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March 25, 2024

Governor's Office of Planning & Research

Mar 21 2024

STATE CLEARINGHOUSE

Brenda Magana
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City of Palmdale
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**SUBJECT: PBP INDUSTRIAL PROJECT SITE PLAN REVIEW 20-011 (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND) SCH# 2024020836; LOS ANGELES
COUNTY, CA**

Dear Brenda Magana:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced MND for the Project 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, CDFW appreciates 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, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (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 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.

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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. As proposed, for example, the Project may be subject to CDFW's 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Palmdale (City)

Objective: The objective of the Project is the construction and operation of two industrial buildings totaling approximately 118,200 square feet of area, and associated elements including landscaping, sidewalks, utility connections, and parking areas. Prior to construction activities, vegetation clearing and grading will occur throughout the Project site.

Location: The approximately seven-acre Project site is located east of Lockheed Way, west of 10th Street East, south of Blackbird Drive, and north of East Rancho Vista Boulevard in the City. The Project site can be locally accessed from these streets, as well as from Sierra Highway (SR-138). The site is undeveloped but, according to the MND, shows signs of human disturbance from agricultural uses, grading of dirt roads, and off-road vehicles. The Project site is adjacent to roads and undeveloped land to the west, south, and east. To the north of the Project site is the Lockheed Martin Aeronautics facility.

Biological Setting: According to the Biological Resources Assessment, the Project site contains 4.55 acres of western Joshua tree woodland, 1.66 acres of rabbitbrush scrub, and 0.9 acre of disturbed/developed land. A total of 58 live western Joshua tree trunks (*Yucca brevifolia*; CESA candidate species) and one dead western Joshua tree occur on site, and all will be impacted by Project activities. The MND states that an incidental take permit (ITP) via the Western Joshua Tree Conservation Act shall be obtained, and that the western Joshua tree census and corresponding fees will be submitted to CDFW prior to Project-related grading.

Sensitive wildlife species may occur on site, including western burrowing owl (*Athene cunicularia*; California Species of Special Concern (SSC)), southern grasshopper mouse (*Onychomys torridus ramona*; SSC), Bendire's thrasher (*Toxostoma bendirei*; SSC), and Le Conte's thrasher (*Toxostoma lecontei*; SSC).

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Timing: Project construction is planned in two phases. Construction duration of Phase 1 is anticipated to be ten months, and Phase 2 is anticipated to be eight months. The opening year for Phase 1 of the Project is anticipated to be 2025.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

COMMENT #1: Burrowing Owl

Issue: The MND includes Mitigation Measure (MM) BIO-3, which includes a plan for a pre-construction survey for sensitive species, including burrowing owls. However, this measure may not be sufficient to avoid or minimize impacts to burrowing owls.

Specific impact: Direct impacts to burrowing owls could occur as a result of the Project activities, including grading, ground disturbance, vegetation clearing, permanent loss of habitat, damage to burrows, and trampling or crushing from construction equipment and vehicle or foot traffic.

Why impact would occur: According to the Biological Resources Assessment (BRA), burrowing owls have a moderate potential to occur on site. MM BIO-3 states that a pre-construction presence/absence survey for sensitive species, including burrowing owl, shall be conducted by a qualified biologist within 30 days prior to any on-site ground disturbing activity. This timeline may be insufficient to accurately determine the presence/absence of burrowing owls on site because it leaves sufficient time for burrowing owls to become established on the Project site after a survey. This could lead to impacts to burrowing owls that were not identified during the pre-construction survey. Additionally, the current mitigation strategy does not include plans to coordinate with CDFW regarding passive or active relocation of burrowing owls. Without adherence to CDFW relocation protocol, and additional coordination, unmitigated impacts to burrowing owls may still occur as a result of the Project activities. Finally, MM BIO-3 does not provide plans for compensatory mitigation for the permanent loss of burrowing owl habitat if they are found on the Project site. Urban development in Antelope Valley contributes to the ongoing loss of suitable habitat for burrowing owls and rapid decline of the burrowing owl population size on a regional scale, especially when compensatory mitigation across the region is not consistent. These cumulative impacts should be addressed in the environmental document.

