



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



June 8, 2022  
Sent via email

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
15415 W. Sand Street, #103  
Victorville, CA 92392

Subject: Initial Study and Mitigated Negative Declaration  
Mojave Desert Land Trust Palisades Ranch Restoration Project  
State Clearinghouse No. 2022050328

Dear Ms. Raponi:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/ Mitigated Negative Declaration (ISMND) from the Mojave Desert Resource Conservation District (District) for the Mojave Desert Land Trust Palisades Ranch Restoration Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

### CDFW ROLE

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

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

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 2 of 20

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, also known as Palisades Ranch, is in the County of San Bernardino in the State of California at Latitude 34.677831 N and Longitude -117.358336 W within Assessor's Parcel Number (APN) 0470-011-33-2000. The Project site is located along a stretch of the Mojave River and consists of approximately 1,647 acres. The Project site consists of upland and riparian habitat, with about 820 acres within the Mojave River floodplain. A small section of the Project site has been previously used to grow alfalfa, hay, and fruit trees.

The District proposes restoring and improving riparian and aquatic habitats for special status species at Palisade Ranch, including San Emigdio blue butterfly (*Plebejus emigdionis*), Mohave tui chub (*Siphateles bicolor mohavensis*), southwestern willow flycatcher (*Empidonax trailii extimis*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), least Bell's vireo (*Vireo bellii pusillus*), Lucy's warbler (*Oreothypis luciae*), western pond turtle (*Emys marmorata*), and Mojave river vole (*Microtus californicus mohavensis*).

Approximately 130 acres of riparian habitat are anticipated to be restored. Riparian enhancement and restoration activities include planting, soil amendments, irrigation, weed treatments, tree removal, placement of small woody debris, river channel alignment, terrace cutting, grading, and installation of in-channel structures (e.g., cofferdam, beaver dam analogs). Restoration of aquatic habitat will involve creation of a pond and reconnecting a 170-acre abandoned agricultural field to the Mojave River by re-establishing a nested floodplain that resembles historic floodplain conditions. The proposed nested floodplain will entail constructing a 6,600-foot main side channel, a 1,425-foot west branch side channel, and two higher elevation 5-year return interval channels. The pond may be used in the future as a refugium for Mojave tui chub. The Project also includes areas for public access: a 1.8-mile trail system, a wildlife-viewing platform, a loop trail system around the restoration area with a boardwalk over a side channel, a pond overlook, and a parking lot.

**Timeframe:** The anticipated start date for this Project is October 2022 and will require 3-5 years to complete.

Dana Raponi, District Manager  
 Mojave Desert Resource Conservation District  
 June 8, 2022  
 Page 3 of 20

## COMMENTS AND RECOMMENDATIONS

CDFW appreciates the District's restoration and enhancement of riparian and aquatic habitats at Palisades Ranch. To assist the District in adequately mitigating the Project's potentially significant impacts on desert tortoise (*Gopherus agassizii*), nesting birds, burrowing owl (*Athene cunicularia*), special-status plants, Mojave River vole (*Microtus californicus mohavensis*), Mohave ground squirrel (*Xerospermophilus mohavensis*), western pond turtle (*Emys marmorata*), Mohave tui chub (*Siphateles bicolor mohavensis*), and Fish and Game Code section 1602 resources, CDFW offers the comments and recommendations presented below, and in Attachment 1 "Mitigation Monitoring and Reporting Program", pursuant to the CEQA Guidelines, section 15097(f). CDFW requests that the District: (1) revise and/or adopt the below biological (BIO) mitigation measures (MM) prior to finalizing the ISMND (also referred to as 'final MND') and (2) consult CDFW's Lydia Rodriguez, Senior Environmental Scientist (Specialist) at [Lydia.Rodriguez@wildlife.ca.gov](mailto:Lydia.Rodriguez@wildlife.ca.gov) regarding appropriate take authorization for the Project (see section CDFW Resources at the end).

