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DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Mar 17 2022**

March 16, 2022  
*Sent via email*

## STATE CLEARINGHOUSE

Irene Romero, Planner  
County of San Bernardino  
Land Use Services Department  
385 N. Arrowhead Avenue, 1st Floor  
San Bernardino, CA 92415-0182

Subject: Initial Study and Mitigated Negative Declaration  
Tentative Tract Map (TT) 20360  
State Clearing House No.2022030017

Dear Ms. Romero:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from the County of San Bernardino (County) for the Tentative Tract Map (TT) 20360 Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

### CDFW ROLE

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

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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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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.

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

Assembly Bill (AB) 819 was signed into law by the Governor this year and became effective January 1, 2022. AB 819 requires lead agencies to submit certain environmental documents and notices electronically to the State Clearinghouse (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 Project site is in the City of Phelan, San Bernadino County, California, Latitude 34.476631 N and Longitude -117.461519 W. The Project site is located off Marco Road between Olivine Road and Lindero Road. The Project proposes to subdivide 19.74 acres into eight (8) 2.4-acre parcels on Assessor's Parcel Numbers (APNs) 3097-581-04, 3097-581-05, and 3097-581-07 for future development of single-family residences.

**Timeframe:** Unavailable

## COMMENTS AND RECOMMENDATIONS

The ISMND recognizes the potential for special-status species, including Western Joshua tree (*Yucca brevifolia*), burrowing owl (*Athene cunicularia*), and desert tortoise (*Gopherus agassizii*) to occur within the Project area but does not provide enough details of the surveys or the surveys reports undertaken to assess biological resources. CDFW is concerned that the analysis completed may have been inadequate to form a complete inventory of special-status species within and surrounding the Project area and to identify the level of impacts on those species. Absent these details, and supporting documentation, it is unclear whether the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources have been adequately identified, disclosed, and mitigated and whether those impacts are less than significant.

CDFW offers the comments and recommendations presented below and in Attachment 1 (Mitigation Monitoring and Reporting Program) to assist the County in adequately mitigating the Project's potentially significant impacts on biological resources and requests that the County adopt the below mitigation measures (also see Attachment 1) prior to finalizing the ISMND.

### Assessment of Biological Resources

#### Nesting Birds

CDFW appreciates the incorporation of Biological (BIO) Resources Mitigation Measure (MM) number 1, which considers nesting bird pre-construction surveys. However, CDFW is concerned that MM BIO-1 is conditioned to only require surveys during the peak bird nesting season considering that birds, such as hummingbirds may nest year-round. MM BIO-1 defines bird nesting season as February 1 to August 31. Please note that nesting may commence before and/or after this timeframe. For example, some species of raptors (e.g. owls, hawks, etc.) may commence nesting activities in January, and passerines may nest later than August 31. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant

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thereto. As such, CDFW offers the following revisions to BIO-1 (edits are in ~~strikethrough~~ and **bold**):

#### BIO-1 Preconstruction Nesting Bird Surveys

**If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-construction sweep shall be performed to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 300- foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities.** If it is not feasible to avoid the nesting bird season (~~February 1 through August 31~~) **(generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1)**, a qualified biologist shall conduct a pre-construction nesting bird survey to determine presence/absence, location, and status of any active nest. ~~To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and the CFGC, T~~the nesting bird survey shall occur no earlier than ~~three seven (3 7)~~ **three** days prior to the commencement of **Project activities (including site preparation, staging, or other ground-disturbing activities)** ~~construction.~~

In the event active nests are discovered, a suitable buffer **of a minimum of 300 feet for raptors and 100 feet for songbirds (unless a smaller buffer is** ~~distance to be~~ determined by a qualified biologist **familiar with the nesting phenology of the nesting species)** shall be established around active nests and no construction within the buffer **shall be** allowed, until the biologist has determined the nest is no longer active (i.e., the nestlings have fledged and are no longer reliant on the nest).

