State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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May 15, 2023

Mr. Kevin White
City of San Jacinto
595 S. San Jacinto Avenue
San Jacinto, CA 92583
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Subject: San Jacinto Residential Development Project, Mitigated Negative Declaration, SCH # 2023040304, City of San Jacinto, Riverside County

Dear Mr. White:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of San Jacinto (City) for the San Jacinto Residential Development Project (Project) for JS Bray, LLC/JA Bray, LLC (Project Applicant/Proponent) pursuant to 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, 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.

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.

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 San Jacinto (City; Lead Agency) and Pacific Communities Builder, Inc. (Project Applicant) are proposing the San Jacinto Residential Development Project (Project). The proposed Project will consist of the construction of up to 181 single-family residential homes and associated infrastructure on approximately 35 acres.

In addition, the Project also includes the following offsite improvements: the connection of proposed internal circulation system to the intersections of Lyon Avenue/Appaloosa Drive and Marilyn Drive/Estrella Street; connecting to existing utility systems within Lyon Avenue; frontage improvements along Lyon Avenue including a multi-use path, sidewalk and street lights; and constructing a portion of the San Jacinto Valley Master Drainage Plan storm drain system Line G-3 from Marilyn Drive/Estrella Street along the northeast edge of the development.

Location: The Project site is located east of Lyon Avenue and Appaloosa Drive, north of Cottonwood Avenue, and west of Marylin Drive in the City of San Jacinto, Riverside County, California, in Township 4 South, Section 28, Range 1 West, of the U.S. Geological Survey 7.5" Riverside East, California topographic quadrangle map; Assessor's Parcel Numbers 436-280-011, 436-280-012, 436-280-013, 436-280-014, and 436-280-025.

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 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 identifies that protocol burrowing owl focused surveys of the Project site were completed in July and August 2021, 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; however, 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.

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,** ~~A~~ **a** pre-construction presence/absence survey for burrowing owl **in accordance with the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area** ~~within the Project footprint where suitable habitat is present~~ will be conducted by a qualified biologist within 30 days prior to the commencement of ground disturbing activities including vegetation clearing, grubbing, tree removal, or site watering. **In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities**

and reported to CDFW. Additionally, if ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey shall again be necessary to minimize the possibility burrowing owl have not colonized the site since it was last disturbed. If burrowing owls are found, the same coordination described above shall be necessary.

If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If burrowing owl ~~have colonized the Project footprint prior to initiation of construction~~ **are present within the survey area**, ~~the Project proponent shall immediately inform the City and Wildlife Agencies and shall prepare a Burrowing Owl Protection and Relocation Plan as well as a Determination of Biologically Equivalent or Superior Preservation (DBESP) for approval by the City and Wildlife Agencies prior to initiating ground disturbance~~ **then avoidance or minimization measures shall be undertaken in consultation with the City of San Jacinto, 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 Project applicant shall not commence activities until no sign is present that the burrows are 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.**

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 will 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 will be submitted to CDFW for review and approval within two weeks of detection and no Project activity will 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 a qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and mitigation measures. The final report will 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 ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program.

> **MM-Bio 1:** Preconstruction Surveys. T**o maintain compliance with the Migratory Bird Treaty Act (MBTA and California Fish and Game Code Sections 3503, 3503.5, and 3513),** prior to the start of ground disturbance or vegetation removal, pre-construction surveys shall be conducted to avoid impacts to avian ~~and bat~~ species.
>
> ~~(a)~~ Removal of any trees, shrubs or any other potential nesting and foraging habitat for avian and/or sensitive avian species shall be conducted outside of the nesting season to the **greatest** extent practical. Alternatively, a nesting bird survey shall be conducted within three (3) days prior to the start of work if work is to occur during the nesting bird season ~~(January 31 – August 31)~~. ~~If vegetation removal occurs outside of nesting season or if no nesting birds are found, no further action is required.~~ **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, site preparation and construction activities may begin during the nesting/breeding season. If **nesting birds or** active nests **(including nesting raptors)** are identified, **then avoidance or minimization measures shall be undertaken in consultation with the City of San Jacinto and California Department of Fish and Wildlife. Measures shall include immediate establishment of an avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of San Jacinto, based on their best professional judgement and experience.** ~~the biologist shall establish appropriate buffers around the nest (typically 500 feet for raptors and sensitive species, 200 feet for non-raptors/non-sensitive species).~~ **The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. The buffer around the nest shall be delineated and flagged, and a**ll work within these buffers shall be halted until **a qualified biologist determines** the nesting effort is finished (i.e., the juveniles are surviving independent from the nest **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.** The onsite biologist shall review and verify compliance with these nesting

boundaries and shall verify the nesting effort has finished **(i.e., the juveniles are surviving independent from the nest). All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is otherwise confirmed that the nest has been unsuccessful or abandoned**. Work can resume within the buffer area when no other active nests are found. ~~Alternatively, a qualified biologist may determine that certain work can be permitted within the buffer areas and shall develop a monitoring plan to prevent any impacts while the nest continues to be active (i.e., has eggs or chicks).~~ If vegetation clearing is not initiated within 72 hours of a negative survey during the nesting season, the nesting survey must be repeated to confirm the absence of nesting birds. **Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to City of San Jacinto Planning Division for mitigation monitoring compliance record keeping.**

