



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



May 4, 2022  
*Sent via email*

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

Subject: Draft Environmental Impact Report  
Village Specific Plan  
State Clearinghouse No. 2021110271



Dear Mr. Alcayaga,

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the Town of Apple Valley (Town) for the Village Specific Plan (Plan/Project) pursuant to 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 Plan that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Plan 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.

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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.

### **ASSEMBLY BILL (AB) 819**

Assembly Bill (AB) 819 was signed into law by Governor Gavin Newsom on July 16, 2021 and became effective January 1, 2022. AB 819 requires lead agencies to submit certain environmental documents and notices electronically to the State Clearing House (SCH) at Office of Planning and Research (OPR). Thus, as of January 1, 2022, lead agencies must take the following actions to comply with CEQA:

- File on CEQAnet – Draft Environmental Impact Reports (DEIR), proposed Negative Declarations (ND), proposed Mitigated Negative Declarations (MND) must be filed electronically on CEQAnet ( <https://ceqanet.opr.ca.gov/>) – as opposed to submitting hard copies.
- Post on Agency website – Draft, proposed, and final environmental documents – including DEIRs, EIRs, NDs, MNDs – as well as any Notice of Preparation (NOP), Notice of Determination (NOD), Notice of Completion, or Notice of Scoping Meetings must be posted on the lead agency's website if it has one. Also, Notices of Availability (NOAs) and hearings related to the DEIR or ND are required to be posted on the lead agency's website, in addition to prior methods of giving notice.
- File and Post with County – NODs must be filed electronically with the county clerk if electronic filings are offered by the county. There is an option to post NODs either in the county clerk's office or on the county clerk's website for a period of 30 days. Additionally, NOPs and NOAs will need to be posted on the county clerk's website and physically, by hard copy, in the county clerk's office.
- Option to email NOPs – If an EIR is required, any NOP may be emailed, rather than mailed, to each entity requiring personal notice – the responsible agency, any public agency with jurisdiction over natural resources affected by the project, and OPR.
- State Agency Filings – State lead agencies are required to file NODs and NOEs electronically on CEQAnet and no longer need to submit hard copies. The filed notice must be available for public inspection on the OPR website for not less than 12 months.
- Public Agency Notice of Completion – Public agencies must file notices of completion on CEQAnet, rather than mailing a paper copy.

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## PROJECT DESCRIPTION SUMMARY

The Plan guides the long-term development and redevelopment of an approximately 651-acre area in the town of Apple Valley in San Bernadino County, California. The Plan addresses the development and redevelopment along Highway 18 between Navajo Road and Central Road and surrounding lands (Plan Area) and proposes the addition of 682 dwelling units, 6,067,523 square feet of commercial/service/office/public facility development, and 2,005 residents within the Plan Area. Upon completion, the Plan will result in a total of 971 dwelling units, 7,890,903 square feet of commercial/retail/office/public facility development, and 2,855 residents in the Plan Area.

**Timeframe:** Unavailable

## COMMENTS AND RECOMMENDATIONS

Herein CDFW offers biological (BIO) mitigation measures (MM) along with comments and recommendations to assist the Town in adequately mitigating the Plan's potentially significant impacts on western Joshua tree (*Yucca brevifolia*), desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Xerospermophilus mohavensis*), nesting birds, burrowing owl (*Athene cunicularia*), special-status plants, and Fish and Game Code section 1602 resources.

The DEIR and MM BIO-1 references the Apple Valley Multi Species Habitat Conservation Plan (MSHCP) and the Natural Community Conservation Plan (NCCP). MM BIO-1 states that prior to development, projects on vacant parcels or as deemed necessary by the Town shall conduct site-specific biological studies in compliance with standard survey methodologies and the Apple Valley MSHCP/NCCP. However, CDFW is aware that the Apple Valley MSHCP/NCCP has been in development for years and is not yet complete. Further, the Town should deem surveys necessary upon recommendation from a qualified biologist in consultation with CDFW.

