

## RESOLUTION NO. 2021-\_\_

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, ADOPTING FINDINGS THAT PLANNING APPLICATION NO. 2019-69 (TENTATIVE TRACT MAP NO. 37977, CONDITIONAL USE PERMIT NO. 2020-05 AND COMMERCIAL DESIGN REVIEW NO. 2020-02) IS CONSISTENT WITH THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP)**

**Whereas**, Mark Cooper, RED Corydon, LLC has filed an application with the City of Lake Elsinore (City) requesting approval of Planning Application No. 2019-69 (Tentative Tract Map No. 37977, Conditional Use Permit No. 2020-05, and Commercial Design Review No. 2020-02) to subdivide a 6.05-acre project site into six (6) parcels for commercial development and one (1) lot for a detention basin. The proposed commercial uses include a 2,300-square-foot (sf) fast food restaurant with a drive-thru (Parcel 1), a 4,088-sf 7-Eleven convenience store (with the concurrent sale of beer and wine – Type 20 ABC license) and gas station with 16 fueling stations under a 4,285-sf fueling canopy with a maximum throughput of 1.87 million gallons of gasoline per year (Parcel 2), a 4,333-sf Superstar Car Wash express tunnel car wash with vacuum bays (Parcel 3), a 5,200-sf tire store (Parcel 4), and 11 flex-tech condos (Parcels 5 and 6). The project site is located within the East Lake Specific Plan, at the northwestern corner of the intersection of Mission Trail and Corydon Street. (APN 370-050-026 and a portion of 370-050-030); and,

**Whereas**, Section 6.0 of the Multiple Species Habitat Conservation Plan (MSHCP) requires that all discretionary projects within a MSHCP Criteria Cell undergo the Lake Elsinore Acquisition Process (LEAP) and the Joint Project Review (JPR) to analyze the scope of the proposed development and establish a building envelope that is consistent with the MSHCP criteria; and,

**Whereas**, Section 6.0 of the MSHCP further requires that the City adopt consistency findings demonstrating that the proposed discretionary entitlement complies with the MSHCP Criteria Cell, and the MSHCP goals and objectives; and,

**Whereas**, pursuant to Lake Elsinore Municipal Code (LEMC) Section 17.415.070 (Conditional Use Permits), Section 17.415.050 (Major Design Review), and Chapter 16.24 (Tentative Map) the Planning Commission (Commission) has been delegated with the responsibility of making recommendations to the City Council (Council) pertaining to tentative maps, conditional use permits, and design review applications; and,

**Whereas**, on December 15, 2020, at a duly noticed Public Hearing the Commission considered evidence presented by the Community Development Department and other interested parties with respect to this item; and,

**Whereas**, on January 12, 2021 at a duly noticed Public Hearing, the Council has considered the recommendation of the Commission as well as evidence presented by the Community Development Department and other interested parties with respect to this item.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1:** The Council has considered the Project and its consistency with the MSHCP prior to adopting Findings of Consistency with the MSHCP.

**Section 2:** That in accordance with the MSHCP, the Council makes the following findings for MSHCP consistency:

1. The Project is a project under the City's MSHCP Resolution, and the City must make an MSHCP Consistency finding before approval.

*Approximately 1.12 acres of the project site is located in the northeastern corner of Criteria Cell 5131, which is in MSHCP Elsinore Area Plan, Subunit 3 (Elsinore). The area that will be developed by the Proposed Project is approximately 0.89 acres of that area. Pursuant to the City's MSHCP Resolution, the project has been reviewed for MSHCP consistency, including consistency with "Other Plan Requirements." These include the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pool Guidelines (MSHCP, § 6.1.2), Protection of Narrow Endemic Plant Species Guidelines (MSHCP, § 6.1.3), Additional Survey Needs and Procedures (MSHCP, § 6.3.2), Urban/Wildlands Interface Guidelines (MSHCP, § 6.1.4), Vegetation Mapping (MSHCP, § 6.3.1) requirements, Fuels Management Guidelines (MSHCP, § 6.4), and payment of the MSHCP Local Development Mitigation Fee (MSHCP Ordinance, § 4).*

2. The Project is subject to the City's LEAP and the Western Riverside County Regional Conservation Authority's (RCA) Joint Project Review processes.

