



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



November 9, 2023

Mitzi Alvarado  
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**SUBJECT: TENTATIVE TRACT MAP 83590 (PROJECT); MITIGATED NEGATIVE DECLARATION (MND); SCH #2023100265**

Dear Mitzi Alvarado:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Lancaster (City) for the Project pursuant 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's 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.

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

<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.

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Protection Act (NPPA; Fish & G. Code, §1900 et seq.), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

## **Project Description Summary**

**Proponent:** Rodeo Credit Enterprises, LLC

**Objective:** The Project proposes the subdivision of approximately 30 acres into 106 single-family residential lots and one lot for a drainage basin. Ingress and egress from the subdivision would be provided from 35<sup>th</sup> Street East and streets within the subdivision would be private. Landscaping and a sidewalk would be provided along 35<sup>th</sup> Street East and East Avenue J.

**Location:** The Project site is located on the northeast corner of the intersection of 35<sup>th</sup> Street East and East Avenue J in the City of Lancaster, California. The Project site is bound by East Lancaster Boulevard to the north, 40<sup>th</sup> Street East to the east, 30<sup>th</sup> Street to the west, and East Avenue J to the south. The Assessor's Parcel Numbers associated with the Project site include 3150-028-001 and 3150-028-002.

**Biological Setting:** The Project site is currently vacant and undeveloped, bordered by vacant land to the north, east, west, and partially to the south. Future residential development is anticipated to occur on the vacant land west and south of the Project site. A field survey of the Project site was conducted on March 9, 2022, and findings were compiled in a Biological Resource Assessment (BRA). Specific focus of the field survey was on the presence/absence of rare, threatened, and endangered species of plants and wildlife. The BRA noted rubber rabbitbrush scrub (*Ericameria nauseosa* shrubland; 28.41 acres) as the only natural vegetation community within the Project site. No special status natural communities or individual plants were observed during the field survey. Additionally, there are no trees or water courses within the Project site. Wildlife observed during the field survey included many common species. Sensitive species that have been identified to occur within the City and are of potential concern for the Project include burrowing owl (*Athene cunicularia*, California Species of Special Concern) and raptors and migratory birds.

## **Comments and Recommendations**

CDFW offers the recommendations below to assist the City in adequately identifying 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).

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## Specific Comments

### Comment #1: Cumulative Impact

**Issue:** The MND does not disclose future residential development, which in conjunction with the proposed Project, may lead to a cumulative impact on biological resources.

**Specific impacts:** The MND does not analyze or discuss cumulative impacts on biological resources as it relates to loss of open space. Significant loss of open space and vacant land could contribute to local expiration of various biological resources.

**Why impact would occur:** Cumulative impacts can result from individually minor but collectively significant projects inclusive of prior, concurrent, and future projects [CEQA Guidelines, §§ 15065(a)(3), 15355]. Although the MND states that the existing land use for the surrounding properties is Vacant, the MND does not disclose future residential developments that will occur near the Project site. CDFW has reviewed and provided comments for two projects, Tentative Tract Map No. 61248 and Tentative Tract Map 83315, located south and west of the Project site, respectively. Both Projects propose development of residential homes and combined with the proposed Project, would develop a total of approximately 100 acres of currently open land. Despite residential subdivisions already existing in this region of the City, development of open land would further limit the availability of suitable habitat to support wildlife. Given the anticipated buildout of the Project site and adjacent areas, potential exists for cumulative impacts to open space (CEQA Guidelines, §15064(d)). CDFW is especially concerned about the loss of desert habitats that support sensitive species, such as burrowing owl, legless lizard (*Anniella pulchra*), Crotch's bumble bee (*Bombus crotchii*), other wildlife, and sensitive plants. Cumulatively, loss of on-site habitat may be significant and warrant further analysis, as well as trigger the need to mitigate the loss of habitat. CDFW believes that cumulative impacts of the Project on biological resources could be cumulatively considerable (CEQA Guidelines §15065(a)(3)) and recommends that the MND include analysis of the overall level of existing and proposed development in the surrounding region, as it pertains to biological resources.

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

**Recommendation #1:** CDFW recommends the City revise the MND to include a cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant and wildlife species, habitat, and vegetation communities. If the City determines that the Project would not have a cumulative impact, the MND should indicate why the cumulative impact is not significant. The City's conclusion should be supported by facts and analyses [CEQA Guidelines, § 15130(a)(2)].

