



February 12, 2021

Governor’s Office of Planning & Research

Feb 17 2021

Daniel Alcayaga
 AICP - Planning Manager
 Town of Apple Valley
 14955 Dale Evans Parkway
 Apple Valley, CA 92307

STATE CLEARINGHOUSE

CONDITIONAL USE PERMIT NO. 2020-01 & TENTATIVE PARCEL MAP NO. 20258
 MITIGATED NEGATIVE DECLARATION
 SCH# 2021010197

Dear Mr. Alcayaga:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) for Conditional Use Permit No. 2020-01 & Tentative Parcel Map No. 20258 (Project) from Town of Apple Valley for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW’s lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: BM Investments, LLC

Objective: The objective of the Project is to construct a residential development on approximately 32.2 acres. Primary Project activities include construction of 210 multi-family units, recreational amenities, street improvements, a 12-foot-wide trail, and a drainage channel.

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.

Location: Town of Apple Valley, San Bernardino County, northwest corner of Navajo Road and Sandia Road, Assessor Parcel Number 434-063-02, Latitude 34.466304°, Longitude -117.191742°
Timeframe: Unknown

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Town of Apple Valley 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.

I. Environmental Setting and Related Impact Shortcoming

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

COMMENT 1:

Section IV Page 14

Issue: The Project activities include development of a drainage channel throughout the parcel to manage historic flows, but the MND states no impact will occur to riparian habitat. The Aquatic Resources Delineation for the Navajo Road 32.2-Acre Project states in Section 4.4 "no CDFW jurisdictional areas have been mapped within the [delineation area] ... due to there being a lack of indicators of regular water flow through this area." Section 5.0 states, "formerly a stream was mapped through the property ... this feature appears to no longer function due to several developments that have occurred along its historic length." The Drainage Report mentions the "site has the evidence of flows within the existing drainage swale crossing the site from southwest towards the northeast".

Specific impact: The Project may substantially adversely affect an existing fish or wildlife resources subject to Fish and Game Code section 1602 through change of an intermittent stream bed, channel, or bank.

Why impact would occur: The supplemental reports provided with the MND provides contradictory information regarding flow. The determination that there will be no impact to riparian habitat is not adequately explained in the MND.

Evidence impact would be significant: Swales that yield channel flow are important sources of water, sediment, nutrients, and other materials during runoff, and are integral parts of a stream (CDFG, 2010).

To minimize significant impacts: Determination of whether a Project may substantially adversely affect an existing fish or wildlife resources subject to Fish and Game Code section 1602 is made by CDFW. CDFW requests a mitigation measure be included in the MND that conditions submission of a Notification of Lake or Streambed Alteration to CDFW, as recommended as BIO-8 in Appendix A, so CDFW may determine if the Project requires an Agreement.

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:

Section IV Page 13

Issue: The MND states that the Project's substantial adverse effects on candidate, sensitive, or special status species potentially present in the Project area have been

reduced to less than significant impacts due to the incorporation of mitigation measures. CDFW has concerns that the MND lacks analysis of the magnitude or nature of incremental change to the environmental baseline, and the significance of the impacts to species identified as a candidate, sensitive, or special status species. The mitigation measures intended to avoid or substantially lessen significant environmental impacts rely on developing avoidance and minimization measures later should the pre-construction survey confirm presence. CDFW has concerns the mitigation measures are mainly future surveys that defer formulation of effective mitigation measures to a later date, deferring to other agencies, including CDFW, to identify and address mitigation measures, rather than presenting measures in the MND.

Specific impact: The MND identifies the Project area could be occupied by sensitive species in the future, therefore the Project could have substantial adverse effects on candidate, sensitive, or special status species present in the Project area.

Why impact would occur: The Biological Technical Report indicates a biological reconnaissance survey was performed for one hour on October 31, 2019. Such methodology can gather general information but is not recognized by CDFW as a method to determine presence or absence of candidate, sensitive, or special status species. The survey did not determine the environmental baseline for species the MND identifies to be potentially impacted. Additionally, the MND did not quantify impacts, such as the number of individuals impacted or the potential amount of suitable habitat for each species that would be lost through Project development within the Project area. The MND states implementation of pre-construction biological surveys as mitigation measures, proposed in BIO-1 and BIO-2, will result in less than significant impacts to special status species, but the direct or indirect impacts have not been quantified or analyzed within the MND.

