

MEMORANDUM

DATE: November 27, 2019

TO: Mr. Rod Jones

FROM: Denise Woodard, LSA Associate/Biologist

SUBJECT: Response to Comments pertaining to Natural Resources on the Draft Environmental Impact Report for the Rockport Ranch Project State Clearinghouse No. 2017081069 (LSA Project Number RDJ1901)

The following provides responses to comments addressed to Mr. Ryan Fowler (Senior Planner, Planning Department) at the City of Menifee (City) pertaining to natural resources in the Draft Environmental Impact Report for the Rockport Ranch Project (Project) State Clearinghouse No. 2017081069. Substantive comments are addressed and include comments from the California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS), hereafter referred to jointly as the Wildlife Agencies, in a letter dated October 18, 2019. In addition, comments are addressed from Mitchell M. Tsai, Attorney at Law, on behalf of the Southwest Regional Council of Carpenters, in letters dated October 21, 2019 and November 1, 2019, respectively. Repetitive comment in Exhibit A of the November 2019 comment letter are not addressed.

In support of these responses, a field visit was conducted by LSA biologist Denise Woodard on November 11, 2019 to assess the current site conditions, and a current (November 19, 2019) databased search of the California Department of Fish and Wildlife's Natural Diversity Data application Rarefind 5 online edition (CDFW CNDDDB, v 5.2.14, <https://www.wildlife.ca.gov/Data/CNDDDB/>) was conducted. Current and historic aerial photographs (Google Earth 2019 and NETRonline Historic Aerials 2018) were also reviewed.

Bracketed No. 5l. *MSHCP policies and procedures that apply to the proposed Project include the protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2), protection of Narrow Endemic Plant Species (MSHCP section 6.1.3), and Additional Survey Needs and Procedures for burrowing owl (MSHCP section 6.3.2).*

Response: Concur

Bracket No. 5m. *Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2*

The Project's "MSHCP Consistency Analysis and Habitat Assessment" report (MCAHA; DEIR Appendix D1) states "No potential jurisdictional waters were identified on the project site" (MCAHA Section 6.2, p. 12). Further, Biological Resources sub-item "b." of the DEIR states:

“Suitable riparian/riverine habitats for the species listed under ‘Purpose’ Volume 1, Section 6.1.2 of the MSHCP are not present on the Project site. Other kinds of sealed aquatic features that could provide suitable habitats for endangered and threatened species of fairy shrimp are not present on the Project site.”

Response. See response to comment Bracket No’s 5n and 5o.

Bracket No. 5n. *However, multiple figures within the MCAHA (i.e., Figures 4, 5, 6, 7, 10, 12) depict three large floodwater-retention basins located on the central and southern parts of the Project site’s western boundary, a large area of ponding located at the southern end of the Project site, and a drainage ditch along the eastern perimeter of the Project site (Briggs Road). Furthermore, Figure 4.3-1 (DEIR, p. 4.3-15) depicts an additional floodwater-retention basin in the northwest corner of the Project site. Given the depiction of these features on figures in the DEIR and associated Appendices, the Wildlife Agencies question the conclusion that there are “no potential jurisdictional waters identified on the Project site.”*

Response. The water holding features on the project site include dairy affluent detention ponds and associated conveyance features. These features were created in uplands for the sole source of managing affluent from dairy activities. All water associated with these features is retained on the project site. The features are considered to be isolated features with no connectivity to natural drainage features or other water conveyance systems, such as storm drains. Aerial photograph review also showed no evidence of natural water features on the project site prior to the construction of the dairy. For these reasons, the subject water holding features would not be subject to the regulatory authority of the USACE under Section 404 of the CWA, the RWQCB under Section 401 of the CWA, or the CDFW under Sections 1600 et seq. of the California Fish and Game Code.

In addition, because these features are artificially created and not associated with a natural waterway, these features would not be subject to protection under the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Section 6.1.2.

