



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 28, 2025
Sent via email.

Luis Rodriguez, Contract Planner III
County of San Bernardino Land Use Services Department, Planning Division
385 N. Arrowhead Ave 1st Floor
San Bernardino, California 92415-0187
Luis.Rodriguez@lus.sbcounty.gov

Dear Luis Rodriguez:

Tentative Tract Map 20584 (Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2025020360

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.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: JT304 LLC

Objective: The Project proposes the subdivision of the site into 23 individual parcels ranging from 5 acres to 58.4 acres in size. The proposed tentative tract (No. 20584) could be built out to 23 single family units.

Location: The proposed Project is located within unincorporated San Bernardino County at Assessor's Parcel Number: 0599-191-49 on approximately 304 acres.

Timeframe: Not specified

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.

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: Desert tortoise (*Gopherus agassizii*)

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

Specific impact: Project activities related to ground disturbance and construction may result in direct take of desert tortoise and furthermore reducing habitat and species movement.

Why impact would occur: The IS/MND states that during a re-survey of the Project area in September 2024, desert tortoise sign was found on the Project site (i.e., scat, burrows, carcass), including an active natal burrow containing 2 hatchlings was found on the Project site. Furthermore, the IS/MND states that biologists estimated about 5 tortoises reside on the Project site. The transportation section of the IS/MND states that the Project will result in approximately 217 daily trips which may result in an increase in direct roadway mortalities. Given the site shows suitable habitat for desert tortoise to occupy the area, the implementation of the Project may introduce new construction and ultimately may pose significant impacts on desert tortoise.

Evidence impact would be significant: Desert tortoise was recently proposed to be uplisted from a threatened to endangered species under CESA, signifying the continued need to conserve the species and importances to avoid impacts to the species and its habitat. Desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive plant species (USFWS 2011)². The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011). Roads have been shown to decrease desert tortoise populations regardless of speed limits or frequency of traffic (Hughson and Darby 2013)³

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the IS/MND provides a measure to minimize the Project's impacts to desert tortoise. However, the measure, as written, may not reduce potential impacts to less than significant. Thus, CDFW strongly recommends the following revisions to BIO-1 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the final MND.

Mitigation Measure: BIO-1 Desert Tortoise

~~If an Agassiz's desert tortoise is found onsite prior to the initiation of or during construction on any lot, all activities likely to affect that animal(s) must cease and the County, CDFW and USFWS must be contacted to determine appropriate steps. No take of the tortoise(s) may occur without prior authorization from the appropriate regulatory agencies, including CDFW and USFWS.~~ **An incidental take permit (ITP) for desert tortoise (*Gopherus***

² U.S. Fish and Wildlife Service [USFWS]. 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

³ Hughson, D. L., and N. Darby. 2013. Desert tortoise road mortality in Mojave National Preserve, California. California Fish and Game 99:222–232.

agassizii) shall be obtained prior to initiation of all ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and the California Department of Fish and Wildlife.

COMMENT # 2. Nesting Birds

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

Specific impact: The Project as described could result in direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, displacement, reduction of habitat and habitat quality associated with road infrastructure.

Why impact would occur: The mitigation measure BIO-2 does not adequately outline nesting bird pre-construction surveys to minimize and avoid impacts to nesting birds.

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

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the IS/MND provides a measure to minimize the Project's impacts to nesting birds. However, the measure, as written, may not reduce potential impacts to less than significant. Thus, CDFW strongly recommends the following revisions to BIO-2 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the final MND.

Mitigation Measure: BIO-2 Pre-construction Nesting Bird Surveys

~~In order to avoid potential impacts to nesting birds, CDWF recommends that certain construction activities not occur during the March 15 and September 15 nesting seasons. Specifically, vegetation should not be removed from the Project site and ground disturbing activities should not be conducted during this period if avoidable. If it is necessary to commence construction on any lot during this period, a qualified biologist must conduct a survey prior to construction and site preparation to survey all shrubs and structures within the Project site for nesting birds. The surveys should be conducted during the appropriate time of day during the breeding season and must end no more than three days prior to ground disturbing activities. Documentation of surveys and findings should be submitted to the CDFW within ten days of the last survey. If no nesting birds were observed, then site preparation and/or construction may begin. If an active bird nest is located, the plant in which it occurs should be left in place until the birds leave the nest. No construction is allowed near active bird nests of threatened or endangered species. All Project related activities shall be conducted outside of the typical nesting bird season (January 15 to August 31) to the maximum extent feasible. Regardless of the time of year, a qualified avian biologist shall conduct pre-construction nesting bird surveys at the appropriate time of day/night, during appropriate weather conditions no more than 3 days prior to the initiation of ground disturbing activities. The survey shall focus on all suitable nesting areas such as but not limited to: trees, shrubs, bare ground, burrows, cavities, and structures. If a nest is suspected, but not confirmed, the qualified avian biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be confirmed based on~~