Evidence impact would be significant: The MND lacks informed consideration of significant and adverse changes to the environmental baseline. Without an accurate environmental baseline of present candidate, sensitive, or special status species and the delay in development of specific avoidance, minimization, and mitigation measures, it is unclear if the mitigation measures proposed to be implemented by the Project Proponent will avoid, minimize, or mitigate the impacts to a level below significant adverse effect.

To minimize significant impacts: CDFW recommends the MND have a complete, recent inventory of rare, threatened, endangered, and other sensitive species within the Project footprint and within areas with the potential to be indirectly affected. CDFW recommends species-specific surveys during the appropriate time of year and time of day, with consideration of seasonal variations of potential presence. With such information, the Town of Apple Valley can identify and analyze the potential impacts to candidate, sensitive, or special status species in or adjacent to the Project area and develop mitigation measures that can avoid, minimize, or mitigate impacts to the species to lessen the adverse significant effects.

COMMENT 3:

Section IV, Page 13

Issue: The Biological Technical Report determined potentially present plant species through literature and database searches, then after performing the biological reconnaissance survey concluded “due to the level of human disturbance at the Project site and the current lack of suitable habitat for the special-status plant, many of the species are presumed absent from the Project site”. Due to this conclusion, the MND lacks mitigation measures for special status plant species. CDFW is unable to effectively assess the Project’s potential impacts to special status plants.

Specific impact: The Project and Project related activities have the potential to take special-status plants.

Why impact would occur: CDFW's California Natural Diversity Database (CNDDDB) is not exhaustive in terms of the data it houses, nor is it an absence database. The CNDDDB data should not be substituted for on-site surveys. CDFW recommends that it be used as a starting point in gathering information about the potential presence of species within the general area of the Project site. The biological reconnaissance survey performed was not a thorough floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW, 2018).

Evidence impact would be significant: Vegetation removal due to development may result in the loss of special status plant species and associated soil seed banks. Certain species are in danger of extinction because their habitats have been severely reduced in acreage, are threatened with destruction or adverse modification, or because of a combination of these and other factors (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).

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).

To minimize significant impacts: CDFW recommends the MND include the results of a thorough, recent, floristic-based assessment of special status plants *following Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018). This assessment will identify the baseline inventory of the Project area and inform if a mitigation measure is needed to lessen the adverse significant effects of loss of special status plants.

CDFW also recommends a mitigation measure be added to the MND that conditions a pre-construction survey be performed to determine if special status plant populations have established, expanded and/or migrated onsite or in areas of indirect impact, but not in lieu of a baseline survey. CDFW included a proposed mitigation measure for Town of Apple Valley's consideration in Appendix A. CDFW recommends Town of Apple Valley ensures the mitigation measure for special status plants has specific avoidance and minimizations measures and performance standards, rather than defer their development to a later date.

II. 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 4:

Section IV, Page 13

Issue: The MND conditions a pre-construction survey to be completed not more than 30 days prior to initiation of ground-disturbing activities that includes surveying for the presence of desert tortoise, Mohave ground squirrel, kit fox, burrowing owl, and migratory birds. If the pre-construction survey confirms presence of species that may be impacted by Project activities, the biologist will make avoidance recommendations in the report. CDFW does not believe the mitigation measure as proposed would reduce impacts to special status species below a level of significance as the environmental

baseline has not been established and the measure includes inadequate deferred mitigation.

Specific impact: The Project and Project related activities have the potential to take CESA-listed species and cause direct or indirect impacts to sensitive or special status species.

Why impact would occur: Mitigation measure BIO-1 defers essential surveys and development of avoidance measures and lacks a performance standard.

BIO-1 does not address the methodology in which the survey will be performed and relies upon one survey within 30 days of start of construction to identify several species. BIO-1 is inadequate to identify the target species, as the survey does not consider the life history and activity patterns of the species in question.

The mitigation measure states avoidance recommendations will be provided after performing the survey if presence is confirmed. The MND does not require the recommended avoidance measures to be followed by the Project Proponent. Lack of inclusion of avoidance measures within the MND prevents CDFW from commenting on their effectiveness to avoid significant impacts to the species.

