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



April 1, 2022
 Sent via email

Governor’s Office of Planning & Research

Apr 01 2022

STATE CLEARINGHOUSE

Alex Jauregui
 Senior Planner
 City of Victorville
 14343 Civic Drive
 Victorville, CA 92392

Subject: Initial Study/Mitigated Negative Declaration
 Tentative Tract Map Case No. PLN16-00006 (TTM 20262)
 State Clearing House No.2022030159

Dear Mr. Jauregui:

The California Department of Fish and Wildlife (CDFW) received an Initial Study (IS) and Mitigated Negative Declaration (MND) (collectively, IS/MND) from the City of Victorville (City) for the Tentative Tract Map Case No. PLN16-00006 (TTM 20262) Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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 or 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 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 no less than 12 months.

- Public Agency Notice of Completion – Public agencies must file notices of completion on CEQAnet, rather than mailing a paper copy.

PROJECT DESCRIPTION SUMMARY

The Project site is in the City of Victorville, San Bernadino County, California; Latitude 34.49796 N and Longitude -117.41334 W. The Project site is located at the intersection of Maricopa Road and Fremont Road in between Bellflower Street and Mesa View Drive. The Project proposes the development of 80 acres for single-family homes on Assessor's Parcel Number (APN) 3096-311-02.

Timeframe: Unavailable

COMMENTS AND RECOMMENDATIONS

The MND recognizes the presence of western Joshua tree (*Yucca brevifolia*) (WJT) -a candidate for listing as threatened under CESA-, the potential presence of burrowing owl (*Athene cunicularia*) and Fish and Game Code section 1602 resources on the Project site. Although CDFW appreciates that the MND considers a CESA Incidental Take Permit (ITP) for the removal of WJT, CDFW is concerned over the lack of substantial evidence provided in the IS/MND in support of the MND's Statement of Findings, as no impact analysis for WJT was performed, and no focused surveys were conducted to quantify WJT present on the Project site. Instead, the MND defers a "comprehensive survey" for WJT to a future date. Thus, CDFW recommends that a final MND (termed hereafter as 'final MND') quantifies WJT presence and assesses direct impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT from destruction or modification of habitat at the Project location, as described in item four below (see 4. WJT). Further, CDFW requests that the MND adopt biological (BIO) mitigation measure (MM) 10 below, which describes the CESA and ITP processes.

The MND's Biological Assessment identifies a drainage channel located on the western portion of the Project site, which per the MND, "may be considered jurisdictional waters of the State". Based on aerial imagery, CDFW has identified that the channel is an ephemeral stream subject to Fish and Game Code section 1602. As identified by the MND, the Project is located within the Adjudicated Mojave Basin Area-Alto subbasin, under the purview and jurisdiction of the Mojave Water Agency (MWA). In accordance with MWA's twenty-eighth draft 2020-2021 annual report (Report)², "...geotechnical and geohydrology investigations continue in the upper Alto, Oeste and western Este Subareas continued...[which]...will provide better information and data to use in determining the best locations for future off-river recharge basins." The Report

² Mojave Water Agency 2020-2021 DRAFT Twenty-eight Annual Report.
<https://www.mojavewater.org/files/28DraftAR2021.pdf>

specifically indicates that “water levels in the western portion of the Alto [areas within the Alto subbasin west of the Mojave River] in the regional aquifer exhibit declines consistent with locally heavy pumping and limited local recharge.” Thus, CDFW recommends the City proposes avoiding impacting: the ephemeral stream, the potential groundwater infiltration, and the groundwater recharge within the west Alto subbasin. Where impacts are unavoidable, CDFW recommends that in the final MND, the City include designs that foster groundwater infiltration and maintain wide, sinuous, soft-bottom channels and banks, that do not result in hydraulic jump or increased velocity of storm flows. The City should also submit to CDFW a Lake and Streambed Alteration (LSA) Notification, as outlined in MM BIO-12 below (see 5. LSA Notification).

CDFW appreciates that a habitat assessment for burrowing owl was conducted, which confirmed suitable habitat for burrowing owl on the Project site. Additionally, the MND states that focused burrowing owl surveys were conducted on October 19, 2021, at which time one burrowing owl was found located on the northeastern portion of the Project site about 180 yards from the north edge of the Project site. Because CDFW is not in receipt of the survey results and the focused surveys were conducted outside of the burrowing owl nesting season (burrowing owls typically nest February 1 through August 31), CDFW is concerned that focused surveys for burrowing owl may not have been performed according to the ‘2012 Staff Report on Burrowing Owl Mitigation’ (California Department of Fish and Wildlife, 2012), which indicates that “it is most effective to conduct breeding and nonbreeding season surveys...”. CDFW exclusively recommends the 2012 Staff Report on Burrowing Owl Mitigation for any project that is surveying and evaluating impacts to burrowing owls, as well as developing and implementing avoidance, minimization, and mitigation measures. Regardless, CDFW also appreciates the inclusion of MM BIO-1, which requires a pre-construction burrowing owl survey and MM BIO-2, which considers avoidance of nesting burrowing owls, passive relocation, and mitigation in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. CDFW offers mitigation and survey recommendations for MM BIO-1 and MM BIO-2 below (see 1. Pre-construction Surveys and 2. Burrowing Owl, respectively).

