



April 3, 2023

Ms. Patricia Brenes

City of Perris

1093 Harley Knox Boulevard

Perris, CA 92571

[pbrenes@cityofperris.org](mailto:pbrenes@cityofperris.org)

**Subject: Tentative Tract Map No. 37904, Mitigated Negative Declaration, SCH # 2023030125, City of Perris, Riverside County**

Dear Ms. Brenes:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Perris (City) for the Tentative Tract Map No. 37904 (Project) for Pacific Communities Builder, Inc. (Project Applicant/Proponent) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>.

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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state fish and wildlife resources.

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<sup>1</sup> 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.

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, including 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.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

CDFW issued Natural Community Conservation Plan approval and take authorization in 2004 for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), as per Section 2800, *et seq.*, of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. CDFW is providing the following comments as they relate to the Project’s consistency with the MSHCP and CEQA.

## **PROJECT DESCRIPTION AND SUMMARY**

**Description:** The City of Perris (City; Lead Agency) and Pacific Communities Builder, Inc. (Project Applicant) are proposing the Tentative Tract Map No. 37904 (Project). The proposed Project will consist of the construction of 185 single family age restricted detached residential units, recreation center building, detention basin, and three recreational areas on approximately 40.62 acres.

In addition, the proposed Project would also include the installation of approximately 367,462 square feet of on-site and off-site street improvements, including half-width public roadway improvements along Mountain Avenue, McPherson Road, and David Jones Road and on-site paved surfaces as part of the Project.

**Location:** The Project site is located north of Mountain Avenue, east of McPherson Road, south of Ellis Avenue, and west of Arrowhead Circle in the City of Perris, Riverside County, California, in Township 5 South, Section 1, Range 4 West, of the U.S. Geological Survey 7.5” Perris, California topographic quadrangle map; Assessor’s Parcel Numbers 342-080-039, 342-080-040, 342-080-041, and 342-080-042.

## **COMMENTS AND RECOMMENDATIONS**

Based on the documents for review, CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, 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 are also be included to improve the environmental document. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains

adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

## **Western Riverside County Multiple Species Habitat Conservation Plan**

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements. The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP.

The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The City is the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. To demonstrate consistency with the MSHCP, as part of the CEQA review, the City shall ensure the Project pays Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP; and demonstrates compliance with: 1) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.1.2 of the MSHCP); 2) the Protection of Narrow Endemic Plant Species (Section 6.1.3 of the MSHCP); 3) the Urban/Wildlands Interface Guidelines (Section 6.1.4 of the MSHCP); 4) the policies set forth in Section 6.3.2; and 5) the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

### **Specific Comments**

#### **Comment #1: Burrowing Owl**

**Issue:** The Project may have a significant impact on burrowing owl (*Athene cunicularia*), a Species of Special Concern (SSC).

**Specific impacts:** Project construction and activities may result in injury or mortality of burrowing owl, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Also, the Project may impact breeding, wintering, and foraging habitat for the species. Habitat loss could result in local extirpation of the species and contribute to local, regional, and State-wide declines of burrowing owl.

**Why impacts would occur:** The MND and Appendix B identifies that protocol burrowing owl habitat surveys of the Project site were completed October 21, 2020, as described in the *2006 Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area* and that no burrowing owls were seen

or suitable habitat was found. No additional details (the survey dates, times, etc.) were provided regarding the burrowing owl surveys mentioned within the MND. The “Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area” specify a written report must be provided detailing results of the habitat assessment with photographs and indicating whether the project site contains suitable burrowing owl habitat and burrow locations.