Evidence impact would be significant: One of the greatest causes of population decline for Mohave ground squirrel, a threatened species, is habitat loss which includes urban development (Gustafson, 1993). Mohave ground squirrel is only active for several months of the year before entering aestivation, approximately March through August (CDFW, 2019). A non-protocol pre-construction survey performed outside of their active season cannot confirm presence of the species.

Desert tortoise, a threatened and candidate endangered species, has experienced declines in population densities from 50-96% throughout its range (Berry, 2003). The proposed survey may take place outside of desert tortoise's most active season. Desert tortoises may be active any time of year, but most of the activity occurs between March and June and the Project site may only be a portion of the tortoise's home range (Marlow, 2008). Harless et al. (2009) found males had home ranges of 106 to 121 acres and females 39.5 to 42 acres. As such, protocol level surveys within areas directly and indirectly affected by Project activities during the most active season should be performed to determine potential impacts to the species.

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).

Project activities have the potential to take nesting bird individuals or their nest or cause adverse reaction that can result in abandonment or failure of a nest. Depending on the species, nests may be built over a period of a few days, which may occur between the pre-construction survey and start of construction. Additionally, the measure only conditions the pre-construction survey for migratory birds. 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.).

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.

To minimize significant impacts: CDFW believes BIO-1, with modifications as recommended by CDFW in Appendix A, should be implemented prior to the start of the Project to determine whether candidate, sensitive, or special status species populations have established, expanded and/or migrated onsite, but not in lieu of protocol-level baseline surveys. Should the protocol-level surveys for desert tortoise and Mohave ground squirrel determine absence, the results of the survey only remain valid for 1-year. Should the Project activities commence after the 1-year period, CDFW recommends subsequent protocol-level surveys to determine presence or absence, as suggested in Appendix A. If the Project, including the Project construction or any Project-related activity during the life of the Project, may impact or result in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate CESA authorization prior to Project implementation.

COMMENT 5:

Section IV, Page 13-14

Issue: CDFW would like to note that BIO-2 measure does not include avoidance or minimization measures for burrowing owls that may be indirectly impacted by Project activities. Additionally, the measure does not recommend mitigation for burrowing owls impacted by Project activities or have a performance standard to guide the outcome of mitigation measure. The Biological Technical Report states burrowing owl has moderate potential to occur within the Project area as suitable habitat is present however no individuals or sign were identified in the field. CDFW would like to note the biological reconnaissance survey did not follow the survey guidelines or recommendations of the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012).

Specific impact: The Project and Project-related activities have potential to take burrowing owl individuals and their nests and may result in loss of burrowing owl habitat.

Why impact would occur: A baseline inventory of burrowing owls has not been obtained. The potential direct and indirect impacts to potentially present burrowing owls, such as potential loss of nesting burrows, satellite burrows, foraging habitat, dispersal and migration habitat, wintering habitat, and habitat linkages, including habitat supporting prey and host burrowers and other essential habitat attributes have not been quantified or analyzed. The future survey as condition by BIO-2 is inadequate to identify individuals that may be impacted by Project activities. The mitigation measure does not condition a monitoring component to prevent take or to compensate for any impacts that may occur.

Evidence impact would be significant: Habitat loss due to development is a threat to burrowing owls (CDFG, 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing owl are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). Take of individual burrowing owls and their nests is defined by FGC section 86, and prohibited by sections 3503, 3503.5 and 3513.

To minimize significant impacts: CDFW recommends a breeding season survey following the guidance and recommendations within the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2010) be performed to determine the environmental baseline in areas directly and indirectly impacted by the Project, and the results be included in the MND. CDFW believes BIO-2 should be implemented prior to the project as a take avoidance survey. A take avoidance survey purpose is to “detect changes in burrowing owl presence such as colonizing owls that have recently moved onto the site, migrating owls, resident burrowing owls changing burrow use, or young of the year that are still present and have not dispersed” (CDFG, 2012). BIO-2 should not be performed in lieu

of a baseline survey. CDFW proposes modifications to BIO-2 for Town of Apple Valley's consideration in Appendix A.

