



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Inland Deserts Region  
 3602 Inland Empire Blvd.  
 Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



February 10, 2025  
 Sent via email.

Delanie Garlick, Contract Senior Planner  
 Harris and Associates  
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Dear Delanie Garlick:

Terrible's Halloran Summit Service Center - PROJ - 2023 – 0036 (Project)  
 MITIGATED NEGATIVE DECLARATION (MND)  
 SCH# 2025010372

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the San Bernardino County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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:** ETT CA, LLC

**Objective:** The Project proposes the development of auto/truck fueling stations with a 7,433 square foot convenience store and three detached fuel canopies with underground fuel storage tanks on approximately 9.18 acres. Additional construction activities will also consist of the demolition of on-site structures and off-site street improvements.

**Location:** The Project is located at 63851 Halloran Summit Road, Nipton, CA San Bernardino County.

**Timeframe:** The start of construction is estimated to begin Spring 2025, and the Project is estimated to begin operations in 2026.

<sup>1</sup> 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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## 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. Editorial comments or other suggestions may also be included to improve the document.

### COMMENT # 1: Burrowing Owl (*Athene cunicularia*) and Desert Tortoise (*Gopherus agassizii*)

#### Initial Study/Mitigated Negative Declaration

**Issue:** The Project has the potential to result in permanent and temporary loss, degradation of habitat for both burrowing owl and desert tortoise. The Project may result in the take of a CESA listed or candidate species during construction of the Project and life of the Project. If the Project, including Project construction or any Project related activity during the life of this Project, results in the take of a CESA-listed species, CDFW recommends that the Project Proponent seek appropriate authorization prior to Project Implementation.

**Specific impact:** The IS/MND proposes pre-construction surveys for multiple special status species however **BIO-1** does not include species specific survey protocols which could allow for the take of CESA listed and candidate species

**Why impact would occur:** The IS/MND fails to outline specific survey protocols that will allow the Project to avoid impacts to special status species. General pre-construction surveys do not provide for adequate detection of special status species and therefore will not detect the presence of special status species possibly resulting in unauthorized take of special status species.

**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 desert tortoise, 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 Treaty Act).

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** CDFW appreciates that the Initial Study provides a measure to minimize the Project's impacts to pre-construction surveys. CDFW offers the following additions to BIO-1 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final MND.

#### Mitigation Measure: Pre-Construction Surveys

(BIO-1) Pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project related ground disturbance.

**Burrowing Owl Survey. 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**

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**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 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.**

**Desert Tortoise Survey. Prior to the Initiation of ground disturbing activities, a Qualified Biologist will conduct pre-construction surveys for desert tortoise. The survey will be consistent with the *United States Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual (2009)* and shall be conducted during the period of activity for desert tortoise. If desert tortoise are found on-site during any stage of Project activity, the Project proponent will immediately halt project activities and contact CDFW.**

**Nesting Bird Survey. Nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special status) **regardless of the time of year during the nesting season**, a qualified Avian Biologist will conduct pre-construction Nesting Bird Surveys (NBS) **no more than three (3) days prior to Project-related disturbance within the Project area and surrounding 500-ft buffer** prior to Project-related disturbance to nestable vegetation to identify any active nests. **Surveys shall encompass all potentially suitable nesting sites including trees, shrubs, bare ground, burrows, cavities, and existing structures.** If no active nests are found, no further action will be required. If an active nest is found, the **Avian** biologist will set appropriate no-work buffers around the nest which will be based upon the nesting species, its sensitivity to disturbance, nesting stage, and expected types, intensity, and duration of the disturbance. The nests and buffer zones shall be field checked weekly by a qualified biological monitor. The approved no-work buffer zone shall be clearly marked in the field, within which no disturbance activity shall commence until the qualified biologist has determines the young birds have successfully fledges and the nest is inactive. **The Avian Biologist will repeat the NBS if Project-related disturbance has been postponed for more than five (5) days.****

## **COMMENT # 2. Bats**

### **Initial Study/Mitigated Negative Declaration**

**Issue:** The Project may impact potentially suitable habitat for bats and avoidance and minimization measures were not proposed within the IS/MND to avoid impacts to bats.

**Specific impact:** On Page 6 of the Biological Assessment, the Project area was reported to support marginal suitable habitat for Townsend's big-eared bat, a Species of Special Concern. However, avoidance and minimization measures were not proposed within the IS/MND.

**Why impact would occur:** The on-site abandoned buildings and structures could provide refuge and serve a potential roosting sites for bats.

