

CITY OF VICTORVILLE DEVELOPMENT DEPARTMENT
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MITIGATED NEGATIVE DECLARATION
Preparation Date: August 4, 2022

Name or Title of Project: Site Plan, Conditional Use Permit, and Tentative Parcel Map Case No. PLAN21-00019.

Location: Southeast corner of U.S. Highway 395 and Dos Palmas Road
(APN No. 3096-381-01 & 3096-381-09)

Entity or Person Undertaking Project: Brahmbatt Architects; 980 Corporate Center Drive; Pomona, California, 91768

Description of Project: A Site Plan, Conditional Use Permits, and a Tentative Parcel Map with an Initial Study and a Mitigated Negative Declaration to allow for the development of a fueling station with alcohol sales and an accessory carwash, drive-thru restaurants, and a hotel, as well as the subdivision of two existing parcels into 6 parcels on properties zoned C-1 (Neighborhood Service) and R-1 (Single-family Residential).

Statement of Findings: The City of Victorville Planning Commission has reviewed the Initial Study for this proposed project and has found that there are no adverse environmental impacts to either the man-made or physical environmental setting if the following mitigation measures are implemented in conformance with the Mitigation Monitoring Policy, and does hereby direct staff to file a Notice of Determination, pursuant to the California Environmental Quality Act (CEQA).

A copy of the Initial Study and other applicable documents used to support the proposed Negative Declaration is available for review at the City of Victorville Planning Division.

Mitigation Measures:

Air Quality Measures:

1. **(AQ-1)** The Applicant shall prepare and submit to the MDAQMD, prior to commencing earth-moving activity, a dust control plan that describes all applicable dust control measures that will be implemented at the project.
2. **(AQ-2)** The Applicant shall ensure that signage, compliant with Rule 403 Attachment B, is erected at each project site entrance not later than the commencement of construction.
3. **(AQ-3)** The Applicant shall ensure the use of a water truck to maintain moist disturbed surfaces and actively spread water during visible dusting episodes to minimize visible fugitive dust emissions. For projects with exposed sand or fines deposits (and for projects that expose such soils through earthmoving), chemical stabilization or covering with a stabilizing layer of gravel will be required to eliminate visible dust/sand from sand/fines deposits.
4. **(AQ-4)** All perimeter fencing shall be wind fencing or the equivalent, to a minimum of four feet of height or the top of all perimeter fencing. The owner/operator shall maintain the wind fencing as needed to keep it intact and remove windblown dropout. This wind fencing requirement may be superseded by local ordinance, rule or project-specific biological mitigation prohibiting wind fencing.

5. **(AQ-5)** All maintenance and access vehicular roads and parking areas shall be stabilized with chemical, gravel or asphaltic pavement sufficient to eliminate visible fugitive dust from vehicular travel and wind erosion. Take actions to prevent project-related trackout onto paved surfaces and clean any project-related trackout within 24 hours. All other earthen surfaces within the project area shall be stabilized by natural or irrigated vegetation, compaction, chemical or other means sufficient to prohibit visible fugitive dust from wind erosion.

Biological Measures:

6. **(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.
7. **(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 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 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 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.
8. **(BIO-3)** If burrowing owls are observed on the project site during future surveys any preconstruction survey as per Mitigation Measure 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 portions of the site between September and January to determine the location of active (non-breeding) burrows.
- 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.
- d) Following a 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 2 hours of initiating Project activities.
- 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.

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.

9. **(BIO-4)** 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. 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. 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, 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, 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 13:1. Final mitigation acreage are subject to the approval of the State CDFW and federal wildlife agencies.

10. **(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, 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. 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 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, 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 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.
11. **(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, Applicant/Developer 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 Applicant/Developer does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.

