



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



October 17, 2024
Sent via email

Shane Stueckle
Deputy Town Manager
Town of Yucca Valley
58928 Business Center Drive
Yucca Valley, California 92284
sstueckle@yucca-valley.org

Dear Shane Stueckle:

Yucca Valley Community Center Athletics Facility Project (Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2024090676

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.

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.

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PROJECT DESCRIPTION SUMMARY

Proponent: Yucca Valley Community Center Athletic Facility Project

Objective: The objective of the Project is to provide expanded recreational opportunities to the citizens of the Town of Yucca Valley (Town). Primary Project activities include the construction of pickleball courts, basketball courts, shaded seating areas and bleachers, restroom building, fencing and landscaping; expansion of the parking lot; and reconstruction of the skate park.

Location: Town of Yucca Valley, San Bernardino County, at 57090 29 Palms Highway, assessor parcel number (APN) 0595-36-127 and Latitude 34.125290, Longitude 116.418403.

Timeframe: Construction of the proposed Project would occur over three phases. The first phase is planned to occur over a six-month period between November 2024 and April 2025. Construction of phases two and three are dependent on funding.

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 Town 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 the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are reduced to less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW requests that additional information and analyses be added to the final MND, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

COMMENT #1: Western Joshua Tree (REVISED)

Section 3.4 Biological Resources (a), Pages 39-41; Appendix B

Issue: The Project will have impacts on Western Joshua Tree (WJT) individuals, that are subject to Fish and Game Code §§ 1927-1927.12.

Specific impact: Project implementation will result in the direct take of WJT and potential indirect take of WJT.

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Why impact would occur: Excavation, trenching, and paving activities associated with construction of the Project will entail lethal take of WJT individuals. Additionally, these activities could impact root systems, change patterns of drainage, infiltration, and soil moisture that could impact and lead to the take of WJT individuals that were planned to be avoided by Project activities.

Evidence impact would be significant: According to the WJT census conducted for the Project, 75 WJT will be lethally removed and project activities will occur within a 15-meter buffer of an additional 59 WJT. The lethal take 75 WJT may require the creation of a WJT Relocation Plan. The MND does not discuss any minimization measures to ensure that the WJT to be preserved on-site are not impacted by construction activities.

Recommended Potentially Feasible Mitigation Measure

Mitigation Measure: To address the above issues and help the Project applicant avoid unlawfully taking of nesting birds, CDFW recommends the inclusion of the below revisions to BIO-2 in the final MND (edits are in ~~striketrough~~ and **bold**).

BIO-1: Comply with the Western Joshua Tree Conservation Act (WJTCA) or the California Endangered Species Act (CESA). Prior to the initiation of ground disturbing activities that may result in incidental take of western Joshua tree by the removal, relocation, replanting, trimming or pruning, or other activity that may result in take of WJT on site, the Project Proponent shall obtain a CESA Incidental Take Permit (ITP) under Section 2081 of the CESA, or any other appropriate take authorization under CESA or the WJTCA (Fish and Game Code §§ 1927-1927.12). Mitigation for CESA will occur at a minimum 1:1 ratio or through the payment of prescribed fees based upon a WJT census approved by CDFW as required by the WJTCA. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit, which may consist of mitigation obligations, relocation, off-site conservation, a CDFW-approved mitigation bank or a combination thereof.

The Town shall clearly identify with visible flagging, or with an alternative method approved in advance in writing by CDFW, all WJT authorized to be taken within the Project Site under the WJTCA or CESA.

The Town shall ensure no work is conducted within the no-work buffers for WJT that will be preserved on site. The Town shall mark no-work buffers using fencing, stakes and ropes, or stakes and flagging of a different color than the color used to identify WJT individuals authorized to be taken. The Town shall maintain the no-work buffer markings for the duration of the Project. After all Project Activities are completed, the town must remove all materials used to mark no-work buffers.

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A qualified biological monitor should be present on site during the transplantation or removal of the Joshua trees. During the remainder of project construction, the biological monitor shall perform weekly site visits to ensure no further project activities occur in the vicinity of the WJTs. The designated botanist shall be responsible for monitoring project construction activities to help avoid incidental take of WJTs.

An education program (Worker Environmental Awareness Program-WEAP) shall be conducted for all construction persons employed or working in the project site before performing any work. The WEAP will inform all personnel of the Joshua trees protected status.

Project-related construction 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 site.

The designated botanist shall have authority to immediately stop any activity and/or to order any reasonable measure to avoid unauthorized take of an individual Western Joshua Tree.

COMMENT #2: Nesting Birds (REVISED)

Section Biological Resources (a), Page 16, 18; Appendix C

Issue: The Project may have impacts on nesting birds, that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of vegetation onsite.

Why impact would occur: Project activities could result in temporary as well as long-term loss of suitable nesting and foraging habitats. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy equipment may disrupt nesting bird mating calls and/or songs, which could impact reproductive success.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

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Evidence impact would be significant: It is the Project proponent's responsibility to avoid take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

Recommended Potentially Feasible Mitigation Measure

Mitigation Measure: To address the above issues and help the Project applicant avoid unlawfully taking of nesting birds, CDFW recommends the inclusion of the below revisions to BIO-2 in the final MND (edits are in ~~strikethrough~~ and **bold**).