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 6:

Section IV, Page 15

Issue: The MND currently acknowledges the status of western Joshua tree, a candidate species, and states the individuals may be protected in place or an incidental take permit may be obtained for removal if the species is listed under CESA. Currently, the MND has BIO-3 to BIO-7 dedicated to potential transplanting of the western Joshua trees should the species not be listed. CDFW is concerned the MND lacks a mitigation measure to describe how the western Joshua trees, including the seed bank, will be protected in place should the species be listed under CESA and an incidental take permit not be obtained, or if the species remains a candidate at the time of proposed Project implementation.

Specific impact: The Project and Project related activities have the potential to take a candidate species.

Why impact would occur: Any activity that results in the removal of a western Joshua tree, or any part thereof, or impacts the seedbank surrounding one or more western Joshua trees may result in take of the species which is prohibited by State law unless otherwise authorized. The MND lacks a mitigation measure and performance standard for avoidance of western Joshua tree individuals and associated seed banks.

Evidence impact would be significant: Seed dispersal by seed-caching rodents may be carried and cached 30-40m away from a mature western Joshua tree (Vander Wal et al., 2006).

To minimize significant impacts: CDFW recommends adding a mitigation measure for western Joshua tree avoidance. CDFW included a proposed mitigation measure for Town of Apple Valley's consideration in Appendix A. If the Project, including the Project construction or any Project-related activity during the life of the Project, may impact or result in take of a candidate or CESA-listed species, CDFW recommends that the Project proponent seek appropriate CESA authorization prior to Project implementation.

III. Editorial Comments and/or Suggestions

The MND states, "Biological surveys were conducted for the desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Spermophilus mohavensis*), burrowing owl (*Athene cunicularia hypugaea*), sharp-shinned hawk (*Accipiter striatus*), Mohave Tui Chub, and loggerhead shrike (*Lanius ludovicianus*). The site survey found no sensitive or endangered species on the site." CDFW would like to note only one survey was performed, a general reconnaissance survey, which is not species-specific. Please note, the species name of Mohave ground squirrel is *Xerospermophilus mohavensis* and sharp-shinned hawk was not mentioned in the Biological Technical Report's assessment of potential species.

The MND states the Town of Apple Valley has a draft Multi-Species Habitat Conservation Plan (MSHCP), and at such time the site is to be developed, the Project will be subject to the mitigation measures identified in the MSHCP. If the effective date of the MSHCP will occur after adopting the MND, CDFW recommends the proposed mitigation measures be included in the MND to maintain consistency and be available for review for this Project.

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. The completed form can be mailed electronically to CNDDDB at the following email address: 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.

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 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 Town of Apple Valley in identifying and mitigating Project impacts on biological resources. Due to the issues presented in this letter, CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts on biological resources. Deficiencies in the Lead Agency CEQA document can affect later project approvals by CDFW in its role as a Responsible Agency. In addition, because of these issues, CDFW has concerns that Town of Apple Valley may not have the basis to approve the Project or make "findings" as required by CEQA unless the environmental document is modified to eliminate and/or mitigate significant impacts, as reasonably feasible (CEQA Guidelines, §§ 15074, 15091 & 15092).

Questions regarding this letter or further coordination should be directed to Ashley Rosales, Environmental Scientist at (760)219-9452 or Ashley.Rosales@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

Attachments

- A. Mitigation Monitoring and Reporting Program (MMRP)

ec: HCPB CEQA Program
Habitat Conservation Planning Branch
CEQAcommentletters@wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