There is insufficient information provided to determine if the proposed avoidance and minimization measures will mitigate Project impacts below a level of significance. BIO-1 would require a no-work buffer around nesting birds, which would apply to occupied burrowing owl burrows, both during the nesting season and outside breeding season to be determined by the biologist. However, no-work buffer could be an insufficient buffer from occupied burrows and adjacent foraging grounds given the types of disturbance associated with the Project. Burrowing owls could react to low level disturbances such as surveys, drive by, or minimal ground disturbance/excavation (Environment Canada 2009). The Project is proposing a buffer that may be more suitable for low level disturbances; however, the Project could generate noise and ground vibrations more consistent with medium to high level disturbance. Project construction would generate noise and ground vibrations during daytime and nighttime earthmoving activities, demolition, tunneling, spoils hauling, and operation of large machinery. A buffer from occupied burrows during these types of disturbances could result in burrowing owls abandoning active nests, potentially causing loss of eggs or developing young, and noise could cause birds to avoid suitable nesting habitat. Finally, a buffer would not protect important foraging habitat during burrowing owl nesting season.

Implementation of buffer “to the extent feasible” does not ensure that buffers will be required, which means that the mitigation proposed is not an enforceable requirement. Furthermore, CDFW’s 2012 Staff Report on Burrowing Mitigation (CDFG 2012) does not support relocating breeding burrowing owls as mitigation. Finally, CDFW does not issue permits for the take of nesting birds, nests, or eggs. BIO-1 does not provide any performance standards suitable for successfully mitigating impacts on burrowing owl habitat. The mitigation measure proposed in the MND may not satisfy the CEQA standards for mitigation that formulation of mitigation measures shall not be deferred until some future date (CEQA Guidelines, § 15126.4).

**Evidence impact would be significant:** Burrowing owl is a SSC, an SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;

- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or,
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2022b). CEQA provides protection not only for ESA and CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). In addition, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). It is unlawful to take, possess, or needlessly destroy the nest or eggs of any raptor.

In California, burrowing owls are in decline primarily because of habitat loss, as well as disease, predation, and drought. Burrowing owls require specific soil and microhabitat conditions, occur in few locations within a broad habitat category of grassland and some forms of agricultural land, require a relatively large home range to support their life history requirements, occur in relatively low numbers, and are semi-colonial.

The Project's impact on burrowing owl has yet to be mitigated below a significant level. Accordingly, the Project continues to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species by CDFW.

#### **Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** To avoid take of active burrowing owl burrows (nests), CDFW requests the City include the following mitigation measures in the MND per below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program.

**MM-Bio 2: To avoid project-related impacts to burrowing owls potentially occurring on or in the vicinity of the project site, project-specific habitat assessments and focused surveys for burrowing owls shall be conducted before implementing development or infrastructure projects within burrowing owl survey areas.** A pre-construction survey for resident burrowing owls shall be conducted by a qualified biologist within 30 days prior to commencement of grading and construction activities (**e.g., vegetation clearing, clearing, and grubbing, tree removal, site watering**) within those portions of the project site containing suitable burrowing owl

habitat. If ground disturbing activities in these areas are delayed or suspended for more than 30 days after the pre- construction survey, the area shall be resurveyed for owls. The pre-construction survey and ~~any relocation activity~~ shall be conducted in accordance with the current Burrowing Owl Instruction for the Western Riverside MSHCP. **The results of the survey should be submitted to the City and California Department of Fish and Wildlife within three days of survey completion. In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW as described above.**

**If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If burrowing owls are found to be present, then avoidance or minimization measures shall be undertaken in consultation with the City of Perris, California Department of Fish and Wildlife (CDFW) and US Fish and Wildlife Service (USFWS). CDFW shall be sent written notification within 48 hours of detection of burrowing owls.** If active nests are identified on an implementing project site during the pre-construction survey, ~~the nests shall be avoided or the owls actively or passively relocated.~~ **If active nests are identified on the Project site, the Project applicant shall not commence activities until it can be determined that the burrows are not being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.** ~~To adequately avoid active nests, no grading or heavy equipment activity shall take place within at least 250 feet of an active nest during the breeding season (February 1 through August 31), and 160 feet during the non-breeding season.~~

~~If burrowing owls occupy the project site and cannot be avoided, active or passive relocation shall be used to exclude owls from their burrows, as agreed to by the City of Perris Planning Division and the CDFG. Relocation shall be conducted outside the breeding season or once the young are able to leave the nest and fly. Passive relocation is the exclusion of owls from their burrows (outside the breeding season or once the young are able to leave the nest and fly) by installing one-way doors in burrow entrances. These one-way doors allow the owl to exit the burrow, but not enter it. These doors shall be left in place 48 hours to ensure owls have left the burrow. Artificial burrows shall be provided nearby. The implementing project area shall be monitored daily for one week to confirm owl use of burrows before excavating burrows in the impact area. Burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible pipe shall~~

