



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 10, 2020

Governor’s Office of Planning & Research

Andrea Gilbert
 City of Chino
 13220 Central Ave
 Chino, CA 91710

Jul 10 2020

STATE CLEARINGHOUSE

Subject: MAJESTIC CHINO HERITAGE
 SCH# 2019039133

Dear Ms. Gilbert:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the City of Chino (City; the CEQA lead agency) for the Majestic Chin Heritage Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW’s lake and streambed alteration regulatory

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

authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project includes the development of industrial buildings at the southeast corner of Bickmore Avenue and Mountain Avenue, in the southwestern portion of the City of Chino, San Bernardino County. Project activities include the construction of two industrial buildings on an approximately 97-acre property, drive aisles, surface parking areas, truck courts, landscaping, utility infrastructure, water quality basins, exterior lighting, walls/fencing, and signage. The Project also includes the installation of an off-site storm drain line that would outlet at an existing concrete wingwall at the terminus of the existing concrete-lined Cypress Channel located east of the Project site. As part of the Project’s construction process, the Project site will be raised so that the proposed finished floor elevations of the two proposed industrial buildings would be at an elevation of 567 feet AMSL or above, thereby raising the finished floor of the buildings out of the Prado Dam Reservoir Area, which will be achieved by the import of fill dirt from one or more properties adjacent to the proposed building site, termed Excess Fill Dirt Sites Nos. 1-5.

Excess Fill Dirt Site No. 1 is located at the southwest corner of Pine Avenue and Johnson Avenue. Excess Fill Dirt Site No. 2 is located at the southeast corner of Pine Avenue and Johnson Avenue. Excess Fill Dirt Site No. 3 is located at the southwest corner of Chino Corona Road and Cucamonga Avenue. Excess Fill Dirt Site No. 4 is located at the southeast corner of Chino Corona Road and Comet Avenue. Excess Fill Dirt Site No. 5 is located south of Hereford Drive and west of Hellman Avenue.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources) CDFW is concerned about the adequacy of the mitigation measures proposed in the DEIR to avoid potentially significant impacts, including cumulative impacts, and the ability of the City of Chino to mitigate significant impacts to declining burrowing owl populations and habitat supporting species of special concern.

Vegetation Communities

The DEIR identified the Project would result in temporary impacts to approximately 0.8-acre of coastal sage scrub habitat. Although MM 4.3-7 addresses the revegetation of this area, it does not, as written, ensure the hydroseed successfully establishes. CDFW suggests MM 4.3-7 be revised to incorporate monitoring and management, as specified below the following comment.

Special Status Raptors

The DEIR states:

The Project Site, off-site improvement area, and all excess fill dirt sites contain suitable foraging habitat for the white-tailed kite, bald eagle, golden eagle, Swainson's hawk, and American peregrine falcon (in total approximately 208 acres of foraging habitat).... The loss of raptor foraging habitat at the off-site improvement area and the excess fill dirt sites is considered to be only a temporary impact because, following the completion of grading, excavation, and soil export activities at the off-site improvement area and excess fill dirt sites, the Project Applicant will apply a native plant hydroseed mix to the impacted areas to re-establish foraging lands for raptors and avoid the spread of non-native, invasive plant species. Based on the foregoing, implementation of the Project would result in less-than significant direct impacts to special-status raptors.

The DEIR did not provide reference to a specific mitigation measure to address the potential impact to special-status raptors. To clearly and effectively address how the Project will "re-establish foraging lands for raptors and avoid the spread of non-native, invasive plant species", as indicated will occur in the DEIR, CDFW recommends MM 4.3-7 be revised as follows:

