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SUBJECT: INITIAL STUDY/MITIGATED NEGATIVE DECLARATION FOR THE TENTATIVE TRACT MAP NO.84283 (23-011) PROJECT, SCH NO. 2024080523, LOS ANGELES COUNTY, CA

Dear Jocelyn Swain:

The California Department of Fish and Wildlife (CDFW) reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Lancaster (City) for the Tentative Tract Map No. 84283 (23-011) Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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 (Fish & G. Code, § 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. CDFW may also act 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

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.

proposed, forexample, 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 law² of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: KB Homes

Objective: The Project proposes to develop an 18.07-acre area of undeveloped land into 56 single-family residential lots. The lots would range from 10,001 square feet to 17,994 square feet. The Project would include the establishment of a block wall around the Project, landscaping, and sidewalks.

Location: The Project is in an undeveloped parcel in the City of Lancaster, Los Angeles County, California. It is in the southeast portion of West Avenue L and 70th Street West. The Project is located west of Quartz Hill High School located on the southeast corner of 65th Street West and West Avenue L.

Biological Setting: The current adjacent lands near the Project area are residential homes in the west, east, and south, and undeveloped annual grasslands in the north. The Project area lies on annual grasslands and undeveloped land.

The vegetation communities of the Project area, with the addition of a 300-foot buffer, consists of annual grassland (26.40 acres), tamarisk thickets (*Tamarix spp.* Shrubland Semi-Natural Alliance; 0.06 acres), and disturbed/developed land (24.03 acres). The Tamarisk thickets vegetation occurs outside the Project boundary.

Sensitive species that have been identified to occur within the City and are of potential concern for the Project include northern California legless lizard (*Anniella pulchra*, California Species of Special Concern (SSC)), coast horned lizard (*Phrynosoma blainvillii*, SSC), Crotch's bumble bee (*Bombus crotchii*, California Endangered Species Act (CESA) listed candidate species), slender mariposa lily (*Calochortus clavatus var. gracilis*; California Rare Plant Rank (CRPR)1B.2), San Fernando Valley spineflower, (*Chorizanthe parryi var. fernandina*; CRPR 1B.1) Parry's spineflower (*Chorizanthe parryi var. parryi*; CRPR 1B.1), tricolored blackbird (*Agelaius tricolor*; CESA-listed threatened, SSC), burrowing owl (*Athene cucularia*; SSC), and nesting birds.

Project History: In January 2024, CDFW provided a pre-consultation letter for the Project. In summary, there were recommendations to conduct focused surveys for Swainson's hawk, burrowing owl, SSC birds, and nesting birds. Additionally, there were

² "Take" is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

recommendations to assume presence for SSC reptiles and include mitigation or compensatory mitigation for SSC reptiles.

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. Additional comments or other suggestions may also be included to improve the document.

COMMENT # 1: Impacts to Rare Plants

Issue: The IS/MND does not discuss or provide mitigation measures to reduce impacts to rare plant species.

Specific impact: The Project may impact suitable habitat for slender mariposa lily, San Fernando Valley spineflower, and Parry's spineflower, and may directly or indirectly impact these rare plant species. The MND does not provide compensatory mitigation for rare plant suitable habitat.

Why impact would occur: According to the Biological Resources Technical Report (BRTR) (Stantec 2023), there is potential for slender mariposa lily, San Fernando Valley spineflower, and Parry's spineflower to occur within the Project area. The IS/MND does not discuss Project impacts that may occur toward these rare plants, nor does it provide mitigation measures for rare plant species. A rare plant survey was conducted on August 24, 2023, and it was determined the Project area has potential to provide suitable habitat for rare plant species as it mainly consists of annual grassland habitat. Additionally, the rare plant survey was conducted outside of the blooming period for slender mariposa lily, San Fernando Valley spineflower, and Parry's spineflower, which generally occurs March to July. The IS/MND does not provide compensatory mitigation for the loss of rare plant species habitat. Impacts to rare plants such as removal of habitat or loss of population would be considered significant under CEQA.

