



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 19, 2022
Sent via email

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



Subject: Initial Study/Mitigated Negative Declaration
Vesting Tentative Tract Map Case No. PLAN21-00040 (TTM 20488)
State Clearing House No. 2022040499

Dear Mr. Jauregui,

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from the City of Victorville (City) for the Vesting Tentative Tract Map Case No. PLAN21-00040 (TTM 20488) 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.

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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 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 Notice of Exemptions 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 Victorville within San Bernadino County in the State of California; Latitude 34.486611 N and Longitude -117.410556 W. The Project site is in between Mesa View Drive and Fremontia Road and is bordered on the south by La Mesa Road. The Project proposes to subdivide approximately 40 acres into 152 lots for the development of single-family residences on Assessor's Parcel Numbers (APNs) 3096-351-02 and 3096-351-03.

Timeframe: Project construction is anticipated to take one year, starting in 2023 or 2024.

COMMENTS AND RECOMMENDATIONS

Biological resources of concern to CDFW that the Project could potentially impact include western Joshua tree (*Yucca brevifolia*), burrowing owl (*Athene cunicularia*), desert tortoise (*Gopherus agassizii*), nesting birds, Mohave ground squirrel (*Xerospermophilus mohavensis*), special-status plants, and Fish and Game Code section 1602 resources.

The ISMND states that habitat assessments were conducted for burrowing owl, desert tortoise, and Mohave ground squirrel. CDFW appreciates that the habitat assessment for desert tortoise was outlined in the ISMND's Biological Report and performed according to U.S. Fish and Wildlife Service (USFWS) desert tortoise survey methodology. The Biological Report states that the habitat assessment for burrowing owl was conducted according to "CDFW protocol"; however, because the protocol was not referenced and protocol steps were not outlined, CDFW is not clear whether the habitat assessment was completed according to the 2012 Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012), which requires a habitat assessment according to Appendix C: Habitat Assessment and Reporting Details. Nonetheless, the Biological Report identified two active burrowing owl burrows.

The Biological Report states that a habitat assessment was performed for Mohave ground squirrel as per CDFW protocol. However, the Biological Report does not outline the protocol followed. Yet the Biological Report concludes that the Project site supports suitable habitat for Mohave ground squirrel, but no Mohave squirrel was observed. Further, the Biological Report states that: "Due to the low population levels and no recent observations in this area of the Mojave Desert, it is the opinion of RCA Associates, Inc. that the likelihood of a Mohave ground squirrel occurring on the proposed project site is extremely low. As a result, the ISMND does not include mitigation for Mohave ground squirrel.

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CDFW is concerned with the lack of focused surveys conducted to determine presence or absence of special-status species such as Mohave ground squirrel, desert tortoise, and plants. The ISMND used reconnaissance surveys to determine presence or absence of special-status plants, which are not appropriate, because reconnaissance surveys are not floristic in nature. Additionally, the reconnaissance survey was carried out in September when some plants are not evident or identifiable.

Considering all the above, CDFW is concerned that the analysis performed may not have been adequate to form a complete inventory of special-status species within the Project area. Therefore, CDFW offers the following comments and recommendations, and in Attachment 1 “Mitigation Monitoring and Reporting Program”, for consideration in a final MND (termed hereafter as ‘final MND’) to assist the City in adequately mitigating the Project’s potentially significant impacts on the aforementioned biological resources.

Biological Resources and Mitigation Measures

1. Western Joshua Tree

As a Candidate for Threatened California Endangered Species Act (CESA)-listed species, CDFW is concerned with the Project’s potential impacts to at least 33 western Joshua tree (WJT) identified as present on the Project site. The ISMND proposes mitigation and an impact analysis for take of WJT tree according to Emergency regulation 14 CCR Section 749.10, 749.12, and 749.11 and translocation of WJT in biological (BIO) mitigation measure (MM) one (MM BIO-1). Please note that CDFW does not consider translocation of WJT appropriate mitigation and that Emergency regulation 14 CCR Section 749.10, 749.12, and 749.11 have expired.

Therefore, to properly calculate demographics and estimate the quality of WJT habitat on-site, CDFW recommends that the City conduct an impact analysis to address and quantify the entire population of WJT on-site through focused surveys. The WJT survey results should be provided in the final MND and include the following: a) GPS coordinates and accompanying map for 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.