### Assessment of Biological Resources

#### Lake and Streambed Alteration Notification

The Project proposes to reconnect an abandoned agricultural field that was historically riparian habitat to the Mojave River via the construction of a main channel and three side channels. Removal of some riparian trees and shrubs is also necessary for the Project. CDFW appreciates that the Project proponent recognizes that notification to CDFW is required, pursuant to section 1602 of the Fish and Game Code. Project activities subject to Fish and Game Code section 1602 include but are not limited to diversion of water from the Mojave River, installation of a cofferdam, and removal of riparian vegetation. As a result, CDFW recommends the District consult with CDFW early regarding notification to comply with the Fish and Game Code section 1602. CDFW offers the following revisions to MM BIO-4 (edits are in ~~strikethrough~~ and **bold**)

#### MM BIO-4

The Applicant shall prepare and submit a Regional Water Quality Control Board 401 Certification, a Fish and Game Code Section 1602 Lake or Streambed Alteration Agreement **notification**, and a State Water Resources Control Board: Section 402 NPDES. No ground disturbance within jurisdictional waters **and Fish and Game Code section 1602 resources** shall occur until the **Mojave Desert Land Trust (MDLT)** obtains the above permits, **including a Lake and Streambed Alteration Agreement** and provides the District verification of permit acquisition. Note that the final compensation package contained in the permits shall be implemented by the MDLT. If the permit conditions are different than the mitigation listed in this document to protect biological resources, the MDLT shall implement the mitigation identified in the permits, ~~which must be equivalent or more effective in mitigating or avoiding potential significant~~

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 4 of 20

~~effects and the substitution of any mitigation measure will not cause any potentially significant effect on the environment.~~

### Desert Tortoise (*Gopherus agassizii*)

Desert tortoise is a state-threatened, proposed endangered species under the California Environmental Species Act (CESA). CDFW is concerned that no recent desert tortoise surveys were conducted (within a year old) and that the ISMND does not include mitigation measures for desert tortoise, especially considering that desert tortoise focused surveys conducted in May of 2016 identified a desert tortoise in its burrow on the Project site. Additionally, numerous scats, ten burrows, and two carcasses were also observed during the May 2016 surveys. CDFW recommends inclusion of MM BIO-5 to avoid potentially significant impacts to desert tortoise.

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

**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. 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. 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. If complete avoidance of desert tortoise cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and consult CDFW regarding appropriate take authorization.**

### Nesting birds

The ISMND states that focus bird surveys were conducted in 2016 and 2020 during the spring bird migration season. Seventy-six avian species, including seven special status species, were identified. CDFW appreciates the District's consideration of avoiding the nesting season in bullet point eight of MM BIO-1, which solely states that “Construction of work shall occur outside of conservation species nesting periods, aquatic spawning, and other time periods as described in said permits”. However, CDFW is concerned with the lack of details in MM BIO-1 in defining the bird nesting season. To avoid or

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 5 of 20

minimize potentially significant impacts to nesting birds, including least Bell's Vireo (*Vireo bellii pusillus*), Swainson's hawk (*Buteo swainsoni*), Cooper's hawk (*Accipiter cooperii*), Lucy's warbler (*Oreothlypis luciae*), yellow warbler (*Setophaga petechia*), yellow-billed cuckoo (*Coccyzus americanus occidentalis*), and yellow-breasted chat (*Icteria virens*), CDFW requests that pre-construction nesting bird surveys be conducted and thus recommends that MM BIO-6 be adopted:

**MM BIO-6:**

**All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. Bird nesting season generally extends from January 1 through September 15 for raptors and February 1 through September 1 for passerine birds. 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 Project activities cannot begin outside of the bird nesting season, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to Project activities. Pre-construction 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.**

**If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 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 has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.**

Burrowing owl (*Athene cunicularia*)

