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

February 22, 2024
Sent via email

Ryan Leonard, Principal Planner
City of Hesperia
9700 Seventh Ave
Hesperia, CA 92345

Dear Mr. Ryan Leonard:

Elite Surplus Distributors, LLC (Site Plan Review [SPR] 22-00009) (PROJECT)
MITIGATED NEGATIVE DECLARATION
SCH# 2024010366

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Hesperia 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Elite Surplus Distributors, LLC, Rogelio Ordaz

[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.

Objective: The objective of the Project will involve the construction and subsequent operation of a new single story metal storage/office building and parking lot with 54,273 square feet to be developed. The new metal storage building would consist of a total floor area of 11,200 square feet for warehousing and storage with an office portion of 1,000 square feet. Landscaping would total 5,993 square feet and would be located along Lemon Street and "E" Avenue and a concrete masonry wall will be constructed along the project site's west, north, and east sides. Primary Project activities include grading, building construction, paving, and landscaping.

Location: The project site is located in the north-central portion of the City of Hesperia, San Bernadino County, California on the southwest corner of Lemon Street and "E" Avenue, coordinates (34.442061, -117.288189) within the United States Geological Survey Hesperia, California Quadrangle (1956), Township 4 North, Range 4 West.

Timeframe: The Project is projected to begin sometime in 2024 and take three months to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist City of Hesperia in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that a Mitigated Negative Declaration (MND) is appropriate for the Project.

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

Section 3.4 Biological Resources, Page 31

Issue: CDFW is concerned that the MND does not adequately address western Joshua tree (WJT) as a candidate threatened species under the California Endangered Species Act (CESA). Species classified as a candidate species under CESA are afforded the same protection as CESA listed species. If any WJTs are to be relocated, removed, or otherwise taken, the Project proponent should obtain an Incidental Take Permit (ITP) from CDFW under §2081 of CESA, or under the Western Joshua Tree Conservation Act (WJTCA) (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, removal, replanting or any activity that may result in take of WJT onsite. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12).

Specific impact: In photos provided in the WJT report there appear to be multiple WJTs both within and adjacent to the Project which could be impacted by Project activities.

Why impact would occur: The MND indicates the Project has the potential for take of WJT through Project activities such as grading, clearing vegetation, stock piling and the use of heavy equipment. The proposed avoidance buffers in Appendix B – Joshua Tree Report are inadequate in protecting the root zone of the WJT. Damage to and killing of WJT roots may kill the individual tree, however it could take several years for the WJT to die. Excessive heat, drought, or other disturbance to the WJT following damage to and killing of its roots may hasten the death of the WJT or increase the likelihood that it will die.

Additionally, in photos provided in the WJT report there appear to be multiple WJTs within 50 feet of the Project boundary on the south end, and a dead WJT in the zone where the main building will be constructed near the living WJT identified in the report. Project activities may impact WJTs within and adjacent to the Project site. All live and dead trees within the Project site and up to 50 feet surrounding the project site need to be included in a census and application for the WJTCA.

Evidence impact would be significant: WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085, §§ 1927-1927.12). Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill”.

Further, the California state legislature has enacted the WJTCA in order to provide protection of WJT. The Project applicant may submit to CDFW for its approval a WJTCA ITP Application and a census pursuant to Fish and Game Code section 1927.3, subdivision (a)(1). The census shall include size information and photographs that categorize WJT according to the following height classes: (1) Less than one meter, (2) One meter or greater but less than 5 meters, (3) Five meters or greater. For more information on the WJTCA, please visit the CDFW Western Joshua Tree Conservation Act Incidental Take Permit website.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant: CDFW offers the following revisions to Mitigation Measure BIO-1 (edits are in strikethrough and **bold**)

Mitigation Measure # BIO-1:

The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to the issuance of grading permits**, initiation of western Joshua tree removal, relocation, replanting, trimming or pruning or any activity that may result in take of WJT on site,** ~~that~~ **the** Project applicant shall have obtained an approved California Endangered Species Act (CESA) Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) pursuant to Section 2081 subdivision (b) of the Fish and Game Code.**, or other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act**

