



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
 3602 Inland Empire Boulevard, Suite C-220
 Ontario, CA 91764
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 20, 2024
 Sent via email

Oliver Mujica
 Contract Planner III
 San Bernardino County
 395 N. Arrowhead Avenue,
 San Bernardino, California 92415

Dear Oliver Mujica:

Love's Truck Stop and Mobile Home Park (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2024110967

The California Department of Fish and Wildlife (CDFW) received an Initial Study/ Mitigated Negative Declaration from San Bernardino County for the Project pursuant to 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: Love's Travel Stops and Country Stores

Objective: The objective of the Project is to develop Baker Travel Stop and Mobile Home Park, a travel stop and mobile home park, encompassing a Project Area of approximately 24.78 acres. The travel stop encompasses 22.6 acres of the Project Area, occupying 18.6 acres and include: a 12,200 square foot (sf) building with 9,600 sf utilized as a convenience store and 2,600 sf for fast-food branded restaurants, above ground diesel storage, below ground storage tanks, auto fueling station with 16 fueling positions, truck

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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fueling station with 7 fueling positions, truck scale, single Recreational Vehicle (RV) dump station, 5 bioretention areas, 100 overnight truck parking spots, 48 car parking spots, 3 RV parking spots, 11 overnight RV parking spots with water and RV dump hookup station, trash enclosure and utility yard, underground storm drain system, and 5,000 sf dog park. The travel stop is proposed to operate 24 hours a day, 7 days a week and employ 55 workers.

The mobile home portion of the Project occurs on 2.18 acres and would be used as residences for employees of the travel stop. The mobile home includes the installation of 8 mobile homes sized by 60 feet by 14 feet. Additionally, construction associated with the mobile home park will include 2 parking spots for each mobile home, 14 visitor parking spots, 2 bioretention areas, 6-foot-tall fence surrounding mobile home and landscaping with shaded canopies.

The Project utility connection would be connected by Baker Community Services District. The travel stop would connect to water and sewer via 4-inch water pipe for fast-food restaurants, convenience store, RV hookup and dump station; 4, 6 and 8-inch pipes for sewer connection, and 10-inch pipes for fire hydrant connections. The mobile home portion of the Project will connect to water via 1-inch water services that would connect to 8-inch water main located on the road. An 8-inch sewer pipe located along the road will also connecting to existing facilities on Baker Boulevard.

Location: The Project is located in Baker, County of San Bernardino, State of California. The Project occurs on two Assessor Parcel Numbers (APN) 0544-471-11 with latitude/longitude of 35.27794066583571, -116.05592096641799, and APN 0544-472-03 with a latitude and longitude of 35.27680043496089, -116.05509763926909. APN 0544-471-11 is bordered by Silver Lane to the north, Baker Boulevard to the south and east, Lakeview Road to the east, and Caltrans Avenue to the west. APN 0544-472-03 is bordered by Baker Boulevard to the north, Interstate 15 (I-15) to the south and undeveloped land to the east and west.

Timeframe: Construction is anticipated to occur over 1-year period, with both the travel stop and mobile home park being completed simultaneously.

COMMENTS AND RECOMMENDATIONS

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

COMMENT #1: Western Burrowing Owl (*Athene cunicularia hypugaea*)

IS/MND page 44, Appendix B Biological Resources Supporting Information page 13-14

Issue: On October 25, 2024, the western burrowing owl (burrowing owl) was designated as a candidate species under the California Endangered Species Act (CESA) and as such is granted the full protection of a threatened species under CESA. The Project has the potential to result in permanent and temporary loss, degradation, and impacts to western burrowing owl and its habitat.

Specific impact: Although no evidence of burrowing owl was detected within the Project site or in the adjoining areas, the Project site is within predicted burrowing owl habitat (CNDDDB). The Project site also has suitable nesting habitat as stated in the Appendix B Biological Resources document. The Project includes the potential to impact burrowing owl through the collapsing of burrows, entombment, displacement, direct take associated with vehicle and equipment strike, indirect take associated with Project activities such as attracting predators, reduction of habitat and habitat quality associated with the construction of the travel stop. The Project may cause permanent and temporary impacts to burrowing owl foraging and potential nesting habitat.