Although burrowing owls were not found present during the 2020 avian surveys, evidence of burrowing owls (whitewash and diagnostic regurgitated pellets) was recorded during the 2016 avian surveys. Because CDFW recognizes that the Project site has the potential to provide suitable habitat for burrowing owls, CDFW recommends the Project adopt MM BIO-7:

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 6 of 20

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

**No less than 14 days prior to the initiation of any Project activities within suitable and adjacent 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 onsite 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 the California Department of Fish and Wildlife (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/approval prior to the commencement of disturbance activities on site. Survey results shall be submitted to CDFW prior to start of Project activities and following the guidelines provided in Appendix D of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).**

### Special-status plants

Two special-status plant species, Mohave monkeyflower (*Diplacus mohavensis*; state rank (S) two (S2)) and beaver dam breadroot (*Pediomelum castoreum*; S2) have occurrence within the Project vicinity but were not identified during the 2020 and 2021 botanical field surveys. CDFW recognizes that botanical surveys were conducted recently in 2021 and CDFW generally considers assessments for rare plants valid for a period of up to three years. Taking this into consideration, CDFW recommends that if the Project is delayed past the year 2024, MM BIO-8 apply:

### **MM BIO-8**

**If the Project is delayed past the year 2024, prior to start of Project activities, and during the appropriate season, the Project proponent shall conduct botanical field surveys 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). If any special-status plants are identified, the District shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the District shall consult CDFW regarding mitigation and minimization measures. If the Project has the potential to impact a state-listed species the District shall consult CDFW regarding appropriate take authorization.**

Mohave Ground Squirrel (*Xerospermophilus mohavensis*) and Mojave River vole (*Microtus californicus mohavensis*)

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 7 of 20

CDFW appreciates that focused surveys for Mohave ground squirrel (2020) and Mojave River vole (2021) were conducted at Palisades Ranch. The trapping surveys yielded six Mojave River voles including adults and juveniles. No Mohave ground squirrels were detected from the surveys, but according to a search of the California Natural Diversity Database (CNDDDB), Mohave ground squirrels have occurrences within a mile of the Project vicinity. Because CDFW has concerns that the Project is within the range of CESA threatened Mohave ground squirrel and the Project site supports suitable habitat for both Mohave ground squirrel and Mojave River vole (a species of special concern), CDFW recommends that the District adopt MM BIO-9 and MM BIO-10 below:

#### **MM BIO-9**

**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 area and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, CDFW shall be notified and the District shall consult CDFW regarding appropriate take authorization.**

#### **MM BIO-10**

**A qualified biologist shall identify all potential active burrows that may be used by state sensitive small mammals (e.g., Mojave River vole) where ground disturbing activities are to occur. The qualified biologist shall clearly delineate (e.g., stakes, flags, construction fencing) an appropriate buffer to avoid burrow collapse or material/water intrusion into the burrow. If ground disturbing activities must occur in areas where burrows cannot be avoided, load-spreading devices (e.g., 4-foot by 8-foot by 0.75-inch-thick plywood sheets, 4-foot by 8-foot plastic Altarnamats) shall be used to preserve the burrow complexes. The type of material and the exact placement of load-spreading devices shall be determined by the qualified biologist and monitored for effectiveness. A monitoring report/email shall be prepared by the qualified biologist and submitted to the California Department of Fish and Wildlife after all work has been completed.**

#### Invasive Species

The ISMND mentions that the District has been working with the Mojave Water Agency (MWA) to control invasive plants along the Mojave River using herbicides and the cut stump method. CDFW understands that the control of invasive plant species is crucial to protect native plant communities. CDFW offers the following revisions (edits are in ~~strikethrough~~ and **bold**) to MM Hydrology (HYD)-2 to prevent non-target species exposure to herbicides and requests the District adopt MM BIO-11 to prevent the spread of non-native and/or invasive plant species through equipment.