*Approximately 1.12 acres of the project site is located in the northeastern corner of Criteria Cell 5131, which is in MSHCP Elsinore Area Plan, Subunit 3 (Elsinore). The area that will be developed by the Proposed Project is approximately 0.89 acres of that area. Therefore, a formal and complete LEAP application, LEAP 2020-01 was submitted to the City on April 3, 2020. The JPR application, JPR 20-06-09-01 was submitted to the Regional Conservation Authority (RCA). The RCA completed the review on September 24, 2020 and found the Project consistent with both the Criteria and Other Plan Requirements.*

3. The Project is consistent with the Riparian/Riverine Areas and Vernal Pools Guidelines.

*Woody water-dependent vegetation or drainages are not present on the project. Approximately 2.4 inches of rain fell on December 23 through 26, 2019. Nine days later, at the time of the survey on January 4, 2020, areas of the site had damp soils but no evidence of ponding. The only water observed occurred in a single soil test pit which contained potable water added by the soils technician. The soil pit was later backfilled.*

*No cracked soils, evidence of vegetation changes or other evidence of long-term inundation is present. Botanical species present on the site did not include facultative, obligate, or vernal pool species. No fairy shrimp or potential fairy shrimp habitat was observed during this study. Vernal pools are not present on the parcel. Habitat subject to Section 6.1.2 of the MSHCP is not present on the project site.*

*Eighty (80) feet to the west of the site, a double row of planted oaks, mulefat, and willow is present in a fenced area at the end of a constructed concrete trapezoidal channel about 190 feet long and 30 feet wide (Figure 3). L&L observed this habitat from accessible public vantage points and using aerial and street view images on Google Earth. Based on the height of the fence, the trees appear to be recently planted and range in height between 6 and 8 feet. Birds maybe present on occasion and is the basis for a recommendation to construct the project outside of the nesting season. If construction cannot avoid the nesting season a preconstruction nesting season clearance survey should be conducted within three (3) days*

*prior to the start of vegetation or ground disturbance. If nesting birds are found to be present an avoidance buffer of at least 350 feet as determined by the biologist should be avoided until the biologist has determined that the birds have fledged from the nest or the nest is otherwise inactive.*

*The habitat in this channel is located in a motorcycle recreation area (Lake Elsinore Motorsport Park) and surrounded by large areas of highly disturbed and developed land subject to ongoing and high levels of noise and disturbance. The habitat is not suitable for special status riparian birds. Another concrete lined trapezoidal channel is located between the property and the adjacent industrial complex on the south. This channel is unvegetated with limited ruderal vegetation adjacent to the channel; there is no riparian habitat present.*

*Least Bell's vireo (*Vireo bellii pusillus*) is state and federally listed as endangered. It is a covered species under the MSHCP and considered adequately conserved, but surveys are required in suitable habitat as described in MSHCP Section 6.1.2. This species is migratory and breeds in California, arriving in March and departing by September or October. Males establish and defend territories in riparian woodlands and riparian scrub. Dense shrub cover is required for nesting.*

*CNDDDB documented occurrences of least Bell's vireo territories in the project vicinity include three records in the Lake Elsinore Back Basin (Element Occurrence [EO] #404 through 406) and one record along the San Jacinto River (EO #407). EO #404 is from 2006 and located about 1.5 miles west-northwest of the site (two territorial males in willow/mulefat scrub), EO #405 is from 2009 and located about 2.3 miles west of the site (two territories), EO #406 is from 2009 and 2010 and located about 1.0 miles east-southeast of the site (one territory in 2009 and one territory in 2010). There are no CNDDDB documented occurrences of southwestern willow flycatcher (*Empidonax traillii extimus*) or the western yellow-billed cuckoo (*Coccyzus americanus occidentalis*) within 10 miles of the site.*

*There is no riparian habitat on the site. The few willows present in the motorcycle park channel are small, scattered, and isolated and do not provide the dense riparian habitat required by least Bell's vireo, southwestern willow flycatcher and western yellow-billed cuckoo. The lack of any immediately adjacent habitat and the ongoing high levels of noise and disturbance in and adjacent to the motorcycle park also create unsuitable conditions for these species. Therefore, there is no suitable habitat for these species on or adjacent to the site and these species are considered absent.*

*The Project is therefore consistent with the Riparian/Riverine Areas and Vernal Pool Guidelines set forth in Section 6.1.2 of the MSHCP. No further action regarding this section of the MSHCP is required.*

