



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 19, 2023

Ms. Danielle Harper-Scott
Associate Planner
14177 Frederick Street
Moreno Valley, CA 92553
danielleh@moval.org

Subject: Draft Mitigated Negative Declaration, Valley Garden Apartments Project, State Clearinghouse No. 2023090006, City of Moreno Valley, Riverside County

Dear Ms. Harper-Scott:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Moreno Valley (City) for the Valley Garden Apartments Project (Project) for the Project Applicant/Proponent (Tran & Mai-Anh Chung) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish & G. Code, §§ 711.7, 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 Moreno Valley (City; Lead Agency) and the Project Applicant (Tran & Mai-Anh Chung) are proposing the Valley Gardens Apartments Project (Project). The proposed Project will consist of the subdivision of an 8.99-acre parcel into two parcels to construct a 64-unit apartment complex composed of eight two-story buildings on approximately 4.6-acres.

Location: The Project site is located north of Alessandro Boulevard, east of Flaming Arrow Drive, south of Old Farm Street, and west of Moreno Rose Place within the City of Moreno Valley, Riverside County, California, in Township 3 South, Section 8, Range 3 West, of the U.S. Geological Survey 7.5”, California topographic quadrangle map; Assessor’s Parcel Number 479-220-024.

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 policies set forth in Section 6.3.2; and 2) 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 the “project area is located within an MSHCP Burrowing Owl Survey Area and contains suitable habitat to potentially support BUOW in the future. Therefore, a focused BUOW survey is required by the MSHCP.” The protocol burrowing owl focused surveys of the Project site have yet to be completed, as described in the *2006 Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area*. The “Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area” specify that focused surveys for burrowing owl should be conducted, and a written report must be provided detailing results of the survey, with photographs. Without information regarding occupancy of the site and how the site may be used by owls (e.g., breeding, overwintering, foraging, etc.), the MND may not be able to determine whether

the project can mitigate its impacts to less than significant. CDFW recommends the MND be revised and circulated to provide this information. However, if the City chooses not to collect and disseminate this information, then the mitigation measure should be updated, as provided below, to address a scenario in which the site is determined to be occupied.

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 of 50 meters around occupied burrowing owl burrows, both during the nesting season and outside breeding season to be determined by the biologist. However, this buffer may be insufficient to protect occupied burrows from 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 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. 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.

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.

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 ~~strike through~~ and **bold**), and also included in Attachment 1 “Mitigation Monitoring and Reporting Program.

MM-Bio 1: The project area is located within an MSHCP Burrowing Owl Survey Area and contains suitable habitat to potentially support BUOW in the future. Therefore, focused BUOW surveys, census, and mapping are required by the MSHCP. A qualified biologist would conduct focused BUOW surveys in accordance with the Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area (MSHCP Survey Guidelines; Riverside County TLMA, 2006) during the burrowing owl nesting season. In addition, a pre-construction survey shall also be conducted within 30 days prior to ~~ground disturbance~~ **to the commencement of ground disturbing activities including vegetation clearing, grubbing, tree removal, or site watering.**

Following the completion of the focused BUOW survey, the biologist would prepare a letter report in accordance with the MSHCP Survey Guidelines summarizing the results of the survey. The report would be submitted to the City of Moreno Valley prior to initiating any ground disturbance activities. If no BUOWs or signs of BUOW are observed during the survey and concurrence is received from EPD and CDFW, project activities may begin. ~~and no further mitigation would be required.~~ **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 BUOW or signs of BUOW are observed during the survey, the site would be considered occupied. The biologist would implement protection measures listed below and contact the eCity, EPD, and CDFW to assist in the

development of avoidance, minimization, and mitigation measures (**a Burrowing Owl Plan**), prior to commencing project activities. The list of potential measures to avoid and minimize impacts to BUOWs described in the ~~above~~-section **below** would be implemented.

~~Planning BUOW Protection Measures: Grading, construction, and other project activities on all grassland habitat will be delayed until the qualified biologist has implemented burrow exclusion and closure. No ground-disturbing activities within 50 meters (165 feet) of an active BUOW burrow will be permitted until burrow exclusion and closure have been implemented. No destruction of foraging habitat will be permitted until burrow exclusion and closure have been implemented.~~

