

CITY OF VICTORVILLE DEVELOPMENT DEPARTMENT
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MITIGATED NEGATIVE DECLARATION
Preparation Date: June 28, 2024

Name or Title of Project: PLAN22-00039 - Luna and 395 Commercial Project

Location: SWC Luna Road and US Hwy 395, Victorville, San Bernardino (Assessor's Parcel Number [APN] 3096-361-09-0000).

Entity or Person Undertaking Project: United Engineering Group (Applicant)

Description of Project: Development of a C-Store (Retail) with Quick Serve Food, eight Multiple Product Dispensers (gas station "islands"), an Express Car Wash, and a Fast-Food Restaurant totaling 19,610 square feet on an approximately 3.57-acre vacant/undeveloped building site.

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:

Biological Measures:

- 1. MM BIO-1. Comply with the Western Joshua Conservation Act.** Prior to the initiation of western Joshua tree removal, relocation, replanting, trimming or pruning, or any activity that may result in take of WJT on site, the Project Proponent shall obtain California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Section 2081 of the CESA, or any other appropriate take authorization under CESA or the Western Joshua Tree Conservation Act (WJTCA) (Fish and Game Code §§ 1927-1927.12). The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit, which may consist of mitigation fees, relocation, off-site conservation, a CDFW-approved mitigation bank or a combination thereof.
- 2. MM BIO-2. Pre-Construction Focused Plant Survey.** A focused plant survey shall be performed for all special status plant species that have the potential to occur on the site and be performed during the blooming season (April through June) to determine the potential environmental effects of the proposed projects on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife.
- 3. MM BIO-3. Burrowing Owl Pre-Construction Survey.** Prior to any ground disturbance, pre-construction surveys for Burrowing Owls on the Project site and in the surrounding area in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012, shall be conducted no more than 14 days prior to the beginning of Project activities, and a secondary survey must be conducted by a qualified

biologist within 24 hours prior to the beginning of project construction to determine if the Project site contains suitable burrowing owl habitat or sign thereof and to avoid any potential impacts to the species. The surveys shall include 100 percent coverage of the Project site. If both surveys reveal no burrowing owls are present or sign thereof, no additional actions related to this measure are required, and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction. If occupied active burrows or sign thereof are found within the development footprint during the pre-construction clearance survey, Mitigation Measure BIO-3 shall apply.

4. **MM BIO-4. Burrowing Owl Avoidance/Relocation.** If active burrows or signs thereof are found within the development footprint during the pre-construction clearance surveys, site-specific non-disturbance buffer zones shall be established by the qualified biologist and shall be no less than 300 feet. If determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows, passive relocation shall be implemented if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the applicant and the City, shall prepare and submit a passive relocation program in accordance with Appendix E of the CDFW's Staff Report on Burrowing Owl Mitigation for CDFW review/approval prior to the commencement of disturbance activities onsite and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. 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. The letter shall be submitted to CDFW.
5. **MM BIO-5. Mohave Ground Squirrel Pre-Construction Survey.** Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines, or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The pre-construction surveys shall cover the Project Area and a 50-foot buffer zone. If Mohave ground squirrel presence is confirmed during the survey, the Project Proponent should 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 be immediately reported to CDFW.
6. **MM BIO-6. Desert Tortoise Pre-Construction Survey.** 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 preconstruction 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 a 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 two 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 the 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.

If desert tortoise presence is 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 §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, 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 (ITP) under Fish and Game Code §2081) is obtained.

If complete avoidance of desert tortoise is infeasible, CDFW recommends that the Project Proponent apply for a CESA ITP and prepare a site-specific Desert Tortoise Translocation Plan (Plan) that will provide details on the proposed recipient site, desert 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 shall 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 occupied desert tortoise habitat and/or mitigation bank credit purchase from a CDFW-approved mitigation bank mitigated at a ratio determined by CDFW after Project analysis.