~~be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. The CDFG shall be consulted prior to any active relocation to determine acceptable receiving sites available where this species has a greater chance of successful long-term relocation. If avoidance is infeasible, then a DBESP will be required, including associated relocation of burrowing owls. If conservation is not required, then owl relocation will still be required following accepted protocols. Take of active nests will be avoided, so it is strongly recommended that any relocation occur outside of the nesting season.~~

**The Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012) and Western Riverside County Multiple Species Habitat Conservation Plan. The qualified biologist and Project Applicant shall coordinate with the City, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the City, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. the City shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.**

**If burrowing owls are observed within Project Site(s) during Project implementation and construction, the Project applicant shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. The City shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan.**

**A final report shall be prepared by the qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and mitigation measures. The final report shall be submitted to the City and CDFW within 30 days of completion of the survey and burrowing monitoring for mitigation monitoring compliance record keeping.**

## **Comment #2: Nesting Bird**

**Issue:** The Project may have a significant impact on nesting birds, including Species of Special Concern and fully protected species, that are subject to Fish and Game Code section 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 the removal of vegetation onsite.

**Why impacts would occur:** Project activities could result in temporary or long-term loss of suitable nesting and foraging habitats. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009), and songbird abundance and density was significantly reduced in areas with high levels of noise (Bayne et al. 2008). Additionally, noise exceeding 70 dB(A) may affect feather and body growth of young birds (Kleist et al. 2018). In addition to construction activities, residential development and increased human presence in the Project site could contribute to nesting bird impacts.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

The duration of a pair to build a nest and incubate eggs varies considerably, therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction to ensure all nests on site are identified and to avoid take of nests. Without appropriate species-specific avoidance measures, biological construction monitoring may be ineffective for detecting nesting birds. This may result in Take of nesting birds. Project ground-disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

**Evidence impacts would be significant:** It is the Project proponent's responsibility to avoid Take of all nesting birds. 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-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. These regulations apply anytime nests or eggs exist on the Project site.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** To address the above issues and help the Project applicant avoid unlawfully taking of nesting birds, CDFW requests the City include the following mitigation measures in the MND per below (edits are in ~~striketrough~~ and **bold**), and also included in Attachment 1 “Mitigation Monitoring and Reporting Program.

**MM-Bio 1: In order to avoid violation of the Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code Sections 3503, 3503.5, and 3513, site preparation activities (ground disturbance, construction activities, staging equipment, and/or ~~∨~~vegetation removal activities) ~~s be conducted outside of~~ for the project shall be avoided, to the greatest extent possible, during the nesting bird season (typically February 15th to August 31st).**

If ~~grading and clearing~~ **site-preparation** activities must occur during the nesting/**breeding** season, **the project proponent shall retain a qualified biologist to conduct a pre-activity field survey prior to the issuance of grading permits for the project to determine if active nests of species protected by the MBTA or the California Fish and Game Code are present in the construction zone.** A nesting bird survey shall be conducted by a qualified biologist within ~~seven~~ **three** days prior to the start of any ground disturbing activities to determine if any nesting birds occur within the project site. **The nest surveys shall include the project site and adjacent areas where project activities have the potential to cause nest failure. The survey results shall be provided to the City’s Planning Department. The Project Applicant shall adhere to the following:**