All Project related activities shall be conducted outside of the typical nesting bird season (January 15 to August 31) to the maximum extent feasible. Regardless of the time of year, a qualified avian biologist shall conduct pre-construction nesting bird surveys at the appropriate time of day/night, during appropriate weather conditions no more than 3 days prior to the initiation of ground disturbing activities. The survey shall focus on all suitable nesting areas such as but not limited to: trees, shrubs, bare ground, burrows, cavities, and structures. If a nest is suspected, but not confirmed, the qualified avian biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be confirmed based on

observations. If a nest is observed, but thought to be inactive, the qualified avian biologist shall monitor the nest for at least 1 hour. When an active nest is confirmed, the qualified avian biologist 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. The qualified avian biologist shall monitor the nest to determine the efficacy of the buffer and shall adjust the buffer accordingly if it is determined to have an adverse reaction. The qualified avian biologist shall monitor the nest daily until activities are no longer within 300 feet of the nest, or the fledglings become independent of their nest, or the nest has failed. Documentation of surveys and findings should be submitted to the CDFW within 10 days of the last survey. If special status species such as but not limited to: Bendire's thrasher, burrowing owl, Cooper's hawk, golden eagle, LeConte's thrasher, loggerhead shrike, northern harrier, prairie falcon, Swainson's hawk, are found within or adjacent to the Project area then ground disturbing activities shall immediately halt and the Project proponent shall contact CDFW Region 6 Inland Deserts Region.

COMMENT # 3. Western Joshua Tree (*Yucca brevifolia*)

Issue: The Project may have significant impacts on western Joshua tree, a CESA listed candidate species.

Specific impact: The mitigation measure BIO-3 does not adequately describe which impacts may result in take of western Joshua tree as a result of Project activities.

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

Evidence impact would be significant: The Project as described will result in direct take of WJT and parts thereof and would result in the loss of the habitats on which they depend on. 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). Additionally, western Joshua tree is protected under the WJTCA. The WJTCA was enacted in July 2023 and prohibits the import, export, take, possession, purchase, or sale of any western Joshua tree in California unless authorized by CDFW (CDFW 2024). Grading, ground disturbance, vegetation clearing, staging of construction equipment, vehicles, and foot traffic may result in the permanent loss of WJT on the Project site and may result in the disruption to the WJT seedbank.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the IS/MND provides a measure to minimize the Project's impacts to western Joshua tree. CDFW recommends the following revisions to BIO-3 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the final MND.

Mitigation Measure: BIO-3 Desert Native Plants

In compliance with §88.01 .050 of the County Development Code, a Desert Native Plant Assessment may be required, and a Tree or Plant Removal Permit must be authorized by the County before any protected desert native plant species can be harvested or removed from the Project site. Protected desert native plants are defined by the County and by §80073 of the California Food and Agricultural Code, Division 23. ~~Furthermore, consistent with State law, an Incidental Take Permit shall be secured for every Joshua tree proposed for destruction or relocation for any of the improvements or lot construction on the Project site prior to any disturbance of the species.~~ **The western Joshua tree (*Yucca brevifolia*) is a candidate threatened species under the California Endangered Species Act (CESA). Prior to the initiation of Project activities that will encroach, remove, relocate, trim, prune, or any activity that may result in take of western Joshua tree (WJT) on site, the Project proponent shall obtain an incidental take permit under**

CESA (Fish and Game Code Section 2081b), or under the Western Joshua Tree Conservation Act (Fish and Game Code sect 1927) (WJTCA). Please note, to obtain a WJTCA ITP, a census of all trees within the project site plus an additional 15-meter census buffer around the project site must be conducted.

COMMENT # 4. CDFW Streambed Alteration Agreement

Issue: The Project as described may result in significant impacts to unnamed desert washes across the entire Project area.

Specific impact: The Project may result in significant impacts and loss of desert wash habitat for biological resources.

Why impact would occur: Mitigation measure BIO-4 as written would only require developments within lots 15 or 16 to notify CDFW for a potential Lake to Streambed Alteration Agreement and leaves out any potential CDFW Fish and Game Code 1602 resources on other lots.

Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the IS/MND provides a measure to minimize the Project's impacts to streambeds. However, the measure, as written, may not reduce potential impacts to less than significant across the site. Thus, CDFW strongly recommends the following revisions to BIO-4 (edits are in ~~strike~~ and **bold**) for inclusion in the final MND.

Mitigation Measure: BIO-4 CDFW Streambed Alteration Agreement.

