



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](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
 CHARLTON H. BONHAM, Director



May 15, 2025  
 Sent via email.

Ron Cruz, Planner  
 San Bernardino County Land Use Services  
 385 N. Arrowhead Ave, 1<sup>st</sup> floor  
 San Bernardino, CA, 92415

Dear Ron Cruz:

JOSHUA TREE GPA AND ZONE CHANGE (PROJECT)  
 NEGATIVE DECLARATION (ND)  
 SCH# 2025041298

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an ND from San Bernardino County for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW appreciates the opportunity to provide comments and recommendations related to the protection and conservation of California's fish and wildlife.

The proposed Project consists of a General Plan Amendment/Policy Plan Amendment and corresponding Zone Change, leading to future development of a 40-acre site that is currently undeveloped and provides habitat for fish and wildlife (biological) resources. The proposed General Plan Amendment/Policy Plan Amendment and corresponding Zone Change will not have an impact on any biological resources at this time because no development is proposed as part of the Project. There is the potential for future development proposals on the 40-acre site resulting from the General Plan Amendment/Policy Plan Amendment and corresponding Zone Change that may impact biological resources and CDFW is providing Comments and Recommendations below for your consideration.

## 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. For example, future development of the Project site may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.) and 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.). Future project proponents may seek related take authorization and a streambed alteration agreement as provided by the Fish and Game Code.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** San Bernardino County (County)

<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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**Objective:** The proposed Project consists of a General Plan Amendment/Policy Plan Amendment and corresponding Zone Change for Assessor's Parcel Number (APN) 0602-371-06, which consists of 40 acres. Currently the Project site is undeveloped and zoned for residential and commercial land use. Seven acres on the southern portion is zoned for commercial land use and the remaining 33 acres is zoned for residential land use. The Project proposes to increase the area under the commercial land use designation from 7 acres to 16 acres and decrease the area under the residential land use designation from 33 acres to 24 acres.

**Location:** The Project is located at the northwest corner of Sunset Road and Twentynine Palms Highway (State Route 62) and south of Verbena Road in the unincorporated community of Joshua Tree, San Bernardino County. Specifically, the Project is located at APN 0602-371-06 and Latitude 34.136444, Longitude: -116.319250.

**Timeframe:** Unspecified

## COMMENTS AND RECOMMENDATIONS

### COMMENT # 1: Western Joshua Tree (*Yucca brevifolia*)

Western Joshua tree (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). 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".

Additionally, western Joshua tree (WJT) is protected under the Western Joshua Tree Conservation Act (WJTCA). The WJTCA was enacted in July 2023 and prohibits the import, export, take, possession, purchase, or sale of any WJT or parts thereof in California unless authorized by CDFW (Fish & G. Code §1927.2). Based on biological surveys in the ND and aerial imagery, CDFW determined that WJT is located on the Project site and according to Exhibit 8 of the ND, at least 112 WJT are found on the Project site. Thus, development of the Project site may have significant impacts on WJT. For example, 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.

CDFW appreciates that the ND recognizes the need for permits from CDFW for the translocation or removal of WJT if future development onsite could impact WJT. CDFW strongly recommends the adoption of the following mitigation measure for future development on the Project site:

#### **Western Joshua Tree Mitigation Measure:**

**The western Joshua tree is a candidate threatened species under the California Endangered Species Act. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project proponent shall obtain an incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW) under Section 2081b of the California Endangered Species Act (CESA), or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, removal, or take (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") of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12). Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the Project site, including photographs, that**

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**categorize the trees according to the following size classes: a. Less than one meter in height, b. One meter or greater but less than five meters in height, and c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For the current fees, please visit: [Western Joshua Tree Conservation Act Incidental Take Permit](#). Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem or trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees.**