4. The Project is consistent with the Protection of Narrow Endemic Plant Species Guidelines.

*The property is not in a Narrow Endemic Plant Species Survey Area (NEPSSA) for any narrow endemic species, and no NEPSSA surveys are required. The proposed project is therefore consistent with the Protection of Narrow Endemic Plant Species Guidelines.*

5. The Project is consistent with the Additional Survey Needs and Procedures.

*The MSHCP requires additional surveys for certain species if the project is located in certain locations. Pursuant to MSHCP Figure 6-2 (Criteria Area Species Survey Area), Figure 6-3*

*(Amphibian Species Survey Areas with Criteria Area), Figure 6-4 (Burrowing Owl Survey Areas with Criteria Area), Figure 6-5 (Mammal Species Survey Areas With Criteria Area), burrowing owl surveys are required for the subject property prior to approval of a development proposal.*

*The property is not located within survey areas for criteria area species (MSHCP Figure 6-2), amphibian species (MSHCP Figure 6-3), or mammal species (MSHCP Figure 6-5) and surveys for those species are not required.*

*The Project site is located within the MSHCP Survey Area for the burrowing owl. L&L Environmental, Inc. visited the project area on October 10, 2019 to describe vegetation and habitat and evaluate probabilities that special status animals and plants might occur within the project site. The weather was 67° to 78° F and conditions were clear and hazy, with winds varying between 1-3 mph.*

*About 2.25 person-hours were spent onsite. All habitat types on the site were visited on foot. The site was surveyed by conducting a series of transects across the subject property, stopping periodically for observations and notations. The entire project area was visually assessed and a buffer area of 500 feet from the project boundary was surveyed around the site for potential suitable habitat for burrowing owl..*

*A burrowing owl (*Athene cunicularia*) habitat assessment was performed by L&L biologist Guy Bruyey during the nesting season to conduct focused breeding season burrowing owl surveys. The focused Burrowing owl (*Athene cunicularia*) surveys were conducted by in accordance with the survey requirements established for the MSHCP (MSHCP Burrowing Owl Survey Instructions, 2006).*

*A total of ±5.75 person-hours were spent onsite during burrowing owl surveys. The site was examined for suitable burrow sites and for signs of occupation by burrowing owl, including pellets, feathers, whitewash, prey remains, and eggshell fragments, as well as individual owls. A search for potentially suitable burrows within dirt, wood, and rock debris piles, artificially created berms, and other locations was conducted during the surveys.*

*The surveys included the entire project site and an additional 150-meter (500-foot) buffer area surrounding the site. (Figure 4) These areas were visually inspected, where possible, in areas identified as potential burrowing owl habitat. Any developed areas in the buffer were visually surveyed with binoculars due to trespassing concerns on private property. Transects were walked throughout the property. Coupled with binocular surveys of any restricted areas, this allowed for complete visual coverage of the survey area. Distance between transects was approximately 15 to 20 meters.*

*California ground squirrels or burrows were not observed on the site or adjacent to the property within the buffer area. Botta's pocket gopher (*Thomomys bottae*) mounds were identified onsite, but no other conspicuous small mammal burrows were observed during this study. No burrowing owl (BUOW), sign of BUOW (pellets, scat, feathers, tracks, etc.), or suitable BUOW burrows are present on onsite or within the buffer area.*

*As a mitigation measure for the proposed Project, the City of Lake Elsinore will require a pre-construction presence/absence survey for burrowing owl to be conducted within 30 days of the commencement of project-related grading or other land disturbance activities to ensure that the species has not moved onto the site since completion of the surveys. The pre-*

*construction survey should occur within 30 days prior to ground disturbing activity. Owls located as a result of survey efforts will be relocated. If burrowing owl have colonized the project site or the offsite improvements area prior to the initiation of construction, the project proponent should immediately inform the City, RCA and the Wildlife Agencies, and coordinate on the potential need for preparation, review and approval of a Burrowing Owl Protection and Relocation Plan, prior to any ground disturbance.*

*Therefore, the subject project is consistent with the Additional Survey Needs and Procedures of the MSHCP.*

6. The Project is consistent with the Urban/Wildlands Interface Guidelines.

*Section 6.1.4 addresses potential indirect impacts to the MSHCP Conservation Area via the Urban Wildland Interface Guidelines. As the Project is urban in nature and is located near the Western Riverside County Regional Conservation Authority (RCA) conserved lands, the Project must comply with all MSHCP Urban/Wildland Interface Guidelines (UWIG) as set forth in Section 6.1.4 of the MSHCP.*

