State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

August 15, 2025
Sent via email

Derek Newland
Planner
San Bernardino County (Land Use Services)
385 N. Arrowhead Ave, 1st Floor
San Bernardino, CA 92415

Dear Derek Newland:

Persistence Mine Reclamation Plan (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2025070443

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from San Bernardino County, Land Use Services (County) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[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.

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" of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), and the Project proponent may seek related take authorization as provided by the Fish and Game Code. 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".

PROJECT DESCRIPTION SUMMARY

Proponent: Gold Discovery Group, LLC

Objective: The objective of the Project is to conduct placer mining activities. Mining will be conducted by the Gold Discovery Group, LLC on public lands administered by the Bureau of Land Management (BLM). Mining activities would consist of extracting gold and silver from consolidated to semi consolidated sands and silts by producing two open pits within a Project site of approximately 125.5 acres. The open pits would be developed in two phases, phase 1 includes creating a wash plant pad site and the initial box cut of the open pits and phase 2 includes continued block or strip mining of the two open pits. Once mining activities are concluded, reclamation would occur by backfilling the open pits and through restoration of the impacted areas. Water for mining operations may come from an existing well or the Project proponent would develop two wells off site that would cause a disturbance of 0.56 acres.

Location: The Project is located in County of San Bernardino on Assessor Parcel Number (APN) 0503-341-01 and APN 0503-081-13 at latitude 35.303921 and longitude -117.608991. The Project is 6.3 miles south of Johannesburg, directly east of U.S. 395, approximately 7 miles west of Cuddeback Lake, and approximately 21 miles north of Kramer Junction.

Timeframe: The Project is expected to have mining activities occur for 33 months and reclamation activities to occur as long as needed to meet requirements set by the County and BLM.

COMMENTS AND RECOMMENDATIONS

The majority of the mitigation measures provided, while appreciated, mainly adhere to the BLM Conservation Management Actions (CMA). While this may be mandated for exploration in federal lands, the Project proponent also has the responsibility to comply with state laws. CDFW recommends that the Project proponent consider state

regulations for fish and wildlife (biological resources) under the California Fish and Game Code. Additionally, considering the scope of the Project and potential impacts to several CESA-listed species (see comments below), CDFW requests that the Project proponent contact CDFW to discuss a CESA Incidental Take Permit (ITP). 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 biological resources.

COMMENT #1: Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

Section: Biological Resources, Page #28 and 52

Issue: Mohave ground squirrel is a threatened species under CESA. While the MND conducted focused surveys for desert tortoise and burrowing owl and included those surveys with the MND, the MND does not provide much of an impact assessment for Mohave ground squirrel. The MND simply provides the results of CNDDB. In 2022, CDFW consulted on the trapping for Mohave ground squirrel at the Project site and Mohave squirrel was detected on site. It was CDFW's understanding that the Project would proceed with an ITP request for Mohave ground squirrel. CDFW is concerned that the mitigation measures for Mohave ground squirrel do not consider obtaining a CESA ITP and instead propose to flag burrows for avoidance. As proposed, CDFW is concerned that mitigation measures will not fully avoid impacts to Mohave ground squirrel and thus result in take. In fact**,** mitigation measures LUPA-BIO-IFS-39 and LUPA-BIO-IFS-41 propose to move Mohave squirrel out of harm's way without a CESA ITP.

Specific impact: Presence of Mohave ground squirrel was detected on the Project site through trapping in 2022 and the Project site is likely occupied by Mohave squirrel. Additionally, mitigation measures LUPA-BIO-IFS-39 and LUPA-BIO-IFS-41 propose to handle individuals, which would result in take.

Why impact would occur: The Project was previously determined to be occupied by Mohave ground squirrel and the Project will impact 125.5 acres of Mohave ground squirrel habitat through the construction of a mine, mining activities, and reclamation of the mine.