Bracket No. 5o. *The Wildlife Agencies were unable to locate a discussion or analysis of the ponding, water-holding, or water flow features identified on the Project site in the DEIR. The detention basins and setting ponds, and other areas of ponding, have the potential to support listed species of fairy shrimp as well as the threatened spreading navarretia (*Navarretia fossalis*), the Wildlife Agencies recommend that the City complete further analyses and present the results in the final EIR (FEIR), or in a revised and recirculated DEIR.*

Response. The onsite water holding features are not considered suitable to support fairy shrimp or spreading navarretia and further detail is provided in the following:

Fairy Shrimp. The MSHCP calls for habitat assessments for three sensitive species of fairy shrimp: Santa Rosa Plateau fairy shrimp (*Linderiella santarosae*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool fairy shrimp (*Branchinecta lynchi*). Santa Rosa Plateau fairy shrimp occurs only on the Santa Rosa Plateau of extreme southwest Riverside County. A fourth sensitive species of Southern California, San Diego fairy shrimp (*Branchinecta sandiegonensis*) is found primarily in coastal areas of Orange and San Diego Counties. It has been found as far inland as the Wildomar area of southwest Riverside County, but is not expected in the project area. These sensitive fairy

shrimp species inhabit vernal pools as well as stock ponds, large road ruts, or other similar habitats that pond water long enough to allow growth and reproduction. To provide fairy shrimp habitat, a feature must regularly pond water for at least 18 days for vernal pool fairy shrimp (Eriksen, C., and D. Belk. 1999. *Fairy Shrimps of California's Puddles, Pools, and Playas*. Mad River Press, Inc., Eureka, California) and two months for Riverside fairy shrimp (U.S. Fish and Wildlife Service 2012. *Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Riverside Fairy Shrimp; Final Rule*. Federal Register 77: 72070-72140.

The water holding features on the project site are not considered to be suitable habitat for special status fairy shrimp based on the following:

- The onsite water holding features were used to retain dairy cattle urine and feces, as well as other affluent from dairy activities up until about 2014/2015. During active dairy use, the water holding features are considered unsuitable for fairy shrimp due to poor water quality and an artificial inundation regime.
- A fairy shrimp habitat assessment was conducted at the time of the field survey conducted for the April 2016 MSHCP Consistency Analysis and Habitat Assessment report. At that time the 2016 field survey, the project site had been almost entirely devoid of vegetation. Due to the high level of disturbance and short period from the decommissioning of the dairy, and habitat requirements of special status fairy shrimp, the onsite water holding features were not considered suitable for fairy shrimp in 2016.
- The 2019 field visit found that one of the water holding features (a detention pond) was inundated with water, and appears to be inundated on a regular basis. Newly developing riparian vegetation was noted growing along the banks of the detention pond. Riparian plant species identified include mule fat (*Baccharis salicifolia*), Goodding's willow (*Salix gooddingii*) and tamarisk (*Tamarix ramosissima*). Because of the frequent and long term inundation of this feature, it is not considered suitable for fairy shrimp. The newly developing riparian habitat is not considered extensive enough to support MSHCP riparian bird species riparian birds, including least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and yellow-billed cuckoo (*Coccyzus americanus*). These species generally require riparian forest habitat composed of willow and cottonwood species with a dense understory.

No water was present in any of the other water holding features. The vegetation in the remainder of the water holding features was dominated by dense (100 percent or greater cover), nonnative, ruderal plant species. Dominant species identified include, white amaranth (*Amaranthus albus*), Australian saltbush (*Atriplex semibaccata*), prickly lettuce (*Lactuca serriola*), stinknet (*Oncosiphon piluliferum*), Russian thistle (*Salsola tragus*), and cheeseweed mallow (*Malva parviflora*). Hydric (water loving) plant species were also present in the portions of the water features that retained water more regularly. The hydric plant species identified are all nonnative and include Australian salt bush, common knotweed (*Polygonum aviculare*), curly dock (*Rumex crispus*), and annual rabbitsfoot grass (*Polypogon monspeliensis*). These hydric plant species are not vernal pool endemic plant species.

Spreading Navarretia. Spreading navarretia is found in saline alkaline soils of vernal pools and depressions and ditches in areas that once supported vernal pools. The MSHCP account for this species states that it “is primarily restricted to the alkali floodplains of the San Jacinto River, Mystic Lake and Salt Creek in association with Willows, Domino and Traver soils” and that “in western Riverside County, spreading navarretia has been found in relatively undisturbed and moderately disturbed vernal pools, within a larger vernal floodplains dominated by annual alkali grassland or alkali playa.”

Although the project site contains mapped saline-alkaline soils, the entire project site has been utilized for dairy farming activities since at least 1996 through 2014/2015. Based on the high level of soil disturbance and associated dominance of dense, nonnative plant species, along with the unsuitable site conditions described above for fairy shrimp, the project site is not considered suitable habitat for spreading navarretia.

