State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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March 15, 2024

Governor's Office of Planning & Research

March 18 2024

STATE CLEARINGHOUSE

Timothy Wheeler
Principal Planner
County of Riverside
4080 Lemon Street
Riverside, CA 92501
twheeler@rivco.org

Subject: Draft Mitigated Negative Declaration, French Valley Commercial Project, State Clearinghouse No. 2024021005, County of Riverside

Dear Timothy Wheeler:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the County of Riverside (County), on behalf of the Project Applicant/Proponent, Salim Development, for the French Valley Commercial Project (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, 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 County of Riverside (County; Lead Agency) and the Project Applicant, Salim Development, is proposing the French Valley Commercial Project (Project). The proposed Project will consist of the construction and operation of a 5,215 square-foot drive through car wash, a 2,535 square-foot drive-through restaurant with indoor dining area, and a 730-square-foot drive-through restaurant without indoor dining on approximately 2.24 acres.

Benton Road will be widened by approximately 25 feet along the project frontage and within the existing County right of way. The project frontage along Benton Road and Penfield Lane will be improved with curb, gutter, sidewalk, and parkway landscaping within the respective right of ways.

Location: The Project site is located north of Auld Road, east of State Highway 79/Winchester Road, west of Penfield Lane, and south of Benton Road, in unincorporated Riverside County, California, in Section 6, Township 7 South, Range 2 West, of the San Bernardino Baseline and Meridian, U.S. Geological Survey California topographic quadrangle map; Associated Parcel Number 963-070-018.

The Project is also located within Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Criteria Cell 5778 and Subunit 5: French Valley/Lower Sedco Hills (SU5) of the Southwest Area Plan.

COMMENTS AND RECOMMENDATIONS

Based on the documents for review, CDFW offers the comments and recommendations below to assist the County 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).

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 and Appendix B identifies that the Project site was evaluated for burrowing owl habitat, and at least four potentially suitable burrows were found. Therefore, focused burrowing owl surveys are 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 habitat assessment with photographs and indicating whether the project site contains suitable burrowing owl habitat and burrow locations.

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 County 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.

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.

BIO-4 states that if preconstruction survey results are positive and impacts to burrowing owls are unavoidable, then "the project proponent will immediately inform the Regional Conservation Authority (RCA) and the Wildlife Agencies and will need to coordinate further with RCA and the Wildlife Agencies, including the possibility of preparing a Burrowing Owl Protection and Relocation Plan, prior to initiating ground disturbance." No detailed avoidance or mitigation measures are described in BIO-4 to mitigate Project impacts if owls are found onsite. There is insufficient information provided to determine if the proposed avoidance and minimization measures will mitigate Project impacts below a level of significance.

Evidence impact would be significant: Burrowing owl is an 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 County include the following mitigation measures in the MND per below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program."

> **MM-BIO 4: Burrowing Owl**. Due to the presence of potentially suitable habitat, **four focused burrowing owl surveys shall be conducted on the Project Area and within a 500-foot buffer during the burrowing owl breeding season (March 1 through August 31) in accordance with the Western Riverside MSHCP Burrowing Owl Survey Instructions (County of Riverside 2006). If survey results are negative (i.e., no occupied burrows or live burrowing owls are detected) and ground-disturbing Project activities are scheduled to begin within 30 days of the final survey, then no additional preconstruction survey or biological monitoring requirements will be necessary.** A 30-day preconstruction survey for burrowing owls is required prior to initial ground-disturbing activities (including vegetation clearing, clearing, and grubbing, tree removal, site watering, equipment staging, grading, etc.) to ensure that no owls have colonized the site in the days or weeks preceding the ground-disturbing activities.
>
> If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately inform the Regional Conservation Authority (RCA) and the Wildlife Agencies and will need to coordinate further with RCA and the Wildlife Agencies, ~~including the possibility of preparing a Burrowing Owl Protection and Relocation Plan, prior to initiating ground disturbance.~~ **An experienced biologist will need to verify if any burrowing owls within the project site are breeding or wintering, a Burrowing Owl Protection and Relocation Plan will be prepared detailing passive (e.g., use of one-way doors and collapse of burrows) and/or active (e.g., capturing owls, relocating to a new site, and collapse of burrows) relocation methods. The Burrowing Owl Protection and Relocation Plan will be submitted to CDFW and USFWS for approval prior to initiating ground disturbance within the project site. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied**

burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed.