### **COMMENT # 2: Sensitive Plant Species**

Development of the Project site may have significant impacts on special-status plants and their habitats. The ND states that the Little San Bernardino Mountains linanthus (*Linanthus maculatus ssp. maculatus*) is highly likely to occur throughout the Project area where streams occur. Little San Bernardino Mountains linanthus is considered by the California Native Plant Society (CNPS)<sup>2</sup> as rare, threatened, or endangered in California and thus has a ranking of 1B.2. Additionally, the ND states that desert unicorn-plant (*Proboscidea althaeifolia*) was observed on site. Desert unicorn-plant is considered by CNPS as a plant with limited distribution and a watch list species and thus has a ranking of 4.3. Additionally, according to CDFW's California Natural Diversity Database (CNDDDB)<sup>3</sup>, the Project site is adjacent to a historical observance of Parish's club-cholla (*Grusonia parishii*). Parish's club-cholla is considered by CNPS as a species that is rare, threatened, or endangered in California but more common elsewhere and thus has a ranking of 2B.2. CDFW considers the take of special-status plants and the loss of these species' habitats as a significant impact, unless mitigated to a level of less than significant. Plants with California Rare Plant Ranks of 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare, or threatened species for the purposes of CEQA analysis.

The ND states that the County may require a focused survey for desert unicorn-plant and Little San Bernardino Mountains linanthus to assess potential impacts from future development onsite. Impacts to special-status plant species may be significant if focused surveys that utilize species specific methodologies are not a requirement prior to any ground disturbing activities and special-status plants are not identified properly. Thus, CDFW recommends that the following mitigation measure be required for future development on the Project site:

#### **Sensitive Plant Species Mitigation Measure:**

**Prior to any ground disturbing activities, a Qualified Botanist shall conduct focused plant surveys that are consistent with the 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities<sup>4</sup>. The surveys shall be conducted at the appropriate time of year when plants are both evident and identifiable (usually, during flowering or fruiting) and in a manner that maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. If any sensitive or special-status plant species is identified, the Qualified Botanist shall delineate a buffer around the plant(s) and impacts shall be fully avoided. If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and**

<sup>2</sup> California Native Plant Society, Rare Plant Program. 2025. Rare Plant Inventory Accessed: Website <https://www.rareplants.cnps.org>

<sup>3</sup> California Department of Fish and Wildlife (CDFW). California Natural Diversity Database (CNDDDB) Accessed: <https://apps.wildlife.ca.gov/bios6/>

<sup>4</sup> California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.

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**perpetual conservation and management thereof as determined by CDFW after Project analysis. If full avoidance of any California Endangered Species Act listed plant species is not feasible, the Project proponent shall not commence Project activities and should obtain an incidental take permit from CDFW.**

**COMMENT # 3: Desert Tortoise (*Gopherus agassizii*)**

The ND states that desert tortoise is a state threatened listed species under CESA. Please note that desert tortoise was recently proposed to be uplisted from a threatened to an endangered species under CESA, signifying the continued need to conserve the species.

According to the ND, during the U.S. Fish and Wildlife Service (USFWS) protocol survey conducted by the Project biologist, no desert tortoise sign was found neither onsite nor in adjacent areas. Therefore, the Project biologist concluded that desert tortoise is absent from the Project site. The ND also recognizes that since the survey was conducted in 2021 and it is not known when development will occur on the site, there is a limited likelihood of desert tortoises entering the site from adjacent vacant desert areas to the north to either pass through the site or establish temporary residency. Thus, the ND suggests that additional surveys may be required when development is proposed. The ND also states that regardless of survey results, tortoises are protected under state and federal laws, and incidental take of the tortoises is prohibited without authorization from USFWS and/or CDFW.

CDFW appreciates that the ND considered potential impacts to desert tortoise and CDFW recommends that the following mitigation measure be required for future development on the Project site considering that desert tortoise may move into the Project site at any given time:

**Mitigation Measure Desert Tortoise:**

**Pre-construction desert tortoise surveys shall be required prior to any ground disturbance or vegetation removal and shall be conducted by a CDFW-approved Designated Biologist(s) knowledgeable in the biology, ecology, and life history of desert tortoise. The desert tortoise clearance survey shall not be completed with other surveys conducted for other species while using the same personnel and shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology <sup>5</sup>, ensuring 100-percent visual coverage for desert tortoise and their sign.**

**If the survey confirms presence, the Project proponent shall fully avoid impacts to desert tortoise. If full avoidance of impacts to desert tortoise is not feasible, the Project proponent should not undertake Project activities and should seek appropriate take authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] for desert tortoise from CDFW.**

**COMMENT # 4: Nesting Birds**

The development of the Project site may have a significant impact on nesting birds and the ND discussed impacts to nesting birds, such as burrowing owl, northern harrier, Cooper's hawk, prairie falcon, and LeConte's trasher. The ND states that burrowing owl is a Species of Special Concern (SSC). Please note that on October 10, 2024, the Fish and Game Commission determined that burrowing owl warrants protection as a candidate species under CESA (Fish & G. Code, § 2050 et seq.). The ND states that a habitat assessment for burrowing owl was conducted in 2021 and no sign of burrowing owl, nor any inactive California ground squirrel burrows or tortoise burrows that are suitable for burrowing owl were found.