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 8 of 20

#### MM HYD-2

Weed abatement sprays shall be applied as directed in the Conceptual Riparian Restoration Plan (Appendix 1, pages 96-101) **by a licensed applicator**, and shall specifically comply with the directions specified by each individual product label (including ambient temperature /wind speed/etc.). Weed abatement shall only occur during dry periods, in which no rain is forecast to occur for at least 48 hours.

**All herbicides, surfactants, and other pesticides utilized within or adjacent to the Project area shall comply with state regulations. All herbicides, surfactants, and other pesticides used within areas subject to Fish and Game Code section 1600 et seq shall be registered for aquatic use by the California Department of Pesticide Regulation (CDPR). Project proponent shall only utilize herbicide sprays via aerial or ground application when wind speed measures less than 10 miles per hour. Project proponent shall ensure all herbicide sprays utilized within and adjacent to waters and sensitive habitat in the Project area contain a dye (registered for aquatic use by CDPR) to prevent overspray. Project proponent shall only use pesticides for which a “no effect” determination has been issued by the U.S. Environmental Protection Agency’s (EPA) Endangered Species Protection Program: [Protecting Endangered Species from Pesticides | US EPA](#) for any species likely to occur within the Project area or downstream. Prior to applying pesticides, Project proponent shall verify that selected pesticides are not on an endangered species bulletin issued by the U.S. EPA. Bulletins are posted at: [Endangered Species Protection Bulletins | US EPA](#).**

#### MM BIO-11

**Project proponent shall ensure designated contractor conducts Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one site and/or waterbody to another. If decontamination is not done on site, Project proponent or designated contractor shall transport contaminated equipment in sealed plastic bags and keep separate from clean gear. Prevention best management practices (BMPs) and guidelines for invasive plants can be found on the California Invasive Plant Council’s website at: [Prevention – California Invasive Plant Council \(cal-ipc.org\)](#) and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: [Home - Stop Aquatic Hitchhikers](#).**

#### Western pond turtle (*Emys marmorata*)

CDFW appreciates that extensive trapping for western pond turtle was conducted by Research Ecologists from the US Geological Survey (USGS) from 2017 to 2020. Although no western pond turtles were capture or observed, it is important to note that USGS Research Ecologists conducting the surveys concluded that “failure to detect pond turtles at Palisades Ranch is unexpected because of the presence of what



Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 9 of 20

appears to be excellent habitat for the species". Because the Project site supports highly suitable habitat for western pond turtle, CDFW recommends that the District adopt MM BIO-12 below:

### **MM BIO-12**

**No more than 72 hours prior to commencement of Project activities, Project proponent shall have a qualified biologist perform a pre-construction survey of the streambeds and adjacent upland areas (including an appropriate area upstream and downstream of the impact area) to determine presence or absence of western pond turtle and other sensitive aquatic species. Survey methodology shall be pre-approved by the California Department of Fish and Wildlife (CDFW) and shall include, at a minimum, visual observations, and appropriate trapping methodology, where appropriate. Documentation of these surveys and findings shall be submitted to CDFW for review prior to commencement of Project activities. If any sensitive fish, amphibian, or other aquatic species are observed during the pre-construction surveys, Project proponent shall contact CDFW for further consultation. At that time, CDFW may request Project proponent submit, for approval, measures to avoid and/or minimize Project impacts to those sensitive aquatic species.**

#### Mohave Tui Chub (*Siphateles bicolor mohavensis*)

The Mohave tui chub (MTC) is a fully protected and CESA threatened species that historically occurred in the Mojave River. Currently absent from the Mojave River, MTC populations now only occur in refuge sites in San Bernardino County. CDFW recognizes that the re-introduction of MTC is a second-tier goal for the Project given the costs associated with this task; however, CDFW sees the value and supports the establishment of a refugium for MTC at Palisades Ranch. CDFW appreciates the inclusion of MM BIO-2 that calls for the removal of American bullfrog from the Project site to reduce impacts to not only MTC, but also Mojave River vole and arroyo toad (*Anaxyrus californicus*). Because American bullfrogs are abundant at Palisades Ranch CDFW agrees that an eradication program for American bullfrog should be established prior to the re-introduction of MTC.