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Why impact would occur: The Appendix B Biological Resources document mentions burrowing owl and the fact that possible suitable habitat occurs onsite with unvegetated/vegetation with low growing plant species that allow for line of sight. The document continues to mention that no burrows or sign of burrowing owl was observed during the site visit of October 6, 2021. The Appendix B Biological Resources document and the MND do not provide information on whether fossorial mammals occur onsite providing burrows for burrowing owl to utilize, nor mention in the species compendium list what species were observed or sign of species observed during site visits conducted October 6, 2021, and June 29, 2023. Burrowing owls have been known to use highly degraded and marginal habitats where existing burrows are available, and often live in close proximity to human developments. Additionally,, the Appendix B Biological Resources document and MND mention no burrows sized 4 inches or greater were found during the site visits but does not give further context as to what size burrows were found. Finally, the MND does not address the potential for burrowing owl to utilize the Project site and provide for surveys prior to vegetation removal and/or ground-disturbing activities.

Evidence impact would be significant: Habitat loss is a threat to burrowing owls (CDFG, 2012). Additionally, burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to direct and 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 owls are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). As a candidate species, western burrowing owl is granted full protection as a threatened species under CESA. 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." CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species, and the impacts must be minimized and fully mitigated.

Recommended Potentially Feasible Mitigation Measures: CDFW recommends the following measures to be included into the final MND.

MM-BIO-3: Burrowing Owl Surveys

Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), focused burrowing owl surveys shall be conducted by a qualified biologist according to the CDFW Staff Report on Burrowing Owl Mitigation (CDFG, 2012 or most recent version) for the project site and surrounding 500 ft radius. Take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. 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, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If the surveys confirm the presence of burrowing owls, active burrows or signs thereof, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. If impacts to occupied burrowing owl habitat or burrow cannot be fully avoided, consultation with CDFW is warranted to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP prior to any ground disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b). Full mitigation often involves the permanent conservation of

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quality habitat benefiting the species through a conservation easement, along with habitat enhancement and ongoing management funded appropriately. Passive relocation, performed according to the Staff Report on Burrowing Owl Mitigation (CDFG, 2012) may be authorized through the incidental take permit as a minimization measure.

COMMENT #2: Permanent Lighting

Issue: The IS/MND does not adequately discuss plans for artificial nighttime lighting. The Project is mentioned to incorporate multiple “on-site lighting” aspects as part of the travel stop of the Project.

Specific impact: The Project has the potential to adversely affect wildlife in the open-space areas adjacent to the Project site. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation (Gatson, et al., 2013).

Why impact would occur: The Project proposes multiple on-site lighting throughout the Project with a brief mention that the lighting will be faced downward and shielded, however the IS/MND does not provide any further context or design for shielding or structure for lighting. Furthermore, The Project IS/MND discusses the new sources of lighting to include nighttime lighting from streetlights, decorative landscaping, exterior building lights, and artificial light created by employees and customers. Finally, the travel stop portion of the Project is mentioned to be open 24-hours a day, 7 days a week, inferring the artificial lighting will be continuous. CDFW does not find this information adequately addresses the potential impacts from artificial lighting for the Project. CDFW recommends the final IS/MND includes an analysis of the direct, indirect, and cumulative impacts of permanent artificial nighttime lighting on biological resources within open-space adjacent to the Project.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration. Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Recommended Potentially Feasible Mitigation Measures: CDFW recommends the following measure be included into the final MND.

MM-BIO-4: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, San Bernardino County and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. San Bernardino County and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). San Bernardino County and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

COMMENT #3: Nesting Birds

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Issue: The Project has the potential to impact nesting birds, including CESA-listed birds, CDFW Species of Special Concern (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 implementation could result in the loss of nesting and/or foraging habitat for (non-) passerine and raptor species.

Why impact would occur: Nesting avian species could be directly or indirectly impacted during construction and for the life of the Project through the removal of potential foraging habitat and loss of and/or modification of habitat features by the construction of the travel stop or mobile home portions of the Project, and vibration during construction and the removal of vegetation. Nest destruction, nest abandonment, behavioral disturbance, increased risk of predation, and degradation of suitable habitat could also lead to significant impacts to nesting avian species and local populations.

The timing of the bird nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and/or later in the year than historical nesting season dates. Both the IS/MND and the Biological Resources document indicate nesting bird surveys would only occur during February-August, CDFW recommends the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

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 Measures: CDFW recommends the inclusion of the below revisions to MM-BIO-1a and 1b in the Final MND to ensure impacts to nesting birds, and the habitats thereof, are mitigated to a level of less than significant. Additions are in **bold** and edits are in ~~strikethrough~~.

MM-BIO-1a: Nesting Bird Pre-construction Surveys

In order to protect migratory bird species, a nesting bird clearance survey shall be conducted prior to any ground disturbance or vegetation removal activities that may disrupt the birds during the nesting season. If construction occurs, **regardless of the time of year, between February 1 and August 31**, a pre-construction clearance survey for nesting birds shall be conducted within 3 days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. **The survey shall be conducted by a Biologist experienced with: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.** The Biologist conducting the clearance survey shall document a negative survey with a brief letter report indicating that no impacts to active avian nests shall occur.