Evidence impact may be significant: Certain species are in danger of extinction because their habitats have been severely reduced in acreage, are threatened with destruction or adverse modification, or because of a combination of these and other factors. The California Endangered Species Act (CESA) and Native Plant Protection Act (NPPA) provide additional protections for such species, including take prohibitions (Fish & G. Code, § 2050 et seq.; Fish & G. Code, § 1908). As a responsible agency, CDFW has the authority to issue permits for the take of species listed under CESA and NPPA if the take is incidental to an otherwise lawful activity; CDFW has determined that the impacts of the take have been minimized and fully mitigated; and the take would not jeopardize the continued existence of the species (Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14 § 786.9, subd. (b)). Botanical field surveys are one of the preliminary steps to detect special status plant species and sensitive natural communities that may be impacted by a project.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: Rare Plant Survey

Within one year prior to the commencement of ground-disturbing activities, habitat assessment surveys for the special-status plants shall be conducted by a qualified botanist. Surveys shall be in accordance with the [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities](#) (CDFW 2018) and [Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants](#) (USFW 2000) at the appropriate time of year when the target species would be in flower or otherwise clearly identifiable. Locations of special-status plant populations shall be clearly identified in the field by staking, flagging, or fencing a minimum 100-foot-wide buffer around them prior to the commencement of activities that may cause disturbance.

Mitigation Measure #2: Compensatory Mitigation

If plants with a CRPR of 1B or 2B are observed in the impact area and cannot be avoided, no Project activities shall commence, and the City shall coordinate with CDFW to discuss avoidance of the rare plants on site. If complete avoidance is unattainable, the Project proponent shall provide compensatory mitigation to offset the Project's impact on rare plants observed on site at no less than 2:1. The total habitat acreage within the mitigation land shall be no less than 2:1. The Project proponent shall acquire CDFW approved mitigation land that has presence of slender mariposa lily, San Fernando Valley spineflower, and Parry's spineflower are located in the same watershed as the Project site. The mitigation land shall also provide equivalent or greater habitat value than that of the Project site. The Project proponent shall protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094. Recordation of the conservation easement shall occur prior to commencement of Project activities. An appropriate endowment shall also be provided for the long-term monitoring and management of mitigation lands.

Mitigation Measure #2: Impacts to Tricolored Blackbird

Issue: The IS/MND does not discuss or provide mitigation measures to reduce impacts to tricolored blackbird, a threatened CESA-listed species.

Specific impact: The Project area provides suitable foraging habitat for tricolored blackbird and may be directly or indirectly impacted by Project activities.

Why impact would occur: According to the BRTR, tricolored blackbird has a moderate potential to forage on the Project area due to its preference for foraging in annual grasslands. According to CNDDDB, there was a recent observation approximately one mile from the Project area. [Tricolored Blackbird Predicted Habitat](#) (CDFW 2024a) and [Tricolored Blackbird Range](#) (CDFW 2024b), also found in CNDDDB, are within the Project area. Wintering tricolored blackbirds often congregate in huge, mixed-species

blackbird flocks that forage in annual grasslands and agricultural fields with low-growing vegetation and at dairies and feedlots. The IS/MND does not discuss Project impacts on tricolored blackbird and does not include mitigation measures to offset the loss of foraging habitat.

Evidence impact would be significant: A California Species of Special Concern 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 extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
2. is listed as Federal Endangered Species Act (ESA)-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
3. 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,
4. 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 2024c).

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).

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 IS/MND does not provide mitigation for potential impacts on SSC. 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.

Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA).

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #3: Tricolored Blackbird Focused Surveys

Protocol level surveys shall be conducted in accordance with the survey methods described in the [California Department of Fish and Wildlife \(Department\) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015](#) (CDFW 2015). Documentation of surveys and findings shall be submitted to the City for review and file. If tricolored blackbird is detected, CDFW shall be contacted immediately to initiate the issuance of an Incidental Take Permit (ITP). Presence of the species may be assumed if the timeline for the Project does not allow for protocol-level surveys.

Mitigation Measure #4: Tricolored Blackbird Pre-Construction Surveys

Pre-construction surveys for tricolored blackbird shall occur 3 days prior to the start of vegetation removal or ground disturbing activities related to construction activities. If the species is detected, no construction activities shall occur in within 500 feet of the observed species or nest. CDFW shall be contacted immediately to initiate the issuance of appropriate take authorization (e.g., and ITP).

Mitigation Measure #5: Incidental Take Permit

If tricolored blackbird is detected the Project proponent shall coordinate with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & Game Code, § 2080 et seq). The Project proponent shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project proponent shall provide a copy of a fully executed take authorization to the City prior to implementing Project ground-disturbing activities and vegetation removal.