CDFW is concerned regarding the adequacy of MM BIO-1 and MM BIO-7 proposed by the City to mitigate potential impacts to nesting birds, since MM BIO-1 does not provide a pre-construction nesting bird survey protocol and MM BIO-7 does not clearly define the nesting bird season. Thus, CDFW recommends revisions to MM BIO-1 and BIO 7, as per below (see 1. Pre-construction Surveys and 3. Nesting Birds, respectively).

CDFW is further concerned that floristic focused plant surveys were not completed to form a complete inventory of rare plants within the Project area. Considering this, the City has not provided a proper analysis or basis to support the determination that the Project’s impacts on sensitive plants would be less than significant. Thus, CDFW recommends that prior to Project implementation, and during the appropriate season, the City conducts botanical field survey following the ‘Protocols for Surveying and

Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities' (CDFW 2018), as per MM BIO 15 below (see 6. Sensitive Plants).

Thus, considering all of the above, CDFW offers the mitigation measures presented below along with comments/recommendations to assist the City in adequately mitigating the Project's potentially significant impacts on WJT, nesting birds, burrowing owl, sensitive plants, and Fish and Game Code section 1602 resources. CDFW requests that the City adopt the mitigation measures listed below and in Attachment 1 (Mitigation Monitoring and Reporting Program) prior to finalizing the MND:

Biological Measures

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

BIO-1

Pre-construction surveys for burrowing owls, and other sensitive wildlife species (i.e. Desert Tortoise, Desert Kit Fox, American Badger, and nesting birds), **and sensitive plants shall be conducted** on the Project site and in the surrounding area in accordance with California Department of Fish and Wildlife approved protocols ~~for each species shall be conducted no more than 30-days prior to ground disturbing activities in accordance with best practices identified by the California Department of Fish and Wildlife~~ **described below in BIO-7 (nesting birds), BIO-2 (burrowing owl), and BIO-15 (sensitive plants)**. If ground disturbing activities are delayed for more than 30-days (including the restarting of activities after project/ground disturbing delays of 30-days or more), additional surveys ~~will~~ **shall** be required.

2. Burrowing Owl. CDFW recommends MM BIO-2 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

BIO-2

~~If burrowing owls are observed on the project site during future surveys the California Department of Fish and Wildlife shall be immediately notified and mitigations shall be required to reduce impacts to less than significant, including the following as approved by the California Department of Fish and Wildlife and in accordance with the updated CDFW Staff Report on Burrowing Owl Mitigation (2012)~~ **No less than 14 days prior to the initiation of any Project activities within suitable habitat, a qualified biologist shall conduct take avoidance surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed on site during the take avoidance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW.**

If burrowing owl(s) are observed on site during the take avoidance survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the Project, then 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 CDFW for review and approval prior to the commencement of any disturbance activities onsite and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. Survey results shall be submitted to CDFW within 30 days of completion of surveys following the guidelines provided in Appendix D of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).

If burrowing owl are present on-site the following steps shall be necessary. These steps may change upon consultation with CDFW during the impact assessment and CDFW's review and approval of the passive relocation program:

- a. Occupied burrowing owl burrows shall not be disturbed during the burrowing owl nesting season (February 1 through August 31) unless a qualified biologist approved by the California Department of Fish and Game verifies through non-invasive methods **that** either: (1) the burrowing 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. A burrowing owl survey shall be conducted on all portion of the site between September and January to determine the location of active (non-breeding) burrows.~~
- b. If the Project cannot avoid burrowing owl, Q**qualified biologists 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), only after 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 ~~and 24 to~~ 48-hour observation period **and 48-hours after installation of one-way doors**, all vacated burrowing owl burrows shall be collapsed.
- d. A qualified biologist shall conduct a post-exclusion survey confirming the absence of borrowing owls on the 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 site the exclusion shall be repeated **as outlined in the CDFW-approved passive relocation program.**

- e. A final clearance survey confirming the absence of active burrowing owl burrows shall be conducted ~~30-days~~ **2-hours** prior to **initiating** ~~proposed~~ **project activities** ~~site disturbance~~.
- f. ~~Unless deemed unnecessary by the CDFW,~~ Compensatory **burrowing owl-occupied** mitigation lands **and the acquisition and conservation thereof** to mitigate for permanent impacts to nesting, occupied, and satellite burrows and burrowing owl habitat shall be provided by the applicant/developer in accordance with CDFW requirements **outlined in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) at no less than a 2:1 (replacement-to-impact) ratio.**