MM-BIO-1b: Avoidance of Active Avian Nests

If an active avian nest is discovered during the pre-construction clearance survey, construction activities must stay outside of a no-disturbance buffer. The size of the no-

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disturbance buffer shall be determined by the wildlife Biologist and shall depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors shall be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest shall be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A Biological Monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behaviors is not adversely affected by the construction activity. **No-disturbance buffers shall be expanded and/or modified as needed by the qualified biologist if any nesting bird shows behavioral responses resulting from Project related activities.** Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Native Landscaping: To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species, and installing water efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants. More information on native plants suitable for the Project location and nearby nurseries is available at: Calscape - Restore Nature One Garden at a Time. Water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species. Additionally, some facilities display drought tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: Home - Save Our Water, California.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to CDFW staff Steven Recinos, Environmental Scientist at 909-731-5954 or Steven.Recinos@wildlife.ca.gov.

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Sincerely,

DocuSigned by:



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Alisa Ellsworth
Environmental Program Manager

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

ATTACHMENTS

Attachment A: MMRP for CDFW-Proposed Mitigation Measures

REFERENCES

- Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108
- California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency.
- Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. *Biological Reviews*, 88.4: 912-927.
- Longcore, T., and C. Rich. 2004. Ecological light pollution – Review. *Frontiers in Ecology and the Environment* 2:191–198.
- Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.
- Rosenberg, D. K., and K. L. Haley. 2004. The ecology of burrowing owls in the agroecosystem of the Imperial Valley, California. *Studies in Avian Biology* 27:120-135.
- Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127. Elsevier Ltd.

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Attachment A Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Mitigation Measure (MM) Description		Timing	Responsible Party
MM-BIO-3 Burrowing Owl Surveys	<p>Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), focused burrowing owl surveys shall be conducted by a qualified biologist according to the CDFW Staff Report on Burrowing Owl Mitigation (CDFG, 2012 or most recent version) for the project site and surrounding 500 ft radius. Take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. 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, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If the surveys confirm the presence of burrowing owls, active burrows or signs thereof, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. If impacts to occupied burrowing owl habitat or burrow cannot be fully avoided, consultation with CDFW is warranted to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP prior to any ground disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b). Full mitigation often involves the permanent conservation of quality habitat benefiting the species through a conservation easement, along with habitat</p>	<p>Prior to commencing ground-or vegetation-disturbing activities</p>	<p>Project proponent</p>

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	<p>enhancement and ongoing management funded appropriately. Passive relocation, performed according to the Staff Report on Burrowing Owl Mitigation (CDFG, 2012) may be authorized through the incidental take permit as a minimization measure.</p>		
<p>MM-BIO-4 Artificial Nighttime Lighting</p>	<p>Throughout construction and the lifetime operations of the Project, San Bernardino County and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. San Bernardino County and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). San Bernardino County and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.</p>	<p>Prior to commencing ground-or vegetation-disturbing activities</p>	<p>Project proponent</p>
<p>MM-BIO-1a Nesting Bird Preconstruction Surveys</p>	<p>In order to protect migratory bird species, a nesting bird clearance survey shall be conducted prior to any ground disturbance or vegetation removal activities that may disrupt the birds during the nesting season. If construction occurs, regardless of the time of year, between February 1 and August 31, a pre-construction clearance survey for nesting birds shall be conducted within 3 days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. The survey shall be conducted by a Biologist experienced with: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures;</p>	<p>Prior to commencing ground-or vegetation-disturbing activities</p>	<p>Project proponent</p>

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	<p>and monitoring the efficacy of implemented avoidance and minimization measures. The Biologist conducting the clearance survey shall document a negative survey with a brief letter report indicating that no impacts to active avian nests shall occur.</p>		
<p>MM-BIO-1b</p>	<p>If an active avian nest is discovered during the pre-construction clearance survey, construction activities must stay outside of a no-disturbance buffer. The size of the no-disturbance buffer shall be determined by the wildlife Biologist and shall depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors shall be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest shall be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A Biological Monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behaviors is not adversely affected by the construction activity. No-disturbance buffers shall be expanded and/or modified as needed by the qualified biologist if any nesting bird shows behavioral responses resulting from Project related activities. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.</p>	<p>Prior to commencing ground-or-vegetation-disturbing activities</p>	<p>Project proponent</p>