will depend on the condition of the potential roosting habitat.</p> <ul style="list-style-type: none">• If evidence of bat use is observed, the number and species of bats using the roost will be determined. Bat detectors may be used to supplement survey efforts.• Avoidance of Maternity Roosts. Work within potential bat roosting habitat shall avoid the maternity roosting season (March 1 to July 31) to the extent feasible. If work must be conducted within the maternity roosting season, prior to the start of work within or near trees, bridges or other structures within the work area, a qualified bat biologist shall conduct a preconstruction survey to determine if bats are roosting within the Project work area. If bats are not roosting, no further mitigation is required. If bats are roosting, all maternity roosts shall be avoided and an appropriate no-disturbance buffer shall be established at the discretion of a qualified biologist, based on the sensitivity of the bat species. If work within the buffer is deemed necessary, a qualified biologist shall monitor work activities to ensure no disturbance to the roost(s).• Exclusion Outside of Maternity Roosting Season. If roosts are determined to be present and must be removed, the bats will be excluded from the roosting site before the site is disturbed. A Bat Mitigation and Monitoring Plan addressing compensation, exclusion methods. And roost removal procedures will be developed and submitted to CDFW prior to implementation. Exclusion methods may include the use of one-way		
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<p>doors a roost entrances (bats may leave, but not re-enter, or sealing roost entrances with the site can be confirmed to contain no bats. Exclusion efforts shall not be conducted if the site is confirmed to be a maternity roost. Exclusion in the fall is recommended to avoid impacts to hibernating bats or a maternity roost (typically April through August in southern California) when flightless young are present.</p> <ul style="list-style-type: none">• If roosts cannot be avoided or it is determined that Project activities may cause roost abandonment, such activities may not commence until permanent, elevated bat houses have been installed outside of, but near the Project area. Placement and height will be determined by a qualified wildlife biologist, but the height of the bat house will be at least 15-feet. Bat houses will be multi-chambered and be purchased or constructed in accordance with CDFW standards. The number of bat houses required will be dependent upon the size and number of colonies found at bat least one bat house will the installed for each pair of bats, (if occurring individually), or of sufficient number to accommodate each colony of bats to be relocated.		
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<p>Mitigation Measure – Desert Bighorn Sheep</p> <p>Bighorn Sheep Management Plan. To avoid significant impacts to desert bighorn sheep, an adaptive management plan (Desert Bighorn Sheep Management Plan) shall be provided to CDFW for review and approval. The Desert 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 ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
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