- 1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization**

**measures; and monitoring the efficacy of implemented avoidance and minimization measures.**

- 2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.**

If nesting birds are not found within the project site, ~~no further actions will be required~~ **site preparation and construction activities may begin during the nesting/breeding season.** If nesting birds (including nesting raptors) are observed, **then avoidance or minimization measures shall be undertaken in consultation with the City of Perris and California Department of Fish and Wildlife. Measures shall include immediate establishment of a buffer zone between construction activities and the nesting bird shall be established by a qualified biologist, and approved by the City of Perris, based on their best professional judgement and experience.** ~~The buffer zone shall be determined by the type of nesting bird. A typical buffer zone will be 250 feet for nesting passerine birds (songbirds) and 500 feet for nesting raptors.~~ **The buffer around the nest shall be delineated and flagged, and no construction activity shall occur within the buffer area until a qualified biologist determines nesting species have fledged and the nest is no longer active or the nest has failed. The biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the biologist determines that such project activities may be causing an adverse reaction, the biologist shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers. All work within these buffers will be halted until the nesting effort is finished (i.e., the juveniles are surviving independent from the nest). The onsite biologist shall review and verify compliance with these nesting avoidance buffers and shall verify the nesting effort has finished. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to City of Perris Planning Division for mitigation monitoring compliance record keeping.**

### **Comment #3: Impacts to Aquatic and Riparian Resources; Lake and Streambed Alteration Agreement (LSAA)**

**Issue:** Based on review of material submitted with the MND and review of aerial photography the Project has the potential to impact fish and wildlife resources subject to Fish and Game Code section 1600 et seq.

**Specific Impact:** The MND identified a stream subject to Fish and Game Code section 1600 along the eastern portion of the proposed alignment (Mountain Avenue Wash) and is directly connected to the San Jacinto River, generally flowing in a south to north direction. Based on the proposed design, the portion of the drainage located in the northeastern portion of the Project Site will be avoided. While the MND, Appendix B, and Appendix I state that the stream will be avoided, the Project activities have the potential to impact fish and wildlife resources through the deposition of debris, waste or other materials that could pass into any river, stream, or lake. In addition, Appendix B mentions that “potential jurisdictional waters were observed during the October 2020 field investigations and a comprehensive jurisdictional delineation survey will be prepared in the near future and report submitted upon completion;” however, no jurisdictional delineation surveys were completed for this Project.

**Why Impact Would Occur:** Project-related activities could potentially alter drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

**Evidence Impact Would Be Significant:** The Project may substantially adversely affect the existing stream pattern and geomorphologic processes of the Project site through the deposition of debris, waste or other materials that could pass into any river, stream or lake. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that “any river, stream or lake” includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources.

CDFW may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code, § 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and 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/Forms>.

### **Recommended potentially feasible mitigation measure(s):**

**Mitigation Measure #1:** To ensure compliance with Fish and Game Code section 1602 CDFW recommends that the City condition the MND to include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 et seq. resources may occur within the proposed Project alignment.

CDFW recommends the inclusion of the following measure in the MND per the edits below (edits are in ~~strike through~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program":

**MM BIO-XX: Prior to the grading the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement or written documentation from CDFW that a Streamed Alteration Agreement is not needed.**

## **ADDITIONAL RECOMMENDATIONS**

### **Mitigation and Monitoring Reporting Plan**

CDFW recommends updating the MND's proposed Biological Resources Mitigation Measures to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [(Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation, monitoring, and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures.

Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1).

## **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 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 for the Tentative Tract Map No. 37904, State Clearinghouse No. 2023030125 to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. CDFW requests that the City of Perris addresses CDFW's comments and concerns prior to adoption of the MND for the Project.

Questions regarding this letter or further coordination should be directed to Katrina Rehner, Environmental Scientist, at [katrina.rehner@wildlife.ca.gov](mailto:katrina.rehner@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Kim Freeburn  
Environmental Program Manager

Ms. Patricia Brenes  
City of Perris, Planning Manager  
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## REFERENCES

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*GAVIN NEWSOM, Governor*  
*CHARLTON H. BONHAM, Director*



**Attachment A: Draft Mitigation and Monitoring Reporting Plan**

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project’s final on and/or off-site mitigation plans.