MM 4.3-7: ~~Prior to the issuance of the first certificate of occupancy for the Project, the Project Applicant shall provide evidence to the City of Chino that~~ **initiate restoration of** all areas within the off-site improvement area and excess fill dirt sites that were disturbed during Project construction **(Restoration Area) immediately following the completion of project activities. Immediate restoration activities shall include** ~~have been planted~~ **planting** with a native hydroseed mix, with the exception of an approximately 0.8-acre area along the southern and eastern boundary of Excess Fill Dirt Site No. 4 that is to be planted with a coastal sage scrub hydroseed mix that matches the species that are present in the adjacent Mill Creek Wetlands. **Following the initial site restoration activities, the Project Applicant shall conduct periodic maintenance and monitoring of the Restoration Area for a minimum of 24 months, including quarterly non-native removal/treatment and quantitative and/or qualitative monitoring. To be deemed successful, the Restoration Area shall exhibit recruitment of native species, non-native cover at or below pre-project condition for the coastal sage scrub site, and less than 10% cover of non-native or invasive species within the rest of the Restoration Area.**

Special-Status Species

The DEIR states:

The least Bell's vireo was detected on Excess Fill Dirt Site No. 1; the species is assumed to nest within the approximately 0.2-acre of southern

willow scrub habitat on the Site and to forage within the approximately 4.5 acres of freshwater marsh/disturbed freshwater marsh on the Site. The species also was detected adjacent to Excess Fill Dirt Site Nos. 2 and 5.

The tri-colored blackbird was observed foraging within and adjacent to Excess Fill Dirt Site No. 4. A known colony of the tri-colored blackbirds live within the Mill Creek Wetlands which are located adjacent to Excess Fill Dirt Site No. 4.

In addition to the observations stated in the DEIR, known occurrences of both species have been recorded on the California Natural Diversity Database (CNDDDB) within and adjacent to the Project Site and the Excess Fill sites. Thus CDFW recommends the Lead Agency and/or the Project Applicant assume the presence of least Bell's vireo and tricolored blackbird within those areas and amend MM 4.3-4 and 4.3-5 to address the potential impacts to the species. CDFW also suggests the inclusion of MM 4.3-9 to address the potential unavoidable impacts to State-listed species.

MM 4.3-4: Project activities within all Excess Fill Dirt Sites shall be conducted outside of the least Bell's vireo and tricolored blackbird nesting season (January 15 to August 31) to the maximum extent feasible. During the nesting bird season, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 500-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 500 feet of the work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and range depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests shall be monitored until the biologist has determined the young have fledged or the Project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. Prior to the issuance of a grading permit, a qualified biologist shall prepare maps showing the locations of known **nests and** least Bell's vireo territories and/or tri-colored blackbird nesting colonies located within 500 feet of ~~all Excess Fill Dirt Sites Nos. 1, 3, and 4.~~ Such locations shall be indicated on the grading plan as reference, and shall be provided to the City of Chino to be included as part of the construction management plan required as part of Mitigation Measure MM 4.3-5.

MM 4.3-5: Prior to grading permit issuance, the City of Chino Planning Division and City of Chino Engineering Division shall review and approve a construction management plan in accordance with City of Chino Municipal Code Section 20.23.210. The construction management plan shall include the following notes. Project contractors shall be required to comply with these notes and permit periodic

inspection of the construction site by City of Chino or the City's designee staff to confirm compliance.

- a) In the event that grading, excavation, and/or soil export activities at Excess Fill Dirt Site Nos. 1, 3, and/or 4 occur during the least Bell's vireo and tri-colored blackbird nesting seasons (March 15 to September 15) and within 500 feet of known least Bell's vireo territories and/or tri-colored blackbird nesting colonies, the Project Applicant shall install an on-site temporary noise barrier, as needed, to ensure these territories and/or nesting colonies are not exposed to noise levels in excess of 65 dBA Leq **and that maintaining noise levels at or below 65 dBA Leq is effective at completely avoiding impacts to least Bell's vireo and tri-colored blackbird** . Noise monitoring **and monitoring of the potential effects of construction noise** shall occur for the duration of construction activities at Excess Fill Dirt Site Nos. 1, 3, and/or 4 **by a qualified biologist** as needed to ensure the least Bell's vireo and tri-colored blackbird are not **impacted**~~exposed to construction noise that exceeds 65 dBA Leq.~~
- b) Any artificial light fixtures used on the Project Site and excess fill dirt sites during **or after** construction shall be placed in an appropriate location and include appropriate design features (e.g., shielding, cut-off devices, etc.) to preclude ~~substantial~~ illumination beyond the Project Site and excess fill dirt site boundaries and within 500 feet of known least Bell's vireo territories and/or tri-colored blackbird nesting colonies.