3. Nesting Birds. CDFW recommends MM BIO-7 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

BIO-7

All Project activities on-site shall be conducted outside of the nesting bird season (the bird nesting season is ~~typically from January 1-September 15~~ ~~January 15 to August 31~~) to the maximum extent feasible. **If Project activities begin during the non-nesting season (September 16-December 31), a pre-construction nesting bird survey shall be performed to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity nesting bird survey 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 Project activities begin ~~d~~during 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 pre-project nesting bird surveys, implement nest **avoidance buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and range from ~~45 to~~ 100 feet for passerines and ~~50 to~~ 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. **A smaller buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species.** Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests shall be monitored until the **qualified** biologist has determined the young have fledged or the project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.**

4. WJT. CDFW is concerned that the City has not provided a complete analysis or basis to support the IS/MND's determination that the Project's impacts to WJT would be less than significant with the identified mitigation (i.e., MM BIO-10). CDFW recommends that prior to finalizing the MND, the City prepare and circulates the results of the proposed comprehensive WJT survey and include results in the final MND. The comprehensive WJT survey should identify and provide: a) the GPS coordinates and accompanying map of each WJT within the Project 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 system for each WJT, and e) geo-referenced, representative photos of parent trees, clones, and general distribution of WJT across the Project site. Prior to finalizing the MND, CDFW recommends that the City: 1) conduct a WJT impact analysis assessing potential impacts within a 186-foot buffer of each WJT, 2) establish a 300-foot avoidance buffer around each WJT that will not be removed, 3) develop a mitigation strategy for Project impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT from destruction or modification of habitat at the Project location. 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 habitat at the Project location 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 habitat at the Project location could also eliminate nurse plants that are critical for WJT seedling survival (Brittingham and Walker 2000).

CDFW requests the final MND adequately identify and disclose the Project's impacts (i.e., direct, indirect, and cumulative) to WJT and its habitat as noted above, propose mitigation to offset those impacts, demonstrate that impacts are not adverse and are fully mitigated. Further, CDFW recommends MM BIO-10 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

BIO-10

Joshua trees shall be protected to comply with the Victorville City Development Code through transplantation, stockpiling and implementation of protective measures as recommended in the Protected Plant Preservation Plan, November 2021. Additionally, prior to the implementation of the recommended measures outlined in the Protected Plant Preservation Plan **and prior to "take" of any western Joshua tree (a Candidate for listing as threatened under the California Endangered Species Act (CESA)), an CESA Incidental Take Permit (ITP) shall be obtained from the California Department of Fish and Wildlife (CDFW) for any Joshua Tree on-site removed from its current position as deemed applicable by the CDFW. 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". 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 a CESA-listed species. CDFW recommends permanent protection of WJT habitat through establishing a conservation easement, developing of a long-term management plan, and establish sufficient funding to implement management plan tasks in perpetuity. These tasks should be completed before starting Project ground-disturbing activities or by providing financial security. 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.

5. LSA Notification. CDFW recommends MM BIO-12 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

BIO-12

~~Unless otherwise deemed unnecessary by applicable reviewing agencies (e.g. U.S. Army Corps of Engineers, Regional Water Quality Control Board, and the California Department of Fish and Wildlife), a Jurisdictional Delineation shall be prepared to determine if waterways are present within the project footprint. If these potential jurisdictional features are within the project footprint, CDFW recommends a jurisdictional delineation of waters of the State be performed and a LSA notification package shall be submitted to CDFW applicable agencies for review and possible approval and approval prior to initiation of project activities development. If through an LSA Notification, impacts to a jurisdictional drainage feature Fish and Game Code section 1602 resources are determined by CDFW to be included in the projects scope of work, an LSA Agreement the necessary permits pursuant to Sections 404 and 401 of the Clean Water Act and Section 1602 of the Fish and Game Code shall be prepared by CDFW, and shall include appropriate avoidance, minimization and mitigation measures, as determined by CDFW accordingly.~~

6. Sensitive Plants. CDFW recommends MM BIO-15 below be adopted by the City prior to finalizing the MND:

BIO-15

Prior to Project implementation, and during the appropriate season, the City shall conduct botanical field surveys 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 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 City shall either avoid the plant(s), by establishing an appropriate avoidance buffer, or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or by 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 from the Project site (i.e., within a separate watershed).

If the Project has the potential to impact a State-listed plant species, the City 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. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW requests that the City include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize and mitigate and thus reduce Project impacts to fish and wildlife resources.

CDFW appreciates the opportunity to comment on the MND for the Tentative Tract Map Case No. PLN16-00006 (TTM 20262) Project (SCH No. 2022030159). CDFW hopes our comments will assist the City of Victorville 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 Corina Jimenez, Environmental Scientist at Corina.Jimenez@wildlife.ca.gov.

