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In Reply Refer To:
 FWS/CDFW-WRIV-20B0007-20CPA0001

October 18, 2019
Sent by email

Mr. Ryan Fowler
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Governor's Office of Planning & Research

OCT 18 2019

STATE CLEARINGHOUSE

Subject: Draft Environmental Impact Report Rockport Ranch Project State Clearinghouse No. 2017081069

Dear Mr. Fowler:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (CDFW), hereafter referred to jointly as the Wildlife Agencies, have reviewed the Draft Environmental Impact Report (DEIR) for the City of Menifee's (City) Rockport Ranch Project (Project), which CDFW received September 11, 2019. Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect fish and wildlife resources.

As discussed below, the Wildlife Agencies are concerned that the DEIR has not adequately identified or assessed the inconsistencies between the proposed Project and Sections 6.1.2 and 6.1.3 of the Western Riverside County Multiple Species Habitat Conservation Plan, as required by Section 15125(d) of the CEQA Guidelines. We request revision of the DEIR to address the following:

1. Adequacy of the baseline assessment of biological resources, specifically for listed fairy shrimp species and for the sensitive plant species.
2. The preparation of an assessment to demonstrate that if present, impacts to listed fairy shrimp and sensitive plant species will be mitigated to less than significant, if the Project will not avoid impacting those resources.

WILDLIFE AGENCY ROLES

The primary concern and mandate of the Service is the protection of fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.).

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 need to exercise regulatory authority as provided by the Fish and Game Code. For example, as proposed, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.)

The Wildlife Agencies have also reviewed this Project to determine consistency with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). On June 22, 2004, the Service issued a section 10(a)(1)(B) permit for the MSHCP. CDFW also issued Natural Community Conservation Plan (NCCP) Approval and Take Authorization for the MSHCP per Section 2800, *et seq.*, of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the two permits.

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements. To obtain additional information regarding the MSHCP please go to: <http://rctlma.org/epd/WR-MSHCP>.

PROJECT DESCRIPTION SUMMARY

The proposed 79.68-acre Project site is located north of Holland Road, west of Briggs Road and south of Newport Road in the City of Menifee, Riverside County. The Project is the development of 305 residential units, associated infrastructure (culverts, storm drains, etc.), recreational facilities (parks), and stormwater detention/water-quality treatment features (a lake and a pond). A Zone Change from Agriculture to Residential is required.

COMMENTS AND RECOMMENDATIONS

The Wildlife Agencies offer the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect effects on fish and wildlife resources. Comments and recommendations are also offered on the proposed Project's consistency with the MSHCP.

MSHCP Implementation and Permittee Obligations

The City is the Lead Agency, an MSHCP permittee and has signed the Implementing Agreement of the MSHCP. As an MSHCP Permittee, the City must ensure that proposed actions, in this case Project approvals, are consistent with the MSHCP and its associated Implementing Agreement. The Project occurs within the Menifee/Sun City Plan Area.

MSHCP policies and procedures that apply to the proposed Project include the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2), protection of Narrow Endemic Plant Species (MSHCP section 6.1.3), and Additional Survey Needs and Procedures for burrowing owl (MSHCP section 6.3.2).

Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2)

The Project's "MSHCP Consistency Analysis and Habitat Assessment" report (MCAHA; DEIR Appendix D1) states "No potential jurisdictional waters were identified on the project site" (MCAHA Section 6.2, p. 12). Further, *Biological Resources* sub-item "b." of the DEIR states:

"Suitable riparian/riverine habitats for the species listed under 'Purpose' Volume 1, Section 6.1.2 of the MSHCP are not present on the Project site. Other kinds of sealed aquatic features that could provide suitable habitats for endangered and threatened species of fairy shrimp are not present on the Project site."

However, multiple figures within the MCAHA (i.e., Figures 4, 5, 6, 7, 10, 12) depict three large floodwater-retention basins located on the central and southern parts of the Project site's western boundary, a large area of ponding located at the southern end of the Project site, and a drainage ditch along the eastern perimeter of the Project site (Briggs Road). Furthermore, Figure 4.3-1 (DEIR, p. 4.3-15) depicts an additional floodwater-retention basin in the northwest corner of the Project site. Given the depiction of these features on figures in the DEIR and associated Appendices, the Wildlife Agencies question the conclusion that there are "no potential jurisdictional waters identified on the Project site."