Evidence impact would be significant: The Project will impact 125.5 acres of habitat for Mohave ground squirrel. CDFW considers the direct and indirect take of Mohave ground squirrel and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant, which would occur through a CESA ITP.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less than significant: CDFW offers the following revisions (additions are in **bold** and deletions are in ~~strikethrough~~) to LUPA-BIO-IFS-39 and for inclusion in the final MND. Additionally, CDFW determined LUPA-BIO-IFS-41 is not needed since LUPA-BIO-IFS-39 includes similar requirements:

Mitigation Measure Biological Resource (LUPA-BIO-IFS-39):

LUPA-BIO-IFS-39: During the typical active Mohave ground squirrel season (February 1 through August 31), **a qualified biologist shall** conduct **camera, trapping, and visual** ~~clearance~~ surveys throughout the **Project** site **and 300-foot buffer**~~,~~ ~~immediately~~ prior to initial ground disturbance in ~~the areas depicted in Appendix D~~ **consultation with CDFW and in accordance with the California Department of Fish and Wildlife Mohave Ground Squirrel Survey Guidelines (CDFW 2023)**. ~~In the cleared areas, perform monitoring to determine if squirrels have entered cleared areas. Contain ground disturbance to within areas cleared of squirrels.~~ ~~Detected occurrences of Mohave ground squirrel will be flagged and~~ **If Mohave ground squirrel is detected through surveys the Project proponent shall fully** avoid~~ed~~ **impacts to Mohave ground squirrel and report it to CDFW or should obtain a CESA ITP if impacts are unavoidable**~~, with a minimum avoidance area of 50 feet, until the squirrels have moved out of harm's way~~. ~~A designated biologist may also actively move squirrels out of harm's way~~.

• ~~How the Project would comply with the CMA: Preconstruction surveys would occur prior to any surface disturbing activities as outlined in the measures in the Plan, and this CMA would be implemented if necessary in coordination with the BLM. Implementing this measure would identify the species' presence to enable the proponent to avoid impacts on this species.~~

~~**Mitigation Measure Biological Resource (LUPA-BIO-IFS-41):**~~

~~**LUPA-BIO-IFS-41**: For any ground-disturbing (e.g., vegetation removal, earthwork, trenching) activities, occurrences of Mohave ground squirrel will be flagged and avoided, with a minimum avoidance area of 50 feet, until the squirrels have moved out of harm's way. A designated biologist may also actively move squirrels out of harm's way.~~
~~• How the Project would comply with the CMA: Preconstruction surveys would occur prior to any surface disturbing activities as outlined in the measures in the Plan, and this CMA would be implemented if necessary in coordination with the BLM. Implementing this measure would identify the species' presence to enable the proponent to avoid impacts on this species.~~

COMMENT #2: Desert Tortoise (*Gopherus agassizii*)

Section: Biological Resources, Page #9, 29-30, 34, 48-50, 56, 98

Issue: Desert tortoise is an endangered species under CESA. CDFW appreciates that focused surveys according to protocol were performed for desert tortoise and that results were provided with the MND. While no live desert tortoises, potential desert tortoise burrows, or signs of desert tortoises were observed, mitigation measure LUPA-BIO-IFS-4 proposes installation of desert tortoise exclusionary fencing and moving desert tortoise out of harm's way. CDFW recommends that installation of exclusionary fencing and handling of desert tortoise only occur with proper authorization, including authorization from CDFW through a CESA ITP.

Specific impact: Project construction and related mining and reclamation activities may cause direct take of desert tortoise and indirect take in the form of reducing habitat and species movement.

Why impact would occur: Suitable habitat for desert tortoise is present on-site, including creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*) and data from CNDDB indicates occurrence of desert tortoise within 2 miles from the Project. Additionally, documents that were previously submitted to CEQAnet and are now withdrawn indicated that desert tortoise was considered present onsite. Furthermore, as CDFW discussed earlier, the Project proposes desert tortoise translocation and exclusionary fencing, which would require take authorization from CDFW.

Evidence impact would be significant: Desert tortoise was recently uplisted from a threatened to endangered species under CESA, signifying the continued need to conserve the species and the importance to avoid impacts to the species and its habitat. CDFW considers the take of a listed species and loss of the species habitat as a significant impact, unless mitigated to a level of less than significant.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less than significant: CDFW offers the following revisions for inclusion in the final MND (additions are in **bold** and deletions are in ~~strikethrough~~) and proposes LUPA-BIO-DT-1 for adoption in the final MND:

Mitigation Measure Biological Resource (LUPA-BIO-IFS-4):

LUPA-BIO-IFS-4: ~~In areas where protocol and clearance surveys are required (see Appendix D),~~ **P**~~p~~rior to construction or commencement of any ~~long-term~~ activity ~~that is likely to adversely affect desert tortoises~~ **and following take authorization from CDFW (i.e., CESA ITP)**, desert tortoise exclusion fencing shall be installed around the perimeter of the activity footprint in accordance with the Desert Tortoise Field