#### Burrowing Owl (*Athene cunicularia*)

The ISMND states that a habitat assessment for burrowing owl was conducted, which determined that the Project site supports suitable habitat for burrowing owl. Although the results of the habitat assessment were not included with the ISMND, CDFW recognizes the potential for burrowing owl and thus appreciates the incorporation of MM BIO-2 and MM BIO-3, which consider burrowing owl pre-construction surveys and passive or active relocation of burrowing owls, respectively. Please note that: (1) CDFW does not consider sole reliance on relocation appropriate to fully avoid and otherwise protect burrowing owl and (2) CDFW is unable to authorize the capture and relocation of burrowing owls except within the context of scientific research (Fish and Game Code, §1002) or a Natural Community Conservation Planning (NCCP) conservation strategy. CDFW recommends that the County notify CDFW if owls are found to be present onsite and develop a conservation strategy in cooperation with CDFW to mitigate for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation (Department of Fish and Game Code, March 2012). CDFW offers the following revisions to MM BIO-2 and BIO-3 (edits are in ~~strikethrough~~ and **bold**):

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## BIO-2 Preconstruction Burrowing Owl Surveys

A qualified biologist ~~shall will~~ perform preconstruction clearance surveys for western burrowing owl year-round and **the last survey shall be** no more than ~~14 30~~ days prior to **the initiation of any Project activities** ~~ground disturbance~~. The survey ~~shall will~~ be conducted **according to the Staff Report on Burrowing Owl (Department of Fish and Game Code, March 2012)** during day-light hours and the biologist ~~shall will~~ visually cover 100% of the **Project** site. ~~Preconstruction clearance surveys for burrowing owl shall follow the CDFW 2012 Staff Report guidelines.~~ If burrowing owl **or sign thereof** are not observed on site, a Memorandum of Findings, **documenting the results for the survey shall be prepared by the qualified biologist and** ~~will be~~ provided to CDFW. If burrowing owl are observed occupying the site, a 250-foot buffer ~~will shall immediately~~ be established around all active burrows and CDFW will be immediately **notified** of nesting/occupation activities. **If burrowing owl or sign thereof are found and the Project cannot avoid active burrows,** Mitigation Measure BIO-3 **shall be implemented** ~~describes the activities associated with relocation to reduce the impacts to less than significant.~~ **All active burrows will be monitored no less than once a week to determine the level of activity.**

## BIO-3 Passive or Active Relocation of Burrowing Owls

If burrowing owls are observed on the Project site during preconstruction surveys **and cannot be avoided by the Project, then: (1) passive relocation shall be implemented if a qualified biologist has determined that there are no nesting owls and/or juvenile owls are no longer dependent on the burrows, (2)** CDFW shall be immediately notified, ~~to determine if avoidance of the nest is appropriate until the nest is vacated, or to gain concurrence and~~ **(3) applicant shall coordinate with** ~~from~~ CDFW on active or passive relocation actions. All passive or relocation activities shall be in concurrence with CDFW's guidelines **provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).**

**The qualified biologist shall contact California Department of Fish and Wildlife (CDFW) and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio. The 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 (CDFG 2012) to the CDFW for review/approval prior to the commencement of disturbance activities onsite. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified**

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**biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.**

If burrowing owl are present and nesting on-site the following steps shall be necessary ~~to reduce impacts to less than significant~~. These steps may be augmented by recommendations from CDFW **upon consultation during the impact assessment and CDFW review/approval of the passive relocation program:**

a. Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by CDFW verifies through non-invasive methods that: (1) owls have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

b. **If the Project cannot avoid burrowing owl**, a A qualified biologist shall exclude all owls from active burrows using one-way doors **during the non-breeding season (September 1– January 31) or during the breeding season (February 1–August 31), if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows**. Concurrently, all inactive burrows and other sources of secondary refuge for burrowing owls shall be collapsed and removed from the site.

c. Following a ~~24 to~~ **48-hours after installation of one-way doors** ~~observation period~~, all vacated burrows shall be collapsed.

d. A qualified biologist shall conduct a post-exclusion survey confirming the absence of burrowing owls on the Project site. **When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation and provided to CDFW.** Should newly occupied burrows be discovered on the Project site the exclusion activities shall be repeated **as outlined in the CDFW-approved passive relocation program**.