COMMENT # 2: Impacts to Burrowing Owl

Issue: While there is discussion of conducting burrowing owl surveys in accordance with the methods outlined in the [Staff Report on Burrowing Owl Mitigation](#) (CDFW 2012), the IS/MND does not incorporate compensatory mitigation measures to offset the loss of burrowing owl habitat that is very likely to occur.

Specific impact: Mitigation Measure 4 in the IS/MND may be insufficient to provide mitigation to offset the loss of confirmed burrowing owl habitat.

Why impact would occur: The BRTR includes a high potential for burrowing owls to nest and forage based the Project areas habitat containing dry annual grassland characterized by low-growing vegetation. Burrowing owls “are found in microhabitats highly altered by humans, including flood risk management and irrigation basins, dikes, banks, abandoned fields surrounded by agriculture, and road cuts and margins.” There was also documentation in the BRTR that showed small burrows and potential habitat in the Stantec Consulting Services Inc. Photographic Log Photo 6, 7, 8. CNDDDB includes an observation of burrowing owl less than 1.5 miles from the Project area. The CNDDDB

datasets, [Burrowing Owl Predicated Habitat](#) (CDFW 2024d) and [Burrowing Owl Range](#) (CDFW 2024e), display a high potential for burrowing owl presence within the Project area.

The following are examples of Project activities that have the potential to take burrowing owls, their nests or eggs, or destroy or degrade burrowing owl habitat: grading, disking, cultivation, earthmoving, burrow blockage, heavy equipment compacting and crushing burrow tunnels. In addition, the following activities may have impacts to burrowing owl populations: eradication of host burrowers; changes in vegetation management (i.e. grazing); use of pesticides and rodenticides; destruction, conversion or degradation of nesting, foraging, over-wintering, or other habitats; destruction of natural burrows and burrow surrogates; and disturbance which may result in harassment of owls at occupied burrows (CDFW 2012). The IS/MND does not provide compensatory mitigation for the loss of burrowing owl habitat. In addition to Mitigation Measure 4, compensatory mitigation would be needed as burrowing owl habitat would be impacted due to construction activities.

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, 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 #6: Compensatory Mitigation

If burrowing owl presence is confirmed, the Project proponent shall offset impacts by acquiring CDFW-approved mitigation lands for the species. The potential mitigation land shall have the following: 1) have presence of burrowing owl; 2) replace the impacted burrowing owl habitat area at a minimum of 2:1 ratio to ensure no net loss of habitat; and 3) be of equivalent or greater habitat value than that of the Project site. Prior to acquisition of potential mitigation land, the Project proponent shall provide CDFW with the appropriate documentation for property eligibility. Requested documentation may include, but is not limited to, a biological report, preliminary title report, mineral risk assessment report, and Phase I Environmental Site Assessment report. Following CDFW written approval of potential mitigation land, the Project proponent shall protect the land in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094. Recordation of the conservation easement shall occur prior to commencement of Project activities. An appropriate

endowment, to be determined by CDFW, shall also be provided for the long-term monitoring and management of mitigation lands.

COMMENT # 3: Impacts to Crotch's Bumble Bee

Issue: The IS/MND does not include survey results for the presence or absence of Crotch's bumble bee.

Specific impact: The IS/MND states Crotch's bumble bee have the potential to occur on-site; however, surveys were not conducted prior to circulation of the IS/MND to determine if Crotch's bumble bee currently occupy the Project area.

Why impact would occur:

The Project's ground and vegetation disturbance could result in potentially significant impacts to Crotch's bumble bee, including loss of foraging resources, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young, and/or queens, and direct mortality. MM 5 does not specifically call for construction to be halted if the species is detected during preconstruction surveys, which means that impacts to Crotch's bumble bee may occur without appropriate take authorization under CESA. Even if this were included as a provision of MM 5, because last minute survey results are being used to detect whether the species is present on site, it is unknown whether construction delays will occur if it is detected. Construction delays caused by work stoppages due to Crotch's bumble bee presence can extend the Project into additional breeding seasons, leading to increased risk of disturbance to Crotch's bumble bee. In addition to the biological cost of construction delays, such delays are expensive in terms of Project implementation and logistics.