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## **Comment #2: Impacts on Burrowing Owl**

**Issue:** Mitigation Measure BIO-2 may not adequately reduce impacts if burrowing owls are identified and does not provide mitigation for habitat loss for burrowing owl.

**Specific impacts:** Project ground-disturbing activities such as grading and installation activities, vegetation removal, and heavy machinery use would result in habitat loss and/or injury/mortality of burrowing owl.

**Why impacts would occur:** According to [California Natural Diversity Database](#) (CNDDDB), there are recorded observations from 2004 and 2005 of burrowing owl utilizing the open space north, east, and south of the Project site (CDFW 2023a). Additionally, the BRA notes that the Project site has a moderate potential to support burrowing owls (page 8). CDFW concurs with the MND that a pre-construction burrowing owl survey should be implemented prior to Project activities. The mitigation measure also proposes the capture and relocation (translocation) of burrowing owl to a suitable nearby property. According to [CDFW's Staff Report on Burrowing Owl Mitigation](#), the efficacy of translocating burrowing owls is not well studied and is generally not recommended by CDFW (CDFW 2012). Additionally, translocation of burrowing owls may result in long-term consequences related to subsequent survival and breeding success. The mitigation measure should be revised to prescribe consultation with CDFW to determine appropriate avoidance and minimization measures if burrowing owls are determined to be present. Additionally, the mitigation measure does not include mitigation that outlines replacement of suitable burrowing owl habitat. Mitigation Measure BIO-2 should be revised to include mitigation in the event that the Project would result in loss of confirmed burrowing owl habitat. Without sufficient mitigation, habitat loss of 30 acres could result in local extirpation of the species and contribute to local, regional, and State-wide declines of the species.

**Evidence impacts would be significant:** A 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:

- 1) if the species is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- 2) if the species is listed as threatened or endangered under Endangered Species Act (ESA)-, but not CESA-, threatened, or endangered;
- 3) if the species meets the State definition of threatened or endangered but has not formally been listed;
- 4) if the species 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,
- 5) if 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 2023b).

CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC that can be shown to meet the criteria for State listing. These SSC

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meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

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

**Mitigation Measure #1: Mitigation Measure BIO-2** – The City shall revise Mitigation Measure BIO-2 by incorporating the underlined language and removing the language with strikethrough:

A pre-construction burrowing owl clearance survey shall be conducted no less than 14 days ~~more than 30 days~~ prior to any vegetation removal or ground disturbing activities to avoid impacts to burrowing owls and/or occupied burrows. The pre-construction clearance survey shall be conducted by a qualified biologist and in accordance with the methods outlined in the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game 2012). Burrowing owl protocol surveys shall be conducted on the Project site and within 500 feet of the Project site where there is suitable habitat. In California, the burrowing owl breeding season extends from February 1 to August 31 with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct four survey visits: 1) at least one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15. Documentation of surveys and findings shall be submitted to the City of Lancaster for review and file. If no burrowing owls or occupied burrows are detected, project activities may begin, and no additional avoidance and minimization measures shall be required.

If an occupied burrow is found outside, but within 500 feet, of the development footprint, the qualified biologist shall establish a “no-disturbance” buffer around the burrow location(s). The size of the “no-disturbance” buffer shall be determined in consultation with CDFW and be based on the species status (i.e., breeding, non-breeding) and proposed level of disturbance. If an occupied burrow or burrowing owl is found within the development footprint, the Project proponent shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project proponent shall contact CDFW to develop appropriate mitigation/management procedures and a final Burrowing Owl Mitigation Plan shall be submitted to the City prior to issuance of construction permits. ~~and cannot be avoided, a burrowing owl exclusion and mitigation plan shall be prepared and submitted to CDFW for approval prior to initiating project activities.~~

~~• If burrowing owls are identified during the non-nesting season, a qualified biologist shall install one-way gates to relocate the owl to a suitable nearby property. Upon confirmation that the burrow is empty, the burrowing shall be collapsed.~~

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~~• In the event that a breeding pair or female owl with offspring are present at a burrow, a buffer zone of at least 50 feet shall be established around the burrow until the offspring have fledged and left the burrow. No work shall occur within the buffer zone. The specific buffer zone shall be established in coordination with CDFW.~~

**Mitigation Measure #2: Compensatory Mitigation** – If the Project will impact habitat supporting burrowing owls, the Project proponent shall offset impacts on habitat supporting a SSC at no less than a 3:1 mitigation ratio. The Project proponent shall set aside replacement habitat either onsite or offsite at a mitigation ratio approved by CDFW. Replacement habitat shall be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate endowment to provide for the long-term management of mitigation lands.

