



State of California - Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
3602 Inland Empire Blvd., Suite C-220  
Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



November 27, 2019

Governor's Office of Planning & Research

DEC 04 2019

STATE CLEARINGHOUSE

Mike Szarzynski  
City of Victorville  
Development Department  
14343 Civic Drive  
Victorville, CA 92392

Subject: Initial Study/Mitigated Negative Declaration- Site Plan Case No.  
PLAN 19-00029 (SCH2019119011).

Dear Mr. Szarzynski:

The California Department of Fish and Wildlife (CDFW) received the Initial Study and Mitigated Negative Declaration (MND) for Site Plan Case No. PLAN 19-00029 (SCH2019119011) (Project) from the City of Victorville (Lead Agency) 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 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.

## **PROJECT DESCRIPTION SUMMARY**

### **Project Location**

The proposed Project is located within the City of Victorville in San Bernardino County. The Project site is located at 17248 D. Street, and contained in multiple Assessor Parcel Numbers: 0472-131-03, 04, 08, 10, 13, 16, and 17. The Project area is approximately 32 acres, and is generally bounded by National Trails Highway to the east and Air Expressway to the north. Portions of the location have areas with previous disturbance including construction and demolition of a mobile home park, and construction material storage. The remaining portions of the Project area are mixed desert scrub dominated by creosote bush.

### **Project Description**

The proposed Project development allows for 1,440 square feet of prefabricated office space, 2 metal storage containers that total 640 square feet, 19 parking spaces, 4,000 square feet of "Concrete Casting Beds", and a 6-acre area for concrete storage. Prior to development of the permanent facilities, the Project includes use of approximately 11.29 acres of existing unpaved road for concrete casting.

## **COMMENTS AND RECOMMENDATIONS**

### **Project Specific Comments and Recommendations**

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

#### **Fully Protected Species and Nesting Birds**

Fish and Game Code 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 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. 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.).



### State Threatened, Endangered, and Candidate Species

CDFW has discretionary authority over activities that could result in the “take” of any species listed as candidate, threatened, or endangered, pursuant to the California Endangered Species Act (CESA; Fish and Game Code, § 2050 *et seq.*). CDFW considers adverse impacts to CESA-listed species, for the purposes of CEQA, to be significant without mitigation. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit (ITP) or a consistency determination in certain circumstances (Fish and Game Code, §§ 2080.1 & 2081).

### Special Status Plants

CDFW recommends the Lead Agency require a thorough, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities

(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) before the commencement of Project activities. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

If special status plants and natural communities may be impacted from the Project, CDFW recommends that the Lead Agency include specific avoidance, minimization, and mitigation measures in the environmental document and make the implementation of each measure a requirement.

### Mitigation Measures

#### *Mitigation Measure 6*

CDFW recommends the Lead Agency modify the preconstruction survey to include the Project Area and a 100-foot buffer zone when surveying for presence of American badger and desert kit fox.

Mitigation Measure 6 does not adequately mitigate impacts to American badger and desert kit fox subject to on-site passive relocation. The mitigation measure should include the requirement to enhance or create burrows in adjacent habitat at a 1:1 ratio of burrow destroyed to created, at least one week prior to implementation of passive relocation techniques. Additionally, juvenile American badger and desert kit fox were not considered during on-site passive relocation. As such it is recommended the Lead

Agency require that no disturbance of active dens will take place when cubs or pups may be present and dependent on parental care. Desert kit fox is a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460. American badger is a Species of Special Concern. CDFW requests to be consulted prior to implementation of passive relocation efforts.

*Mitigation Measure 7*

CDFW requests notification and consultation should burrowing owl presence be confirmed and a Burrowing Owl Exclusion Plan be developed.

*Mitigation Measure 8*

CDFW recommends the following measures be added to supplement Mitigation Measure 8:

- The qualified biologist shall be qualified in identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques; recognizing breeding and nesting behaviors; locating nests and breeding territories; identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.
- Surveys shall be conducted by the qualified biologist at the appropriate time of day/night, during appropriate weather conditions. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. Surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors).
- If a nest is suspected, but not confirmed, the qualified biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. The qualified biologist shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed).
- If a nest is observed, but thought to be inactive, the qualified biologist shall monitor the nest for one hour (four hours for raptors during the non-breeding season) prior to



approaching the nest to determine status. The qualified biologist shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate.

- The qualified biologist shall be onsite daily to monitor all active nests, the efficacy of established buffers, and to document any new nesting occurrences. If the qualified biologist determines that Project activities may be causing an adverse reaction, the qualified biologist shall adjust the buffer accordingly.
- The qualified biologist shall ensure that none of the materials used for Project activities pose an entanglement risk to birds.

#### Mitigation Measure 9

CDFW recommends that the Lead Agency include specific avoidance, minimization and mitigation measures in the environmental document for sensitive wildlife and plant species and make the implementation of each measure a requirement. Please note, if a CESA-listed species is found within the project site, activities should be halted until the individuals moves off the Project site on its own accord, unless CDFW issues an ITP for the Project that authorizes a biologist to move the species out of harm's way.