(WJTCA) of Fish and Game Code (§§ 1927-1927.12). California Fish and Game Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill". Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927- 1927.12). To execute a CESA ITP or WJTCA ITP, CDFW requires documentation of CEQA compliance. CDFW requires CEQA documentation to include proof of filing fees and State Clearinghouse circulation, including assignment of a State Clearinghouse number. The Project applicant will adhere to measures and conditions set forth within the Incidental Take Permit. To **further** ensure CESA compliance, the following measures shall be implemented by the Project applicant:

- General provisions involving a designated representative, designated biologist(s), an education program, construction monitoring documentation, trash abatement, and hazardous waste removal.
- Monitoring, notification, and reporting provisions including notification before commencement, notification of non-compliance, compliance monitoring, quarterly compliance report, annual status report, California Natural Diversity Database observations, final mitigation report, and notification of take or damage.
- Take minimization measures including covered species avoidance, perimeter fencing, dust control, and prevention of the introduction of invasive species in agreement with California Invasive Plant Council's guidelines.
- Obtain mitigation land credits at a ratio approved by CDFW within a CDFW approved conservation bank designated to permanently protect the population of Joshua tree.
- In the case that mitigation land within a CDFW approved conservation bank may not be secured, habitat management lands shall be acquired to establish land for permanent protection and management of Joshua tree habitat at the discretion of CDFW.

COMMENT #2: Bats

Section 3.4 Biological Resources, Page 31

Issue: Outside of the site visit and the WJT report, no other biological assessments or surveys were provided within the document. CDFW is concerned that without current biological survey results, including protocol presence/absence surveys and a thorough impact analysis, it is unclear whether this component of the Project and lack of thorough analysis could result in significant impacts to biological resources including various bat species.

Specific impact: The MND lacks a complete and recent assessment of biological resources within the Project site and surrounding area. Specifically, the Project could cause significant impacts to bat species that occur within the Project vicinity. There are

25 species of bats in California, and 16 use culverts. Because relatively high percentages of the populations of Mexican free-tailed bats (*Tadarida brasiliensis mexicanus*), Yuma bats (*Myotis yumanensis*), and pallid bats (*Antrozous pallidus*) roost in culverts, these species are the most susceptible to adverse effects by maintenance and construction activites.

Why impact would occur: On the south end of the Project site is a culvert used to convey flows below E avenue within 500 feet of the Project site. Many bat species roost in a variety of culvert structures associated with road and railway transportation alignments; these include concrete box culverts, concrete arch culverts, concrete pipe culverts, and corrugated metal pipe culverts. Occupied culverts are found in a variety of habitats, including heavily urbanized landscapes, and bats have been documented day roosting (including maternity roosting), night roosting, and even mating within culvert structures. Day roost features often used by bats in culverts vary widely and can include overlap joints, expansion joints, manhole access shafts, drainage pipes, open concrete surfaces, and bird nests. Warehouse, office, and parking lot construction would require ground disturbance (e.g., trenching, grading, soil compaction, burrow loss, and earth-moving activities) and vegetation removal. These activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance. These disturbances can cause indirect impacts, and/or take of bats.

Evidence impact would be significant: Misconceptions about what constitutes suitable roosting habitat for bats in culverts can result in these structures being overlooked during the environmental review process, and consequently impacts to bats roosting in culverts are often not adequately minimized or mitigated. Bridges and culverts provide roosting habitat for 16 of the 25 bat species that occur in California. These roosting features are analogous to naturally occurring roosts, many of which have been degraded or lost due to disturbance and other anthropogenic influences. In many cases the large mass of these human-made structures replaces some of the lost natural roosting habitat resources for bats and provides them with stable thermal conditions that bats require throughout their lifecycle. Over the past several decades, the importance of bridges and culverts as roosting habitat has become increasingly apparent.

Because roosting habitat is a limited and declining resource for bats, overlooking culverts or less-commonly encountered features in culverts, such as roosts, can have profound conservation and management implications. The MND lacks an adequate bat survey, and a mitigation measure for the protection of bats.

Pallid bat is CDFW Species of Special Concern which meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). CEQA provides protection not only for CESA-listed species, but for any species including but not limited to Species of Special Concern (SSC) which can be shown to meet the criteria for State listing.

