



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



November 12, 2024
Sent via email.

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

Inland Empire North Logistics Center Apple Valley (Project)
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
 SCH# 2023090366

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the Town of Apple Valley for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: Synergy Consulting CA

Objective: The Project proposes the construction of two industrial buildings on 178 acres of land. Building 1 would be approximately 1,507,326 square feet and Building 2 would be approximately 1,097,120 square feet. The Project also proposes loading docks, vehicle parking and several roadway improvements.

Location: The Project site is located within the northwestern part of the town of Apple Valley within San Bernardino County at APN: 0472-031-08.

Timeframe: The Project is expected to commence in 2024 lasting through 2026.

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.

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 2

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Town of Apple Valley 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.

COMMENT #1: Western Joshua tree (*Yucca brevifolia*) MM-BIO-1

Draft Environmental Impact Report

Issue: The Project will impact western Joshua Tree (WJT), a candidate species pursuant to the California Endangered Species Act. The Draft EIR states that a total of 298 WJTs were observed within the Project site and the associated 50-foot buffer. MM-BIO-1 states that mitigation for the direct impacts to WJT on-site will be mitigated through the fulfillment of payment of elected fees described in the Western Joshua Tree Conservation Act (WJTCA).

Specific impact: Mitigation measure MM-BIO-1 states that impacts only to those WJT mentioned would be mitigated for. CDFW would like to note that an additional WJT census survey may be needed for the Incidental Take Permit (ITP) application. Additionally, CDFW would like to include the option of obtaining an ITP either through the WJTCA or through the California Endangered Species Act (CESA).

Why impact would occur: Incidental take of WJT individuals in the form of mortality ("kill") may occur as a result of removing mature and emergent individuals; relocating individuals; eliminating and modifying habitat; removing seedbank and crushing an/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

Evidence impact would be significant: As outlined in MM-BIO-1, mitigation would only apply to those WJT outlined and as a result does not thoroughly explain how mitigation would be provided if new sprouts are observed throughout the Project site outside of the amount outlined. Additionally, MM-BIO-1 should include the option of obtaining an ITP through the WJTCA and the CESA.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the Draft EIR provides a measure to minimize the Project's impacts to western Joshua trees. CDFW offers the following revisions to MM-BIO-1 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final EIR.

Mitigation Measure: (MM-BIO-1) Conservation of Western Joshua Tree Lands.
(REVISED)

~~Mitigation for direct impacts to 4 western Joshua trees that are 5 meters or greater in height, 201 trees 1 meter or greater but less than 5 meters in height, and 78 trees less than 1 meter in height will be fulfilled through a payment of the elected fees as described in Section 1927.3 of the Western Joshua Tree Conservation Act. In conformance with the reduced fee schedule, mitigation will consist of payment of \$1,000 for each western Joshua tree 5 meters or greater in height, \$200 for each western Joshua tree 1 meter or greater but less than 5 meters in height, and \$150 for each western Joshua tree less than 1 meter in height.~~

Obtain an Incidental Take Permit (ITP) for impacts to western Joshua tree (*Yucca brevifolia*) through compliance with the Western Joshua Tree Conservation Act (Fish and Game Code §§ 1927-1927.12) and adhere to the Western Joshua Tree Relocation Guidelines and Protocols if determined necessary by CDFW, or through the California Endangered Species Act (Fish and Game Code, §§ 2080-2085).

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 3

COMMENT #2: Desert Tortoise (*Gopherus agassizii*) MM-BIO-10

Draft Environmental Impact Report

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to desert tortoise habitat. The Project may result in the take of desert tortoise, a California Endangered Species Act (CESA) listed threatened and candidate endangered species, during construction of the Project and life of the Project.

Specific impact: Project construction and related activities of constructing two industrial buildings and associated roadway improvements may cause direct take of desert tortoise and indirect take in the form of reducing habitat and species movement.

Why impact would occur: As described on page 4.3-7 of the DEIR, 12 suitable burrows were mapped throughout the Project site and were noted as in good condition for desert tortoise. In addition, 6 inactive burrows were detected that may have been used by desert tortoise in the past. Also, 11 areas were noted to support desert tortoise pallet sites such as shallow burrows or bunk overhangs. Lastly, possible desert tortoise scat was found within the Project site. Impact to desert tortoise would occur due to the loss of habitat for desert tortoise as reported by the numerous suitable burrows and areas for desert tortoise. Within the DEIR, it is noted that the most recent CNDDDB occurrence for desert tortoise within 1 mile of the Project site was in 2005, however, this outdated occurrence does not preclude the potential that desert tortoise could inhabit the area. The loss of desert tortoise habitat could result in significant impacts.

Evidence impact would be significant: Desert tortoise was recently uplisted from a threatened to endangered species under CESA, signifying the continued need to conserve the species and importances to avoid impacts to the species and its habitat. Although surveys and the DEIR indicate desert tortoise or sign of desert tortoise was not found, the species could have moved into the area since the surveys occurred. CDFW considers the take of a listed species and loss of species habitat as a significant impact, unless mitigated to a level of less than significant.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the Draft EIR provides a measure to minimize the Project's impacts to desert tortoise. CDFW strongly recommends the following revisions to MM-BIO-10 (edits are in ~~strike through~~ and **bold**) for inclusion in the Final EIR.

