



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE

Inland Deserts Region  
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Ontario, CA 91764  
[wildlife.ca.gov](http://wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 27, 2022  
*Sent via email*

Alex Jauregui, Senior Planner  
City of Victorville  
14242 Civic Drive  
Victorville, CA 92392

Subject: Mitigated Negative Declaration for General Plan Amendment, Planned Unit Development, Site Plan, and tentative Parcel Map Case No. PLAN21-00023 (Victor Valley Connection); State Clearing House No. 2022040631

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 Victor Valley Connection Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

## **CDFW ROLE**

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

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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

### **PROJECT DESCRIPTION SUMMARY**

The Project site is located on approximately 34.74 acres in the City of Victorville, County of San Bernadino within Assessor's Parcel Numbers 3091-221-03 through 3091-221-21. The Project site was previously graded with curb cuts, driveway entrances, and utilities already installed. Previous entitlements have expired; thus, a new project is proposed.

The Project proposes to build a mixed-use development consisting of commercial, retail, office, self-storage, and multi-family residential developments. The Project proposes approximately 230,632 square feet (SF) of commercial retail, office and self-storage uses on 16.07 acres and 376 multi-family residential dwelling units on 18.67 acres. The Project includes the following land use elements:

- General Plan Amendment (GPA) from the current General Plan land use designation of Commercial (C) to Mixed-Use (MU)
- Change of Zone (CZ) from General to Commercial — Transitional (C-2T) zone to Planned Unit Development (PUD) zone
- Tentative Parcel Map (TPM) No. 20402 application to subdivide 34.74 acres into 18 parcels ranging in size, from 0.55 to 5.92 acres
- Site Plan application for approximately 230,632 SF of commercial use, consisting of retail, storage, restaurant, and office uses, and up to 376 multi-family residential dwelling units on 34.74 acres

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- Planned Unit Development Application consisting of parcels 1-18 of TPM No. 20402.

A drive-thru restaurant on an existing 1.25-acre parcel is proposed at the northwest corner of Bear Valley Road and 2<sup>nd</sup> Avenue under a separate entitlement process.

**Timeframe:** The Project is proposed to be mass graded in an approximate three-month time frame. Actual construction and phasing is dependent on market conditions once the Project receives City approvals.

## **COMMENTS AND RECOMMENDATIONS**

CDFW is concerned regarding baseline biological conditions assumed and/or documented by the ISMND and with the adequacy of the one biological (BIO) mitigation measures (MM) (MM BIO-1) proposed by the City to mitigate potential impacts to biological resources that may occur on-site. CDFW's comments provided herein regarding burrowing owl, western Joshua tree, and waters and drainages subject to Fish and Game Code section 1602 concern the biological baseline for which the MND's analysis is based. Specifically, comments reference further evaluation of the biological baseline which must be addressed in the MND's analysis prior to CDFW being able to comment on, or otherwise recommend or revise mitigation measures. CDFW is available to consult with the City to develop, review and/or recommend mitigation measures for the above referenced resources once the biological baseline issues identified below are addressed in the MND.

### **Comments Regarding Baseline Biological Conditions**

To assist the City in adequately evaluating the Project's potentially significant impacts to biological resources, CDFW offers the following comments regarding the Project's baseline biological conditions:

#### Burrowing Owl

The Project site includes suitable burrowing owl habitat that is not identified or analyzed within the ISMND. Neither the ISMND nor the ELMT habitat assessment letter (ELMT, 2021) evaluates the potential presence or suitable habitat for burrowing owl (*Athene cunicularia*). Burrowing owl is an adaptable species that can follow anthropogenic disturbances, particularly when fossorial

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mammals are present as is the case with the Project site. Although CDFW staff did not access the site, suitable burrowing owl habitat, including burrows and fossorial mammals, were observed from the rights-of-way of 2nd and 3<sup>rd</sup> Streets on May 20, 2022. Additionally, the California Natural Diversity Database (a positive detection *only* database) has records of a burrowing owl *within* and adjacent to the Project site. The ISMND and biological report should include a burrowing owl habitat assessment, prepared in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation document (see Burrowing Owl Guidelines, Appendix C) (Department of Fish and Game, March 2012) and submitted to CDFW for review. As applicable, and in accordance with the Burrowing Owl Guidelines, focused surveys should be performed and an impact assessment and a site-specific mitigation plan should be developed and adopted by the ISMND and implemented by a Qualified Biologist (see Burrowing Owl Guidelines for project impact evaluation guidelines and definition for Qualified Biologist). Copies of the surveys, results, and subsequent analyses should be provided to CDFW within 15 days of completion and 60 days prior to the start of ground disturbing activities to allow for adequate planning for the project proponent, City of Victorville, and CDFW staff.

#### Biological Survey Timing

The conclusions of the habitat assessment (ELMT, 2021) do not fully and accurately establish the presence or absence of the species or habitats inventoried as the timing of the assessment was not optimized for species detection nor according to established species survey protocols. The probability of species detection is directly correlated with utilizing established survey guidelines including conducting surveys at appropriate seasons, times, and weather conditions. The ISMND and ELMT habitat assessment should be revised to clarify the time of day and climactic conditions that the biological surveys were conducted on September 22, 2021 and how those conditions affect the outcome of the report. Specifically, the timing of the ELMT assessment occurred during the non-breeding season for burrowing owl when species detection probability is low, and results are typically inconclusive (See Burrowing Owl Guidelines referenced above). Similarly, floristic surveys should be conducted at the appropriate time of year when plants are evident and identifiable in accordance with the CDFW publication Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018).