If development is proposed **on any parcel within the Project area** ~~for the area on or around the washes on lots 15 or 16~~, then the California Department of Fish and Wildlife (CDFW) must be consulted. If CDFW determines that the activity may substantially affect fish and wildlife resources, then a Streambed Alteration Agreement will be **obtained** ~~property~~. The Agreement will include measures to protect those resources and provide mitigation, consistent with the terms to be negotiated with the Department, to assure that impacts are reduced to less than significant levels.

COMMENT # 5. Burrowing owl (*Athene cunicularia*)

Issue: The Project has the potential to result in permanent and temporary loss, degradation, of habitat for burrowing owl. The Project may result in take of a CESA candidate species during construction of the Project and the life of the Project. If the Project, including Project construction or any Project related activity during the life of this Project, could result 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 does not outline appropriate methodologies for surveys for burrowing owl, a CESA candidate species.

Why impact would occur: The IS/MND proposes to avoid impacts to burrowing owl by conducting pre-construction nesting bird surveys within Mitigation Measure BIO-2. BIO-2 does not outline species specific pre-construction surveys for burrowing owl. Burrowing owl's may not be detectable during general nesting bird surveys. Pre-construction surveys

specific to burrowing owl should be in conjunction with the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

Evidence impact would be significant: The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.*, Fish and Game Code sections 3503.5, *etc.*) and Federal laws (*i.e.*, Migratory Bird Treaty Act). Furthermore, on October 10, 2024, the Fish and Game CESA, CDFW considers the take of burrowing owl and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant which may include that ground disturbing activities be postponed until appropriate authorization (*i.e.*, a finalized CESA ITP under Fish and Game Code section 2081) is obtained.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW appreciates that the IS/MND provides a measure to minimize the Project's impacts to nesting birds. However, the measure may not be sufficient to avoid impacts to burrowing owl. Thus, CDFW strongly recommends BIO-6 for inclusion in the final MND.

Mitigation Measure: BIO-6 Burrowing owl (NEW)

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 Mitigation⁴ (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 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 burrows 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.

COMMENT # 6. Desert kit Fox (*Vulpes macrotis*)

Issue: The Project could impact desert kit fox, a fur-bearing mammal (Title 14 CCR section 460), during the construction of the Project and the life of the Project.

⁴ California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

Specific impact: The IS/MND states that scat was incorrectly identified during the initial 2021 survey and furthermore does not propose pre-construction surveys to minimize impacts to desert kit fox that could traverse throughout the Project area.

Why impact would occur: The IS/MND does not propose mitigation measures to avoid potential significant impacts to desert kit fox.

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. Desert kit fox is a protected species per Title 14 California Code of Regulations section 460 and may not be taken at any time.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW strongly recommends BIO-7 for inclusion in the final MND.

Mitigation Measure: BIO-7 Desert kit fox (NEW)

No more than 14 days prior to the beginning of surface disturbing maintenance activities, the qualified biologist shall conduct a survey to determine if potential desert kit fox dens are present in the Project area. If potential dens are located, they shall be monitored by the qualified biologist. If non-natal active dens can be avoided and buffered from Project activities, the qualified biologist shall flag a minimum 300-foot disturbance-free buffer zone. No disturbance of active dens may take place when juveniles may be present and dependent on parental care. A minimum 500-foot disturbance-free buffer shall be placed around the natal den and maintained until juvenile independence is determined by the qualified biologist. If active dens are present within the Project area, the Project proponent shall halt all Project activities and immediately contact CDFW Region 6 Inland Deserts Region.

Additional Comments and Suggestions

Submitting Data on Special Status Species.

CDFW strongly recommends the Project proponent to submit data to the California Natural Diversity Database at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>, regarding any special status species such as but not limited to: desert tortoise, Bendire's thrasher, burrowing owl, Cooper's hawk, golden eagle, LeConte's thrasher, loggerhead shrike, northern harrier, prairie falcon, Swainson's hawk observed within or adjacent to the Project area.

Focused Survey for Agassiz's Desert Tortoise, Habitat Evaluation for Burrowing Owl and Joshua Tree, and General Biological Resources Assessment (Appendix B).

As mentioned on Page 22 of the IS/MND, the Project site was re-surveyed in 2024. However, Appendix B outlines the results of the initial survey that was conducted in 2021 and does not provide information regarding methodology and results for the re-survey conducted in 2024. It is unclear whether the results summarized on Page 22 of the IS/MND pertain to the 2024 re-survey or the 2021.

Subdivision of Parcels.

As mentioned on Page 18 of the IS/MND, the sale and construction of each lot would occur independently and is a discretionary paper transaction; CDFW strongly recommends that the Project proponent disclose information regarding the presence of special status species to interested parties in the Project area. The Project proponent should provide resources regarding permitting and biological resources to interested parties and should direct any questions regarding special status species to the CDFW Inland Deserts Region. CDFW also recommends circulating a copy of this letter for any interested parties in the Project area.