Mitigation Measure: (MM-BIO-10) Pre-construction Clearance Surveys for Mojave Desert Tortoise and Avoidance. **(REVISED)**

An Incidental Take Permit (ITP) for Desert tortoise (*Gopherus agassizii*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and/or the California Department of Fish and Wildlife. One pre-construction clearance survey in accordance with current U.S. Fish and Wildlife Service (USFWS) protocol shall be conducted to reevaluate locations of potential Mojave desert tortoise burrows within the Project limits so take of Mojave desert tortoise can be avoided. The pre-construction clearance survey shall be conducted **on the Project site ~~in areas supporting potentially suitable habitat~~ 14 to 21 days prior to the start of construction activities; or alternatively, pre-construction clearance surveys may be conducted at any time following **the installation** ~~construction~~ of a desert tortoise **exclusionary fencing** ~~—proof fence~~ encompassing the Project site that would ensure that tortoises cannot enter the Project after clearance surveys are completed. **Should there be any faults following the installation of the desert tortoise exclusionary fence that would compromise the efficiency, an additional pre-construction clearance survey shall be conducted****

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 4

throughout the Project site. If no Mojave desert tortoises are found during the surveys, ~~no further mitigation would be required; however,~~ desert tortoise **exclusionary fencing—proof fence** encompassing the Project site shall remain in place until Project construction is completed and shall be monitored by a qualified biologist in compliance with current USFWS protocol. Should Mojave desert tortoise be located during the clearance survey, all methods used for handling desert tortoises during the clearance surveys must be in accordance with the USFWS Desert Tortoise Field Manual **and** ~~or~~ Project-specific guidance contained in a habitat conservation plan **and** ~~or~~ ITP ~~Incidental Take Permit~~. No take of Mojave desert tortoise shall occur without **prior** authorization in the form of an ~~ITP Incidental Take Permit~~ pursuant to California Fish and Game Code Section 2081 and a habitat conservation plan. The Project proponent shall adhere to measures and conditions set forth within the Incidental Take Permit. Anyone who handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS **and** CDFW. The area cleared and number of Mojave desert tortoises found within that area shall be reported to the local USFWS and appropriate state wildlife agency. Notification shall be made in accordance with the conditions of the habitat conservation plan **and** ~~or~~ ITP ~~Incidental Take Permit~~. ~~Should Mojave desert tortoise be located during the clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for Mojave desert tortoise. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres or as otherwise determined through coordination with USFWS and/or the California Department of Fish and Wildlife.~~

COMMENT #3: Burrowing Owl (*Athene cunicularia*) MM-BIO-11

Draft Environmental Impact Report

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to burrowing owl habitat. The Project may result in the take of burrowing owl, a CESA listed candidate species, during construction of the Project and life of the Project.

Specific impact: The DIER describes that multiple suitable burrowing owl burrows were located thorough the site although no sign of burrowing owl was observed, however since the time of surveying, burrowing owl could have potentially inhabited the site. If burrowing owl has inhabited the site the potential for the collapsing of burrows, entombment, displacement, direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, reduction of habitat and habitat quality could occur. The Project as described will cause permanent and temporary impacts to burrowing owl foraging and nesting habitat

Why impact would occur: On page 4.3-7 of the DEIR, the Project site contains open scrub habitat that may support burrowing owl. Additionally, the DEIR states that numerous potentially suitable burrows for nesting were found and mapped throughout the Project site. Although the DEIR states that no active sign of burrowing own was found throughout the site. Also, within the DEIR, it is noted that the most recent CNDDDB occurrence for burrowing owl is 4.5 miles southwest of the Project site is from 2008 however, this outdated occurrence does not preclude the potential that burrowing owl could inhabit the area. Lastly, the DEIR concludes that burrowing owl has a moderate potential to occur within the Project area and because the Project area contains suitable habitat for burrowing owl, the loss of burrowing owl habitat could result in significant impacts.

Evidence impact would be significant: The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.*, Fish and Game Code sections 3503.5, *etc.*) and Federal laws (*i.e.*, Migratory Bird

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 5

Treaty Act). Furthermore, following the Fish and Game Commission's decision to list burrowing owl as a candidate species under CESA, CDFW considers the take of burrowing owl and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant which may include that ground disturbing activities be postponed until appropriate authorization (*i.e.*, a finalized CESA ITP under Fish and Game Code section 2081) is obtained.

Recommended potentially feasible mitigation measure(s): CDFW appreciates that the DEIR provides a measure to minimize the Project's impacts to burrowing owl. CDFW offers the following revisions to MM-BIO-11 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final EIR.

