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April 24, 2024

Governor's Office of Planning & Research

Brenda Magaña
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Apr 24 2024
STATE CLEARINGHOUSE

SUBJECT: CONDITIONAL USE PERMIT 23-005 AND SITE PLAN REVIEW 22-010, MITIGATED NEGATIVE DECLARATION, SCH# 2024031006; LOS ANGELES, CA

Dear Brenda Magaña:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) from the City of Palmdale (City; Lead Agency) for the Conditional Use Permit 23-005 and Site Plan Review 22-010 Project (Project). 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

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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: Duke Engineering

Objective: The Project proposes the construction and operation of a convenience store and a Chevron gas station with underground fuel tanks. The proposed market and gas station would be constructed in the northern and central portion of the Project site. A 5,045 square-foot drive through restaurant is proposed in the southern portion of the Project site. Street improvements would occur along 10th Street West and West Avenue O. Additionally, parking stalls and new landscaping would be installed throughout the Project site. The entire Project site would be graded and paved prior to construction activities.

Location: The 2-acre Project site is located on the southwest corner of 10th Street West and West Avenue O in the City. The Project site is bound by West Avenue O to the north, 10th Street West to the east, and vacant land to the west and south. The Assessor's Parcel Numbers associated with the Project site include 3005-010-025 and 3005-010-026.

Biological Setting: The Project site consists of vacant land with no existing physical features on site. Beyond the immediate boundaries of the Project site lies open space to the west and residential development to the north, west, and south. The Project site is heavily disturbed with evidence of heavy machinery use in addition to numerous foot, motorcycle, and truck trails.

A general biological survey was conducted on April 14, 2022, and findings from the survey were compiled in a Biological Resources Assessment (BRA). Vegetation on the Project site is minimal and consist mainly of non-native vegetation such as Russian thistle (*Salsola tragus*) and cheat grass (*Bromus tectorum*). A few shrubs were noted in less disturbed areas within the Project site. Dead pieces of western Joshua tree (*Yucca brevifolia*; CESA candidate species) were observed during the general survey. No special-status vegetation communities were observed, and no water courses flowed through the Project site. Additionally, no special status wildlife were observed within the Project site. The Project site provides habitat to support burrowing owls (*Athene cunicularia*; California Species of Special Concern (SSC)) and nesting birds and raptors. Mitigation measures to avoid, minimize, and/or mitigate adverse Project impacts on burrowing owl and nesting birds were incorporated in the MND.

COMMENTS AND RECOMMENDATIONS

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CDFW offers the comments and recommendations below to assist the City in adequately avoiding and/or mitigating the Project's impacts on fish and wildlife (biological) resources. Additional comments or other suggestions may also be included to improve the 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).

Comment #1: Western Joshua Tree

Issue: Dead pieces of western Joshua trees were observed on site during the general survey.

Specific impacts: Ground-disturbing activities would result in removal of dead western Joshua trees from the Project site.

Why impact would occur: Based on aerial imagery, western Joshua trees appear to have been present on the Project site as recently as 2017 (Google Earth 2024). According to Appendix C of the BRA, dead pieces of western Joshua tree are currently present within the Project site. The MND does not discuss the previous presence of western Joshua trees or the existing presence of dead pieces of western Joshua tree on site. For any living or dead western Joshua trees present within a Project site, the Project proponent would need to obtain the appropriate incidental take permit from CDFW under CESA or the [Western Joshua Tree Conservation Act](#) (WJTCA) (Fish & G. Code, §§ 1927-1927.12) prior to ground-disturbing activities (CDFW 2024a). The Project would result in take of a CESA candidate species if the Project proceeded without appropriate take authorization.

Evidence impact would be significant: The western Joshua tree is a species designated as candidate for listing as threatened pursuant to CESA (Fish & G. Code, § 2050 *et seq.*). The western Joshua tree is granted full protection of a threatened species under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Additionally, western Joshua tree is protected under the WJTCA. The WJTCA was enacted in July 2023 and prohibits the importation, export, take, possession, purchase, or sale of any western Joshua tree in California unless authorized by CDFW (CDFW 2024a).