Bumble bees live in colonies composed of a queen, workers, and, near the end of the season, reproductive members of the colony. Colonies are annual, with new nests initiated by solitary queens in the spring. Crotch's bumble bees primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under-brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2018). New queens produced at the end of the annual colony cycle mate before entering diapause, which is a form of hibernation. Overwintering sites utilized by these solitary mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams, et al. 2014). The highest detection probability is during the Colony Active Period of April through August, but Crotch's bumble bee could be in the Project area at any time of year.

Evidence impact would be significant: Recently, the California Fish and Game Commission accepted a petition to list the Crotch's bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. 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).

CDFW considers impacts to species that are candidates for CESA listing to be significant, under CEQA. Accordingly, the Project may have a substantial adverse 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 the CDFW or USFWS.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #1: Assumption of Presence

CDFW recommends that the environmental document assume presence of Crotch's bumble bee and analyze the Project for impacts to the species. Additionally, MM 5 should be amended to require that the Project applicant apply for an ITP under CESA prior to the commencement of Project activities. Such a requirement would eliminate the possibility that detection of Crotch's bumble bee in preconstruction surveys will halt construction activities while an ITP is acquired. If the MND is not amended to include analysis and a revision of MM 5 that requires application for an ITP prior to the start of construction, then the language in MM 5 should be revised to include that no construction shall occur until appropriate take authorization for the species is acquired.

COMMENT # 4: Impacts to Reptiles

Issue: The mitigation measure proposed in the IS/MND does provide compensatory mitigation for coast horned lizard and northern California legless lizard.

Specific impact: Direct impacts to coast horned lizard and northern California legless lizard could result from Project construction and activities (e.g., equipment staging, mobilization, and grading); ground disturbance; vegetation clearing; and trampling or crushing from construction equipment, vehicles, and foot traffic. Indirect impacts could result from temporary or permanent loss of suitable habitat.

Why impact would occur: The annual grassland and loose, sandy soils provides suitable habitat for coast horned lizard and northern California legless lizard. The BRTR concludes that there is a moderate potential for both species to be present. The City acknowledges the potential presence of this SSC and provides Mitigation Measure 2, which describes pre-construction surveys and relocation. Actively relocating species out of the Project area may result in incidental injury or physical distress, especially during the transit process. While relocation activities may be warranted, species should be given the opportunity to move out of harm's way on their own accord. Additionally, the mitigation measure does not outline compensatory mitigation if presence of coast horned lizard and northern California legless lizard is confirmed. Given that habitat loss on a local and regional scale is a major cause of population decline for SSC, removal of confirmed SSC habitat would be considered a significant impact and should be mitigated appropriately.

Evidence impact would be significant: A California Species of Special Concern 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
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 2024c).

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). The IS/MND does not provide mitigation for potential impacts on SSC. 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 #7: SSC Reptile Pre-Construction Survey

Prior to the commencement of ground or vegetation disturbing activities pre-construction surveys for coast horned lizard and northern California legless lizard shall be conducted by a qualified biologist with appropriate handling permits. The surveys shall be conducted within 72 hours prior to the commencement of ground or vegetation disturbing activities. The qualified biologist shall survey the proposed impact areas and a 50-foot buffer. The preconstruction surveys shall incorporate appropriate methods and timing to detect these species, including individuals that could be concealed in burrows, beneath leaf litter, or in loose soil. If a special-status species is found, the qualified biologist shall contact CDFW, and the species shall be passively ushered out of harm's way to an area that is unaffected by the Project. If the Project requires SSC to be removed, disturbed, or otherwise handled, the qualified biologist shall obtain all appropriate permits and prepare a species-specific list (or plan) of proper handling and passive relocation protocols. The list (or plan) of protocols shall be implemented during Project construction and activities/biological construction monitoring.

Mitigation Measure #8: Compensatory Mitigation

For SSC that have been confirmed and/or are expected to occur within the Project area, the Project proponent shall provide compensatory mitigation for temporary and permanent loss of any habitat supporting SSC. There shall be no net loss of habitat supporting SSC (CEQA Guidelines, § 15370(e)). Compensatory mitigation shall be provided within the Project boundary at no less than 2:1. Mitigation shall provide appropriate habitat (depending on the species), refugia, and habitat structures that support that species (e.g., woody material, rocks, brush piles, pools, burrows). Any proposed mitigation area/plan shall include a discussion on the territory size; nesting, breeding, foraging, and refuge locations; invasive, non-native plant and wildlife species present; food availability; and how all life cycle functions will be mitigated. The 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.