Mitigation Measure: (MM-BIO-11) Burrowing Owl Surveys. (NEW)

~~MM-BIO-11. Pre-construction Surveys for Burrowing Owl and Avoidance.~~

~~One pre-construction burrowing owl survey shall be completed no more than 14 days before initiation of site preparation or grading activities, and a second survey shall be completed within 24 hours of the start of site preparation or grading activities. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction surveys, the Project site and offsite improvement areas shall be resurveyed. Surveys for burrowing owl shall be conducted in accordance with protocols established in the California Department of Fish and Wildlife (CDFW; then California Department of Fish and Game) 2012 (or most recent version) Staff Report on Burrowing Owl Mitigation. If burrowing owls are detected, the burrowing owl relocation plan shall be implemented in consultation with CDFW, with the plan to be approved by the Town. As required by the burrowing owl relocation plan, disturbance to occupied burrows shall be avoided during the nesting season (February 1 through August 31). Buffers shall be established around occupied burrows in accordance with guidance provided in CDFW's Staff Report on Burrowing Owl Mitigation. No Project activities shall be allowed to encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until it is determined that occupied burrows have been vacated or the nesting season has completed. Outside of the nesting season, passive owl relocation techniques shall be implemented. Owls shall be excluded from burrows in the immediate Project area and within a buffer zone by installing one-way doors in burrow entrances. These doors shall be in place at least 72 hours prior to ground-disturbing activities. The Project site shall be monitored daily for 1 week to confirm owl departure from burrows prior to any ground-disturbing activities. Compensatory mitigation for permanent loss of owl habitat, if the site is occupied by burrowing owl, shall be provided following the guidance in CDFW's Staff Report on Burrowing Owl Mitigation. Where possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels during excavation to maintain an escape route for any wildlife inside the burrow. An endoscope (fiber optic camera) should also be used to scope the burrow in front of the excavation. Occupied burrows that are excavated need to be replaced at a 2:1 ratio if there are already suitable burrows present nearby. Should burrowing owl be located during the clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for burrowing owl. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable burrowing owl habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres.~~

(MM-BIO-11) Burrowing Owl. An Incidental Take Permit (ITP) for Burrowing owl (*Athene cunicularia*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Burrowing owl habitat.

(MM-BIO-11.1.) Burrowing Owl Habitat Assessment. Prior to the initiation of ground disturbing activities, The Project proponent shall conduct a burrowing owl habitat assessment consistent with the 2012 Staff Report. A habitat assessment shall be conducted by Designated Biologist(s) knowledgeable of burrowing owl habitat, ecology, and field identification of the species, burrow and burrow surrogates, and burrowing owl

Daniel Alcayaga, Planning Manager
Town of Apple Valley
November 12, 2024
Page 6

sign at least thirty (30) calendar days prior to the initiation of ground disturbing activities. The assessment shall consist of walking the Project site to identify the presence of burrowing owl habitat. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. A report summarizing the results of the habitat assessment shall be submitted to CDFW within 10 days of survey completion.

(MM-BIO-11.2.) Burrowing Owl Avoidance. Project proponent shall clearly delineate a no-disturbance buffer of 250 ft radius around all burrowing owl burrows such as roosting and satellite burrows within and adjacent to within approximately 400 feet of the Project area with posted signs demarking the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl habitat. Project proponent shall delineate burrows with different materials than those used to delineate the Project area. Project proponent shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.

(MM-BIO-11.3.) Burrowing Owl Pre-Construction Surveys. The Project proponent shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity within three (3) days prior to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other “ornamentation,” feathers, prey remains, etc. If it is evident that the burrows are actively being used, the Project proponent shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan. CDFW shall be notified in writing of detection of active burrows within three (3) days.

(MM-BIO-11.4.) Burrowing Owl Survey Results. The Project proponent shall submit the survey methodology and results within ten days of survey completion and at least twenty-one days prior to commencement of ground disturbing activities to CDFW Inland Deserts Region.

(MM-BIO-11.5.) Burrowing Owl Plan. If burrowing owls are detected on the Project site, the Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of ground disturbing activities. If burrowing owls are detected after ground disturbing activities have been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation characteristics that will be impacted; 2) if avoidance of impacts is proposed details on avoidance actions and monitoring such as proposed buffers, visual barriers and other actions; 3) site monitoring to be conducted prior to, during, and after any exclusion of burrowing owls from their burrows sufficient to ensure take is avoided, daily monitoring with cameras and direct observation for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season, and process to document any excluded burrowing owls are using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight). If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of ground disturbing activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW review and approval.

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 7

(MM-BIO-11.6.) Burrowing Owls Observed During Construction. If burrowing owls are observed within the Project Site during Project implementation and construction, the Project proponent shall notify CDFW immediately in writing.

COMMENT #4: Nesting Birds MM-BIO-12

Draft Environmental Impact Report

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, SSC, and common birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project as described could result in direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, displacement, reduction of habitat and habitat quality associated with road infrastructure. The Project as described would cause permanent and temporary impacts to avian species' foraging and nesting habitat.

Why impact would occur: Within the DEIR, MM-BIO-12 limits nesting bird surveys to only occur within nesting bird season, CDFW would like to note that regardless the time of year, a pre-construction clearance survey should be conducted to avoid potential impacts to nesting birds. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success²³. On page 4.3-28, the DEIR states that the Project would result in loss of suitable habitat for LeConte's thrasher and Loggerhead strike through vegetation removal. MM-BIO-12 as outlined in the DEIR does not adequately give authority to the qualified biologist to monitor and determine whether the nest has been vacated in order to proceed without risking violation to state or federal laws.

Evidence impact would be significant: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto.

Recommended potentially feasible mitigation measure(s): CDFW appreciates that the Draft EIR provides a measure to minimize the Project's impacts to nesting birds. CDFW offers the following revisions to MM-BIO-12 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final EIR.