The ISMND mentions that the pond will have a maximum depth of 7 feet. CDFW recommends the pond maintain a depth of 10 feet to 20 feet to accommodate MTC and considering that the pond will also be used for irrigation of restored vegetation. CDFW also recommends that the pond be constructed with clay pond liner (long lasting, non-toxic), and a permanent exclusionary barrier to prevent non-native predators of MTC from entering the pond and hybridization with arroyo chub.

The Recovery Plan for the Mohave Tui Chub (USFWS 1984) speculates on the reasons why many attempts to transplant MTC have failed, including inadequate water quality and quantity, flooding, and lack of spawning areas. CDFW appreciates that the Project

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 10 of 20

proponent has addressed concerns with flooding and existing water rights in the ISMND. Should the District decide to re-introduce MTC, CDFW recommends that water quality be closely monitored (pH levels, ammonia, dissolved oxygen, turbidity, salinity) and that the refugium have adequate plant material such as bulrush (*Schoenoplectus americanus*) for spawning and resistance to colonization by harmful aquatic plants.

### Trespass and Degradation of Habitat

The Project includes areas for public access: a 1.8-mile trail system, a wildlife-viewing platform, a loop trail system around the restoration area with a boardwalk over a side channel, a pond overlook, and a parking lot. CDFW is concerned that there is a lack of detail regarding deterring human entry or activities in conservation habitat. CDFW recommends the District conditions the installation and maintenance of barriers, where feasible, to monitor and preclude access to adjacent habitat. Habitat degradation due to unauthorized trespass, littering, and vandalism should be thoroughly analyzed and disclosed in the final MND.

### **CDFW Resources**

To help the District move forward with establishing a refugium for MTC and address take authorization for special-status species, CDFW offers the information below.

#### Incidental Take Permits (ITP) - 2081 (b)

Section 2081 subdivision (b) of the Fish and Game Code allows CDFW to authorize take of species listed as endangered, threatened, candidate, or a rare plant, if that take is incidental to otherwise lawful activities and if certain conditions are met. These authorizations are commonly referred to as incidental take permits (ITPs).

#### Consistency Determination (CD) - 2080.1

If a species is listed by both the federal Endangered Species Act and CESA, Fish and Game Code section 2080.1 allows an applicant who has obtained a federal incidental take statement (federal Section 7 consultation) or a federal incidental take permit (federal Section 10(a)(1)(B)) to request that the Director of CDFW find the federal documents consistent with CESA. If the federal documents are found to be consistent with CESA, a consistency determination (CD) is issued and no further authorization or approval is necessary under CESA.

#### Restoration Management Permit

The Restoration Management Permit (RMP) consolidates “take” authorizations that habitat restoration projects may need to obtain into a single streamlined permit. The RMP can authorize state-defined take (hunt, pursue, capture, catch, or kill, or attempt to do so) of endangered, threatened, and candidate species pursuant to the California Endangered Species Act (CESA) as well as fully protected species (FPS) pursuant to

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 11 of 20

Fish and Game Code sections 3511, 4700, 5050, and 5515. RMP's do not require submittal of an application fee.

#### Memorandum of Understanding (MOU) - 2081 (a)

MOUs authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions to import, export, take, or possess endangered, threatened, or candidate species for scientific, educational, or management purposes.

#### Fully Protected Species Memorandum of Understanding

A Fully Protected (FP) Species Memorandum of Understanding (MOU) is required for scientific research and recovery activities involving any California Fully Protected species.

#### Scientific Collecting Permit (SCP)

SCPs are required to take, collect, capture, mark, or salvage, non-CESA listed species for scientific, educational, and non-commercial propagation purposes.