Because suitable habitat is not present for special status fairy shrimp species and spreading navarretia, focused surveys are not required.

Bracket No. 5p. *Habitat for fairy shrimp species on the federal list of threatened and endangered species includes (aside from natural water bodies) stock ponds, ephemeral ponds, and other human-created depressions. Any ponding feature (natural or anthropogenic) that holds standing water (~3 cm or deeper) for more than 24 hours (USFWS 2017) is considered to be potential fairy shrimp habitat by the Wildlife Agencies. The multiple water-holding and water-conveying features located on the Project site should have been assess or surveyed for listed species of fairy shrimp as part of compliance with Section 6.1.2 of the MSHCP.*

Response. See response to comment Bracket 5o.

Bracket No. 5q. *To implement and demonstrate consistency with Section 6.1.2 of the MSHCP, and therefore Section 15125(d) of the CEQA Guidelines, the Wildlife Agencies recommend that listed species fairy shrimp protocol-level surveys (USFWS 2017) be completed on the Project site and that results be presented in the FEIR or in a revised and recirculated DEIR.*

Response. See response to comment Bracket 5o.

Bracket No. 5r. *“Protection of Narrow Endemic Plant Species (MSHCP section 6.1.3).” The Project site is located within Narrow Endemic Plant Species Survey Area 4 (NEPSSA-4) of the MSHCP, requiring surveys for Munz’s onion, San Diego ambrosia, many-stemmed dudleya, spreading navarretia, California Orcutt grass, and Wright’s trichocoronis. The Wildlife Agencies were unable to locate focused plant survey results within the DEIR. Instead, the DEIR concludes (based on a single site visit conducted on January 26, 2016) that due lack of observance of sensitive plant species during the site visit, the site’s high level of disturbance, and widespread distribution of “ruderal” plant species, NEPSSA species are not present on the Project site.*

Response. A NEPSSA 4 plant habitat assessment was conducted as part of the project April 2016 MSHCP Consistency Analysis and Habitat Assessment report. This report found habitat on the project site to be unsuitable for NEPSSA 4 plant species including Munz's onion, San Diego ambrosia, many-stemmed dudleya, spreading navarretia, California orcutt grass, Wrights's trichocoronis at that time. Based on current site conditions, and additional information provided in response to comment for Bracket 5n and Bracket 5o, the site is still considered unsuitable for these NEPSSA

plant species. Therefore, based on the lack of suitable habitat, not further study (i.e., focused survey) is required under the MSHCP. Please also see response to comment Bracket No. 5s.

Bracket No. 5s. *The Wildlife Agencies are concerned by this conclusion, given that San Diego ambrosia has been found in several disturbed sites, including dirt access roads and roadsides (e.g., along Pujol Street in Temecula), and spreading navarretia has been detected in roadside vernal pools shaped by road construction activities. Both plant species are somewhat cryptic and navarretia is small and low-growing. Both species are easily overlooked outside of their respective blooming periods (May and June, for spreading navarretia; May – July for San Diego ambrosia). To ensure the species are detectable, a reference site should be visited to verify species phenology. The Wildlife Agencies request that NEPSSA species surveys be conducted during the relevant blooming periods.*

Response. According to the April 2016 MSHCP Consistency Analysis and Habitat Assessment report, habitat was found to be absent for the subject NEPSSA 4 plant species. The following further supports these results for the subject species:

Spreading Navarretia. See response to comment for Bracket 5o.

San Diego Ambrosia. San Diego ambrosia is found in open floodplain terraces on Garretson gravelly fine sandy loams, or in the watershed margins of vernal pools or alkali playas on Las Posas loam in close proximity to Willow silty alkaline soils. Occurs in sparse annual vegetation.

No Garretson gravelly fine sandy loams, Las Posas loam soils, or Willow silty alkaline soils are present on the project site. In addition, there are no CNDDDB records for this species within a 3-mile radius of the project site. The vegetation on the project site is currently dense ruderal vegetation as detailed in response to comment Bracket 5o. Due to the lack of suitable soils and vegetation, habitat on the project site is not considered suitable for the San Diego ambrosia.

Because there is not suitable habitat for Spreading navarretia and San Diego ambrosia, focused surveys are not required.