Mitigation Measure: (MM-BIO-12) Pre-construction Nesting Bird Surveys and Avoidance. **(REVISED)**

Special-status bird species that have a moderate potential to occur within the Project include burrowing owl, LeConte's thrasher, and loggerhead shrike, **pallid bat, and Townsend's big-eared bat**. The Project also contains trees, shrubs, and other vegetation that provide opportunities for other non-sensitive birds and raptors to nest on site. Construction activities shall avoid the migratory bird nesting season (typically February 1 through August 31) to reduce any potential significant impact to birds that

² Patricelli, G. L., & Blickley, J. L. 2006. Avian Communication in Urban Noise: Causes and Consequences of Vocal Adjustment. *The Auk*, 123(3), 639–649.
³ Halfwerk, W., L.J.M. Holleman, C. M Lessells, H. Slabbekoorn. 2011. Negative Impact of Traffic Noise on Avian Reproductive Success. *Journal of Applied Ecology* 48:210–219.

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 8

may be nesting in the survey area. ~~If construction activities must occur during the migratory bird nesting season,~~ **Regardless of the time of year, a pre-construction avian nesting clearance survey of the Project site and within 500 feet of all impact areas must be conducted to determine the presence/absence of protected migratory birds and active nests. The avian nesting survey shall be performed by a qualified wildlife biologist within 72 hours prior to the start of construction in accordance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513. If an active bird nest is found within the Project area or within 500 feet of the Project area, the nest shall be flagged and mapped on the construction plans, along with an appropriate buffer established around the nest, which shall be determined by the qualified biologist based on the species' sensitivity to disturbance (typically 300 feet for passerines and 500 feet for raptors and special status species). The nest area and buffers shall be monitored daily by the qualified biologist and avoided until the qualified biologist has determined the nest is vacated and the juveniles have fledged. The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall be conducted when construction occurs in close proximity to an active nest buffer. No Project activities shall encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until is determined by the qualified biologist that the nestlings have fledged and the nest is no longer active. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.**

COMMENT #5: Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

Draft Environmental Impact Report

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to Mohave ground squirrel habitat. The Project may result in the take of Mohave ground squirrel, a California Endangered Species Act (CESA) listed threatened, during construction of the Project and life of the Project.

Specific impact: Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to Mohave ground squirrel. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of up to 178 acres of Mohave ground squirrel habitat.

Why impact would occur: On page 4.3-6 of the DEIR, 31 special-status species were determined to have a moderate potential to occur within the Project boundary. Of those species, Mohave ground squirrel was determined to have the potential to occur. The DEIR states that focused surveys for Mohave ground squirrel were conducted and no further analysis will be conducted. Additionally, within the DEIR, it is noted that the most recent occurrence for Mohave ground squirrel is 9 miles southwest of the Project site is from 2011 however, this outdated occurrence does not preclude the potential that Mohave ground squirrel could inhabit the area. Lastly, the DEIR states that marginally suitable habitat is present, loss of suitable habitat may cause significant impacts to Mohave ground squirrel. Desert shrub vegetation such as creosote bush scrub (*Larrea tridentata*) are known to provide habitat for Mohave ground squirrel.

Evidence impact would be significant: Consistent with CEQA Guidelines, Section 15380, the status of the Mohave ground squirrel as a threatened species under the California Endangered Species Act (Fish & G. Code, § 2050 *et seq.*) qualifies it as an endangered, rare, or threatened species under CEQA.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW recommends the following mitigation measure MM-BIO-16 for Mohave ground squirrel be included in the Final EIR.

Mitigation Measure: (MM-BIO-16) Pre-construction Clearance Surveys for Mojave Ground Squirrel and Avoidance. (NEW)

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 9

Prior to the initiation of ground disturbing activities, focused pre-construction clearance surveys throughout the Project site for Mojave ground squirrel will be conducted by a qualified biologist familiar with the species' behavior and life history. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines⁴ (CDFW 2023). Visual surveys will be conducted prior to ground disturbing activities commencing between March 15 and April 15, visual surveys shall be conducted on the Project site during daylight hours but a qualified biologist who can readily identify Mohave ground squirrel (*Xerospermophilus mohavensis*) and White-tailed antelope squirrel (*Ammospermophilus leucurus*). If the results of the survey confirm absence, then the Qualified Biologist shall ensure Mojave ground squirrels do not enter the Project site. If the survey or monitoring throughout the duration of the Project confirms presence, the Project proponent shall obtain an Incidental Take Permit (ITP) for Mohave ground squirrel. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel.

COMMENT #6: Crotch's Bumble Bee (*Bombus crotchii*)

Draft Environmental Impact Report

Issue: The project may impact suitable habitat for Crotch's bumble bee (*Bombus crotchii*), a CESA candidate species, and has the potential for take pursuant to Fish & G. Code, § 2081(b).

Specific Impact: The Project may result in temporal or permanent loss of suitable nesting and foraging habitat. Project ground-disturbing activities may cause death or injury of adults, eggs, and larva; burrow collapse; nest abandonment; and reduced nest success.

