



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



October 9, 2023

Governor's Office of Planning & Research

Natalie P. Patty
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San Bernardino County
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Oct 09 2023

STATE CLEARINGHOUSE

Avellana Senior Wellness Community (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)

Dear Ms. Patty:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a MND from San Bernardino County (Lead Agency) for the Project pursuant 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. 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 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 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 &

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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: San Bernardino County

Objective: The construction and operation of a Senior Wellness Community. The Senior Wellness Community would include a 399-unit Senior Mobile Home Park, 11,700 square foot Community Center, 5,000 square foot Wellness Convenience Shop, 3,500 square foot First Aid Center, and a 750,000 gallon pond. The proposed development would also include a 60,000 gallon per day packaged wastewater treatment plant, a two Mega-Watt solar area, a water well designated to provide 45,000 gallons per day, two 125,000 gallon water storage tanks, and a 1,895 square foot caretaker residence.

Location: This Project is located south of Bear Valley Road, north of Circle 5 Ranch Road, and southwest of State Route 18 in the City of Apple Valley, California (Township 4 North, Range 2 West, Section 6, USGS Apple Valley South, California Quadrangle.)

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Bernardino County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Burrowing Owl (*Athene cunicularia*)

This site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, prohibited by sections 3503, 3503.5, and 3513. Take is defined by Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture, or kill".

CDFW appreciates that San Bernardino County will follow the guidelines in the Burrowing Owl Survey Protocol and Mitigation Guidelines, and also recommends following the guidelines found in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) available for download from CDFW's website: <https://www.wildlife.ca.gov/conservation/survey-protocols>. The Staff Report on Burrowing Owl Mitigation specifies three steps for Project Impact evaluations:

1. Habitat Assessment;
2. Surveys; and
3. Impact Assessment

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CDFW also appreciates the inclusion of MM BIO-1 in regards to pre-construction survey considerations. However, in accordance of the Staff Report on Burrowing Owl Mitigation, Take Avoidance surveys during the pre-construction period are intended to detect burrowing owl presence on a project site during a fixed period in time. The ISMND specifically states that pre-construction surveys shall be conducted any time of year. This does not allow for the proper assessment of impacts to burrowing owl, per step 3 of Project Impact evaluations. Step 1 Habitat assessments are conducted to evaluate the likelihood that the site supports burrowing owl. Step 2 Species specific surveys provide information needed to determine potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with FGC Sections 86, 3503, and 3503.5. Step 3 Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA Project activity.

If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2021), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 2 artificial burrows constructed to 1 natural burrow collapsed (2:1) as minimization for potentially significant impact of evicting burrowing owls. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted; thus CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect burrowing owls if they return. CDFW also recommends that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed and approved by CDFW; permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the Staff Report; site monitoring is conducted prior to, during and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided; and excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site.

CDFW offers the following revisions to MM BIO-1 (edits are in strikethrough and additions are in bold):

MM BIO-1

~~A Pre-construction Burrowing Owl Survey shall be conducted by a qualified biologist at least 14 days prior to any Project activities, at any time of year.~~ **Prior to any ground**

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disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential burrowing owl occupation must be Surveys shall be completed following the then current CDFG recommendations and guidelines for Burrowing Owl Protocol Surveys or most recent version by a qualified biologist. **The burrow survey can be conducted any time, but the breeding season focused survey cannot begin prior to February 1. If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on site, a breeding season survey for burrowing owl in accordance to the Staff Report (CDFG 2012).** If an active burrowing owl burrow is detected within any Project disturbance area or the prescribed radii from the project site pursuant to the CDFW Burrowing Owl Survey Protocol and Mitigation Guidelines (BUOW SPMG), a buffer zone surrounding the burrow shall be flagged in accordance with said BUOW SPMG , and no impacts to soils or vegetation or noise levels above as that allowed by CDFW shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation dated March 7, 2012 such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).

Western Joshua Tree (*Yucca brevifolia*)

The ISMND states that a Protected Plant Plan shall be developed with criteria for protections that would not require a State of California Incidental Take Permit. Project activities are expected to result in the removal of western Joshua tree (WJT) individuals, a candidate species under CESA, and in the permanent loss of WJT habitat. This Project has the potential for take of WJT individuals and associated seedbank through the removal of individuals; clearing of vegetation; general operation of vehicles and heavy equipment; grading; staging equipment and stockpiling. Incidental take of WJT individuals in the form of mortality (“kill”) may occur as a result of removing mature and emergent individuals; relocating individuals; eliminating and modifying habitat; removing seedbank and crushing and/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as CESA listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). 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”.

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The ISMND also states that in the event of the Protected Plant Plan be revised as such that the WJT would be proposed for removal, the tree shall be transplanted or stockpiled for any future transplanting. CDFW generally does not support the use of salvaging, translocation, or transplantation as a mitigation strategy for unavoidable impacts to WJT. As such, CDFW encourages San Bernardino County to apply for either a CESA Incidental Take Permit (ITP) for WJT or a Western Joshua Tree Conservation Act ITP to fully mitigate impacts to WJT.