### Additional Recommendations

1. **Nesting Birds and Raptors.** CDFW recommends the City revise Mitigation Measure BIO-3 by incorporating the underlined language and removing the language with strikethrough:

If Project activities occurs between January 1 through September 15, a nesting bird and raptor survey shall be conducted within a 500-foot radius of the construction site, prior to ground disturbing activities (e.g., staging, mobilizing, grading, vegetation removal) within the Project site. A The nesting bird and raptor survey shall be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project-related activity during the appropriate nesting times and concentrate on potential roosting or perch sites. If Project activities are delayed or suspended for more than 7 days during the breeding season, the nesting bird and raptor survey shall be repeated. within 14 days prior to the start of any construction/ground disturbing activities. The qualified biologist shall survey all suitable nesting habitat within the project impact area, and areas within a biologically defensible buffer zone surrounding the project impact area. If no active bird nests are detected during the clearance survey, project activities may begin, and no additional avoidance and minimization measures shall be required. If an active bird nest is found, the species shall be identified, and a “no disturbance” buffer shall be established around the active nest. The size of the “no disturbance” buffer shall be increased or decreased based on the judgement of the qualified biologist and level of activity and sensitivity of the species. At a minimum, the buffer shall be at least 500 feet around active raptor nests and 100 50 feet around nests of migratory bird species. Personnel working on the Project, including all contractors working on site, shall be instructed on the presence of nesting birds, restricted areas, and adherence to no disturbance buffers. The buffer shall remain in place until young have fledged or a nest becomes inactive as determined by a qualified biologist. The qualified biologist shall periodically monitor any active bird nests to determine if project-related activities occurring outside the “no-disturbance” buffer disturb the birds and if the buffer shall be increased. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, project activities within the “no-disturbance” buffer may occur following an additional survey by the qualified biologist to search for any new bird nests in the restricted area.

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**Environmental Data.** CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database (i.e., California Natural Diversity Database) which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Information on special status species should be submitted to the CNDDDB by completing and submitting [CNDDDB Field Survey Forms](#) (CDFW 2023c). Information on special status native plant populations and sensitive natural communities, the [Combined Rapid Assessment and Relevé Form](#) should be completed and submitted to CDFW's Vegetation Classification and Mapping Program (CDFW 2023d).

**Mitigation and Monitoring Reporting Plan.** CDFW recommends the City update the Project's proposed Biological Resources Mitigation Measures and condition the environmental document to include mitigation measures recommended in this letter. CDFW provides comments to assist the City in developing mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear in order for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). 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 A).

### **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**

We appreciate the opportunity to comment on the Project to assist the City in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines, § 15073(e)]. If you have any questions or comments regarding this letter, please contact Julisa Portugal, Environmental Scientist, at [Julisa.Portugal@wildlife.ca.gov](mailto:Julisa.Portugal@wildlife.ca.gov) or (562) 330-7563.

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Sincerely,

DocuSigned by:

  
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David Mayer  
Environmental Program Manager  
South Coast Region

ec: CDFW  
Cindy Hailey, San Diego – [Cindy.Hailey@wildlife.ca.gov](mailto:Cindy.Hailey@wildlife.ca.gov)  
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**References:**

- [CDFW] California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>
- [CDFW] California Department of Fish and Wildlife. 2023a. California Natural Diversity Database. Available at: <https://wildlife.ca.gov/Data/CNDDDB>
- [CDFW] California Department of Fish and Wildlife. 2023b. Threatened and Endangered Species. Available at: <https://wildlife.ca.gov/Conservation/CESA>
- [CDFW] California Department of Fish and Wildlife. 2023c. Submitting Data to the CNDDDB. Available at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>
- [CDFW] California Department of Fish and Wildlife. 2023d. Combined Rapid Assessment and Releve Form. Available at: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