Please note that due to various factors including habitat loss and population decline, burrowing owls were recently petitioned to be listed as an endangered or threatened species under CESA by the Center of Biological Diversity (CBD 2024).

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Evidence impacts would be significant:

Currently, the burrowing owl is designated as an SSC. A California 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. is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
2. is experiencing, or formerly experienced, serious (nonscyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or,
3. 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.

SSCs meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. 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) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Recommendation #1:

To minimize significant impacts: CDFW strongly recommends that burrowing owl surveys, avoidance, minimization, and mitigation plans be consistent with the [CDFW Staff Report on Burrowing Owl Mitigation](#) (2012). The Staff Report contains information on survey protocols, appropriate avoidance buffers, impact assessments, mitigation methods, and more. The pre-construction burrowing owl survey should take place no more than 14 days prior to the start of Project activities. If burrowing owls are found on-site, a qualified biologist should prepare and submit a passive relocation plan for CDFW review and approval prior to any relocation efforts. Additionally, if burrowing owls are found on-site, the Project proponent should provide compensatory mitigation for permanent loss of habitat.

COMMENT #2: Southern Grasshopper Mouse

Issue: The MND may not adequately address potential impacts to southern grasshopper mouse.

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Specific impact: Direct impacts to southern grasshopper mouse could occur due to Project activities. This species could become trapped, trampled, or crushed. Additionally, the Project could lead to a permanent loss of habitat for southern grasshopper mouse.

Why impact would occur: According to the BRA, southern grasshopper mouse has moderate potential to occur on site due to the presence of suitable habitat. General wildlife surveys on the Project site did not lead to any observations of this species, but focused trapping efforts would likely be necessary to determine the presence/absence of this small, nocturnal species more accurately. MM BIO-3 states that a pre-construction presence/absence survey for sensitive species, including southern grasshopper mouse, shall be conducted by a qualified biologist within 30 days prior to any on-site ground disturbing activity. A general wildlife survey 30 days prior to the start of Project activities may not accurately reflect the presence/absence of southern grasshopper mouse. This period is long enough that southern grasshopper mouse could become established on the Project site after the pre-construction survey but prior to ground disturbing Project activities. Additionally, southern grasshopper mouse is a small, nocturnal species, and likely would not be observed during a general wildlife survey. In order to observe southern grasshopper mouse, a focused survey would likely be required, which would involve trapping at species-appropriate times of day and year. As currently proposed, the Project's wildlife surveys for southern grasshopper mouse could lead to an incorrect assumption of the absence of the species on site. This could lead to impacts on individuals that are present but were not identified during surveys.

Evidence impacts would be significant: Southern grasshopper mouse is an SSC. SSCs meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. The MND does not provide mitigation for potential loss of habitat supporting southern grasshopper mouse. 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) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Recommendation #2:

To minimize significant impacts: CDFW recommends that the Project's environmental document assume presence of southern grasshopper mouse and include a mitigation measure or measures which provide compensatory mitigation for impacts to this species due to the Project.

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Mitigation Measure #1:

To minimize significant impacts: The City should retain a qualified biologist with survey experience with native small mammals, specifically southern grasshopper mouse. Within 14 days prior to commencing any Project-related ground-disturbing activities, the qualified biologist should conduct focused surveys for southern grasshopper mouse and suitable habitat. In addition, the qualified biologist should conduct daily biological monitoring during any activities involving vegetation clearing or modification of natural habitat. Positive detections of southern grasshopper mouse and suitable habitat at the detection location should be mapped and photographed. The qualified biologist should provide a summary report of SSC surveys to the City prior to implementing any Project-related ground-disturbing activities and vegetation removal.

