



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 9, 2020

Sent via email

Governor's Office of Planning & Research

MAR 10 2020

Alex Jauregui
Associate Planner
City of Victorville
14343 Civic Drive
Victorville, CA 92392

STATE CLEARINGHOUSE

TENTATIVE TRACT MAP PLAN18-00023 (TTM 18940) (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2020029029

Dear Alex Jauregui:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Victorville for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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

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.

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: TMS Consortium

Objective: The objective of the Project is to develop a single-family residential subdivision on approximately 5 acres. Primary Project activities include construction of 17 lots, resulting in 3.4 units per acre.

Location: City of Victorville, San Bernardino County, west of and abutting Second Ave., south of Country Ranch Ct., and north of Silica Dr., 34.480493°, - 117.300425°

Timeframe: Unknown

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist City of Victorville 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW below, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1: Mitigation Measure 7

Section IV, Page 11

Issue: CDFW appreciates the City of Victorville conditioned the environmental document to require pre-construction surveys for burrowing owls, desert tortoise, desert kit fox, American badger, and nesting birds 30 days prior to construction, and prior to restarting construction after delays of 30 days or more. However, presence of threatened Mohave ground squirrel was not considered in the biological assessment.

Specific impact: The Project is within the geographic range of Mohave ground squirrel.

Why impact would occur: The environmental document did not assess habitat suitability or potential for the presence of a relict population of Mohave ground squirrel.

Evidence impact would be significant: 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).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure:

To minimize significant impacts: CDFW recommends City of Victorville condition the environmental document to include pre-construction surveys for Mohave ground squirrel. CDFW approved protocols may be found at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>.

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). Information on how to obtain an ITP can be found at <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>. CDFW recommends the inclusion of the following new measure in the Final MND:

MM BIO-[X]: Pre-Construction Surveys for Mohave Ground Squirrels. Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG, 2010) or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project Area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, per Mitigation Measure 10, the Project Proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities.

COMMENT 2: Mitigation Measure 9; Mitigation Measure 12

Section IV, Page 12

Issue: CDFW has concerns that Mitigation Measure 9 states mitigation measures for sensitive wildlife species, such as desert tortoise, desert kit fox, American badger, or

nesting birds will be developed and implemented if species presence is detected on-site and approved by CDFW as applicable in accordance with best practices. Similarly, Mitigation Measure 12 states the City Planner will review the new biological survey and verify the adequacy of adopted mitigation measures for any endangered, threatened, candidate, Species of Special Concern, and fully protected species present and only confer with CDFW should they be deemed inadequate.

Specific impact: Exclusion of developed mitigation measures within the environmental document does not allow CDFW to comment on their ability to avoid, minimize, and mitigate significant impacts to sensitive wildlife species.

Why impact would occur: The mitigation measure, as written, allows the discretion of the Project biologist and City Planner to implement mitigation measures for a CESA-listed species, protected species, a Species of Special Concern, and potential special status native plant populations and natural communities after completion of the CEQA process and without CDFW review or consultation.

Evidence impact would be significant:

- Desert tortoise are a CESA-listed species and take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) is prohibited unless authorized by state law.
- Desert kit fox are 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.
- 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 make 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.).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure:

To minimize significant impacts: CDFW recommends the inclusion of the following new measures in the Final MND:

MM BIO-[X]: Pre-Construction Desert Tortoise Surveys. No more than 30 calendar days prior to start of Covered Activities a qualified biologist shall conduct pre-construction surveys for desert tortoise. Pre-construction surveys shall be completed using perpendicular survey routes within the Project Area and 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 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, per Mitigation Measure 10, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities.

MM BIO-[X]: Pre-Construction Desert Kit Fox and American Badger Surveys. No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a qualified biologist shall conduct a survey to determine if potential desert kit fox or American badger burrows are present in the Project Area. If potential burrows are located, they shall be monitored by the qualified biologist. If the burrow is determined to be active, the qualified biologist shall verify there are suitable burrows outside of the Project Area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5 day period. After the qualified biologist has determined there are no active burrows the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile desert kit fox and juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

MM BIO-[X]: All Project activities shall be conducted outside of nesting season (January 15 to August 31) to the maximum extent feasible. During the nesting bird season, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and range from 15 to 100 feet for passerines and 50 to 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests shall be monitored until the biologist has determined the young have fledged or the project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

MM BIO-[X]: Should special status plants or natural communities be present on in the Project Area, a qualified biologist shall transplant perennial species, and perform seed collection and dispersal from annual species, and develop other conservation strategies that will protect the viability of the local population. If these minimization measures are implemented, monitoring of plant populations will be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation will be no net reduction in the size or viability of the local population.

MM BIO-[X]: A qualified biologist 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 that includes a discussion of the biology of the habitats and species that may be present at the site. 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 mitigation measures. Education should include but not be limited to desert tortoise, 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.