Manual (USFWS 2009) or most up-to- date USFWS protocol. Additionally, short-term desert tortoise exclusion fencing will be installed around short term construction and/or activity areas (e.g., staging areas, storage yards, excavations, and linear facilities), as appropriate, per the Desert Tortoise Field Manual (USFWS 2009) or most up- to-date USFWS protocol. **Prior to installation of exclusionary fencing, pre-construction clearance surveys shall be conducted using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual. These surveys shall cover 100 percent of the Project area and a 50-foot buffer zone around the Project site. If any desert tortoise is found, it shall be allowed to move out of harm's way on its own violation or translocation of desert tortoise shall occur according to the CESA ITP.**

~~- Exemption from desert tortoise protocol survey requirements can be obtained from BLM, in coordination with USFWS, and CDFW as applicable, on a case-by-case basis if a designated biologist determines the activity site does not contain the elements of desert tortoise habitat, is unviable for occupancy, or if baseline studies inferred absence during the current or previous active season.~~

- Construction of desert tortoise exclusion fences will occur during the time of year when tortoise are less active in order to minimize impacts and to accommodate subsequent desert tortoise surveys. Any exemption or modification of desert tortoise exclusion fencing requirements will be based on the specifics of the activity and the site-specific population and habitat parameters **and with the approval of BLM and CDFW (an amendment to the CESA ITP may be needed)**. ~~Sites with low population density and disturbed, fragmented, or poor habitat are likely to be candidates for fencing requirement exemptions or modifications.~~ Substitute measures, such as on-site biological monitors in the place of the fencing requirement, may be required **by BLMD or CDFW**, as appropriate.

- After an area is fenced, and until desert tortoises are removed, the designated biologist is responsible for ensuring that desert tortoises are not being exposed to extreme temperatures or predators as a result of their pacing the fence. Remedies may include the use of shelter sites placed along the fence, immediate translocation, removal to a secure holding area, or other means determined by the BLM, USFWS, and CDFW, as applicable.

~~- Modification or elimination of the above requirement may also be approved if the activity design will allow retention of desert tortoise habitat within the footprint. if such a Modification is approved, modified protective measures may be required to minimize impacts to desert tortoises that may reside within the activity area.~~

- Immediately prior to desert tortoise exclusion fence construction, a designated biologist will conduct a clearance survey of the fence alignment to ~~clear~~ **ensure** desert tortoises **are absent** from the proposed fence line's path.

- All desert tortoise exclusion fencing will incorporate desert tortoise proof gates or other approved barriers to prevent access of desert tortoises to work sites through access road entry points.
- Following installation, long-term desert tortoise exclusion fencing will be inspected for damage quarterly and within 48 hours of a surface flow of water due to a rain event **or winds** that may damage the fencing.
- All damage to long-term or short-term desert tortoise exclusion fencing will be immediately blocked to prevent desert tortoise access and repaired within 72 hours.

~~• How the Project would comply with the CMA: GDG's Plan of Operations describes the implementation of temporary desert tortoise exclusion fencing and other monitoring measures, which will be in accordance with current USFWS protocol. The Project will comply with the CMA. Implementing this measure would avoid impacts on this species~~

Mitigation Measure Biological Resource (LUPA-BIO-IFS-5):

LUPA-BIO-IFS-5: Following the clearance surveys within sites that are fenced with long-term desert tortoise exclusion fencing, a designated biologist will monitor initial clearing and grading activities to ensure that desert tortoises missed during the initial clearance survey are moved from harm's way. A designated biologist will inspect construction pipes, culverts, or similar structures: (a) with a diameter greater than 3 inches, (b) stored for one or more nights, (c) less than 8 inches aboveground and (d) within desert tortoise habitat (such as, outside the long-term fenced area), before the materials are moved, buried, or capped. As an alternative, such materials shall be capped before storing outside the fenced area or placing on pipe racks. Pipes stored within the long-term fenced area after completing desert tortoise clearance surveys will not require inspection.