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**Evidence impact would be significant:** 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). Several bat species are considered Species of Special Concern. Impacts on SSC could require a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065). Impacts on bats, either directly or indirectly through disturbances to roosts and loss of habitat, would be a significant impact.

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** CDFW offers the following revisions to Mitigation Measure for inclusion in the Final MND.

#### **Mitigation Measure: Bat Pre-Construction Surveys**

**(BIO-3) (NEW) Pre-construction surveys for bats shall be conducted by a Qualified Biologist. The pre-construction survey shall focus on bat roosting habitat suitability of the structures and trees that may be removed, altered, or indirectly affected by the Project. If bat roosting habitat is determined to be present on the Project site, then nighttime surveys shall be performed during summer months (i.e. June-August). If the site supports maternity roosts or special status species during any stage of Project activity, the Project proponent will immediately halt project activities and contact CDFW.**

#### **COMMENT #3: 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 in the final MND.

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#### **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.

#### **Additional Comments and Suggestions**

##### **Invasive Species Awareness Education Program.**

CDFW would like to suggest the incorporation of an awareness education program about invasive species. 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.

##### **Dilapidated Structures Wildlife Survey**

CDFW would like to suggest the incorporation of a pre-construction survey for any wildlife that may find refuge in the dilapidated structures found on site. If any sign of wildlife is found within the structures the Project Proponent should consult with the Qualified Biologist to determine the next course of action to allow the species to move out on its own accord prior to demolition of the structures. The Project Proponent should discourage any wildlife species from moving into or finding refuge in the buildings. If any sign of special status species is found within the abounded structures before demolition, CDFW strongly recommends the Project Proponent contact CDFW for the next course of action.

**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

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CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

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

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the San Bernardino County 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](mailto:Emily.leon@wildlife.ca.gov)

Sincerely,

DocuSigned by:

*Alisa Ellsworth*

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Alisa Ellsworth

Environmental Program Manager

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## ATTACHMENTS

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

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## 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.
- 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 Plan and Draft Recommendations**

<b>Biological Resources (BIO)</b>		
<b>Mitigation Measure (MM)</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p>(BIO-1) Pre-construction surveys for burrowing owls, desert tortoise, nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project related ground disturbance.</p> <p>Burrowing Owl Survey. 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 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>Desert Tortoise Survey. Prior to the Initiation of ground disturbing activities, a Qualified Biologist will conduct pre-construction surveys for desert tortoise. The survey will be consistent with the United States Fish</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project Proponent and Qualified Biologist</p>



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<p>and Wildlife Service Desert Tortoise (Mojave Population) Field Manual (2009) and shall be conducted during the period of activity for desert tortoise. If desert tortoise are found on-site during any stage of Project activity, the Project proponent will immediately halt project activities and contact CDFW.</p> <p><u>Nesting Bird Survey.</u> To avoid impacts to nesting birds (common and special status) regardless of the time of year, a qualified Avian Biologist will conduct pre-construction Nesting Bird Surveys (NBS) no more than three (3) days prior to Project-related disturbance within the Project area and surrounding 500-ft buffer to identify any active nests. Surveys shall encompass all potentially suitable nesting sites including trees, shrubs, bare ground, burrows, cavities, and existing structures. If no active nests are found, no further action will be required. If an active nest is found, the Avian biologist will set appropriate no-work buffers around the nest which will be based upon the nesting species, its sensitivity to disturbance, nesting stage, and expected types, intensity, and duration of the disturbance. The nests and buffer zones shall be field checked weekly by a qualified biological monitor. The approved no-work buffer zone shall be clearly marked in the field, within which no disturbance activity shall commence until the qualified biologist has determines the young birds have successfully fledges and the nest is inactive. The Avian Biologist will repeat the NBS if Project-related disturbance has been postponed for more than five (5) days.</p>		
<p>(BIO-3)(NEW) Pre-construction surveys for bats shall be conducted by a Qualified Biologist. The pre-construction survey shall focus on bat roosting habitat suitability of the structures and trees that may be removed, altered, or indirectly affected by the Project. If bat roosting habitat is determined to be present on the Project site, then nighttime surveys shall be performed during summer months (i.e. June-August). If the site supports maternity roosts or special status species during any stage of Project activity, the Project proponent will immediately halt project activities and contact CDFW.</p>	<p>Prior to the initiation of ground disturbing activities</p>	<p>Project Proponent and Qualified Biologist</p>
<p>(BIO-4)(NEW) 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 <a href="http://darksky.org/">http://darksky.org/</a>). 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 the initiation of ground disturbing activities</p>	<p>Project Proponent</p>