Why impact would occur: On page 4.3-9, the DEIR states that the Project site contains scrub communities that could support the preferred plant genera for Crotch's bumble bee. Crotch's bumble bees are considered generalist foragers and have been observed to forage on a diverse range of floral species⁵. The DEIR states that because the focused surveys did not detect suitable flora therefore Crotch's bumble bee is not expected to occur throughout the Project area. CDFW would like to note that the absence of flora commonly associated with Crotch's bumble bee does not preclude that Crotch's bumble bee could inhabit the area.

Evidence impact would be significant: The California Fish and Game Commission accepted a petition to list Crotch's bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Crotch's bumble bee is granted full protection of a threatened species under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

If take or adverse impacts to Crotch's bumble bee cannot be avoided either during Project activities or over the life of the Project, the Project should obtain appropriate take authorization from CDFW pursuant to Fish & G. Code, § 2081 subdivision (b).

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW recommends the following mitigation measure MM-BIO-17 to Crotch's bumble bee for inclusion in the Final EIR.

Mitigation Measure: (MM-BIO-17) Surveys for Crotch's bumble bee. (NEW)

⁴ California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines.

⁵ Williams P.H., Thorp, R.W., Richardson L.L., and Colla S.R. 2014. Bumble Bees of North America: *An Identification Guide*. Princeton University Press.

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 10

(MM-BIO.17.1) Due to scrub communities that could support the floristic habitat within the Project site, a qualified entomologist familiar with the species behavior and life history shall conduct surveys to determine the presence/absence of Crotch’s bumble bee. Surveys should follow CDFW’s *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species*⁶. If no CESA-protected bumble bees are found during the surveys, but the habitat assessment identified suitable nesting, foraging, or overwintering habitat within the project site, it is recommended that a biological monitor be onsite during vegetation or ground disturbing activities. Survey results, including negative findings, should be submitted to CDFW prior to implementing Project-related ground disturbing activities. At minimum, a survey report should provide the following:

- a) A description and map of the survey area, focusing on areas that could provide suitable habitat for Crotch’s bumble bee. CDFW recommends the map show surveyor(s) track lines to document that the entire site was covered during field surveys.**
- b) Field survey conditions that should include name(s) of qualified entomologist(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals, and species searched.**
- c) Map(s) showing the location of nests/colonies.**
- d) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class; density, cover, and abundance of each species).**

(MM-BIO-17.1.2) If Crotch’s bumble bee is detected, the Project proponent in consultation with a qualified entomologist shall develop a plan to fully avoid impacts to Crotch’s bumble bee. The plan should include effective, specific, enforceable, and feasible measures. An avoidance plan should be submitted to CDFW prior to implementing ground disturbing activities and/or vegetation removal where there may be impacts to Crotch’s bumble bee.

(BIO-17.1.3) If Crotch’s bumble bee is detected and if impacts to Crotch’s bumble bee cannot be feasibly and fully avoided during Project construction and activities, the Project proponent shall coordinate with CDFW to obtain appropriate permits for incidental take of Crotch’s bumble bee and provide appropriate mitigation for impacts to Crotch’s bumble bee habitat.

COMMENT #7: Species Connectivity

Issue: The Project does not propose any avoidance or minimization measures specific to the Project impacts on the movement between species on the surrounding adjacent undeveloped areas.

Specific impact: The Project may result in a semi-permeable to impermeable barrier to wildlife connectivity that could result in the restriction of movement for species.

Why impact would occur: The project has the potential to isolate populations and restrict movement of genes between the adjacent surrounding undeveloped portions of land.

Evidence impact would be significant: The Project may result in habitat fragmentation due to the narrowing of wildlife corridors and routes⁷ between the two surrounding

⁶ California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species.
⁷ Crooks, K. R. 2002. Relative Sensitivities of Mammalian Carnivores to Habitat Fragmentation. *Conservation Biology*, 16(2), 488–502.

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 11

undeveloped areas. The Project could restrict gene flow between populations that may result in a lower genetic diversity that may decrease species fitness⁸⁹. Additionally, the Project may result in collision-related species mortality due to an increase in traffic patterns and roads¹⁰. Impacts to special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance.

Recommended potentially feasible mitigation measure to reduce to less than significant: CDFW recommends the adoption of MM-BIO-18 below in the Final EIR to ensure impacts related to species connectivity within the adjacent surrounding undeveloped areas are mitigated to a level of less than significant.

Mitigation Measure: (MM-BIO-17) Species Connectivity Database Observations. (NEW)

During Project all ground disturbing activities, the Qualified Biologist shall report any collision related mortalities that may occur within adjacent roadways of the Project site to the [California Roadkill Observation System \(CROS\)](#). In addition, the qualified Biologist shall report any identifiable recently sprouted native and nonnative plant species that occur within the Project area during Project activities to the [CalFlora Plant Observation database](#).

I. Editorial Comments and Suggestions

On pages 4.3-29 and 4.3-30 the DEIR states that mitigation for the following [Species of Special Concern](#) (SSC): LeConte's thrasher (*Toxostoma lecontei*), Loggerhead shrike (*Lanius ludovicianus*), Pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynothinus townsendii*) would be through Conservation of Western Joshua Tree Lands (MM-BIO-1) because habitat is similar to that of the Joshua tree woodlands. CDFW would like to note that the Western Joshua Tree Conservation Act (Fish and Game Code §§ 1927-1927.12) should only be used for conservation of the Western Joshua tree (*Yucca brevifolia*) species. Mitigation through the WJTCA is only applicable for the species of (*Yucca brevifolia*). Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). In addition, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). CDFW strongly recommends the Project proponent implement the revisions to MM-BIO-12 Pre-construction Nesting Bird Surveys and Avoidance to feasibly avoid any significant impacts to SSC species.