Bracket No. 5t: *To implement and demonstrate consistency with Section 6.1.3 of the MSHCP, and therefore Section 15125(d) of the CEQA Guidelines, the Wildlife Agencies recommend that focused surveys for spreading navarretia and San Diego ambrosia during the respective blooming periods be conducted and that reference sites be visited to verify species phenology. We request that survey results be presented in the FEIR or in the revised and recirculated DEIR. “[The Wildlife Agencies] recommend that the City revise MM-BIO-1 and condition the measure to include the following edits.”*

Response. See response to comment for Bracket No’s 5l, 5n, 5o, 5r and 5s.

Bracket No. 5u. *Additional Survey Needs and Procedures for burrowing owl (MSHCP section 6.3.2)*

Appendix D1 and the Biological Resources section of the DEIR, identifies that the Project site contains suitable habitat for burrowing owls, and an owl-occupied burrow was documented in January, 2016. The City has conditioned the Project through Mitigation Measure BIO-1 (MM- BIO-1) to complete a 30-day preconstruction survey. The Wildlife Agencies appreciate the City’s incorporation of this

mitigation measure, however, we recommend that the City revise MM-BIO-1 and condition the measure to include the following (edits are in bold and strikethrough):

- *MM-BIO-1: A 30-day preconstruction survey for burrowing owl is required by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) to confirm the continued presence of burrowing owl within the survey area. The survey shall be conducted by a qualified biologist no more than 30 days prior to ground disturbance in accordance with MSHCP survey requirements to avoid direct take of burrowing owl. If burrowing owls are determined to occupy the Project site or the immediate vicinity, CDFW, the Service, the Western Riverside County Regional Conservation Authority, **CDFW, the Service, the Western Riverside County Regional Conservation Authority, and the City of Menifee Community Development** ~~will~~ **shall** be notified, **within three business days of the discovery of the owl(s)**, and avoidance measures will be implemented, as appropriate, pursuant to the MSHCP, the California Fish and Game Code, the MBTA, and the mitigation guidelines prepared by the CDFW (2012).*

The following measures are recommended in CDFW guidelines to avoid impacts on an active burrow:

- *No disturbance should occur within 50 meters (approximately 160 feet) of occupied burrows during the non-breeding season.*
- *No disturbance should occur within 75 meters (approximately 250 feet) of occupied burrows during the breeding season.*

For unavoidable impacts, passive or active relocation of burrowing owls would need to be implemented through the development of a Burrowing Owl Protection and Relocation Plan approved by the Service, CDFW, and the Western Riverside County Regional Conservation Authority by a qualified biologist outside the breeding season, in accordance with procedures set by the MSHCP and in coordination with the CDFW.

Response. The changes and recommended measures will be incorporated as stated.

Bracket No. 5v. *Because of the frequency with which burrowing owls have been detected on planned development sites in the City in recent years, and to avoid delays in the Project's construction timeline, the Wildlife Agencies recommend the City condition the issuance of the Project's grading permit on completion of a Service- and CDFW-approved Burrowing Owl Protection and Relocation Plan.*

Response. A CDFW approved Burrowing Owl Protection and Relocation Plan is required by the MSHCP in the event that the burrowing owl is determined to be present. A Burrowing Owl Protection and Relocation Plan will only be prepared if the burrowing owl is determined to be present during the 30 day preconstruction survey identified in Bracket No. 5u measure MM-BIO-1 above.

Bracket No. 5w. *Fish and Game Code section 1600 et seq.*

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.

Response. The water holding features on the project site are not are not subject Fish and Game Code Section 1600 et. Seq. See response to comment Bracket No. 5n. Therefore an notification under Fish and Game Code Section 1602 is not required.

Bracket No. 5x. *Though the site appears to have been subject to regular ground disturbance, the DEIR does identify water conveyance within discreet features: the "drainage ditch" along the eastern perimeter of the Project site. Given presence of the "drainage ditch" onsite, CDFW recommends that the City include the following new mitigation measure in the DEIR to ensure compliance with Fish and Game Code section 1602:*

To ensure compliance with Fish and Game Code section 1602 the project applicant shall provide either of the following: Written correspondence from the California Department of Fish and Wildlife stating that notification pursuant to Section 1602 of the Fish and Game Code is not required for the project; or a copy of a California Department of Fish and Wildlife executed Lake or Streambed Alteration Agreement, authorizing activities within areas subject to Fish and Game Code section 1602.

