



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



March 12, 2025  
*Sent via email*

Luis Rodriguez, Planner  
San Bernardino County  
385 N. Arrowhead Avenue  
San Bernardino, CA 92415

Dear Luis Rodriguez:

Joshua Tee – Mercury Drive – Dry Camp Site (PROJECT)  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH# 2025020486

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from San Bernardino County (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

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<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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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:** Joseph Milburn

**Objective:** The objective of the Project is to construct 15 dry campsites on Assessor's Parcel Number (APN) 0631-201-68. The Project will be constructed on 7.5-acre parcel and each campsite will include a parking space, tent or RV/trailer area, shade structure, and picnic table. The Project will include an estimated 20-foot-wide compacted dirt road to allow access to the 15 campsites. The Project will not include connection to water service and will place portable restrooms or "porta potties" in shared use areas in the campsite. Electricity will be provided for an automated gate, fence, and lighting by the use of solar panels and batteries. The APN has pre-existing structures onsite including a cabin, storage structure, bathroom and septic tank that will remain intact and used by the owner.

**Location:** The Project is located at 62076 Mercury Dr, Joshua Tree, CA 92252. The Project is located in the Northeast corner of the intersection of Adele Lane and Mercury Drive. The project is centered at approximately latitude 34°14'56.5"N and longitude 116°18'29.8"W.

**Timeframe:** TBD

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the 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: Western Joshua Tree (*Yucca brevifolia*)**

#### **Section I Aesthetics, Page #12-13; Section IV Biological Resources, Page 22-23**

**Issue:** The Project will potentially have impacts to western Joshua Tree (WJT), a candidate species under the California Endangered Species Act (CESA).

**Specific impact:** As described, the Project could have direct and indirect impacts to WJT due to Project activities and the intensity/duration of Project activities that will encroach upon WJTs.

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**Why impact would occur:** Incidental take of WJT individuals may occur as a result of trimming existing individuals root systems, modifying soil moisture availability and drainage patterns, 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. Project activities will occur within 40 feet of WJTs. Grading, compaction of soils, construction of infrastructure, maintenance of infrastructure, and construction and maintenance of parking lots all have the potential to cause impacts to WJTs.

**Evidence impact would be significant:** The WJT census provided by the County indicates there are 2 WJTs onsite. Project plans describe work activities within 40 feet of WJT individuals and therefore the Project will encroach upon WJT individuals.

**Recommended Mitigation Measure(s)** (additions in **bold**, deletions in ~~strikethrough~~):

**Mitigation Measure BIO-1 (REVISED):**

~~BIO-1: Two (2) Joshua trees were found on site during the focused Western Joshua Tree census survey performed in 2024. Any impacts to the Joshua tree or within forty (40) feet of the Western Joshua Tree shall require compliance with the Western Joshua Tree Conservation Act (WJTCA), which was passed in July 2023 to conserve Western Joshua Tree and its habitat while supporting the state's renewable energy and housing priorities. The WJTCA authorizes CDFW to:~~

- ~~• Permit the trimming and removal of hazardous or dead Western Joshua Trees.~~
- ~~• Permit the incidental take of Western Joshua Trees under CESA provided the permittee meets certain conditions.~~

~~The Project shall avoid impacts to the Western Joshua Trees on site through avoiding construction within 40 feet of the trees onsite. If it becomes necessary for construction to occur within 40 feet of the trees onsite (i.e. impact the trees per the WJTCA), any proposed impacts to the Joshua trees on site shall require prior authorization from CDFW pursuant to the WJTCA. Removal of onsite Joshua trees or century plants shall be required to comply with Section 88.01 of the San Bernardino Development Code, which requires the issuance of a permit prior to the removal of regulated trees and plants.~~

**Prior to the initiation of WJT encroachment, trimming or pruning or any activity that may result in take of WJT, the Project Proponent should obtain California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Section 2081b of the CESA, or under the Western Joshua Tree Conservation Act (WJTCA) of Fish and Game Code (§§ 1927-1927.12). California Fish and Game Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill". Mitigation for CESA will occur at a minimum 1:1 or**

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**per the stem count per the WJTCA census in lieu fee. Mitigations fees are updated annually: Western Joshua Tree Conservation Act Incidental Take Permit.**

**COMMENT #2: 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.

**Specific impact:** Impacts to desert kit fox could occur both during the construction of the Project and the operation and maintenance of the Project post-construction. The Project could result in the collapse of occupied burrows, and/or direct mortality or injury of desert kit fox.