Further, the ND states that: 1) northern harrier is a CDFW SSC, but is not likely to forage or nest onsite; 2) Cooper's hawk and prairie falcon are designated as a Watch List species

<sup>5</sup> U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for any action that may occur within the range of the Mojave Desert Tortoise (*Gopherus agassizii*).

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by CDFW, the latter also as a Bird of Conservation Concern by USFWS, but no nesting habitat exists and foraging habitat exists for these species throughout the Project site; 3) loggerhead shrike and LeConte's thrasher are CDFW SSC and USFWS Birds of Conservation Concern and suitable nesting and foraging habitat for these species is common on the Project site; and 4) future development onsite has the potential to adversely affect loggerhead shrike and LeConte's thrasher, and further study and mitigation will be required at the time that development is proposed.

The ND also states that "CDFW typically requires that vegetation not be removed from a project site between March 15 and September 15 and if it is necessary to commence project construction between March 15 and September 15, a qualified biologist should survey all shrubs and structures within the Project site for nesting birds, no more than three days prior to clearing. 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". CDFW would like to clarify that a pre-construction nesting bird survey is needed prior to construction regardless of the time of year to ensure that impacts to nesting birds are avoided. This is considering that the timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.).

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.

Considering all of the above, CDFW recommends the following mitigation measure be required for future development on the Project site:

**Nesting Birds Mitigation Measure:**

**Within 3 days prior to any ground disturbing activities, a Qualified Avian Biologist shall conduct pre-construction nesting bird surveys that encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures throughout the Project area and appropriate buffer as determined by the Qualified Avian Biologist. If an active nest is confirmed, the Qualified Avian Biologist shall immediately establish a conservative buffer around the nest. The buffer shall be delineated to ensure that all Project personnel avoid the active nest. Furthermore, the buffer shall not be marked in a manner that attracts predators. The buffer shall remain in place until the Qualified Avian Biologist determines that the young have fledged or the nest has been abandoned. If at any time during Project activities, a California Endangered Species Act listed bird species is observed nesting on site, the Project proponent shall immediately halt Project activities and contact CDFW Inland Deserts Region 6.**

**COMMENT # 5: Burrowing Owl (*Athene cunicularia*)**

The Project may have a significant impact on burrowing owl, a CESA candidate listed species. The ND states that a habitat assessment for burrowing owl was conducted in 2021 and the site survey found no sign of burrowing owl, nor any suitable burrows for burrowing owl and thus determined that burrowing owl was absent from the Project site.

The 2012 Staff Report on Burrowing Owl Mitigation<sup>6</sup> states that burrowing owl preferred habitat generally includes short, sparse vegetation with few shrubs. Based on the

<sup>6</sup> California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

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vegetation description in the ND and aerial imagery, the Project site contains suitable habitat for burrowing owl. Additionally, the habitat assessment and surveys for burrowing owl were conducted in 2021 and since then and leading up to the development of the Project site, burrowing owl may visit, forage, or nest within the Project site. As transient species, burrowing owls have a high potential to move into suitable habitat prior to and during construction activities. Burrowing owls also frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman et al. 2008<sup>7</sup>; Coulombe 1971<sup>8</sup>). CDFW is concerned with potential impacts to burrowing owl from future development of the Project site including take of burrowing owls, their nests, or eggs and destruction of nesting, foraging, or over-wintering habitat. Injury, disruption of breeding behavior, and/or reduction of reproductive capacity of the species may also occur.

Burrowing owl is a candidate species under CESA. During the candidacy period, burrowing owl is afforded the same protection as a threatened and endangered species under CESA. 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). If a project could result in take, appropriate CESA authorization (*i.e.*, Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of project activities.