Invasive species awareness education program.

CDFW appreciates the incorporation of MM-BIO-5 Education Program and would like to suggest adding more awareness about invasive species as also mentioned within MM-BIO-14 Invasive Plant Management. Prior to the initiation of ground disturbing activities, the Project proponent should provide an education program to educate employees about the spread of invasive species associated within the project. The educational program should consist of a discussion of the invasive species currently present within the Project site as well as those that may pose a threat to or have the potential to invade the Project site. Through the implementation of ground disturbing activities, invasive species may be introduced to the surrounding undeveloped areas and may encroach on native plant species. Additionally, following the construction of the Project and beginning of industrial work; invasive species may still continue to spread and possibly encroach into surrounding areas.

ENVIRONMENTAL DATA

⁸ Clark, R. W., Brown, W. S., Stechert, R., & Zamudio, K. R. 2010. Roads, Interrupted Dispersal, and Genetic Diversity in Timber Rattlesnakes. *Conservation Biology*, 24(4), 1059–1069.

⁹ Dutcher, K.E., Vandergast, A.G., Esque, T.C., Mitelberg, A., Matocq, M.D., Heaton, J. S., & Nussear, K. E. 2020. Genes in space: what Mojave desert tortoise genetics can tell us about landscape connectivity. *Conservation Genetics* 21, 289–303.

¹⁰ Trombulak, S. C., & C. A. Frissell. (2000). Review of ecological effects of roads on terrestrial and aquatic communities. *Conservation Biology*, 14, 18–30.

Daniel Alcayaga, Planning Manager
Town of Apple Valley
November 12, 2024
Page 12

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 DEIR to assist the Town of Apple Valley in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Emily Leon, Environmental Scientist at Emily.Leon@wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

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

Julia Karo, Acting Senior Environmental Scientist, Supervisor
Inland Deserts Region
Julia.Karo@wildlife.ca.gov

ATTACHMENTS

Attachment A: Draft Mitigation Monitoring and Reporting Plan and Draft Recommendations

Daniel Alcayaga, Planning Manager
Town of Apple Valley
November 12, 2024
Page 13

REFERENCES

California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines.

California Department of Fish and Wildlife. 2013. Staff Report on Burrowing Owl Mitigation.

California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species.

Clark, R. W., Brown, W. S., Stechert, R., & Zamudio, K. R. 2010. Roads, Interrupted Dispersal, and Genetic Diversity in Timber Rattlesnakes. *Conservation Biology*, 24(4), 1059–1069.

Crooks, K. R. 2002. Relative Sensitivities of Mammalian Carnivores to Habitat Fragmentation. *Conservation Biology*, 16(2), 488–502. JSTOR,

Dutcher, K.E., Vandergast, A.G., Esque, T.C., Mittelberg, A., Matocq, M.D., Heaton, J. S., & Nussear, K. E. 2020. Genes in space: what Mojave desert tortoise genetics can tell us about landscape connectivity. *Conservation Genetics* 21, 289–303.

Halfwerk, W., L.J.M. Holleman, C. M Lessells, H. Slabbekoorn. 2011. Negative Impact of Traffic Noise on Avian Reproductive Success. *Journal of Applied Ecology* 48:210–219.

Patricelli, G. L., & Blickley, J. L. 2006. Avian Communication in Urban Noise: Causes and Consequences of Vocal Adjustment. *The Auk*, 123(3), 639–649.

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Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 14

Attachment A

Draft Mitigation Monitoring and Reporting Plan and Draft Recommendations

Biological Resources (BIO)		
Mitigation Measure (MM)	Implementation Schedule	Responsible Party
<p><u>MM-BIO-1. Conservation of Western Joshua Tree Lands.</u></p> <p>Obtain an Incidental Take Permit (ITP) for impacts to western Joshua tree (<i>Yucca brevifolia</i>) through compliance with the Western Joshua Tree Conservation Act (Fish and Game Code §§ 1927-1927.12) and adhere to the Western Joshua Tree Relocation Guidelines and Protocols if determined necessary by CDFW, or through the California Endangered Species Act (Fish and Game Code, §§ 2080-2085).</p> <p>Mitigation for direct impacts to 4 western Joshua trees that are 5 meters or greater in height, 201 trees 1 meter or greater but less than 5 meters in height, and 78 trees less than 1 meter in height will be fulfilled through a payment of the elected fees as described in Section 1927.3 of the Western Joshua Tree Conservation Act. In conformance with the reduced fee schedule, mitigation will consist of payment of \$1,000 for each western Joshua tree 5 meters or greater in height, \$200 for each western Joshua tree 1 meter or greater but less than 5 meters in height, and \$150 for each western Joshua tree less than 1 meter in height.</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project proponent and Qualified Biologist</p>
<p><u>MM-BIO-10. Pre-construction Clearance Surveys for Mojave Desert Tortoise and Avoidance.</u></p> <p>An Incidental Take Permit (ITP) for Desert tortoise (<i>Gopherus agassizii</i>) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and/or the California Department of Fish and Wildlife. One pre-construction clearance survey in accordance with current U.S. Fish and Wildlife Service (USFWS) protocol shall be conducted to reevaluate locations of potential Mojave desert tortoise burrows within the Project limits so take of Mojave desert tortoise can be avoided. The pre-construction clearance survey shall be conducted on the Project site in areas supporting potentially suitable habitat 14 to 21 days prior to the start of construction activities; or alternatively, pre-construction clearance surveys may be conducted at any time following the installation construction of a desert tortoise exclusionary fencing — proof fence encompassing the Project site that would ensure that tortoises cannot enter the Project after clearance surveys are completed. Should there be any faults</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project proponent and Qualified Biologist</p>

