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VIA U.S. MAIL & E-MAIL

November 1, 2019

Ryan Fowler, Senior Planner
City of Menifee
29844 Haun Road
Menifee, CA 92586

Email Delivery to: rfowler@cityofmenifee.us

RE: Supplemental Comments to the Rockport Ranch Project Draft Environmental Impact Report; SCH No. 2017081069 (GPA No. 2016-287, CZ No. 2016-288, SP No. 2016-286 and TR 37131)

Dear Mr. Fowler,

On behalf of Southwest Regional Council of Carpenters (“**Commenters**” or “**Southwest Carpenters**”), my Office is submitting these comments on the City of Menifee’s (“**City**” or “**Lead Agency**”) Draft Environmental Impact Report (“**DEIR**”) (SCH No. 2017081069) for the Rockport Ranch Project (“**Project**”). These comments supplement our previous comments which were submitted on October 21, 2019.

9a

The Project proposes to construct a mix of single-family homes and single-family courtyard residential development with open space and trails on a 79.68-acre Rockport Ranch property, which is located in the City of Menifee, on the southwest corner of Briggs Road and Old Newport Road (APNs 364-190-004, and 364-190-005). DEIR, p. 1-1. The Project Site is the location of the former Abacherli Dairy. DEIR, p. 3-9.

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The residential development totals 38.4 acres of the Project Site. DEIR, p. 3.2. The Project proposes 305 residential lots, 96 single-family courtyard residential units and 209 single-family residential units) 20.1-acres of private recreational open space and trails and 21.18-acres of road and easements. DEIR, p. 3-3.

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The Project proposes to implement a General Plan Amendment (GPA No. 2016-287), Change of Zone (CZ No. 2016-288), Specific Plan (SP No. 2016-286), and Tentative Tract Map (TR No. 2016-285 also referred to as TR 37131), herein collectively referred to as the “Project”) to allow development of a Specific Plan subdivision which includes 305 residential units as well as recreation facilities. DEIR, p. 1-1. The proposed GPA would revise the Land Use Designation from Agriculture (AG) to Specific Plan (SP). *Id.*

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The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states, including in southern California, and has a strong interest in well-ordered land use planning and addressing the environmental impacts of development projects.

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Individual members of the Southwest Carpenters live, work, and recreate in the City of Menifee and surrounding communities and would be directly affected by the Project’s environmental impacts. Commenters expressly reserve the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

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Commenters incorporate by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the Project’s environmental documentation may assert any issue timely raised by other parties).

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Moreover, Commenter requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (“**CEQA**”), Cal Public Resources Code (“**PRC**”) § 21000 *et seq.*, and the California Planning and Zoning Law (“**Planning and Zoning Law**”), Cal. Gov’t Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency’s governing body.

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I. EXPERT

This comment letter includes comments from a biological resources expert Scott Cashen, M.S. concerning the DEIR. His comments, attachments, and Curriculum Vitae (“CV”) are attached hereto and are incorporated herein by reference.

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Mr. Scott Cashen, M.S. is an environmental biologist with 26 years of professional experience in wildlife ecology and natural resources management. He has served as a biological resources expert for over 125 projects in California. His experience and scope of work in this regard has included assisting various clients with evaluations of biological resource issues, reviewing environmental compliance documents prepared pursuant to the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act, and submitting written comments in response to CEQA and NEPA documents. His work has included the preparation of written and oral testimony for the California Energy Commission, California Public Utilities Commission, and Federal courts.

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Mr. Cashen has knowledge and experience with numerous taxa, ecoregions, biological resource issues, and environmental regulations. As a biological resources expert, Mr. Cashen is knowledgeable of the various agency-promulgated guidelines for field surveys, impact assessments, and mitigation. Mr. Cashen has led field investigations on several special-status species, including ones focusing on the yellow-legged frog, red-legged frog, desert tortoise, steelhead, burrowing owl, California spotted owl, northern goshawk, willow flycatcher, Peninsular bighorn sheep, red panda, and various forest carnivores.

9k

Mr. Cashen is a recognized expert on the environmental impacts of renewable energy development. He has been involved in the environmental review process of over 80 solar, wind, biomass, and geothermal energy projects. Mr. Cashen’s role in this capacity has encompassed all stages of the environmental review process, from the initial document review through litigation support. Mr. Cashen has provided expert witness testimony on several of the Department of the Interior’s “fast-tracked” renewable energy projects. His testimony on those projects helped lead agencies to develop project alternatives and mitigation measures to reduce environmental impacts associated with the projects.

9l

Mr. Cashen was a member of the independent scientific review panel for the Quincy Library Group project, the largest community forestry project in the United States. As a member of the panel, Mr. Cashen was responsible for advising the U.S. Forest Service on its scientific monitoring program, and for preparing a final report to

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Congress describing the effectiveness of the Herger-Feinstein Forest Recovery Act of 1998. | 9m cont.

Mr. Cashen’s educational background includes a B.S. in Resource Management from the University of California at Berkeley, and an M.S. in Wildlife and Fisheries Science from the Pennsylvania State University. | 9n

II. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. The DEIR Failed to Adequately Establish the Environmental Setting Regarding the Occurrence of Burrowing Owls on the Project Site

The DEIR recognizes that the Project Site is located within the “Burrowing Owl Survey Area” in the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”). DEIR, p. 4.5-18. According to Mr. Cashen, the MSHCP requires applicants to conduct burrowing owl surveys “utilizing the protocols identified in the CDFG Staff Report on Burrowing Owl Mitigation.” Exhibit B, p. 2. These protocols require a minimum of three survey visits, at least three weeks apart, between April 15 and July 15. *Id.* | 9o

However, according to Mr. Cashen, the DEIR’s burrowing owl surveys failed to comport with the MSHCP’s burrowing owl survey protocols. Exhibit B, p. 2. The DEIR replied only on two surveys, both of which were outside of the April 15 to July 15 timeframe required by the MSHCP. *Id.* As a result, the DEIR failed to establish an adequate baseline for the existence of burrowing owls on the Project Site. | 9p

B. The DEIR Omitted Material Information and Failed to Adequately Analyze and Mitigate the Project’s Impacts on Biological Resources

The DEIR omitted issue areas “a. through e.” of CEQA Guidelines Appendix G related to biological resources by concluding that no further analysis was required. DEIR, p. 4.5-1. However, according to Mr. Cashen, the DEIR’s omission of issue areas a, c, in particular, and, in particular, is unsupported by substantial evidence. Exhibit B, p. 3. | 9q

1. *The DEIR Improperly Omitted Analysis of Biological Resources Issue Area A of Appendix G*

Issue Area “a” of Appendix G requires an analysis of whether the Project would have a substantial adverse effect, either directly or through habitat modification, on any | 9r

species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. CEQA Guidelines, Appendix G.

