

PLANNING COMMISSION

ATTACHMENT F

CDFW Comments



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



April 11, 2025
Sent via email

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

PLAN23-00030 - Tentative Tract Map 20576 (Project)
Mitigated Negative Declaration (MND)
SCH# 2025040136

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. CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

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.

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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: Rodeo Credit Enterprises, LLC.

Objective: The Project proposes the construction of a 242-lot single family residential development on four parcels totaling 70.8 acres.

Location: The Project is located in the southwest portion of the City of Victorville, northwest of the corner of Mesa Street and Topaz Road, on Assessor's Parcel Numbers 3136-441-01, 3136-441-02, 3136-411-04, and 3136-411-05. The Project site's latitude and longitude are 34.450682°N, -117.384865°W.

Timeframe: Construction will commence in November 2025, last for 61 months, and conclude in December 2030.

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 (*Yucca brevifolia*)

Issue: The Project will have impacts on Western Joshua Tree (WJT) individuals, which are protected under Fish and Game Code sections 1927-1927.12 and Fish and Game Code section 2081.

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

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

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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: Field surveys for the Project are reported in the Biological Technical Report (BRTR) and were conducted in 2023. The BRTR documents the presence of at least 23 WJT on the Project site that would be directly and indirectly impacted by Project activities.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW strongly recommends the following revisions to BIO-1 (edits are in ~~striketrough~~ and **bold**) for adoption in the final MND.

Mitigation Measure: BIO-1 Western Joshua Tree Fee Payment (Revised)

Mitigation for direct impacts **and indirect impacts** to 23 western Joshua trees will be fulfilled through a payment of ~~the elected~~ fees as described in Section 1927.3 of the WJTCA. ~~In conformance with the fee schedule, mitigation will consist of payment of \$2,500 for each western Joshua tree five meters or greater in height; \$500 for each western Joshua tree less than five meters in height but greater than one meter; and \$340 for each western Joshua tree less than one meter in height.~~ California Department of Fish and Wildlife (CDFW) determines the final fee. Alternatively, **if a CESA incidental take permit is obtained**, mitigation will occur through off-site conservation or through a CDFW approved mitigation bank, or as required by ~~the~~ a Section 2081 Incidental Take Permit, ~~if received~~.

~~Along with~~ **Prior to** the fee payment, WJT Conservation Act (WJTCA) also requires submittal of a WTJCA Incidental Take Permit application, accompanied by a census of western Joshua trees within the Project site and a 50-foot buffer (census area). At minimum, the census requires parallel survey transects throughout the Census Area, photographs of each tree, and tree measurements per CDFW protocol.

Prior to the issuance of grading permits, the project applicant shall also submit an application and applicable fee paid to the County of San Bernardino for removal or relocation of protected western Joshua tree under California Desert Native Plants Act (CDNPA), as determined by designated County personnel. **However, removal, trimming, encroachment upon, or relocation of western Joshua tree shall not occur without an incidental take permit from CDFW.**

The project must also receive written consent from the City of Victorville's Director of Parks and Recreation prior to the removal or relocation of western Joshua trees in accordance with City of Victorville Code of Ordinances, Chapter 13.33, Preservation and Removal of Joshua Trees.

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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: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from construction activities including project grading and vegetation removal. CDFW is concerned with the potential impacts to nesting birds including loss of nesting/foraging habitat and take from ground disturbing activities and construction.

Conducting work outside the peak nesting season is an important avoidance and minimization measure, but CDFW recognizes that this is not always feasible, and thus recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. This is also considering that the timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have also been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and this shift has led to a change in availability of resources (Socolar et al., 2017). Additionally, CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. Thus, CDFW recommends that disturbance to occupied nests of non-migratory passerine birds, migratory birds, and raptors within the Project site and surrounding area be avoided any time birds are nesting onsite. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

Why impact would occur: The MND includes BIO-7, which requires a pre-construction survey for nesting birds. However, BIO-7 specifies that the preconstruction survey would only occur during a defined nesting season (i.e., February 1 -August 31), which may lead to impacts to birds that nest outside of this defined nesting season.

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-

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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 following revisions to BIO-7 (edits are in ~~strike~~through and **bold**) for adoption in the final MND.

Mitigation Measure: BIO-7 Nesting Bird Avoidance (Revised)

~~Construction activities shall avoid the migratory bird nesting season (typically February 1 through August 31), to reduce any potential significant impact to birds that may be nesting on the survey area. If construction activities must occur during the migratory bird nesting season,~~ **Prior to vegetation removal or initial ground disturbance** an avian nesting survey of the project site and within 500 feet of all impact areas must be conducted to determine the presence/absence of ~~protected migratory~~ birds and active nests. The avian nesting survey shall be performed by a qualified wildlife biologist within 72 hours prior to the start of construction in accordance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513. If the biologist does not find any active nests within or ~~immediately~~ adjacent to the impact areas, the vegetation clearing/construction work shall be allowed to proceed.