MM 4.3-9: If the Project, including Project construction or any Project-related activity during the life of the Project, results in unavoidable impacts to CESA-listed species, the Project Applicant shall seek appropriate authorization prior to Project implementation. This includes an incidental take permit (ITP) or other CESA authorization. Information on how to obtain an ITP can be found at <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-TakePermits>.

Burrowing Owl

The DEIR determined:

The Project site and all excess fill dirt sites contain suitable foraging habitat for the burrowing owl as well as ground squirrel burrows that could be used by the burrowing owl for nesting. Two burrowing owls, presumed to be a mating pair, were observed on the Project Site; no burrowing owls or signs of burrowing owl use were observed on the excess fill dirt sites. Because the burrowing owl is a nomadic species its movements are unpredictable, it is possible that the burrowing owl continues to occupy the Project site or that the species moves to another property in the future. Likewise, it is possible that the burrowing owl does not use the excess fill dirt sites or that the species inhabits one or more of the excess fill dirt sites

in the future. If burrowing owls are present on the Project Site and/or the excess fill dirt sites at the time construction activities commence, potential direct impacts to the species would be significant and mitigation would be required.

Since the DEIR identifies a presumed breeding pair of burrowing owl on the Project site, and indicates that “potential direct impacts to the species would be significant and mitigation would be required”, CDFW is confused as to why the City would defer the formulation of mitigation for the loss of this occupied habitat until construction. CEQA Guidelines §15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. Current scientific literature supports the conclusion that mitigation for permanent burrowing owl habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow. CDFW has provided revisions to Mitigation Measures 4.3-1 through 4.3-3 to address the need for mitigation.

The DEIR offers two approaches to avoid potential direct impacts to burrowing owl dependent on the location of the owls. The mitigation measures are stated as either ‘Applicable to the Project Site or ‘Applicable to Excess Fill Dirt Site Nos. 1 through 5’. CDFW finds the mitigation measures that are applicable to the Project site (MM 4.3-1 and 4.3-2) generally acceptable with the inclusion of minor revisions, while CDFW does not support the mitigation measures applicable to excess fill dirt site nos. 1 through 5 (MM 4.3-3), and has provided alternative language to address this issue.

CDFW has several concerns within the mitigation measures (MMs 4.3-1(c) and 4.3-3) referencing the City of Chino Subarea 2 Resources Management Plan (RMP). CDFW is unaware of successful burrowing owl mitigation being implemented under the RMP and questions the City’s continued use of this plan to offset burrowing owl impacts barring a comprehensive review of the efficacy of the plan. Further, MM 4.3-3 proposes to offset impacts to burrowing owl through the payment of mitigation fees to the City of Chino. The payment of a mitigation fee to offset the loss of burrowing habitat is inappropriate and inadequate, and defers the identification of a specific and enforceable mitigation measure to outside of the CEQA process, depriving the public an opportunity to comment on the adequacy of the future mitigation.

CDFW has proposed revisions to Mitigation Measures 4.3-1 through 4.3-3 to address the above described issues.