~~• How the Project would comply with the CMA: GDG's Plan of Operations describes the implementation of desert tortoise exclusion fencing and other monitoring measures which will be in accordance with current USFWS protocol. The Project will comply with the CMA. Implementing this measure would avoid impacts on this species~~

Mitigation Measure Biological Resource (LUPA-BIO-IFS-8):

LUPA-BIO-IFS-8: Personnel working on the Project, including personnel, contractors and all subcontractors shall i~~I~~nspect the ground under the vehicle for the presence of desert tortoise any time a vehicle or construction equipment is parked in desert tortoise habitat outside of areas fenced with desert tortoise exclusion fencing. If a desert tortoise is seen, it may move on its own. If it does not move within 15 minutes, a designated biologist **reviewed and approved by CDFW pursuant to the Project's CESA ITP** may remove and relocate the animal ~~to a safe location~~ **according to the Translocation Plan in the CESA ITP**.

• ~~How the Project would comply with the CMA: GDG Plan of Operations includes this CMA and other monitoring measures to protect desert tortoises. The Project will comply with the CMA.~~

Mitigation Measure Biological Resource (LUPA-BIO-IFS-9):

LUPA-BIO-IFS-9: Vehicular traffic will not exceed 15 miles per hour within the areas ~~not cleared by protocol level surveys,~~ where **there is no exclusionary fencing and where** desert tortoise may be impacted.
• ~~How the Project would comply with the CMA: All activities for the Project where desert tortoises may be impacted will be within areas cleared by protocollevel surveys, such that additional speed limits are not anticipated to be needed. However, should vehicle traffic require access to areas not cleared by survey, the Project would comply with the CMA. Implementing this measure would avoid impacts on this species.~~

Mitigation Measure Biological Resource (LUPA-BIO-DT-1) (New):

An Incidental Take Permit (ITP) for desert tortoise *(Gopherus agassizii*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct and/or indirect impacts shall be fulfilled through conservation of suitable desert tortoise habitat through the purchase of mitigation bank credits or land acquisition as determined by CDFW in the ITP.

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

Section: Biological Resources, Page #27, 30, 51,

Issue: Burrowing owl is a candidate species protected under CESA. Mitigation measure LUPA-BIO-IFS-13 proposes passive relocation of burrowing owl through installation of one-way doors and LUPA-BIO-IFS-14 proposes active relocation, but these measures do not consider that relocation would need to be authorized by CDFW through a CESA ITP.

CDFW appreciates that focused breading season surveys for burrowing owl were conducted in 2024 that generally followed the 2012 Staff Report on Burrowing Owl Mitigation[2] (Staff Report). Although no burrowing owls or sign thereof were detected during these surveys, CDFW is concerned that during the lapse of time between the surveys and the time the Project may start, burrowing owl may be present either

[2] California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

during the breeding season or wintering season due to the presence of suitable habitat on-site (i.e., burrows, sparge vegetation, suitable soils). As such, the Project has the potential to impact burrowing owl and under CESA impacts to burrowing owl should be either fully avoided or authorized by an ITP. For these reasons, if a lapse of 3 years or more occurs from when focused surveys (according to the Staff Report) were last conducted to when Project construction begins, CDFW recommends that breeding/wintering season surveys according to the Staff Report be conducted. If such surveys occurred within 3 years of Project initiation, CDFW recommends that a pre-construction burrowing owl survey be conducted to confirm presence/absence of the species.

Specific impact: The Project may result in take of burrowing owl through Project activities such as mine construction, mining operations, and mine reclamation. The Project has the potential to impact burrowing owl through the collapsing of burrows, entombment, displacement, direct take associated with vehicle and/or equipment strike(s) and mine reclamation, indirect take associated with Project activities such as attracting predators, reduction of habitat and habitat quality associated with the construction of the mine and mining activities. The Project as described will cause possible permanent and temporary impacts to burrowing owl foraging and nesting habitat.

Why impact would occur: While burrowing owls were not detected during breeding season surveys, the MND and additional documents state that suitable habitat for burrowing owl is present onsite; for example, sparse vegetation, rolling hills, burrows, and suitable soils. As such, burrowing could be present at the time of construction. Additionally, multiple burrowing owl occurrences are found near the Project site as reported in CNDDB. Furthermore, the mitigation measures propose relocation of burrowing owl, which should be authorized through a CESA ITP.