Pre-Construction BUOW Protection Measures: Prior to the initiation of grading and construction activities, **a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW. If no burrowing owls are observed during the survey, site preparation and construction activities may begin.** ~~the biologist shall implement passive relocation of an active BUOW burrow by installing a one-way door and then permanently excluding the BUOW from returning once it is confirmed that no BUOW individuals remain in the burrow. A biological monitor will visit the site daily to verify that the burrow is empty by monitoring and scoping the burrow. Considering that there is not adequate BUOW habitat of at least 6.6 acres to which an excluded BUOW pair can relocate, the project applicant shall pay a Local Development Mitigation Fee to the County of Riverside to offset the impacts to the BUOW. All surveys and reporting required by the MSHCP will be complied with including a focused BUOW survey.~~

BUOW Protection Measures: If BUOWs or signs of BUOW are observed during the survey, then the site would be considered occupied and the biologist shall contact the City of Moreno Valley, EPD, **US Fish and Wildlife Service (USFWS)**, and CDFW to assist in the development of avoidance, minimization, and mitigation measures discussed below, prior to commencing project activities (Riverside County TLMA, 2006). **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, RCA, 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, RCA, and USFWS review and approval.

Construction BUOW Protection Measures: A biological monitor will be onsite to monitor any BUOW or signs of BUOW. ~~If any BUOW are observed then the biologist will consult with the County EPD and CDFW to determine the appropriate measures.~~ 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.

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 (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 Valley Garden Apartments Project, State Clearinghouse No. 2023090006 to assist in identifying and

Ms. Danielle Harper-Scott
City of Moreno Valley
September 19, 2023
Page 9 of 14

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 Moreno Valley 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:

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Kim Freeburn
Environmental Program Manager

ec: **California Department of Fish and Wildlife**
Carly Beck, Senior Environmental Scientist Supervisor
Carly.Beck@wildlife.ca.gov

U.S. Fish and Wildlife Service
Karin Cleary-Rose
Karin_Cleary-Rose@fws.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov.

REFERENCES

- California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>
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- Halfwerk, W., L.J.M. Holleman, C. M Lessells, H. Slabbekoorn. 2011. Negative Impact of Traffic Noise on Avian Reproductive Success. *Journal of Applied Ecology* 48:210–219.
- Kleist, N. J., R. P. Guralnick, A. Cruz, C. A. Lowry, and C. D. Francis. 2018. Chronic Anthropogenic Noise Disrupts Glucocorticoid Signaling and has Multiple Effects on Fitness in an Avian Community. *Proceedings of the National Academy of Sciences* 115: E648–E657.
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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	<p>MM BIO-1: The project area is located within an MSHCP Burrowing Owl Survey Area and contains suitable habitat to potentially support BUOW in the future. Therefore, focused BUOW surveys, census, and mapping are required by the MSHCP. A qualified biologist would conduct focused BUOW surveys in accordance with the Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area (MSHCP Survey Guidelines; Riverside County TLMA, 2006) during the burrowing owl nesting season. In addition, a pre-construction survey shall also be conducted within 30 days prior to the commencement of ground disturbing activities including vegetation clearing, grubbing, tree removal, or site watering.</p> <p>Following the completion of the focused BUOW survey, the biologist would prepare a letter report in accordance with the MSHCP Survey Guidelines summarizing the results of the survey. The report would be submitted to the City of Moreno Valley prior to initiating any ground disturbance activities. If no BUOWs or signs of BUOW are observed during the survey and concurrence is received from EPD and CDFW, project activities may begin. 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</p>	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	<p>have not colonized the site since it was last disturbed. If burrowing owls are found, the same coordination described above shall be necessary.</p> <p>If BUOW or signs of BUOW are observed during the survey, the site would be considered occupied. The biologist would implement protection measures listed below and contact the City, EPD, and CDFW to assist in the development of avoidance, minimization, and mitigation measures (a Burrowing Owl Plan), prior to commencing project activities. The list of measures to avoid and minimize impacts to BUOWs described in the section below would be implemented.</p> <p>Pre-Construction BUOW Protection Measures: Prior to the initiation of grading and construction activities, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW. If no burrowing owls are observed during the survey, site preparation and construction activities may begin.</p> <p>BUOW Protection Measures: If BUOWs or signs of BUOW are observed during the survey, then the site would be considered occupied and the biologist shall contact the City of Moreno Valley, EPD, US Fish and Wildlife Service (USFWS), and CDFW to assist in the development of avoidance, minimization, and mitigation measures discussed below, prior to commencing project activities (Riverside County TLMA, 2006). 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</p>		
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	<p>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 qualified biologist and Project Applicant shall coordinate with the City, RCA, 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, RCA, and USFWS review and approval.</p> <p>Construction BUOW Protection Measures: A biological monitor will be onsite to monitor any BUOW or signs of BUOW. 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</p>		
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	<p>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 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.</p>		
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