9r cont.

First, the Initial Study (“IS”) erroneously concluded that the only special-status species that would be discussed in the EIR is burrowing owl by stating that “[t]he Project site is not within any other MSHCP survey areas, within a criteria cell, or within or near any MSHCP Special linkage areas.” IS, p. 29. However, according to Mr. Cashen, the Project site is located within the MSHCP’s Narrow Endemic Plant Species Survey Area (“NEPSSA”). Exhibit B, p. 3 citing DEIR, p. 4.5-18. As a result, the IS’s conclusion that the Project Site is not within any other MSHCP survey areas is incorrect and omitted analyses of numerous other special-status species including narrow endemic plants.

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Next, Mr. Cashen states that the MSHCP does not delineate survey areas for Riverside Fairy Shrimp, Santa Rosa Plateau Fairy Shrimp, and Vernal Pool Fairy Shrimp and as a result, the surveys for these species are required for all projects, like the Project, which contains potential habitat for these species. Exhibit B, p. 5-6. However, both the IS and DEIR omit any analysis of the Project’s impacts on these protected species.

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Finally, the MSHCP does not cover impacts to special-status bats and as a result, does not delineate survey areas for such bats. According to Mr. Cashen, three special-status bat species (western red bat, western yellow bat, and hoary bat) have the potential to occur at the Project site. Exhibit B, p. 7. However, neither the IS nor the DEIR analyzed the Project’s potential impacts to special-status bats.

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As a result, the DEIR’s analysis regarding special-status species is also limited only to burrowing owl.

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2. *The DEIR Improperly Omitted Analysis of Biological Resources Issue Areas C and D*

Issue area “c” of the CEQA Guidelines Appendix G requires the lead agency to determine whether the Project would have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. CEQA Guidelines, Appendix G.

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According to Mr. Cashen, the IS’s conclusion that there are no jurisdictional waters on the Project Site is unsupported by any data or analysis, especially with respect to waters of the state. As a result, the IS and the DEIR improperly omitted analysis of Issue Area “c.”

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The CEQA Guidelines Appendix G Issue Area “d” requires the lead agency to determine whether the Project will interfere substantially with the movement of any native resident or migratory fish or wildlife species or with onestablished native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. CEQA Guidelines, Appendix G. However, according to Mr. Cashen, the IS fails to analyze the Project’s potential impacts on nursery sites of wildlife taxa besides nesting birds and wildlife movements or wildlife movement corridors. Exhibit B, p. 8. As a result, the City has failed to provide substantial evidence that issue area “d” requires further analysis in the DEIR.

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C. The DEIR Fails to Adequately Mitigate the Project’s Impacts on Biological Resources

1. *The DEIR Fails to Implement the MSHCP’s Best Management Practices*

According to Mr. Cashen, the MSHCP obligates the City to require compliance with the Standard Best Management Practices set forth in Appendix C of the MSHCP. Exhibit B, p. 8, citing MSHCP, pp. 6-48, -49. However, the DEIR fails to incorporate mitigation measures or mechanisms to implement the MSHCP’s Best Management Practices. *Id.*

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2. *The DEIR’s MM-BIO-1 is Vague and Improperly Defers Mitigation*

According to Mr. Cashen, MM-BIO-1 is vague and improperly defers specific actions that will need to be taken to avoid negative impacts on burrowing owls that occupy the Project Site or “immediate vicinity,” which is undefined and subjective. Exhibit B, p. 9.

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Moreover, MM-BIO-1’s citation to the CDFW guidelines to avoid impacts on an active burrow is incorrect as CDFW guidelines recommend a 500-meter buffer, rather than a 50 or 75-meter buffer required by MM-BIO-1. Exhibit B, p. 9.

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Finally, MM-BIO-1’s relocation procedure is vague because it fails to cite any specific performance criteria for relocation such as the relocation procedures set by the MSHCP. Exhibit B, p. 10.

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D. CEQA Requires Revision and Recirculation of an Environmental Impact Report As a Result of the Omission of Biological Resources Impacts Analysis

CEQA Guidelines require recirculation when a draft EIR is "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." 14 Cal Code Regs §15088.5. This test for recirculation was based on *Mountain Lion Coalition v. Fish & Game Comm'n* (1989) 214 Cal.App.3d 1043, where the court found that the draft EIR's wholesale omission of any cumulative impacts analysis required recirculation of the final EIR.

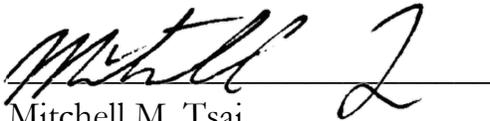
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III. CONCLUSION

Commenters request that the City revise and recirculate the Project's environmental impact report to address the aforementioned concerns. If the City has any questions or concerns, feel free to contact my office.

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Sincerely,



Mitchell M. Tsai
Attorneys for Southwest Regional
Council of Carpenters

Attached:

Biological Expert, Scott Cashen, M.S. – C.V. (**Exhibit A**);

Letter from Scott Cashen to Mitchel M. Tsai re Comments on the Draft Environmental Impact Report for the Rockport Ranch Project with Exhibits (October 29, 2019) (**Exhibit B**)

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EXHIBIT A

Scott Cashen, M.S.
Senior Wildlife Ecologist

Scott Cashen has 25 years of professional experience in natural resources management. During that time he has worked as a field biologist, forester, environmental consultant, and instructor of Wildlife Management. Mr. Cashen focuses on CEQA/NEPA compliance issues, endangered species, scientific field studies, and other topics that require a high level of scientific expertise.

Mr. Cashen has knowledge and experience with numerous taxa, ecoregions, biological resource issues, and environmental regulations. As a biological resources expert, Mr. Cashen is knowledgeable of the various agency-promulgated guidelines for field surveys, impact assessments, and mitigation. Mr. Cashen has led field investigations on several special-status species, including ones focusing on the yellow-legged frog, red-legged frog, desert tortoise, steelhead, burrowing owl, California spotted owl, northern goshawk, willow flycatcher, Peninsular bighorn sheep, red panda, and various forest carnivores.