If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, 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 Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure burrowing owl has not colonized the site since it was last disturbed. If burrowing owl is found, the same coordination described above will be necessary.

Comment #2: Nesting Bird

Issue: The Project may have a significant impact on nesting birds, including Species of Special Concern and fully protected species, that are subject to Fish and Game Code section 3513 and the Migratory Bird Treaty Act of 1918.

Specific impact: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of vegetation onsite.

Why impacts would occur: Project activities could result in temporary or long-term loss of suitable nesting and foraging habitats. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009), and songbird abundance and density was significantly reduced in areas with high levels of noise (Bayne et al. 2008). Additionally, noise exceeding 70 dB(A) may affect feather and body growth of young birds (Kleist et al. 2018). In addition to construction activities,

residential development and increased human presence in the Project site could contribute to nesting bird impacts.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

The duration of a pair to build a nest and incubate eggs varies considerably, therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction to ensure all nests on site are identified and to avoid take of nests. Without appropriate species-specific avoidance measures, biological construction monitoring may be ineffective for detecting nesting birds. This may result in take of nesting birds. Project ground-disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

Evidence impacts would be significant: It is the Project proponent's responsibility to avoid Take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To address the above issues and help the Project applicant avoid unlawfully taking of nesting birds, CDFW requests the County include the following mitigation measures in the MND per below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program".

> **MM BIO-5: Nesting Bird Surveys. To the greatest extent feasible, any ground-disturbing construction activities and removal and/or trimming of vegetation suitable for nesting birds shall be conducted during the**

nonbreeding season for birds in order to avoid violations of the MBTA and California Fish and Game Code §§ 3503, 3503.5 and 3513. If activities associated with vegetation removal, construction, or grading are planned during the bird nesting/breeding season ~~(generally February 1 through August 31; January 1 for raptors)~~, a qualified biologist shall conduct surveys for active nests. Preconstruction nesting bird surveys shall be conducted weekly beginning 14 days prior to initiation of ground-disturbing activities, with the last survey conducted no more than 3 days prior to the start of clearance/construction work. **The nesting bird survey shall include the Project Area and adjacent areas where Project activities have the potential to cause nest failure.** If ground-disturbing activities are delayed, additional preconstruction surveys shall be conducted so that no more than 3 days have elapsed between the survey and ground-disturbing activities. **The results of the pre-construction survey shall be documented by the qualified biologist and shall be provided to the City. The Project Applicant shall adhere to the following:**

1. **Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**

2. **Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.**

If no nesting birds are observed during the survey, site preparation and construction activities may begin. If nesting birds or ~~A~~**a**ctive nests **are** found ~~within 100 feet of the construction zone~~ **to be present**, **the biologist shall identify a non-disturbance buffer that** shall be delineated with highly visible construction fencing or other exclusionary material that would inhibit entry by personnel or equipment into the buffer zone **until nesting has been completed as determined through periodic nest monitoring by the biologist based on their best professional judgement and experience.**

The size of the non-disturbance buffer will be determined by the Project biologist. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. Construction personnel shall be instructed regarding the ecological sensitivity of the fenced area. Installation of the exclusionary material will be completed by construction personnel under the supervision of a qualified biologist prior to initiation of construction activities. **The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are harassing the nest and may result in nest abandonment or take. The biological monitor may modify the buffer or propose other recommendations in order to minimize disturbance to nesting birds.** The buffer zone shall remain intact and maintained while the nest is active (i.e., occupied or being constructed by at least one adult bird) and until young birds have fledged and no continued use of the nest is observed, as determined by a qualified biologist. The barrier shall be removed by construction personnel at the direction of the biologist. ~~The following RCMs are regulatory requirements implemented as a routine action by the County to ensure compliance with the requirements of the County.~~ **The results of the survey shall be documented and filed with the Environmental Permitting Department prior to construction.**

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 County 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 County 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 County with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND for the French Valley Commercial Project, State Clearinghouse No. 2024021005 to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. CDFW requests that the County of Riverside address CDFW's comments and concerns prior to adoption of the MND for the Project.