Response. See response to comment Bracket No's 5n and 5w.

Bracket No. 5y. *Please note that CDFW's issuance of a Lake or Streambed Alteration (LSA) Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the CEQA document should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA>.*

Response. Comment noted.

Bracket No. 5z. *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.

Response. Comment noted. No special status species or protected natural communities are present.

Bracket No. 5aa. 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.).

Response. The subject filing fee will be paid accordingly.

Bracket No. 5bb. *The DEIR has not adequately identified or assessed inconsistencies between the proposed Project and Sections 6.1.2 and 6.1.3 of the MSHCP, as required by Section 15125(d) of the CEQA Guidelines. To implement and demonstrate consistency with the MSHCP, the Wildlife Agencies recommend the completion of listed species fairy shrimp surveys (USFWS 2017) and focused surveys for NEPSSA species and that the results of these surveys be presented in the FEIR or in the revised and recirculated DEIR. The Wildlife Agencies also have concerns about the delineation of MSHCP riparian / riverine / vernal pool resources on the Project site and request a site visit and field meeting to review the delineation and assess onsite conditions.*

Response. See response to comments for Bracket No. 5cc for clarification of impacts to fairy shrimp, NEPSSA plants and fairy shrimp.

Bracket No. 5cc. *In summary, the Wildlife Agencies request that the City:*

- (a) Require the completion of the surveys referenced above for listed fairy shrimp species and for the threatened spreading navarretia and the endangered San Diego ambrosia;*
- (b) Prepare a Determination of Biologically Superior or Equivalent Preservation (DBESP), as required by the MSHCP, for proposed Project impacts to MSHCP riparian / riverine / vernal pool resources and any NEPSSA plant species that are present, if the Project will not avoid impacting those resources; and*
- (c) Update the EIR, accordingly.*

Response. Habitat on the project site is considered unsuitable for listed fairy shrimp, spreading navarretia and San Diego ambrosia. See response to comments for Brackets 5o, 5r and 5s. Due to lack of suitable habitat, the project will have no effects to subject species. Therefore, further study and the preparation of a DBESP is not required.

Bracket No. 7w. *Burrowing owls and their nests and eggs are protected from “take” (meaning destruction, pursuit possession, etc.) under the Migratory Bird Treaty Act (MBTA) of 1918 and under Sections 3503, 3503.5, and 3800 of the California Fish and Game Code. The DEIR acknowledges that activities that cause destruction of active nests, or that cause nest abandonment and subsequent*

death of eggs or young, may constitute violations of one or both of these laws. “The DEIR fails to adequately analyze the project’s significant impacts on burrowing owls.”

Response. See response to comment Bracket No’s 5u and 5v.

Bracket No. 7x. *The DEIR admits that at least one burrowing owl and burrow were observed during a survey in 2016. DEIR, p. 4.5-22. However, after the survey was done, the Project Applicant illegally began demolition of the concrete and fill from the prior dairy operations in or about October 2016. It was not until September 2017 that the demolition and grading permits were approved and it was not until October 2017, just one month before the completion of the demolition and grading, that the construction BMPs were installed. DEIR, p. 4.1-4~5. No other surveys were conducted after the illegal demolition and grading were completed in November 2017. As a result, the DEIR fails to adequately analyze the Project’s impacts on burrowing owls.*

Response. A burrowing owl habitat assessment was conducted as part of the April 2016 MSHCP Consistency Analysis and Habitat Assessment report. A focused survey was conducted in March/April 2016 and documented in a letter report dated April 11, 2016 addressed to Rod Jones. A single burrowing owl was observed during the habitat assessment in January 2016. No burrowing owls were not found during the March/April 2016 focused burrowing owl survey conducted within the appropriate MSHCP survey protocol time period (March 15-August 30). In addition, a MSHCP 30 day burrowing owl pre-construction survey was conducted in September 2017 prior to City approved demolition activities. No owls were observed during the 30 day preconstruction survey.

[Please note, LSA cannot speak to any onsite activities conducted prior to work completed for the MSHCP consistency report and associated burrowing owl surveys. LSA defers to Mr. Rod Jones on this portion of the comment.]