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### Western Joshua Tree

Western Joshua tree is a candidate threatened species under California Endangered Species Act (CESA). During the candidacy period, no person shall import into California, export out of California, or take, possess, purchase, or sell within California, western Joshua trees or any part or product thereof, or attempt any of those acts, except as authorized pursuant to CESA. Pursuant to section 2081, subdivision (b) of the Fish and Game Code, CDFW may issue an Incidental Take Permit (ITP) authorizing the take of candidate species when it is incidental to an otherwise lawful activity.

The status of the four western Joshua trees (*Yucca brevifolia*) originally documented onsite in the 2019 RCA and Associates biological report is not provided by the current MND or 2021 ELMT habitat assessment. The ELMT habitat assessment states that no western Joshua tree were observed onsite. The ISMND and ELMT habitat assessment should be revised to include an evaluation of the four western Joshua tree originally documented in the Project's 2019 biological report. A copy of the proposed Protected Plant Plan (RCA, 2019) or equivalent document should be included in the ISMND.

### Jurisdictional Wetlands and Drainages

CDFW is concerned with potential surface water flows onsite. Thus, the ISMND should document and disclose that either: no Project stormwater flows are directed offsite (including across 2<sup>nd</sup> Avenue) where they may pass into Spring Valley Lake or the Mojave River; or that discharges may require notification to CDFW pursuant Fish and Game Code section 1600 *et seq.* Fish and Game Code section 1602 states, in part, that "An entity shall not... *deposit or dispose of debris, waste [emphasis added], or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless CDFW receives written notification regarding the activity in the manner prescribed by the department [CDFW]*".

The ELMT habitat assessment letter describes a desktop review of potential "jurisdictional features" but does not describe a field-based jurisdictional determination under the *Jurisdictional Wetlands and Drainages* section. Similarly, the Jurisdictional Areas section states that "No jurisdictional drainage and/or wetland features were observed... Therefore, development of the project will not result in impacts to Corps, Regional Board, or CDFW jurisdiction and regulatory approvals will not be required" (ELMT, 2021). Site drainage has historically and

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presently drained from the southwest to the northeast of the Project toward Spring Valley and the Mojave River—both sensitive receptors. Presently, site drainage is facilitated northeasterly to a 14-foot-wide drop inlet structure where flows are conveyed below 2<sup>nd</sup> Avenue and discharged to Parcel 1 of Parcel Map 16382 (See sheet 1 of the Victorville Connection Project within the preliminary hydrology report (DRC Engineering, May 17, 2021). The habitat assessment and ISMND should be revised to include a field-based analysis of the Project drainage features and discharge patterns.

### **Additional Comments and Recommendations**

CDFW appreciates the inclusion of MM BIO-1, which provides mitigation for nesting birds. To further assist the City in adequately mitigating the Project's potentially significant impacts to biological resources, CDFW offers revisions to MM BIO-1 as per below, and in Attachment 1 "Mitigation Monitoring and Reporting Program", pursuant to the CEQA Guidelines, section 15097(f). CDFW requests that the City revise MM BIO-1 prior to finalizing the ISMND as follows (edits are in ~~strikethrough~~ and **bold**):

(BIO-1)

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

If construction occurs between ~~February~~ **January 1<sup>st</sup>** and ~~August 31<sup>st</sup>~~ **September 15<sup>th</sup>**, a preconstruction clearance survey **of the Project site and a 300-foot buffer surrounding the Project area** for nesting birds ~~should~~ **shall** be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. **Pre-construction clearance surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.** The biologist conducting the clearance survey ~~should~~ **shall** document the document a negative survey with a brief letter report indicating that no impacts to active avian

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nests will occur. If an active avian nest is discovered during the preconstruction clearance survey, construction activities ~~should~~ **shall** stay outside of a no-disturbance buffer **established by the qualified avian biologist. Nest buffers are species specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger** ~~The size of the~~ no-disturbance buffer may ~~will~~ be determined by the ~~wildlife~~ **qualified avian** biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. **A qualified avian biologist** ~~biological monitor should~~ **shall** be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur. **The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.**

## 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 online field survey form, along with the types of information reported to CNDDDB, can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

## 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

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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 ISMND the suggested mitigation measures (Attachment 1) offered by CDFW to reduce Project impacts.

CDFW appreciates the opportunity to comment on the ISMND for the Victor Valley Connection Project (SCH No. 2022040631) and hopes our comments 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 Eric Weiss, Senior Environmental Scientist, Specialist at [Eric.Weiss@wildlife.ca.gov](mailto:Eric.Weiss@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 Clearing House, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

## REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

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

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



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Attachment 1: Mitigation Monitoring and Reporting Program (MMRP)

PURPOSE OF THE MMRP

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

TABLE OF MITIGATION MEASURES

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

<b>Biological (BIO) Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p>BIO-1</p> <p>If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.</p> <p>If construction occurs between January 1<sup>st</sup> and September 15<sup>th</sup>, a preconstruction clearance survey of the Project site and a 300- foot buffer surrounding the Project area for nesting birds shall be conducted within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. Pre-construction</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>clearance surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. The biologist conducting the clearance survey shall document the document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the preconstruction clearance survey, construction activities shall stay outside of a no-disturbance buffer established by the qualified avian biologist. Nest buffers are species specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger no-disturbance buffer may be determined by the qualified avian biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A qualified avian shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
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