



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 2, 2025
Sent via email

Edgar Gonzalez, Senior Planner
City of Hesperia
9700 Seventh Ave
Hesperia, California 92345
egonzalez@hesperiaca.gov

Topaz Residential Project (Project)
Mitigated Negative Declaration (MND)
SCH# 2025050601

Dear Edgar Gonzalez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Hesperia (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related activities that have the potential to adversely affect fish and wildlife resources. CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

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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need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: San Luis Concrete Corp.

Objective: The Project proposes the construction of seven single-family residences, a 0.42-acre-foot retention basin; paving for Project site access, driveways, and a cul-de-sac; and other associated on-site improvements on a 2.51-acre property and off-site improvements along the property frontage. The Project site consists of eight total lots ranging from 7,210 to 13,924 square feet in size. The lot located in the northeastern corner of the Project site will be developed with a 0.42-acre-foot stormwater retention basin, while the remaining seven lots will be developed with residential single-family residences. Other on-site improvements include, but would not be limited to, the installation of a streetlight on the western end of the proposed cul-de-sac, and the installation of a new three-way fire hydrant on the western end of the proposed cul-de-sac. Off-site improvements include the construction of a sidewalk, curb, and gutter along Topaz Avenue. Sidewalk ramps will be constructed to the north and south of the access road entrance.

Location: The Project is located in the northwest portion of the City of Hesperia and north and west of the corner of Topaz Avenue and Courtney Street. The Project site's latitude and longitude are 34.436431 N, -117.356029 W.

Timeframe: Not specified

COMMENTS AND RECOMMENDATIONS

CDFW appreciates the thoroughness of the measures in the draft MND to avoid and minimize impacts to biological resources and appreciates the Project's application for a Western Joshua Tree Conservation Act Incidental Take Permit, its consideration of burrowing owl surveys according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012), and measures that comply with the Survey Considerations for CESA Candidate Bumble Bee Species (CDFW 2023). CDFW recommends only minor modifications to the measures 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. Editorial comments or other suggestions may

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also be included to improve the document. CDFW strongly recommends the following revisions to BIO-16 and BIO-17 (edits are in ~~strike through~~ and **bold**) for adoption in the final MND.

BIO-16 Burrowing Owl Avoidance, Minimization, and Mitigation (Revised):

~~No more than 14 days~~ **P**prior to the start of ground disturbance, a preconstruction survey for burrowing owls in conformance with the California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation (CDFW 2012 **or most recent version**) shall be completed within suitable habitat at every work area and within a 150-m buffer zone of each work area. Work areas shall be resurveyed following periods of inactivity of **1 2** weeks or more. The project applicant/owner shall submit the results of the preconstruction survey to the City of Hesperia and CDFW. If occupied burrows are identified on-site or within the 150-meter buffer, ~~the following measures shall be implemented:~~

- a. ~~No disturbance shall occur within 160 feet (50 m) of occupied burrows during the non-breeding season (September 1–January 31) or within 650 feet (200 m) during the breeding season (February 1–August 31);~~
- b. ~~Occupied burrows shall not be disturbed during the nesting season (February 1–August 31);~~
- c. ~~Unless otherwise authorized by CDFW, a 650-foot buffer within which no activity shall be maintained between project activities and nesting burrowing owls during the nesting season. This protected area shall remain in effect until August 31 or at CDFW's discretion and, based on monitoring evidence, until the young owls are foraging independently.~~

If **and** it is determined that impacts to burrowing owl cannot be avoided and may result in incidental take of the species, the biological monitor(s) shall immediately halt work; **and t**~~The project applicant shall be required to complete consultation with CDFW to~~ apply for an ITP pursuant to CESA. Additional mitigation measures **will** ~~may~~ be required as part of the ITP process.

BIO-17 Nesting Bird Surveys and Nest Avoidance (Revised):

~~If site preparation, grading or construction activities are proposed during the typical nesting bird season (February 1–September 15), w~~**Within 1 3 week days prior** to ground-disturbing activities, a nesting bird survey shall be conducted by a qualified biologist to determine presence/absence of nesting birds. Surveys shall cover all areas potentially affected by the project via direct impacts (e.g., nest destruction) or indirect impacts (e.g., noise, vibration, odors, movement of workers or equipment, etc.). If

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absence of nesting birds is verified, construction activities may begin upon submittal of a survey report to the City of Hesperia Planning Department. If nesting activities are detected, the following measures shall be implemented:

- a. Buffer Establishment. If an active bird nest is observed during preconstruction surveys or during construction, a minimum no-disturbance buffer of 250 feet around active nests of ~~non-listed~~ passerine bird species and a 500-foot no-disturbance buffer around active nests of ~~non-listed~~ raptors shall be implemented using high visibility markers or fencing. These buffers shall remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.
- b. Variance of Buffer Distances. Variance from the no-disturbance buffers described above may be allowable when there is a compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. Any variance from the no-disturbance buffers shall be advised and supported by a qualified biologist and CDFW shall be notified in advance of implementing a variance.
- c. Nest Monitoring. If nest buffers are reduced, the biologist shall monitor any construction activities that take place within 250 feet of ~~non-listed~~ passerine bird species nests, and 500 feet of ~~non-listed~~ raptor nests. If nesting birds show any signs of disturbance, including changes in behavior, significantly reducing frequency of nests visits, or refusal to visit the nest, the biologist will stop work and increase the nest buffer. If appropriate on a case-by-case basis, as determined by the qualified biologist, nest monitoring may be reduced to weekly spot-check monitoring, at a minimum, if the biologist determines that the nesting birds have shown no signs of disturbance from construction activities and a continuation of the same types of construction activities are unlikely to disturb the nesting birds.
- d. Nest Removal. Nests, eggs, or young of birds covered by the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code shall not be moved or disturbed until a qualified biologist has determined that the nest has become inactive or young have fledged and become independent of the nest.
- e. Reporting. A qualified biologist shall document all active nests and submit a letter report to the City of Hesperia Planning Department documenting project compliance with the MBTA, California Fish and Game Code, and applicable project mitigation measures.

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ADDITIONAL COMMENTS AND SUGGESTIONS

Submitting Data on Special Status Species

CDFW strongly recommends the Project proponent submits data to the California Natural Diversity Database at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>, regarding any special status species such as but not limited to: desert tortoise, Bendire's thrasher, burrowing owl, Cooper's hawk, golden eagle, LeConte's thrasher, loggerhead shrike, northern harrier, prairie falcon, Swainson's hawk observed within or adjacent to the Project area.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

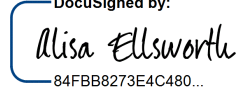
CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Jason Bill, Senior Environmental Scientist (Specialist) at Christopher.Bill@wildlife.ca.gov

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Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

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San Luis Concrete Corp.
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Jessica Cleavenger, SWCA Environmental Consultants
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ATTACHMENTS

Attachment A: Mitigation Monitoring and Reporting Plan

REFERENCES

California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species.

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Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources		
Mitigation Measure	Implementation Schedule	Responsible Party
<u>BIO-16 Burrowing Owl Avoidance and Mitigation</u> Prior to the start of ground disturbance, a preconstruction survey for burrowing owls in conformance with the California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation (CDFW 2012 or most recent version) shall be completed within suitable habitat at every work area and within a 150-m buffer zone of each work area. Work areas shall be resurveyed following periods of inactivity of 1 week or more. The project applicant/owner shall submit the results of the preconstruction survey to the City of Hesperia and CDFW. If occupied burrows are identified on-site or within the 150-meter buffer and it is determined that impacts to burrowing owl cannot be avoided and may result in incidental take of the species, the biological monitor(s) shall immediately halt work and the project applicant shall be required to complete consultation with CDFW to apply for an ITP pursuant to CESA. Additional mitigation measures will be required as part of the ITP process.	Prior to initiation of all ground disturbing activities	Project proponent
<u>BIO-17 Nesting Bird Surveys and Nest Avoidance:</u> Within 3 days prior to ground-disturbing activities, a nesting bird survey shall be conducted by a qualified biologist to determine presence/absence of nesting birds. Surveys shall cover all areas	Prior to initiation of all ground disturbing activities	Project proponent

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potentially affected by the project via direct impacts (e.g., nest destruction) or indirect impacts (e.g., noise, vibration, odors, movement of workers or equipment, etc.). If absence of nesting birds is verified, construction activities may begin upon submittal of a survey report to the City of Hesperia Planning Department. If nesting activities are detected, the following measures shall be implemented: a. Buffer Establishment. If an active bird nest is observed during preconstruction surveys or during construction, a minimum no-disturbance buffer of 250 feet around active nests of passerine bird species and a 500-foot no-disturbance buffer around active nests of raptors shall be implemented using high visibility markers or fencing. These buffers shall remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. b. Variance of Buffer Distances. Variance from the no-disturbance buffers described above may be allowable when there is a compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. Any variance from the no-disturbance buffers shall be advised and supported by a qualified biologist and CDFW shall be notified in advance of implementing a variance. c. Nest Monitoring. If nest buffers are reduced, the biologist shall monitor any construction activities that take place within 250 feet of passerine bird species nests, and 500 feet of raptor nests. If nesting birds show any signs of disturbance, including changes in behavior, significantly reducing frequency of nests visits, or refusal to visit the nest, the biologist will stop work and increase the nest buffer. If appropriate on a case-by-case basis, as determined by the qualified biologist, nest monitoring may be		
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