



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



June 25, 2020

Travis Clark  
Associate Planner  
City of Victorville Planning Division  
P.O. Box 5001  
Victorville, California 92393-50

Governor's Office of Planning & Research

Jun 26 2020

## STATE CLEARINGHOUSE

Tentative Tract Map PLAN18-00035 (TTM 20088) (Project)  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH# 2020059043

Dear Mr. Clark:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Victorville Planning Division for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

### CDFW ROLE

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

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code..

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Altec Engineering

**Objective:** The objective of the Project is to develop a single-family residential subdivision on approximately 20 acres. Primary Project activities include construction of 71 lots, resulting in 3.5 units per acre.

**Location:** North of and abutting Seneca Road, South of and abutting Villa Street, East of Highway 395 and West of Mesa Linda Avenue; APN: 3135-361-05 & 06; Within the City of Victorville, County of San Bernardino, State of California, San Bernardino Meridian, Section 15, Township 5N, Range 5W

**Timeframe:** Unknown

## **COMMENTS AND RECOMMENDATIONS**

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

### **I. Mitigation Measure or Alternative and Related Impact Shortcoming**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?**

#### **COMMENT 1: Additional Mitigation Measure**

**Section 2, Page 3**

**Issue:** The MND lacks analysis of potential impacts to special status plant species. A biological report was provided and mentioned the presence of five listed or special status species, but the MND does not include measures for them or other potential special status plants. As Mojave monkeyflower, a rare species that can grow in disturbed habitat, has been mapped near the Project location (CNDDDB, 2020; CNPS, 2020), CDFW has concerns sensitive plant species may be present.

**Specific impact:** A botanical field survey to identify all plants to the taxonomic level necessary to determine rarity and listing status was not performed. The MND lacks analysis of potential impact, and avoidance, minimization, and mitigation measures for special status plant species.

**Why impact would occur:** Botanical field surveys should be conducted during times of year when plants are evident and identifiable (i.e. flowering or fruiting), which may warrant multiple surveys during the season to capture floristic diversity (CDFW, 2018). Habitats, such as desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment (CDFW, 2018).

**Evidence impact would be significant:** Sensitive plant species are listed under the CESA as threatened, or endangered, or proposed or candidates for listing; designated as rare under the Native Plant Protection Act; or plants that otherwise meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 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. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Fish and Game Code Sections 1900–1913 includes provisions that prohibit the take of endangered and rare plants from the wild and a salvage requirement for landowners.

### **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)**

#### **Mitigation Measure 1:**

**To minimize significant impacts:** To ensure that Project impacts to biological resources are fully analyzed, CDFW recommends the City of Victorville require a thorough floristic-based assessment of special status plants and natural communities. The assessment should be performed by a qualified biologist following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native*

*Plant Populations and Natural Communities* (CDFW, March 2018) or most recent version.

- <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline=1>

Note that CDFW generally considers biological field assessments for rare plants valid for a period of up to three years. Should Mojave monkeyflower or other special status plants be present, CDFW recommends the inclusion of the following mitigation measure:

**MM-X: Special Status Plant Species.** Should any CESA-listed plant species be present at the Project site, the Project Proponent shall obtain an incidental take permit for those species prior to the start of Project activities. Should Mojave monkeyflower or other special status plants or natural communities be present in the Project area, a qualified biologist shall develop species specific avoidance, minimization, and mitigation measures to ensure there is no net reduction in the size or viability of the local population.

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?**

**COMMENT 2:** Mitigation Measure 9; Mitigation Measure 12

### **Section 2, Page 3**

**Issue:** CDFW has concerns that Mitigation Measure 9 states mitigation measures for sensitive wildlife species, such as desert tortoise, desert kit fox, American badger, or nesting birds will be developed and implemented if species presence is detected on-site and approved by CDFW as applicable in accordance with best practices.

Focused surveys should be conducted for desert tortoises following this approved CDFW protocol:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=174633&inline> and nesting birds following this approved CDFW protocol:

<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=147327> in order to develop mitigation measures.

Similarly, Mitigation Measure 12 states the City Planner will review the new biological survey and verify the adequacy of adopted mitigation measures for any

endangered, threatened, candidate, Species of Special Concern, and fully protected species present and only confer with CDFW should they be deemed inadequate. CDFW appreciates the requirement of an additional biological survey, but the mitigation as written, lacks specificity on which species or types of species will be surveyed.