<b>Biological Resources (BIO)</b>			
<b>Mitigation Measure (MM)</b>		<b>Timing</b>	<b>Responsible Party</b>
<b>Burrowing Owl</b>	<p><b>MM BIO-2:</b> To avoid project-related impacts to burrowing owls potentially occurring on or in the vicinity of the project site, project-specific habitat assessments and focused surveys for burrowing owls shall be conducted before implementing development or infrastructure projects within burrowing owl survey areas. A pre-construction survey for resident burrowing owls shall be conducted by a qualified biologist within 30 days prior to commencement of grading and construction activities (e.g., vegetation clearing, clearing, and grubbing, tree removal, site watering) within those portions of the project site containing suitable burrowing owl habitat. If ground disturbing activities in these areas are delayed or suspended for more than 30 days after the pre-construction survey, the area shall be resurveyed for owls. The pre-construction survey shall be conducted in accordance with the current Burrowing Owl Instruction for the Western Riverside MSHCP. The results of the survey should be submitted to the City and California Department of Fish and Wildlife within three days of survey completion. In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>



	<p>and reported to CDFW as described above.</p> <p>If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If burrowing owls are found to be present, then avoidance or minimization measures shall be undertaken in consultation with the City of Perris, California Department of Fish and Wildlife (CDFW) and US Fish and Wildlife Service (USFWS). CDFW shall be sent written notification within 48 hours of detection of burrowing owls. If active nests are identified on the Project site, the Project applicant shall not commence activities until it can be determined that the burrows are not being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.</p> <p>The Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012) and Western Riverside County Multiple Species Habitat Conservation Plan. The qualified biologist and Project Applicant shall coordinate with the City, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the City, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the</p>		
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	<p>burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. the City shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>If burrowing owls are observed within Project Site(s) during Project implementation and construction, the Project applicant shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. the City shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan.</p> <p>A final report shall be prepared by the qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and mitigation measures. The final report shall be submitted to the City and CDFW within 30 days of completion of the survey and burrowing monitoring for mitigation monitoring compliance record keeping.</p>		
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<p><b>Nesting Birds</b></p>	<p><b>MM-BIO-1:</b> In order to avoid violation of the Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code Sections 3503, 3503.5, and 3513, site preparation activities (ground disturbance, construction activities, staging equipment, and/or vegetation removal activities)-for the project shall be avoided, to the greatest extent possible, during the nesting bird season.</p> <p>If site-preparation activities must occur during the nesting/breeding season, the project proponent shall retain a qualified biologist to conduct a pre-activity field survey prior to the issuance of grading permits for the project to determine if active nests of species protected by the MBTA or the California Fish and Game Code are present in the construction zone. A nesting bird survey shall be conducted by a qualified biologist within three days prior to the start of any ground disturbing activities to determine if any nesting birds occur within the project site. The nest surveys shall include the project site and adjacent areas where project activities have the potential to cause nest failure. The survey results shall be provided to the City’s Planning Department. The Project Applicant shall adhere to the following:</p> <ol style="list-style-type: none"> <li>1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization</li> </ol>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
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	<p>measures.</p> <p><b>2.</b> Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.</p> <p>If nesting birds are not found within the project site, site preparation and construction activities may begin during the nesting/breeding season. If nesting birds (including nesting raptors) are observed, then avoidance or minimization measures shall be undertaken in consultation with the City of Perris and California Department of Fish and Wildlife. Measures shall include immediate establishment of a buffer zone between construction activities and the nesting bird by a qualified biologist, and approved by the City of Perris, based on their best professional judgement and experience. The buffer around the nest shall be delineated and flagged, and no construction activity shall occur within the buffer area until a qualified biologist determines nesting species have fledged and the nest is no longer active or the nest has failed. The biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the biologist determines that such project activities may be causing an adverse reaction, the biologist</p>		
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	<p>shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers. All work within these buffers will be halted until the nesting effort is finished (i.e., the juveniles are surviving independent from the nest). The onsite biologist shall review and verify compliance with these nesting avoidance buffers and shall verify the nesting effort has finished. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to City of Perris Planning Division for mitigation monitoring compliance record keeping.</p>		
<p>Impacts to Aquatic and Riparian Resources</p>	<p><b>MM BIO-XX:</b> Prior to the grading the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement or written documentation from CDFW that a Streambed Alteration Agreement is not needed.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>