Bracket No. 7y: *“The DEIR improperly defers mitigation of the project’s significant impacts on burrowing owls.” Moreover, the DEIR fails to adequately mitigate the Project’s significant impacts on burrowing owls by improperly deferring the adoption of specific performance standards that the mitigation measures are designed to achieve.*

Response. The project conducted a focused burrowing owl survey and 30 pre-construction survey for demolition activities in accordance with MSHCP burrowing owl survey protocol. In addition, the project will conduct an additional 30 day preconstruction survey before any future ground disturbing activities, and additional measures will be implemented if the burrowing owl is found at that time. See response to comment Bracket No. 5u. Therefore, no mitigation has been deferred.

Bracket No. 7z. *Section 15126.4(a)(1)(B) of the CEQA Guidelines states “[f]ormulation of mitigation measures shall not be deferred until some future time.” While specific details of mitigation measure may be deferred, an agency is required to (1) commit itself to mitigation, (2) adopt specific performance standards the mitigation will achieve, and (3) identify the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. See *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671.*

Response. The project has not deferred mitigation. See response to Bracket No. 7y.

Bracket No. 7aa. *As explained above, the DEIR admits that at least one burrowing owl and burrow were observed during a survey. DEIR, p. 4.5-22. There is no question that any “take” of burrowing owls or their nests and eggs violate the MBTA and the applicable sections of the California Fish and Game Code.*

Response. See response to comments for Bracket No’s 7w, 7x, 7y and 7z.

Bracket No. 7bb. *The DEIR’s biological resource mitigation measures MM-BIO-1 and MM-BIO-2 are vague and fail to adopt specific performance standards to ensure mitigation of the Project’s potentially significant impacts to burrowing owls. While MM-BIO-1 sets recommendations that no disturbances should occur within a certain distance during either breeding or nonbreeding seasons, it does not state for how long such avoidance of impacts must occur during construction and how much construction could be delayed. DEIR, p. 4.5-25. MM-BIO-2 similarly requires a survey during the nesting season and requires avoidance buffers if active bird nests are found. However, both MM-BIO-1 and MM-BIO-2 defer the mitigation of impacts to burrowing owls by failing to specify when and how relocation, if any, would take place especially given prior occurrence of burrowing owl in the Project Site. Moreover, relocation appears inevitable since any type of avoidance buffers cannot be maintained in perpetuity since the entire Project Site will be completely redeveloped into the Project according to the proposed Specific Plan. Finally, the DEIR fails to analyze how any extent of relocation or disturbance of burrowing owls or their burrows would constitute a take. Based on the vague analyses and improper deferrals contained in MM-BIO-1 and -2, the DEIR’s conclusion that the Project’s biological impacts would be reduced to an insignificant level is unsupported.*

Response. Appropriate avoidance and minimization measures for the burrowing owl will be incorporated by the project. See response to comment for Bracket No. 5u.

Bracket No. 9o. *The DEIR recognizes that the Project Site is located within the “Burrowing Owl Survey Area” in the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”). DEIR, p. 4.5-18. According to Mr. Cashen, the MSHCP requires applicants to conduct burrowing owl surveys “utilizing the protocols identified in the CDFG Staff Report on Burrowing Owl Mitigation.” Exhibit B, p. 2. These protocols require a minimum of three survey visits, at least three weeks apart, between April 15 and July 15. Id.*

Response. The April 2016 focused burrowing owl survey was conducted in accordance with accepted MSHCP guidelines (*Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area*, Riverside County Environmental Programs Department, March 29, 2006). The reference in the 2016 focused survey report to the “Burrowing Owl Survey Protocol and Mitigation Guidelines, The California Burrowing Owl Consortium, April 1993” is an editorial error.

Bracket No. 9p. *“according to Mr. Cashen, the DEIR’s burrowing owl surveys failed to comport with the MSHCP’s burrowing owl survey protocols. Exhibit B, p. 2. The DEIR replied only on two surveys, both of which were outside of the April 15 to July 15 timeframe required by the MSHCP. Id. As a*

result, the DEIR failed to establish an adequate baseline for the existence of burrowing owls on the Project Site.”

Response. A focused burrowing owl survey dated April 2016 was completed for the project. See response to comment Bracket No. 7x above.

