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GAVIN NEWSOM, Governor
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May 26, 2020
Sent via email

Governor's Office of Planning & Research

MAY 26 2020

STATE CLEARINGHOUSE

Jay Eastman
Principal Planner
City of Riverside
3900 Main Street, 3rd Floor
Riverside, CA 92522

Subject: Draft Environmental Impact Report (DEIR)
Northside Specific Plan Project
State Clearinghouse No. 2019039168

Dear Mr. Eastman:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from City of Riverside (City; Lead Agency) for the Northside Specific Plan Project (Project) pursuant to 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

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.

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 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 site is located on the border between the County of San Bernardino and County of Riverside, California. The Project site encompasses 2,000 acres, approximately 1,600 acres are within the City of Riverside, approximately 336 acres are within the City of Colton, and approximately 83 acres are within the unincorporated County of Riverside. The Project site is southwest of La Loma Hills, north of downtown Riverside, west of Hunter Industrial Park, and east of the Santa Ana River.

The Northside Specific Plan does not propose a development project. The Northside Specific Plan is a framework that guides future development projects within the Northside Specific Plan Area (SPA). The Northside Specific Plan includes goals and policies related to land use, mobility, sustainability, social equity, and economics.

COMMENTS AND RECOMMENDATIONS

The DEIR recognizes the potential for several special-status species, including endangered species, to occur within the Project area. CDFW is concerned that the analysis completed may have been inadequate to form a complete inventory of special-status species within the Project area and to identify the level of impacts on those species identified as potentially present.

Absent these details, and supporting documentation, it is unclear whether the Project's impacts have been adequately identified, disclosed, and mitigated. CDFW offers the comments and recommendations below to assist the City.

Special-status Plant Species

Mitigation Measure (MM) BIO-1a states that special-status plants impacted will be transplanted and preserved. Please note that CDFW does not recommend transplantation of established native plants given the low survival rate of transplants. As

such, CDFW is concerned that the approach is not appropriate for mitigation. When considering mitigation, it is important that the land ultimately conserved for mitigation has the same or better resource value than the resource value being impacted. Thus, to adequately off-set impacts, CDFW recommends the City considers purchasing credits from a mitigation bank or acquiring and conserving in perpetuity lands with the target resources.

CDFW recommends that the City revise MM BIO-1a and condition the measure to include the following (edits are in **bold** and ~~strikethrough~~):

MM BIO-1a: Prior to **ground disturbing activities** ~~issuance of a grading permit~~ involving undeveloped lands in the Northside Specific Plan area (SPA) outside of the MSHCP, **botanical field surveys according to 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities** ~~a habitat assessment for the potential for special-status plants to occur shall be conducted by a Qualified Biologist. If there is suitable habitat for special-status plants, then a focused survey during the species blooming period~~ **mitigation** will be required. **If State-listed plants have the potential to be impacted, the applicant shall apply for Incidental Take Permit through the California Department of Fish and Wildlife for authorization of those impacts.**

For special-status plants, if ~~100~~ **99%** of ~~the~~ area with long-term conservation value for the species cannot be avoided, then ~~additional measures~~ **mitigation, in the form of mitigation credits or land acquisition and conservation**, would be required. ~~In cases where more than 10% of the areas with long-term conservation value would be impacted, occurrences shall be transplanted and preserved. Prior to transplantation, a mitigation and monitoring plan shall be submitted the City of Colton for review by a qualified biologist and approval prior to ground disturbance to occupied habitat. Upon approval, the plan will be implemented by the applicant.~~ **Agency-approved Habitat mitigation credits or occupied replacement lands shall be purchased** ~~replacement/enhancement at a~~ **minimum 3 4:1 ratio** (occupied acres **mitigated** ~~restored/enhanced to occupied-acres impacted~~). Preservation and mitigation areas shall be fenced to avoid indirect impacts. ~~If on-site avoided and/or conservation occurs, non-native plant species listed on the most recent California Invasive Plant Council inventory (<https://www.cal-ipc.org/plants/inventory/>) with a rating of moderate or high shall not be included in landscaping.~~