The ISMND considers impacts to WJT from implementation of a 40-foot buffer associated with Emergency regulation 14 CCR Section 749.10. Please note that the impact assessment for each individual WJT should include a 186-foot radius in consideration of the seedbank. The final MND should thereby include: 1) the impact analysis to assess potential impacts to WJT within a 186-foot buffer zone of each WJT

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(Vander Wall et al. 2006), 2) in addition to implementation of a 300-foot buffer around each WJT not scheduled for removal, and 3) a mitigation strategy addressing impacts to WJT individuals, the WJT seedbank, and indirect impacts to WJT. Indirect impacts to WJT include the destruction of the yucca moth (*Tegeticula synthetica*), WJT's obligate pollinator, during its dormant and flight phases, which would thereby impact the ability of WJT to sexually recruit new individuals (Sweet et al. 2019). It should also be noted that the destruction or modification of WJT habitat could eliminate critical nurse plants for WJT seedling survival (Brittingham and Walker 2000) and disrupt the seed dispersal behavior of rodents; the primary way that WJT seeds are buried deep enough for successful seed germination (Waitman et al. 2012). As such, CDFW requests the final MND 1) adequately identify and disclose Project impacts (i.e., direct, indirect, and cumulative) to WJT as noted above, 2) propose mitigation to offset impacts to WJT, and 3) demonstrate that impacts to WJT are less than significant and, for the purposes of CESA permitting, are fully mitigated. Therefore, CDFW recommends the following revisions to MM BIO-1 Below (edits are in ~~strikethrough~~ and **bold**):

MM BIO-1

If any western Joshua trees (WJT) are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an incidental take permit (ITP) from California Department of Fish and Wildlife (CDFW) under CDFW under §2081 of the California Endangered Species Act (CESA), prior to the relocation, removal, or 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 either the purchase of conservation or mitigation bank credits or 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 Project activities. 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. The Project Proponent shall comply with the following measures as approved by the CDFW:**

~~a) Special Order 749.11 Mitigation for Qualifying Dead WJT. If the site has only dead WJT and these trees can qualify for mitigation under Special Order 749.11, the Project Proponent shall pursue mitigation under Special Order 749.11.~~

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~~b) Seed Preservation for Non-Qualifying Dead WJT. If avoidance of dead WJT is infeasible, seeds shall be collected from the dead tree by a certified arborist or a qualified desert plant biologist and preserved at a CDFW approved repository. Subsequent to the collection of seeds, the dead tree can be removed for disposal.~~

~~c) Payment of Mitigation Fee to Western Joshua Tree Mitigation Fund. For unavoidable impacts to live WJT, the Project Proponents shall propose making a payment to the Western Joshua Tree Mitigation Fund as established under Special Order 749.10. This mitigation should strictly follow the census requirements, occupied habitat acreage calculation methodology, and mitigation ratio listed under Special Order 749.10. More specifically, Project Proponent shall calculate impacts to WJT and associated habitat using the impact area methodology identified in Special Order 749.10. Alternatively, the project proponent may pay a mitigation fee consistent with the mitigation fee requirements identified in Special Order 749.12. In the event Joshua tree is not listed as a threatened species, Mitigation Measure BIO-1 shall not apply. The Project would be subject to Municipal Code Chapter 13.33 – Preservation and Removal of Joshua Trees as a condition of approval and not mitigation as defined by CEQA.~~

2. Burrowing Owl (*Athene cunicularia*)

The Project area provides suitable foraging and nesting habitat for burrowing owl. CDFW recommends that the City 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 \(ca.gov\)](#) to survey, mitigate, and evaluate impacts to burrowing owls. Therefore, CDFW recommends the following revisions to MM BIO-2 and MM BIO-3 below (edits are in ~~strikethrough~~ and **bold**):

MM BIO-2

Pre-construction surveys for Burrowing Owls on the Project site and in the surrounding area shall be conducted by a qualified biologist no more than ~~1430~~-days prior to **initiation of Project** ~~ground-disturbing~~ activities in accordance with guidelines identified by the California Department of Fish and Wildlife (**CDFW**) **2012 Staff Report on Burrowing Owl Mitigation (Department of Fish and Game Code, March 2012)**. If ~~Project-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 be required **including but not limited to a take avoidance survey within 24 hours of ground disturbance**. If burrowing owls are observed on the Project site during ~~future surveys~~ the Pre-construction survey the California Department of Fish and Wildlife shall be immediately notified, and ~~additional mitigation measures shall be required to reduce impacts to less than significant. Acceptable mitigation measures are described in the Staff Report on Burrowing Owl Mitigation State of~~

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~~California Natural Resources Agency, Department of Fish and Game, March 7, 2012, and as outlined in Mitigation Measure BIO-3 shall be required.~~

If burrowing owl(s) are not observed onsite during any pre-construction surveys, 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.