If an active bird nest is found (i.e., nests that support eggs, nestlings, or juveniles), the nest shall be flagged and mapped on the construction plans along with an appropriate buffer established around the nest, which will be determined by the **qualified wildlife biologist** based on the species' sensitivity to disturbance. The nest area shall be avoided until the nest is vacated and the juveniles have fledged, **as confirmed by the qualified wildlife biologist**. The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall also be conducted when construction occurs in close proximity to an active nest buffer. No project activities may encroach into established buffers without the consent of a **qualified** monitoring biologist **who has experience with monitoring nesting birds and who determines that encroachment will not cause an adverse effect to nesting birds**. The buffer shall remain in place until it is determined the nestlings have fledged and the nest is no longer considered active, **as confirmed by the qualified wildlife biologist**.

COMMENT # 3: 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

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

Specific impact: Focused surveys for burrowing owl were not conducted; however, the BTRR recognizes that the Project site contains suitable habitat for burrowing owl and a recent occurrence of burrowing owl has been reported 1.6 miles northwest of the Project site.

Why impact would occur: The MND includes BIO-6, which details pre-construction surveys, creation of a relocation plan, and avoidance of burrows during the nesting season for burrowing owl. However, BIO-6 includes relocation of burrowing owl, which should only be conducted with appropriate take authorization (e.g., ITP).

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 following revisions to BIO-6 (edits are in ~~strike through~~ and **bold**) for adoption in the final MND.

Mitigation Measure: BIO-6 Pre-Construction Burrowing Owl Surveys (Revised)

~~One pre-construction burrowing owl survey shall be completed no more than 14 days before initiation of site preparation or grading activities, and a second survey shall be completed within 24 hours of the start of site preparation or grading activities. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction surveys, the project site shall be resurveyed. Breeding season S~~surveys for burrowing owl shall be conducted in accordance with protocols established in the 2012 (or most recent version) Staff Report on Burrowing Owl Mitigation.

If burrowing owls are detected, a ~~Burrowing Owl Relocation Plan~~ **the Project proponent shall fully avoid impacts to burrowing owl** ~~shall be implemented in consultation with the CDFW. If impacts to burrowing owl are unavoidable, the Project proponent shall obtain a CESA ITP. The Burrowing Owl Relocation Plan shall require avoidance of disturbance to occupied burrows during the nesting season (February 1 through August 31). Buffers shall be established around occupied burrows in accordance with guidance provided in CDFW's Staff Report on Burrowing Owl~~

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~~Mitigation. No project activities shall be allowed to encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until it is determined that occupied burrows have been vacated or the nesting season has completed.~~

~~Outside of the nesting season, passive owl relocation techniques approved by CDFW shall be implemented. Owls shall be excluded from burrows in the immediate project area and within a buffer zone by installing one-way doors in burrow entrances. These doors shall be placed at least 48 hours prior to ground-disturbing activities. The project site shall be monitored daily for 1 week to confirm owl departure from burrows prior to any ground-disturbing activities. Compensatory mitigation for permanent loss of owl habitat shall be provided following the guidance in CDFW's Staff Report on Burrowing Owl Mitigation and as determined by CDFW through a CESA ITP.~~

~~Where possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels during excavation to maintain an escape route for any wildlife inside the burrow.~~

Should burrowing owl be located during the pre-construction survey, the project would result in the loss of **at least 65.55 acres** of occupied habitat for burrowing owl, **and impacts shall be authorized and fully mitigated, as determined by CDFW, through a CESA ITP.** Mitigation for direct impacts to occupied habitat shall be fulfilled through conservation of suitable burrowing owl habitat through the purchase of credits **(if available) or perpetual management and conservation of acquired** ~~at a minimum of 4:4 in-kind habitat replacement of equal or better functions and values to those impacted by the project, for a total of 65.55 acres.~~

Additional Comments and Suggestions

Submitting Data on Special Status Species

CDFW strongly recommends the Project proponent submits data to the California Natural Diversity Database at <https://wildlife.ca.gov/Data/CNDDB/Submitting-Data>, regarding any special status species such as but not limited to: desert tortoise, Bendire's thrasher, Crotch's bumble bee, burrowing owl, Cooper's hawk, golden eagle, LeConte's thrasher, loggerhead shrike, northern harrier, prairie falcon, Swainson's hawk 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, §

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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, Senior Environmental Scientist (Specialist) at Christopher.Bill@wildlife.ca.gov

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
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ATTACHMENTS

Attachment A: Mitigation Monitoring and Reporting Plan

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REFERENCES

- California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: [Microsoft Word - BUOW Staff Report final 030712 REV 1.doc \(ca.gov\)](#)
- Socular JB, Epanchin PN, Beissinger SR and Tingley MW. 2017. Phenological shifts conserve thermal niches. Proceedings of the National Academy of Sciences 114(49): 12976-12981.