Desert Tortoise (*Gopherus agassizii*)

Desert tortoise is a state-threatened, proposed endangered species, as such CDFW is concerned that MM BIO-4 lacks the appropriate take authorization if desert tortoise were to be found on-site during the preconstruction surveys. To address potential impacts to desert tortoise, CDFW recommends the following revisions to MM BIO-4 prior to the County adopting the ISMND (edits are in ~~strikethrough~~ and **bold**):

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A USFWS authorized and **CDFW-approved** biologist shall survey the Project site (including a **50-foot** buffer ~~where accessible~~) for the presence of desert tortoise no more than **48 hours** ~~14 days~~ prior to the commencement of project activities **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. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area.** If desert tortoise and/or active burrows are observed, the authorized biologist shall ~~notify contact~~ **notify** ~~USFWS for concurrence and direction on relocation of the tortoise and 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 to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.~~ **notify** ~~In general, desert tortoise shall be moved no more than 1,000 feet for juveniles and adults, and 300 feet for hatchlings.~~

#### Western Joshua Tree (*Yucca brevifolia*)

CDFW appreciates the recognition that CEQA documentation is needed as part of the California Endangered Species Act (CESA) Incidental Take Permit (ITP) application process for western Joshua tree, as a candidate threatened species under CESA.

Although the ISMND states there are approximately 100 Joshua Trees on site based on field investigations from March 19, 2021, CDFW was not provided with the results and methods for the survey of WJT and is concerned that the assessment may have been inappropriate to quantify impacts to western Joshua tree. Please note that the impact assessment for each individual WJT should include a 186-foot radius in consideration of the seedbank. In addition, impacts to WJT should consider the Project site and a 300-foot buffer.

Currently, the ISMND has MM BIO-5, which is dedicated to the application of a CESA ITP for take of WJT. CDFW is concerned that the ISMND defers mitigation for western Joshua tree to the CESA ITP. CDFW recommends that prior to finalizing the ISMND, the County include a mitigation strategy for WJT that considers impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT from destruction or modification of habitat at the Project location. Indirect impacts include destruction of western Joshua tree'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 western Joshua tree to sexually recruit new individuals (Sweet et al. 2019). Destruction or modification of habitat at the Project location could also disrupt the seed dispersal behavior of rodents, which is the primary way that western Joshua tree seeds

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are buried at a soil depth suitable for successful germination (Waitman et al. 2012). Destruction or modification of habitat at the Project location could also eliminate nurse plants that are critical for western Joshua tree seedling survival (Brittingham and Walker 2000).

CDFW requests the ISMND adequately identify and disclose the Project's impacts (i.e., direct, indirect, and cumulative) to the biological resources noted above and propose mitigation to offset those impacts and demonstrate that impacts are less than significant and, for the purposes of CESA permitting, fully mitigated. CDFW therefore recommends that BIO-5 be revised as follows (edits are in ~~strike through~~ and **bold**):

### **BIO-5 Incidental Take Permit from California Department of Fish and Wildlife**

An Incidental Take Permit (**ITP**) shall be required from CDFW for the removal of **western** Joshua trees on the Project site. An ITP application and supporting documentation, **in accordance with the California Code of Regulations, title 14, sections 783.2 and 783.3** shall be submitted to CDFW for review and approval for removal of **western** Joshua trees on the Project site. An ITP ~~establishes a performance standard~~ **requiring** that the impacts be "minimized and fully mitigated" with "measures that are roughly proportional in extent to the impact of the authorized taking on the species." Therefore, additional mitigation measures, such as the purchase of credits from an approved conservation or mitigation bank, land acquisition, or entry into a conservation easement, will be determined ~~in consultation with~~ **by** CDFW to meet ITP requirements. ~~Because Joshua tree was designated as a candidate species in October 2020 and is still subject to a status review by CDFW, it is impractical to determine the specific details of mitigation, beyond compliance with the ITP.~~ An ITP application requires a completed CEQA document to accompany the ITP application and fee. CDFW requires the CEQA document have a state clearing house number, show proof of filing fees, and proof the document has been circulated. CDFW will then review the ITP **application** and CEQA document and make a determination of mitigation.

### Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

CDFW has concerns that the Project is within the range of the CESA threatened Mohave ground squirrel but the ISMND finds the presence of Mohave ground squirrel unlikely based on a habitat assessment that CDFW is not purview to. Furthermore, no surveys were performed to confirm absence/presence of Mohave ground squirrel. Because CDFW recognizes the potential for Mohave ground squirrel at the start of construction, it is recommended that the County adopt MM BIO-6:

### **BIO-6 Mohave Ground Squirrel Pre-construction Survey**

**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 CDFW. The**

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**pre-construction surveys shall cover the Project area and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project Proponent should obtain an ITP for Mohave ground squirrel prior to the start of Project 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 Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.**