CDFW recognizes the Plan is within the range of desert tortoise and Mohave ground squirrel and is aware of the presence of burrowing owl within the Plan Area, as confirmed by CDFW's California Natural Diversity Database (CNDDDB). Meanwhile the DEIR states that "Conservation of lands for specifically covered species, like the Desert Tortoise, Mojave Ground Squirrel, Le Conte's Thrasher, Burrowing Owl, etc.," is a mandate of the Plan. Notwithstanding, the DEIR only proposes MM BIO-1, and MM BIO-2, which provides mitigation for nesting birds. In the Biological Mitigation Measures section below, CDFW proposes revisions to MM BIO-1 (see 1. Pre-construction Surveys below) to require species-specific pre-construction surveys according to CDFW-accepted protocols through implementation of MM BIO-3 (Burrowing Owl), MM BIO-4 (Desert Tortoise), and MM BIO-5 (Mohave Ground Squirrel).

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CDFW appreciates the incorporation of MM BIO-2, requiring nesting bird surveys. CDFW recommends revisions to MM BIO-2 below (see 2. Nesting Birds) to help the Town avoid impacts to nesting birds that may nest outside of the peak nesting season (generally peak nesting season is February 1 to August 31); for example, some species of raptors (e.g. owls, hawks, etc.) may commence nesting activities in January and hummingbirds may nest year-round.

Absent botanical field surveys, CDFW determined based on aerial imagery the presence of at least three (3) western Joshua tree (WJT) within the Plan Area. As a Candidate for Threatened California Endangered Species Act (CESA)-listed species, CDFW is concerned that the Plan does not consider potential impacts to WJT. A pre-construction special-status plant survey, as suggested in MM BIO-6 below (see 6. Special-status Plants) should confirm the presence of WJT along with any other special-status species present. Additionally, CDFW recommends the Town adopt MM BIO-7 below (see 7. Western Joshua Tree) to avoid impacts to WJT.

The MND acknowledges the presence of a drainage onsite and states, “there is one non-jurisdictional water mapped within the Planning Area, in the southeastern corner near Central Road. Given the nature of ephemeral desert washes and drainages, the drainage may have moved, been modified due to surrounding development, or gone extinct. No riparian habitats or sensitive natural communities are known to occur in the Planning Area. However, future development projects facilitated by Alternatives 1 and 2 could potentially disturb these resources”. CDFW is concerned with the Plan’s potential impacts to Fish and Game Code section 1602 resources. Based on review of aerial photography from the California State Water Resources Control Board, an ephemeral stream runs along Assessor’s Parcel Number (APN) 3087-392-29-0000 and APN 3087-392-01-0000, located north of Ottawa road in between Central Road and Malaki Road before Eyota Road. The ephemeral stream continues south of Ottawa Road into adjacent vacant lands. Considering the potential for Fish and Game Code section 1602 resources within the Plan Area, CDFW recommends the Town adopt MM BIO-8 below (see 8. Lake and Streambed Alteration Notification).

CDFW requests that the Town adopts in a final EIR (termed hereafter as ‘final EIR’) the mitigation measures listed below and also found in Attachment 1 (Mitigation Monitoring and Reporting Program):

### **Biological Mitigation Measures**

1. Pre-construction Surveys. CDFW recommends MM BIO-1 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

MM BIO-1

Prior to **grading or any other ground-disturbing activity, including vegetation removal** ~~development actions, development projects proposed on vacant parcels, or as~~

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~~deemed necessary by the Town, pre-construction surveys for burrowing owl, desert tortoise, and Mohave ground squirrel shall be conducted according to MM BIO-3, MM BIO-4, and MM BIO-5, respectively. shall be required to conduct site-specific biological studies in compliance with standard survey methodologies and the Apple Valley MSHCP/NCCP. Species-specific and/or resource-specific surveys may be required and shall comply with applicable protocols of CDFW, USFWS, and/or other appropriate regulatory agencies. If biological resources are present that would be significantly impacted by a project, mitigation measures shall be implemented to reduce impacts on sensitive species/habitat to less than significant levels.~~