REFERENCES

- Berry, K.H. 2003. Declining Trends in Desert Tortoise Populations at Long-term Study Plots in California between 1979 and 2002: Multiple Issues. 28th Annual Desert Tortoise Council Symposium, p. 75.
- California Department of Fish and Game (CDFG). 2010. A Review of Stream Processes and Forms in Dryland Watersheds.
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- California Department of Fish and Wildlife (CDFW). 2019. A Conservation Strategy for the Mohave Ground Squirrel *Xerospermophilus mohavensis*.
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- Gustafson, J.R. 1993. A Status Review of the Mohave Ground Squirrel (*Spermophilus mohavensis*). Department of Fish and Game Report to the Fish and Game Commission.
- Harless, M.L., A.D. Walde, D.K. Delaney, L.L. Pater, and W.K. Hayes. 2009. Home range, spatial overlap, and burrow use of the Desert Tortoise in the west Mojave Desert. *Copeia* 2009:378–389.
- Marlow, R. W. Life history account for Mohave Desert Tortoise. California Wildlife Habitat Relationships (CWHR) Version 9.0. California Department of Fish and Game and California Interagency Wildlife Task Group; 2008.
- Rosenberg, D. K., and K. L. Haley. 2004. The ecology of burrowing owls in the agroecosystem of the Imperial Valley, California. *Studies in Avian Biology* 27:120-135.
- Vander Wall, S.B., Esque, T., Haines, D., Garnett, M. and Waitman, B.A., 2006. Joshua tree (*Yucca brevifolia*) seeds are dispersed by seed-caching rodents. *Ecoscience*, 13(4), pp.539-543.

ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party for implementing the mitigation measure. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1 A pre-construction survey shall be completed by a qualified biologist prior to not more than 30 days of initiation of any earth moving activity on site to determine changes in species presence. The pre-construction surveys shall include an intensive site survey for desert tortoise, Mojave Ground Squirrel, kit fox, burrowing owl and migratory and nesting birds. Should any affected species be identified, the biologist shall include recommendations for avoidance in his/her report.</p> <p>a. A qualified biologist with experience identifying all age classes of desert tortoise in the field shall conduct a protocol level presence or absence survey within the Project area and three (3) 10-m belt transects at 200-m intervals parallel and perpendicular to the project area perimeter in open adjacent habitat no more than 48 hours prior to all project activities in accordance with the U.S. Fish and Wildlife Service 2010 desert tortoise survey methodology. The survey shall utilize 100-percent visual coverage for desert tortoise and their sign. If the survey confirms presence, the Project Proponent may not commence Project activities, and shall contact CDFW for consultation. Should avoidance of all impacts to desert tortoise be infeasible the Project Proponent shall apply for an incidental take permit from CDFW prior to Project activities.</p> <p>b. Prior to construction, a qualified biologist holding a current Memorandum of Understanding from CDFW shall conduct a protocol survey</p>	<p>Prior to Project activities/Entire Project</p>	<p>Project Proponent</p>

<p>following the Mohave Ground Squirrel Survey Guidelines (CDFW, 2010) to determine the presence or absence of Mohave ground squirrel. If the survey confirms presence, the Project Proponent may not commence Project activities, and shall contact CDFW for consultation. Should avoidance of all impacts to Mohave ground squirrel be infeasible the Project Proponent shall apply for an incidental take permit from CDFW prior to Project activities.</p> <p>c. No more than thirty (30) days prior to the beginning of surface disturbing activities, qualified biologist shall conduct a survey to determine if desert kit fox dens are present in the Project area or within open adjacent habitat within 500-feet of the Project area that may be indirectly impacted. If potential dens are located, they shall be monitored by the qualified biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. If the den is determined to be active, the qualified biologist shall implement a 500-foot buffer and intact vegetation buffer that connects to adjacent habitat to serve as cover. No Project activities may occur within the buffer and its efficacy shall be monitored daily and adjusted, as necessary. The qualified biologist shall have the authority to stop Project activities to prevent take. If active dens are present within the Project area that may be impacted, the Permittee shall submit a monitoring and relocation plan for CDFW's review and approval which will include passive relocation methodology and creation or enhancement of replacement dens in adjacent habitat. No disturbance of active dens shall take place when juveniles may be present and dependent on parental care.</p> <p>d. <u>Nesting Bird Surveys.</u> All project activities, including vegetation clearing, shall be conducted outside of nesting season to the maximum extent feasible. During the nesting bird season, the qualified biologist shall conduct a nesting bird survey at the appropriate times of day and weather, no more than three (3) days prior to start of Project activities within the Project area and 200-meter buffer zone where accessible. Surveys shall encompass all suitable areas including trees,</p>		
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<p>shrubs, bare ground, burrows, cavities, and structures. The qualified biologist shall implement nest buffers at all active nests within the Project area and buffer zone. The initial no-disturbance buffer shall extend a minimum of 500 feet in all directions for raptors and listed passerines and 300 feet in all directions for all other passerines. A reduced buffer may be implemented at the discretion of the qualified biologist. The qualified biologist shall conduct monitoring daily at all active nests to ensure take does not occur and adjust the buffers as needed. Active nests shall be monitored and buffered until the qualified biologist has determined the young are independently foraging and have fledged or the project is finished. The qualified biologist has the authority to stop work if nesting individuals or pairs exhibit signs of disturbance. The qualified biologist shall repeat the survey if project activity ceases for more than five (5) days to determine whether nesting on the site has occurred.</p>		
<p>BIO-2. Pre-Construction Survey. Within 14 days prior to ground disturbance, the Applicant will retain a qualified biologist to conduct take avoidance burrowing owl surveys within the area to be disturbed and adjacent habitat following the guidance and recommendations within the Staff Report on Burrowing Owl Mitigation (CDFG, 2012) to inform take avoidance actions. The survey will be performed by walking parallel transects spaced no more than 20 meters apart, adjusting for vegetation height and density, and will be focused on changes in owl presence, detecting burrows that are occupied, or are suitable for occupation, by the burrowing owl. The results of the surveys, including graphics showing the locations of any active burrows detected and any avoidance measures required, will be submitted to the Town of Apple Valley and the California Department of Fish & Wildlife (CDFW) within 14 days following completion of the surveys. If active burrows are detected, the following take avoidance measures will be implemented:</p> <ol style="list-style-type: none"> a. If burrowing owls are observed using burrows on-site or within open adjacent habitat during the non-breeding season (September through January, unless determined otherwise by a qualified biologist based on field observations in the region), occupied burrows will be left undisturbed, and no construction activity will take place within 300 feet of the burrow where feasible (see below). A 	<p>Prior to Project activities/Entire Project</p>	<p>Project Proponent</p>