BIO-2: To the extent feasible, vegetation removal shall be conducted outside of the nesting season for migratory birds to avoid direct impacts. ~~If vegetation removal occurs during the migratory bird nesting season, between February 1 and September 15, pre-construction~~ **Pre-construction** nesting bird surveys shall be performed **by a qualified biologist** within three days prior to vegetation removal. **The survey should cover all suitable habitat for birds including trees, shrubs bare ground, burrow cavities, and structures, as well as an appropriate buffer of the habitat.** If active nests are found, **an appropriate buffer shall be established around each nest site, based on the professional judgment of a qualified biologist. Buffers shall be delineated by temporary flagging or other means and remain in effect as long as construction is occurring or until the nest is no longer active.** ~~during nesting bird surveys, they shall be flagged. A 250-foot buffer shall be fenced around song bird nests and a 500-foot buffer shall be fenced around raptor nests.~~ **No construction will take place within the buffer until the young have fledged and left the nest, as determined by the qualified biologist. The biological monitor shall take steps to ensure that construction activities will not disturb or disrupt nesting activities. If the biological monitor determines that construction activities are disturbing or disrupting nesting activities, the biologist shall have the authority to halt construction to reduce noise and/or disturbance at the nests and adjust/increase the avoidance buffer as appropriate.**

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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 found at the following link: 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. 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.

FILING FEES

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 appreciates the opportunity to comment on the MND to assist the Town of Yucca Valley in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jason Bill, Senior Environmental Scientist Specialist at Christopher.Bill@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

Attachment 1: Mitigation and Monitoring Reporting Plan (MMRP) for CDFW-Proposed Mitigation Measures

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ec: Jason Bill, Environmental Scientist Specialist, CDFW
Christopher.Bill@Wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

| Mitigation Measures | Timing and Methods | Responsible Parties |
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| <p>Mitigation measure BIO-1: Western Joshua Tree</p> <p>Comply with the Western Joshua Tree Conservation Act (WJTCA) or the California Endangered Species Act (CESA). Prior to the initiation of ground disturbing activities that may result in incidental take of western Joshua tree by the removal, relocation, replanting, trimming or pruning, or other activity that may result in take of WJT on site, the Project Proponent shall obtain a CESA Incidental Take Permit (ITP) under Section 2081 of the CESA, or any other appropriate take authorization under CESA or the WJTCA (Fish and Game Code §§ 1927-1927.12). Mitigation for CESA will occur at a minimum 1:1 ratio or through the payment of prescribed fees based upon a WJT census approved by CDFW as required by the WTJCA. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit, which may consist of mitigation obligations, relocation, off-site conservation, a CDFW-approved mitigation bank or a combination thereof.</p> <p>The Town shall clearly identify with visible flagging, or with an alternative method approved in advance in writing by CDFW, all WJT authorized to be taken within the Project Site under the WJTCA or CESA.</p> <p>The Town shall ensure no work is conducted within the no-work buffers for WJT that will be preserved on site. The Town shall mark no-work buffers using fencing, stakes and ropes, or stakes and flagging of a different color than the color used to identify WJT individuals authorized to be taken. The Town shall maintain the no-work buffer markings for the duration of the Project. After all Project Activities are completed, the town must remove all materials used to mark no-work buffers.</p> | <p>Timing: Prior to ground disturbing activities</p> <p>Methods: See Mitigation Measure</p> | <p>Implementation: Town of Yucca Valley</p> <p>Monitoring and Reporting: Town of Yucca Valley</p> |

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| <p>A qualified biological monitor should be present on site during the transplantation or removal of the Joshua trees. During the remainder of project construction, the biological monitor shall perform weekly site visits to ensure no further project activities occur in the vicinity of the WJTs. The designated botanist shall be responsible for monitoring project construction activities to help avoid incidental take of WJTs.</p> <p>An education program (Worker Environmental Awareness Program-WEAP) shall be conducted for all construction persons employed or working in the project site before performing any work. The WEAP will inform all personnel of the Joshua trees protected status.</p> <p>Project-related construction 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 site.</p> <p>The designated botanist shall have authority to immediately stop any activity and/or to order any reasonable measure to avoid unauthorized take of an individual Western Joshua Tree.</p> | | |
| <p>Mitigation measure BIO-2: Nesting Birds</p> <p>To the extent feasible, vegetation removal shall be conducted outside of the nesting season for migratory birds to avoid direct impacts. Pre-construction nesting bird surveys shall be performed by a qualified biologist within three days prior to vegetation removal. The survey should cover all suitable habitat for birds including trees, shrubs bare ground, burrow cavities, and structures, as well as an appropriate buffer of the habitat. If active nests are found, an appropriate buffer shall be established around each nest site, based on the professional judgment of a qualified biologist. Buffers shall be delineated by temporary flagging or other means and remain in effect as long as construction is occurring or until the nest is no</p> | <p>Timing: No more than 3 days prior to vegetation removal or ground-disturbing activities. Methods: See Mitigation Measure</p> | <p>Implementation: Town of Yucca Valley Monitoring and Reporting: Town of Yucca Valley</p> |

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| <p>longer active. No construction will take place within the buffer until the young have fledged and left the nest, as determined by the qualified biologist. The biological monitor shall take steps to ensure that construction activities will not disturb or disrupt nesting activities. If the biological monitor determines that construction activities are disturbing or disrupting nesting activities, the biologist shall have the authority to halt construction to reduce noise and/or disturbance at the nests and adjust/increase the avoidance buffer as appropriate.</p> | | |
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