#### *Mohave Ground Squirrel (MGS)*

The Project is within the range of the threatened MGS. A survey during the active months of the species should be completed to determine presence or presence should be assumed and an ITP issued by CDFW. CDFW recommends the Lead Agency require the survey be conducted by a qualified biologist at the appropriate time of year and time of day when MGS is active or otherwise identifiable using Mohave Ground Squirrel Survey Guidelines (see: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>). CDFW should be immediately notified if MGS is observed/found on the Project site.

If MGS and/or their habitat may be impacted by the Project, including Project construction or any Project-related activity during the life of the Project, resulting in take, CDFW recommends that the Project proponent seek an ITP prior to Project implementation.

#### *Desert Tortoise*

CDFW recommends the Lead Agency perform a pre-construction clearance survey no more than 7 calendar days prior to start of Project to ensure desert tortoise are absent from the Project area.

The survey should be performed by a qualified biologist knowledgeable in the biology and natural history of the desert tortoise. Pre-construction clearance surveys for desert tortoise should use the methods described in the most recent United States Fish and

Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual. In addition to the guidance provided in the USFWS Field Manual, CDFW provides the following recommendations:

- Pre-construction clearance surveys shall be completed using perpendicular survey routes within the Project area. Pre-construction clearance surveys cannot be combined with other clearance surveys conducted for other species while using the same personnel.
- These surveys shall cover 100 percent of the Project area and a 50-foot buffer zone.
- 24 hours prior to the start of Project activities, the qualified biologist shall conduct a final survey of the Project area. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows.

If desert tortoise and/or their habitat may be impacted by the Project, including Project construction or any Project-related activity during the life of the Project, resulting in take, CDFW recommends that the Project proponent seek an ITP prior to Project implementation.

#### *Joshua Tree*

Western Joshua tree (*Yucca brevifolia*) has been petitioned for listing as Threatened under CESA by the Center for Biological Diversity. CDFW recommends that the Lead Agency addresses this listing petition in the CEQA document and include proper steps that need to be taken if this listing is adopted by the Fish and Game Commission.

#### *Mitigation Measure 10*

CDFW recommends the Lead Agency update the measure to include presence or absence of threatened, candidate, and Species of Special Concern.

#### Training and Education Program

The MND mentions a Training and Education Program. CDFW recommends this be enforced through a mitigation measure in the environmental document. An example of such a mitigation measure is as follows:

- Project proponent shall conduct an education program for all persons employed or otherwise working on the project site prior to performing any work on-site. The program shall consist of a presentation from a qualified biologist that includes a discussion of the biology of the habitats and species identified in the Project area. The qualified biologist shall also include as part of the education program



information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations and project-specific protective measures. Education should include but not be limited to desert tortoise, Mohave ground squirrel, burrowing owl, desert kit fox, American badger, nesting birds, and special-status plants. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site. Permittee shall prepare and distribute wallet-sized cards or a fact sheet that contains this information for workers to carry on-site.

#### Measures to Minimize Impacts on Other Species

CDFW recommends that the Lead Agency condition the environmental document to require a qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures should also be taken to prevent wildlife from re-entering the Project site. Please note only qualified biologists with authorization by CDFW may move CESA-listed species.

#### California Natural Diversity Database (CNDDDB)

Please note, CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the potential presence of species within the general area of the Project site.

#### Lake and Streambed Alteration Program

CDFW requires notification for work undertaken in or near any river, stream, or lake that flows at least episodically, including ephemeral streams, desert washes, and watercourses with a subsurface flow. Fish and Game Code section 1602 states, "An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur...." Upon receipt of a complete notification, CDFW determines if the activities may substantially adversely affect existing fish and wildlife resources. CDFW recommends that prior to adoption of the MND the Lead Agency condition a new mitigation measure requiring the submission of a Notification of Lake or Streambed Alteration to CDFW's Lake and Streambed Alteration Program. Specifically, CDFW requests that the Lead Agency include the following new mitigation measure in the MND:

**Mitigation Measure:** Prior to commencement of Project activities the Applicant shall submit a Notification of Lake or Streambed Alteration to CDFW's Lake and Streambed Alteration Program; and if determined necessary by CDFW, obtain a Lake or Streambed Alteration Agreement, authorizing impacts to California Fish and Game Code, section 1602 resources associated with the Project.

### **Environmental Data**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 CNDDDB. The CNDDDB field survey form can be submitted online at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>, or a completed PDF Field Survey Form (<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>) can be completed and mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

### **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 IS/MND. If you should have any questions pertaining to this letter, please contact Ashley Rosales, Environmental Scientist at [Ashley.Rosales@Wildlife.ca.gov](mailto:Ashley.Rosales@Wildlife.ca.gov) or (909)-980-8607.

Sincerely,



Scott Wilson  
Environmental Program Manager

Cc: State Clearinghouse