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Via email only

29 October 2026

Paul Gonzales, Planning Director/Chief
County of San Bernardino, Land Use Services Department, Planning Division
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RE: Compliance with San Bernardino County's Biologist Qualifications and Report Protocol for Biological Assessment Reports/Compliance with California Environmental Quality Act

Dear Mr. Gonzales,

In reviewing numerous recent biological technical reports (reports), prepared by biological consultants and initial studies/mitigated negative declarations (IS/MNDs) written by the San Bernardino County Land Use Services Department – Planning Division (County) that rely on the results of these reports, we are concerned that a majority of the reports do not meet the County's own standards on the Biologist Qualifications and Report Protocol for Biological Assessment Reports, which is referenced above and attached to this letter.

The County's 2006 Biologist Qualifications and Report Protocol for Biological Assessment Reports (County's Report Protocol) uses statements, including "The individual [qualifying biological consultant] **must demonstrate** the ability...;" "The qualification **requirements** are structured...;" and "Individuals **must possess** a bachelor's degree..." Each of these statements implies that the County's 2006 document is not intended to serve as guidelines but as County requirements.

Consultants are performing *reconnaissance* surveys for desert tortoises and producing general biological resource assessments when the County's Report Protocol clearly states that "A survey for a specific listed species [must be] done per USFWS/CDFG protocol by a permit-holding biologist." Although it then refers to California gnatcatchers, this requirement applies equally to desert tortoise, Mohave ground squirrel, western burrowing owl, western Joshua tree, and other rare, desert-adapted species [e.g., focused surveys for rare plants as per California Department of Fish and Wildlife (CDFW 2018) methodology] for which there are specific state and federal agency protocols. Although there are no formal survey protocols for LeConte's thrasher and Bendire's thrasher, which are two species recently designated as candidates for listing under the California Endangered Species Act (CESA) and therefore subject to CESA protections, qualified consultants must be able to identify them and assess habitats for their presence.

In addition to not implementing protocol survey methods, most of the biological reports we review do not have the requisite components listed in the County's 2006 nine-page document (Attachment 1), which include:

- Consultation with Experts on Species/Agencies;
- show on an appropriately scaled map the location of sample points, transects, and any additional areas surveyed in the vicinity of the project; date(s) of all survey(s), times of day and duration of survey (how long onsite);
- limitations that may influence results;
- clearly state whether USFWS/CDFW survey protocol, if applicable, was used;
- listing of particular expected species, especially raptors, or listed species, may be appropriate, but their absence should be explained (migratory, estivating, nocturnal species, etc.); and,
- include a list of and discuss invertebrates in special situations, (i.e., species of concern).
- A separate discussion of any species occurring on or using areas directly or indirectly affected by the project, which are recognized by a government agency, conservation entity or scientific group as being depleted, potentially depleted, declining, rare, locally endemic, endangered, threatened, and/or any species nominated for or on a state or federal rare, endangered, or threatened species list;
- particular attention should be given to any on-site habitat that is contiguous with off-site habitat;
- acknowledge the current USFWS or other agency's policy of recognizing the validity of the surveys for the time period specified;
- a circumstance of a negative result is not necessarily evidence that the species does not exist on the site or that the site is not actual or potential habitat of the species;

- list and discuss all probable impacts to threatened, rare, endangered or unique species either listed or proposed by a Federal or State agency, or the California Native Plant Society;
- include if the proposed project will disrupt the integrity or continuity of an important habitat or habitat/wildlife;
- in the Recommendations section of the report, indicate areas of the project site where additional investigations (such as seasonal flora surveys or trapping studies, etc.) should be completed prior to considering a project for approval;
- discuss how or why each mitigation measure reduces or avoids the impact, and provide information on whether or not the mitigation measure reduces the impact to below the level of significance;
- identify the entity or agency that will be responsible for the implementation of the mitigation measures;
- Generally, it is NOT appropriate to use the following as mitigation:
    - Monitor, report, or "study further" an impact;
    - "consult with" an agency or entity; or
    - hire staff or perform a study.
- For EACH mitigation measure included in the report, the type of monitoring required and the entity to perform and/or report on the measure must be stated.

We continually point out these deficiencies to the County in our comment letters but there is no evidence that our concerns are being addressed. For example, with regards to the recent "Joshua Tree Estates" proposed project:

- The consultant performed recon surveys for tortoises, rather than protocol surveys (USFWS 2019a) as specified by USFWS and CDFW;
- the surveys did not include adjacent areas, as required by the CDFW's burrowing owl survey methods (CDFG 2012); and,
- the technical report recommended clearance surveys prior to construction but since protocol surveys were never performed, the negative results were questionable; and,
- the deficiencies in the consultant's report were reproduced in the County's IS/MND.