Bracket No. 9s: *“the Initial Study (“IS”) erroneously concluded that the only special-status species that would be discussed in the EIR is burrowing owl by stating that “[t]he Project site is not within any other MSHCP survey areas, within a criteria cell, or within or near any MSHCP Special linkage areas.” IS, p. 29. However, according to Mr. Cashen, the Project site is located within the MSHCP’s Narrow Endemic Plant Species Survey Area (“NEPSSA”). Exhibit B, p. 3 citing DEIR, p. 4.5-18. As a result, the IS’s conclusion that the Project Site is not within any other MSHCP survey areas is incorrect and omitted analyses of numerous other special-status species including narrow endemic plants.”*

Response. A habitat assessment was conducted for MSHCP NEPSSA plant species. See response to comment Bracket No. 5r.

Bracket No. 9t: *Next, Mr. Cashen states that the MSHCP does not delineate survey areas for Riverside Fairy Shrimp, Santa Rosa Plateau Fairy Shrimp, and Vernal Pool Fairy Shrimp and as a result, the surveys for these species are required for all projects, like the Project, which contains potential habitat for these species. Exhibit B, p. 5-6. However, both the IS and DEIR omit any analysis of the Project’s impacts on these protected species. “Both the IS and DEIR omit any analysis of the Project’s impacts on these [Riverside Fairy Shrimp, Santa Rosa Plateau Fairy Shrimp, and Vernal Pool Fairy Shrimp] protected species.”*

Response. See response to comment Bracket 5o.

Bracket No. 9u. *“According to Mr. Cashen, three special status bat species (western red bat, western yellow bat, and hoary bat) have the potential to occur at the Project site. Exhibit B, p. 7. However, neither the IS nor the DEIR analyzed the Project’s potential impacts to special-status bats.”*

Response. The following serves to address potential project impacts to the subject bats.

Western red bat. The western red bat is classified as California Species of Special Concern and roosts in the foliage of trees and shrubs, commonly in edge habitats along streams or open fields, and sometimes in orchards or urban areas. Often associated with riparian habitats, particularly those containing sycamores and cottonwoods. The project site is almost exclusively vegetated by ruderal herbaceous forbs and grasses. The project site contains limited newly emergent riparian habitat, and **individual** ornamental trees associated with an existing residence that provides marginally suitable habitat for the western red bat. Because habitat for this bat is very limited and considered to be of low quality, the project will not have significant impacts to this bat species.

Western yellow bat. The western yellow bat is classified as a California Species of Special Concern and is found mostly in desert and desert riparian areas of the southwest US, but also expanding its range with the increased usage of native and non-native ornamental palms in landscaping. Individuals typically roost amid dead fronds of palms in desert oases, but have also been

documented roosting in cottonwood trees. Suitable riparian areas are not present. Ornamental palms are associated with a residence on the project site. These palms are lacking skirts typically used by bats for roosting and are considered to be **unsuitable** habitat for the Western yellow bat. Because **no suitable** habitat **is present** for this bat, **the project will have no effects on this species.** ~~is very limited and considered to be of low quality, the project will not have significant impacts to this bat species.~~

~~The project is not anticipated to have significant impacts to the western yellow bat.~~

Hoary bat. The hoary is classified as a California Special Animal and prefers open habitats with access to trees for roosting, and water. The project site contains limited newly emergent riparian habitat and **individual** ornamental trees associated with an existing residence that provide marginally suitable habitat for the hoary bat. Because habitat for this bat is very limited and considered to be of low quality, the project will not have significant impacts to this bat species.

These nonlisted special-status bat species have no official status but merit consideration under CEQA in order to evaluate any potential adverse effects. Project effects to these nonlisted bat species are not considered substantial because habitat is limited or absent for these species.

Bracket No. 9v. As a result, the DEIR's analysis regarding special-status species is also limited only to burrowing owl.

Response. The project is not anticipated to affect other special status species. See response to comment for Brackets 9o, 9p, 9t, and 9u.

Bracket No. 9x: *According to Mr. Cashen, the IS's conclusion that there are no jurisdictional waters on the Project Site is unsupported by any data or analysis, especially with respect to waters of the state. As a result, the IS and the DEIR improperly omitted analysis of Issue Area "c."*

Response. See response to comment 5n.