MM BIO-3

If burrowing owls are observed on the project site during ~~future surveys~~ **any pre-construction survey as per MM BIO-2**, the California Department of Fish and Wildlife (CDFW) shall be immediately notified, and **the applicant shall conduct an impact assessment in accordance with the 2012 Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation and any 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 that a reduced buffer would not adversely affect the burrowing owl(s).**

If burrowing owls cannot be avoided by the Project, then a qualified biologist shall prepare and submit a passive relocation program to CDFW for review/approval prior to the commencement of Project activities 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 and mitigation shall be required **as described below (see g)** to reduce impacts to less than significant, ~~including~~ the following **steps** as approved by the California Department of Fish and Wildlife and in accordance with the updated CDFW Staff Report on Burrowing Owl Mitigation (2012) **shall be implemented if burrowing owl are present on-site:**

- 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 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) 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.
- c) **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**

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- the burrows.** Concurrently, all inactive burrows and other sources of secondary refuge for burrowing owls shall be collapsed and removed from the site.
- d) Following ~~a and 24 to 48~~ hour observation period **and 48-hours after installation of one-way doors**, all vacated burrows shall be collapsed.
 - e) 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.**
 - f) A final clearance survey confirming the absence of active burrowing owls burrows shall be conducted within ~~30 days~~ **2 hours of initiating Project activities** ~~proposed site disturbance.~~
 - g) ~~Unless deemed unnecessary by the CDFW,~~ Compensatory mitigation lands for permanent impacts to nesting, occupied, and satellite burrows and burrowing owl habitat shall be provided by the applicant/developer **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 in accordance with CDFW requirements.**

When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, Project 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 Project activities.

3. Desert Tortoise (*Gopherus agassizii*)

MM BIO-4 proposes translocation of desert tortoise if found present during pre-construction desert tortoise surveys. However, MM BIO-4 does not consider obtaining a California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Fish and

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Game Code section 2081 even though desert tortoise is a state-threatened, proposed endangered species under CESA. Please note that translocation of desert tortoise would be considered take and take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Therefore, to address potential impacts to desert tortoise, CDFW offers the following revisions to MM BIO-4 (edits are in ~~strikethrough~~ and **bold**):

MM BIO-4

~~No more than 30 calendar days prior to start of Project Activities a~~ A qualified **CDFW-approved** biologist shall conduct pre-construction presence/absence surveys for desert tortoise **during the desert tortoise active season (April to May or September to October) 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service (USFWS) 2019 desert tortoise survey methodology.** Pre-construction surveys shall be completed using **100-percent visual coverage for desert tortoise and their sign and shall use** perpendicular survey routes within the Project site and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project Activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. **Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area.**

Should desert tortoise presence be confirmed during the survey, **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 ~~all desert tortoises encountered during clearance surveys and subsequent monitoring efforts will be permanently removed from the Project site and translocated to an off-site recipient site.~~ **If complete avoidance of desert tortoise cannot be achieved, CDFW recommends the Project Proponent not undertake Project activities and Project 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.**

If complete avoidance of desert tortoise is infeasible, ~~t~~The Project Proponent **should apply for a CESA ITP and shall prepare a site-specific Desert Tortoise Translocation Plan (Plan)** that will provide details on the proposed recipient site, desert

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tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury, and will be consistent with project permits and current USFWS **and CDFW** guidelines. The Plan **shall** also include a requirement for communication and coordination with the Bureau of Land Management (BLM) regarding the desert tortoise recipient site. Prior to construction, the Plan **shall** be subject to the **review and approval** of the CDFW and the USFWS. Impacts shall be offset through acquisition of compensatory land within suitable and occupied desert tortoise habitat and/or monetary contributions to other recovery efforts in the West Mojave **and/or mitigation bank credit purchase from a CDFW-approved mitigation bank** mitigated ~~for~~ at a ratio of **no less than 43:1**. Final mitigation acreage are subject to the approval of ~~the State~~ **CDFW** and federal wildlife agencies.