#### Safe Harbor Agreement (SHA)

A SHA authorizes incidental take of a species listed as endangered, threatened, candidate, or a rare plant, if implementation of the agreement is reasonably expected to provide a net conservation benefit to the species, among other provisions. SHAs are intended to encourage landowners to voluntarily manage their lands to benefit CESA-listed species. California SHAs are analogous to the federal safe harbor agreement program and CDFW has the authority to issue a consistency determination based on a federal safe harbor agreement.

### **ENVIRONMENTAL DATA**

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

### **FILING FEES**

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 12 of 20

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 District 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 ISMND for the Mohave Desert Land Trust Palisades Ranch Restoration Project (SCH No. 2022050328) and hopes our comments will assist the District in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

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

## ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

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

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 13 of 20

## 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:

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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:

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U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.

U.S. Fish and Wildlife Service (USFWS). 1984. Recovery Plan for the Mohave Tui Chub, *Gila bicolor mohavensis*. Portland, Oregon: USFWS.

California Department of Fish and Game (CDFG). 2010. Mohave Ground Squirrel Survey Guidelines. Available for download at:

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Dana Raponi, District Manager  
 Mojave Desert Resource Conservation District  
 June 8, 2022  
 Page 14 of 20

## **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)/Hydrological (HYD) Mitigation Measure (MM)</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p>MM BIO-4</p> <p>The Applicant shall prepare and submit a Regional Water Quality Control Board 401 Certification, a Fish and Game Code Section 1602 Lake or Streambed Alteration notification, and a State Water Resources Control Board: Section 402 NPDES. No ground disturbance within jurisdictional waters and Fish and Game Code section 1602 resources shall occur until the Mojave Desert Land Trust (MDLT) obtains the above permits, including a Lake and Streambed Alteration Agreement and provides the District verification of permit acquisition. Note that the final compensation package contained in the permits shall be implemented by the MDLT. If the permit conditions are different than the mitigation listed in this document to protect biological resources, the MDLT shall implement the mitigation identified in the permits.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Dana Raponi, District Manager  
 Mojave Desert Resource Conservation District  
 June 8, 2022  
 Page 15 of 20

<p>MM BIO-5:</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. 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. 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. If complete avoidance of desert tortoise cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and consult CDFW regarding appropriate take authorization.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-6:</p> <p>All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. Bird nesting season generally extends from January 1 through September 15 for raptors and February 1 through September 1 for passerine birds. 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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Dana Raponi, District Manager  
 Mojave Desert Resource Conservation District  
 June 8, 2022  
 Page 16 of 20

<p>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 Project activities cannot begin outside of the bird nesting season, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to Project activities. Pre-construction 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. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 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 has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>MM BIO-7:                   No less than 14 days prior to the initiation of any Project activities within suitable and adjacent 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 onsite 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 the California Department</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>



Dana Raponi, District Manager  
 Mojave Desert Resource Conservation District  
 June 8, 2022  
 Page 17 of 20

<p>of Fish and Wildlife (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/approval prior to the commencement of disturbance activities on site. Survey results shall be submitted to CDFW prior to start of Project activities and following the guidelines provided in Appendix D of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).</p>		
<p>MM BIO-8</p> <p>If the Project is delayed past the year 2024, prior to start of Project activities, and during the appropriate season, the Project proponent shall conduct botanical field surveys 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). If any special-status plants are identified, the District shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the District shall consult CDFW regarding mitigation and minimization measures. If the Project has the potential to impact a state-listed species the District shall consult CDFW regarding appropriate take authorization.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-9</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 area and a 50- foot</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Dana Raponi, District Manager  
 Mojave Desert Resource Conservation District  
 June 8, 2022  
 Page 18 of 20

