



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



December 6, 2019

Governor's Office of Planning & Research

**DEC 06 2019**

**STATE CLEARINGHOUSE**

Alex Jauregui  
City of Victorville  
Planning Division  
14343 Civic Drive  
Victorville, CA 92392

Subject: Initial Study/Mitigated Negative Declaration- Tentative Tract Map  
Plan 19-00020 (TTM 20274) (SCH2019119038).

Dear Alex Jauregui:

The California Department of Fish and Wildlife (CDFW) received the Initial Study and Mitigated Negative Declaration (MND) for Tentative Tract Map Plan 19-00020 (TTM 20274) (SCH2019119038) (Project) from the City of Victorville Planning Division (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 east and abutting to Amethyst Road, and north of Eucalyptus Street. Oro Grande Wash is the north perimeter of the Project area. The Project is contained in Assessor Parcel Number 3072-251-34. The Project area is approximately 44 acres of undeveloped desert scrub habitat.

### **Project Description**

The proposed Project includes the recordation and development of a single-family residential subdivision. The subdivision contains 168 lots, with approximately 3.8 units per acre.

## **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.

#### **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.*). 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 before the commencement of Project activities (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>).

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. CDFW generally considers biological field assessments for rare plants valid for a period of up to three years.

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 2*

This mitigation measure states pre-construction surveys for burrowing owl and other sensitive wildlife species will be conducted. CDFW recommends the Lead Agency require pre-construction surveys for desert tortoise, desert kit fox, American badger, burrowing owl, and nesting birds with CDFW approved protocols. If the same personnel will be conducting surveys for multiple species, CDFW recommends each species-specific survey be performed independently.

### *Mitigation Measure 3*

Please note, the scientific name for Mohave ground squirrel (MGS) is *Xerospermophilus mohavensis*. CDFW recommends the Lead Agency require the trapping 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 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>). If MGS may be impacted by the Project resulting in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate CESA authorization prior to Project implementation. This may include an ITP. CDFW should be immediately notified if MGS is observed/found on the Project site.

### *Mitigation Measure 4*

CDFW recommends the burrowing owl surveys be performed during the breeding season, as that is when the species is most detectable. As mentioned in the mitigation measure, pre-construction surveys should be performed no more than 30 days prior to Project impacts. CDFW does not recommend determination of burrowing owl presence based on non-breeding season surveys as results are often inconclusive. Should burrowing owl presence be determined, the proposed Project will impact habitat for the species. CDFW requires recommends compensatory mitigation land for permanent impacts to nesting, occupied and satellite burrows and burrowing owl habitat. CDFW recommends the Lead Agency include acquisition of compensatory mitigation land in the mitigation measure. Survey methodologies for breeding and non-breeding season surveys as well as mitigation methods are outlined in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>).

### *Mitigation Measure 5*

This measure states if sensitive wildlife species or nesting birds are detected on the Project site during future surveys or assessments, all work on-site shall stop immediately, and mitigation measures will be required. CDFW recommends the Lead Agency specify this mitigation measure in the MND. It is unclear if this is in reference to commencement of the Project, Project activities restarting after a delay of at least 30 days, or if species move into the area during Project activities. All pre-construction surveys to identify sensitive species or nesting bird presence and appropriate avoidance, minimization, and mitigation measures should be completed prior to start of Project-related activities.

### *Mitigation Measure 6*

The new biological survey should also include determining the presence or absence of threatened species, candidate species, Species of Special Concern, fully protected



species, and special status plants. CDFW recommends the avoidance, minimization, and mitigation measures for species identified in the survey are included in the environmental document and that the Lead Agency makes the implementation of each measure a requirement. If any adopted mitigation measures are not included in the environmental document, CDFW requests the opportunity to review the surveys and mitigation measures prior to the issuance of a grading permit. CDFW is available for consultation on wildlife species, appropriate survey methods, and avoidance, minimization, and mitigation measures.

If desert tortoise may be impacted by the Project resulting in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an ITP. CDFW should be immediately notified if a desert tortoise is observed/found on the Project site.

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. It is recommended the Lead Agency require the preparation of a desert kit fox and American badger mitigation and monitoring plan. Desert kit fox breeding season is January to the end of May. If a natal burrow is located on the Project site, a qualified biologist should determine appropriate buffers and maintain connectivity to adjacent habitat. No Project activities or vegetation removal may occur within the buffer or habitat connectivity.

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 address this listing petition in the CEQA document and include proper steps that needs to be taken if this listing is adopted by the Fish and Game Commission.

#### *Mitigation Measure 7*

Fish and Game Code 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.

#### 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)

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.

#### 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