4. Nesting Birds

CDFW offers the following revisions to MM BIO-5 (edits are in ~~strikethrough~~ and **bold**):

MM BIO-5

All Project activities on-site shall be conducted outside of nesting season (**non-nesting season is typically from September 16 through December 31**) ~~{January 15 to August 31}~~ to the maximum extent feasible. **If Project activities begin** ~~During~~ the nesting bird season, a qualified biologist shall conduct a pre-project nesting bird surveys, ~~implement nest buffers, and conduct monitoring at all active nests to verify the absence of nesting birds~~ within the work area and surrounding 300-foot buffer **no more than two hours prior to initiating Project activities**. ~~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.~~ **For any Project activity occurring during the nesting season, typically 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 Project-related activities.** If active nests containing eggs or young are found, **no work shall be permitted near the nest until the young birds have fledged or the nest is no longer active.** ~~a~~ A qualified biologist shall establish an appropriate nest **avoidance** buffer **to be marked on the ground**. Nest **avoidance** buffers are species-specific and ~~range from 15 to 100~~ **shall be about 100** feet for passerines and ~~50 to 300~~ **300** feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. **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**

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buffer distance shall be monitored **daily by the qualified biologist** 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.

5. Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

CDFW has concerns that although the Project is within the range of the CESA-threatened Mohave ground squirrel and contains suitable habitat for Mohave ground squirrel, no focused surveys were conducted to determine presence/absence of Mohave ground squirrel. The ISMND does not include mitigation measures to prevent impacts to Mohave ground squirrel either, because according to the Biological Report the Project's "habitat is not prime Mohave ground squirrel habitat". Thus, CDFW recommends the adoption of MM BIO-6 below to help the City avoid impacts to Mohave ground squirrel:

MM BIO-6

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 Project site and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the City should obtain an Incidental Take Permit (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 City does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.

6. Special-status Plants

According to a search of the California Natural Diversity Database (CNDDDB), two special-status plant species sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*; state rank of S2) and short-joint beavertail (*Opuntia basilaris* var. *brachyclada*; state rank of S3) have occurrence within the Project vicinity. The MND states that neither of these species were observed on the site during the reconnaissance survey and are thereby not expected to occur onsite during the foreseeable future. However, as mentioned earlier, since reconnaissance surveys are not considered floristic in nature and are not adequate to identify all plants in a project area to the level necessary to determine if there are special-status plants, CDFW recommends botanical field surveys be conducted following the 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). prior to construction. As such, CDFW recommends the addition of MM BIO-7 (see below) to the final MND to fully avoid and

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otherwise protect sensitive plant communities from Project-related direct and indirect impacts:

MM BIO-7

Prior to Project implementation, and during the appropriate season, the City shall conduct botanical field surveys within the Project 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 City 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 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 City should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

7. Lake and Streambed Alteration Notification

According to aerial imagery, an ephemeral stream, which is subject to Fish and Game Code section 1602, bisects the lower left corner of the Project site at the intersection of Fremontia Road and La Mesa Road. Additionally, there is evidence of flow from the ephemeral stream into the Project site all along the Project boundary adjacent to Fremontia Road. Although the Biological Report mentions Fish and Game Code section 1602 under "Regulatory Context", the Biological Report does not evaluate the potential impacts to Fish and Game Code section 1602 resources on-site. CDFW recommends that the City adopt MM BIO-8 below to either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or, if notification under section 1602 of the Fish and Game Code is

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required for the Project, to obtain a CDFW executed Lake and Streambed Alteration Agreement:

MM BIO-8

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

ENVIRONMENTAL DATA

CEQA requires that information developed in Environmental Impact Reports and Negative Declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

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

CONCLUSION

CDFW requests that the City include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources. CDFW appreciates the opportunity to comment on the MND for the Vesting Tentative Tract Map Case No. PLAN21-00040 (TTM20488) Project (SCH No. 2022040499) and hopes our comments will assist the City in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

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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:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

cc: 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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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.