12. **(BIO-7)** Prior to Project implementation, and during the appropriate season, the Applicant/Developer 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 Applicant/Developer 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 Applicant/Developer should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

Cultural Resource Measures:

13. **(CR-1)** Prior to the issuance of a grading permit, the Applicant shall provide evidence to the City of Victorville that a qualified archaeologist/paleontologist has been retained by the Project Applicant to conduct monitoring of excavation activities and has the authority to halt and redirect earthmoving activities in the event that suspected paleontological resources are unearthed.
14. **(CR-2)** The archaeologist/paleontologist monitor shall conduct full-time monitoring during grading and excavation operations in undisturbed, very old alluvial fan sediments at or below four (4) feet below ground surface and shall be equipped to salvage fossils if they are unearthed to avoid construction delays and to remove samples of sediments that are likely to contain the remains of small fossil invertebrates and vertebrates. The archaeologist/paleontologist monitor shall be empowered to temporarily halt or divert equipment to allow of removal of abundant and large specimens in a timely manner. Monitoring may be reduced if the potentially fossiliferous units are not present in the subsurface, or if present, are determined upon exposure and examination by qualified archaeologist/paleontologist personnel to have a low potential to contain or yield fossil resources.
15. **(CR-3)** Recovered specimens shall be properly prepared to a point of identification and permanent preservation, including screen washing sediments to recover small invertebrates and vertebrates, if necessary. Identification and curation of specimens into a professional, accredited public museum repository with a commitment to archival conservation and permanent retrievable storage, such as

the San Bernardino County Museum in San Bernardino, California, is required for significant discoveries. The archaeologist/paleontologist must have a written repository agreement in hand prior to initiation of mitigation activities.

16. **(CR-4)** A final monitoring and mitigation report of findings and significance shall be prepared, including lists of all fossils recovered, if any, and necessary maps and graphics to accurately record the original location of the specimens. The report shall be submitted to the City of Victorville prior to building final.
17. **(CR-5)** Prior to the initiation of ground-disturbing activities, field personnel should be alerted to the possibility of buried prehistoric or historic cultural deposits and paleontological resources. In the event that field personnel encounter buried cultural materials and/or paleontological resources, work in the immediate vicinity of the find should cease and a qualified archaeologist/paleontologists must be retained to assess the significance of the find. The qualified archaeologist/paleontologist shall have the authority to stop or divert construction excavation as necessary. If the qualified archaeologist/paleontologist finds that any cultural resources present meet eligibility requirements for listing on the California register or the national register of historic places (national register), plans for the treatments, evaluation, and mitigation of impacts to the find will need to be developed. Prehistoric or historic cultural materials that may be encountered during ground-disturbing activities include:
 - Historic-period artifacts such as glass bottles and fragments, cans, nails, ceramic and pottery fragments, and other metal objects;
 - Historic-period structural or building foundations, walkways, cisterns, pipes, privies, and other structural elements;
 - Pre-historic flaked-stone artifacts and debitage (waste material), consisting of obsidian, basalt, and/or cryptocrystalline silicates;
 - Dark, greasy soil that may be associated with charcoal, ash, bone, shell, flaked stone, ground stone and fire affected rocks; and,
 - Human remains.

Geology and Soils Measures:

18. **(GEO-1)** Prior to issuance of a grading permit the applicant shall obtain coverage under the statewide general NPDES permit for control of construction and post-construction related storm water in accordance with the requirements of the Small MS4 General Permit.
19. **(GEO-2)** The Applicant shall prepare a project specific Storm Water Pollution Prevention Plan (SWPPP) as required in the NPDES permit and shall identify site-specific erosion and sediment control best management practices that will be implemented; The SWPPP shall be applicable to all areas of the project site including construction areas, access roads to and through the site, and staging and stockpile areas; Temporary best management practices for all components of the project must be implemented until such time as permanent post-construction best management practices are in place and functioning; and all excess sediment excavated as part of the Project that is not used onsite should be stockpiled in a location such that it will not be transported by wind or water into a surface water. An adequate combination of sediment and erosion control BMPs must be implemented and maintained to temporarily stabilize all stockpiled sediment until such time that it is reused and/or permanently stabilized.
20. **(GEO-3)** The applicant/developer shall prepare and implement a comprehensive Spill Prevention and Response Plan for the Project, subject to review and approval by the City Planner and City Engineer (or their designee) prior to the issuance of any associated building or grading permit. This plan should

outline the site-specific monitoring requirements and list the best management practices necessary to prevent hazardous material spills or to contain and cleanup a hazardous material spill, should one occur.