As to CEQA, inadequate avoidance, minimization, and mitigation measures for impacts on western Joshua trees will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

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Recommendation #1: The MND should address the presence of dead western Joshua trees within the Project site, as well as the Project's impact on any live western Joshua trees within and adjacent to the Project site. Findings from a western Joshua tree survey should also be provided and discussed in the MND.

Recommendation #2: The Project proponent should meet with CDFW at the earliest possible opportunity to determine how to obtain the appropriate take authorization for western Joshua tree.

Mitigation Measure #1: Western Joshua Tree Survey – The Project proponent shall retain a qualified biologist to conduct a western Joshua tree survey within the Project site and an appropriate distance around the Project site. Findings from the survey shall be compiled in a survey report submitted to the City prior to the beginning of Project activities.

Comment #2: Impacts on Burrowing Owl

Issue: The Project may impact over-wintering burrowing owls during Project activities.

Specific impacts: Project ground-disturbing activities such as vegetation removal and grading will result in habitat loss and may lead to death or injury of individuals. Project construction activities may also disrupt foraging behavior for over-wintering burrowing owl present on site.

Why impact would occur: According to the [California Natural Diversity Database](#), burrowing owl has been recorded within two miles of the Project site (CDFW 2024c). Additionally, the MND and BRA acknowledge the potential presence of burrowing owls on site. The MND provides Mitigation Measure BIO-1 to conduct a preconstruction survey. CDFW concurs that a preconstruction burrowing owl survey should be conducted; however, the mitigation measure does not outline specific actions that would occur following confirmed presence. The mitigation measure should be revised to prescribe coordination with CDFW to determine appropriate avoidance and minimization measures if burrowing owls are determined to be present. Implementation of specific avoidance and minimization actions would greatly reduce Project's impact on burrowing owls. Additionally, the mitigation measure does not include mitigation that outlines replacement of suitable burrowing owl habitat. Removal of suitable habitat would result in the Project's contribution to ongoing loss of suitable habitat for this SSC. The mitigation measure revision should ensure that there is no net loss of habitat.

Evidence impact would be significant: Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86 and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." In addition, burrowing owl qualifies for enhanced consideration afforded to species under CEQA,

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that can be shown to meet the criteria for listing as endangered, rare, or threatened (CEQA Guidelines, § 15380(d)). Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #2: Mitigation Measure BIO-1 – The City should revise Mitigation Measure BIO-1 to incorporate the underlined language and omit language in strikethrough:

Consistent with the “Staff Report on Burrowing Owl Mitigation” a take avoidance (preconstruction) burrowing owl survey shall be conducted by a qualified biologist ~~will be accomplished~~ no more than 14 days prior to ground disturbance activities to ensure no owls have moved into the study site (CDFG 2012). All survey efforts shall be conducted prior to any Project activities that could result in habitat disturbance to soil, vegetation, or other sheltering habitat for burrowing owls. 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 variations by geographic location and climatic conditions.

If an occupied burrow or burrowing owl is found within the development footprint, the biologist 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 and CDFW for review and approval prior to Project activities. ~~If burrowing owls are found to have moved into the site, methods noted within the Staff Report will be applied as appropriate.~~

If avoidance cannot be achieved, the Project proponent shall offset impacts on habitat supporting an SSC at a minimum of 2:1 to ensure no net loss of burrowing owl habitat. The Project proponent shall set aside comparable replacement habitat to 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.

Comment #3: Impacts on Nesting Birds and Raptors

Issue: The mitigation measure proposed in the MND may not be sufficient to minimize Project impacts on nesting birds and raptors.

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Specific Impact: Project activities (i.e., vegetation removal, grading, paving, construction) may result in mortality or injury to individual birds and raptors present within the Project site. Additionally, Project activities during breeding season of nesting birds could result in nest abandonment and/or incidental loss of fertile eggs or nestlings.

Why impact would occur: Various bird and raptor species were observed during the general survey. While no nests were present on site, it is likely that during breeding season nests may be found on the ground or under small shrubs. The MND provides a mitigation measure that describes a minimum buffer of 50 feet would be placed around active nests. With a buffer of 50 feet, eggs and nestlings may continue to be impacted by noise disturbances, increased human activity, increased lighting, dust, vegetation clearing, ground-disturbing activities (e.g., staging, access, grading), and vibrations caused by heavy equipment. If a buffer zone is not appropriately sized, any active nests may also be encroached upon or destroyed. Moreover, Project activities in close proximity to an active nest may result in incidental take of individual eggs or nestlings within the nest. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable foraging habitats. The minimum buffer should be expanded to ensure that the Project does not result in incidental take of individuals or active nests.