#### Lake and Streambed Alteration (LSA)

Based on review of aerial photography from the California State Water Resources Control Board, several drainage features transverse the Project site. For example, APN 3097-581-04 contains at least 2 ephemeral drainage features, APN 3097-581-07 contains at least one ephemeral drainage feature, and APN 3097-581-05 contains at least one ephemeral drainage feature. Considering the high potential for Fish and Game Code section 1602 resources on-site, the CDFW recommends the County adopt MM BIO-7 below prior to finalizing the ISMND:

#### **BIO-7 LSA Notification**

**Prior to construction and issuance of any grading permit, the Project applicant 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 Project, or the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

#### Imperiled and Rare Plants

CDFW is concerned that an analysis was not completed to form a complete inventory of rare plants within the Project area and to identify the level of impacts on those species identified as potentially present and thus whether the Project's impacts have been adequately identified, disclosed, and mitigated. CDFW recommends that prior to adopting the ISMND, the County complete focused surveys following accepted protocol/methods and updates the ISMND to reflect the survey results and any changes in mitigation to address Project impacts. CDFW recommends MM BIO-8 below be added to the ISMND to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.

#### **BIO-8 Sensitive Plants Survey**

**Prior to Project implementation, and during the appropriate season, the County shall conduct botanical field survey following protocols set forth in the Protocols for Surveying and Evaluating Impacts to Special Status**

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**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 rare plants or sensitive vegetation communities are identified, the County shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence 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 Project site (i.e., within a separate watershed) or is not occupied by or available to special status species.

If the Project has the potential to impact a State-listed species, the County should apply for a California Endangered Species Act Incidental Take Permit with the California Department of Fish and Wildlife.

## **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

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

## CONCLUSION

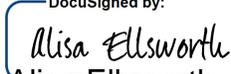
CDFW appreciates the opportunity to comment on the ISMND to assist the County of San Bernardino in identifying and mitigating Project impacts on biological resources. CDFW concludes that the ISMND does not adequately identify or mitigate for the Project's significant, or potentially significant, impacts on biological resources. CDFW recommends that the ISMND include a more complete assessment of the Project's potential impacts on biological resources, as well as appropriate avoidance, minimization, and mitigation measures. CDFW recommends that the County adopt the recommended mitigation measures (Attachment 1) offered by CDFW prior to finalizing the ISMND to reduce Project impacts.

CDFW appreciates the opportunity to comment on the ISMND for the Tentative Tract Map (TT) 20360 Project and hopes our comments assist the County of San Bernardino in identifying and mitigating Project impacts on biological resources. If you should have any questions pertaining to the comments provided in this letter, please contact Cindy Castaneda, Senior Environmental Scientist (Specialist), at (909) 544-1177 or at [Cindy.Castaneda@wildlife.ca.gov](mailto:Cindy.Castaneda@wildlife.ca.gov).

## ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:  
  
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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California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: [http://www.dfg.ca.gov/wildlife/nongame/survey\\_monitor.html](http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)

California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Available for download at:

