



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
 3602 Inland Empire Boulevard, Suite C-220
 Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 12, 2023

Governor's Office of Planning & Research

Daniel Alcayaga
 Planning Manager
 Town of Apple Valley
 14955 Dale Evans Parkway
 Apple Valley, CA 92307

Sep 13 2023

STATE CLEARINGHOUSE

GTS Cold Storage Project (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2023080221

Dear Mr. Alcayaga:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Town of Apple Valley for the Project pursuant 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. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

Conserving California's Wildlife Since 1870

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PROJECT DESCRIPTION SUMMARY

Proponent: Town of Apple Valley

Objective: The objective of the Project is to construct a 385,004-square-foot cold storage warehouse building on an 18.7-acre site. The Project would be divided into two spaces, each side would include a 7,700-square-foot, 2-story office area. The project would also include the construction of a 3,000-square-foot electrical and fire pump building.

Location: The Project is located on the northwest corner of Navajo Road and Lafayette Street, in the Town of Apple Valley, County of San Bernardino, California. Corresponding Assessor Parcel Number (APN) is 0463-231-06, and coordinates are 34°35'42"N 117°11'26"W, (34.595000, -117.190556).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Comments and Recommendations

Western Joshua Tree - California Endangered Species Act

The California Endangered Species Act (CESA) is a California environmental law that conserves and protects plant and animal species at risk of extinction. Western Joshua tree (WJT), currently a Candidate Threatened species under CESA, has the potential to occur within the Project. Under CESA, a species classified as a Candidate is afforded the same protection as a CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Take is defined in Fish and Game Code § 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill". A CESA-listed or Candidate species, or any part or product of the plant or animal, may not be imported into the state, exported out of the state, "taken" (i.e., killed), possessed, purchased, or sold without proper authorization. An incidental take permit may be obtained to allow a permittee to take a CESA-listed or Candidate species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Permittees must implement species-specific minimization and avoidance measures, and fully mitigate the impacts of the project. (Fish & G. Code, § 2081 (b); Cal. Code Regs., tit. 14, §§ 783.2-783.8). Additionally, project proponents have the option of either obtaining an incidental take permit or any other appropriate take authorization under CESA or obtaining a take permit under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12).

Burrowing Owl (*Athene cunicularia*)

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Take of individual burrowing owls and their nests is defined by Fish and Game Code §86, and prohibited by § 3503, 3503.5 and 3513. Take is defined in Fish and Game Code § 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

CDFW appreciates that the City will follow the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and-Game, March 2012); available for download from CDFW’s website:

<https://www.wildlife.ca.gov/conservation/survey-protocols>. The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

- a. A habitat assessment;
- b. Survey; and
- c. An impact assessment

CDFW appreciates the inclusion of Biological Resources Mitigation Measure No. 2 and Biological Resources Mitigation Measure No.3 which considers preconstruction surveys for burrowing owl, however, CDFW is concerned that according to the 2012 Staff Report on Burrowing Owl Mitigation, Take avoidance (pre-construction) surveys are intended to detect the presence of burrowing owls on a project site at a fixed period in time. The DEIR does not include the necessary survey documentation to assess project impacts to burrowing owl. According to the 2012 Staff Report on Burrowing Owl there are three progressive steps in evaluating whether projects will result in impacts to burrowing owl. The information gained from these steps will inform any subsequent avoidance, minimization and mitigation measures. The steps for project impact evaluations are: 1) habitat assessment, 2) surveys, and 3) impact assessment. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with FGC § 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity.

If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 2 artificial burrow constructed to 1 natural burrow collapsed (2:1) as minimization for the potentially significant impact of evicting burrowing owls. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site

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during Project activities, at a rate that is sufficient to detect burrowing owls if they return. CDFW also recommends that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed and approved by CDFW; permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the Staff Report; site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided; and excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site.

If burrowing owls are found to occupy the Project site and avoidance is not possible, CDFW recommends mitigation for permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. CDFW recommends permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

CDFW offers the following revisions to Biological Resources MM BIO-2 and MM BIO-3 (edits are in strikethrough and bold).

MM BIO-2. Prior to any ground disturbance, ~~pre-construction~~ surveys for burrowing owls, **sign and potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted** on the Project site and in the surrounding area in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012, ~~shall be conducted no more than 14 days prior to the beginning of Project activities, and a secondary survey must be conducted by a qualified biologist within 24 hours prior to the beginning of Project construction to determine if the Project site contains suitable burrowing owl or sign thereof and to avoid any potential impacts to the species.~~ **The breeding season survey should consist of three or more survey visits during daylight hours and with each visit at least three weeks apart during the peak of the breeding season, commonly accepted in California as between 15 April and 15 July. Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.).** The surveys shall include 100% coverage of the Project site. If both surveys reveal no burrowing owls are

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present or sign thereof, no additional actions related to this measure are required and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction.