Evidence impact would be significant: Burrowing owls are regulated under Fish and Game Code section 3503.5 and 2050, the Migratory Bird Treaty Act, and are a CDFW Species of Special Concern (SSC). The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. While CDFW appreciates that the MND includes mitigation measures specific to burrowing owl, the measures as proposed would not fully avoid impacts to burrowing owl and could result in take. 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, which would occur through a CESA ITP.

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

MND (additions are in **bold** and deletions are in ~~strikethrough~~) to avoid, minimize, and mitigate impacts to burrowing owls:

Mitigation Measure Biological Resource (LUPA-BIO-IFS-12):

LUPA-BIO-IFS-12: If prior to Project initiation focused burrowing owls surveys per the 2012 Staff Report on Burrowing Owl Mitigation (Staff Report) have not been conducted within 3 years of commencement of Project activities, the Project proponent shall conduct focused surveys per the Staff Report. If focused surveys have been conducted within 3 years of Project initiation, the Project proponent shall conduct a pre-construction burrowing owl survey to confirm presence/absence of burrowing owl. If burrowing owls are present during any of the surveys, a designated biologist will conduct appropriate activity-specific biological monitoring to ensure **full** avoidance of occupied burrows~~ and establishment of the 656 feet (200 meter) setback to sufficiently minimize disturbance during the nesting period on all activity sites, when practical~~.
~~• How the Project would comply with the CMA: The project is partially within the DRECP species distribution model. However, occurrences of species or this species' nests have not been observed within the Project site. Pre-clearance surveys would be required prior to surface disturbance and if the species or active burrows are found in the Project site, this CMA would be implemented to the extent practicable or LUPA-BIO-IFS-13 would be alternatively implemented. Implementing this measure would identify the species' presence to enable the proponent to avoid impacts on this species.~~

Mitigation Measure Biological Resource (LUPA-BIO-IFS-13):

LUPA-BIO-IFS-13: If **active** burrows cannot be **fully** avoided on-site, **the Project proponent shall contact CDFW and should obtain a CESA ITP.** Passive burrow exclusion **shall only occur if a CESA ITP is obtained from CDFW and shall be conducted** by a **qualified** designated biologist through the use of one-way doors ~~will occur~~ according to the specifications in Appendix D or the most up-to-date agency BLM ~~or~~ **and** CDFW specifications **in the CESA ITP**. Before exclusion, there must be verification that burrows are empty as specified in Appendix D or the most up-to-date BLM **and** CDFW protocols **in the CESA ITP**. Confirmation **by a qualified designated biologist** that the burrow is not currently supporting nesting or fledgling activities is required prior to any burrow exclusions or excavations. **Additionally, the Project proponent shall provide compensatory mitigation for any impacts to burrowing owl and their habitat and fully mitigate those impacts as determined by CDFW in a CESA ITP.**
~~• How the Project would comply with the CMA: The Project is partially within the DRECP species distribution model. However, occurrences of species or this species' nests have not been observed within the Project site. Pre-clearance surveys would~~

~~be required prior to surface disturbance, and if the species or active burrows are found in the Project site, this CMA would be implemented as needed. Implementing this measure would identify the species' presence to enable the proponent to avoid impacts on this species.~~

Mitigation Measure Biological Resource (LUPA-BIO-IFS-14):

LUPA-BIO-IFS-14: Activity-specific active translocation of burrowing owls may be considered, in coordination with CDFW **and with CDFW's approval though a CESA ITP**.

~~• How the Project would comply with the CMA: The Project is partially within the DRECP species distribution model. However, occurrences of species or this species' nests have not been observed within the Project site. Pre-clearance surveys would be required prior to surface disturbance and if the species or active burrows are found in the Project site, this CMA would be implemented as needed. Implementing this measure would identify the species' presence to enable the proponent to avoid impacts on this species.~~

Comment #4: Nesting Birds

Section #4.4 Biological Resources, Page #68, 69, 72, 73, 75-77

Issue: The MND minimally considers Project impacts to birds. This concerns CDFW, because all birds are protected by CDFW and migratory birds are also protected by the Migratory Bird Treaty Act of 1918.

Specific Impact: Project implementation could result in the loss of nesting and/or foraging habitat for (non-)passerine and raptor species that are protected under Fish and Game Code Sections 3503, 3503.5, and 3513 and/or the Migratory Bird Treaty Act.