Project activities such as elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance can create impacts through destruction of nests, and abandonment of nests and roosts. These impacts can lead to the abandonment of young, loss of mating and foraging sites, and decrease the population size in the area surrounding the Project site if not properly managed.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW offers the following Mitigation Measure

Mitigation Measure #: BIO-2

Prior to the initiation of Project activities within suitable bat roosting habitat, the permittee shall retain a qualified biologist to conduct focused surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. Two spring surveys (April through June) and two winter surveys (November through January) shall be performed by qualified biologists. Surveys shall be conducted during favorable weather conditions only. Each survey shall consist of one dusk emergence survey (start one hour before sunset and last for three hours), followed by one pre-dawn re-entry survey (start one hour before sunrise and last for two hours), and one daytime visual inspection of all potential roosting habitat on the Project site. Surveys shall be conducted within one 24-hour period. Visual inspections shall focus on the identification of bat sign (i.e., individuals, guano, urine staining, corpses, feeding remains, scratch marks and bats squeaking and chattering). Bat detectors, bat call analysis, and visual observation shall be used during all dusk emergence and pre-dawn re-entry surveys. If active maternity roosts are identified in the work area or 500 feet extending from the work area during preconstruction surveys for maternity roosts, Project construction will only occur outside of the maternity roosting season. Maternity roosts shall not be evicted, excluded, removed, or disturbed. If active hibernacula are identified in the work area or 500 feet extending from the work area, a minimum 500-foot no work buffer shall be provided around wintering roosts (hibernacula). The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers shall be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise. Hibernacula roosts shall not be evicted, excluded, removed, or disturbed.

Comment #3: Burrowing Owl (*Athene cunicularia*)

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Specific impact: The MND lacks a complete and recent assessment of biological resources within the Project site and surrounding area. The Project could cause significant impacts to biological resources including burrowing owl.

Why impact would occur: Burrowing owls are well-adapted to open, relatively flat expanses and vacant lots and prefer habitats with generally short sparse vegetation with few shrubs such as those occurring on the sites identified for future development. CDFW is aware of active burrows and burrowing owl observations (CNDDB) occurring within the Project site. Maintenance of ephemeral streambeds would require ground disturbance (e.g., trenching, grading, soil compaction, burrow loss, and earth-moving activities) and vegetation removal. These activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance.

Evidence impact would be significant: Habitat loss is a threat to burrowing owls (CDFG, 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing owl are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). Burrowing owl is a CDFW Species of Special Concern – The California Biologist's Handbook (biologistshandbook.com). CEQA provides protection not only for CESA-listed species, but for any species including but not limited to Species of Special Concern (SSC) which can be shown to meet the criteria for State listing. Burrowing owl is a species of special concern that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

Mitigation Measure #: BIO-3

Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted 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 surveys shall include 100 percent coverage of the Project site. A report summarizing the breeding season survey including all requirements for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review and approval.

If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary.

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 reviewed and approved by CDFW prior to commencing Project activities. The plan shall include 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. The ratio of acquisition to loss must in most cases exceed 1:1 for any species, particularly burrowing owl. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats.

Mitigation Measure #: BIO-4

To ensure that the Project avoids impacts to burrowing owl, a qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.

Comment #4 Nesting Birds

Specific impact: The MND lacks a complete and recent assessment of biological resources within the Project site and surrounding area. The Project could cause significant impacts to biological resources including nesting birds.

Why impact would occur: Project activities may cause adverse reactions to nesting birds. The mitigation measure provided no methodology for the pre-construction survey, which could result in the take of nesting birds if an active nest is not properly identified.

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

Mitigation Measure #: BIO-5

Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Surveys shall encompass all suitable areas, including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration will take into consideration the size of the property; density and complexity of habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure that the data collected is complete and accurate. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nesting locations and nesting behavior (i.e., copulation, carrying food or nesting materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury, or distraction displays, or other behaviors). Surveyors shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the surveying/monitoring efforts (e.g., limit the number of surveyors, limit the time spent at/near the nest, scan the site for potential predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed, but thought to be inactive, the Designated Biologist(s) shall monitor the nest for one hour (four hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The Designated Biologist(s) shall use their best professional judgement regarding monitoring period and whether approaching the nest is appropriate.

When an active nest is confirmed, the Designated Biologist(s) shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Designated Biologist(s) shall document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Designated Biologist(s) may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Designated Biologist(s) shall use his/her professional expertise to determine the frequency of monitoring required (based on the nest location, bird species, and identified maintenance activities) at the onset of any changes in Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficiency of the buffer.