7. **MM BIO-7. Worker Environmental Awareness Training:** A qualified biologist must present a biological resources information training for desert tortoise, Mohave ground squirrel, and burrowing owl prior to Project activities to all personnel who will be working within the Project site. The same instruction shall be provided for any new workers prior to their performing any work onsite. Interpretation shall be provided for any non-English speaking workers.
8. **MM BIO-8. Deceased or Injured Tortoise Within the Project Site:** USFWS and CDFW shall be informed of any injured or deceased desert tortoise (and other special-status species) found on site (verbal notice within 24-hours and written notification within 5-days).
9. **MM BIO-9. Species Avoidance:** If during Project activities a desert tortoise is discovered within the Project site, all activities shall immediately stop and the CDFW shall be immediately notified (within 24 hours). Coordination with respective state and federal resource agencies shall be required prior to restarting activities to determine appropriate avoidance, minimization, and mitigation measures.
10. **MM BIO-10. Nesting Bird Pre-Construction Survey.** Regardless of the time of year, a pre-construction sweep shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. Additionally, a nesting bird survey shall be conducted by a qualified biologist no more than 3 days prior to the initiation of project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests.

The survey shall be conducted by a qualified biologist. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment. If nesting bird activity is present, a no-disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction or abandonment. If nesting bird activity is present, a no-disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction and disruption of breeding or rearing behavior. The buffer shall be a minimum of 500 feet for raptors and 300 feet for songbirds, unless a smaller buffer

is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests, as confirmed by a qualified biologist. A qualified biologist shall inspect the active nest to determine whether construction activities are disturbing the nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no disturbance buffer' shall be expanded. If there is no nesting activity, then no further action is needed for this measure.

11. MM BIO-11. Crotch's Bumble Bee Survey. Prior to the initiation of project activities, the Project proponent must obtain a qualified biologist to conduct surveys for the candidate bumble bee species. The qualified biologist will conduct habitat mapping no less than 120 days prior to the initiation of Project activities with the submittal of a complete baseline habitat mapping report encompassing Fish and Game Code 1602 resources. Mapping will identify habitat alliances following Sawyer et al. (2009) and the report will identify species composition for each mapped alliance. If habitat mapping identifies the presence of plants (e.g., genera *Antirrhinum*, *Phacelia*, *Clarkia*, *Cordylanthus*, *Dendromecon*, *Eschscholzia*, *Eriogonum*, *Hypericum*, *Lantana*, *Lupinus*, *Salvia*, *Asclepias*, *Cirsium*, *Monardella*, *Keckiella*, *Acmispon*, *Euthamia*, *Ehrendorferia*, *Vicia*, and/or *Trichostema*) or other suitable habitats, then a qualified biologist approved by CDFW shall prepare a draft survey plan and conduct surveys for Crotch's bumble bee. The survey plan will identify the timing, number, and duration of survey efforts and procedures to follow if Crotch's bumble bee is detected within the Project area. The survey methodology shall generally follow the U.S. Fish and Wildlife Service protocol for the Rusty Patched bumble bee (USFWS 2019). CDFW also recommends completing multiple surveys, coinciding with the peak bloom periods of the plants listed above.

Following the completion of surveys, and no less than 30 days prior to initiation of Project activities, survey results shall be submitted to CDFW for review and comment. If Crotch's bumble bee is detected during surveys, Project activities shall not occur in any occupied habitat areas and the qualified biologist shall immediately notify CDFW.

12. MM BIO-12. Compensatory Mitigation for Waters of the State. Prior to the issuance of a grading permit or any earth-disturbing activities within the jurisdictional waters identified in Jurisdictional Delineation Luna Road and Highway 395 Commercial/Retail Center City of Victorville, San Bernardino County, California, L&L Environmental, December 14, 2022, the Project Proponent shall obtain any required regulatory permits required by the California Department of Fish & Wildlife (CDFW), and a Section 401 Water Quality Certification from the RWQCB for temporary and/or permanent impacts to the jurisdictional area that are regulated by the CDFW and the RWQCB. Impacts shall be mitigated at 3:1, or as modified by the regulatory agencies through the permitting process.