~~(b) Trees and large shrubs shall be surveyed for the presence of special status bat species by a qualified bat biologist no more than two weeks prior to the initiation of vegetation removal or ground disturbing activities if work will begin within the maternity season (March 1 to August 31). Surveys may entail direct inspection of the trees and large shrubs or nighttime surveys as determined by a qualified biologist. If active bat roosts are present, a qualified bat biologist shall determine the species of bats present and the type of roost (i.e., day roost, night roost, maternity roost). If special-status bat species are present, a qualified bat biologist shall determine appropriate avoidance measures, which may include implementation of a construction-free buffer around the active roost.~~

Comment #3: Impacts on Bats

Issue: The Project may have a significant impact on the following species of bats (collectively, bats), which includes some SSC:

- Western red bat (*Lasiurus blossevillii*)
- Western yellow bat (*Lasiurus xanthinus*)

Specific Impacts: Project construction and activities may result in direct and indirect impacts to bats. Direct impacts include removal of trees and structures occupied by roosting bats. This could result in injury or mortality to bats as well as loss of roosting habitat. Indirect impacts to bats and roosts could result from increased noise disturbances, human activity, dust, vegetation clearing, ground-disturbing activities (e.g., staging, mobilizing, excavating, and grading), and vibrations caused by heavy equipment.

Why impact would occur: Page 4.4-16 states, “western yellow bat and western red bat have a moderate potential to occur within the Project footprint for foraging; however,

the Project footprint exhibits limited nesting or roosting habitat for these species. The permanent loss of approximately 35.06 acres of foraging habitat for these species would not decrease populations below self-sustaining levels given the availability of habitat remaining in the region. Therefore, permanent impacts would be less than significant pursuant to CEQA. During temporary construction activities, individuals would be expected to move to nearby habitat; therefore, there would be no direct mortality on these species."

To mitigate the Project's impact on bats, the Project proposes mitigation measures BIO MM-1. However, this measure may not be sufficient to mitigate the Project's impacts to below a level of significance. BIO MM-1 would require pre-construction surveys for bats prior to the initiation of vegetation removal or ground disturbing activities if work will begin within the maternity season. Site-specific, focused surveys are necessary to determine if bats and roosts are present in a variety of natural and human-made environments that modeling may have missed. These environments include caves, rocky crevices, cliffs, abandoned mines, barns, buildings, culverts, and bridges. Bat presence, when informed by surveys conducted during unfavorable weather conditions, could result in false negatives. Insufficient bat surveys could result in injury or mortality of undetected bats and loss of bat roosts.

BIO MM-1 would require avoidance of active hibernacula or maternity roosts as determined by the qualified bat biologist. The MND does not state how the active hibernacula or maternity roosts would be avoided. Impacts to roosting bats or bats in maternity roosts could result in reduced fecundity or injury and mortality of reproductive female bats and pups. Maternity colonies that are affected by temporarily reduced fecundity or mortality may require multiple years to recover following a disturbance event (H.T. Harvey & Associates 2019). Accordingly, the Project and mitigation measures proposed by the Project could result in a population decline of an SSC. Finally, no compensatory mitigation is proposed in the MND. The Project could result in loss of roosting habitat. Relocating or evicting active hibernacula or maternity roosts is not mitigating for loss of habitat that would occur.

Evidence impact would be significant: Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Several bat species are considered 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).

Impacts on SSC could require a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065). Impacts on bats, either directly or indirectly through disturbances to roosts and loss of habitat, would be a significant impact.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To address the above issues and help the Project applicant avoid unlawful taking of bats, 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-XX: To avoid impacts to special-status bat species and identify roosting habitat, bat surveys shall be conducted in the spring, summer, fall, and winter by a qualified bat biologist prior to initiation of Project activities. Surveys shall be conducted within the Project site and 100-foot buffer during appropriate weather conditions. If bats are identified, the qualified bat biologist shall identify the bats to the species level and evaluate the colony to determine its size and significance, and presence of a maternal colony. If any evidence of bat occupation is identified during surveys, the qualified bat biologist shall then provide additional measures to avoid impacts to roosting bats as recommended by the California Department of Fish and Wildlife (CDFW) and shall include replacing any existing bat roosts impacted by the Project with new roosting habitat in conjunction with a three (3) year monitoring period by a CDFW-approved bat biologist. Measures provided shall be specific to the individual roost species present, and proposed construction activities, and shall include, but not be limited to the following: a) postponement of Project activities to outside of the bat maternity season (typically, maternity season is April 1 through August 31) if a maternity colony is identified to be present and b) monitoring of Project activities by a qualified bat biologist. Project activities that do not produce noise or vibrations substantially higher than ambient conditions may be conducted if a non-maternal roosting colony is present at the qualified bat biologist's discretion and if approved by CDFW. If the qualified bat biologist determines that nonmaternal colony roosting bats are disturbed by construction activities, construction activities shall cease immediately and additional avoidance measures (e.g., installation of a noise shroud or sound curtain) and coordination with CDFW shall be required before activities resume. If a