Greenhouse Gas Measures:

21. **(GHG-1)** Prior to the issuance of building permits, the applicant/developer shall complete a Greenhouse Gas Emissions Screening Table in accordance with the City's adopted version of the San Bernardino County Regional Greenhouse Gas Reduction Plan 2021, while achieving the minimum number of points necessary to comply with the City of Victorville Greenhouse Gas reductions goals. This measure corresponds to Program GHG-1).
22. **(GHG-2)** To the extent feasible, the City of Victorville Planning Department shall verify incorporation of the identified Screening Table Measures within the Project building plans/site designs and/or verify compliance with an updated version of the City's Greenhouse Gas Screening Table prior to the issuance of building permit(s). This measure corresponds to Program GHG-2).

Noise Measures:

23. **(N-1)** The Applicant must ensure that the contractors use construction equipment that includes working mufflers and other sound suppression equipment as a means to reduce machinery noise.
24. **(N-2)** The Applicant must ensure that the use of the carwash tunnel is limited to the daylight hour only. When not in use, the car wash tunnel must be secured by a gate.
25. **(N-3)** The restaurant drive through lane restaurant speakers must remain at its location shown on the site plan so as not to impact the residences located to the west and east. The speakers must be designed so that noise amplification is directed towards the cars and not the residences.
26. **(N-4)** Loitering in the parking areas with attendant loud noise (radios, car noise, etc.) will not be permitted. The drive through lane restaurant speakers must remain at its location shown on the site plan so as not to impact the residences located to the east.
27. **(N-5)** Haul trucks will be prohibited from travelling on local streets in the residential areas. All haul trucks must travel either northbound or southbound on Highway 395.

Tribal Cultural Resources Measure:

28. **(TCR-1)** Prior to the issuance of a grading permit, the Applicant shall provide evidence to the City of Victorville that a qualified archaeologist/paleontologist has been retained by the Project Applicant to conduct monitoring of excavation activities and has the authority to halt and redirect earthmoving activities in the event that suspected paleontological resources are unearthed.
29. **(TCR-2)** The archaeologist/paleontologist monitor shall conduct full-time monitoring during grading and excavation operations in undisturbed, very old alluvial fan sediments at or below four (4) feet below ground surface and shall be equipped to salvage fossils if they are unearthed to avoid construction delays and to remove samples of sediments that are likely to contain the remains of small fossil invertebrates and vertebrates. The archaeologist/paleontologist monitor shall be empowered to temporarily halt or divert equipment to allow of removal of abundant and large specimens in a timely manner. Monitoring may be reduced if the potentially fossiliferous units are not present in the subsurface, or if present, are determined upon exposure and examination by qualified

archaeologist/paleontologist personnel to have a low potential to contain or yield fossil resources.

- 30. (TCR-3)** Recovered specimens shall be properly prepared to a point of identification and permanent preservation, including screen washing sediments to recover small invertebrates and vertebrates, if necessary. Identification and curation of specimens into a professional, accredited public museum repository with a commitment to archival conservation and permanent retrievable storage, such as the San Bernardino County Museum in San Bernardino, California, is required for significant discoveries. The archaeologist/paleontologist must have a written repository agreement in hand prior to initiation of mitigation activities.
- 31. (TCR-4)** A final monitoring and mitigation report of findings and significance shall be prepared, including lists of all fossils recovered, if any, and necessary maps and graphics to accurately record the original location of the specimens. The report shall be submitted to the City of Victorville prior to building final.

Public Review Period: August 5, 2022 through September 6, 2022.

Tentative Public Hearing Date: September 14, 2022