The Wildlife Agencies were unable to locate a discussion or analysis of the ponding, water-holding, or water flow features identified on the Project site in the DEIR. The detention basins and setting ponds, and other areas of ponding, have the potential to support listed species of fairy shrimp as well as the threatened spreading navarretia (*Navarretia fossalis*), the Wildlife Agencies recommend that the City complete further analyses and present the results in the final EIR (FEIR), or in a revised and recirculated DEIR.

Habitat for fairy shrimp species on the federal list of threatened and endangered species includes (aside from natural water bodies) stock ponds, ephemeral ponds, and other human-created depressions. Any ponding feature (natural or anthropogenic) that holds standing water (~3 cm or deeper) for more than 24 hours (USFWS 2017) is considered to be potential fairy shrimp habitat by the Wildlife Agencies. The multiple water-holding and water-conveying features located on the Project site should have been assessed or surveyed for listed species of fairy shrimp as part of compliance with Section 6.1.2 of the MSHCP.

To implement and demonstrate consistency with Section 6.1.2 of the MSHCP, and therefore Section 15125(d) of the CEQA Guidelines, the Wildlife Agencies recommend that listed species fairy shrimp protocol-level surveys (USFWS 2017) be completed on the Project site

and that results be presented in the FEIR or in a revised and recirculated DEIR.

Protection of Narrow Endemic Plant Species (MSHCP section 6.1.3)

The Project site is located within Narrow Endemic Plant Species Survey Area 4 (NEPSSA-4) of the MSHCP, requiring surveys for Munz's onion, San Diego ambrosia, many-stemmed dudleya, spreading navarretia, California Orcutt grass, and Wright's trichocoronis. The Wildlife Agencies were unable to locate focused plant survey results within the DEIR. Instead, the DEIR concludes (based on a single site visit conducted on January 26, 2016) that due lack of observance of sensitive plant species during the site visit, the site's high level of disturbance, and widespread distribution of "ruderal" plant species, NEPSSA species are not present on the Project site.

The Wildlife Agencies are concerned by this conclusion, given that San Diego ambrosia has been found in several disturbed sites, including dirt access roads and roadsides (*e.g.*, along Pujol Street in Temecula), and spreading navarretia has been detected in roadside vernal pools shaped by road construction activities. Both plant species are somewhat cryptic and navarretia is small and low-growing. Both species are easily overlooked outside of their respective blooming periods (May and June, for spreading navarretia; May – July for San Diego ambrosia). To ensure the species are detectable, a reference site should be visited to verify species phenology. The Wildlife Agencies request that NEPSSA species surveys be conducted during the relevant blooming periods.

To implement and demonstrate consistency with Section 6.1.3 of the MSHCP, and therefore Section 15125(d) of the CEQA Guidelines, the Wildlife Agencies recommend that focused surveys for spreading navarretia and San Diego ambrosia during the respective blooming periods be conducted and that reference sites be visited to verify species phenology. We request that survey results be presented in the FEIR or in the revised and recirculated DEIR.

Additional Survey Needs and Procedures for burrowing owl (MSHCP section 6.3.2)

Appendix D1 and the *Biological Resources* section of the DEIR, identifies that the Project site contains suitable habitat for burrowing owls, and an owl-occupied burrow was documented in January, 2016. The City has conditioned the Project through Mitigation Measure BIO-1 (MM-BIO-1) to complete a 30-day preconstruction survey. The Wildlife Agencies appreciate the City's incorporation of this mitigation measure, however, we recommend that the City revise MM-BIO-1 and condition the measure to include the following (edits are in **bold** and ~~strikethrough~~):

MM-BIO-1: A 30-day preconstruction survey for burrowing owl is required by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) to confirm the continued presence of burrowing owl within the survey area. The survey shall be conducted by a qualified biologist no more than 30 days prior to ground disturbance in accordance with MSHCP survey requirements to avoid direct take of burrowing owl. If burrowing owls are determined to occupy the Project site or the immediate vicinity, **CDFW, the Service, the Western Riverside County Regional Conservation Authority, and the City**

of Menifee Community Development ~~will~~**shall** be notified, **within three business days of the discovery of the owl(s)**, 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).

The following measures are recommended in 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.

For unavoidable impacts, passive or active relocation of burrowing owls would need to be implemented **through the development of a Burrowing Owl Protection and Relocation Plan approved by the Service, CDFW, and the Western Riverside County Regional Conservation Authority.** ~~by a qualified biologist outside the breeding season, in accordance with procedures set by the MSHCP and in coordination with the CDFW.~~

Because of the frequency with which burrowing owls have been detected on planned development sites in the City in recent years, and to avoid delays in the Project's construction timeline, the Wildlife Agencies recommend the City condition the issuance of the Project's grading permit on completion of a Service- and CDFW-approved Burrowing Owl Protection and Relocation Plan.