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.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND 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 Emily Leon, Environmental Scientist at Emily.leon@wildlife.ca.gov

Sincerely,

DocuSigned by:

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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

REFERENCES

Hughson, D.L., and N. Darby. 2013. Desert tortoise road mortality in Mojave National Preserve, California. *California Fish and Game* 99:222-232

California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

U.S. Fish and Wildlife Service [USFWS]. 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

Attachment A

Draft Mitigation Monitoring and Reporting Plan and Draft Recommendations

Biological Resources (BIO)		
Mitigation Measure (MM)	Implementation Schedule	Responsible Party
<p><u>BIO-1. Desert tortoise</u></p> <p>An incidental take permit (ITP) for desert tortoise (<i>Gopherus agassizii</i>) shall be obtained prior to initiation of all ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and the California Department of Fish and Wildlife.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent</p>
<p><u>BIO-2. Pre-Construction Nesting Bird Surveys</u></p> <p>All Project related activities shall be conducted outside of the typical nesting bird season (January 15 to August 31) to the maximum extent feasible. Regardless of the time of year, a qualified avian biologist shall conduct pre-construction nesting bird surveys at the appropriate time of day/night, during appropriate weather conditions no more than 3 days prior to the initiation of ground disturbing activities. The survey shall focus on all suitable nesting areas such as but not limited to: trees, shrubs, bare ground, burrows, cavities, and structures. If a nest is suspected, but not confirmed, the qualified avian biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be confirmed based on observations. If a nest is observed, but thought to be inactive, the qualified avian biologist shall monitor the nest for at least 1 hour. When an active nest is confirmed, the qualified avian biologist shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer 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. The qualified avian biologist shall monitor the nest to determine the efficacy of the buffer and shall adjust the buffer accordingly if it is determined to have an adverse reaction. The qualified avian biologist shall monitor the nest daily until activities are no longer within 300 feet of the nest, or the fledglings become independent of their nest, or the nest has failed. Documentation of surveys and findings should be submitted to the CDFW within 10 days of the last survey If special status species such as but not limited to: Bendire’s thrasher, burrowing owl, Cooper’s hawk, golden eagle, LeConte’s</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and Qualified Avian Biologist</p>

<p>thrasher, loggerhead shrike, northern harrier, prairie falcon, Swainson’s hawk, are found within or adjacent to the Project area then ground disturbing activities shall immediately halt and the Project proponent shall contact CDFW Region 6 Inland Deserts Region.</p>		
<p><u>BIO-3 Desert Native Plants.</u></p> <p>In compliance with §88.01 .050 of the County Development Code, a Desert Native Plant Assessment may be required, and a Tree or Plant Removal Permit must be authorized by the County before any protected desert native plant species can be harvested or removed from the Project site. Protected desert native plants are defined by the County and by §80073 of the California Food and Agricultural Code, Division 23. The western Joshua tree (<i>Yucca brevifolia</i>) is a candidate threatened species under the California Endangered Species Act (CESA). Prior to the initiation of Project activities that will encroach, remove, relocate, trim, prune, or any activity that may result in take of western Joshua tree (WJT) on site, the Project proponent shall obtain an incidental take permit under CESA (Fish and Game Code Section 2081b), or under the Western Joshua Tree Conservation Act (Fish and Game Code sect 1927) (WJTCA). Please note, to obtain a WJTCA ITP, a census of all trees within the project site plus an additional 15-meter census buffer around the project site must be conducted.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent</p>
<p><u>BIO-4 CDFW Streambed Alteration Agreement.</u></p> <p>If development is proposed on any parcel within the Project area, then the California Department of Fish and Wildlife (CDFW) must be consulted. If CDFW determines that the activity may substantially affect fish and wildlife resources, then a Streambed Alteration Agreement will be obtained. The Agreement will include measures to protect those resources and provide mitigation, consistent with the terms to be negotiated with the Department, to assure that impacts are reduced to less than significant levels.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent</p>
<p><u>BIO-6 Burrowing owl (NEW).</u></p> <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</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and Qualified biologist</p>

<p>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 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><u>BIO-7 Desert kit fox (NEW)</u></p> <p>No more than 14 days prior to the beginning of surface disturbing maintenance activities, the qualified biologist shall conduct a survey to determine if potential desert kit fox dens are present in the Project area. If potential dens are located, they shall be monitored by the qualified biologist. If non-natal active dens can be avoided and buffered from Project activities, the qualified biologist shall flag a minimum 300-foot disturbance-free buffer zone. No disturbance of active dens may take place when juveniles may be present and dependent on parental care. A minimum 500-foot disturbance-free buffer shall be placed around the natal den and maintained until juvenile independence is determined by the qualified biologist. If active dens are present within the Project area, the Project proponent shall halt all Project activities and immediately contact CDFW Region 6 Inland Deserts Region.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and Qualified biologist</p>