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Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1 Western Joshua Tree Fee Payment (Revised)</p> <p>Mitigation for direct impacts and indirect impacts to western Joshua trees will be fulfilled through a payment of fees as described in Section 1927.3 of the WJTCA. California Department of Fish and Wildlife (CDFW) determines the final fee. Alternatively, if a CESA incidental take permit is obtained, mitigation will occur through off-site conservation or through a CDFW approved mitigation bank, or as required by the Section 2081 Incidental Take Permit.</p> <p>Prior to the fee payment, WJT Conservation Act (WJTCA) also requires submittal of a WTJCA Incidental Take Permit application, accompanied by a census of western Joshua trees within the Project site and a 50-foot buffer (census area). At minimum, the census requires parallel survey transects throughout the Census Area, photographs of each tree, and tree measurements per CDFW protocol.</p> <p>Prior to the issuance of grading permits, the project applicant shall also submit an application and applicable fee paid to the County of San Bernardino for removal or relocation of protected western Joshua tree under California Desert Native Plants Act (CDNPA), as determined by designated County personnel. However, removal, trimming, encroachment upon, or relocation of western Joshua tree shall not occur without an incidental take permit from CDFW.</p> <p>The project must also receive written consent from the City of Victorville's Director of Parks and Recreation prior to the removal or relocation of western Joshua</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent</p>

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trees in accordance with City of Victorville Code of Ordinances, Chapter 13.33, Preservation and Removal of Joshua Trees.		
<p>BIO-7 Nesting Bird Avoidance (Revised)</p> <p>Prior to vegetation removal or initial ground disturbance an avian nesting survey of the project site and within 500 feet of all impact areas must be conducted to determine the presence/absence of birds and active nests. The avian nesting survey shall be performed by a qualified wildlife biologist within 72 hours prior to the start of construction in accordance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513. If the biologist does not find any active nests within or adjacent to the impact areas, the vegetation clearing/construction work shall be allowed to proceed.</p> <p>If an active bird nest is found (i.e., nests that support eggs, nestlings, or juveniles), the nest shall be flagged and mapped on the construction plans along with an appropriate buffer established around the nest, which will be determined by the qualified wildlife biologist based on the species' sensitivity to disturbance. The nest area shall be avoided until the nest is vacated and the juveniles have fledged, as confirmed by the qualified wildlife biologist. The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall also be conducted when construction occurs in close proximity to an active nest buffer. No project activities may encroach into established buffers without the consent of a qualified monitoring biologist who has experience with monitoring nesting birds and who determines that encroachment will not cause an adverse effect to nesting birds. The buffer shall remain in place until it is determined the nestlings have fledged and the nest is no longer considered active, as confirmed by the qualified wildlife biologist.</p>	Prior to initiation of all ground disturbing activities	Project proponent and qualified avian biologist
BIO-6 Pre-Construction Burrowing Owl Surveys (Revised)	Prior to initiation of all ground disturbing	Project proponent and qualified avian biologist

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<p>Breeding season surveys for burrowing owl shall be conducted in accordance with protocols established in the 2012 (or most recent version) Staff Report on Burrowing Owl Mitigation.</p> <p>If burrowing owls are detected, the Project proponent shall fully avoid impacts to burrowing owl. If impacts to burrowing owl are unavoidable, the Project proponent shall obtain a CESA ITP.</p> <p>Compensatory mitigation for permanent loss of owl habitat shall be provided following the guidance in CDFW’s Staff Report on Burrowing Owl Mitigation and as determined by CDFW through a CESA ITP.</p> <p>Should burrowing owl be located during the pre-construction survey, the project would result in the loss of at least 65.55 acres of occupied habitat for burrowing owl, and impacts shall be authorized and fully mitigated, as determined by CDFW, through a CESA ITP. Mitigation for direct impacts to occupied habitat shall be fulfilled through conservation of suitable burrowing owl habitat through the purchase of credits (if available) or perpetual management and conservation of acquired in-kind habitat of equal or better functions and values to those impacted by the project.</p>	activities	
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