<p>buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, CDFW shall be notified and the District shall consult CDFW regarding appropriate take authorization.</p>		
<p><b>MM BIO-10</b></p> <p>A qualified biologist shall identify all potential active burrows that may be used by state sensitive small mammals (e.g., Mojave River vole) where ground disturbing activities are to occur. The qualified biologist shall clearly delineate (e.g., stakes, flags, construction fencing) an appropriate buffer to avoid burrow collapse or material/water intrusion into the burrow. If ground disturbing activities must occur in areas where burrows cannot be avoided, load-spreading devices (e.g., 4-foot by 8-foot by 0.75-inch-thick plywood sheets, 4-foot by 8-foot plastic Alturamats) shall be used to preserve the burrow complexes. The type of material and the exact placement of load-spreading devices shall be determined by the qualified biologist and monitored for effectiveness. A monitoring report/email shall be prepared by the qualified biologist and submitted to the California Department of Fish and Wildlife after all work has been completed.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p><b>MM HYD-2</b></p> <p>Weed abatement sprays shall be applied as directed in the Conceptual Riparian Restoration Plan (Appendix 1, pages 96-101) by a licensed applicator, and shall specifically comply with the directions specified by each individual product label (including ambient temperature /wind speed/etc.). Weed abatement shall only occur during dry periods, in which no rain is forecast to occur for at least 48 hours. All herbicides, surfactants, and other pesticides utilized within or adjacent to the Project area shall comply with state regulations. All herbicides, surfactants, and other pesticides used within areas subject to Fish and Game Code section 1600 <i>et seq</i> shall be registered for aquatic use by the California Department of Pesticide Regulation (CDPR). Project proponent shall only utilize herbicide sprays via aerial or ground application when wind</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Dana Raponi, District Manager  
 Mojave Desert Resource Conservation District  
 June 8, 2022  
 Page 19 of 20

<p>speed measures less than 10 miles per hour. Project proponent shall ensure all herbicide sprays utilized within and adjacent to waters and sensitive habitat in the Project area contain a dye (registered for aquatic use by CDPR) to prevent overspray. Project proponent shall only use pesticides for which a "no effect" determination has been issued by the U.S. Environmental Protection Agency's (EPA) Endangered Species Protection Program: <a href="#">Protecting Endangered Species from Pesticides   US EPA</a> for any species likely to occur within the Project area or downstream. Prior to applying pesticides, Project proponent shall verify that selected pesticides are not on an endangered species bulletin issued by the U.S. EPA. Bulletins are posted at: <a href="#">Endangered Species Protection Bulletins   US EPA</a>.</p>		
<p>MM BIO-11</p> <p>Project proponent shall ensure designated contractor conducts Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one site and/or waterbody to another. If decontamination is not done on site, Project proponent or designated contractor shall transport contaminated equipment in sealed plastic bags and keep separate from clean gear. Prevention best management practices (BMPs) and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: <a href="#">Prevention – California Invasive Plant Council (cal-ipc.org)</a> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <a href="#">Home - Stop Aquatic Hitchhikers</a>.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-12</p> <p>No more than 72 hours prior to commencement of Project activities, Project proponent shall have a qualified biologist perform a pre-construction survey of the streambeds and adjacent upland areas (including an appropriate area upstream and downstream of the impact area) to determine presence or absence of western pond turtle and other</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Dana Raponi, District Manager  
Mojave Desert Resource Conservation District  
June 8, 2022  
Page 20 of 20

<p>sensitive aquatic species. Survey methodology shall be pre-approved by the California Department of Fish and Wildlife (CDFW) and shall include, at a minimum, visual observations, and appropriate trapping methodology, where appropriate. Documentation of these surveys and findings shall be submitted to CDFW for review prior to commencement of Project activities. If any sensitive fish, amphibian, or other aquatic species are observed during the pre-construction surveys, Project proponent shall contact CDFW for further consultation. At that time, CDFW may request Project proponent submit, for approval, measures to avoid and/or minimize Project impacts to those sensitive aquatic species.</p>		
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