Like many other recent reports we've reviewed, it was evident the consultant did not know that burrowing owl and LeConte's thrasher are both listed as Candidate Species for State Listing under CESA and that the tortoise has been listed as an Endangered Species by CDFW since July 2025, nor did they know that survey protocols for Mohave ground squirrels have been revised. This use of inaccurate and outdated information speaks to the "Experience" section of the County's "Biologists Qualifications" requirements.

Whereas we understand that the County cannot be responsible for the quality or accuracy of a consultant's work, in the case of the Joshua Tree Estates project, the County's IS/MND - word for word - reproduced all of the consultant's errors in that document. As the responsible Lead Agency under the California Environmental Quality Act (CEQA), we believe the County should have recognized the deficiencies and inaccuracies and required the consultant to correct the errors. Whereas we pointed out all these issues, errors, and inconsistencies in our attached letter of July 28, 2026 (Attachment 2), we are unaware if the County changed the final IS/MND to correct the consultant's misinformation and absence of essential information.

In October 2025, we submitted a comment letter for the Landers Hotel (Attachment 3). Many of the same concerns listed above were included in our letter:

- Meandering transects instead of protocol tortoise surveys;
- no surveys of an "action area" encompassing adjacent areas;
- the survey was several years old, whereas CDFW requires that the survey be refreshed after one year;
- additionally, because it was outdated, it did not acknowledge that burrowing owl is currently a Candidate Species for CESA listing;
- the consultant did not survey adjacent areas as required by the CDFW burrowing owl protocol; and,
- the report did not acknowledge that an incidental take permit would be required for western Joshua tree, which occurred on the site.

As with the Joshua Tree Estates project listed above, the County reproduced these deficiencies in its draft IS/MND. It is significant that the project was being considered by the County last fall, and whereas we do not know if the County required that any of these deficiencies be addressed in a revised IS/MND or if new protocol-level surveys were performed to replace reconnaissance surveys, a third party informed us last week that County Supervisors recently granted approval of the Landers Hotel project.

In August 2026, we reviewed the consultant's biological report and County's IS/MND for the Avellana Mobile Park Home Project, for which we submitted comments on 8/25/2026 (Attachment 4). Most of the same concerns expressed for both Joshua Tree Estates and Landers Hotel were perpetuated in that document, as well:

- The County circulated a biological report as baseline information that was 5.5 years old (i.e., written in 2021);
- because it was that old, the consultant's report did not acknowledge that western burrowing owl, LeConte's thrasher, and Crotch's bumble bee are all Candidate Species for State Listing, which is understandable, but the County reproduced all of the outdated information in its current IS/MND;
- there is no evidence that the consultant conducted protocol surveys for desert tortoise or burrowing owl, instead referring to "meandering transects," so the County based its conclusions on survey methods implemented at the consultant's discretion while ignoring agency requirements;
- the consultant found that Mohave ground squirrel had been reported to the California Natural Diversity Data Base *on the subject property* but then concluded in their report that the species had not been reported in the area; the County's IS/MND reproduced this misinformation and did not require protocol surveys or include any mitigation measures for the species; and, (for this and the two previous examples given above),
- the County failed to assess the efficacy of the consultant's report based on its own survey and report requirements given in the 2006 document referred to above (Attachment 1).

Based on these recent, specific examples, there seem to be significant, programmatic problems in the lack of content and quality in the consultant's reports, which are reflected - often verbatim - in the County's IS/MNDs. The County is failing to enforce its own standards and CEQA requirements, which in many cases would require that consultants resurvey projects or provide supplemental information when deficient surveys have been performed and are recognized by the County.

The County's distribution of these incomplete, deficient, erroneous biological technical reports and then writing IS/MNDs based on them, demonstrates that the County is not seeking and enforcing the best available science on which to base its formal determinations under CEQA.

Another persisting, repetitive problem reproduced in the majority of the County's IS/MNDs concerns the requirement to perform "preconstruction surveys" immediately prior to ground disturbance as a means to avoid significant impacts to rare biological resources. The USFWS recognizes "presence-absence" surveys (USFWS 2019a) as a method to detect tortoise sign and assess impacts based on the results, whereas "clearance surveys" (USFWS 2019b) are performed immediately prior to ground disturbance to (a) move listed species from harm's way after state and federal incidental take permits have been issued and (b) ascertain that focal rare species (e.g., desert tortoise, western burrowing owl) continue to be absent *after full scale protocol surveys have been performed*. USFWS does not use the term, "preconstruction surveys."