**Why impact would occur:** This Project's biological assessment did not consider impacts to desert kit fox based on field surveys and habitat assessment. The California Natural Diversity Database (CNDDDB) provides a GIS data layer of the extent of "Kit Fox Predicted Habitat", which models the Project location as "High" predicted habitat.

**Evidence impact would be significant:** The desert kit fox is a Furbearing Mammal that is protected from take by California Code of Regulations Title 14 CCR § 460 and may be resident on the Project site. Project documentation does not propose mitigation measures to minimize potential significant impacts to desert kit fox.

CDFW strongly recommends the following Mitigation Measure to avoid significant impacts to desert kit fox.

**Recommended Mitigation Measure(s):**

**Mitigation Measure-BIO-3 Desert Kit Fox (NEW)**

**No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities.**

**If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. Permittee shall provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results.**

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**Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Permittee shall reschedule Project activities or submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care.**

**Permittee shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove when construction is complete. The Designated Biologist shall periodically check the inactive burrows remain blocked and are not reoccupied.**

### **COMMENT #3: Crotch's Bumble Bee (*Bombus crotchii*)**

**Issue:** The Project may impact suitable habitat for Crotch's bumble bee (CBB), a CESA candidate species, and has the potential for take pursuant to Fish & G. Code, § 2081(b). The IS/MND does not consider the potential impacts by the Project to Crotch's bumble bee which could result in permanent and temporary loss, degradation, and impacts the species habitat.

**Specific impact:** The Project may result in temporal or permanent loss of suitable nesting and foraging habitat. Project ground-disturbing activities may cause death or injury of adults, eggs, and larva through collapsing burrows, entombment, displacement, and vegetation removal that reduces foraging and nesting habitat and habitat quality.

**Why impact would occur:** Direct impacts to CBB individuals could occur through the removal of host plants that occur on the Project site or that have been documented in the general vicinity.

**Evidence impact would be significant:** The General Biological Assessment for the Project noted the presence of rush milkweed (*Asclepias subulata*) a nectar source for CBB. Furthermore, another nectar source for CBB, notch-leaved phacelia (*Phacelia crenulata*) has been documented in the vicinity of the Project (Thorp et. Al. 1983, Williams et Al, 2014).

### **Recommended Mitigation Measure(s):**

#### **Mitigation Measure BIO-4 Crotch's Bumble Bee**

#### **BIO-4 Crotch's Bumble Bee Habitat Assessment (NEW)**

**Prior to vegetation removal and/or grading, a Designated Biologist shall conduct a habitat assessment to determine whether Crotch's bumble bee habitat is present or absent in the Project site and adjoining area. The habitat assessment shall be performed according to the 2023 CDFW Survey Considerations for Candidate Bumble Bee.**

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**If habitat for Crotch's bumble bee is present, a Designated Biologist shall conduct focused surveys prior to vegetation removal and/or grading for the presence/absence of Crotch's bumble bee. Survey methodology shall follow the 2023 CDFW Survey Considerations for Candidate Bumble Bee. Surveys shall be conducted during the flying season when the species is most likely to be detected above ground, between March 1 to September 1, by an approved Designated Biologist familiar with Crotch's bumble bee behavior and life history. Surveys shall be conducted within the Project site and areas adjacent to the Project site where suitable habitat exists. Survey results including negative findings shall be submitted to CDFW at least 30 days prior to Project-related vegetation removal and/or ground-disturbing activities. If the species is identified on site, Project Proponent shall fully avoid the species absent take authorization. If the Project may result in take of Crotch's bumble bee through either nest destruction or destruction of potential nests hidden in bunch grasses or other nesting habitat, or if complete avoidance of Crotch's bumble bee cannot be achieved, Project activities shall be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.**

#### **COMMENT #4: Nesting Birds**

##### **Section #IV Biological Resources, Page #24-25**

**Issue:** CDFW is concerned that the information assessed in the biological assessment may not be sufficient to ensure that the Project does not impact nesting birds.

**Specific impact:** The Project could result in the loss of nesting bird and foraging habitat for (non-) passerine and raptor species.

**Why impact would occur:** The Project will construct 15 dry camp sites. The Project location is described as paved but aerial imagery does not clearly indicate the location is paved, any development could impact nesting birds. The biological assessment indicates that if Project construction would occur between February 1 through September 15 a survey shall be conducted. CDFW would strongly advise a nesting bird pre-construction survey regardless of the time of year as the timing of 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. The General Biological Assessment indicates white-crowned sparrow (*Zonotrichia leucophrys*) was observed onsite, this species is known to forage and nest on the ground and therefore any activities impacting the ground or ground disturbance could cause potential impacts.

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**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.

CDFW strongly recommends the following Mitigation Measure to avoid significant impacts to nesting birds.