2. Nesting Birds. CDFW offers the following revisions to MM BIO-2 (edits are in ~~strikethrough~~ and **bold**):

MM BIO-2

**All Plan activities shall be conducted outside of the nesting bird season (non-nesting season is typically from September 16 through December 31) to the maximum extent feasible. If Plan activities begin during the non-nesting season, a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Plan areas (including access routes) and a 300- foot buffer surrounding the Plan areas, no more than two hours prior to initiating Plan activities.**

~~For any Plan activity grading or other site disturbance or tree or vegetation removal occurring during the nesting season, typically between February~~ **January 1 through September 15 for raptors in southern California and February 1 through August 31<sup>st</sup> September 1 for passerine birds,** a qualified biologist shall conduct at least one nesting bird survey, and more if deemed necessary by the ~~consulting~~ **qualified** biologist, ~~immediately~~ **within three (3) days** prior to initiation of Plan-related ground disturbing activities. ~~If active nests containing eggs or young nesting birds are present, no work shall be permitted near the nest until the young birds have fledged or the nest is no longer active. The qualified biologist shall establish an appropriate nest avoidance buffer to be marked on the ground. While there is no established protocol for nest avoidance, when consulted, the CDFW generally recommends Nest avoidance buffers are species specific and shall be about 500 feet for birds-of-prey, and 300 feet for songbirds. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Plan activity has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.~~

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3. Burrowing Owl (*Athene cunicularia*). The Plan Area has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” CDFW recommends that the Town follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012); available for download from CDFW’s website: [Microsoft Word - BUOW Staff Report final\\_030712 REV 1.doc \(ca.gov\)](#). The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

- a. A habitat assessment;
- b. Surveys; and
- c. An impact assessment

As stated in the Staff Report on Burrowing Owl Mitigation, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

Thus, considering the aforementioned, CDFW recommends the adoption of MM BIO-3 below to address potential impacts to burrowing owl:

### **MM BIO-3**

**Prior to grading or any other ground-disturbing activity, a qualified biologist shall conduct a habitat assessment for burrowing owls to determine if suitable burrowing owl habitat is present in and adjacent to the Plan site. Surveys shall be conducted consistent with the procedures outlined in the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation (California Department of Fish and Wildlife, 2012).**

**If there is suitable habitat for burrowing owl, then focused breeding season surveys as described in the Staff Report on Burrowing Owl Mitigation shall be conducted by a qualified biologist. If presence of burrowing owl is determined, the applicant shall contact CDFW and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing**

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**Plan activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio.**

**No less than 14 days prior to ground-disturbing activities, a qualified biologist shall conduct pre-construction surveys. If no burrowing owl(s) are observed on-site during the pre-construction clearance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to issuance of any grading permits, and no further action is required. If burrowing owl(s) are observed on-site during the pre-construction clearance survey, areas occupied by burrowing owls shall be avoided. No ground-disturbing activities shall be permitted within 500 meters of an occupied burrow. A smaller buffer may be established if the qualified biologist determines a reduced buffer would not adversely affect the burrowing owl(s).**

**If burrowing owls cannot be avoided by the Plan activity, then a qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation to CDFW for review/approval prior to the commencement of Plan activities. Burrow exclusion involves the installation of one-way doors in burrow openings during the non-breeding season to temporarily or permanently exclude burrowing owls and to close burrows after verifying through site monitoring and scoping that the burrows are empty. Existing or artificial burrows situated less than 75 meters from the Plan site are the ideal scenario for successful passive relocation. Additional factors for successful passive relocation are included in the CDFW 2012 Staff Report on Burrowing Owl Mitigation. Prior to passive relocation, suitable replacement burrows site(s) shall be provided at a minimum ratio of 2:1 and permanent conservation and management of burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owl impacts are replaced consistent with the Staff Report on Burrowing Owl Mitigation including its Appendix A within designated adjacent conserved lands identified through coordination with CDFW. A qualified biologist shall confirm the natural or artificial burrows on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted, and a reporting plan shall be prepared for CDFW review and approval. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years. When a qualified biologist determines that burrowing owls are no longer occupying the Plan site and passive relocation is complete, Plan activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW prior to the start of Plan activities.**