**Specific impact:** Exclusion of developed mitigation measures within the environmental document does not allow CDFW to comment on their ability to avoid, minimize, and mitigate significant impacts to sensitive wildlife species.

**Why impact would occur:** Since the mitigation measure is not disclosed in the CEQA document and is determined at a later time after completion of the CEQA process, it is not known whether the measure will reduce impacts to less than significant.

**Evidence impact would be significant:**

- Desert tortoise are a CESA-listed species and take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) is prohibited unless authorized by state law.
- Desert kit fox are a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460.
- American badger is a Species of Special Concern.
- Fish and Game Code 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 make pursuant thereto. 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. 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.).

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)**

**Mitigation Measure 2:**

**To minimize significant impacts:** CDFW requests mitigation measures be included in the environmental document so they may be reviewed.

- Should desert kit fox or American badger be found on or adjacent to the Project area, it is recommended the City of Victorville require the preparation of a desert kit fox and American badger mitigation and monitoring plan for CDFW's review. Desert kit fox breeding season is January to the end of May. If a natal burrow is located on the Project site, a qualified biologist should determine appropriate buffers and maintain connectivity to adjacent habitat. No Project activities or vegetation removal may occur within the buffer or habitat connectivity during breeding season.
- CDFW recommends the mitigation measure for nesting birds include but not be limited to requiring a qualified biologist to be on-site daily to monitor all active nests, the efficacy of established buffers, and to document any new nesting occurrences.
- CDFW recommends City of Victorville condition the environmental document to include on-site worker education about any sensitive wildlife species that may occur in the area
- CDFW recommends that any additional biological survey(s) be conducted by species type (mammals, reptiles, birds, etc.) and adhere to CDFW approved protocols, which can be found here.

<https://wildlife.ca.gov/Conservation/Survey-Protocols>

- Additionally, CDFW requests to be contacted immediately should sensitive wildlife species be present in the Project area.

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?**

**COMMENT 3:** Mohave Ground Squirrel (MGS)

**Section 2, Page 3**

**Issue:** CDFW appreciates the assessment of habitat suitability for MGS; however, because the site was found to have "low-quality" habitat and is within the geographic range of MGS, CDFW recommends mitigation for MGS be provided.

**Specific impact:** The Project is within the geographic range of Mohave ground squirrel.

**Why impact would occur:** The biological assessment ranked the site as “low-quality” habitat for MGS, signifying the potential for MGS. MGS are known to have historically occupied areas in the Victor Valley region and are state-listed as threatened, thereby giving species protection under CESA. MGS is found in several habitat types in the Mojave Desert including creosote bush scrub, a dominant habitat type identified on the project site. Should MGS presence be confirmed, the measure lacks avoidance, minimization and mitigation to avoid take.

**Evidence impact would be significant:** CDFW has discretionary authority over activities that could result in the “take” of any species listed as candidate, threatened, or endangered, pursuant to CESA. CDFW considers adverse impacts to CESA-listed species, for the purposes of CEQA, to be significant without mitigation. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085).

### **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

#### **Mitigation Measure 3:**

**To minimize significant impacts:** CDFW recommends City of Victorville assume presence of MGS and condition the environmental document to include pre-construction surveys for MGS. CDFW approved protocols may be found at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>. If a Project, including Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit (ITP). Information on how to obtain an ITP can be found at <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>.

## **II. Editorial Comments and/or Suggestions**

**MM-X: On-site Education.** A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. Education should include but not be limited to desert tortoise, burrowing owl, special status plant species, and nesting birds.

Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site.

**MM-X: Minimize Impacts on Other Species.** A qualified biologist shall be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with authorization from CDFW shall move CESA-listed species.

Lastly, CDFW would like to note the Fish and Game Commission has received a petition to list Western Joshua Tree (*Yucca brevifolia*) as a threatened species under CESA. It is expected the Fish and Game Commission may make a decision in August 2020. CDFW recommends City of Victorville review the listing status prior to finalizing the MND as it may affect the legality of Mitigation Measure 12. If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP.

## **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 found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 fee is required in order for the underlying project approval to be

Travis Clark, Associate Planner  
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operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City of Victorville in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Julia Karo, Environmental Scientist at [Julia.Karo@Wildlife.ca.gov](mailto:Julia.Karo@Wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
8091B1A9242F49C...

Scott Wilson  
Environmental Program Manager

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

## REFERENCES

California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. Website  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>