**Recommended Mitigation Measure(s):**

**Mitigation Measure BIO-5 Nesting Birds**

**BIO-5 Nesting Birds (NEW)**

**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: 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**

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**disturbing activities shall immediately halt and the Project proponent shall contact CDFW Region 6 Inland Deserts Region.**

## **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 the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Steven Recinos, Environmental Scientist at (909)731-5954 or [Steven.Recinos@wildlife.ca.gov](mailto:Steven.Recinos@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento



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## REFERENCES

1. California Department of Fish and Wildlife. California Natural Diversity Database. (2025, February). Kit Fox Predicted Habitat [ds2599]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved March 1, 2025, from <https://wildlife.ca.gov/Data/BIOS>
2. California Department of Fish and Wildlife. Biogeographic Data Branch, 2025. California Wildlife Habitat Relationship System, White-Crowned Sparrow. Sacramento, CA.
3. Thorp, R.W., D.S. Horning, and L.L. Dunning. 1983. Bumble bees and cuckoo bumble bees of California (Hymenoptera: Apidae). Bulletin of the California Insect Survey 23
4. Williams, P.H., R.W. Thorp, L.L. Richardson, and S.R. Colla. 2014b. Bumble bees of North America: an Identification Guide. Princeton University Press.

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| <b>Mitigation Measure</b>                 |   | <b>Timing</b>  | <b>Responsible Party</b> |
|---|---|--|--------------------------|
| MM-BIO-1<br>Western Joshua Tree (Revised) | <p>Removal of onsite Joshua trees or century plants shall be required to comply with Section 88.01 of the San Bernardino Development Code, which requires the issuance of a permit prior to the removal of regulated trees and plants.</p> <p>Prior to the initiation of WJT encroachment, trimming, or pruning or any activity that may result in take of WJT, the Project Proponent should obtain California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Section 2081b of the CESA, or under the Western Joshua Tree Conservation Act (WJTCA) of Fish and Game Code (§§ 1927- 1927.12). California Fish and Game Code section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”. Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Mitigations fees are updated annually: Western Joshua Tree Conservation Act Incidental Take Permit.</p> | Prior to commencing ground- or vegetation-disturbing activities. | Project Proponent        |
| MM-BIO-3<br>Desert Kit Fox (NEW)          | <p>No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities.</p> <p>If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with</p>  | Prior to commencing ground- or vegetation-disturbing activities. | Project Proponent        |

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|  | <p>observation but shall not be the sole basis upon which the status is determined. Permittee shall provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results.</p> <p>Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Permittee shall reschedule Project activities or submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care.</p> <p>Permittee shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove when construction is complete. The Designated Biologist shall periodically check the inactive burrows remain blocked and are not reoccupied.</p> |   |                          |
| <p>MM-BIO-4<br/>                 Crotch's Bumble Bee (NEW)</p> | <p>Prior to vegetation removal and/or grading, a Designated Biologist shall conduct a habitat assessment to determine whether Crotch's bumble bee habitat is present or absent in the Project site and adjoining area. The habitat assessment shall be performed according to the 2023 CDFW Survey Considerations for Candidate Bumble Bee.</p> <p>If habitat for Crotch's bumble bee is present, a Designated Biologist shall conduct focused surveys prior to vegetation removal and/or grading for the presence/absence of Crotch's bumble bee. Survey methodology shall follow the 2023 CDFW Survey Considerations for Candidate Bumble Bee. Surveys shall be conducted during the flying season when the species is most likely to be detected</p>  | <p>Prior to commencing ground- or vegetation-disturbing activities.</p> | <p>Project Proponent</p> |

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|   | <p>above ground, between March 1 to September 1, by an approved Designated Biologist familiar with Crotch’s bumble bee behavior and life history. Surveys shall be conducted within the Project site and areas adjacent to the Project site where suitable habitat exists. Survey results including negative findings shall be submitted to CDFW at least 30 days prior to Project-related vegetation removal and/or ground-disturbing activities. If the species is identified on site, Project Proponent shall fully avoid the species absent take authorization. If the Project may result in take of Crotch’s bumble bee through either nest destruction or destruction of potential nests hidden in bunch grasses or other nesting habitat, or if complete avoidance of Crotch’s bumble bee cannot be achieved, Project activities shall be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.</p> |   |                          |
| <p>MM-BIO-5<br/>                 Nesting<br/>                 Birds (NEW)</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</p>  | <p>Prior to commencing ground- or vegetation-disturbing activities.</p> | <p>Project Proponent</p> |

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|  | <p>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: 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.</p> |  |  |
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