Mr. Cashen is a recognized expert on the environmental impacts of renewable energy development. He has been involved in the environmental review process of over 80 solar, wind, biomass, and geothermal energy projects. Mr. Cashen's role in this capacity has encompassed all stages of the environmental review process, from initial document review through litigation support. Mr. Cashen has provided expert witness testimony on several of the Department of the Interior's "fast-tracked" renewable energy projects. His testimony on those projects helped lead agencies develop project alternatives and mitigation measures to reduce environmental impacts associated with the projects.

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Mr. Cashen was a member of the independent scientific review panel for the Quincy Library Group project, the largest community forestry project in the United States. As a member of the panel, Mr. Cashen was responsible for advising the U.S. Forest Service on its scientific monitoring program, and for preparing a final report to Congress describing the effectiveness of the Herger-Feinstein Forest Recovery Act of 1998.

AREAS OF EXPERTISE

- CEQA, NEPA, and Endangered Species Act compliance issues
- Comprehensive biological resource assessments
- Endangered species management
- Renewable energy development
- Scientific field studies, grant writing and technical editing

EDUCATION

M.S. Wildlife and Fisheries Science - The Pennsylvania State University (1998)

Thesis: *Avian Use of Restored Wetlands in Pennsylvania*

B.S. Resource Management - The University of California, Berkeley (1992)

PROFESSIONAL EXPERIENCE

Litigation Support / Expert Witness

Mr. Cashen has served as a biological resources expert for over 100 projects subject to environmental review under the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA). As a biological resources expert, Mr. Cashen reviews CEQA/NEPA documents and provides his clients with an assessment of biological resource issues. He then submits formal comments on the scientific and legal adequacy of the project's environmental documents (e.g., Environmental Impact Statement). If needed, Mr. Cashen conducts field studies to generate evidence for legal testimony, or he can obtain supplemental testimony from his deep network of species-specific experts. Mr. Cashen has provided written and oral testimony to the California Energy Commission, California Public Utilities Commission, and U.S. district courts. His clients have included law firms, non-profit organizations, and citizen groups.

REPRESENTATIVE EXPERIENCE

Solar Energy

- Abengoa Mojave Solar Project
- Avenal Energy Power Plant
- Beacon Solar Energy Project
- Blythe Solar Power Project
- Calico Solar Project
- California Flats Solar Project
- Calipatria Solar Farm II
- Carrizo Energy Solar Farm
- Catalina Renewable Energy Project
- Fink Road Solar Farm
- Genesis Solar Energy Project
- Heber Solar Energy Facility
- Imperial Valley Solar Project
- Ivanpah Solar Electric Generating
- Maricopa Sun Solar Complex
- McCoy Solar Project
- Mt. Signal and Calexico Solar
- Panoche Valley Solar
- San Joaquin Solar I & II
- San Luis Solar Project
- Stateline Solar Project
- Solar Gen II Projects
- SR Solis Oro Loma
- Vestal Solar Facilities
- Victorville 2 Power Project
- Willow Springs Solar

Geothermal Energy

- Casa Diablo IV Geothermal Project
- East Brawley Geothermal
- Mammoth Pacific 1 Replacement
- Orni 21 Geothermal Project
- Western GeoPower Plant

Wind Energy

- Catalina Renewable Energy Project
- Ocotillo Wind Energy Project
- SD County Wind Energy Ordinance
- Searchlight Wind Project
- Shu'luuk Wind Project
- Tres Vaqueros Repowering Project
- Tule Wind Project
- Vasco Winds Relicensing Project

Biomass Facilities

- CA Ethanol Project
- Colusa Biomass Project
- Tracy Green Energy Project

Other

- DRECP
- Carnegie SVRA Expansion Project
- Lakeview Substation Project
- Monterey Bay Shores Ecoresort
- Phillips 66 Rail Spur
- Valero Benecia Crude By Rail
- World Logistics Center

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Project Management

Mr. Cashen has managed several large-scale wildlife, forestry, and natural resource management projects. Many of the projects have required hiring and training field crews, coordinating with other professionals, and communicating with project stakeholders. Mr. Cashen's experience in study design, data collection, and scientific writing make him an effective project manager, and his background in several different natural resource disciplines enable him to address the many facets of contemporary land management in a cost-effective manner.

REPRESENTATIVE EXPERIENCE

Wildlife Studies

- Peninsular Bighorn Sheep Resource Use and Behavior Study: (*CA State Parks*)
- "KV" Spotted Owl and Northern Goshawk Inventory: (*USFS, Plumas NF*)
- Amphibian Inventory Project: (*USFS, Plumas NF*)
- San Mateo Creek Steelhead Restoration Project: (*Trout Unlimited and CA Coastal Conservancy, Orange County*)
- Delta Meadows State Park Special-Status Species Inventory: (*CA State Parks, Locke*)

Natural Resources Management

- Mather Lake Resource Management Study and Plan – (*Sacramento County*)
- Placer County Vernal Pool Study – (*Placer County*)
- Weidemann Ranch Mitigation Project – (*Toll Brothers, Inc., San Ramon*)
- Ion Communities Biological Resource Assessments – (*Ion Communities, Riverside and San Bernardino Counties*)
- Del Rio Hills Biological Resource Assessment – (*The Wyro Company, Rio Vista*)

Forestry

- Forest Health Improvement Projects – (*CalFire, SD and Riverside Counties*)
- San Diego Bark Beetle Tree Removal Project – (*SDG&E, San Diego Co.*)
- San Diego Bark Beetle Tree Removal Project – (*San Diego County/NRCS*)
- Hillslope Monitoring Project – (*CalFire, throughout California*)

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Biological Resources

Mr. Cashen has a diverse background with biological resources. He has conducted comprehensive biological resource assessments, habitat evaluations, species inventories, and scientific peer review. Mr. Cashen has led investigations on several special-status species, including ones focusing on the foothill yellow-legged frog, mountain yellow-legged frog, desert tortoise, steelhead, burrowing owl, California spotted owl, northern goshawk, willow flycatcher, Peninsular bighorn sheep, red panda, and forest carnivores.