COMMENT # 5: Impacts to Nesting Birds and Raptors

Issue: The mitigation measure for nesting birds and raptors may be improved to ensure adequate surveys occur prior to the start of construction.

Specific impact: Nesting birds and raptors could establish within the Project area after nesting bird surveys have been conducted as the IS/MND proposes the surveys to occur at least 14 days prior to construction activity. Additionally, the IS/MND recommends a 50-foot buffer around active nests, which may continue to result in disturbance and ultimate take of nesting birds.

Why impact would occur: According to the BRTR, Stantec biologists conducted field surveys within their Biological Survey Area (BSA) of 18.07 acres. Six bird species were observed and identified. Additionally, the BRTR's California Natural Diversity Database (CNDDDB) search resulted in 14 species that have potential to occur, and seven of those species having a moderate to high potential to forage within the Project area. This is due to the Project area consisting of mainly annual grassland vegetation. The Stantec Consulting Services Inc. Photographic Log Photo 8 captures a broken pipe on both ends, which could provide habitat for birds as well.

Bird species can construct nests and begin laying eggs in less than seven days. Therefore, a pre-construction nesting bird survey scheduled within 14 days prior to construction may miss some instances of nesting. To minimize the chances of missing nests, CDFW recommends scheduling the survey within three days before the start of ground disturbing activities. In terms of a no disturbance buffer, it may need to be increased based on the birds' tolerance level to the disturbance as it varies greatly depending on species, intensity of disturbance, whether the nesting pair is accustomed to disturbance, the location of the nest, or the stage of development of nestlings. Disturbance too close to the nest may impact the parents' ability to forage effectively and reduce nestlings' chances of survival. In some cases, disturbance can cause the parents to abandon the nest completely.

Evidence impact would be significant: Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA).

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #9: Nesting Bird and Raptor Pre-Construction Survey - The City should revise Mitigation Measure 3 to incorporate the underlined language and omit the language in strikethrough:

A nesting bird survey shall be conducted by a qualified biologist within 44 3 days prior to the start of any construction/ground disturbing activities. The qualified biologist shall survey all suitable nesting habitat within the project impact area, and areas within a biologically defensible buffer zone surrounding the project impact area. If no active bird nests are detected during the clearance survey, project activities may begin, and no additional avoidance and minimization measures shall be required. If an active bird nest is found, the species shall be identified, and a “no disturbance” buffer shall be established around the active nest. The size of the “no disturbance” buffer shall be increased or decreased based on the judgement of the qualified biologist and level of activity and sensitivity of the species. At a minimum, the buffer shall be at least 500 feet around active raptor nests and ~~50~~ 100 feet around nests of migratory bird species. The qualified biologist shall periodically monitor any active bird nests to determine if project-related activities occurring outside the “no-disturbance” buffer disturb the birds and if the buffer shall be increased. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, project activities within the “no-disturbance” buffer may occur following an additional survey by the qualified biologist to search for any new bird nests in the restricted area. Proposed Project-related ground-disturbing activities and vegetation removal shall occur outside of the avian breeding season, which generally runs from February 15 through September 15 (as early as January 1 for some raptors) to avoid take of birds or their eggs.

ADDITIONAL COMMENTS

Mitigation and Monitoring Reporting Plan. CDFW recommends the Project’s environmental document include mitigation measures recommended in this letter. CDFW has provided comments via a mitigation monitoring and reporting plan to assist in the development of feasible, specific, detailed (i.e., responsible party, timing, specific actions, location), and fully enforceable mitigation measures (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The Lead Agency 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 a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation Monitoring and Reporting Plan (Attachment A).

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 website](#)³ provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the [Combined Rapid Assessment and Relevé Form](#)⁴.

The City should ensure data collected for the preparation of the recirculated IS/MND is properly submitted.

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 IS/MND to assist the City of Lancaster in identifying and mitigating Project impacts on biological resources. CDFW requests an opportunity to review and comment on any response that the City of Lancaster has to our comments and to receive notification of any forthcoming hearing date(s) for the Project (CEQA Guidelines, § 15073(e)).

³ <https://wildlife.ca.gov/Data/CNDDDB>

⁴ <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

Questions regarding this letter or further coordination should be directed to Joleena De La Fe⁵, Environmental Scientist.