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,
DocuSigned by:

Magdalena Rodriguez

938A012E7285407...
Alisa Ellsworth

Environmental Program Manager

For

ec: Office of Planning and Research, State Clearinghouse, Sacramento
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 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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Vander Wall, S.B., T.C. Esque, B.A. Waitman, D.F. Haines, and M.G. Garnett. 2006. Joshua tree (*Yucca brevifolia*) seeds are dispersed by seed-caching rodents. *Ecoscience* 13: 539-543.

Waitman, B. A., S. B. Vander Wall, and T. C. Esque. 2012. Seed dispersal and seed fate in Joshua tree (*Yucca brevifolia*). *Journal of Arid Environments* 81: 1-8.

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.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1</p> <p>Pre-construction surveys for Desert Tortoise, Desert Kit Fox, American Badger, burrowing owls, nesting birds, and sensitive plants shall be conducted on the Project site and in the surrounding area in accordance with California Department of Fish and Wildlife approved protocols described below in BIO-7 (nesting birds), BIO-2 (burrowing owl), and BIO-15 (sensitive plants). If ground disturbing activities are delayed for more than 30-days (including the restarting of activities after project/ground disturbing delays of 30-days or more), additional surveys shall be required.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-2</p> <p>No less than 14 days prior to the initiation of any Project activities within suitable habitat, a qualified biologist shall conduct take avoidance surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed on site during the take avoidance survey, a letter shall be prepared by the qualified biologist documenting the</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>results of the survey. The letter shall be submitted to CDFW.</p> <p>If burrowing owl(s) are observed on site during the take avoidance survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the Project, then 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 CDFW for review/approval prior to the commencement of disturbance activities onsite and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. Survey results shall be submitted to CDFW within 30 days of completion of surveys following the guidelines provided in Appendix D of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If burrowing owl are present on-site the following steps shall be necessary. These steps may change upon consultation with CDFW during the impact assessment and CDFW review/approval of the passive relocation program:</p> <ul style="list-style-type: none">a. Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the California Department of Fish and Game verifies through non-invasive methods that either: (1) the birds 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, qualified biologists 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		
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<p>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 a 48-hour observation period and 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 borrowing owls on the 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 site the exclusion shall be repeated as outlined in the CDFW-approved passive relocation program.</p> <p>e. A final clearance survey confirming the absence of active burrowing owls burrows shall be conducted within 2-hours of initiating project activities.</p> <p>f. Compensatory burrowing owl-occupied mitigation lands and the acquisition and conservation thereof for permanent impacts to nesting, occupied, and satellite burrows and burrowing owl habitat shall be provided by the applicant/developer in accordance with CDFW requirements outlined in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) at no less than a 2:1 (replacement-to-impact) ratio.</p>		
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<p>BIO-7</p> <p>All Project activities on-site shall be conducted outside of nesting bird season (typically September 16 through December 31 to the maximum extent feasible. If Project activities begin during the non-nesting season, 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.</p> <p>If Project activities begin during 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 pre-project nesting bird surveys, implement nest avoidance buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and range from 100 feet for passerines and 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. A smaller buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species. Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests shall be monitored until the qualified biologist has determined the young have fledged or the project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-10</p> <p>Joshua trees shall be protected to comply with the Victorville City Development Code through transplanted, stockpiling and implementation of</p>	<p>Prior to commencing ground- or vegetation-</p>	<p>Project Proponent</p>

<p>protective measures as recommended in the Protected Plant Preservation Plan, November 2021. Additionally, prior to the implementation of the recommended measures outlined in the Protected Plant Preservation Plan and prior to “take” of any western Joshua tree (a Candidate for Threatened California Endangered Species Act (CESA)-listed species), a CESA Incidental Take Permit (ITP) shall be obtained from the California Department of Fish and Wildlife (CDFW). 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”. 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 a conservation easement, development of a long-term management plan, and funding sufficient to implement management plan tasks in perpetuity which should be completed before starting Project ground-disturbing activities or by providing financial security. 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>disturbing activities</p>	
<p>BIO-12</p> <p>CDFW recommends a jurisdictional delineation and LSA notification package be submitted to CDFW for review prior to initiation of project activities. If through an LSA Notification, impacts to Fish and Game Code section 1602 resources are determined by CDFW to be included in the projects scope of work, an LSA Agreement pursuant to Section 1602 of the Fish and Game Code shall be prepared by CDFW, and shall include appropriate mitigation, as determined by CDFW.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>BIO-15</p> <p>Prior to Project implementation, and during the appropriate season, the City 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 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 City 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 City should apply for a California Endangered Species Act Incidental Take Permit with the California Department of Fish and Wildlife.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
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