Biological (BIO) Mitigation Measures (MM)	Implementation Schedule	Responsible Party
<p>MM BIO-1</p> <p>If any western Joshua trees (WJT) are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an incidental take permit (ITP) from California Department of Fish and Wildlife (CDFW) under CDFW under §2081 of the California Endangered Species Act (CESA), prior to the relocation, removal, or 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</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>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 either the purchase of conservation or mitigation bank credits or 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 Project activities. 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-2</p> <p>Pre-construction surveys for Burrowing Owls on the Project site and in the surrounding area shall be conducted by a qualified biologist no more than 14 days prior to initiation of Project activities in accordance with guidelines identified by the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation (Department of Fish and Game Code, March 2012). If Project 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 be required including but not limited to a take avoidance survey within 24 hours of ground disturbance. If burrowing owls are observed on the Project site during the Pre-construction survey the California Department of Fish and Wildlife shall be immediately notified, and Mitigation Measure BIO-3 shall be required.</p> <p>If burrowing owl(s) are not observed onsite during any pre-construction surveys, a letter shall be prepared by the qualified biologist documenting the</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>results of the survey. The letter shall be submitted to CDFW prior to issuance of any grading permits, and no further action is required.</p>		
<p>MM BIO-3</p> <p>If burrowing owls are observed on the project site during any pre-construction survey as per MM BIO-2, the California Department of Fish and Wildlife (CDFW) shall be immediately notified, and the applicant shall conduct an impact assessment in accordance with the 2012 Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation and any 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 that a reduced buffer would not adversely affect the burrowing owl(s).</p> <p>If burrowing owls cannot be avoided by the Project, then a qualified biologist shall prepare and submit a passive relocation program to CDFW for review/approval prior to the commencement of Project activities 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 and mitigation shall be required as described below (see g) to reduce impacts to less than significant, the following steps as approved by the California Department of Fish and Wildlife and in accordance with the updated CDFW Staff Report on Burrowing Owl Mitigation (2012) shall be implemented if burrowing owl are present on-site:</p> <p>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 either:</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>(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.</p> <p>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.</p> <p>c) 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), 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.</p> <p>d) Following a 48 hour observation period and 48-hours after installation of one-way doors, all vacated burrows shall be collapsed.</p> <p>e) 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>f) A final clearance survey confirming the absence of active burrowing owls burrows shall be conducted within 2 hours of initiating Project activities.</p>		
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<p>g) Compensatory mitigation lands for permanent impacts to nesting, occupied, and satellite burrows and burrowing owl habitat shall be provided by the applicant/developer 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.</p> <p>When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, Project 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 Project activities.</p>		
<p>MM BIO-4</p> <p>A CDFW-approved biologist shall conduct pre-construction presence/absence surveys for desert tortoise during the desert tortoise active season (April to May or September to October) 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service (USFWS) 2019 desert tortoise survey methodology. Pre-construction surveys shall be completed using 100-percent visual coverage for desert tortoise and their sign and shall use perpendicular survey routes within the Project site and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project Activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area.</p> <p>Should desert tortoise presence be confirmed during the survey, 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 Project activities and Project 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.</p> <p>If complete avoidance of desert tortoise is infeasible, the Project Proponent should apply for a CESA ITP and shall prepare a site-specific Desert Tortoise Translocation Plan (Plan) that will provide</p>		
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<p>details on the proposed recipient site, desert tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury, and will be consistent with project permits and current USFWS and CDFW guidelines. The Plan shall also include a requirement for communication and coordination with the Bureau of Land Management (BLM) regarding the desert tortoise recipient site. Prior to construction, the Plan shall be subject to the review and approval of the CDFW and the USFWS. Impacts shall be offset through acquisition of compensatory land within suitable and occupied desert tortoise habitat and/or monetary contributions to other recovery efforts in the West Mojave and/or mitigation bank credit purchase from a CDFW-approved mitigation bank mitigated at a ratio of no less than 3:1. Final mitigation acreage are subject to the approval of CDFW and federal wildlife agencies.</p>		
<p>MM BIO-5 All Project activities on-site shall be conducted outside of nesting season (non-nesting season is typically from September 16 through December 31) to the maximum extent feasible. If Project activities begin during the nesting bird season, a qualified biologist shall conduct a pre-project nesting bird survey to verify the absence of nesting birds within the work area and surrounding 300-foot buffer no more than two hours prior to initiating Project activities. For any Project activity occurring during the nesting season, typically 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 Project-related activities. If active nests containing eggs or young are found,</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>no work shall be permitted near the nest until the young birds have fledged or the nest is no longer active. A 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 100 feet for passerines and 300 feet for raptors. 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 project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>MM BIO-6</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 Project site and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the City should obtain an Incidental Take Permit (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 City does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>
<p>MM BIO-7</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>Prior to Project implementation, and during the appropriate season, the City shall conduct botanical field surveys within the Project 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 City 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 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 City should apply for a California Endangered</p>		
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Species Act (CESA) Incidental Take Permit (ITP) with CDFW.		
MM BIO-8 Prior to construction and issuance of any grading permit, the City 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, <i>or</i> the City should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.	Prior to commencing Project activities	Project Proponent