Fish and Game Code section 1600 et seq.

CDFW requires notification for work undertaken in or near any river, stream, or lake that flows at least episodically, including ephemeral streams, desert washes, and watercourses with a subsurface flow. Fish and Game Code section 1602 states, "An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur". Upon receipt of a complete notification, CDFW determines if the activities may substantially adversely affect existing fish and wildlife resources.

Though the site appears to have been subject to regular ground disturbance, the DEIR does identify water conveyance within discreet features: the "drainage ditch" along the eastern perimeter of the Project site. Given presence of the "drainage ditch" onsite, CDFW recommends that the City include the following new mitigation measure in the DEIR to ensure compliance with Fish and Game Code section 1602:

To ensure compliance with Fish and Game Code section 1602 the project applicant shall provide either of the following: Written correspondence from the California Department of

Fish and Wildlife stating that notification pursuant to Section 1602 of the Fish and Game Code is not required for the project; or a copy of a California Department of Fish and Wildlife executed Lake or Streambed Alteration Agreement, authorizing activities within areas subject to Fish and Game Code section 1602.

Please note that CDFW's issuance of a Lake or Streambed Alteration (LSA) Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the CEQA document should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA>.

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 found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

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

SUMMARY AND CONCLUSIONS

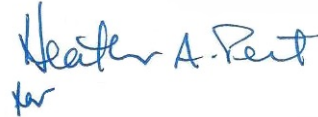
The DEIR has not adequately identified or assessed inconsistencies between the proposed Project and Sections 6.1.2 and 6.1.3 of the MSHCP, as required by Section 15125(d) of the CEQA Guidelines. To implement and demonstrate consistency with the MSHCP, the Wildlife Agencies recommend the completion of listed species fairy shrimp surveys (USFWS 2017) and focused surveys for NEPSSA species and that the results of these surveys be presented in the FEIR or in the revised and recirculated DEIR. The Wildlife Agencies also have concerns about the delineation of MSHCP riparian / riverine / vernal pool resources on the Project site and request a site visit and field meeting to review the delineation and assess onsite conditions.

In summary, the Wildlife Agencies request that the City:

- (a) Require the completion of the surveys referenced above for listed fairy shrimp species and for the threatened spreading navarretia and the endangered San Diego ambrosia;
- (b) Prepare a Determination of Biologically Superior or Equivalent Preservation (DBESP), as required by the MSHCP, for proposed Project impacts to MSHCP riparian / riverine / vernal pool resources and any NEPSSA plant species that are present, if the Project will not avoid impacting those resources; and
- (c) Update the EIR, accordingly.

We appreciate the opportunity to comment on the DEIR and look forward to continuing to work with the City on this Project. If you have any questions or comments regarding this letter, or to schedule the site visit/field meeting, please contact James Thiede of the Service at james_thiede@fws.gov or 760-322-2070 x 419 and Carly Beck of CDFW at carly.beck@wildlife.ca.gov or 909-945-3294.

Sincerely,



Handwritten signature of Heather A. Pert in blue ink.

for
Brian Croft
Acting Assistant Field Supervisor
U.S. Fish and Wildlife Service
Palm Springs Fish & Wildlife Office

Scott Wilson
Environmental Programs Manager
California Department of Fish and Wildlife
Inland Deserts Region

cc:

State Clearinghouse
James Mace, U.S. Army Corp of Engineers
Jason Bill, Santa Ana Regional Water Quality Control Board
Marc Brown, Santa Ana Regional Water Quality Control Board
Heather Pert, CDFW Lake and Stream Alteration Program
Charles Landry, Regional Conservation Authority

REFERENCES

[CDFW 2012]. California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. March 2012. 36 pages. Sacramento, California.

Matthew Fagan Consulting Services, Inc. 2019. Draft Environmental Impact Report for the "Rockport Ranch Project". Prepared for the City of Menifee. August 2019. 837 pages. Temecula, California.

LSA Associates Inc. 2016. MSHCP Consistency Analysis and Habitat Assessment, Rockport Ranch Project, City of Menifee, Riverside County, California. April 2016. 24 pages. Riverside, California.

[USFWS 2017]. U.S. Fish & Wildlife Service. 2017. Survey Guidelines for the Listed Large Branchiopods. November 2017. 24 pages. Sacramento, California.