



State of California – Natural Resources Agency
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December 23, 2024

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**Subject: Vesting Tentative Tract Map No. 7471 (Project)
Mitigated Negative Declaration (MND)
State Clearinghouse No.: 2024110806**

Dear Courtney Camps:

The California Department of Fish and Wildlife (CDFW) received a MND from the City of Bakersfield, as Lead Agency, for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802.). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect 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. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the Project planning process if an ITP may be pursued for the Project.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T under CEQA Guidelines section 15380, CDFW recommends it should be fully considered in the environmental analysis for the Project.

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PROJECT DESCRIPTION SUMMARY

Proponent: LGI Homes – California, LLC

Objective: The Project proposes to subdivide 83.97 acres into 393 single-family residential lots. The Project also includes the subdivision of five landscape and five private landscape areas, and one retention basin, one private retention basin, and one private park.

Location: The Project site is located within the City of Bakersfield on the southwest corner of Paladino Drive and Morning Drive in northeast Bakersfield. Adjacent properties to the north, west, and east are vacant land. To the south of the Project site is an elementary school and existing single-family residential development. The specific parcel number affected by this Project is Assessor's Parcel Number (APN): 437-010-043.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Bakersfield in adequately identifying 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 may also be included to improve the CEQA document prepared for this Project.

The MND and aerial imagery of the parcel show that the Project site is comprised of disturbed annual grassland. Historic imagery demonstrates that initial grading for residential development occurred around the year 2006 and the land has since remained fallow and occupied by non-native grasses. The surrounding habitats to the west, north, and east are largely composed of vacant, undisturbed annual grasslands. California Natural Diversity Database (CNDDDB) records show the Project is within the geographic range of several special-status animal species, and several mitigation measures are proposed to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State endangered and fully protected and federally endangered blunt-nosed leopard lizard (*Gambelia sila*); the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); and the State species of special concern American badger (*Taxidea taxus*).

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Comment 1: Blunt-nosed Leopard Lizard

Blunt-nosed leopard lizard (BNLL) is a State endangered and fully protected and federally endangered species. The Project site is within the known geographic range of BNLL, and the species is known to occur less than 3 miles away from the Project site (CNDDDB 2024).

Suitable BNLL habitat includes all areas of grassland and shrub habitat that contain required habitat elements, such as small mammal burrows and open areas for basking. BNLL are also known to utilize open space patches between suitable habitat features including disturbed sites, and unpaved access roadways. Based on aerial imagery and the information provided in the MND, the Project site may contain suitable habitat for BNLL.

CDFW concurs with the use of the methodologies outlined in mitigation measures BIO-8, through BIO-10 to minimize and avoid impacts to BNLL. BIO-8 states that a qualified biologist(s) will conduct protocol surveys in accordance with the “Approved Survey Methodology for the Blunt-Nosed Leopard Lizard” (CDFW 2019) to detect any BNLL that may occur on the Project site. In addition to these measures, CDFW also recommends that any BNLL detection, known burrows, or egg clutch sites have a minimum 395-acre buffer. This buffer is based on unpublished data from Dr. David Germano documenting that “male BNLL have home ranges up to 52 acres and that female BNLL have home ranges exceeding 98 acres, the known maximum home range sizes observed for the species, the unknown specific footprint of the individual BNLL’s home range relative to where the lizard was observed on the surface, and the unknown location of the lizard underground when construction commences.” CDFW would like to additionally refer to a 2018 study from Tennant, Germano, and others titled “Investigating blunt-nosed leopard lizard population size, demographics, space use, and future population trends on Department Ecological Reserves”. Among other findings, this study recorded female BNLL in competitive areas dispersing over a kilometer before returning back to their home range. One surveyed female was identified 1,344 meters from her original detection point (Tennant 2018). CDFW also recommends that an appropriate number of qualified biologists be present during all ground-disturbing Project activities to monitor for BNLL, not just the initial surface disturbance activities, and that any individual that may enter the Project activity area be allowed to leave unobstructed of its own accord.

Comment 2: San Joaquin Kit Fox

The MND notes that during the biological resource evaluation, evidence of San Joaquin kit fox (SJKF) was observed on the proposed Project site. This detection is further supported by multiple historical and recent observations on CNDDDB near the Project site (CNDDDB 2024). Mitigation measures BIO-7 through BIO-9 are provided to mitigate for impacts to SJKF. CDFW concurs with the mitigation measures outlined in the MND;

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however, if take cannot be avoided, acquisition of an Incidental Take Permit (ITP) prior to any ground disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b), would be required to comply with the California Endangered Species Act (CESA).