MM 4.3-1: Within 14 days prior to the commencement of grading activities, a qualified biologist shall conduct a survey of the planned limits of ground disturbance and make a determination regarding the presence or absence of the burrowing owl. The determination shall be documented in a report and shall be submitted, reviewed, and accepted by the City of Chino prior to the issuance of a grading permit and subject to the following provisions:

- a) In the event that the pre-construction survey detects no burrowing owls in the planned limits of ground disturbance, a grading permit may be issued without restriction.
- b) In the event that the pre-construction survey detects the burrowing owl within planned grading limits on the Project Site **or within planned limits of ground disturbance on Excess Fill Dirt Site Nos. 1 through 5**, then prior to the issuance of a grading permit and prior to the commencement of ground-disturbing activities on the Project Site **and Excess Fill Dirt Site Nos. 1 through 5** the Project Applicant shall comply with MM 4.3-2.
- ~~c) In the event that the pre-construction survey detects the burrowing owl within planned limits of ground disturbance on Excess Fill Dirt Site Nos. 1 through 5, which are located in The Preserve Specific Plan area and subject to the *City of Chino Subarea 2 Resources Management Plan*, then prior to the issuance of a grading permit and prior to the commencement of ground-disturbing activities at the respective excess fill dirt site, the Project Applicant shall comply with MM 4.3-3.~~

MM 4.3-2: Applicable to the Project Site: In the event that the pre-construction survey identifies the presence of the burrowing owl on the Project Site **or Excess Fill Dirt Sites**, then prior to the commencement of ground-disturbing activities on the property:

- a) Prior to disturbance of occupied burrows, natural or artificial replacement burrows shall be provided at a ratio of 2:1 within a City- **and CDFW**-approved relocation area. A qualified biologist shall confirm the replacement burrows are unoccupied and suitable for burrowing owl use prior to disturbance of occupied burrows.
- b) No disturbance shall occur within 50 meters of occupied burrows during the nonbreeding season (September 1 through January 31) or within ~~75~~ **300** meters of occupied burrows during the breeding season (February 1 through August 31), ~~until the Project Applicant provides evidence to the City of Chino that suitable replacement burrows have been provided.~~ **All occupied burrows will have a visible marker placed near them to ensure that equipment and machinery do not collapse the burrows.**
- c) Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the CDFW verifies through noninvasive methods ~~that either: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.~~

- d) If burrowing owls are present at the time occupied burrows are to be disturbed, the owls shall be excluded from the site in accordance with the California Department of Fish and Game 2012 Staff Report. **CDFW shall be consulted on the development and implementation of any proposed relocation efforts.**

MM 4.3-3: Prior to initiating Project activities, the Project proponent shall mitigate the loss of burrowing owl habitat through the perpetual conservation and management of occupied burrowing owl habitat, approved by CDFW, at a minimum ratio of 1:1. The City or Project proponent shall develop a conservation strategy in cooperation with CDFW, in accordance with CDFW's *Staff Report on Burrowing Owl Mitigation*. ~~Applicable to Excess Fill Dirt Site Nos. 1 through 5: In the event that the pre-construction survey identifies the presence of the burrowing owl at an excess fill dirt site, the Project Applicant shall ensure at minimum that Project-related activities occur in conformance with the burrowing owl mitigation standards established by the *City of Chino Subarea 2 Resources Management Plan*.~~

- a) ~~Prior to disturbance of occupied burrows, natural or artificial replacement burrows shall be provided at a ratio of 2:1 within a City-designated relocation area. A qualified biologist shall confirm the replacement burrows are unoccupied and suitable for burrowing owl use prior to disturbance of occupied burrows.~~
- b) ~~No disturbance shall occur within 50 meters of occupied burrows during the nonbreeding season (September 1 through January 31) or within 75 meters of occupied burrows during the breeding season (February 1 through August 31), until the Project Applicant provides evidence to the City of Chino that suitable replacement burrows have been provided.~~
- c) ~~Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the CDFW verifies through noninvasive methods that either: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.~~
- d) ~~If burrowing owls are present at the time occupied burrows are to be disturbed, the owls shall be excluded from the site in accordance with the California Department of Fish and Game 2012 Staff Report on Burrowing Owl Mitigation and the protocol established in Table 4-6 of the *City of Chino Subarea 2 Resources Management Plan*.~~
- e) ~~If the City of Chino has established a mitigation fee program for the long-term management of burrowing owl habitat as recommended by the *City of Chino Subarea 2 Resources Management Plan* prior to issuance of the first grading permit, then the Project Applicant shall pay the appropriate mitigation fee to the City of Chino.~~