Considering all of the above, CDFW recommends the following mitigation measure be required for future development on the Project site:

**Burrowing Owl Mitigation Measure:**

**Prior to the initiation of Project activities, a qualified biologist shall conduct a burrowing owl habitat assessment consistent with the 2012 *Staff Report on Burrowing Owl Mitigation*. If the burrowing owl habitat assessment identifies burrowing owl habitat or sign of burrowing owl, the Project proponent shall have a Designated Biologist(s) perform breeding season surveys for burrowing owls according to the 2012 *Staff Report on Burrowing Owl Mitigation*. If burrowing owls are detected on the Project site, the Project proponent shall fully avoid impacts to burrowing or should obtain a CESA ITP if impacts to burrowing owl are unavoidable.**

**COMMENT # 6: Fish and Game Code 1602 Resources**

Joshua Tree Creek traverses the Project site and the Project may result in significant impacts to Joshua Tree Creek and ephemeral channels located throughout the Project site that stem from Joshua Tree Creek. The ND states that a jurisdictional delineation will be required if any activity has the potential to impact Joshua Tree Creek and recognizes that a 1602 Streambed Alteration Agreement is required from CDFW for all activities that alter streams. CDFW would like to note that Fish and Game Code section 1602 resources on the Project site not only include Joshua Tree Creek but also the numerous channels located on the Project site that stem from Joshua Tree Creek. Future development is likely to impact Joshua Tree Creek and its associated channels.

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.

Considering all of the above, CDFW recommends the following mitigation measure be required for future development on the Project site:

<sup>7</sup> Chipman, E.D., McIntyre, N.E., Strauss, R.E., et. al. (2008). Effects of Human Land Use on Western Burrowing Owl Foraging and Activity Budgets. *J. Raptor Res.*, 42(2).

<sup>8</sup> Coulombe, H.N. (1971). Behavior and Population Ecology of the Burrowing Owl, *Speotyto Cunicularia*, in the Imperial Valley of California. *Ecology of the Burrowing Owl*.

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**Streambed Alteration Agreement Mitigation Measure:**

**Prior to construction activities, mapping of stream resources on the Project site shall be conducted to identify streams on site. If Project construction activities occur within a stream or associated habitat, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.**

**COMMENT #7: Future Development**

CDFW recommends circulating a copy of this letter to entities proposing to develop in the Project site. The County should provide resources regarding permitting and biological resources to developers of the Project site and should direct any questions regarding biological resources to CDFW Inland Deserts at [askregion6@wildlife.ca.gov](mailto:askregion6@wildlife.ca.gov).

**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 ND to assist in identifying and mitigating impacts on biological resources from future development of the Project site.

Questions regarding this letter or further coordination should be directed to Emily Leon, Environmental Scientist at [Emily.Leon@wildlife.ca.gov](mailto:Emily.Leon@wildlife.ca.gov) or at (760) 644-5976.

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento  
[State.clearinghouse@opr.ca.gov](mailto:State.clearinghouse@opr.ca.gov)

**ATTACHMENTS**

Attachment A: Mitigation Monitoring and Reporting Plan

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## REFERENCES

California Department of Fish and Wildlife (CDFW). California Natural Diversity Database (CNDDDB) Accessed: <https://apps.wildlife.ca.gov/bios6/>

California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.

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

California Native Plant Society, Rare Plant Program. 2025. Rare Plant Inventory Accessed: Website <https://www.rareplants.cnps.org>

Chipman, E.D., McIntyre, N.E., Strauss, R.E., et. al. (2008). Effects of Human Land Use on Western Burrowing Owl Foraging and Activity Budgets. *J. Raptor Res.*, 42(2).

Coulombe, H.N. (1971). Behavior and Population Ecology of the Burrowing Owl, *Speotyto Cunicularia*, in the Imperial Valley of California. *Ecology of the Burrowing Owl*.

U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for any action that may occur within the range of the Mojave Desert Tortoise (*Gopherus agassizii*).