~~The mitigation and monitoring plan for the transplanted special-status plant(s) will describe habitat improvement/restoration measures to be completed prior to introducing transplanted special-status plants. Habitat improvement/restoration will be based on special-status plant occupied habitat. The plan will specify: (1) the location of mitigation site(s); (2) site preparation measures such as topsoil treatment, soil decompaction, erosion control, temporary irrigation systems, or other measures as appropriate; (3) the source of all plant propagules (seed, potted nursery stock, etc.), the quantity and species of seed or potted stock of all plants to be introduced or planted into the restoration/enhancement areas; (4) a schedule and action plan to maintain and monitor the enhancement/restoration areas, to include at minimum, qualitative annual monitoring for revegetation success and site degradation due to erosion, trespass, or animal damage for a period no less than 2 years; (5) measures to avoid long-term indirect effects; and (5) contingency measures such as replanting, weed control, or erosion control to be implemented if habitat improvement/restoration efforts are not successful. In addition, the plan will specify methods to collect special-status plants and introduce them into the mitigation site.~~

Special-status Small Mammals

The DEIR identified the potential for San Bernardino kangaroo rat (SBKR), Los Angeles pocket mouse, and Stephen's kangaroo rat to occur. However, the determination was based on data and literature review, and focused surveys (i.e., trapping) were not conducted. Because trapping was not conducted prior to the preparation of the DEIR, the level of impacts to SBKR, Los Angeles pocket mouse, and Stephen's kangaroo rat cannot be disclosed. CDFW is concerned that without this information, the analysis in the DEIR is incomplete and the significance of these impacts cannot be determined, nor adequate mitigation identified, as required under CEQA. Therefore, CDFW recommends that the City revise MM BIO-5a and condition the measure to incorporate permanent conservation of habitat as follows (edits are in **bold** and ~~strikethrough~~):

MM-BIO-5a: ~~Prior to issuance of grading permits~~ **ground disturbing activities** for Northside Specific Plan areas outside of the MSHCP on undeveloped lands, a ~~habitat assessment for San Bernardino kangaroo rat or Stephens' kangaroo rat shall be required~~ **CDFW-approved qualified biologist shall conduct pre-construction trapping surveys within suitable habitat to determine presence of SBKR, Los Angeles pocket mouse, and Stephen's kangaroo rat, following trapping protocols acceptable to California Department of Fish and Wildlife. If Los Angeles pocket mouse is present, mitigation of no less than 2:1 will be required.**

Additionally, the City shall prepare and implement a set of avoidance and minimization measures aimed at protecting special-status small mammals from project-related impacts. The proposed avoidance and minimization measures shall be provided to CDFW for review and approval *no fewer than 30 days prior to the initiation of project activities*. If suitable habitat for San Bernardino kangaroo rat or Stephen's kangaroo rat is present on the site, a focused survey and trapping would be required an incidental take permit and mitigation at no less than a 3:1 (replacement to impact) ratio for loss of habitat would be required, or as determined in the appropriate CESA authorization for listed species. Construction will not proceed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained. Because there is no official survey protocol for San Bernardino kangaroo rat or Stephens' kangaroo rat, the survey protocol developed by the MSHCP Biological Monitoring Program shall be used as a guide to for survey methodology (refer to San Bernardino kangaroo rat or Stephens' kangaroo rat survey Reports at the MSHCP website: <http://wrc-rca.org/about-rca/monitoring/monitoring-surveys/>). If presence of San Bernardino kangaroo rat or Stephens' kangaroo rat is known or assumed to occur on the project site located outside of the MSHCP, the following measures shall be noted on the grading plan prior to grading permit issuance and required to be implemented by the applicant.

Based on the Qualified Biologist assessment and surveys for San Bernardino kangaroo rat and/or Los Angeles pocket mouse, 90% of those portions of the site that provide for long-term conservation value for the species shall be avoided. If 90% of the portion of the site that provides long-term conservation value for San Bernardino kangaroo rat or Stephens' kangaroo cannot be avoided, additional suitable habitat for the species must be conserved at a minimum of 2:1, depending on the quality of habitat impacted and the quality of habitat conserved. Additionally, 30 days prior to construction activities in suitable habitat, a qualified biologist shall conduct a survey within the proposed construction disturbance zone and within 200 feet of the disturbance zone for the relevant species. If either species is detected, trapping and relocation will occur in all areas of soil disturbance and construction. Preparation of small mammal relocation plan would be required and subject to the review and approval by the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) prior to any site disturbance. If San Bernardino kangaroo rat or Stephens' kangaroo

~~rat are present on the site, a take permit from the USFWS and CDFW will be required as described in Northside Specific Plan Program Environmental Impact Report CM-BIO-1, and measures may be refined with further input from these agencies~~

Burrowing Owl (*Athene cunicularia*)

The DEIR recognizes the potential to impact burrowing owl individuals; however, no surveys were undertaken to determine presence/absence and the extent of impacts to the species. CDFW is concerned that without protocol burrowing owl surveys, CDFW cannot determine if the DEIR has adequately disclosed and mitigated impacts, including with the incorporation of MM BIO-8a. CDFW recommends that a habitat assessment be conducted prior to the start of project activities as outlined in Appendix C of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). Please note that habitat assessments dated more than one year to the construction date are unacceptable.