Sincerely,

DocuSigned by:

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Victoria Tang
Environmental Program Manager
South Coast Region

ATTACHMENTS

Attachment A: Draft Mitigation, Monitoring, and Reporting Program

ec: California Department of Fish and Wildlife
Victoria Tang
Jennifer Turner
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Attachment A: Draft Mitigation Monitoring and Reporting Program (MMRP)

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

Mitigation Measure	Timing	Responsible Party
<p>Mitigation Measure #1: Rare Plant Survey</p> <p>Within one year prior to the commencement of ground-disturbing activities, habitat assessment surveys for the special-status plants shall be conducted by a qualified botanist. Surveys shall be in accordance with the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018) and Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants (USFW 2000) at the appropriate time of year when the target species would be in flower or otherwise clearly identifiable. Locations of special-status plant populations shall be clearly identified in the field by staking, flagging, or fencing a minimum 100-foot-wide buffer around them prior to the commencement of activities that may cause disturbance.</p>	<p>Prior to Project Initiation</p>	<p>Qualified Biologist</p>
<p>Mitigation Measure #2: Compensatory Mitigation</p> <p>If plants with a CRPR of 1B or 2B are observed in the impact area and cannot be avoided, no Project activities shall commence, and the City shall coordinate with CDFW to discuss avoidance of the rare plants on site. If complete avoidance is unattainable, the Project proponent shall provide compensatory mitigation to offset the Project’s impact on rare plants observed on site at no less than 2:1. The total habitat acreage within the mitigation land shall be no less than 2:1. The Project proponent shall acquire CDFW approved mitigation land that has presence of slender mariposa lily, San Fernando Valley spineflower, and Parry’s spineflower are located in the same watershed as the Project site. The mitigation land shall also provide equivalent or greater habitat value than that of the Project site. The Project proponent shall protect</p>	<p>Prior to Project Initiation</p>	<p>Lead Agency</p>

<p>replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094. Recordation of the conservation easement shall occur prior to commencement of Project activities. An appropriate endowment shall also be provided for the long-term monitoring and management of mitigation lands.</p>		
<p>Mitigation Measure #3: Tricolored Blackbird Focused Surveys</p> <p>Protocol level surveys shall be conducted in accordance with the survey methods described in the California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015 (CDFW 2015). Documentation of surveys and findings shall be submitted to the City for review and file. If tricolored blackbird is detected, CDFW shall be contacted immediately to initiate the issuance of an Incidental Take Permit (ITP). Presence of the species may be assumed if the timeline for the Project does not allow for protocol-level surveys.</p>	<p>Prior to Project Initiation</p>	<p>Qualified Biologist</p>
<p>Mitigation Measure #4: Tricolored Blackbird Pre-Construction Surveys</p> <p>Pre-construction surveys for tricolored blackbird shall occur 3 days prior to the start of vegetation removal or ground disturbing activities related to construction activities. If the species is detected, no construction activities shall occur in within 500 feet of the observed species or nest. CDFW shall be contacted immediately to initiate the issuance of appropriate take authorization (e.g., and ITP).</p>	<p>Prior to Project Initiation</p>	<p>Qualified Biologist</p>
<p>Mitigation Measure #5: Incidental Take Permit</p> <p>If tricolored blackbird is detected the Project proponent shall coordinate with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & Game Code, § 2080 et seq). The Project proponent shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project proponent shall</p>	<p>Prior to Project Initiation</p>	<p>Lead Agency</p>

<p>provide a copy of a fully executed take authorization to the City prior to implementing Project ground-disturbing activities and vegetation removal.</p>		
<p>Mitigation Measure #6: Compensatory Mitigation</p> <p>If burrowing owl presence is confirmed, the Project proponent shall offset impacts by acquiring CDFW-approved mitigation lands for the species. The potential mitigation land shall have the following: 1) have presence of burrowing owl; 2) replace the impacted burrowing owl habitat area at a minimum of 2:1 ratio to ensure no net loss of habitat; and 3) be of equivalent or greater habitat value than that of the Project site. Prior to acquisition of potential mitigation land, the Project proponent shall provide CDFW with the appropriate documentation for property eligibility. Requested documentation may include, but is not limited to, a biological report, preliminary title report, mineral risk assessment report, and Phase I Environmental Site Assessment report. Following CDFW written approval of potential mitigation land, the Project proponent shall protect the land in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094. Recordation of the conservation easement shall occur prior to commencement of Project activities. An appropriate endowment, to be determined by CDFW, shall also be provided for the long-term monitoring and management of mitigation lands.</p>	<p>Prior to Project Initiation</p>	<p>Project Proponent</p>
<p>Recommendation #1: Assumption of Presence</p> <p>CDFW recommends that the environmental document assume presence of Crotch's bumble bee and analyze the Project for impacts to the species. Additionally, MM 5 should be amended to require that the Project applicant apply for an ITP under CESA prior to the commencement of Project activities. Such a requirement would eliminate the possibility that detection of Crotch's bumble bee in preconstruction surveys will halt construction activities while an ITP is acquired. If the MND is not amended to include analysis and a revision of MM 5 that requires application for an ITP prior to the start of construction, then the language in MM 5 should be revised to include that no construction shall occur until appropriate take authorization for the species is acquired.</p>	<p>Prior to Project Initiation</p>	<p>Lead Agency</p>

