



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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GAVIN NEWSOM, Governor
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March 4, 2024

Shannon Edwin
44933 Fern Avenue
Lancaster, CA 93534
sedwin@cityoflancasterca.gov

SUBJECT: TENTATIVE TRACT MAP NO. 23-001 – TENTATIVE TRACT MAP 83573 (PROJECT); MITIGATED NEGATIVE DECLARATION (MND); SCH #2024020265

Dear Shannon Edwin:

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.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'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 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

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.

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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.

Project Description Summary

Proponent: Rodeo Credit Enterprises, LLC

Objective: The Project proposes the subdivision of 18.5 acres into 68 single-family lots ranging from 7,432 square feet to 12,051 square feet. One lot would be designated as a common area to install a gym, pool, spa, outdoor park area, and dog run. Access to the subdivision would be provided from 42nd Street West. Additionally, internal streets would be constructed and remain private. The entire Project site will be graded prior to construction activities.

Location: The 18.5-acre Project site is located on the northeast corner of Avenue K and 42nd Street West in the City of Lancaster, California. The Project site is bound by residential development to the north, 40th Street West to the east, 42nd Street West to the west and Avenue K to the south. The Assessor’s Parcel Numbers associated with the Project site include 3153-025-043 and 3153-025-019.

Biological Setting: The Project site is currently vacant and undeveloped. Beyond the immediate borders of the Project site lies additional residential neighborhoods and California State University Bakersfield a mile east of the site. The Project site is heavily disturbed with heavy equipment tracks, trash dumping, scattered litter, debris, and soil piles. A dirt parking area is present within the southeast corner of the Project site.

A general biological survey was conducted on October 9, 2021, and March 6, 2023, with findings compiled in a Biological Resources Assessment (BRA). During the general biological survey, protocol-level habitat assessments were conducted for desert tortoise (*Gopherus agassizii*; CESA and Endangered Species Act (ESA)-listed threatened), Mohave ground squirrel (*Xerospermophilus mohavensis*; CESA-listed threatened), and burrowing owl (*Athene cunicularia*; California Species of Special Concern (SSC)).

The Project site is characteristic of an abandoned agricultural field. Vegetation on the Project site consists of non-native grasses and weeds. No sensitive plant communities or special-status plants were observed during surveys. Additionally, no water courses were observed within the Project site. In regard to wildlife species, no special-status species were observed during the surveys and suitable habitat for desert tortoise and Mohave ground squirrel was not present. Common wildlife observed include, but is not limited to,

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domestic dog (*Canis familiaris*), desert cottontail (*Sylvilagus auduboni*), mourning dove (*Zenaida macroura*), and pocket gopher (*Thomomys bottae*).

Comments and Recommendations

CDFW offers 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).

Specific Comments

Comment #1: Impact on Burrowing Owl

Issue: Mitigation Measure 2 may not adequately reduce impacts if burrowing owls are identified; the measure does not provide mitigation to offset habitat loss for burrowing owls.

Specific impacts: Project ground-disturbing (i.e., grading, vegetation removal, construction) may result in habitat loss and/or direct harm (i.e., injury, morality) of individual burrowing owls.

Why impact would occur: According to the BRA, there are uncovered underground water lines observed within the Project site that may serve as future cover sites for burrowing owls. Burrowing owls are advantageous birds that are known to utilize crevices, openings, and man-made structures as site opportunities if natural burrows are not available. Additionally, the [California Natural Diversity Database](#) has a 2006 observation of burrowing owl within the southeast portion of the Project site (CDFW 2024a). CDFW concurs with the MND that protocol-level burrowing owl surveys should be conducted prior to Project activities. The mitigation measure also proposes the capture and relocation (translocation) of burrowing owl if present within the Project site. 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). Moreover, translocation of burrowing owls may result in long-term consequences related to subsequent survival and breeding success. Additionally, the mitigation measure does not include mitigation that outlines replacement of suitable burrowing owl habitat. In the Antelope Valley Regional Conservation Investment Strategy, burrowing owls are considered a focal species with a high priority conservation level and a conservation goal of 75 percent suitable habitat is retained (DMCA 2021). Given that burrowing owls are a SSC and have regional significance, the mitigation measure should be revised to include mitigation in the event that the Project would result in loss of confirmed burrowing owl habitat. Ongoing threats to

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suitable habitat such as land conversion and development continues to result in a constant loss of suitable habitat on a local and regional scale.

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 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 2024b).