maternity colony is present, tree removal and/or modification shall occur outside the bat maternity season (typically April 1 through August 31) in the fall (after flightless young have become volant as determined by the qualified bat biologist) and under the supervision of a qualified bat biologist.

The qualified bat biologist shall supervise the following two-step process of tree removal that shall occur over a 2-day period to avoid direct mortality of foliage-roosting species: (1) On Day 1, branches and limbs that do not contain crevices or cavities shall be removed using hand tools or chainsaws. The goal is to create a disturbance sufficient to cause any bats roosting in the tree to leave that night and not return, but not at a level of intensity that will cause bats to fly out of the tree during the disturbance itself (i.e., during the daytime, when leaving the roost will likely result in predation) and (2) On Day 2, the remainder of the tree may be removed.

Comment #4: 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 an “interim channel” that may be subject to Fish and Game Code section 1600) throughout the Project site and is hydrologically connected to the San Jacinto River. 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.

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 ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program":

> **MM BIO-XX: Direct and indirect permanent impacts to CDFW jurisdictional non-wetlands waters shall be addressed through Section 1602 of the California Fish and Game Code. 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 (SAA) or written documentation from CDFW that a Streamed Alteration Agreement is not needed.**
>
> **The notification to CDFW should provide the following information:**
>
> 1. **A stream delineation including the bed, bank and channel;**
> 2. **Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily**

impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009);

3. **A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and**

4. **A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site.**

If an SAA is required, the Applicant shall provide compensatory mitigation at no less than 3:1 for impacts to streams and associated natural communities, or at a ratio acceptable to CDFW per a LSA Agreement. Mitigation should occur within the Western Riverside County. On-site mitigation measures may include the enhancement of existing streams. A conceptual Habitat Mitigation and Monitoring Plan shall be prepared, if necessary, for the enhancement activities to address impacts to Fish and Game Code section 1602 resources, which may include non-native species removal and revegetation followed by periodic monitoring. The plan shall specify the criteria and standards by which the enhancement actions will compensate for impacts of the project on streams.

Additional Recommendations

Weed Management Plan. A weed management plan should be developed for the Project site and implemented during the duration of this long-term Project. On-going soil disturbance promotes establishment and growth of non-native weeds. As part of the Project, non-native weeds should be prevented from becoming established. The Projects site should be monitored via mapping for new introductions and expansions of non-native weeds.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 San Jacinto Residential Development Project, State Clearinghouse No. 2023040304 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 San Jacinto 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 Rehrer, Environmental Scientist, at katrina.rehrer@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...

Kim Freeburn
Environmental Program Manager

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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.