REPRESENTATIVE EXPERIENCE

Biological Assessments/Biological Evaluations (“BA/BE”)

- Aquatic Species BA/BE – Reliable Power Project (*SF Public Utilities Commission*)
- Terrestrial Species BA/BE – Reliable Power Project (*SF Public Utilities Commission*)
- Management Indicator Species Report – Reliable Power Project (*SF Public Utilities Commission*)
- Migratory Bird Report – Reliable Power Project (*SF Public Utilities Commission*)
- Terrestrial and Aquatic Species BA – Lower Cherry Aqueduct (*SF Public Utilities Commission*)
- Terrestrial and Aquatic Species BE – Lower Cherry Aqueduct (*SF Public Utilities Commission*)
- Terrestrial and Aquatic Species BA/BE – Public Lands Lease Application (*Society for the Conservation of Bighorn Sheep*)
- Terrestrial and Aquatic Species BA/BE – Simon Newman Ranch (*The Nature Conservancy*)

Avian

- Study design and Lead Investigator - Delta Meadows State Park Special-Status Species Inventory (*CA State Parks: Locke*)
- Study design and lead bird surveyor - Placer County Vernal Pool Study (*Placer County: throughout Placer County*)
- Surveyor - Willow flycatcher habitat mapping (*USFS: Plumas NF*)
- Independent surveyor - Tolay Creek, Cullinan Ranch, and Guadacanal Village restoration projects (*Ducks Unlimited/USGS: San Pablo Bay*)
- Study design and Lead Investigator - Bird use of restored wetlands research (*Pennsylvania Game Commission: throughout Pennsylvania*)
- Study design and surveyor - Baseline inventory of bird species at a 400-acre site in Napa County (*HCV Associates: Napa*)

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- Surveyor - Baseline inventory of bird abundance following diesel spill (*LFR Levine-Fricke: Suisun Bay*)
- Study design and lead bird surveyor - Green Valley Creek Riparian Restoration Site (*City of Fairfield: Fairfield, CA*)
- Surveyor - Burrowing owl relocation and monitoring (*US Navy: Dixon, CA*)
- Surveyor - Pre-construction burrowing owl surveys (*various clients: Livermore, San Ramon, Rio Vista, Napa, Victorville, Imperial County, San Diego County*)
- Surveyor - Backcountry bird inventory (*National Park Service: Eagle, Alaska*)
- Lead surveyor - Tidal salt marsh bird surveys (*Point Reyes Bird Observatory: throughout Bay Area*)
- Surveyor - Pre-construction surveys for nesting birds (*various clients and locations*)

Amphibian

- Crew Leader - Red-legged frog, foothill yellow-legged frog, and mountain yellow-legged frog surveys (*USFS: Plumas NF*)
- Surveyor - Foothill yellow-legged frog surveys (*PG&E: North Fork Feather River*)
- Surveyor - Mountain yellow-legged frog surveys (*El Dorado Irrigation District: Desolation Wilderness*)
- Crew Leader - Bullfrog eradication (*Trout Unlimited: Cleveland NF*)

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Fish and Aquatic Resources

- Surveyor - Hardhead minnow and other fish surveys (*USFS: Plumas NF*)
- Surveyor - Weber Creek aquatic habitat mapping (*El Dorado Irrigation District: Placerville, CA*)
- Surveyor - Green Valley Creek aquatic habitat mapping (*City of Fairfield: Fairfield, CA*)
- GPS Specialist - Salmonid spawning habitat mapping (*CDFG: Sacramento River*)
- Surveyor - Fish composition and abundance study (*PG&E: Upper North Fork Feather River and Lake Almanor*)
- Crew Leader - Surveys of steelhead abundance and habitat use (*CA Coastal Conservancy: Gualala River estuary*)
- Crew Leader - Exotic species identification and eradication (*Trout Unlimited: Cleveland NF*)

Mammals

- Principal Investigator – Peninsular bighorn sheep resource use and behavior study (*California State Parks: Freeman Properties*)
- Scientific Advisor – Study on red panda occupancy and abundance in eastern Nepal (*The Red Panda Network: CA and Nepal*)
- Surveyor - Forest carnivore surveys (*University of CA: Tahoe NF*)
- Surveyor - Relocation and monitoring of salt marsh harvest mice and other small mammals (*US Navy: Skagg's Island, CA*)
- Surveyor – Surveys for Monterey dusky-footed woodrat. Relocation of woodrat houses (*Touré Associates: Prunedale*)

Natural Resource Investigations / Multiple Species Studies

- Scientific Review Team Member – Member of the scientific review team assessing the effectiveness of the US Forest Service's implementation of the Herger-Feinstein Quincy Library Group Act.
- Lead Consultant - Baseline biological resource assessments and habitat mapping for CDF management units (*CDF: San Diego, San Bernardino, and Riverside Counties*)
- Biological Resources Expert – Peer review of CEQA/NEPA documents (*various law firms, non-profit organizations, and citizen groups*)
- Lead Consultant - Pre- and post-harvest biological resource assessments of tree removal sites (*SDG&E: San Diego County*)
- Crew Leader - T&E species habitat evaluations for Biological Assessment in support of a steelhead restoration plan (*Trout Unlimited: Cleveland NF*)
- Lead Investigator - Resource Management Study and Plan for Mather Lake Regional Park (*County of Sacramento: Sacramento, CA*)
- Lead Investigator - Biological Resources Assessment for 1,070-acre Alfaro Ranch property (*Yuba County, CA*)
- Lead Investigator - Wildlife Strike Hazard Management Plan (*HCV Associates: Napa*)
- Lead Investigator - Del Rio Hills Biological Resource Assessment (*The Wyro Company: Rio Vista, CA*)
- Lead Investigator – Ion Communities project sites (*Ion Communities: Riverside and San Bernardino Counties*)
- Surveyor – Tahoe Pilot Project: Validation of California's Wildlife Habitat Relationships (CWHR) Model (*University of California: Tahoe NF*)

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Forestry

Mr. Cashen has five years of experience working as a consulting forester on projects throughout California. Mr. Cashen has consulted with landowners and timber operators on forest management practices; and he has worked on a variety of forestry tasks including selective tree marking, forest inventory, harvest layout, erosion control, and supervision of logging operations. Mr. Cashen's experience with many different natural resources enable him to provide a holistic approach to forest management, rather than just management of timber resources.

REPRESENTATIVE EXPERIENCE

- Lead Consultant - CalFire fuels treatment projects (*SD and Riverside Counties*)
- Lead Consultant and supervisor of harvest activities – San Diego Gas and Electric Bark Beetle Tree Removal Project (*San Diego*)
- Crew Leader - Hillslope Monitoring Program (*CalFire: throughout California*)
- Consulting Forester – Forest inventories and timber harvest projects (*various clients throughout California*)

Grant Writing and Technical Editing

Mr. Cashen has prepared and submitted over 50 proposals and grant applications. Many of the projects listed herein were acquired through proposals he wrote. Mr. Cashen's clients and colleagues have recognized his strong scientific writing skills and ability to generate technically superior proposal packages. Consequently, he routinely prepares funding applications and conducts technical editing for various clients.