Why impact would occur: Nesting avian species could be directly or indirectly impacted during construction and for the life of the Project through the removal of potential foraging habitat, loss of and/or modification of habitat features, construction or mining activities, installation of artificial lighting, creation of noise and vibration, and the removal of vegetation. Nest destruction, nest abandonment, behavioral disturbance, increased risk of predation, and degradation of suitable habitat could also lead to significant impacts to nesting avian species and local populations. The MND mentions the Project could host ground nesting birds during the nesting season, but specific measures for these impacts were not provided.

Evidence impact would be significant: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird,

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

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less than significant: Considering all of the above, CDFW offers the following measure for inclusion in the final MND:

Mitigation Measure Biological Resource (LUPA-BIO-BIRD-1) (NEW): Pre-Construction Nesting Bird Survey

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 the fledglings become independent of their nest, or the nest has failed.

Editorial Comments and/or Other Suggestions

Comment #5: Lake and Streambed Alteration Agreement

According to the MND, there are shallow, dry, ephemeral stream channels that cross the Project site and CDFW confirmed the presence of streams through aerial imagery. According to the MND these features potentially fall under the jurisdiction of the California Regional Water Quality Control Board (RWQCB) and the CDFW and the Project proponent would obtain the requisite approvals from the RWQCB and CDFW for any impacts on state jurisdictional resources. CDFW hereby confirms that the streams located on the Project site are subject to Fish and Game Code section 1602, and CDFW recommends the Project proponent apply for a Lake and Streambed Alteration Agreement to authorize impacts to streams. As such, CDFW recommends the below revisions to BIO-27 (additions are in **bold** and deletions are in ~~strikethrough~~):

BIO-27: Before ground-disturbing activities begin, the Project proponent shall be responsible for obtaining approval ~~as needed~~ from the RWQCB, and~~/or the~~ CDFW for any **impacts to RWQCB/ACOE** jurisdictional water features **and Fish and Game Code section 1602 resources** ~~in the Project site~~. **Approval by CDFW shall occur through a Lake and Streambed Alteration Agreement.** Such approvals may require a jurisdictional ~~water preconstruction survey~~ **delineation** conducted by a biologist or regulatory specialist. The purpose of this~~ survey~~ is to confirm the extent of **RWQCB/ACOE** jurisdictional waters features and **Fish and Game Code section 1602 resources** as defined by state and federal law within the project footprint. These ~~survey~~ results would then be used by RWQCB and CDFW to calculate impact acreages and determine the amount of compensatory mitigation required by the proponent to offset the loss of wetland**/stream** functions and values.

COMMENT # 6: Crotch's Bumble Bee (*Bombus crotchii*)

Crotch's bumble bee is a candidate species protected under CESA, and the Project is within the range of Crotch's bumble bee. Additionally, the Project site contains buckwheat, phacelia, and poppy used by the species to forage. While CDFW is aware that CNDD does not contain nearby occurrences, CNDDB is not exhaustive in terms of the data it houses, nor is it an absence database. Thus, CDFW recommends that the final MND evaluate potential impacts to Crotch's bumble bee and avoids, minimizes, and mitigates Project impacts on Crotch's bumble bee. Project impacts to Crotch's bumble bee should be fully avoided or authorized through a CESA ITP. Considering the aforementioned, CDFW recommends the below measure:

Mitigation Measure Biological Resource (LUPA-BIO-BEE-1) (NEW):

The Project proponent shall conduct a Crotch's bumble bee habitat assessment consistent with the 2023 *Survey Considerations for Candidate Bumble Bee*

***Species*[3] to evaluate the likelihood of Crotch's bumble bee occurring within and adjacent to the Project area. The habitat assessment shall be conducted by a qualified biologist knowledgeable of foraging, nesting, and/or overwintering habitat for Crotch's bumble bee.**

If the habitat assessment identifies suitable foraging, nesting, and/or overwintering habitat for Crotch's bumble bee, focused surveys shall be conducted within the Project area and within 100-feet of the Project area prior to the start of Project activities. Surveys shall be conducted using the survey guidance in the *2023 Survey Considerations for Candidate Bumble Bee Species*. If Crotch's bumble bee is detected, impacts to Crotch's bumble bee shall be fully avoided or a CESA ITP should be obtained.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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.