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4. Desert Tortoise (*Gopherus agassizii*). To address potential impacts to desert tortoise, CDFW recommends the adoption of MM BIO-4 below:

#### **MM BIO-4**

**During the desert tortoise active season (April to May or September to October) pre-construction surveys for desert tortoise shall be conducted by a California Department of Fish and Wildlife (CDFW)-approved biologist no more than 48 hours prior to initiation of Plan activities and after any pause in Plan activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to start of Plan activities. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Plan area. If the survey confirms presence of desert tortoise, the project proponent shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) to desert tortoise. If complete avoidance of desert tortoise cannot be achieved, CDFW recommends the project proponent not undertake Plan activities and Plan activities be postponed until appropriate authorization (i.e., California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Fish and Game Code section 2081) is obtained.**

5. Mohave Ground Squirrel (*Xerospermophilus mohavensis*). CDFW has concerns that the Plan is within the range of the CESA threatened Mohave ground squirrel and recommends the adoption of MM BIO-5 below:

#### **MM BIO-5**

**Pre-construction surveys following the *Mohave Ground Squirrel Survey Guidelines* (CDFG 2010), or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by the California Department of Fish and Wildlife (CDFW). The pre-construction surveys shall cover the Plan site and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Town should obtain an Incidental Take Permit (ITP) for Mohave ground squirrel prior to the start of Plan activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey. If a Mohave ground squirrel is observed during Plan activities, and the Town does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.**



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6. Special-status Plants. CDFW recommends MM BIO-6 below be added to the final EIR to fully avoid and otherwise protect sensitive plant communities from the Plan-related direct and indirect impacts:

#### **MM BIO-6**

**Prior to Plan implementation, and during the appropriate season, the Town shall conduct botanical field surveys within the Plan Area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Town shall either avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging), or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Plan site (i.e., within a separate watershed) or is not occupied by or available to special-status species.**

**If the Plan has the potential to impact a state-listed species, the Town should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.**

7. Western Joshua Tree. As a Candidate for Threatened California Endangered Species Act (CESA)-listed species, CDFW is concerned with the Plan's potential impacts to at least 3 WJT identified by CDFW through aerial imagery. CDFW recommends that the Town conduct an impact analysis for WJT. When analyzing impacts to WJT, the entire population on the project site should be considered to properly calculate demographics and estimate the quality of WJT habitat on-site. CDFW recommends the final EIR quantify WJT presence on the entirety of the Plan Area through focused surveys. The WJT survey results should be included in the final EIR and should identify and provide: a) the GPS coordinates and accompanying map of each WJT within the Plan Area; b) the age class of each WJT; c) the number of clonal WJT associated with each parent plant and the methodology used to make this determination; d) a unique numbering

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system for each WJT, and e) geo-referenced, representative photos of parent trees, clones, and general distribution of WJT across the Plan site.

Furthermore, the final EIR should include: 1) an impact analysis assessing potential Plan impacts to WJT within a 186-foot buffer zone of WJT (Vander Wall et al. 2006), 2) implementing a 300-foot buffer around WJT not scheduled for removal to avoid impacts to WJT, and 3) a mitigation strategy for Plan impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT. Indirect impacts to WJT include destruction of WJT's obligate pollinating moth (yucca moth; *Tegeticula synthetica*), while it is dormant in the soil or while it is in its flight phase, which would impact the ability of WJT to sexually recruit new individuals (Sweet et al. 2019). Destruction or modification of WJT habitat in the Plan Area could also disrupt the seed dispersal behavior of rodents, which is the primary way that WJT seeds are buried at a soil depth suitable for successful germination (Waitman et al. 2012). Destruction or modification of WJT habitat in the Plan area could also eliminate nurse plants that are critical for WJT seedling survival (Brittingham and Walker 2000).