PERMITS

U.S. Fish and Wildlife Service Section 10(a)(1)(A) Recovery Permit for the Peninsular bighorn sheep

PROFESSIONAL ORGANIZATIONS / ASSOCIATIONS

The Wildlife Society

Cal Alumni Foresters

Mt. Diablo Audubon Society

OTHER AFFILIATIONS

Scientific Advisor and Grant Writer – *The Red Panda Network*

Scientific Advisor – *Mt. Diablo Audubon Society*

Grant Writer – *American Conservation Experience*

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cont.

TEACHING EXPERIENCE

Instructor: Wildlife Management - The Pennsylvania State University, 1998

Teaching Assistant: Ornithology - The Pennsylvania State University, 1996-1997

PUBLICATIONS

Gutiérrez RJ, AS Cheng, DR Becker, S Cashen, et al. 2015. Legislated collaboration in a conservation conflict: a case study of the Quincy Library group in California, USA. Chapter 19 *in*: Redpath SR, et al. (eds). *Conflicts in Conservation: Navigating Towards Solutions*. Cambridge Univ. Press, Cambridge, UK.

Cheng AS, RJ Gutiérrez RJ, S Cashen, et al. 2016. Is There a Place for Legislating Place-Based Collaborative Forestry Proposals?: Examining the Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project. *Journal of Forestry*.

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cont.

EXHIBIT B

October 29, 2019

Mr. Mitchell M. Tsai
155 South El Molino Avenue, Suite 104
Pasadena, CA 91101

Subject: Comments on the Draft Environmental Impact Report for the Rockport Ranch Project

Dear Mr. Tsai:

This letter contains my comments on the Draft Environmental Impact Report (DEIR”) prepared by the City of Menifee (“City”) for the Rockport Ranch Project (“Project”). The Abacherli Family Trust (“Applicant”) proposes to implement a General Plan Amendment, Change of Zone, Specific Plan, and Tentative Tract Map to allow development of a Specific Plan subdivision that includes 305 residential units on the 79.68-acre Rockport Ranch property in the City of Menifee, California.

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I am an environmental biologist with 26 years of professional experience in wildlife ecology and natural resources management. I have served as a biological resources expert for over 125 projects in California. My experience and scope of work in this regard has included assisting various clients with evaluations of biological resource issues, reviewing environmental compliance documents prepared pursuant to the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act, and submitting written comments in response to CEQA and NEPA documents. My work has included the preparation of written and oral testimony for the California Energy Commission, California Public Utilities Commission, and Federal courts. My educational background includes a B.S. in Resource Management from the University of California at Berkeley, and a M.S. in Wildlife and Fisheries Science from the Pennsylvania State University. A true and correct copy of my current curriculum vitae is attached hereto.

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I have particular knowledge of the biological resource issues associated with the Project through my work on several other projects in the region. The comments herein are based on my review of the environmental documents prepared for the Project, a review of scientific literature pertaining to biological resources known to occur in the Project area, and the knowledge and experience I have acquired during more than 26 years of working in the field of natural resources management.

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ENVIRONMENTAL SETTING

Burrowing Owl

The Project site is within the “Burrowing Owl Survey Area” designated in the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”).¹ The Applicant’s consultant, LSA Associates, Inc. (“LSA”), detected a burrowing owl at the Project site on 26 January 2016. LSA subsequently conducted focused surveys for burrowing owls at the Project site on 17, 20, and 22 of March, and 3 April 2016.² No burrowing owls were detected during those surveys, which led LSA and the City to conclude that burrowing owls were no longer present at the site.³

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The MSHCP requires applicants to conduct burrowing owl surveys “utilizing the protocols identified in the CDFG Staff Report on Burrowing Owl Mitigation.”⁴ LSA did not adhere to those survey protocols, which require a minimum of three survey visits, at least three weeks apart, between 15 April and 15 July.⁵ LSA did not conduct any surveys during this time frame. Because LSA’s surveys terminated before some burrowing owls have selected their nest burrows, the survey data do not provide reliable information on the presence, abundance, and distribution of burrowing owls at the Project site.⁶ This precludes proper understanding of the environmental setting, and thus, the severity of the Project’s impacts on the regional burrowing owl population. This is important because the MSHCP has failed to achieve the species-specific objective of having at least five Core Areas that support a combined total breeding population of approximately 120 burrowing owls, with no fewer than five pairs in any one Core Area.⁷ Indeed, in 2017, only 11 pairs were documented on conserved land, and only one of the Core Areas satisfied the objective of having at least five breeding pairs.⁸

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PROJECT IMPACTS

The DEIR lists the six questions posed in the Biological Resources section of the Initial Study (“IS”). It then states: “[b]ased on the analysis in the IS it was determined that the questions pertaining to issue areas a. through e., related to the biological resources (in the questions asked

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¹ DEIR, p. 4.5-18.

² DEIR, Appendix D1 (*MSHCP Consistency Analysis and Habitat Assessment*), Table A.

³ *Ibid*, p. 12 and DEIR, p. 4.5-25.

⁴ MSHCP, Vol II-B, p. B-68.

⁵ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 28.

⁶ *Ibid*, p. 6 and Appendix D. See also Biological Monitoring Program. 2018. Western Riverside County MSHCP Biological Monitoring Program 2015–2017 Western Burrowing Owl (*Athene cunicularia hypugaea*) Pair Count Report. Prepared for the Western Riverside County Multiple Species Habitat Conservation Plan. Riverside, CA. p. 19.

⁷ Western Riverside County Regional Conservation Authority. 2019. Western Riverside County Multiple Species Habitat Conservation Plan. 2018 Annual Report. p. 7-77 and Table 7-2.

⁸ Biological Monitoring Program. 2018. Western Riverside County MSHCP Biological Monitoring Program 2015–2017 Western Burrowing Owl (*Athene cunicularia hypugaea*) Pair Count Report. Prepared for the Western Riverside County Multiple Species Habitat Conservation Plan. Riverside, CA. p. 12.

above) would not require any further analysis in the Draft Environmental Impact Report (DEIR).”⁹ This is spurious reasoning because, as described below, the IS fails to provide substantial evidence that issue areas a, c, and d do not require any further analysis in the DEIR.

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cont.