Evidence impact would be significant: 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.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #3: Mitigation Measure BIO-2 – The City should revise Mitigation Measure BIO-2 to incorporate the underlined language and omit language in strikethrough:

If possible, ~~removal of vegetation will~~ Project activities shall occur outside the nesting season for migratory birds (February 1 through September 15, as early as January 1 for some raptors). ~~Nesting generally lasts from February to July but may extend beyond this time frame.~~ If this removal will Project activities shall occur during or close to the nesting season, a qualified biologist shall conduct nesting bird and raptor surveys throughout the entire Project site within 7 days prior to the start of Project activities ~~will survey all areas to be disturbed as close as possible but no more than one week prior to removal.~~ If active bird nests are found, a qualified biologist shall establish no-disturbance buffers to minimize impacts on those nests. The qualified biologist shall implement a minimum 30-foot no-disturbance buffer around passerine nests. For raptors, the no-disturbance buffer shall be expanded to 500 feet. Personnel working on

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the Project, including all contractors working on site, shall be instructed on the presence of nesting birds, area sensitivity, and adhere to no-disturbance buffers. These buffers may be expanded by the qualified biologist impacts to nests will be avoided by either delaying work or establishing initial buffer areas of a minimum of 50 feet (16 m) around active migratory bird species nests. The project biologist will determine if the buffer areas should be increased or decreased based on the nesting bird and/or raptor response to disturbances. The buffers shall be maintained until the breeding season has ended or until a qualified biologist has determined that the nestlings have fledged and are no longer reliant upon the nest or parental care for survival.

Additional Comments

Landscaping. The Project proposes landscaping throughout the Project site. CDFW recommends the Project proponent use only native species found in naturally occurring vegetation communities within or adjacent to the Project site. The Project proponent should not plant, seed, or otherwise introduce non-native, invasive plant species to areas that are adjacent to and/or near native habitat areas. Accordingly, CDFW recommends the Project proponent restrict use of any species, particularly 'moderate' or 'high' listed by the [California Invasive Plant Council](#) (Cal-IPC 2024). These species are documented to have substantial and severe ecological impacts on physical processes, plant and animal communities, and vegetation structure.

Wildlife Friendly Fencing. Fencing, such as chain link styles, could obstruct wildlife movement and result in wildlife injury or mortality due to impalement and entanglement. CDFW recommends the Project proponent utilize wildlife friendly fencing in the Project design. Wildlife-friendly fencing should be used and strategically placed in areas of high biological resource value in order to protect biological resources, habitat, and wildlife movement. CDFW recommends [A Landowner's Guide to Wildlife Friendly Fences](#) for information wildlife-friendly fences (MFWP 2012).

Data. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., CNDDDB] which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special status species detected by completing and submitting [CNDDDB Online Field Survey Form](#) (CDFW 2024d). The Project proponent should ensure that data was submitted data properly, with all data fields applicable filled out, prior to finalizing/adopting the environmental document. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred. The Project proponent should provide CDFW with confirmation of data submittal.

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

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Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment A).

Filing Fees


The Project, as proposed, could 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 City and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

Conclusion

CDFW appreciates 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)].

Questions regarding this letter or further coordination should be directed to 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
Steve Gibson
Frida Diaz-Barriga

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- [CDFW] California Department of Fish and Wildlife. 2024d. Submitting Data to the CNDDDB. Available at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.
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- Google Earth. 2024. Intersection of West Avenue O and 10th Street West, Palmdale, CA.
- [MFWP] Montana Fish, Wildlife and Parks. 2012. A Landowner's Guide to Wildlife Friendly Fences: How to Build Fence with Wildlife in Mind. Second Edition Revised and Updated. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=134713&inline>

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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.