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 15

<p>following the installation of the desert tortoise exclusionary fence that would compromise the efficiency, an additional pre-construction clearance survey shall be conducted throughout the Project site. If no Mojave desert tortoises are found during the surveys, no further mitigation would be required; however, desert tortoise exclusionary fencing—proof fence encompassing the Project site shall remain in place until Project construction is completed and shall be monitored by a qualified biologist in compliance with current USFWS protocol. Should Mojave desert tortoise be located during the clearance survey, all methods used for handling desert tortoises during the clearance surveys must be in accordance with the USFWS Desert Tortoise Field Manual and or Project-specific guidance contained in a habitat conservation plan and or ITP Incidental Take Permit. No take of Mojave desert tortoise shall occur without prior authorization in the form of an ITP Incidental Take Permit pursuant to California Fish and Game Code Section 2081 and a habitat conservation plan. The Project proponent shall adhere to measures and conditions set forth within the Incidental Take Permit. Anyone who handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS and CDFW. The area cleared and number of Mojave desert tortoises found within that area shall be reported to the local USFWS and appropriate state wildlife agency. Notification shall be made in accordance with the conditions of the habitat conservation plan and or ITP Incidental Take Permit. Should Mojave desert tortoise be located during the clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for Mojave desert tortoise. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres or as otherwise determined through coordination with USFWS and/or the California Department of Fish and Wildlife.</p>		
<p>(MM-BIO-11) Burrowing Owl. An Incidental Take Permit (ITP) for Burrowing owl (<i>Athene cunicularia</i>) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Burrowing owl habitat.</p> <p><u>(MM-BIO-11.1) Burrowing Owl Habitat Assessment.</u> Prior to the initiation of ground disturbing activities, The Project proponent shall conduct a burrowing owl habitat assessment consistent with the 2012 Staff Report. A habitat assessment shall be conducted by Designated Biologist(s) knowledgeable of burrowing owl habitat, ecology, and field identification of the species, burrow and burrow surrogates, and burrowing owl sign at least thirty (30) calendar days prior to the initiation of ground disturbing activities. The assessment shall consist of walking the Project site to identify the presence of</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project proponent and Qualified Biologist</p>

Daniel Alcayaga, Planning Manager
Town of Apple Valley
November 12, 2024
Page 16

<p>burrowing owl habitat. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. A report summarizing the results of the habitat assessment shall be submitted to CDFW within 10 days of survey completion.</p> <p><u>(MM-BIO-11.2.) Burrowing Owl Avoidance.</u> Project proponent shall clearly delineate a no-disturbance buffer of 250 ft radius around all burrowing owl burrows such as roosting and satellite burrows within and adjacent to within approximately 400 feet of the Project area with posted signs demarking the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl habitat. Project proponent shall delineate burrows with different materials than those used to delineate the Project area. Project proponent shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.</p> <p><u>(MM-BIO-11.3.) Burrowing Owl Pre-Construction Surveys.</u> The Project proponent shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity within three (3) days prior to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other “ornamentation,” feathers, prey remains, etc. If it is evident that the burrows are actively being used, the Project proponent shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan. CDFW shall be notified in writing of detection of active burrows within three (3) days.</p> <p><u>(MM-BIO-11.4.) Burrowing Owl Survey Results.</u> The Project proponent shall submit the survey methodology and results within ten days of survey completion and at least twenty-one days prior to commencement of ground disturbing activities to CDFW Inland Deserts Region.</p> <p><u>(MM-BIO-11.5.) Burrowing Owl Plan.</u> If burrowing owls are detected on the Project site, the Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of ground disturbing activities. If burrowing owls are detected after ground disturbing activities have been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation</p>		
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Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 17

<p>characteristics that will be impacted; 2) if avoidance of impacts is proposed details on avoidance actions and monitoring such as proposed buffers, visual barriers and other actions; 3) site monitoring to be conducted prior to, during, and after any exclusion of burrowing owls from their burrows sufficient to ensure take is avoided, daily monitoring with cameras and direct observation for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season, and process to document any excluded burrowing owls are using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight). If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of ground disturbing activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW review and approval.</p> <p><u>(MM-BIO-11.6.) Burrowing Owls Observed During Construction.</u> If burrowing owls are observed within the Project Site during Project implementation and construction, the Project proponent shall notify CDFW immediately in writing.</p>		
<p><u>MM-BIO-12. Pre-construction Nesting Bird Surveys and Avoidance.</u></p> <p>Special-status bird species that have a moderate potential to occur within the Project include burrowing owl, LeConte's thrasher, and loggerhead shrike, pallid bat, and Townsend's big-eared bat. The Project also contains trees, shrubs, and other vegetation that provide opportunities for other non-sensitive birds and raptors to nest on site. Construction activities shall avoid the migratory bird nesting season (typically February 1 through August 31) to reduce any potential significant impact to birds that may be nesting in the survey area. If construction activities must occur during the migratory bird nesting season, Regardless of the time of year, a pre-construction avian nesting clearance survey of the Project site and within 500 feet of all impact areas must be conducted to</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project proponent and Qualified Biologist</p>

