



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
 3602 Inland Empire Boulevard, Suite C-220
 Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



August 22, 2023
 Sent via email.

Travis Clark
 City of Victorville
 14343 Civic Drive
 Victorville, CA 92392

PLAN22-00017
 MITIGATED NEGATIVE DECLARATION
 SCH 2023070446



Dear Mr. Clark:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Victorville for the PLAN22-00017 Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. 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 California 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.

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 California 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

Travis Clark
City of Victorville
August 22, 2023
Page 2

(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

Proponent: Rich Development

Objective: The Project proposes to develop 2.361 acres in the City of Victorville for the purpose of constructing and operating one 3600 square foot express service car wash, one 1000 square foot coffee shop, and associated improvements to include landscaping, parking, and right-of-way and drainage improvements.

Location: The Project site is in the western portion of Victorville in San Bernardino County in Section 22, Township 5 North, Range 5 West (USGS Adelanto, CA 7.4-minute quadrangle). The property is approximately 5.5-acres and located at the northeast corner of the intersection of Palmdale Road and Cantina Street.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the City of Victorville in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The MND has not adequately identified and disclosed in the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are reduced to less than significant.

Burrowing Owl (*Athene cunicularia*)

The General Biological Resources Assessment (GBRA) describes the site as having suitable habitat for burrowing owl. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." The GBRA also recommends the inclusion of a mitigation measure for pre-construction surveys for burrowing owls to ensure that the chances of detecting the species is maximized. However no specific mitigation measure for burrowing owl was included in the MND. As suitable habitat for burrowing owl has been confirmed on the Project site, CDFW recommends the addition of Mitigation Measure BIO-4, with additions in **bold**:

Mitigation Measure BIO-4: Burrowing Owl Avoidance

Suitable burrowing owl habitat has been confirmed on the Project site; therefore, focused burrowing owl surveys shall be conducted in accordance with the Staff

Travis Clark
City of Victorville
August 22, 2023
Page 3

Report on Burrowing Owl Mitigation (2012) prior to the initiation of vegetation- or ground-disturbing activities. Prior to the initiation of Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and a surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11cm in diameter, >150cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, feces, and other “ornamentation”, feathers, whitewash, prey remains, etc.). If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season surveys for burrowing owl shall be conducted between February 1 and September 1. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found, the qualified biologist shall prepare and implement a Burrowing Owl Mitigation and Monitoring Plan (BOMMP). The BOMMP shall describe the proposed monitoring, minimization, mitigation actions. The BOMMP shall include the number and location of occupied burrow sites and details on adjacent or nearby suitable habitat available to owls for relocation. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation methods and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the BOMMP following CDFW and USFWS review and approval.

Desert Tortoise (*Gopherus agassizii*)

The Project site is located within documented desert tortoise range. The GBRA recommends a mitigation measure for desert tortoise, but one is not included in the MND. CDFW also recommends further desert tortoise surveys be performed, as the initial assessment for desert tortoise was performed in December, a time of year in which desert tortoises are in brumation. CDFW recommends inclusion of the following mitigation measures for desert tortoise:

Mitigation Measure BIO-5: Desert Tortoise

A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. 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

Travis Clark
City of Victorville
August 22, 2023
Page 4

for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, 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 to desert tortoise. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until appropriate authorization [i.e., California Endangered Species Act (CESA) Incidental Take Permit under Fish and Game Code section 2081] is obtained.

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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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.)

CONCLUSIONS

CDFW appreciates the opportunity to comment on the PLAN22-00017 MND to assist the City of Victorville in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marlee Poff, Environmental Scientist at email Marlee.Poff@wildlife.ca.gov.

Travis Clark
City of Victorville
August 22, 2023
Page 5

Sincerely,

DocuSigned by:

Alisa Ellsworth

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

Attachments:

Mitigation Monitoring and Reporting Program (MMRP) for CDFW-Proposed
Mitigation Measures

cc: Office of Planning and Research, State Clearinghouse, Sacramento

Travis Clark
 City of Victorville
 August 22, 2023
 Page 6

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 measures.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
Mitigation Measure BIO 4: Burrowing Owl Avoidance - Suitable burrowing owl habitat has been confirmed on the Project site; therefore, focused burrowing owl surveys shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (2012) prior to the initiation of vegetation- or ground-disturbing activities. Prior to the initiation of Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and a surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11cm in diameter, >150cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, feces, and other "ornamentation", feathers, whitewash, prey remains, etc.). If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season surveys for burrowing owl shall be conducted between February 1 and September 1. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found,	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

Travis Clark
 City of Victorville
 August 22, 2023
 Page 7

<p>the qualified biologist shall prepare and implement a Burrowing Owl Mitigation and Monitoring Plan (BOMMP). The BOMMP shall describe the proposed monitoring, minimization, mitigation actions. The BOMMP shall include the number and location of occupied burrow sites and details on adjacent or nearby suitable habitat available to owls for relocation. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation methods and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the BOMMP following CDFW and USFWS review and approval.</p>		
<p>Mitigation Measure BIO-5: Desert Tortoise - A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. 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 absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, 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 to desert tortoise. If complete avoidance cannot be achieved, the Project</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Travis Clark
City of Victorville
August 22, 2023
Page 8

<p>proponent shall not undertake Project activities and Project activities shall be postponed until appropriate authorization [i.e., California Endangered Species Act (CESA) Incidental Take Permit under Fish and Game Code section 2081] is obtained.</p>		
--	--	--