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

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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>Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p><b>BIO-1 Preconstruction Nesting Bird Surveys</b></p> <p>If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-construction sweep shall be performed to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 300- foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. If it is not feasible to avoid the nesting bird season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1), a qualified biologist shall conduct a pre-construction nesting bird survey to determine presence/absence, location, and status of any active nest. The nesting bird survey shall occur no earlier than three (3) days prior to the commencement of Project activities (including site preparation, staging, or other ground-disturbing activities).</p> <p>In the event active nests are discovered, a suitable buffer of a minimum of 300 feet for raptors and 100 feet for songbirds (unless a smaller buffer is determined by a qualified biologist familiar with the</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>nesting phenology of the nesting species) shall be established around active nests and no construction within the buffer shall be allowed, until the biologist has determined the nest is no longer active (i.e., the nestlings have fledged and are no longer reliant on the nest).</p>		
<p><b>BIO-2 Preconstruction Burrowing Owl Surveys</b></p> <p>A qualified biologist shall perform preconstruction clearance surveys for western burrowing owl year-round and the last survey shall be no more than 14 days prior to the initiation of any Project activities. The survey shall be conducted according to the Staff Report on Burrowing Owl (Department of Fish and Game Code, March 2012) during day-light hours and the biologist shall visually cover 100% of the Project site. If burrowing owl or sign thereof are not observed on site, a Memorandum of Findings, documenting the results for the survey shall be prepared by the qualified biologist and provided to CDFW. If burrowing owl are observed occupying the site, a 250-foot buffer shall immediately be established around all active burrows and CDFW will be immediately notified of nesting/occupation activities. If burrowing owl or sign thereof are found and the Project cannot avoid active burrows, Mitigation Measure BIO-3 shall be implemented. All active burrows will be monitored no less than once a week to determine the level of activity.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p><b>BIO-3 Passive or Active Relocation of Burrowing Owls</b></p> <p>If burrowing owls are observed on the Project site during preconstruction surveys and cannot be avoided by the Project, then: (1) passive relocation shall be implemented if a qualified biologist has determined that there are no nesting owls and/or juvenile owls are no longer dependent on the burrows, (2) CDFW shall be immediately notified and (3) applicant shall coordinate with CDFW on active or passive relocation actions. All passive or relocation activities shall be in concurrence with CDFW's guidelines provided in the Staff Report on Burrowing</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>Owl Mitigation (Department of Fish and Game, March 2012).</p> <p>The qualified biologist shall contact California Department of Fish and Wildlife (CDFW) and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio. The 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 (CDFG 2012) to the CDFW for review/approval prior to the commencement of disturbance activities onsite. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction 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.</p> <p>If burrowing owl are present and nesting on-site the following steps shall be. These steps may be augmented by recommendations from CDFW upon consultation during the impact assessment and CDFW review/approval of the passive relocation program:</p> <p>a. Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by CDFW verifies through non-invasive methods that: (1) owls have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.</p> <p>b. If the Project cannot avoid burrowing owl, a qualified biologist shall exclude all owls from active burrows using one-way doors during the non-</p>		
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<p>breeding season (September 1– January 31) or during the breeding season (February 1–August 31), if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. Concurrently, all inactive burrows and other sources of secondary refuge for burrowing owls shall be collapsed and removed from the site.</p> <p>c. Following 48-hours after installation of one-way doors, all vacated burrows shall be collapsed.</p> <p>d. A qualified biologist shall conduct a post-exclusion survey confirming the absence of burrowing owls on the Project site. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation and provided to CDFW. Should newly occupied burrows be discovered on the Project site the exclusion activities shall be repeated as outlined in the CDFW-approved passive relocation program.</p>		
<p><b>BIO-4 Preconstruction Desert Tortoise Survey</b></p> <p>A USFWS authorized and CDFW-approved biologist shall survey the Project site (including a 50-foot buffer) for the presence of desert tortoise no more than 48 hours prior to the commencement of project activities 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. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If desert tortoise and/or active burrows are observed, the authorized biologist shall notify USFWS and the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.</p>		
<p><b>BIO-5 Incidental Take Permit from California Department of Fish and Wildlife</b></p> <p>An Incidental Take Permit (ITP) shall be required from CDFW for the removal of western Joshua trees on the Project site. An ITP application and supporting documentation, in accordance with the California Code of Regulations, title 14, sections 783.2 and 783.3 shall be submitted to CDFW for review and approval for removal of western Joshua trees on the Project site. An ITP requires that the impacts be "minimized and fully mitigated" with "measures that are roughly proportional in extent to the impact of the authorized taking on the species." Therefore, additional mitigation measures, such as the purchase of credits from an approved conservation or mitigation bank and/or land acquisition and entry into a conservation easement, will be determined by CDFW to meet ITP requirements of fully mitigated standards. An ITP application requires a completed CEQA document to accompany the ITP application and fee. CDFW requires the CEQA document have a state clearing house number, show proof of filing fees, and proof the document has been circulated. CDFW will then review the ITP application and CEQA document and make a determination of mitigation.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p><b>BIO-6 Mohave Ground Squirrel Pre-construction Survey</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 CDFW. The pre-construction surveys shall cover the Project area and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project proponent</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>should obtain an ITP for Mohave ground squirrel prior to the start of Project 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 Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.</p>		
<p><b>BIO-7 LSA Notification</b></p> <p>Prior to construction and issuance of any grading permit, the Project applicant 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 Project, or the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p><b>BIO-8 Sensitive Plants Survey</b></p> <p>Prior to Project implementation, and during the appropriate season, the County shall conduct botanical field survey following protocols set forth in the 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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>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.</p> <p>If any rare plants or sensitive vegetation communities are identified, the County shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence 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 Project site (i.e., within a separate watershed) or is not occupied by or available to special status species.</p> <p>If the Project has the potential to impact a State-listed species, the County should apply for a California Endangered Species Act Incidental Take Permit with the California Department of Fish and Wildlife.</p>		
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