<p>qualified biologist shall remain on-site during Project activities to monitor the burrowing owls. Monitoring shall take place a minimum of two hours immediately following sunrise, during times of increased levels of disturbance, and two hours immediately prior to sunset, or until Project activities cease for the day. The qualified biologist shall increase the buffer size as needed and stop Project activities if burrowing owls exhibit sign of disturbance.</p> <p>b. If avoiding disturbance of owls and owl burrows on-site is infeasible, owls will be passively relocated excluded from all active burrows through the use of exclusion devices placed in occupied burrows in accordance with protocols established in CDFW's Staff Report on Burrowing Owl Mitigation (2012). Passive relocation activities shall take place outside the nesting season and when fledglings are independent and no longer dependent on parental care. The qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation such that the habitat acreage, number of burrows, and burrowing owls impacted are replaced. Specifically, The plan will include but not limited to methodology for installing exclusion devices, utilizing one-way doors, will be installed in the entrance of all active burrows. The devices will be left in the burrows and monitored by the qualified biologist for at least 48 hours to ensure that all owls have been excluded from the burrows and prevent take. Each of the burrows will then be excavated by hand and/or mechanically and refilled to prevent reoccupation. Exclusion will continue until the owls have been excluded from the disturbance area, as determined by a qualified biologist.</p> <p>c. Any active burrowing owl burrows detected on-site or within adjacent habitat during the breeding season (February through August, unless determined otherwise by a qualified biologist based on field observations in the region), will not be disturbed. Construction activities will not be conducted within 300 feet of an active onsite burrow at this season. A qualified biologist shall</p>		
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<p>remain on-site during to monitor the burrowing owls. Monitoring shall take place a minimum of two hours immediately following sunrise, during times of increased levels of disturbance, and two hours immediately prior to sunset, or until Project activities cease for the day. The qualified biologist shall increase the buffer size as needed and stop Project activities if burrowing owls exhibit sign of disturbance.</p>		
<p>BIO-3: Should western Joshua tree not be listed under CESA, a qualified approved arborist will be retained to conduct any future transplanting activities and will follow the protocol of the County's Development Code. Removal of all plants protected or regulated by the Desert Native Plants Act would be required to comply with the provisions of the Act before the issuance of a development permit or approval of a land use application. Should western Joshua tree be a candidate species or CESA-listed species during the time of proposed Project implementation, the Project proponent shall adhere to BIO- 10.</p>	<p>Prior to Project activities</p>	<p>Project Proponent</p>
<p>BIO-4: Should western Joshua tree not be listed under CESA, Joshua trees deemed suitable for transplanting shall be utilized as part of the proposed landscaping on-site where possible or shall be transplanted to an area of the Project Site where they can remain in perpetuity. Joshua trees which are deemed not suitable for transplanting may be removed from the Project Site. Should western Joshua tree be a candidate species or CESA-listed species during the time of proposed Project implementation, the Project proponent shall adhere to BIO- 10.</p>	<p>During Project activities</p>	<p>Project Proponent</p>
<p>BIO-5: Should western Joshua tree not be listed under CESA, p Prior to excavation, a qualified arborist shall construct earthen berms around each Joshua tree. The Joshua trees shall be watered approximately one week before transplanting. Watering the Joshua trees prior to transplanting will help make excavation easier, ensure the root ball will hold together, and minimize stress to the tree. Should western Joshua tree be a candidate species or CESA-listed species during the time of proposed Project implementation, the Project proponent shall adhere to BIO- 10.</p>	<p>During Project activities</p>	<p>Project Proponent</p>
<p>BIO-6: Should western Joshua tree not be listed under CESA, e Each Joshua tree deemed suitable for transplanting shall be moved to a pre-selected location and shall be placed and oriented in the same direction as its original direction. Once transplanted, the area around the tree shall be backfilled with native soil, and the</p>	<p>During Project activities</p>	<p>Project Proponent</p>