Please be aware that CDFW does not recommend the exclusion of owls using passive relocation unless there are suitable burrows available within 50-100 meters of the closed burrows, a distance generally within a pair's territory (Trulio 1995, CDFG 2012), and the relocation area is protected through a long-term conservation mechanism (e.g., conservation easement). Burrow exclusion should only be conducted during the non-

breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty by site surveillance and/or scoping. CDFW's *Staff Report on Burrowing Owl Mitigation* also includes that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until:

- A Burrowing Owl Exclusion Plan (Appendix E in the Staff Report) is developed and approved by the applicable local CDFW office;
- Permanent loss of occupied burrow(s) and habitat and temporary exclusion is mitigated in accordance with guidelines provided in the Staff Report;
- Site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided.
- Young of the year have fledged, as confirmed by daily monitoring for one week, if the exclusion will occur immediately after the end of the breeding season.
- Excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight).

CDFW Fish and Game Code section 1602 resources

The DEIR identified the three following areas as CDFW Fish and Game Code section 1602 resources jurisdiction:

Cypress Channel. "The Project's proposed storm drain line would terminate at and discharge to the Cypress Channel. Approximately 0.01-acre of Corps, RWQCB, and CDFW jurisdiction area is located within the off-site improvement area."

Drainage 1. "Drainage 1 is an intermittent channel that enters Excess Fill Dirt Site No. 1 beneath existing Pine Avenue flows in a north-to-south direction for approximately 1,645 feet before leaving Excess Fill Dirt Site No. 1... approximately 4.8 acres of CDFW jurisdiction area is located within Excess Fill Dirt Site No. 1."

Ditch 1. "Ditch 1 is a manmade roadside ditch located parallel to Johnson Avenue within Excess Fill Dirt Site No. 2. Ditch 1 enters Excess Fill Dirt Site No. 2 beneath Pine Avenue and flows north-to-south for approximately 2,366 feet before leaving the Site. Approximately 0.3-acre of RWCB and CDFW jurisdiction area is located within Excess Fill Dirt Site No. 2."

CDFW is concerned that the DEIR's jurisdictional delineation may have omitted a ½-acre drainage on the northeast portion of the Project site. Aerial photography, both current and historical show that this area accumulates surface flows and these flows then enter Cypress Channel through a dip crossing. This potential Fish and Game Code section 1602 resource appears to be vegetated with mulefat scrub and should be clearly delineated. The DEIR should discuss impacts to this potential Fish and Game Code section 1602 resource and also discuss any potential impacts to special status biological resources that may utilize the mulefat scrub habitat.

Please also note that Fish and Game Code section 1602 resources are not defined by the ordinary high-water mark (OHWM). The DEIR states that a “storm drain outlet will be installed above the OHWM. Based on the foregoing information, no impact would occur and no mitigation is required”. Mere avoidance of the OHWM does not ensure all areas subject to Fish and Game Code section 1602 will be avoided.

Based on review of materials submitted with the DEIR, the City may need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Based on the above comments, CDFW proposes the City include the following addition to MM 4.3-8.

MM 4.3-8: Prior to the issuance of the permit that would allow the construction of the Project’s off-site storm drain connection to the Cypress Channel, the City of Chino Planning Division and City of Chino Engineering Division shall review and approve a construction management plan in accordance with City of Chino Municipal Code Section 20.23.210. The construction management plan shall include the following note. Project contractors shall be required to comply with these notes and permit periodic inspection of the construction site by City of Chino staff to confirm compliance.