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 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 2 - CDFW strongly recommends the City revise Mitigation Measure 2 by incorporating the underlined language and removing the language with strikethrough:

The applicant shall retain a qualified biologist who shall conduct burrowing owl protocol surveys on the project site in accordance with the procedures established by the California Department of Fish and Wildlife in the Staff Report on Burrowing Owl Mitigation prior to the issuance of any construction related permits. 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

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least three weeks apart, between April 15 and July 15, with at least one visit after June 15. Documentation of the surveys and findings shall be submitted to the City of Lancaster for review and file. If an occupied burrow or burrowing owls are identified during the surveys, the applicant shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation and contact the California Department of Fish and Wildlife (CDFW) to develop appropriate mitigation/management procedures. The applicant shall submit a final Burrowing Owl Mitigation Plan to the City prior to the City issuing construction permits. The applicant shall implement all measures identified in the Burrowing Owl Mitigation Plan.

At a minimum, the following shall occur:

- ~~• 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 burrow shall be collapsed.~~
- ~~• In the event that a breeding pair or female owl with offspring are present at the 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 -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

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

A nesting bird and raptor survey shall be conducted by a qualified biologist no more than 7 days within 30 days prior to the start of construction/ground disturbing activities. 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. The survey area shall include the Project site plus a 500-foot buffer to search for nesting birds and raptors. If active bird nests are identified during the survey, the qualified biologist shall delineate an appropriate buffer to protect the nest. the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. Impacts to nesting birds will be avoided by delay of work or establishing At a minimum, a buffer of 500 feet shall be delineated around active raptor nests and 50 feet a buffer of 100 feet shall be

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delineated around other 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.

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 2024c). 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 2024d).

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,

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please contact Julisa Portugal, Environmental Scientist, at Julisa.Portugal@wildlife.ca.gov
or (562) 330-7563.

Sincerely,

DocuSigned by:

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Victoria Tang
Environmental Program Manager
South Coast Region

EC: California Department of Fish and Wildlife

Jennifer Turner, San Diego – Senior Environmental Scientist (Supervisory)
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Office of Planning and Research

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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. 2024a. California Natural Diversity Database. Available at: <https://wildlife.ca.gov/Data/CNDDDB>
- [CDFW] California Department of Fish and Wildlife. 2024b. Threatened and Endangered Species. Available at: <https://wildlife.ca.gov/Conservation/CESA>
- [CDFW] California Department of Fish and Wildlife. 2024c. Submitting Data to the CNDDDB. Available at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.
- [CDFW] California Department of Fish and Wildlife. 2024d. Combined Rapid Assessment and Releve Form. Available at:
<https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>
- [DMCA] Desert and Mountain Conservation Authority. 2021. Antelope Valley Regional Conservation Investment Strategy. Available at:
<https://wildlife.ca.gov/Conservation/Planning/Regional-Conservation/RCIS>

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Attachment A:

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

Recommendation	Mitigation Measures	Timing	Responsible Party
<p>MM-BIO-1 – Mitigation Measure 2</p>	<p>The applicant shall retain a qualified biologist who shall conduct burrowing owl protocol surveys on the project site in accordance with the procedures established by the California Department of Fish and Wildlife in the Staff Report on Burrowing Owl Mitigation prior to the issuance of any construction related permits. 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 the surveys and findings shall be submitted to the City of Lancaster for review and file. If an occupied burrow or burrowing owls are identified during the surveys, the applicant shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation and contact the California Department of Fish and Wildlife to</p>	<p>Prior to issuance of City permits and Project activities.</p>	<p>Project proponent/ City/Qualified Biologist</p>

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	<p>develop appropriate mitigation/management procedures. The applicant shall submit a final Burrowing Owl Mitigation Plan to the City prior to the City issuing construction permits. The applicant shall implement all measures identified in the Burrowing Owl Mitigation Plan.</p>		
<p>MM-BIO-2-Compensatory Mitigation</p>	<p>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>MM-BIO-3-Nesting Bird and Raptor Survey</p>	<p>A nesting bird and raptor survey shall be conducted by a qualified biologist no more than 7 days prior to the start of construction/ground disturbing activities. 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. The survey area shall include the Project site plus a 500-foot buffer to search for nesting birds and raptors. If active bird nests are identified during the survey, the qualified biologist shall delineate an appropriate buffer to protect the nest. At a minimum, a buffer of 500 feet shall be delineated around active raptor nests and a buffer of 100 feet shall be delineated around migratory bird species. Personnel working on the Project, including all contractors</p>	<p>Prior to and during Project activities</p>	<p>Qualified Biologist</p>

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	<p>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.</p>		
<p>REC-1 – Environmental Data</p>	<p>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.</p>	<p>Prior to Project activities</p>	<p>Qualified Biologist</p>