<p>transplanted Joshua tree shall be watered immediately. Should western Joshua tree be a candidate species or CESA-listed species during the time of proposed Project implementation, the Project proponent shall adhere to BIO- 10.</p>		
<p>BIO-7: Should western Joshua tree not be listed under CESA, tThe qualified arborist shall develop a watering regiment to ensure the survival of the transplanted Joshua trees. Should western Joshua tree be a candidate species or CESA-listed species during the time of proposed Project implementation, the Project proponent shall adhere to BIO- 10.</p>	<p>During Project activities</p>	<p>Project Proponent</p>
<p>BIO-8: Notification of Streambed Alteration. Prior to commencement of Project activities, the Project Proponent shall submit a Notification of Lake or Streambed Alteration to CDFW’s Lake and Streambed Alteration Program. Upon receipt of a complete notification, CDFW shall determine if Project activities may substantially adversely affect existing fish and wildlife resources. If required by CDFW, the Project Proponent shall obtain a CDFW-executed Lake or Streambed Alteration Agreement, authorizing impacts to resources subject to Fish and Game Code section 1602 associated with the Project, or a letter from CDFW stating an Agreement is not required, prior to commencing Project activities subject to Fish and Game Code section 1602.</p>	<p>Prior to Project activities</p>	<p>Project Proponent</p>
<p>BIO-9: Prior to construction and during the appropriate blooming periods for special-status plant species, a qualified biologist shall conduct a special status plant survey in the Project area and 100-foot buffer to determine whether special status plant populations have established, expanded and/or migrated onsite. The surveys shall be floristic in nature (i.e., identifying all plant species to the taxonomic level necessary to determine rarity). If individual or populations of special-status plant species are found within the areas proposed for disturbance, species-specific measures to avoid and minimize impacts shall be implemented to ensure no net reduction in the size or viability of the local population- which may include transplanting perennial species, seed collection and dispersal from annual species, or protection in place. The surveys and reporting shall follow following <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</i> (CDFW, 2018).</p>	<p>Prior to Project activities</p>	<p>Project Proponent</p>

<p>If State-listed plant species are present, and avoidance is infeasible, an incidental take permit from CDFW shall be obtained prior to the commencement of project activities.</p>		
<p>BIO-10: During candidacy of the western Joshua tree, all western Joshua trees and parts thereof shall be buffered for avoidance. A qualified biologist shall establish a 250-foot buffer around each western Joshua tree parent, seedling, and sprout. No project activities may occur within the buffer. Should avoidance be infeasible (during candidacy or if the species is listed under CESA) the Project Proponent shall apply for an incidental take permit from CDFW prior to Project activities.</p>	<p>Prior to Project activities</p>	<p>Project Proponent</p>