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 18

<p>determine the presence/absence of protected migratory birds and active nests. The avian nesting survey shall be performed by a qualified wildlife biologist within 72 hours prior to the start of construction in accordance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513. If an active bird nest is found within the Project area or within 500 feet of the Project area, the nest shall be flagged and mapped on the construction plans, along with an appropriate buffer established around the nest, which shall be determined by the qualified biologist based on the species' sensitivity to disturbance (typically 300 feet for passerines and 500 feet for raptors and special status species). The nest area and buffers shall be monitored daily by the qualified biologist and avoided until the qualified biologist has determined the nest is vacated and the juveniles have fledged. The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall be conducted when construction occurs in close proximity to an active nest buffer. No Project activities shall encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until is determined by the qualified biologist that the nestlings have fledged and the nest is no longer active. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.</p>		
<p><u>(MM-BIO-16) Pre-construction Clearance Surveys for Mojave Ground Squirrel and Avoidance. (NEW)</u></p> <p>Prior to the initiation of ground disturbing activities, focused pre-construction clearance surveys throughout the Project site for Mojave ground squirrel will be conducted by a qualified biologist familiar with the species' behavior and life history. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines¹¹ (CDFW 2023). Visual surveys will be conducted prior to ground disturbing activities commencing between March 15 and April 15, visual surveys shall be conducted on the Project site during daylight hours but a qualified biologist who can readily identify Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>) and White-tailed antelope squirrel (<i>Ammospermophilus leucurus</i>). If the results of the survey confirm absence, then the Qualified Biologist shall ensure Mojave ground squirrels do not enter the Project site. If the survey or monitoring throughout the duration of the Project confirms presence, the Project proponent shall obtain an Incidental Take Permit (ITP) for Mohave ground squirrel. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel.</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project proponent and Qualified Biologist</p>
<p><u>(MM-BIO.17.1) Surveys for Crotch's bumble bee. (NEW)</u></p>		<p>Project proponent and</p>

¹¹ California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines.

Daniel Alcayaga, Planning Manager
 Town of Apple Valley
 November 12, 2024
 Page 19

<p>Due to scrub communities that could support the floristic habitat within the Project site, a qualified entomologist familiar with the species behavior and life history shall conduct surveys to determine the presence/absence of Crotch’s bumble bee. Surveys should follow CDFW’s <i>Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species</i>¹². If no CESA-protected bumble bees are found during the surveys, but the habitat assessment identified suitable nesting, foraging, or overwintering habitat within the project site, it is recommended that a biological monitor be onsite during vegetation or ground disturbing activities. Survey results, including negative findings, should be submitted to CDFW prior to implementing Project-related ground disturbing activities. At minimum, a survey report should provide the following:</p> <p>a) A description and map of the survey area, focusing on areas that could provide suitable habitat for Crotch’s bumble bee. CDFW recommends the map show surveyor(s) track lines to document that the entire site was covered during field surveys.</p> <p>b) Field survey conditions that should include name(s) of qualified entomologist(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals, and species searched.</p> <p>c) Map(s) showing the location of nests/colonies.</p> <p>d) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class; density, cover, and abundance of each species).</p> <p>(MM-BIO-17.1.2) If Crotch’s bumble bee is detected, the Project proponent in consultation with a qualified entomologist shall develop a plan to fully avoid impacts to Crotch’s bumble bee. The plan should include effective, specific, enforceable, and feasible measures. An avoidance plan should be submitted to CDFW prior to implementing ground disturbing activities and/or vegetation removal where there may be impacts to Crotch’s bumble bee.</p> <p>(BIO-17.1.3) If Crotch’s bumble bee is detected and if impacts to Crotch’s bumble bee cannot be feasibly and fully avoided during Project construction and activities, the Project proponent shall coordinate with CDFW to obtain appropriate permits for incidental take of Crotch’s bumble bee</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Qualified Entomologist</p>
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¹² California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. [Bumble Bee Survey Guidelines \(ca.gov\)](https://www.calendangered.org/conservation/survey-guidelines)

Daniel Alcayaga, Planning Manager
Town of Apple Valley
November 12, 2024
Page 20

and provide appropriate mitigation for impacts to Crotch’s bumble bee habitat.		
Mitigation Measure: (MM-BIO-17) Species Connectivity Database Observations. (NEW) During Project all ground disturbing activities, the Qualified Biologist shall report any collision related mortalities that may occur within adjacent roadways of the Project site to the California Roadkill Observation System (CROS) . In addition, the qualified Biologist shall report any identifiable recently sprouted native and nonnative plant species that occur within the Project area during Project activities to the CalFlora Plant Observation database .	Prior to the initiation of ground disturbing activities and during Project activities	Project proponent and Qualified Biologist