Biological Resources (BIO)			
Mitigation Measure (MM)		**Timing**	**Responsible Party**
Burrowing Owl	**MM BIO-2:** To avoid project-related impacts to burrowing owls potentially occurring on or in the vicinity of the project site, a pre-construction presence/absence survey for burrowing owl in accordance with the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area shall be conducted by a qualified biologist within 30 days prior to the commencement of ground disturbing activities including vegetation clearing, grubbing, tree removal, or site watering. In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW. Additionally, if ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey shall again be necessary to minimize the possibility burrowing owl have not colonized the site since it was last disturbed. If burrowing owls are found, the same coordination described above shall be necessary. If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If burrowing owl are present within the survey area, then avoidance or minimization measures will be undertaken in consultation with the City of San Jacinto, California Department of Fish and Wildlife (CDFW) and US Fish and Wildlife Service (USFWS). CDFW shall be sent	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	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 Project applicant shall not commence activities until no sign is present that the burrows are 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. 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 will be submitted to the City and CDFW within 30 days of completion of the survey and burrowing monitoring for mitigation monitoring compliance record keeping.		
Nesting Birds	**MM-BIO-1:** Preconstruction Surveys. To maintain compliance with the Migratory Bird Treaty Act (MBTA and California Fish and Game Code Sections 3503, 3503.5, and 3513), prior to the start of ground disturbance or vegetation removal, pre-construction surveys shall be conducted to avoid impacts to avian species. Removal of any trees, shrubs or any other potential nesting and foraging habitat for avian and/or sensitive avian species shall be conducted outside of the nesting season to the greatest extent practical. Alternatively, a nesting bird survey shall be conducted within three (3) days prior to the start of work if work is to occur during the nesting bird season. 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	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	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, site preparation and construction activities may begin during the nesting/breeding season. If nesting birds or active nests (including nesting raptors) are identified, then avoidance or minimization measures shall be undertaken in consultation with the City of San Jacinto and California Department of Fish and Wildlife. Measures shall include immediate establishment of an avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of San Jacinto, based on their best professional judgement and experience. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. The buffer around the nest shall be delineated and flagged, and all work within these buffers shall be halted until a qualified biologist determines the nesting effort is finished (i.e., the juveniles are surviving independent from the nest **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. The onsite biologist shall review and verify compliance with these nesting boundaries and shall verify the nesting effort has finished **(i.e., the juveniles are surviving independent from the nest). All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is otherwise confirmed that the nest has been unsuccessful or abandoned**. Work can resume within the buffer area when no other active nests are found. If vegetation clearing is not initiated within 72 hours of a negative survey during the nesting season, the nesting survey must be repeated to confirm the absence of nesting birds. **Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to City of San Jacinto Planning Division for mitigation monitoring compliance record keeping.**		
Bats	**MM BIO-XX:** To avoid impacts to special-status bat species and identify roosting habitat, bat surveys shall be conducted in the spring, summer, fall, and winter by a qualified bat biologist prior to initiation of Project activities. Surveys shall be conducted within the Project site and 100-foot buffer during appropriate weather conditions. If bats are identified, the qualified bat biologist shall identify the bats to the species level and evaluate the colony to determine its size and significance, and presence of a maternal colony. If any evidence of bat occupation is identified during surveys, the qualified bat biologist shall then provide additional measures to avoid impacts to roosting bats as recommended by the California Department of Fish and Wildlife (CDFW) and shall include replacing any existing bat roosts impacted by the Project with new roosting habitat in conjunction with a three (3) year monitoring period by a CDFW-approved bat biologist. Measures provided shall be specific to the individual roost species present,	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	and proposed construction activities, and shall include, but not be limited to the following: a) postponement of Project activities to outside of the bat maternity season (typically, maternity season is April 1 through August 31) if a maternity colony is identified to be present and b) monitoring of Project activities by a qualified bat biologist. Project activities that do not produce noise or vibrations substantially higher than ambient conditions may be conducted if a non-maternal roosting colony is present at the qualified bat biologist's discretion and if approved by CDFW. If the qualified bat biologist determines that nonmaternal colony roosting bats are disturbed by construction activities, construction activities shall cease immediately and additional avoidance measures (e.g., installation of a noise shroud or sound curtain) and coordination with CDFW shall be required before activities resume. If a maternity colony is present, tree removal and/or modification shall occur outside the bat maternity season (typically April 1 through August 31) in the fall (after flightless young have become volant as determined by the qualified bat biologist) and under the supervision of a qualified bat biologist. The qualified bat biologist shall supervise the following two-step process of tree removal that shall occur over a 2-day period to avoid direct mortality of foliage-roosting species: (1) On Day 1, branches and limbs that do not contain crevices or cavities shall be removed using hand tools or chainsaws. The goal is to create a disturbance sufficient to cause any bats roosting in the tree to leave that night and not return, but not at a level of intensity that will cause bats to fly out of the tree during the disturbance itself (i.e., during the daytime, when leaving the roost will likely result in predation) and (2) On Day 2, the remainder of the tree may be removed.		

Impacts to Aquatic and Riparian Resources	**MM BIO-XX**: Direct and indirect permanent impacts to CDFW jurisdictional non-wetlands waters shall be addressed through Section 1602 of the California Fish and Game Code. 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 (SAA) or written documentation from CDFW that a Streamed Alteration Agreement is not needed. The notification to CDFW should provide the following information: 1. A stream delineation including the bed, bank and channel; 2. Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009); 3. A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and 4. A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site. If an SAA is required, the Applicant shall provide compensatory mitigation at no less than 3:1 for impacts to streams and	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	associated natural communities, or at a ratio acceptable to CDFW per a LSA Agreement. Mitigation should occur within the Western Riverside County. On-site mitigation measures may include the enhancement of existing streams. A conceptual Habitat Mitigation and Monitoring Plan shall be prepared, if necessary, for the enhancement activities to address impacts to Fish and Game Code section 1602 resources, which may include non-native species removal and revegetation followed by periodic monitoring. The plan shall specify the criteria and standards by which the enhancement actions will compensate for impacts of the project on streams.		