



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



March 21, 2025
Sent via email

Mina Morgan
Assistant Planner
City of Victorville
14343 Civic Drive
Victorville, California 92393
Immorgan@victorvilleca.gov

Case No. PLAN24-00037- Woodspring Suites (Project)
Mitigated Negative Declaration (MND)
SCH# 2025021045

Dear Mina Morgan:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Victorville (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Mina Morgan, Assistant Planner
City of Victorville
March 21, 2025
Page 2

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.

PROJECT DESCRIPTION SUMMARY

Proponent: TGC Group

Objective: The Project proposes the construction and subsequent operation of a new four-story residential hotel on a 3.18-acre parcel. The hotel will be a total of 46,400 square feet and the remainder of the parcel will be developed into parking lots and landscaping.

Location: The Project is located in the City of Victorville, northeast of the corner of Cottonwood Avenue and Pahute Avenue, directly east of Interstate 15 and ½ mile north of Bear Valley Road. The Project site's latitude and longitude are 34.478251°N, - 117.337858°W.

Timeframe: Not specified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

COMMENT #1: Western Joshua Tree (*Yuca brevifolia*)

Issue: The Project will have impacts on Western Joshua Tree (WJT) individuals, that are subject to Fish and Game Code §§ 1927-1927.12 & Fish and Game Code § 2081.

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

Mina Morgan, Assistant Planner
City of Victorville
March 21, 2025
Page 3

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

Evidence impact would be significant: According to the Project's General Biological Resources Assessment (GBRA), field surveys were conducted on December 16, 2021. The GBRA indicates that the vegetation on the Project site "contains multiple Joshua trees, and any attempt to remove a Joshua tree, dead or alive, from its current position will require an Incidental Take Permit (ITP)."

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW strongly recommends the following revisions to BIO-Mitigation #3 (edits are in ~~strike through~~ and **bold**) for adoption in the final MND.

Mitigation Measure: BIO-Mitigation #3 Western Joshua Tree (Revised)

Prior to grading, mitigation for direct impacts to the western Joshua trees within the project site will be fulfilled through the attainment of a Western Joshua Tree Conservation Act (WJTCA) Incidental Take Permit (**ITP**). **To obtain a WJTCA ITP, a current census of WJT is required** and a payment of the ~~electe~~d fees as described in Section 1927.3 of the WJTCA **is due, the amount of which will be determined by the California Department of Fish and Wildlife based on the census data.** ~~In~~ conformance with the ~~reduced fee schedule prescribed for the project area,~~ mitigation will consist of payment of \$2,544.75 for each western Joshua tree five meters or greater in height. ~~California Department of Fish and Wildlife determines the final fee.~~

COMMENT #2: Nesting Birds

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, Species of Special Concern, and common birds that are subject to Fish and Game Code sections 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project as described could result in direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, displacement, and reduction of habitat and habitat quality.

Why impact would occur: The MND includes BIO-Mitigation #1, which requires a general pre-construction survey for nesting birds, burrowing owl, and desert tortoise. However, BIO-Mitigation #1 does not outline specific survey protocols. General pre-construction surveys do not provide for adequate detection of nesting birds and therefore may possibly result in take.

Mina Morgan, Assistant Planner
City of Victorville
March 21, 2025
Page 4

Evidence impact would be significant: 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.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW strongly recommends the adoption of BIO-Mitigation #4 below in the final MND.

Mitigation Measure: BIO-Mitigation #4 Pre-construction Nesting Bird Surveys (New)

A qualified avian biologist shall conduct pre-construction nesting bird surveys at the appropriate time of day/night, during appropriate weather conditions no more than 3 days prior to the initiation of ground disturbing activities. The survey shall focus on all suitable nesting areas such as but not limited to: trees, shrubs, bare ground, burrows, cavities, and structures. If a nest is suspected, but not confirmed, the qualified avian biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be confirmed based on observations. If a nest is observed, but thought to be inactive, the qualified avian biologist shall monitor the nest for at least 1 hour for passerine birds and 4 hours for raptors. When an active nest is confirmed, the qualified avian biologist shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. The qualified avian biologist shall monitor the next to determine the efficacy of the buffer and shall adjust the buffer accordingly if it is determined that birds are having an adverse reaction. The qualified avian biologist shall monitor the next daily until activities are no longer within 300 feet of the nest, or the fledglings become independent of their nest, or the nest has failed.

COMMENT #3: CDFW Streambed Alteration Agreement

Issue: Based on aerial imagery of the Project area, a streambed flows parallel to Pahute Avenue on the south side of the Project site. The streambed is an unnamed

Mina Morgan, Assistant Planner
City of Victorville
March 21, 2025
Page 5

tributary to Oro Grande Wash. Project construction activities as described may result in substantial impacts to this streambed.

Specific impact: Construction activities may result in the placement of fill material within streambeds, leading to the loss of desert wash habitat for biological resources.

Why impact would occur: Grading activities to construct the Project could potentially place fill within streambeds on the site, obstructing the natural flow of streams.

Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW strongly recommends the adoption of the following new measure, BIO-Mitigation #5, for inclusion in the final MND.

Mitigation Measure: BIO-Mitigation #5 CDFW Streambed Alteration Agreement (New)

Prior to construction activities, mapping of stream resources in the Project area shall be conducted to identify streams on site. If Project construction activities occur within a streambed, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.