CDFW recommends the following changes be made to MM BIO-2 (edits are in strikethrough and additions are in bold):

MM BIO-2

~~A Protected Plant Plan shall be developed and shall identify methods, locations, and criteria for protecting the existing Joshua Trees in place before, during, and post-construction that would not require a State of California Incidental Take Permit.~~

~~A State of California CDFW Incidental Take Permit will be required for the take of any existing WJT.~~

~~Should the Site Plan be revised such that the Joshua tree would be proposed for removal, the tree shall be transplanted or stockpiled for future transplanting wherever possible pursuant to CDFW criteria and San Bernardino County Development Code.~~

The western Joshua tree is a candidate threatened species under the California Endangered Species Act, and the following measures will be implemented:

- **Prior to the initiation of Joshua tree removal, obtain a California Endangered Species Act (CESA) Incidental Take Permit under Section 2081 of the Fish and Game Code, or a Western Joshua Tree Conservation Act Incidental Take Permit under Section 1927-1927.12 of the Fish and Game Code. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit.**
- **Name, qualifications, business address, and contact information of a biological monitor (designated botanist) shall be submitted to CDFW at least 30 days prior to Project activities. The designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.**
- **Project-related personnel shall access the Project area using existing routes, or routes identified in the Project description, and shall not cross western Joshua tree habitat outside or on route to the Project area.**

Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

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CDFW is concerned regarding the Mohave ground squirrel (MGS) section of the ISMND. The General Biological Resources Assessment states that a habitat assessment survey was conducted in January 2021. According to the Mohave Ground Squirrel Survey Guidelines (2010), unless certain circumstances apply, under the assumption of presence of MGS, CDFW requires a survey to be conducted for the MGS on the project site if the proposed site has potential habitat of this species and the presence of the species on the project site is unknown. Potential habitat is land supporting desert scrub vegetation within or adjacent to the geographic range of the species. A habitat assessment is not part of the MGS Survey Guidelines.

Additionally, the General Biological Resources Assessment states that “It is in the opinion of RCA Associates, Inc. that the habitat is not prime Mohave ground squirrel habitat and is very unlikely to support populations of the species based on the following criteria: 1) No recent documented observations in the general region. 2) No connectivity within habitat which may support the species.” Per the MGS Survey Guidelines, “A qualified biologist is a biologist who has demonstrated pertinent field experience in capturing and handling ground squirrels or other small mammals in desert/arid communities and who has been permitted by the Department to work without supervision.” CDFW recommends the lead agency include the qualifications of the biologist making this determination to ensure the accuracy of the document.

CDFW recommends including a Mitigation Measure regarding Mohave ground squirrel (MM BIO-6), as one is not currently included in the ISMND.

MM BIO-6. Preconstruction 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 CDFW. The preconstruction surveys shall cover the Project area and a 50-foot buffer zone, with visual surveys to determine Mohave ground squirrel activity and habitat quality that shall be undertaken during the period of 15 March through 15 April. If visual surveys do not reveal presence of the Mohave ground squirrel on the project site, standard small-mammal trapping grids shall be established in potential Mohave ground squirrel habitat. The number of grids will depend on the amount of potential habitat on the project site, as determined by the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or the most recent version. If Mohave ground squirrel presence is confirmed during the survey, the Project Proponent shall obtain an 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 Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall immediately be reported to CDFW.

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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: <http://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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the ISMND to assist San Bernardino County in identifying and mitigating Project impacts on biological resources and we request that the County address the Department's comments and concerns prior to adoption of the MND. If you should have any questions pertaining to the comments provided in this letter, please contact Marlee Poff at (760) 338-8942 or at Marlee.Poff@wildlife.ca.gov.

Sincerely,

DocuSigned by:


Alisa Ellsworth

Environmental Program Manager

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**ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM
 (MMRP)
 PURPOSE OF THE MMRP**

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

TABLE OF MITIGATION MEASURES

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

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
<p>Mitigation Measure BIO-1 – Burrowing Owl</p> <p>Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential burrowing owl occupation must be completed following the then current CDFG recommendations and guidelines for Burrowing Owl Protocol Surveys or most recent version by a qualified biologist. The burrow survey can be conducted any time, but the breeding season focused survey cannot begin prior to February 1. If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on site, a breeding season survey for burrowing owl in accordance to the Staff Report (CDFG 2012). If an active burrowing owl burrow is detected within any Project disturbance area or the prescribed radii from the project site pursuant to the CDFW Burrowing Owl Survey Protocol and Mitigation Guidelines (BUOW SPMG), a buffer zone surrounding the burrow shall be flagged in</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>accordance with said BUOW SPMG , and no impacts to soils or vegetation or noise levels above as that allowed by CDFW shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation dated March 7, 2012 such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).</p>		
<p>Mitigation Measure BIO-2 – Western Joshua Tree</p> <p>The western Joshua tree is a candidate threatened species under the California Endangered Species Act, and the following measures will be implemented:</p> <ul style="list-style-type: none"> • Prior to the initiation of Joshua tree removal, obtain a California Endangered Species Act (CESA) Incidental Take Permit under Section 2081 of the Fish and Game Code, or a Western Joshua Tree Conservation Act Incidental Take Permit under Section 1927-1927.12 of the Fish and Game Code. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit. • Name, qualifications, business address, and contact information of a biological monitor (designated botanist) shall be 	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>submitted to CDFW at least 30 days prior to Project activities. The designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.</p> <ul style="list-style-type: none"> • Project-related personnel shall access the Project area using existing routes, or routes identified in the Project description, and shall not cross western Joshua tree habitat outside or on route to the Project area. 		
<p>Mitigation Measure BIO-6 – Mohave Ground Squirrel</p> <p>Preconstruction 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 CDFW. The preconstruction surveys shall cover the Project area and a 50-foot buffer zone, with visual surveys to determine Mohave ground squirrel activity and habitat quality that shall be undertaken during the period of 15 March through 15 April. If visual surveys do not reveal presence of the Mohave ground squirrel on the project site, standard small-mammal trapping grids shall be established in potential Mohave ground squirrel habitat. The number of grids will depend on the amount of potential habitat on the project site, as determined by the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or the most recent version. If Mohave ground squirrel presence is confirmed during the survey, the Project Proponent shall obtain an 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 Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall immediately be reported to CDFW.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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