MM BIO-3. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

Site-specific non-disturbance buffer zones shall be established by the qualified biologist and shall be no less than 300 ~~meters~~ feet. If determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows, passive relocation shall be implemented if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the Project Proponent and the Town, shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW review/approval prior to the commencement of disturbance activities on-site and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.

Mohave ground squirrel (*Xerospermophilus mohavensis*)

CDFW is concerned regarding the Mohave ground squirrel (MGS) section of the ISMND. The ISMND states "A habitat assessment was performed for the Mohave ground squirrel as per CDFW protocol including an analysis of the on-site habitat, evaluation of local populations, and assessment of connectivity with habitats in the surrounding area which might support populations of the Mohave ground squirrel." According to the Mohave Ground Squirrel Survey Guidelines (2010), unless certain

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circumstances apply (assumption of presence of MGS), CDFW requires a survey to be undertaken for the MGS on a project site if the proposed site has potential habitat of this species and the presence of the species on the project site is unknown. Potential habitat is land supporting desert shrub vegetation within or adjacent to the geographic range of the species. A habitat assessment is not a part of the MGS Survey Guidelines.

Additionally, the General Biological Assessment states that, “due to low population levels and no recent observations in this area of the Mojave Desert, it is the opinion of RCA Associates, Inc. that the likelihood of Mohave ground squirrel occurring on the proposed project site is extremely low”. According to the MGS Survey Guidelines, “A qualified biologist is a biologist who has demonstrated pertinent field experience in capturing and handling ground squirrels or other small mammals in desert/arid communities and who has been permitted by the Department to work without supervision.” CDFW recommends the lead agency, include the qualifications of the biologist that is making this determination to ensure the accuracy of the document.

Finally, the ISMND states, “CDFW may choose to conduct a live-trapping survey to definitively determine the presence/absence of Mohave ground squirrels.” CDFW is concerned regarding this statement. It is the responsibility of the lead agency and the project proponent to ensure that all applicable laws and regulations are followed and adhered to. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Take is defined in Fish and Game Code § 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill”. An incidental take permit may be obtained to allow a permittee to take a CESA-listed if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Permittees must implement species-specific minimization and avoidance measures, and fully mitigate the impacts of the project. (Fish & G. Code, § 2081 (b); Cal. Code Regs., tit. 14, §§ 783.2-783.8).

CDFW offers the following revisions to Biological Resources MM BIO-4 (edits are in strikethrough and bold).

MM BIO-4. Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The pre-construction surveys shall cover the Project area and a 50-foot buffer zone, **with visual surveys to determine Mohave ground squirrel activity and habitat quality that shall be undertaken during the period of 15 March through 15 April. If visual surveys do not reveal presence of the Mohave ground squirrel on the project site, standard small-mammal trapping grids shall be established in potential Mohave ground squirrel habitat. The number of grids will depend on the amount of potential habitat on the project site, as determined by Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or most recent version.** If Mohave ground squirrel presence is confirmed during the survey, the Project Proponent shall obtain an ITP for

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Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

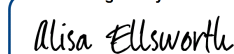
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND and assist Town of Apple Valley in identifying and mitigating Project impacts on biological resources and we request that the Town of Apple Valley address the Department's comments and concerns prior to adoption of the MND. If you should have any questions pertaining to the comments provided in this letter, please contact Julian Potier (909) 938-6112 or at julian.potier@wildlife.ca.gov.

Sincerely,

DocuSigned by:


Alisa Ellsworth

Environmental Program Manager

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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 mitigation measures.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
<p><i>MM BIO-2.</i></p> <p>Prior to any ground disturbance, pre-construction surveys for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted on the Project site and in the surrounding area in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. The breeding season survey should consist of three or more survey visits during daylight hours and with each visit at least three weeks apart during the peak of the breeding season, commonly accepted in California as between 15 April and 15 July. Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.). The surveys shall include 100% coverage of the Project site. If both surveys reveal no burrowing owls are present or sign</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>thereof, no additional actions related to this measure are required and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction.</p>		
<p><i>MM BIO 3:</i></p> <p>If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</p> <p>Site-specific non-disturbance buffer zones shall be established by the qualified biologist and shall be no less than 300 meters. If determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows, passive relocation shall be implemented if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the Project Proponent and the Town, shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>Owl Artificial Burrow and Exclusion Plans) of the CDFW’s Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW review/approval prior to the commencement of disturbance activities on-site and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.</p>		
<p><i>MM BIO-4.</i></p> <p>Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The pre-construction surveys shall cover the Project area and a 50-foot buffer zone, with visual surveys to determine Mohave ground squirrel activity and habitat quality that shall be undertaken during the period of 15 March through 15 April. If visual surveys do not reveal presence of the Mohave ground squirrel on the project site, standard small-mammal trapping grids shall be established in potential Mohave ground squirrel habitat. The number of grids will depend on the amount of potential habitat on the project site, as determined by Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or most recent version. If Mohave ground squirrel presence is confirmed during the survey, the Project Proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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