COMMENT #4: Burrowing owl (*Athene cunicularia*)

Issue: Burrowing owl is a candidate species under CESA. The Project has the potential to result in permanent and temporary loss and degradation of burrowing owl habitat. The Project may result in take of burrowing owl during construction and the life of the Project. If the Project, including Project construction or any Project related activity during the life of this Project, may result in the take of a CESA-listed species, CDFW

Mina Morgan, Assistant Planner
City of Victorville
March 21, 2025
Page 6

recommends that the Project proponent seek appropriate authorization (i.e., Incidental Take Permit [ITP]) prior to Project implementation.

Specific impact: The MND does not include pre-construction surveys for burrowing owl, a CESA candidate species.

Why impact would occur: Construction activities have the potential to take burrowing owls by collapsing burrows and modifying foraging and nesting habitat.

Evidence impact would be significant: The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of burrowing owl. On October 10, 2024, the Fish and Game Commission designated burrowing owl as a candidate species under CESA. CDFW considers the take of burrowing owl and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant, which would occur through a CESA ITP. Further, burrowing owl is protected under Fish and Game Code section 3503.5 and the Migratory Bird Treaty Act.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW strongly recommends the adoption of the following new measure, BIO-Mitigation #6, for inclusion in the final MND.

Mitigation Measure: BIO-Mitigation #6 Burrowing Owl (New)

Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), focused burrowing owl surveys shall be conducted by a qualified biologist according to the CDFW Staff Report on Burrowing Owl Mitigation (CDFG, 2012 or most recent version) for the Project site and surrounding 500 ft radius. Take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. Burrowing owls may re-colonize a site after only a few days, thus time lapses between Project activities require subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If the surveys confirm the presence of burrowing owls, impacts to burrowing owl shall be fully avoided. If impacts to burrowing owl are unavoidable, the City should apply for a CESA ITP.

Additional Comments and Suggestions

Submitting Data on Special Status Species

Mina Morgan, Assistant Planner
City of Victorville
March 21, 2025
Page 7

CDFW strongly recommends to the Project proponent to submit data to the California Natural Diversity Database at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>, regarding any special status species such as but not limited to: desert tortoise, Bendire's thrasher, burrowing owl, Cooper's hawk, golden eagle, LeConte's thrasher, loggerhead shrike, northern harrier, prairie falcon, Swainson's hawk that are observed within or adjacent to the Project area.

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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

Mina Morgan, Assistant Planner
City of Victorville
March 21, 2025
Page 8

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

ATTACHMENTS

Attachment A: Draft Mitigation Monitoring and Reporting Plan and Draft Recommendations

REFERENCE

California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

Mina Morgan, Assistant Planner
 City of Victorville
 March 21, 2025
 Page 9

Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-Mitigation #3 Western Joshua Tree (Revised)</p> <p>Prior to grading, mitigation for direct impacts to the western Joshua trees within the project site will be fulfilled through the attainment of a Western Joshua Tree Conservation Act (WJTCA) Incidental Take Permit (ITP). To obtain a WJTCA ITP, a current census of WJT is required and a payment of the fees as described in Section 1927.3 of the WJTCA is due, the amount of which will be determined by the California Department of Fish and Wildlife based on the census data.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent</p>
<p>BIO-Mitigation #4 Pre-construction Nesting Bird Surveys (New)</p> <p>A qualified avian biologist shall conduct pre-construction nesting bird surveys at the appropriate time of day/night, during appropriate weather conditions no more than 3 days prior to the initiation of ground disturbing activities. The survey shall focus on all suitable nesting areas such as but not limited to: trees, shrubs, bare ground, burrows, cavities, and structures. If a nest is suspected, but not confirmed, the qualified avian biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be confirmed based on observations. If a nest is observed, but thought to be inactive, the qualified avian biologist shall monitor the nest for at least 1 hour for passerine birds and 4 hours for raptors. When an active nest is confirmed, the qualified avian biologist</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified avian biologist</p>

Mina Morgan, Assistant Planner
 City of Victorville
 March 21, 2025
 Page 10

<p>shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. The qualified avian biologist shall monitor the nest to determine the efficacy of the buffer and shall adjust the buffer accordingly if it is determined that birds are having an adverse reaction. The qualified avian biologist shall monitor the nest daily until activities are no longer within 300 feet of the nest, or the fledglings become independent of their nest, or the nest has failed.</p>		
<p>BIO-Mitigation #5 CDFW Streambed Alteration Agreement (New)</p> <p>Prior to construction activities, a mapping of stream resources in the Project area shall be conducted. If project construction activities will occur within a mapped streambed, then the California Department of Fish and Wildlife (CDFW) must be consulted. If CDFW determines that the activity may substantially affect fish and wildlife resources, then a Streambed Alteration Agreement will be obtained property. The Agreement will include measures to protect those resources and provide mitigation, consistent with the terms to be negotiated with the Department, to assure that impacts are reduced to less than significant levels.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>
<p>Mitigation Measure: BIO-Mitigation #6 Burrowing Owl (New)</p> <p>Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), focused burrowing owl surveys shall be conducted by a qualified biologist according to the CDFW Staff Report on Burrowing Owl Mitigation (CDFG, 2012 or most recent version) for the Project site and</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

Mina Morgan, Assistant Planner
City of Victorville
March 21, 2025
Page 11

<p>surrounding 500 ft radius. Take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. Burrowing owls may re-colonize a site after only a few days, thus time lapses between Project activities require subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If the surveys confirm the presence of burrowing owls, impacts to burrowing owl shall be fully avoided. If impacts to burrowing owl are unavoidable, the City should apply for a CESA ITP.</p>		
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