- a) During construction of the Project’s storm drain outlet within the Cypress Channel, a tarp shall be installed above the ordinary high water mark (OHWM) on the east face of the wing wall to prevent construction debris from entering the Channel; access to the Channel shall only be made on foot; all construction activities shall be performed using hand tools; and, the storm drain outlet shall be installed above the OHWM.
- b) Prior to the construction of the Project’s storm drain outlet within the Cypress Channel, or ground disturbance within areas potentially subject to Fish and Game Code section 1602, the City of Chino or the Project Applicant shall conduct a thorough review of the Project site, Offsite Improvement Areas, and Excess Fill Dirt Sites, in coordination with an experienced biologist or biological consultant, to determine areas potentially subject to Fish and Game Code section 1602 and notify CDFW per Fish and Game Code section 1602 if these areas cannot be avoided.**

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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Chino in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Marina Barton, Environmental Scientist at 909-948-9632 or Marina.Barton@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

Attachment: Draft Mitigation Monitoring and Reporting Program for CDFW-proposed Mitigation Measures

ec: Office of Planning and Research, State Clearinghouse, Sacramento

HCPB CEQA Coordinator
Habitat Conservation Planning Branch

Andrea Gilbert
City of Chino
July 10, 2020
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Marina Barton, Environmental Scientist, CDFW Inland Deserts Region
Marina.Barton@wildlife.ca.gov

REFERENCES

- California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. (https://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)
- California Natural Diversity Database (CNDDB) Government [ds45]. 2020. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System.

ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

| Mitigation Measure | Implementation Schedule | Responsible Party |
|---|--|--------------------------|
| <p>MM 4.3-1: Within 14 days prior to the commencement of grading activities, a qualified biologist shall conduct a survey of the planned limits of ground disturbance and make a determination regarding the presence or absence of the burrowing owl. The determination shall be documented in a report and shall be submitted, reviewed, and accepted by the City of Chino prior to the issuance of a grading permit and subject to the following provisions:</p> <p>a) In the event that the pre-construction survey detects no burrowing owls in the planned limits of ground disturbance, a grading permit may be issued without restriction.</p> <p>b) In the event that the pre-construction survey detects the burrowing owl within planned grading limits on the Project Site or within planned limits of ground disturbance on Excess Fill Dirt Site Nos. 1 through 5, then prior to the issuance of a grading permit and prior to the commencement of ground-disturbing activities on the Project Site and Excess Fill Dirt Site Nos. 1 through 5 the Project Applicant shall comply with MM 4.3-2.</p> <p>c) In the event that the pre-construction survey detects the burrowing owl within planned limits of ground</p> | <p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p> | <p>Project Proponent</p> |

| | | |
|--|--|--------------------------|
| <p>disturbance on Excess Fill Dirt Site Nos. 1 through 5, which are located in The Preserve Specific Plan area and subject to the City of Chino Subarea 2 Resources Management Plan, then prior to the issuance of a grading permit and prior to the commencement of ground-disturbing activities at the respective excess fill dirt site, the Project Applicant shall comply with MM 4.3-3.</p> | | |
| <p>MM 4.3-2: Applicable to the Project Site: In the event that the pre-construction survey identifies the presence of the burrowing owl on the Project Site or Excess Fill Dirt Sites, then prior to the commencement of ground-disturbing activities on the property:</p> <p>a) Prior to disturbance of occupied burrows, natural or artificial replacement burrows shall be provided at a ratio of 2:1 within a City- and CDFW-approved relocation area. A qualified biologist shall confirm the replacement burrows are unoccupied and suitable for burrowing owl use prior to disturbance of occupied burrows.</p> <p>b) No disturbance shall occur within 50 meters of occupied burrows during the nonbreeding season (September 1 through January 31) or within 75 300 meters of occupied burrows during the breeding season (February 1 through August 31), until the Project Applicant provides evidence to the City of Chino that suitable replacement burrows have been provided. All occupied burrows will have a visible marker placed near them to ensure that equipment and machinery do not collapse the burrows.</p> <p>c) Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the CDFW verifies through noninvasive methods that either: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.</p> <p>d) If burrowing owls are present at the time occupied burrows are to be disturbed, the owls shall be excluded from the site in accordance with the California Department of Fish and Game 2012 Staff Report. CDFW</p> | <p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p> | <p>Project Proponent</p> |