CDFW requests the final EIR 1) adequately identify and disclose the Plan impacts (i.e., direct, indirect, and cumulative) to WJT as noted above, 2) propose mitigation to offset those impacts to WJT, and 3) demonstrate that impacts to WJT are less than significant and, for the purposes of CESA permitting, are fully mitigated. Further, CDFW recommends the adoption of MM BIO- 7 below:

#### **MM BIO-7**

**CDFW recommends that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) be obtained if the Plan has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection through the establishment of a conservation easement, development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed or financial security must be provided before starting any Plan activities. In order to execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof the document has been circulated.**

8. Lake and Streambed Alteration Notification. CDFW recommends the County adopt MM BIO-8 below prior to finalizing the EIR to avoid potential impacts to Fish and Game Code section 1602:

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## **MM BIO-8**

**Prior to construction and issuance of any grading permit, the Town should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Plan, or the Town should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Plan.**

## **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 operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSION**

CDFW requests that the Town of Apple Valley include in the final EIR the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Plan impacts on California fish and wildlife resources.

CDFW appreciates the opportunity to comment on the DEIR for the Village Specific Plan (SCH No. 2021110271) and hopes our comments will assist the Town in identifying, avoiding, minimizing, and mitigating Plan impacts on fish and wildlife resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Corina Jimenez, Environmental Scientist at [Corina.Jimenez@wildlife.ca.gov](mailto:Corina.Jimenez@wildlife.ca.gov).

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## ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:



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Alisa Ellsworth  
Environmental Program Manager

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

## REFERENCES

Brittingham, S. and L. R. Walker. 2000. Facilitation of *Yucca brevifolia* recruitment by Mojave Desert shrubs. *Western North American Naturalist* 60(4): 374-383.

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## **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. 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.

<b>Biological (BIO) Mitigation Measure (MM)</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p>MM BIO-1</p> <p>Prior to grading or any other ground-disturbing activity, including vegetation removal, pre-construction surveys for burrowing owl, desert tortoise, and Mohave ground squirrel shall be conducted according to MM BIO-3, MM BIO-4, and MM BIO-5, respectively.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-2</p> <p>All Plan activities shall be conducted outside of the nesting bird season (non-nesting season is typically from September 16 through December 31) to the maximum extent feasible. If Plan activities begin during the non-nesting season, a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>Plan areas (including access routes) and a 300- foot buffer surrounding the Plan areas, no more than two hours prior to initiating Plan activities.</p> <p>For any Plan activity occurring during the nesting season, typically between January 1 through September 15 for raptors in southern California and February 1 through September 1 for passerine birds, a qualified biologist shall conduct at least one nesting bird survey, and more if deemed necessary by the qualified biologist, within three (3) days prior to initiation of Plan-related activities. If active nests containing eggs or young are present, no work shall be permitted near the nest until the young birds have fledged or the nest is no longer active. The qualified biologist shall establish an appropriate nest avoidance buffer to be marked on the ground. Nest avoidance buffers are species specific and shall be about 500 feet for birds-of-prey, and 300 feet for songbirds. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Plan activity has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>MM BIO-3</p> <p>Prior to grading or any other ground-disturbing activity, a qualified biologist shall conduct a habitat assessment for burrowing</p>	<p>Prior to commencing ground- or vegetation</p>	<p>Project Proponent</p>