7. The Project is consistent with the Vegetation Mapping requirements.

*The entire Project site consists of Non-native Grassland. Grasses observed and identified onsite include Mediterranean grass (*Schismus barbatus*) and foxtail chess (*Bromus diandrus*). Additional non-native grass species are likely present but not identified due to season. The most conspicuous weedy annuals observed onsite include (but may not be limited to) Russian thistle (*Salsola tragus*), short-pod mustard (*Hirschfeldia incana*), London rocket (*Sisymbrium irio*), red-stemmed filaree (*Erodium cicutarium*), and tocalote (*Centaurea melitensis*). Native annuals that are tolerant of disturbed or waste places observed include fiddleneck (*Amsinckia menziesii* var. *intermedia*), cudweed aster (*Corethrogyne filaginifolia*), annual sunflower (*Helianthus annuus*), horseweed (*Conyza canadensis*), doveweed (*Croton setiger*), telegraph weed (*Heterotheca grandiflora*), and annual bur-weed (*Ambrosia acanthicarpa*). Other plants less commonly observed include tree tobacco (*Nicotiana glauca*), vinegar weed (*Trichostemma lanceolatum*), nightshade (*Solanum* species), and western jimsonweed (*Datura wrightii*). This mapping is sufficient under the MSHCP and is consistent with the MSHCP vegetation mapping requirements.*

8. The Project is consistent with the Fuels Management Guidelines.

*Section 6.4 of the MSHCP requires that new developments adjacent to the MSHCP Conservation Area (in this case the proposed 770-acre Plan preservation areas) or other undeveloped lands incorporate any fuel/brush management zones and Best Management Practices. The Project Site is not located in or adjacent to the proposed 770-acre Plan preservation areas, is proposed as a non-combustible commercial development, and undeveloped areas adjacent to the Project Site are anticipated to be developed and is therefore not expected to be subject to fuel modification requirements.*

*The Project will incorporate the BMPs outlined in Volume I, Appendix C of the MSHCP as part of the development pursuant to regulatory and/or County requirements.*

*Therefore, the Project is consistent with the Fuels Management Guidelines as set forth in Section 6.4 of the MSHCP.*

9. The Project will be conditioned to pay the City's MSHCP Local Development Mitigation Fee.

*As a condition of approval, the Project will be required to pay the City's MSHCP Local Development Mitigation Fee at the time of issuance of building permits.*

10. The Project is consistent with the MSHCP.

*Approximately 1.12 acres of the project site is located in the northeastern corner of Criteria Cell 5131, which is in MSHCP Elsinore Area Plan, Subunit 3 (Elsinore). The area that will be developed by the Proposed Project is approximately 0.89 acres of that area. Conservation within this Cell will range from 65%-75% of the Cell focusing in the southern portion of the Cell. The conservation requirements set forth for this Criteria Cell has been replaced with the preservation of habitat in the Back Basin of Lake Elsinore through the 770-acre Agreement. The Project Site is not located within 3,200 feet of proposed preservation land in the 770-acre Plan. Even without consideration of the 770-acre Plan, the Project site falls outside of that portion of Criteria Cell 5131 identified for conservation and the project site does not meet the conservation requirements set forth for Subunit 3 of the Elsinore Area Plan . Therefore, conservation of the project site, or any portion thereof, is not required. The proposed project is consistent with the MSHCP.*

**Section 3:** Based upon the evidence presented, both written and testimonial, and the above findings, the Council hereby finds that the Project is consistent with the MSHCP.

**Section 4:** This Resolution shall take effect immediately upon its adoption.

**Section 5:** The City Clerk shall certify to the adoption of this Resolution and enter it into the book of original Resolutions.

**Passed and Adopted** on this 12<sup>th</sup> day of January, 2021.

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Robert E. Magee, Mayor

**Attest:**

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Candice Alvarez, MMC  
City Clerk

STATE OF CALIFORNIA                    )  
COUNTY OF RIVERSIDE                ) ss.  
CITY OF LAKE ELSINORE                )

I, Candice Alvarez, MMC, City Clerk of the City of Lake Elsinore, California, do hereby certify that Resolution No. 2021-\_\_\_\_\_ was adopted by the City Council of the City of Lake Elsinore, California, at the regular meeting of January 12, 2021, and that the same was adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Candice Alvarez, MMC  
City Clerk