| | | |
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| <p>shall be consulted on the development and implementation of any proposed relocation efforts.</p> | | |
| <p>MM 4.3-3: Prior to initiating Project activities, the Project proponent shall mitigate the loss of burrowing owl habitat through the perpetual conservation and management of occupied burrowing owl habitat, approved by CDFW, at a minimum ratio of 1:1. The City or Project proponent shall develop a conservation strategy in cooperation with CDFW, in accordance with CDFW's Staff Report on Burrowing Owl Mitigation. Applicable to Excess Fill Dirt Site Nos. 1 through 5: In the event that the pre-construction survey identifies the presence of the burrowing owl at an excess fill dirt site, the Project Applicant shall ensure at minimum that Project-related activities occur in conformance with the burrowing owl mitigation standards established by the City of Chino Subarea 2 Resources Management Plan. a) Prior to disturbance of occupied burrows, natural or artificial replacement burrows shall be provided at a ratio of 2:1 within a City-designated relocation area. A qualified biologist shall confirm the replacement burrows are unoccupied and suitable for burrowing owl use prior to disturbance of occupied burrows. b) No disturbance shall occur within 50 meters of occupied burrows during the nonbreeding season (September 1 through January 31) or within 75 meters of occupied burrows during the breeding season (February 1 through August 31), until the Project Applicant provides evidence to the City of Chino that suitable replacement burrows have been provided. c) Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the CDFW verifies through noninvasive methods that either: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. d) If burrowing owls are present at the time occupied burrows are to be disturbed, the owls shall be excluded from the site in accordance with the California Department of Fish and Game 2012 Staff Report on Burrowing Owl Mitigation and the protocol established in Table 4-6 of the City of Chino Subarea 2 Resources Management Plan. e) If the City of Chino has established a mitigation fee program for the long-term management of burrowing owl</p> | <p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p> | <p>Project Proponent</p> |

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| <p>habitat as recommended by the City of Chino Subarea 2 Resources Management Plan prior to issuance of the first grading permit, then the Project Applicant shall pay the appropriate mitigation fee to the City of Chino.</p> | | |
| <p>MM 4.3-4: Project activities within all Excess Fill Dirt Sites shall be conducted outside of the least Bell's vireo and tricolored blackbird nesting season (January 15 to August 31) to the maximum extent feasible. During the nesting bird season, a qualified biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 500-foot buffer. Nesting bird surveys shall be conducted by a qualified biologist within 500 feet of the work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and range depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. Established buffers shall remain until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests shall be monitored until the biologist has determined the young have fledged or the Project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. Prior to the issuance of a grading permit, a qualified biologist shall prepare maps showing the locations of known nests and least Bell's vireo territories and/or tri-colored blackbird nesting colonies located within 500 feet of all Excess Fill Dirt Sites Nos. 1, 3, and 4. Such locations shall be indicated on the grading plan as reference, and shall be provided to the City of Chino to be included as part of the construction management plan required as part of Mitigation Measure MM 4.3-5.</p> | <p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p> | <p>Project Proponent</p> |
| <p>MM 4.3-5: Prior to grading permit issuance, the City of Chino Planning Division and City of Chino Engineering Division shall review and approve a construction management plan in accordance with City of Chino Municipal Code Section 20.23.210. The construction management plan shall include the following notes. Project contractors shall be required to comply with these notes and permit periodic inspection of the construction site by</p> | <p>Before commencing ground- or vegetation-disturbing activities/ Throughout</p> | <p>Project Proponent</p> |