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**Attachment A:**

**CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations**

Recommendation	Mitigation Measures	Timing	Responsible Party
<p><b>MM-BIO-1 – Mitigation Measure BIO-2</b></p>	<p>A pre-construction burrowing owl clearance survey shall be conducted no less than 14 days prior to any vegetation removal or ground disturbing activities to avoid impacts to burrowing owls and/or occupied burrows. The pre-construction clearance survey shall be conducted by a qualified biologist and in accordance with the methods outlined in the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game 2012). Burrowing owl protocol surveys shall be conducted on the Project site and within 500 feet of the Project site where there is suitable habitat. In California, the burrowing owl breeding season extends from February 1 to August 31 with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct four survey visits: 1) at least one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15. Documentation of surveys and findings shall be submitted to the City of Lancaster for review and file. If no burrowing owls or occupied burrows are detected, project activities may begin, and no additional avoidance and minimization measures shall be required.</p> <p>If an occupied burrow is found outside, but within 500 feet, of the</p>	<p>Prior to and during Project activities</p>	<p>Project proponent/ Qualified Biologist</p>

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	<p>development footprint, the qualified biologist shall establish a “no-disturbance” buffer around the burrow location(s). The size of the “no-disturbance” buffer shall be determined in consultation with CDFW and be based on the species status (i.e., breeding, non-breeding) and proposed level of disturbance. If an occupied burrow or burrowing owl is found within the development footprint, the Project proponent shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project proponent shall contact CDFW to develop appropriate mitigation/management procedures and a final Burrowing Owl Mitigation Plan shall be submitted to the City prior to issuance of construction permits.</p>		
<p><b>MM-BIO-2-Compensatory Mitigation</b></p>	<p>If the Project will impact habitat supporting burrowing owls, the Project proponent shall offset impacts on habitat supporting a SSC at no less than a 3:1 mitigation ratio. The Project proponent shall set aside replacement habitat either onsite or offsite at a mitigation ratio approved by CDFW. Replacement habitat shall be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate endowment to provide for the long-term management of mitigation lands.</p>	<p>Prior to Project activities</p>	<p>Project proponent</p>
<p><b>MM-BIO-3 – Mitigation Measure BIO-3</b></p>	<p>If Project activities occurs between January 1 through September 15, a nesting bird and raptor survey shall be conducted within a 500-foot radius of the construction site, prior to ground disturbing activities (e.g., staging, mobilizing, grading, vegetation removal) within the Project</p>	<p>Prior to Project activities</p>	<p>Project proponent/ Qualified Biologist</p>

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	<p>site. The nesting bird and raptor survey shall be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project-related activity during the appropriate nesting times and concentrate on potential roosting or perch sites. If Project activities are delayed or suspended for more than 7 days during the breeding season, the nesting bird and raptor survey shall be repeated. If no active bird nests are detected during the clearance survey, project activities may begin, and no additional avoidance and minimization measures shall be required. If an active bird nest is found, the species shall be identified, and a “no disturbance” buffer shall be established around the active nest. The size of the “no disturbance” buffer shall be increased or decreased based on the judgement of the qualified biologist and level of activity and sensitivity of the species. At a minimum, the buffer shall be at least 500 feet around active raptor nests and 100 feet around nests of migratory bird species. Personnel working on the Project, including all contractors working on site, shall be instructed on the presence of nesting birds, restricted areas, and adherence to no disturbance buffers. The buffer shall remain in place until young have fledged or a nest becomes inactive as determined by a qualified biologist. The qualified biologist shall periodically monitor any active bird nests to determine if project-related activities occurring outside the “no-disturbance” buffer disturb the birds and if the buffer shall be increased. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under</p>		
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	natural conditions, project activities within the “no-disturbance” buffer may occur following an additional survey by the qualified biologist to search for any new bird nests in the restricted area.		
<b>REC-1- Cumulative Analysis</b>	CDFW recommends the City revise the MND to include a cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant and wildlife species, habitat, and vegetation communities. If the City determines that the Project would not have a cumulative impact, the MND should indicate why the cumulative impact is not significant. The City’s conclusion should be supported by facts and analyses.	Prior to Adoption of MND	City
<b>REC-2 – Environmental Data</b>	CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database (i.e., California Natural Diversity Database) which may be used to make subsequent or supplemental environmental determinations. Information on special status species should be submitted to the CNDDDB by completing and submitting CNDDDB Field Survey Forms. Information on special status native plant populations and sensitive natural communities, the Combined Rapid Assessment and Relevé Form should be completed and submitted to CDFW’s Vegetation Classification and Mapping Program.	Prior to Project activities	Qualified Biologist