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[3] California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species

Questions regarding this letter or further coordination should be directed to Steven Recinos, Environmental Scientist at 909-731-5954 or by email at Steven.Recinos@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@lci.ca.gov

ATTACHMENTS

Attachment A: Mitigation Monitoring Reporting Plan

REFERENCES

California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.
https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true

California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines.

California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species

Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources		
Mitigation Measure	**Implementation Schedule**	**Responsible Party**
LUPA-BIO-IFS-39: During the typical active Mohave ground squirrel season (February 1 through August 31), a qualified biologist shall conduct camera, trapping, and visual surveys throughout the Project site and 300-foot buffer prior to initial ground disturbance in consultation with CDFW and in accordance with the California Department of Fish and Wildlife Mohave Ground Squirrel Survey Guidelines (CDFW 2023). If Mohave ground squirrel is detected through surveys the Project proponent shall fully avoid impacts to Mohave ground squirrel and report it to CDFW or should obtain a CESA ITP if impacts are unavoidable.	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Biologist
LUPA-BIO-IFS-4: Prior to construction or commencement of any and following take authorization from CDFW (i.e., CESA ITP), desert tortoise exclusion fencing shall be installed around the perimeter of the activity footprint in accordance with the Desert Tortoise Field Manual (USFWS 2009) or most up-to- date USFWS protocol. Additionally, short-term desert tortoise exclusion fencing will be installed around short term construction and/or activity areas (e.g., staging areas, storage yards, excavations, and linear facilities), as appropriate, per the Desert	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Biologist

Tortoise Field Manual (USFWS 2009) or most up-to-date USFWS protocol. Prior to installation of exclusionary fencing, pre-construction clearance surveys shall be conducted using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual. These surveys shall cover 100 percent of the Project area and a 50-foot buffer zone around the Project site. If any desert tortoise is found, it shall be allowed to move out of harm's way on its own violation or translocation of desert tortoise shall occur according to the CESA ITP. - Construction of desert tortoise exclusion fences will occur during the time of year when tortoise are less active in order to minimize impacts and to accommodate subsequent desert tortoise surveys. Any exemption or modification of desert tortoise exclusion fencing requirements will be based on the specifics of the activity and the site-specific population and habitat parameters and with the approval of BLM and CDFW (an amendment to the CESA ITP may be needed). Substitute measures, such as on-site biological monitors in the place of the fencing requirement, may be required by BLM or CDFW, as appropriate. - After an area is fenced, and until desert tortoises are removed, the designated biologist is responsible for ensuring that desert tortoises are not being exposed to extreme temperatures or predators as a result of their pacing the fence. Remedies may include the use of shelter sites placed along the fence, immediate translocation, removal to a secure holding area, or other means determined by the BLM, USFWS, and CDFW, as applicable. - Immediately prior to desert tortoise exclusion fence construction, a designated biologist will conduct a clearance survey of the fence alignment to ensure desert tortoises are absent from the proposed fence line's path. - All desert tortoise exclusion fencing will incorporate desert tortoise proof gates or other		

approved barriers to prevent access of desert tortoises to work sites through access road entry points. - Following installation, long-term desert tortoise exclusion fencing will be inspected for damage quarterly and within 48 hours of a surface flow of water due to a rain event or winds that may damage the fencing. - All damage to long-term or short-term desert tortoise exclusion fencing will be immediately blocked to prevent desert tortoise access and repaired within 72 hours.		
LUPA-BIO-IFS-5: Following the clearance surveys within sites that are fenced with long-term desert tortoise exclusion fencing, a designated biologist will monitor initial clearing and grading activities to ensure that desert tortoises missed during the initial clearance survey are moved from harm's way. A designated biologist will inspect construction pipes, culverts, or similar structures: (a) with a diameter greater than 3 inches, (b) stored for one or more nights, (c) less than 8 inches aboveground and (d) within desert tortoise habitat (such as, outside the long-term fenced area), before the materials are moved, buried, or capped. As an alternative, such materials shall be capped before storing outside the fenced area or placing on pipe racks. Pipes stored within the long-term fenced area after completing desert tortoise clearance surveys will not require inspection.	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Biologist
LUPA-BIO-IFS-8: Personnel working on the Project, including personnel, contractors and all subcontractors shall inspect the ground under the vehicle for the presence of desert tortoise any time a vehicle or construction equipment is parked in desert tortoise habitat outside of areas fenced with desert tortoise exclusion fencing. If a desert tortoise is seen, it	During Project activities	Project personnel