In all of the specific project examples cited above, the consultant never conducted tortoise or burrowing owl protocol surveys on which the IS/MND should have been based; rather, they walked "meandering transects;" and the County then required that "preconstruction surveys" be performed within a few weeks or days of ground disturbance. In the absence of protocol surveys, the County's conclusions in the IS/MND are based on incomplete, unacceptable survey methods that do not meet current management standards required by state and/or federal agencies. In effect, the County is requiring that "clearance surveys" be performed to reaffirm absence of rare species but since full protocol surveys were never performed in the first place, the assumption that clearance surveys are following protocol surveys is violated.

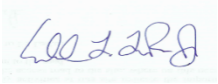
When the County bases its IS/MND on anything less than current data, which seems to be a regular practice (e.g., the Avellana project's biological report was 5.5 years old), its assessment improperly defers both the analysis of impacts and the formulation of mitigation to the post-approval period. CEQA permits the details of mitigation to be developed after project approval only where the agency commits to specific, enforceable performance standards that the deferred measures must achieve [CEQA Guidelines § 15126.4(a)(1)(B)]. Here, these measures commit only to conducting surveys using the most current survey protocols at an unspecified future date, with no performance standards, no thresholds for determining significance, and no identified mitigation to be applied if the species are found. This is impermissible deferral: The surveys are not mitigation; they are the data used in the analysis that CEQA requires before approval, not mitigation that follows it. The County must ensure that surveys are complete, conducted properly, and current so that its impacts analysis reflects current conditions. The County must identify enforceable mitigation with measurable performance standards in the IS/MND before the County approves the proposed project.

Does the County still recognize the attached 2006 "San Bernardino County Biologist Qualifications and Report Protocol" as being valid? Is it being distributed to established and newer consultants? Are the requirements enforced by the County? We remember in the 1990s when Randy Scott was the planning director for the County, that he would require third-party consultants to resurvey sites when there were obvious deficiencies in the initial reports. Since it is now 20 years old, is there any intent to update the 2006 document? We believe that, if enforced, the requirements would result in the requisite information for the County to conduct analysis and identify required mitigation to complete IS/MNDs that comply with CEQA although some sections may need updating.

Given the persisting deficiencies in consultant's reports we are reviewing, we conclude that either the County no longer enforces these requirements or the consultants are not aware of them. The County is authorizing projects based on biological reports that are not meeting the County's own published standards or CEQA requirements. We believe that part of the solution would be for the County to update the Biologist Qualifications and Report Protocol Requirements and distribute them to all consultants working in San Bernardino County.

As mentioned in the last several comment letters submitted to the County, including those listed above, the Council is available to meet with the County to discuss a scientifically supported process that could be implemented to comply with the purpose and intent of CEQA in the development of IS/MNDs with respect to the desert tortoise and other species protected under the CESA and the Federal Endangered Species Act.

Respectfully,



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[USFWS] U.S. Fish and Wildlife Service. 2019a. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV. October 8, 2019. https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf

[USFWS] U.S. Fish and Wildlife Service. 2019b. Clearance survey protocol for the Mojave Desert Tortoise. May 2019. https://www.fws.gov/sites/default/files/documents/Attachment%201.Clearance%20survey%20protocol_final.pdf

Attachment 1. Biological Qualifications for surveys and reports in San Bernardino County.

Link to Attachment 1: https://www.dropbox.com/scl/fi/d92yilwc3xypm3ox4dk8s/San-Bernardino-County-Biologist-Qualifications-and-Report-Protocol.2006.pdf?rlkey=fkfe7p77e80tnp0ggsd74a17z&dl=0

Attachment 2. Comment letter on Joshua Tree Estates Initial Study/Mitigated Negative Declaration (PROJ-2023-00129), dated July 28, 2026.

Link to Attachment 2: https://www.dropbox.com/scl/fi/opw6zuv6ycbrvgy2796im/Joshua-Tree-Estates-Initial-Study-MND.7-28-2026.pdf?rlkey=p1o62oo1kwx8i946wscbx6mz6&dl=0

Attachment 3. Comment letter on Landers Hotel Project (PROJ-2023-00146), dated October 16, 2025.

Link to Attachment 3: https://www.dropbox.com/scl/fi/3oqj9ph3143rpgrhf4e12/Landers-Hotel-Project.10-16-2025.pdf?rlkey=5juqcn4iw8j8tzi2rm1gmtgkh&dl=0

Attachment 4. Comment letter on Avellana Senior Wellness Community Draft Initial Study/Mitigated Negative Declaration (IS/MND) (PROJ-2021-00063), dated August 25, 2026.

Link to Attachment 4: https://www.dropbox.com/scl/fi/gsigbjwjlasj6mjvqq3jf/Avellana-Senior-Wellness-Community-IS-MND.8-25-2026.pdf?rlkey=3yq9qq77f3ky1zyw9lsf7eu9o&dl=0