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<p>owls to determine if suitable burrowing owl habitat is present in and adjacent to the Plan site. Surveys shall be conducted consistent with the procedures outlined in the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation (California Department of Fish and Wildlife, 2012).</p> <p>If there is suitable habitat for burrowing owl, then focused breeding season surveys as described in the Staff Report on Burrowing Owl Mitigation shall be conducted by a qualified biologist. If presence of burrowing owl is determined, the applicant shall contact CDFW and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing Plan activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio.</p> <p>No less than 14 days prior to ground-disturbing activities, a qualified biologist shall conduct pre-construction surveys. If no burrowing owl(s) are observed on-site during the pre-construction clearance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to issuance of any grading permits, and no further action is required. If burrowing owl(s) are observed on-site during the pre-construction clearance survey, areas occupied by burrowing owls shall be avoided. No ground-disturbing activities shall be permitted within 500 meters of an occupied burrow. A smaller buffer may be established if the qualified biologist determines a reduced buffer would not adversely affect the burrowing owl(s).</p>	<p>disturbing activities</p>	
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<p>If burrowing owls cannot be avoided by the Plan activity, then a qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation to CDFW for review/approval prior to the commencement of Plan activities. Burrow exclusion involves the installation of one-way doors in burrow openings during the non-breeding season to temporarily or permanently exclude burrowing owls and to close burrows after verifying through site monitoring and scoping that the burrows are empty. Existing or artificial burrows situated less than 75 meters from the Plan site are the ideal scenario for successful passive relocation. Additional factors for successful passive relocation are included in the CDFW 2012 Staff Report on Burrowing Owl Mitigation. Prior to passive relocation, suitable replacement burrows site(s) shall be provided at a minimum ratio of 2:1 and permanent conservation and management of burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owl impacts are replaced consistent with the Staff Report on Burrowing Owl Mitigation including its Appendix A within designated adjacent conserved lands identified through coordination with CDFW. A qualified biologist shall confirm the natural or artificial burrows on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted, and a reporting plan shall be prepared for CDFW review and approval. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years. When a</p>		
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<p>qualified biologist determines that burrowing owls are no longer occupying the Plan site and passive relocation is complete, Plan activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW prior to the start of Plan activities.</p>		
<p><b>MM BIO-4</b></p> <p>During the desert tortoise active season (April to May or September to October) pre-construction surveys for desert tortoise shall be conducted by a California Department of Fish and Wildlife (CDFW)-approved biologist no more than 48 hours prior to initiation of Plan activities and after any pause in Plan activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to start of Plan activities. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Plan area. If the survey confirms presence of desert tortoise, the project proponent shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) to desert tortoise. If complete avoidance of desert tortoise cannot be achieved, CDFW recommends the project proponent not undertake Plan activities and Plan activities</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>be postponed until appropriate authorization (i.e., California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Fish and Game Code section 2081) is obtained.</p>		
<p><b>MM BIO-5</b></p> <p>Pre-construction surveys following the <i>Mohave Ground Squirrel Survey Guidelines</i> (CDFG 2010), or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by the California Department of Fish and Wildlife (CDFW). The pre-construction surveys shall cover the Plan site and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Town should obtain an Incidental Take Permit (ITP) for Mohave ground squirrel prior to the start of Plan activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey. If a Mohave ground squirrel is observed during Plan activities, and the Town does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p><b>MM BIO-6</b></p> <p>Prior to Plan implementation, and during the appropriate season, the Town shall conduct botanical field surveys within the Plan Area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Town shall either avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging), or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Plan site (i.e., within a separate watershed) or is not occupied by or available to special-status species.</p> <p>If the Plan has the potential to impact a state-listed species, the Town should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</p>		
<p>MM BIO-7</p> <p>CDFW recommends that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) be obtained if the Plan has the potential to result in “take” (California Fish and Game Code Section 86</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 &amp; 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection through the establishment of a conservation easement, development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed or financial security must be provided before starting any Plan activities. In order to execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof the document has been circulated.</p>		
<p>MM BIO-8</p> <p>Prior to construction and issuance of any grading permit, the Town should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Plan, or the Town should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Plan.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>