Issue Area A: Would the Project 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 California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

The IS’s assessment of impacts to special-status species is limited to the burrowing owl. It then states: “[t]he Project site is not within any other MSHCP survey areas, within a criteria cell, or within or near any MSHCP Special Linkage areas.”¹⁰ There are three problems with this statement:

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First, the Project site is located within the MSHCP’s Narrow Endemic Plant Species Survey Area (“NEPSSA”).¹¹ Therefore, the IS’s statement that the Project site is not within any other MSHCP survey areas is incorrect.

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Second, the MSHCP does not delineate survey areas for the Riverside fairy shrimp, Santa Rosa Plateau fairy shrimp, and vernal pool fairy shrimp because surveys are required for all projects that contain potential habitat for those species.¹²

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Third, the MSHCP does not cover impacts to special-status bats. As a result, the MSHCP does not delineate survey areas for bats. Special-status bats have the potential to occur at the Project site (as described further below). Because the IS failed to assess impacts to special-status bats, the City does not have the basis for its conclusion that “Issue Area A” requires no further analysis in the DEIR.

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Narrow Endemic Plant Species

The Applicant did not conduct focused botanical surveys for narrow endemic plants (or any other special-status plant species). According to the DEIR:

Suitable soils and/or habitat conditions for six (6) NEPSSA species do not occur on site; therefore, focused surveys are not required, pursuant to Section 6.1.3 (Protection of Narrow Endemic Plant Species) of the MSHCP Guidelines. In addition, none of these species was observed during the January 2016 field survey. Table 4.5-3, MSHCP Narrow Endemic Plant Survey Species, below, details habitat suitability for each of these species within the study area.¹³

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⁹ DEIR, p. 4.5-1.

¹⁰ IS, p. 29.

¹¹ DEIR, p. 4.5-18.

¹² MSHCP, Vol I, Appendix E. *See also* Western Riverside County Regional Conservation Authority. 2019 Apr 15. MSHCP Permittee Training [PowerPoint Presentation]. Available at: <http://www.wrc-rca.org/wp-content/uploads/WRC-MSHCP-Training_Permittees_04.15.19_FINAL.pdf>.

¹³ DEIR, p. 4.5-21.

Table 4.5-3 acknowledges that the Project site contains suitable soil conditions (i.e., alkaline soils) for three of the NEPSSA plants (i.e., spreading navarretia, California Orcutt grass, and Wright’s trichocoronis). However, it eliminates them from further consideration based on the following rationale:

- Spreading navarretia: “vernal pools and depressions and ditches that once supported vernal pools are absent.”
- California Orcutt grass: “vernal pools are absent.”
- Wright’s trichocoronis: “alkali playa, alkali annual grasslands and vernal pools area absent.”

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The DEIR fails to provide substantial evidence that vernal pools are absent from the Project site. According to the DEIR: “[s]tanding water was observed on the site in several locations on the dates of geotechnical exploration, due to inclement weather. Additionally, several basins, approximately 5 feet to 20 feet in depth, are located in the western and southwestern portions of the site and collect storm water.”¹⁴ Even if these features technically do not qualify as “vernal pools,” they may replicate the habitat conditions provided by vernal pools. This is important because the NEPSSA plants are not limited exclusively to vernal pools; they also occur in vernal pool-like habitats. For example, spreading navarretia may occur in man-made depressions and ditches that have the same hydrological dynamics as vernal pool habitat and playa.¹⁵

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The DEIR suggests that there is no potential habitat for Wright’s trichocoronis due to the absence of alkali playa and alkali annual grasslands. However, dominant vegetation at the Project site includes Malabar sprangletop (*Leptochloa fusca*),¹⁶ which is an annual grass species¹⁷ associated with alkaline soils.¹⁸ Therefore, the Project site appears to contain alkali annual grasslands. Based in the photographs provided in the DEIR, the Project site also appears to contain alkali playa.¹⁹

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According to the MSHCP: “given the underlying soils and the possible presence of a seed bank in those soils, even the areas of lower quality areas have the potential to support Narrow Endemic Plant Species if allowed to remain undisturbed (e.g., if farmed fields are allowed to go fallow, flood control activities cease, etc.). Therefore, site-specific focused surveys for Narrow Endemic Plant Species shall be required within the Narrow Endemic Plant Species survey areas where appropriate soils and Habitat are present.”²⁰ Because the DEIR fails to provide sufficient evidence that there is no potential habitat for Narrow Endemic Plant Species at the Project site,

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¹⁴ DEIR, p. 4.5-5 and -6.

¹⁵ U.S. Fish and Wildlife Service. 2009. *Navarretia fossalis* (Spreading navarretia), 5-Year Review: Summary and Evaluation. p. 1.

¹⁶ DEIR, p. 4.5-6.

¹⁷ Smith JP Jr. 2012. *Leptochloa fusca*. In: Jepson Flora Project (eds.) *Jepson eFlora*. Available at: <http://ucjeps.berkeley.edu/eflora/eflora_display.php?tid=80455>. (Accessed on October 28, 2019).

¹⁸ CABI. 2019. Invasive Species Compendium [online]. Datasheet for *Leptochloa fusca* (sprangletop). Available at: <<https://www.cabi.org/isc/datasheet/119826>>.

¹⁹ DEIR, Figure 4.5-1, photos 7, 10, and 12.

²⁰ MSHCP, p. 6-29.

the City does not have the basis for its conclusion that there would be no impacts to special-status plants.

| 9vv cont.

Riverside Fairy Shrimp, Santa Rosa Plateau Fairy Shrimp, and Vernal Pool Fairy Shrimp

The MSHCP requires mapping of stock ponds, ephemeral pools, and other aquatic features.²¹ It further requires an assessment to determine the effects of the Project on vernal pools and associated protected species in accordance with MSHCP Section 6.1.2.²² If the mapping identifies potential habitat for the Riverside fairy shrimp, vernal pool fairy shrimp, or Santa Rosa Plateau fairy shrimp, and the proposed project design does not incorporate avoidance of the identified habitat, the MSHCP requires: (a) focused surveys for the species, and (b) the implementation of avoidance and minimization measures in accordance with the species-specific objectives.²³

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The Project site contains several aquatic features (e.g., ponds)²⁴ that would be impacted by development of the Project.²⁵ The DEIR fails to map these aquatic features in accordance with the requirements of the MSHCP.²⁶ The DEIR also fails to assess the potential for the aquatic features to provide habitat for the Riverside fairy shrimp, vernal pool fairy shrimp, or Santa Rosa Plateau fairy shrimp.²⁷ Indeed, the only reference I could find to these species in the Project's CEQA documents is in the IS, which makes the conclusory statement that: "seasonal aquatic features that could provide suitable habitats for endangered and threatened species of fairy shrimp are not present on the Project site."²⁸ This statement: (a) is not supported by data, analysis, or any other information provided in the IS; and (b) does not satisfy the requirements of the MSHCP, which requires a description of the criteria used to make the determination of "no suitable habitat."²⁹ As described below, the aquatic features at the Project site may provide potential habitat for the Riverside fairy shrimp and vernal pool fairy shrimp. Because the Applicant has not conducted focused surveys for these species, the Project does not comply with the provisions of the MSHCP, and the City does not have the basis for its conclusion that there would be no impact to endangered and threatened species of fairy shrimp.