II. Closely Related Past, Present, and Reasonably Foreseeable Probable Future Projects (CUMULATIVE IMPACTS, MANDATORY FINDING OF

SIGNIFICANCE: Does the Project have impacts that are individually limited, but cumulatively considerable? "Cumulatively considerable" means that incremental effects of the Project are considerable when viewed in connection with effects of past projects, effects of other current projects, and effects of probable future projects?)

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1: SCH#2020029030

Issue: The environmental document does not note that City of Victorville is Lead Agency for the Proponent for another project (SCH#2020029030) directly adjacent to the Project area.

Specific impact: This results in additional development resulting in permanent impacts to biological resources in the area. It is unclear of the timing of the Projects, and if they will occur simultaneously or separately.

Why impact would occur: CDFW is concerned the potential eviction of wildlife species from this Project will not be performed simultaneously with species that may need to be

evicted from the adjacent project. Therefore, individuals have the potential to be evicted twice.

Evidence impact would be significant: Species are dependent on burrows at all times of the year for survival and/or reproduction. Eviction may lead to indirect impacts or take. Permanent closure of burrows may result in significant loss of burrows and habitat for reproduction and other life history requirements. Depending on the proximity and availability of alternate habitat, loss of access to burrows will likely result in varying levels of increased stress and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Closely Related Past, Present, and Reasonably Foreseeable Probable Future Projects)

Mitigation Measure:

To minimize significant impacts: CDFW recommends the inclusion of the following new measure in the Final MND:

MM BIO-[X]: Passive relocation of burrowing owl, desert kit fox, or American badger shall take place concurrently on Project sites for SCH#2020029029 and SCH#2020029030 to prevent the multiple evictions of the same individual.

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

Alex Jauregui, Associate Planner
City of Victorville
March 9, 2020
Page 8

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 City of Victorville in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ashley Rosales, Environmental Scientist at 909-980-8607 or Ashley.Rosales@Wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager

Attachment: Draft Mitigation Monitoring and Reporting Program for CDFW-proposed Mitigation Measures.

cc: Office of Planning and Research, State Clearinghouse, Sacramento

HCPB CEQA Coordinator
Habitat Conservation Planning Branch

RESOURCES

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation.

California Department of Fish and Game (CDFG). 2010. Mohave Ground Squirrel Survey Guidelines.

ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party for implementing the mitigation measure. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
MM BIO-[X]: <u>Pre-Construction Surveys for Mohave Ground Squirrels</u> . Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG, 2010) or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project Area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, per Mitigation Measure 10, the Project Proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities.	Before commencing ground- or vegetation-disturbing activities/Entire Project	Project Proponent
MM BIO-[X]: <u>Pre-Construction Desert Tortoise Surveys</u> . No more than 30 calendar days prior to start of Covered Activities a qualified biologist shall conduct pre-construction surveys for desert tortoise. Pre-construction surveys shall be completed using perpendicular survey routes within the Project Area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species	Before commencing ground- or vegetation-disturbing activities/Entire Project	Project Proponent

while using the same personnel. Project Activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, per Mitigation Measure 10, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities.		
MM BIO-[X]: <u>Pre-Construction Desert Kit Fox and American Badger Surveys.</u> No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a qualified biologist shall conduct a survey to determine if potential desert kit fox or American badger burrows are present in the Project Area. If potential burrows are located, they shall be monitored by the qualified biologist. If the burrow is determined to be active, the qualified biologist shall verify there are suitable burrows outside of the Project Area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5 day period. After the qualified biologist has determined there are no active burrows the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile desert kit fox and juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.	Before commencing ground- or vegetation-disturbing activities/Entire project	Project Proponent

<p>MM BIO-[X]: Should special status plants or natural communities be present on in the Project Area, a qualified biologist shall transplant perennial species, and perform seed collection and dispersal from annual species, and develop other conservation strategies that will protect the viability of the local population. If these minimization measures are implemented, monitoring of plant populations will be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation will be no net reduction in the size or viability of the local population.</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>
<p>MM BIO-[X]: A qualified biologist 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 that includes a discussion of the biology of the habitats and species that may be present at the site. 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 mitigation measures. Education should include but not be limited to desert tortoise, 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.</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>
<p>MM BIO-[X]: All Project activities shall be conducted outside of nesting season (January 15 to August 31) to the maximum extent feasible. During the nesting bird season, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>

surveys shall be conducted by a qualified biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and range from 15 to 100 feet for passerines and 50 to 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests shall be monitored until the biologist has determined the young have fledged or the project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.		
MM BIO-[X]: Passive relocation of burrowing owl, desert kit fox, or American badger shall take place concurrently on Project sites for SCH#2020029029 and SCH#2020029030 to prevent the multiple evictions of the same individual.	Before commencing ground- or vegetation-disturbing activities/Entire Project	Project Proponent