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| <p>City of Chino or the City's designee staff to confirm compliance.</p> <p>a) In the event that grading, excavation, and/or soil export activities at Excess Fill Dirt Site Nos. 1, 3, and/or 4 occur during the least Bell's vireo and tri-colored blackbird nesting seasons (March 15 to September 15) and within 500 feet of known least Bell's vireo territories and/or tri-colored blackbird nesting colonies, the Project Applicant shall install an on-site temporary noise barrier, as needed, to ensure these territories and/or nesting colonies are not exposed to noise levels in excess of 65 dBA Leq and that maintaining noise levels at or below 65 dBA Leq is effective at completely avoiding impacts to least Bell's vireo and tri-colored blackbird . Noise monitoring and monitoring of the potential effects of construction noise shall occur for the duration of construction activities at Excess Fill Dirt Site Nos. 1, 3, and/or 4 by a qualified biologist as needed to ensure the least Bell's vireo and tri-colored blackbird are not impacted exposed to construction noise that exceeds 65 dBA Leq.</p> <p>b) Any artificial light fixtures used on the Project Site and excess fill dirt sites during or after construction shall be placed in an appropriate location and include appropriate design features (e.g., shielding, cut-off devices, etc.) to preclude substantial illumination beyond the Project Site and excess fill dirt site boundaries and within 500 feet of known least Bell's vireo territories and/or tri-colored blackbird nesting colonies.</p> | <p>project duration</p> | |
| <p>MM 4.3-7: Prior to the issuance of the first certificate of occupancy for the Project, tThe Project Applicant shall provide evidence to the City of Chino that initiate restoration of all areas within the off-site improvement area and excess fill dirt sites that were disturbed during Project construction (Restoration Area) immediately following the completion of project activities. Immediate restoration activities shall include have been planted planting with a native hydroseed mix, with the exception of an approximately 0.8-acre area along the southern and eastern boundary of Excess Fill Dirt Site No. 4 that is to be planted with a coastal sage scrub hydroseed mix that matches the species that are present in the adjacent Mill Creek Wetlands. Following the initial site</p> | <p>Before commencing ground- or vegetation-disturbing activities / Throughout project duration</p> | <p>Project Proponent</p> |

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| <p>restoration activities, the Project Applicant shall conduct periodic maintenance and monitoring of the Restoration Area for a minimum of 24 months, including quarterly non-native removal/treatment and quantitative and/or qualitative monitoring. To be deemed successful, the Restoration Area shall exhibit recruitment of native species, non-native cover at or below pre-project condition for the coastal sage scrub site, and less than 10% cover of non-native or invasive species within the rest of the Restoration Area.</p> | | |
| <p>MM 4.3-8: Prior to the issuance of the permit that would allow the construction of the Project’s off-site storm drain connection to the Cypress Channel, the City of Chino Planning Division and City of Chino Engineering Division shall review and approve a construction management plan in accordance with City of Chino Municipal Code Section 20.23.210. The construction management plan shall include the following note. Project contractors shall be required to comply with these notes and permit periodic inspection of the construction site by City of Chino staff to confirm compliance.</p> <p>a) During construction of the Project’s storm drain outlet within the Cypress Channel, a tarp shall be installed above the ordinary high water mark (OHWM) on the east face of the wing wall to prevent construction debris from entering the Channel; access to the Channel shall only be made on foot; all construction activities shall be performed using hand tools; and, the storm drain outlet shall be installed above the OHWM.</p> <p>b) Prior to the construction of the Project’s storm drain outlet within the Cypress Channel, or ground disturbance within areas potentially subject to Fish and Game Code section 1602, the City of Chino or the Project Applicant shall conduct a thorough review of the Project site, Offsite Improvement Areas, and Excess Fill Dirt Sites, in coordination with an experienced biologist or biological consultant, to determine areas potentially subject to Fish and Game Code section 1602 and notify CDFW per Fish and Game Code section 1602 if these areas cannot be avoided.</p> | <p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p> | <p>Project Proponent</p> |

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| <p>MM 4.3-9: If the Project, including Project construction or any Project-related activity during the life of the Project, results in unavoidable impacts to CESA-listed species, the Project Applicant shall seek appropriate authorization prior to Project implementation. This includes an incidental take permit (ITP) or other CESA authorization. Information on how to obtain an ITP can be found at https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-TakePermits.</p> | <p>Before commencing ground- or vegetation-disturbing activities</p> | <p>Project Proponent</p> |
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