may move on its own. If it does not move within 15 minutes, a designated biologist reviewed and approved by CDFW pursuant to the Project's CESA ITP may remove and relocate the animal according to the Translocation Plan in the CESA ITP.		
LUPA-BIO-IFS-9: Vehicular traffic will not exceed 15 miles per hour within the areas where there is no exclusionary fencing and where desert tortoise may be impacted.	During Project activities	Project personnel
LUPA-BIO-DT-1: An Incidental Take Permit (ITP) for desert tortoise *(Gopherus agassizii*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct and/or indirect impacts shall be fulfilled through conservation of suitable desert tortoise habitat through the purchase of mitigation bank credits or land acquisition as determined by CDFW in the ITP.	Prior to initiation of all ground disturbing activities	Project proponent
LUPA-BIO-IFS-12: If prior to Project initiation focused burrowing owls surveys per the 2012 Staff Report on Burrowing Owl Mitigation (Staff Report) have not been conducted within 3 years of commencement of Project activities, the Project proponent shall conduct focused surveys per the Staff Report. If focused surveys have been conducted within 3 years of Project initiation, the Project proponent shall conduct a pre-construction burrowing owl survey to confirm presence/absence of burrowing owl. If burrowing owls are present during any of the surveys, a designated biologist will conduct appropriate activity-specific biological monitoring to ensure full avoidance of occupied burrows.	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Biologist

LUPA-BIO-IFS-13: If active burrows cannot be fully avoided on-site, the Project proponent shall contact CDFW and should obtain a CESA ITP. Passive burrow exclusion shall only occur if a CESA ITP is obtained from CDFW and shall be conducted by a qualified designated biologist through the use of one-way doors according to the specifications in Appendix D or the most up-to-date agency BLM ~~or~~ and CDFW specifications in the CESA ITP. Before exclusion, there must be verification that burrows are empty as specified in Appendix D or the most up-to-date BLM and CDFW protocols in the CESA ITP. Confirmation by a qualified designated biologist that the burrow is not currently supporting nesting or fledgling activities is required prior to any burrow exclusions or excavations. Additionally, the Project proponent shall provide compensatory mitigation for any impacts to burrowing owl and their habitat and fully mitigate those impacts as determined by CDFW in a CESA ITP.	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Biologist
LUPA-BIO-IFS-14: Activity-specific active translocation of burrowing owls may be considered, in coordination with CDFW and with CDFW's approval though a CESA ITP.	Prior to initiation of all ground disturbing activities	Project proponent
LUPA-BIO-BIRD-1: 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	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Biologist

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 the fledglings become independent of their nest, or the nest has failed.		
BIO-27: Before ground-disturbing activities begin, the Project proponent shall be responsible for obtaining approval from the RWQCB, and CDFW for any impacts to RWQCB/ACOE jurisdictional water features and Fish and Game Code section 1602 resources. Approval by CDFW shall occur through a Lake and Streambed Alteration Agreement. Such approvals may require a jurisdictional delineation conducted by a biologist or regulatory specialist. The purpose of this is to confirm the extent of RWQCB/ACOE jurisdictional waters features and Fish and Game Code section 1602 resources as defined by state and federal law within the project footprint. These results would then be used by RWQCB and CDFW to calculate impact acreages and determine the amount of compensatory mitigation required by the proponent to offset the loss of wetland/stream functions and values.	Prior to initiation of all ground disturbing activities	Project proponent

LUPA-BIO-BEE-1: The Project proponent shall conduct a Crotch's bumble bee habitat assessment consistent with the 2023 *Survey Considerations for Candidate Bumble Bee Species* to evaluate the likelihood of Crotch's bumble bee occurring within and adjacent to the Project area. The habitat assessment shall be conducted by a qualified biologist knowledgeable of foraging, nesting, and/or overwintering habitat for Crotch's bumble bee. If the habitat assessment identifies suitable foraging, nesting, and/or overwintering habitat for Crotch's bumble bee, focused surveys shall be conducted within the Project area and within 100-feet of the Project area prior to the start of Project activities. Surveys shall be conducted using the survey guidance in the *2023 Survey Considerations for Candidate Bumble Bee Species*. If Crotch's bumble bee is detected, impacts to Crotch's bumble bee shall be fully avoided or a CESA ITP should be obtained.	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Biologist