Permittee, under the direction of the Designated Biologist(s), may also take steps to discourage nesting on the Project site, including moving equipment and materials daily, covering materials with tarps or fabric, and securing all open pipes and construction materials. The Designated Biologist(s) shall ensure that none of the materials used propose an entanglement risk to birds or other species.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 Mitigated Negative Declaration for the Elite Surplus Distributors, LLC (Site Plan Review [SPR] 22-00009) (SCH# 2024010366) and recommends that the City of Hesperia address the CDFW's comments and concerns prior to approving the revised MND.

Questions regarding this letter or further coordination should be directed to Julian Potier, Environmental Scientist at (909)938-6112 or julian.potier@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8373E4C480...

Alisa Ellsworth
Environmental Program Manager

Attachments

A. MMRP

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 requirement. 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
Mitigation Measure BIO-1: The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to the issuance of grading permits, initiation of western Joshua tree removal, relocation, replanting, trimming or pruning or any activity that may result in take of WJT on site, the project applicant shall have obtained an approved California Endangered Species Act (CESA) Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) pursuant to Section 2081 subdivision (b) of the Fish and Game Code., or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (WJTCA) of Fish and Game Code (§§ 1927-1927.12). California Fish and Game Code section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12). To execute a CESA ITP or WJTCA ITP, CDFW requires documentation of CEQA compliance. CDFW requires CEQA documentation to include proof of filing fees and State Clearinghouse circulation, including	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

assignment of a State Clearinghouse number. The Project applicant will adhere to measures and conditions set forth within the Incidental Take Permit. To further ensure CESA compliance, the following measures shall be implemented by the Project applicant: • General provisions involving a designated representative, designated biologist(s), an education program, construction monitoring documentation, trash abatement, and hazardous waste removal. • Monitoring, notification, and reporting provisions including notification before commencement, notification of non-compliance, compliance monitoring, quarterly compliance report, annual status report, California Natural Diversity Database observations, final mitigation report, and notification of take or damage. • Take minimization measures including covered species avoidance, perimeter fencing, dust control, and prevention of the introduction of invasive species in agreement with California Invasive Plant Council's guidelines. • Obtain mitigation land credits at a ratio approved by CDFW within a CDFW approved conservation bank designated to permanently protect the population of Joshua tree. • In the case that mitigation land within a CDFW approved conservation bank may not be secured, habitat management lands shall be acquired to establish land for permanent protection and management of Joshua tree habitat at the discretion of CDFW.		
Mitigation Measure #: BIO-2 Prior to the initiation of Project activities within suitable bat roosting habitat, the permittee shall retain a qualified biologist to conduct focused surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. Two spring surveys (April through June) and two winter surveys (November through January) shall be performed by qualified biologists.	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

Surveys shall be conducted during favorable weather conditions only. Each survey shall consist of one dusk emergence survey (start one hour before sunset and last for three hours), followed by one pre-dawn re-entry survey (start one hour before sunrise and last for two hours), and one daytime visual inspection of all potential roosting habitat on the Project site. Surveys shall be conducted within one 24-hour period. Visual inspections shall focus on the identification of bat sign (i.e., individuals, guano, urine staining, corpses, feeding remains, scratch marks and bats squeaking and chattering). Bat detectors, bat call analysis, and visual observation shall be used during all dusk emergence and pre-dawn re-entry surveys. If active maternity roosts are identified in the work area or 500 feet extending from the work area during preconstruction surveys for maternity roosts, Project construction will only occur outside of the maternity roosting season. Maternity roosts shall not be evicted, excluded, removed, or disturbed. If active hibernacula are identified in the work area or 500 feet extending from the work area, a minimum 500-foot no work buffer shall be provided around wintering roosts (hibernacula). The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers shall be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise. Hibernacula roosts shall not be evicted, excluded, removed, or disturbed.		
Mitigation Measure #: BIO-3 Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted 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 surveys shall include 100 percent coverage of the Project site. A report summarizing the breeding season survey including all	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

requirements for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review and approval. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. 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 reviewed and approved by CDFW prior to commencing Project activities. The plan shall include 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. The ratio of acquisition to loss must in most cases exceed 1:1 for any species, particularly burrowing owl. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats.		

Mitigation Measure #: BIO-4 To ensure that the Project avoids impacts to burrowing owl, a qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent
Mitigation Measure #: BIO-5 Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent