



State of California – Natural Resources Agency

GAVIN NEWSOM, Governor



DEPARTMENT OF FISH AND WILDLIFE

CHARLTON H. BONHAM, Director

Inland Deserts Region
3602 Inland Empire Blvd, Suite C-220
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March 5, 2025
Sent via email

Christian Espinoza, Planning Technician
City of Adelanto
11600 Air Expressway
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cespinoza@adelantoca.gov

Daisy Road Industrial Storage Project (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2025020514

Dear Christian Espinoza:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Adelanto 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: Mike Kale, Reliable Crane Service

Objective: The objective of the Project is to develop an outdoor crane storage and equipment storage yard on a 2.43-acre parcel. The project would install one prefabricated metal building that would be about 4,800 square feet in size, and a storage trailer that would be about 340 square feet in size. Lighting improvements include the installation of a high-mast light pole for security. The Project will also include minor grading, leveling and paving for site access and parking, the installation of chain link fencing along the perimeter of the property, and 93,851 square feet of landscaping. The Project site is currently undeveloped but is used as an equipment storage yard.

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.

Christian Espinoza, Planning Technician
 City of Adelanto
 March 5, 2025
 Page 2

Location: The Project site is located east of Daisy Road and north of Cassia Road in the City of Adelanto, San Bernadino County at Latitude 34.555162 and Longitude -117.4285 on Assessor's Parcel Number (APN) 3128-101-17. The Project site is surrounded by vacant and undeveloped land to the south and east, and industrial/manufacturing development to the north and west.

Timeframe: Construction was planned to begin in the fourth quarter of 2024 and was expected to conclude 2 months later. No updated timelines are discussed.

COMMENTS AND RECOMMENDATIONS

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

I. Environmental Setting and Related Impact Shortcoming

COMMENT #1: Nesting Birds

ISMND Page #28, Biological Resource Assessment

Issue: CDFW is concerned that Mitigation Measure BIO-1, as currently written, is not sufficient in timing or scope to prevent impacts to nesting birds and raptors. The Project site provides nesting and foraging habitat as stated in the Biological Assessment Report (BRA).

Specific impact: Various bird species were detected during the field investigation including common raven (*Corvus corax*), European starling (*Sturnus vulgaris*), house sparrow (*Passer domesticus*), mourning dove (*Zenaida macroura*), Eurasian collared dove (*Streptopelia decaocto*), and northern mockingbird (*Mimus polyglottos*). Additionally, an active raven nest was observed approximately 40 feet south of the project site. CDFW appreciates the inclusion of a nesting bird measure BIO-1. BIO-1 states that "construction activities involving vegetation removal shall be conducted between September 1 and January 31. If construction occurs inside the peak nesting season (between February 1 and August 31), a pre-construction survey by a qualified Biologist shall be conducted within 72 hours prior to construction activities to identify any active nesting locations."

Why impact would occur: While proposed BIO-1 establishes dates when songbirds and raptors generally tend to nest, it is important to remember that the timing of the 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 later in the year than historical nesting season dates. Species that nest outside the peak breeding season should also be considered (e.g., hummingbirds may nest year-round, and raptors may nest outside the peak breeding season). To adequately identify nesting bird presence in the Project area, nesting pre-constructions surveys should be conducted by a qualified biologist no more than three (3) days prior to the initiation of project activities, at the appropriate time of day/night, during appropriate weather conditions **regardless of the time of the year**. If nesting birds are detected during surveys, CDFW recommends that buffers be established around nest sites with the following distances: a minimum of 300 feet for songbirds, and 500 feet for raptors. Reductions in buffers may be appropriate based on screening vegetation, ambient levels of human activities, or other factors.

Evidence impact would be significant: The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential, and industrial land uses. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: To address the above issues and help the Project applicant avoid

Christian Espinoza, Planning Technician
 City of Adelanto
 March 5, 2025
 Page 3

unlawfully taking of nests and eggs, CDFW recommends that disturbance of occupied nests within the Project site be avoided any time birds are nesting on-site. Preconstruction nesting bird surveys shall be performed no more than 3 days prior to Project activities to determine the presence and location of nesting birds. CDFW recommends that the measure be revised to the following (edits are in ~~strike through~~ and **bold**) for inclusion in the final MND:

Biological Resources Mitigation Measure 1 (MM BIO-1)

All construction activities shall comply with the federal Migratory Bird Treaty Act of 1918 (MBTA) and California Fish and Game Code Sections 3503, 3511 and 3513. The MBTA governs the taking and killing of migratory birds, their eggs, parts, and nests and prohibits the take of any migratory bird, their eggs, parts, and nests. Compliance with the MBTA shall be accomplished by completing the following:

Regardless of the time of year, a preconstruction survey shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, no more than three (3) days prior to the initiation of project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist shall make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If nesting bird activity is present within the work area or the Project's zone of influence (generally 100-300 feet), a no disturbance buffer zone shall be established by the qualified biologist to be marked on the ground around each nest. The buffer shall be a minimum of 500 feet for raptors and 300 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. Active nest(s) and an established buffer distance(s) shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. If there is no nesting activity, then no further action is needed for this measure. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.

~~Construction activities involving vegetation removal shall be conducted between September 1 and January 31. If construction occurs inside the peak nesting season (between February 1 and August 31), a pre-construction survey by a qualified Biologist shall be conducted within 72 hours prior to construction activities to identify any active nesting locations. If the Biologist does not find any active nests, the construction work shall be allowed to proceed. The biologist conducting the clearance survey shall document a negative survey with a report indicating that no impacts to active avian nests shall occur.~~

~~If the Biologist finds an active nest within the pre-construction survey area and determines that the nest may be impacted, the Biologist shall delineate an appropriate buffer zone around the nest. The size of the buffer shall be determined by the Biologist and shall be based on the nesting species, its sensitivity to disturbance, expected types of disturbance, and location in relation to the construction activities. These buffers are typically 300 feet from the nests of non-listed species and 500 feet from the nests of raptors and listed species. Any active nests observed during the survey shall be mapped on an aerial photograph. Only construction activities (if any) that have been approved by a Biological Monitor shall take place within the buffer zone until the nest is vacated. The Biologist shall serve as a Construction Monitor when construction activities take place near active nest areas to ensure that no inadvertent impacts on these nests occur. Results of the pre-construction survey and any subsequent monitoring shall be provided to the Property Owner/Developer and the City of Adelanto. The monitoring report shall summarize the results of the nest monitoring, describe construction restrictions currently in place, and confirm that construction activities can proceed within the buffer area without jeopardizing the survival of the young birds.~~

Christian Espinoza, Planning Technician
 City of Adelanto
 March 5, 2025
 Page 4

COMMENT # 2 Western Joshua Tree (*Yucca brevifolia*) :

ISMND Page #24, Biological Resource Assessment Page

Issue: The IS/MND recognizes the presence of western Joshua tree (WJT), a candidate species under California Endangered Species Act (CESA), near the proposed Project site. However, the IS/MND does not provide mitigation measures for WJT. Ground-disturbing activities may impact WJT on the adjacent parcels.

Specific impact: The IS/MND states that “no western Joshua trees were observed within the proposed project footprint.” However, one live and one dead WJT measuring over 5 meters were observed adjacent to the Project site and within the 50-foot buffer. The IS/MND states that no direct impacts will occur to WJT from project implementation and a Western Joshua Tree Incidental Take Permit (WJTCA ITP) will not be required.

Why impact would occur: Take of WJT is defined as any activity that results in the removal of WJT or any parts thereof (CDFW 2025). Access and construction occurring adjacent to WJTs in the off-site parcels could impact WJTs as a result of ground disturbing activities, encroachment, compaction, trampling, or disturbance of the root zone and seedbank by heavy equipment, vehicles or foot traffic, and increased dust, water, and wind erosion during construction. The IS/MND should address the Project’s impact on any live WJTs adjacent to the Project site. Under the WJTCA ITP, each WJT stem or trunk arising from the ground must be considered an individual tree requiring mitigation. In addition, for the purposes of the census, the Project site is defined as the area(s) where Project activities are expected to occur (e.g., access, staging, construction, etc.). The census area is defined as the Project site plus an additional 15- meter (~50 ft) census buffer around the Project site. If the census buffer area extends onto neighboring properties, landowner(s) permission should be obtained, whenever possible, to document any WJTs on adjacent properties. If landowner permission isn’t available, WJT may be observed from the property boundary. More information regarding the WJTCA can be found here: [Western Joshua Tree Conservation Permitting](#).

Evidence impact would be significant: WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). 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 2025). Grading, vegetation clearing, staging of construction equipment, vehicles, and foot traffic might impact WJT in adjacent areas, and may result in the disruption to WJT seedbank.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significance: The IS/MND should be revised to discuss the Project’s direct or indirect impacts on any WJT within the adjacent areas. Given the location of WJT adjacent to the Project area, CDFW offers the following mitigation measure for inclusion in the final IS/MND:

Biological Resources Mitigation Measure 2 (MM BIO-2)

The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to the initiation of western Joshua tree removal, relocation, replanting, 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](#).

COMMENT #3: Burrowing Owl (*Athene cunicularia hypugaea*)

ISMND Page #24, Biological Resource Assessment

Christian Espinoza, Planning Technician
 City of Adelanto
 March 5, 2025
 Page 5

Issue: On October 25th, 2024, the western burrowing owl was designated as a candidate CESA-listed species. The Project may impact burrowing owl and its habitat. The IS/MND does not include mitigation measures for burrowing owl. Furthermore, the general biological survey that was conducted on April 23, 2024, by ELMT Consulting is not sufficient in timing and scope to detect burrowing owl.

Specific impact: CDFW is concerned that the IS/MND does not sufficiently identify Project impacts to burrowing owl nor ensure impacts are mitigated to a level less than significant.

Although no evidence of burrowing owl was detected within the Project site, and a 200-foot buffer, the Project site is within potential burrowing owl habitat (CNDDDB). CDFW would also like to point out that one reconnaissance survey was conducted on the project site and no species-specific surveys were completed. Additionally, the habitat assessment may not have been conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version), which recommends surveying adjoining areas within 500 feet.

Why impact would occur: Burrowing owls have been known to use highly degraded and marginal habitats where existing burrows are available. The nest and roost burrows of the burrowing owl are most commonly dug by ground squirrels, but they have also been known to use a variety of other species' dens or holes (Gervais, J.A., Rosenberg, D.K., & Comrack, L.A., 2008). Burrowing owls may use small mammal burrows throughout the Project site and adjacent areas as overwintering, breeding, and nesting habitat. Additionally, the California Natural Diversity Database (CNDDDB) dataset, [Burrowing Owl Predicted Habitat](#) (CDFW 2025) display a high potential for burrowing owl presence within the Project area, along with several observations of burrowing owls within 5 miles of the Project site (CDFW 2025). Project implementation, including grading, vegetation clearing and construction, may result in direct mortality, population declines, or local extirpation of burrowing owl not previously identified. Burrowing owls also have a high potential to move into disturbed areas since they are adapted to highly modified habitats (Chipman et al., 2008; Coulombe, 1971).

Evidence impact would be significant: Habitat loss is a threat to burrowing owls (CDFG, 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing owls are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species, and the impacts must be minimized and fully mitigated.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that prior to commencing Project activities, pre-construction surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). The surveys shall include 100 percent coverage of the Project site and 500-foot buffer in adjacent habitat. To support the City of Adelanto in reducing impacts to burrowing owl to a level less than significant, CDFW offers the following mitigation measure:

Biological Resources Mitigation Measure 3 (MM BIO-3)

Pre-construction surveys for burrowing owl occupation shall be conducted by a qualified biologist(s) prior to the start of Project-related activities. The surveys shall follow the methods described in the CDFW's Staff Report on Burrowing Owl Mitigation (CDFW 2012). The surveys shall include 100 percent coverage and include a minimum 500-foot buffer in adjacent habitat. Pre-construction surveys shall be conducted no less than 14 days before initial ground disturbance (e.g., grading, grubbing, construction). Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance

Christian Espinoza, Planning Technician
City of Adelanto
March 5, 2025
Page 6

surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance. If burrowing owls or suitable burrowing owl burrows with sign (e.g., whitewash, pellets, feathers, prey remains) are identified on the Project site during the survey, Project activities shall be immediately halted. The qualified biologist shall notify CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval. If avoidance is not feasible, the Project Proponent shall consult with CDFW on the next steps, including obtaining an Incidental Take Permit (ITP) for burrowing owl prior to the start of Project activities.

COMMENT 4: Desert Tortoise (*Gopherus agassizii*)

IS/MND Page # 25, Biological Resource Assessment

Issue: The Project site is within the range of the CESA-endangered desert tortoise and the Project has the potential to result in permanent loss, degradation, and impacts to desert tortoise habitat.

Specific impact: The IS/MND does not provide any avoidance, or mitigation measures specific to desert tortoise. Focused surveys were not conducted as stated in the IS/MND. Project activities have the potential to lead to the take of desert tortoise.

Why impact would occur: This species is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat, due to development. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert tortoise. Project construction and operation may result in collision with or crushing by vehicles or heavy equipment; entrapment within open trenches and pipes; entrapment or entanglement within materials and equipment staged and moved; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation

Evidence impact would be significant: Desert tortoise has full protection of an endangered species under CESA. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less than significant: CDFW offers the following measure for inclusion in the final IS/MND:

Biological Resources Mitigation Measure 4 (MM BIO-4):

A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Preconstruction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.

ENVIRONMENTAL DATA

Christian Espinoza, Planning Technician
City of Adelanto
March 5, 2025
Page 7

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 City of Adelanto in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Lydia Rodriguez, Senior Environmental Scientist Specialist at lydia.rodriguez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

Attachment A: MMRP for CDFW-Proposed Mitigation Measures

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

REFERENCES

- California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: [Microsoft Word - BUOW Staff Report_final_030712 REV 1.doc](#)
- Chipman, Erica D., et al. "Effects of human land use on western Burrowing Owl foraging and activity budgets." *Journal of Raptor Research* 42.2 (2008): 87-98
- Coulombe, Harry N. "Behavior and population ecology of the burrowing owl, *Speotyto cunicularia*, in the Imperial Valley of California." *The Condor* 73.2 (1971): 162- 176
- Gervais, J.A., Rosenberg, D.K., and Comrack, L.A. Burrowing Owl (*Athene cunicularia*). Shuford, W.D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- Rosenberg, D. K., and K. L. Haley. 2004. The ecology of burrowing owls in the agroecosystem of the Imperial Valley, California. *Studies in Avian Biology* 27:120-135.
- U.S. Fish and Wildlife Service (USFWS). 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California.



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GAVIN NEWSOM, Governor



DEPARTMENT OF FISH AND WILDLIFE

CHARLTON H. BONHAM, Director

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Attachment A

Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

Draft Mitigation Monitoring and Reporting Program (MMRP)

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

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p>MM BIO-1:</p> <p>All construction activities shall comply with the federal Migratory Bird Treaty Act of 1918 (MBTA) and California Fish and Game Code Sections 3503, 3511 and 3513. The MBTA governs the taking and killing of migratory birds, their eggs, parts, and nests and prohibits the take of any migratory bird, their eggs, parts, and nests. Compliance with the MBTA shall be accomplished by completing the following: Regardless of the time of year, a preconstruction survey shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, no more than three (3) days prior to the initiation of project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist shall make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If nesting bird activity is present within the work area or the Project’s zone of influence (generally 100-300 feet), a no disturbance buffer zone shall be established by the qualified biologist to be marked on the ground around each nest. The buffer shall be a minimum of 500 feet for raptors and 300 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. Active nest(s) and an established buffer distance(s) shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. If there is no nesting activity, then no further action is needed for this measure. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-2:</p> <p>The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to the initiation of western Joshua tree removal, relocation, replanting, 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</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

<p>(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</p>		
<p>MM BIO-3: Pre-construction surveys for burrowing owl occupation shall be conducted by a qualified biologist(s) prior to the start of Project-related activities. The surveys shall follow the methods described in the CDFW’s Staff Report on Burrowing Owl Mitigation (CDFW 2012). The surveys shall include 100 percent coverage and include a minimum 500-foot buffer in adjacent habitat. Pre-construction surveys shall be conducted no less than 14 days before initial ground disturbance (e.g., grading, grubbing, construction). 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. If burrowing owls or suitable burrowing owl burrows with sign (e.g., whitewash, pellets, feathers, prey remains) are identified on the Project site during the survey, Project activities shall be immediately halted. The qualified biologist shall notify CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval. If avoidance is not feasible, the Project Proponent shall consult with CDFW on the next steps, including obtaining an Incidental Take Permit (ITP) for burrowing owl prior to the start of Project activities.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM-BIO 4: A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Preconstruction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>