Comment 3: Western Burrowing Owl

The California Fish and Game Commission named western burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024. This action advanced the species to candidacy under CESA and as such BUOW now receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). It is illegal to import, export, take (hunt, pursue, catch, capture, or kill, or attempt engage in any of these activities), possess, purchase, or sell BUOW or any part or product thereof (Fish & G. Code, §§§ 86, 2080, 2085).

The Project site is within the known geographic range of BUOW and there are multiple historic and recent occurrences located within five miles of the Project site (CDFW 2024). BUOW inhabit open grasslands and desert scrublands containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Based on aerial imagery and the information provided in the MND, the Project site and adjacent lands contain suitable habitat for BUOW nesting and foraging.

Mitigation measure BIO-11 is provided to mitigate for potential impacts to BUOW. However, CDFW does not concur that BIO-11 is sufficient to mitigate for potential impacts to BUOW and recommends the MND include the following:

Recommended Mitigation Measure 1: BUOW Surveys Prior to Construction

CDFW recommends that surveys following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) be conducted the survey season immediately prior to construction.

Recommended Mitigation Measure 2: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be detected, either during preconstruction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

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Recommended Mitigation Measure 3: BUOW Take Authorization

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Comment 4: Crotch's Bumble Bee

The Project site is within the known geographic range of Crotch's bumble bee (CBB) and there are at least two historical observations within ten (10) miles of the Project site (CNDDDB 2024). CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and these habitat elements appear to be present within the vacant lands in the vicinity of the Project site. Mitigation measure BIO-8 is provided to mitigate for potential impacts to CBB. However, CDFW does not concur that BIO-8 is sufficient to mitigate for potential impacts to CBB and recommends the following:

Recommended Mitigation Measure 4: CBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.

Recommended Mitigation Measure 5: CBB Surveys

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

Recommended Mitigation Measure 6: CBB Avoidance

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any

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detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

Recommended Mitigation Measure 7: CBB Take Authorization

If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

Comment 5: American Badger

The Project site is within the known geographic range of American badger (AMBA) and suitable habitat is present (CDFW 2024) within the Project site and its vicinity. AMBA occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). Mitigation Measure BIO-11 is provided to mitigate for potential impacts to AMBA. CDFW concurs with BIO-11 and also recommends the following:

Recommended Mitigation Measure 8: Surveys

CDFW recommends that a qualified biologist conduct focused surveys for AMBA, as well as their requisite habitat features, to evaluate potential impacts resulting from ground disturbance.

Recommended Mitigation Measure 9: Avoidance

Avoidance whenever possible is encouraged via delineation and a 50-foot no disturbance buffer around burrows. CDFW also advises that any individuals observed be allowed to leave the Project site of their own volition.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including, but not limited to BNLL and SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

Nesting birds: CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does

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not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

CNDDDB: Please note that the CNDDDB is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

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

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communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to the CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, could have an impact on biological resources, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required 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 to assist the City of Bakersfield in identifying and mitigating Project impacts on biological resources. A Mitigation Monitoring and Reporting Program (Attachment 1) is included below to assist the City of Bakersfield with incorporating the recommended mitigation measures provided above.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions regarding this letter or further coordination, please contact Marile Colindres, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 974-3452, or by electronic mail at marile.colindres@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Bob Stafford
5343A684FF02469...

For Julie A. Vance
Regional Manager

ec: State Clearinghouse
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REFERENCES

- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 *in* Lincer, J. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. California Department of Fish and Game, Sacramento, California, USA.
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- Zeiner, D., W. Laudenslayer, Jr., K. Mayer, and M. White. 1990. California's Wildlife. Volumes I-III *in* California Department of Fish and Game, editor. California Department of Fish and Wildlife, Sacramento, California, USA.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

**PROJECT: Vesting Tentative Tract Map No. 7471 (Project)
Mitigated Negative Declaration (MND)**

SCH No.: 2024110806

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 1: BUOW Surveys Prior to Construction	
Recommended Mitigation Measure 3: BUOW Take Authorization	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 4: CBB Habitat Assessment	
Recommended Mitigation Measure 5: CBB Surveys	
State Species of Special Concern	
Recommended Mitigation Measure 8: Surveys	
<i>During Construction</i>	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 2: BUOW Avoidance Buffer	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 6: CBB Avoidance	
Recommended Mitigation Measure 7: CBB Take Authorization	
American Badger	
Recommended Mitigation Measure 9: Avoidance	