<p>Mitigation Measure #7: SSC Reptile Pre-Construction Survey</p> <p>Prior to the commencement of ground or vegetation disturbing activities pre-construction surveys for coast horned lizard and northern California legless lizard shall be conducted by a qualified biologist with appropriate handling permits. The surveys shall be conducted within 72 hours prior to the commencement of ground or vegetation disturbing activities. The qualified biologist shall survey the proposed impact areas and a 50-foot buffer. The preconstruction surveys shall incorporate appropriate methods and timing to detect these species, including individuals that could be concealed in burrows, beneath leaf litter, or in loose soil. If a special-status species is found, the qualified biologist shall contact CDFW, and the species shall be passively ushered out of harm's way to an area that is unaffected by the Project. If the Project requires SSC to be removed, disturbed, or otherwise handled, the qualified biologist shall obtain all appropriate permits and prepare a species-specific list (or plan) of proper handling and passive relocation protocols. The list (or plan) of protocols shall be implemented during Project construction and activities/biological construction monitoring.</p>	<p>Prior to Project Initiation</p>	<p>Project Proponent</p>
<p>Mitigation Measure #8: Compensatory Mitigation</p> <p>For SSC that have been confirmed and/or are expected to occur within the Project area, the Project proponent shall provide compensatory mitigation for temporary and permanent loss of any habitat supporting SSC. There shall be no net loss of habitat supporting SSC (CEQA Guidelines, § 15370(e)). Compensatory mitigation shall be provided within the Project boundary at no less than 2:1. Mitigation shall provide appropriate habitat (depending on the species), refugia, and habitat structures that support that species (e.g., woody material, rocks, brush piles, pools, burrows). Any proposed mitigation area/plan shall include a discussion on the territory size; nesting, breeding, foraging, and refuge locations; invasive, non-native plant and wildlife species present; food availability; and how all life cycle functions will be mitigated. The 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>Post Project Construction</p>	<p>Lead Agency</p>

<p>Mitigation Measure #9: Nesting Bird and Raptor Pre-Construction Survey - The City should revise Mitigation Measure 3 to incorporate the <u>underlined</u> language and omit the language in strikethrough:</p> <p>A nesting bird survey shall be conducted by a qualified biologist within 14 <u>3</u> days prior to the start of any construction/ground disturbing activities. The qualified biologist shall survey all suitable nesting habitat within the project impact area, and areas within a biologically defensible buffer zone surrounding the project impact area. If no active bird nests are detected during the clearance survey, project activities may begin, and no additional avoidance and minimization measures shall be required. If an active bird nest is found, the species shall be identified, and a “no disturbance” buffer shall be established around the active nest. The size of the “no disturbance” buffer shall be increased or decreased based on the judgement of the qualified biologist and level of activity and sensitivity of the species. At a minimum, the buffer shall be at least 500 feet around active raptor nests and 50 <u>100</u> feet around nests of migratory bird species. The qualified biologist shall periodically monitor any active bird nests to determine if project-related activities occurring outside the “no-disturbance” buffer disturb the birds and if the buffer shall be increased. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, project activities within the “no-disturbance” buffer may occur following an additional survey by the qualified biologist to search for any new bird nests in the restricted area. <u>Proposed Project-related ground-disturbing activities and vegetation removal shall occur outside of the avian breeding season, which generally runs from February 15 through September 15 (as early as January 1 for some raptors) to avoid take of birds or their eggs.</u></p>	<p>Prior to Project Initiation</p>	<p>Qualified Biologist</p>
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