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**Attachment A**

**Mitigation Monitoring and Reporting Plan**

<b>Biologist Resources</b>		
<b>Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p><b><u>Western Joshua Tree</u></b></p> <p>The western Joshua tree is a candidate threatened species under the California Endangered Species Act. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project proponent shall obtain an incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW) under Section 2081b of the California Endangered Species Act (CESA), or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (Fish &amp; G. Code, §§ 1927-1927.12), prior to the relocation, removal, or take (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") of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 &amp; 2085 and §§ 1927-1927.12). Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the Project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height, b. One meter or greater but less than five meters in height, and c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For</p>	<p>Prior to any ground disturbing activity</p>	<p>Project proponent</p>

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<p>the current fees, please visit: <a href="#">Western Joshua Tree Conservation Act Incidental Take Permit</a>. Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem or trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees.</p>		
<p><b><u>Sensitive Plant Species</u></b></p> <p>Prior to any ground disturbing activities, a Qualified Botanist shall conduct focused plant surveys that are consistent with the 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities<sup>9</sup>. The surveys shall be conducted at the appropriate time of year when plants are both evident and identifiable (usually, during flowering or fruiting) and in a manner that maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. If any sensitive or special-status plant species is identified, the Qualified Botanist shall delineate a buffer around the plant(s) and impacts shall be fully avoided. If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and perpetual conservation and management thereof as determined by CDFW after Project analysis. If full avoidance of any California Endangered Species Act listed plant species is not feasible, the Project proponent shall not commence Project activities and should obtain an incidental take permit from CDFW.</p>	<p>Prior to any ground disturbing activity</p>	<p>Project proponent and Qualified Botanist</p>
<p><b><u>Desert Tortoise</u></b></p> <p>Pre-construction desert tortoise surveys shall be required prior to any ground disturbance or vegetation removal and shall be conducted by a CDFW-approved Designated Biologist(s) knowledgeable in the biology, ecology, and life history of desert tortoise. The desert tortoise clearance survey shall not be completed with other surveys conducted for other species while using</p>	<p>Prior to any ground disturbing activity</p>	<p>Project proponent and Qualified Biologist</p>

<sup>9</sup> California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.

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<p>the same personnel and shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology <sup>10</sup>, ensuring 100-percent visual coverage for desert tortoise and their sign.</p> <p>If the survey confirms presence, the Project proponent shall fully avoid impacts to desert tortoise. If full avoidance of impacts to desert tortoise is not feasible, the Project proponent should not undertake Project activities and should seek appropriate take authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] for desert tortoise from CDFW.</p>		
<p><b><u>Nesting Birds</u></b></p> <p>Within 3 days prior to any ground disturbing activities, a Qualified Avian Biologist shall conduct pre-construction nesting bird surveys that encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures throughout the Project area and appropriate buffer as determined by the Qualified Avian Biologist. If an active nest is confirmed, the Qualified Avian Biologist shall immediately establish a conservative buffer around the nest. The buffer shall be delineated to ensure that all Project personnel avoid the active nest. Furthermore, the buffer shall not be marked in a manner that attracts predators. The buffer shall remain in place until the Qualified Avian Biologist determines that the young have fledged or the nest has been abandoned. If at any time during Project activities, a California Endangered Species Act listed bird species is observed nesting on site, the Project proponent shall immediately halt Project activities and contact CDFW Inland Deserts Region 6.</p>	<p>Prior to any ground disturbing activity</p>	<p>Project proponent and Qualified Avian Biologist</p>
<p><b><u>Burrowing Owl</u></b></p> <p>Prior to the initiation of Project activities, a qualified biologist shall conduct a burrowing owl habitat assessment consistent with the 2012 <i>Staff Report on Burrowing Owl Mitigation</i>. If the burrowing owl habitat assessment identifies burrowing owl habitat or sign of burrowing owl, the Project proponent shall have a Designated Biologist(s)</p>	<p>Prior to any ground disturbing activity</p>	<p>Project proponent and Qualified Biologist</p>

<sup>10</sup> U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for any action that may occur within the range of the Mojave Desert Tortoise (*Gopherus agassizii*).

Ron Cruz, Planner  
 San Bernardino County Land Use Services  
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<p>perform breeding season surveys for burrowing owls according to the 2012 <i>Staff Report on Burrowing Owl Mitigation</i>. If burrowing owls are detected on the Project site, the Project proponent shall fully avoid impacts to burrowing or should obtain a CESA ITP if impacts to burrowing owl are unavoidable.</p>		
<p><b><u>Streambed Alteration Agreement</u></b></p> <p>Prior to construction activities, mapping of stream resources on the Project site shall be conducted to identify streams on site. If Project construction activities occur within a stream or associated habitat, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.</p>	<p>Prior to any ground disturbing activity</p>	<p>Project proponent</p>