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		Timing	Responsible Party
MM-BIO-1 – Western Joshua Tree Survey	The Project proponent shall retain a qualified biologist to conduct a western Joshua tree survey within the Project site and an appropriate distance around the Project site. Findings from the survey shall be compiled in a survey report submitted to the City prior to the beginning of Project activities.	Prior to Project activities	Project Proponent/ Qualified Biologist
MM-BIO-2 – Mitigation Measure BIO-1 Burrowing Owl	<p>Consistent with the “Staff Report on Burrowing Owl Mitigation” a take avoidance (preconstruction) burrowing owl survey shall be conducted by a qualified biologist no more than 14 days prior to ground disturbance activities to ensure no owls have moved into the study site (CDFG 2012). All survey efforts shall be conducted prior to any Project activities that could result in habitat disturbance to soil, vegetation, or other sheltering habitat for burrowing owls. 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 variations by geographic location and climatic conditions.</p> <p>If an occupied burrow or burrowing owl is found within the development footprint, the biologist shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in</p>	Prior to and during Project activities	Project Proponent/ Qualified Biologist

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	<p>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 and CDFW for review and approval prior to Project activities.</p> <p>If avoidance cannot be achieved, the Project proponent shall offset impacts on habitat supporting an SSC at a minimum of 2:1 to ensure no net loss of burrowing owl habitat. The Project proponent shall set aside comparable replacement habitat to 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>MM-BIO-3-Mitigation Measure BIO-2 Nesting Birds/Raptors</p>	<p>If possible, Project activities shall occur outside the nesting season for migratory birds (February 1 through September 15, as early as January 1 for some raptors). If Project activities shall occur during or close to the nesting season, a qualified biologist shall conduct nesting bird and raptor surveys throughout the entire Project site within 7 days prior to the start of Project activities. If active bird nests are found, a qualified biologist shall establish no-disturbance buffers to minimize impacts on those nests. The qualified biologist shall implement a minimum 30-foot no-disturbance buffer around passerine nests. For raptors, the no-disturbance buffer shall be expanded to 500 feet. Personnel working on the Project, including all contractors working on site, shall be instructed on the presence of nesting birds, area sensitivity, and adhere to no-</p>	<p>Prior to and during Project activities</p>	<p>Project Proponent/ Qualified biologist</p>

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	disturbance buffers. These buffers may be expanded by the qualified biologist based on the nesting bird and/or raptor response to disturbances. The buffers shall be maintained until the breeding season has ended or until a qualified biologist has determined that the nestlings have fledged and are no longer reliant upon the nest or parental care for survival.		
REC 1 – MND Revision	The MND should address the presence of dead western Joshua trees within the Project site, as well as the Project’s impact on any live western Joshua trees within and adjacent to the Project site. Findings from a western Joshua tree survey should also be provided and discussed in the MND.	Prior to finalizing CEQA document	Lead Agency
REC 2 – CDFW Consultation	The Project proponent should meet with CDFW at the earliest possible opportunity to determine how to obtain the appropriate take authorization for western Joshua tree.	Prior to Project activities	Project Proponent
REC 3 - Landscaping	CDFW recommends the Project proponent use only native species found in naturally occurring vegetation communities within or adjacent to the Project site. The Project proponent should not plant, seed, or otherwise introduce non-native, invasive plant species to areas that are adjacent to and/or near native habitat areas. Accordingly, CDFW recommends the Project proponent restrict use of any species, particularly ‘moderate’ or ‘high’ listed by the California Invasive Plant Council.	Prior to and during Project activities	Project Proponent
REC 4 – Fencing	CDFW recommends the Project proponent utilize wildlife friendly fencing in the Project design. Wildlife-friendly fencing should be used and strategically placed in areas of high biological resource value in order to protect biological resources, habitat, and wildlife movement. CDFW	Prior to and during Project activities	Project Proponent

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	recommends A Landowner's Guide to Wildlife Friendly Fences for information wildlife-friendly fences.		
REC 5 – Data	Please report any special status species detected by completing and submitting CNDDDB Online Field Survey Form. The City should ensure that the Project proponent has submitted the data properly, with all data fields applicable filled out, prior to finalizing/adopting the environmental document. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred. The Project proponent should provide CDFW with confirmation of data submittal.	Prior to finalizing CEQA document	Project Proponent/ Lead Agency