Questions regarding this letter or further coordination should be directed to Katrina Rehrer, Environmental Scientist, at katrina.rehrer@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...

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Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project's final on and/or off-site mitigation plans.

Biological Resources (BIO)			
Mitigation Measure (MM)		**Timing**	**Responsible Party**
Burrowing Owl	**MM-BIO 4: Burrowing Owl.** Due to the presence of potentially suitable habitat, four focused burrowing owl surveys shall be conducted on the Project Area and within a 500-foot buffer during the burrowing owl breeding season (March 1 through August 31) in accordance with the Western Riverside MSHCP Burrowing Owl Survey Instructions (County of Riverside 2006). If survey results are negative (i.e., no occupied burrows or live burrowing owls are detected) and ground-disturbing Project activities are scheduled to begin within 30 days of the final survey, then no additional preconstruction survey or biological monitoring requirements will be necessary. A 30-day preconstruction survey for burrowing owls is required prior to initial ground-disturbing activities (including vegetation clearing, clearing, and grubbing, tree removal, site watering, equipment staging, grading, etc.) to ensure that no owls have colonized the site in the days or weeks preceding the ground-disturbing activities.	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately inform the Regional Conservation Authority (RCA) and the Wildlife Agencies and will need to coordinate further with RCA and the Wildlife Agencies. An experienced biologist will need to verify if any burrowing owls within the project site are breeding or wintering, a Burrowing Owl Protection and Relocation Plan will be prepared detailing passive (e.g., use of one-way doors and collapse of burrows) and/or active (e.g., capturing owls, relocating to a new site, and collapse of burrows) relocation methods. The Burrowing Owl Protection and Relocation Plan will be submitted to CDFW and USFWS for approval prior to initiating ground disturbance within the project site. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat. If impacts		

	to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, 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 Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval. If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure burrowing owl has not colonized the site since it was last disturbed. If burrowing owl is found, the same coordination described above will be necessary.		
Nesting Birds	**MM BIO-5: Nesting Bird Surveys.** To the greatest extent feasible, any ground-disturbing construction activities and removal and/or trimming of vegetation suitable for nesting birds shall be conducted during the nonbreeding season for birds in order to avoid violations of the MBTA and California Fish and Game Code §§ 3503, 3503.5 and 3513. If activities associated with vegetation removal, construction, or grading are planned during the bird nesting/breeding season, a qualified biologist shall conduct surveys for active nests. Preconstruction nesting bird surveys shall be conducted weekly beginning 14 days prior to initiation of ground-disturbing activities, with the last survey conducted no more than 3 days prior to the start of clearance/construction work. The nesting bird survey shall include the Project Area and adjacent areas where Project activities have the potential to	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	cause nest failure. If ground-disturbing activities are delayed, additional preconstruction surveys shall be conducted so that no more than 3 days have elapsed between the survey and ground-disturbing activities. The results of the pre-construction survey shall be documented by the qualified biologist and shall be provided to the City. The Project Applicant shall adhere to the following: **1.** Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures. **2.** Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. If no nesting birds are observed during the survey, site preparation and construction activities may begin. If nesting		

	birds or active nests are found to be present, the biologist shall identify a non-disturbance buffer that shall be delineated with highly visible construction fencing or other exclusionary material that would inhibit entry by personnel or equipment into the buffer zone until nesting has been completed as determined through periodic nest monitoring by the biologist based on their best professional judgement and experience. The size of the non-disturbance buffer will be determined by the Project biologist. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. Construction personnel shall be instructed regarding the ecological sensitivity of the fenced area. Installation of the exclusionary material will be completed by construction personnel under the supervision of a qualified biologist prior to initiation of construction activities. The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are harassing the nest and may result in nest abandonment or take. The biological monitor may modify the buffer or propose other recommendations in order to minimize disturbance to nesting birds. The buffer zone shall remain intact and maintained while the nest is active (i.e., occupied or being constructed by at least one adult bird) and until young birds have fledged and no continued use of the nest is observed, as determined by a qualified biologist. The barrier shall be removed by construction personnel at the direction of the biologist. The		

	results of the survey shall be documented and filed with the Environmental Permitting Department prior to construction.		