Bracket No. 9y: *The CEQA Guidelines Appendix G Issue Area "d" requires the lead agency to determine whether the Project will interfere substantially with the movement of any native resident or migratory fish or wildlife species or with onestablished native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. CEQA Guidelines, Appendix G. However, according to Mr. Cashen, the IS fails to analyze the Project's potential impacts on nursery sites of wildlife taxa besides nesting birds and wildlife movements or wildlife movement corridors. Exhibit B, p. 8.*

Response. The project is located within an area of encroaching development and is not located within a MSHCP conservation area or MSHCP designated wildlife linkage or corridor. The Project study area does not support regional wildlife movement, wildlife corridors, or nursery sites; therefore, the project will have no effects related to this topic.

Bracket No. 9z: *According to Mr. Cashen, the MSHCP obligates the City to require compliance with the Standard Best Management Practices set forth in Appendix C of the MSHCP. Exhibit B, p. 8, citing MSHCP, pp. 6-48, -49. However, the DEIR fails to incorporate mitigation measures or mechanisms to implement the MSHCP's Best Management Practices. Id.*

Response. See response to comment Bracket No. 9aa.

Bracket No. 9aa. “MM-BIO-1 is vague and improperly defers specific actions that will need to be taken to avoid negative impacts on burrowing owls that occupy the Project Site or “immediate vicinity,” which is undefined and subjective.”

Response. To comply with the MSHCP, a 30-day pre-construction survey will be conducted. If burrowing owls are determined to be present, the project proponent would need to inform and coordinate with the City of Menifee and the Wildlife Agencies immediately. The preparation of a Burrowing Owl Protection and Relocation Plan would be necessary prior to initiating ground disturbance. Any active burrow avoidance buffers would be identified in the Plan in coordination with the City of Menifee and the Wildlife Agencies. See response to comment Bracket No. 5u.

Bracket No. 9bb. “MM-BIO-1’s citation to the CDFW guidelines to avoid impacts on an active burrow is incorrect as CDFW guidelines recommend a 500-meter buffer, rather than a 50 or 75-meter buffer required by MM-BIO-1.”

Response. Per the requirements of the MSHCP, if burrowing owls are determined to be present, the project proponent would need to inform and coordinate with the City of Menifee and the Wildlife Agencies immediately. The preparation of a Burrowing Owl Protection and Relocation Plan would be necessary prior to initiating ground disturbance. Any active burrow avoidance buffers would be identified in the Plan in coordination with the City of Menifee and the Wildlife Agencies.

See response to comment Bracket No. 5u.

Bracket No. 9cc. *M-BIO-1’s relocation procedure is vague because it fails to cite any specific performance criteria for relocation such as the relocation procedures set by the MSHCP.”*

Response. Per the requirements of the MSHCP, if burrowing owls are determined to be present, the project proponent would need to inform and coordinate with the City of Menifee and the Wildlife Agencies immediately. The preparation of a Burrowing Owl Protection and Relocation Plan would be necessary prior to initiating ground disturbance. Any active burrow avoidance buffers would be identified in the Plan in coordination with the City of Menifee and the Wildlife Agencies. See response to comment Bracket No. 5u and 5v.

Bracket No. 9dd. *CEQA Guidelines require recirculation when a draft EIR is “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” 14 Cal Code Regs §15088.5. This test for recirculation was based on Mountain Lion Coalition v. Fish & Game Comm’n (1989) 214 Cal.App.3d 1043, where the court found that the draft EIR’s wholesale omission of any cumulative impacts analysis required recirculation of the final EIR.*

Response: The Western Riverside County Multi-Species Habitat Conservation Plan (WRCMSHCP) serves as a comprehensive, multi-jurisdictional Habitat Conservation Plan (HCP) pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act and the Natural Communities Conservation Plan, focusing on the conservation of species and their associated habitats in western Riverside County. The WRCMSHCP allows participating jurisdictions to

authorize the take of both the plant and wildlife species identified within the WRCMSHCP area. Regulation of the “take” of threatened, endangered, and rare species is authorized by the Wildlife Agencies (USFWS and CDFW), which allow “take authorization” for otherwise lawful actions (e.g., public and private development) in exchange for the assembly and management of a coordinated WRCMSHCP Conservation Area. The City is obligated to abide by specific conditions as described in Section 13.8 of the WRCMSHCP. Through project compliance with MSHCP, as detailed in these responses, the project will not result in substantial cumulative impacts.

Please contact me if you require further clarification or have any questions.

Sincerely,

LSA ASSOCIATES, INC.



Denise Woodard
Associate/ Senior Biologist