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²¹ MSHCP, p. 6-22.

²² DEIR, pp. 4.5-14 and -15.

²³ MSHCP, p. 6-23.

²⁴ DEIR, Appendix O (*Rockport Ranch Specific Plan*), pp. 1-8 and 1-10. *See also* DEIR, Figure 4.5-1, photos 5, 6, 7, 10, and 12.

²⁵ DEIR, Appendix P (*Project Plans*).

²⁶ *See* DEIR, Figure 4.5-1 (which suggests the entire Project site is comprised of Ruderal/Highly Disturbed vegetation).

²⁷ *See* DEIR, Appendix D1 (*MSHCP Consistency Analysis and Habitat Assessment*), which is limited to an assessment of habitat for burrowing owl and Narrow Endemic Plant Survey Species.

²⁸ IS, p. 30.

²⁹ Western Riverside County Regional Conservation Authority. 2019 Apr 15. MSHCP Permittee Training [PowerPoint Presentation]. Available at: <http://www.wrc-rca.org/wp-content/uploads/WRC-MSHCP-Training_Permittees_04.15.19_FINAL.pdf>. p. 62.

Riverside Fairy Shrimp

Riverside fairy shrimp are generally restricted to vernal pools and other non-vegetated ephemeral pools greater than 12 inches deep.³⁰ However, they can persist in extremely variable environments.³¹ For example, they have been detected in artificial basins, stock ponds, man-made holes, and road ruts.³² The California Natural Diversity Database (“CNDDDB”) has several records of Riverside fairy shrimp within five miles of the Project site.³³ This includes detection of the species approximately two miles from the Project site in an abandoned stock pond on a property that was dry-farmed for several decades and with no vernal pool indicator plants.³⁴ Because the Project site appears to contain aquatic habitats comparable to other sites where Riverside fairy shrimp have been detected, the City does not have the basis for its conclusion that there is no potential for impacts to this species.

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Vernal Pool Fairy Shrimp

Despite the moniker, vernal pool fairy shrimp are not limited to “vernal pools;” they also occur in vernal pool-like habitats such as seasonal wetlands and pools.³⁵ Indeed, vernal pool fairy shrimp occur in a wide range of habitats, including degraded or otherwise poor-quality habitats such as stock ponds, roadside ditches, and pools created by tire tracks.³⁶

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The vernal pool fairy shrimp is associated with inland mesas and valleys containing alkaline soils in the Western Riverside County vernal pool region.³⁷ The Project site contains alkaline soils³⁸ within an inland valley in the Western Riverside County vernal pool region.³⁹ Because the Project site appears to provide potential habitat for the vernal pool fairy shrimp, the City does not have the basis for its conclusion that there would be no impacts to this species.

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³⁰ U.S. Fish and Wildlife Service. 2008. Riverside Fairy Shrimp (*Streptocephalus woottoni*), 5-Year Review: Summary and Evaluation. p. 4.

³¹ *Ibid*, p. 5.

³² California Natural Diversity Database. 2019 Oct 1. RareFind 5. California Department of Fish and Wildlife.

³³ *Ibid*.

³⁴ *Ibid*, EO Index 92969.

³⁵ U.S. Fish and Wildlife Service. 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. U.S. Fish and Wildlife Service, Portland, Oregon. pp. II-196 and -197. *See also* California Natural Diversity Database. 2019 Oct 1. RareFind 5. California Department of Fish and Wildlife.

³⁶ California Natural Diversity Database. 2019 Oct 1. RareFind 5. California Department of Fish and Wildlife.

³⁷ U.S. Fish and Wildlife Service. 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. U.S. Fish and Wildlife Service, Portland, Oregon. p. II-197.

³⁸ DEIR, Table 4.5-3.

³⁹ U.S. Fish and Wildlife Service. 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. U.S. Fish and Wildlife Service, Portland, Oregon. Figure III-16a.

Special-Status Bats

The Project site contains trees that provide potential roosting habitat for three special-status bat species:⁴⁰

1. The western red bat is a California Species of Special Concern that is ranked High Priority by the Western Bat Working Group (“WBWG”).⁴¹ This species roosts primarily in the foliage of trees or shrubs.⁴² Day roosts are commonly in edge habitats adjacent to streams or open fields, in orchards, and sometimes in urban areas.⁴³
2. The western yellow bat is a California Species of Special Concern that is ranked High Priority by the WBWG.⁴⁴ This species commonly roosts in palms, including ornamental palms used in landscaping.⁴⁵
3. The hoary bat is ranked Medium Priority by the WBWG.⁴⁶ This species roosts primarily in foliage of both coniferous and deciduous trees, usually at the edge of a clearing.

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The structures (i.e., four residences, a milking building, and a work shop building) located in the northeast portion of the Project site provide potential roosting habitat for additional special-status bat species. These include the pallid bat (California Species of Special Concern), Townsend’s big-eared bat (California Species of Special Concern), and fringed myotis (WBWG High Priority), among others.

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Bat roosts provide sites for mating, rearing of young, and hibernation; they promote social interactions and the digestion of food; and they provide protection from predators and adverse weather.⁴⁷ The availability of suitable roost sites is the limiting factor for most bat populations.⁴⁸ The MSHCP does not cover bat species. As a result, impacts to potential roosting habitat at the Project site constitutes a potentially significant impact that was not disclosed or analyzed in the DEIR (or IS).

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⁴⁰ California Department of Fish and Wildlife. California Interagency Wildlife Task Group. 2014. CWHR version 9.0 personal computer program. Sacramento, CA. *See also* Western Bat Working Group. 2005 (Update). Species Accounts. Available at: <<http://wbwg.org/western-bat-species>>.

⁴¹ California Department of Fish and Wildlife, California Natural Diversity Database. 2019 Aug. Special Animals List. 67 pp.