Cultural Resources Measures:

13. MM CUL-1. In the event that cultural resources are discovered during project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work on the other portions of the project outside of the buffered area may continue during this assessment period. Additionally, the Yuhaaviatam of San Manuel Nation Cultural Resources Department (YSMN) shall be contacted, as detailed within TCR-1, regarding any pre-contact and/or historic-era finds and be provided information after the archaeologist makes his/her initial assessment of the nature of the find, so as to provide Tribal input with regards to significance and treatment.

14. MM CUL 2. If significant pre-contact and/or historic-era cultural resources, as defined by CEQA (as amended, 2015), are discovered and avoidance cannot be ensured, the archaeologist shall develop a Monitoring and Treatment Plan, the drafts of which shall be provided to YSMN for review and

comment, as detailed within TCR-1. The archaeologist shall monitor the remainder of the project and implement the Plan accordingly.

- 15. MM CUL 3.** If human remains or funerary objects are encountered during any activities associated with the project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease and the County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5 and that code enforced for the duration of the project.

Geology and Soils Measures:

- 16. MM PALEO-1. Inadvertent Discovery of Paleontological Resources.** If paleontological resources are encountered during the implementation of the Project, ground-disturbing activities will be temporarily redirected from the vicinity of the find. A qualified paleontologist (the "Project Paleontologist") shall be retained by the developer to make an evaluation of the find. If the resource is significant, Mitigation Measure PALEO-2 shall apply.

- 17. MM PALEO-2. Paleontological Treatment Plan.** If a significant paleontological resource(s) is discovered on the property, in consultation with the Project Proponent and the City, the qualified paleontologist shall develop a plan of mitigation that shall include salvage excavation and removal of the find, removal of sediment from around the specimen (in the laboratory), research to identify and categorize the find, curation in the find a local qualified repository, and preparation of a report summarizing the find.

Tribal Cultural Resources Measures:

- 18. MM TCR-1.** The Yuhaaviatam of San Manuel Nation Cultural Resources Department (YSMN) shall be contacted, as detailed in CUL-1, of any pre-contact and/or historic-era cultural resources discovered during project implementation and be provided information regarding the nature of the find, so as to provide Tribal input with regards to significance and treatment. Should the find be deemed significant, as defined by CEQA (as amended, 2015), a cultural resources Monitoring and Treatment Plan shall be created by the archaeologist, in coordination with YSMN, and all subsequent finds shall be subject to this Plan. This Plan shall allow for a monitor to be present that represents YSMN for the remainder of the project, should YSMN elect to place a monitor on-site.
- 19. MM TCR-2.** Any and all archaeological/cultural documents created as a part of the project (isolate records, site records, survey reports, testing reports, etc.) shall be supplied to the applicant and Lead Agency for dissemination to YSMN. The Lead Agency and/or applicant shall, in good faith, consult with YSMN throughout the life of the project.

Note: Yuhaaviatam of San Manuel Nation realizes that there may be additional tribes claiming cultural affiliation to the area; however, Yuhaaviatam of San Manuel Nation can only speak for itself. The Tribe has no objection if the agency, developer, and/or archaeologist wishes to consult with other tribes in addition to YSMN and if the Lead Agency wishes to revise the conditions to recognize additional tribes.

Utilities and Service System Measures:

- 20.** Construction/installation of utilities and service systems will impact Biological Resources, Cultural Resources, Noise, Paleontological Resources, and Tribal Cultural Resources. MM BIO-1 through MM BIO-11, MM CUL-1 through MM CUL-3, MM PALEO-1, MM PALEO-2 and MM TCR -1 and MM TCR-2 described above are required.

PLAN24-00008 - Independent Station (Green Tree Blvd. & Hesperia Road)

Public Review Period: June 28, 2024, through July 29, 2024.

Tentative Public Hearing Date: August 14, 2024