Wildlife should be allowed to move away on their own (non-invasive, passive relocation) to adjacent appropriate habitat. Special status wildlife should be captured only by a qualified biologist with proper handling permits.

If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife documented. A formal report should be sent to CDFW and the City within three calendar days of the incident or finding. Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

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 found at the following link:

http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 fee is required 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.)

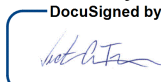
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CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Brigid Moran at Brigid.Moran@wildlife.ca.gov or (858) 354-3527.

Sincerely,

DocuSigned by:

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Victoria Tang
Environmental Program Manager
South Coast Region

EC: California Department of Fish and Wildlife

Steve Gibson
Jennifer Turner
Jennifer Ludovissy

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

United States Fish and Wildlife Service
Jonathan Snyder – Jonathan_d_Snyder@fws.gov

REFERENCES

- California Environmental Quality Act (CEQA). 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.
- California Office of Planning and Research. 2009 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, § 21081.6 and CEQA Guidelines, § 15097, §15126.4(2).
- California Department of Fish and Wildlife. 2022. Threatened and Endangered Species. Available at: <https://wildlife.ca.gov/Conservation/CESA>
- 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=true>
- California Department of Fish and Wildlife. Southern Grasshopper Mouse. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2513>

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Center for Biological Diversity. 2024. Petition Before the California Fish and Game Commission to List California Populations of the Western Burrowing Owl (*Athene cunicularia hypugaea*) as Endangered or Threatened Under the California Endangered Species Act. Available at: https://s3-us-west-2.amazonaws.com/s3-wagtail.biologicialdiversity.org/documents/California-Burrowing-Owl-Petition_3-5-24.pdf

ATTACHMENT A: Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) or Recommendation (REC) Description	Implementatio n Schedule	Responsibl e Party
REC-1: Burrowing Owl: CDFW strongly recommends that burrowing owl surveys, avoidance, minimization, and mitigation plans be consistent with the CDFW Staff Report on Burrowing Owl Mitigation (2012). The Staff Report contains information on survey protocols, appropriate avoidance buffers, impact assessments, mitigation methods, and more. The pre-construction burrowing owl survey should take place no more than 14 days prior to the start of Project activities. If burrowing owls are found on-site, a qualified biologist should prepare and submit a passive relocation plan for CDFW review and approval prior to any relocation efforts. Additionally, if burrowing owls are found on-site, the Project proponent should provide compensatory mitigation for permanent loss of habitat.	Prior to and during Project activities	City of Palmdale
REC-2: Southern Grasshopper Mouse: CDFW recommends that the Project's environmental document should assume presence of southern grasshopper mouse and include a mitigation measure or measures which provide compensatory mitigation for impacts to this species due to the Project.	Prior to Project activities	City of Palmdale
MM-1: Sensitive Wildlife Avoidance: The City shall retain a qualified biologist with survey experience with native small mammals, specifically southern grasshopper mouse. Within 14 days prior to commencing any Project-related ground-disturbing activities, the qualified biologist shall conduct	Prior to and during Project activities	City of Palmdale

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<p>focused surveys for southern grasshopper mouse and suitable habitat. In addition, the qualified biologist shall conduct daily biological monitoring during any activities involving vegetation clearing or modification of natural habitat. Positive detections of southern grasshopper mouse and suitable habitat at the detection location shall be mapped and photographed. The qualified biologist shall provide a summary report of SSC surveys to the City prior to implementing any Project-related ground-disturbing activities and vegetation removal.</p> <p>Wildlife shall be allowed to move away on their own (non-invasive, passive relocation) to adjacent appropriate habitat. Special status wildlife shall be captured only by a qualified biologist with proper handling permits.</p> <p>If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area shall stop immediately, the qualified biologist shall be notified, and dead or injured wildlife documented. A formal report shall be sent to CDFW and the City within three calendar days of the incident or finding. Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.</p>		
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