⁴² Western Bat Working Group. 2005 (Update). Species Accounts: Western Red Bat. Available at: <<http://wbwg.org/western-bat-species>>.

⁴³ *Ibid.*

⁴⁴ California Department of Fish and Wildlife, California Natural Diversity Database. 2019 Aug. Special Animals List. 67 pp.

⁴⁵ California Department of Fish and Wildlife. California Interagency Wildlife Task Group. 2014. CWHR version 9.0 personal computer program. Sacramento, CA. *See also* Western Bat Working Group. 2005 (Update). Species Accounts. Available at: <<http://wbwg.org/western-bat-species>>.

⁴⁶ California Department of Fish and Wildlife, California Natural Diversity Database. 2019 Aug. Special Animals List. 67 pp.

⁴⁷ Kunz TH. 1982. Roosting Ecology of Bats. In: Kunz TH, editor. Ecology of Bats. Plenum Publishing Corp. New York (NY). p. 1.

⁴⁸ *Ibid.* *See also* Western Bat Working Group. 2005 (Update). Species Accounts. Available at: <<http://wbwg.org/western-bat-species>>.

Issue Area C: Would the Project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

The current CEQA guidelines direct lead agencies to assess whether the project would have a substantial adverse effect on federally protected wetlands *or state protected wetlands*.⁴⁹ The Water Board’s wetland definition differs slightly from the Clean Water Act definition in that, under the Water Board’s definition, an area can also be classified as a wetland if it is devoid of any vegetation, but wetland hydrology and soils are present.⁵⁰ In addition, the Porter-Cologne Act defines “waters of the state” very broadly, such that it includes artificial wetlands that are now a relatively permanent part of the natural landscape, and that are not subject to ongoing operation and maintenance.⁵¹ As reported by the Water Board: “[i]f an aquatic feature meets the wetland definition, the burden is on the applicant to demonstrate that the wetland is not a water of the state.”⁵²

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The IS makes the conclusory statement that there are no jurisdictional waters on the Project site.⁵³ However, it fails to provide any data or analysis substantiating that conclusion, especially with respect to waters of the state. As a result, the City has not provided substantial evidence that “Issue Area C” requires no further analysis in the DEIR.

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Issue Area D: Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

The IS’s analysis of this issue is limited to the potential for the Project to impact nesting birds; there is no analysis of impacts to nursery sites of other wildlife taxa. In addition, there is no analysis of wildlife movement, or wildlife movement corridors. As a result, the City has not provided substantial evidence that “Issue Area D” requires no further analysis in the DEIR.

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MITIGATION ISSUES

Best Management Practices

The MSHCP obligates the City to require compliance with the Standard Best Management Practices set forth in Appendix C of the MSHCP.⁵⁴ The DEIR fails to incorporate a mitigation

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⁴⁹ Association of Environmental Professionals. 2019. 2019 California Environmental Quality Act (CEQA) Statute and Guidelines. p. 316. Available at: <http://resources.ca.gov/ceqa/docs/2019_CEQA_Statutes_and_Guidelines.pdf>.

⁵⁰ State Water Resources Control Board. 2019. State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. Staff Report Including the Substitute Environmental Documentation. p. 54.

⁵¹ *Ibid*, p. 59.

⁵² *Ibid*, p. 60.

⁵³ IS, p. 30.

⁵⁴ MSHCP, pp. 6-48 and -49.

measure or other mechanism that ensures implementation of the MSHCP’s Best Management Practices.

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MM-BIO-1

MM-BIO-1 requires a preconstruction survey for burrowing owls no more than 30 days prior to ground disturbance to avoid direct take of burrowing owls. Whereas this condition is consistent with the MSHCP, it is not consistent with the California Department of Fish and Wildlife’s (“CDFW”) current guidelines for take avoidance surveys. Specifically, CDFW’s Staff Report on Burrowing Owl Mitigation recommends an initial survey no less than 14 days prior to initiating ground disturbance activities, and a final survey within 24 hours of ground disturbance.⁵⁵ Because LSA’s burrowing owl survey data are outdated and did not adhere to CDFW’s survey protocol, a single preconstruction survey up to 30 days prior to ground disturbance is insufficient to ensure take of burrowing owls is avoided.

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MM-BIO-1 states:

If burrowing owl are determined to occupy the Project site or immediate vicinity, the City of Menifee Community Development Department will be notified, and avoidance measures will be implemented, as appropriate, pursuant to the MSHCP, the California Fish and Game Code, the MBTA, and the mitigation guidelines prepared by the CDFW (2012).

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This condition is vague and improperly defers the specific actions that will be taken to avoid negative impacts to burrowing owls that occupy the Project site or “immediate vicinity” (which is subjective and not defined).

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According to MM-BIO-1: “[t]he following measures are recommended in the CDFW guidelines to avoid impacts on an active burrow:

- No disturbance should occur within 50 meters (approximately 160 feet) of occupied burrows during the non-breeding season.
- No disturbance should occur within 75 meters (approximately 250 feet) of occupied burrows during the breeding season.”

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This information is incorrect. CDFW guidelines recommend a 500-meter (1,640-foot) buffer between occupied burrows and activities causing a high level of disturbance (e.g., construction activities), regardless of season.⁵⁶ Because the DEIR allows the Applicant to install no-disturbance buffers that are substantially (85% to 90%) less than the buffers recommended by CDFW, it does not ensure Project activities would avoid causing significant impacts to burrowing owls.

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⁵⁵ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. pp. 29 and 30.

⁵⁶ *Ibid*, p. 9.

MM-BIO-1 concludes with the following statement:

For unavoidable impacts, passive or active relocation of burrowing owls would need to be implemented by a qualified biologist outside the breeding season, in accordance with procedures set by the MSHCP and in coordination with the CDFW.

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This condition is overly vague because it fails to cite the relocation procedures set by the MSHCP, nor are those procedures readily available to the public. This makes it impossible for the public to evaluate the probability that there will be significant impacts to owls that are relocated from the Project site. As reported by the CDFW, relocation of burrowing owls is a potentially significant impact under CEQA.⁵⁷ The DEIR fails to disclose and assess impacts associated with relocating burrowing owls from the Project site, nor could I find in the MSHCP an assessment of impacts associated with the relocation of burrowing owls. As a result, the burrowing owl relocation proposed in the DEIR constitutes an unexamined, potentially significant impact.

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This concludes my comments on the DEIR.

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Sincerely,



Scott Cashen, M.S.
Senior Biologist

⁵⁷ *Ibid*, pp. 10 and 11.