If the habitat assessment determined suitable habitat for burrowing owl, protocol surveys should be conducted prior to commencement of project activities. Surveys should be consistent with the Staff Report on Burrowing Owl Mitigation or other similarly accepted protocol. If burrowing owls are identified on the site, the Applicant should contact CDFW and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project activities, to assist in the development of avoidance, minimization, and mitigation measures. Depending on the level of impacts, CDFW would likely recommend permanent conservation, enhancement, and management of existing, occupied burrowing owl habitat and measures to minimize impacts to burrowing owls on the Project site.

Mitigation Measure BIO-8a considers implementation of a passive relocation program. CDFW does not recommend the exclusion of owls using passive relocation unless there are suitable burrows available within 100 meters of the closed burrows (Trulio 1995, CDFG 2012) and the relocation area is protected through a long-term conservation mechanism (e.g., conservation easement). CDFW recommends that the City notify CDFW if owls are found to be present onsite and develop a conservation strategy in cooperation with CDFW, in accordance with CDFW's Staff Report on Burrowing Owl Mitigation.

CDFW offers the following revisions to MM BIO-8a (edits are in ~~strikethrough~~ and **bold**):

MM-BIO-8a: Prior to ~~issuance of a grading permit~~ **ground disturbing activities** on undeveloped sites outside of the MSHCP within the Northside Specific Plan, a habitat assessment for the potential for burrowing owl to occur shall be conducted by a Qualified Biologist. If there is suitable habitat for burrowing owl ~~and the applicant would like to~~

~~demonstrate that burrowing owl is absent~~, then a focused **breeding season** surveys as described in the Staff Report on Burrowing Owl Mitigation (CDFW 2012) shall be conducted by a Qualified Biologist. If presence of burrowing owl is ~~known or assumed~~ **determined**, the **applicant shall contact California Department of Fish and Wildlife (CDFW) and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio. In addition**, the following measures shall be ~~noted on the grading plan~~ **completed** prior to ~~grading permit issuance~~ **ground disturbing activities** and required to be implemented by the applicant in ~~suitable burrowing owl habitat outside of the MSHCP.:~~

- No less than 14 days prior to ground-disturbing activities (vegetation clearance, grading), a Qualified Biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) shall conduct pre-construction take avoidance surveys on and within 200 meters (656 feet) of the construction zone to identify occupied breeding or wintering burrowing owl burrows. The take avoidance burrowing owl surveys shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012) and shall consist of walking parallel transects 7 to 20 meters apart, adjusting for vegetation height and density as needed, and noting any burrows, ~~with fresh~~ burrowing owl sign, or presence of burrowing owls. Copies of the burrowing owl survey results shall be submitted to the California Department of Wildlife (CDFW) and the City of Colton.
- If burrowing owls are detected on site, no ground-disturbing activities shall be permitted within 200 meters (656 feet) of an occupied burrow ~~during the breeding season (February 1 to August 31)., unless otherwise authorized by CDFW. During the nonbreeding season (September 1 to January 31), ground-disturbing work can proceed near active burrows provided the work occurs no closer than 50 meters (165 feet) from the burrow. Depending on the level of disturbance, A~~ a smaller buffer may be established in ~~consultation with CDFW if the~~ **qualified biologist determines a reduced buffer would not adversely affect the burrowing owl(s)**. If avoidance of active burrows is infeasible ~~during the nonbreeding season, then before breeding behavior is exhibited and after the burrow is confirmed empty by site surveillance and/or scoping, a qualified~~

~~project biologist shall implement~~ **prepare and submit** a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) **to the CDFW for review/approval prior to the commencement of disturbance activities on-site.**

- **Passive relocation consists of excluding burrowing owls from occupied burrows and providing suitable artificial burrows nearby for the excluded burrowing owls. Prior to disturbance of the occupied burrows, suitable replacement burrows shall be provided at a ratio of 2:1 and permanent conservation and management of burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owl impacts are replaced consistent with the Staff Report on Burrowing Owl Mitigation including its Appendix A within designated adjacent conserved lands identified through coordination with CDFW. A qualified biologist shall confirm the natural or artificial burrow on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted and a reporting plan shall be prepared. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years.**

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). Information can be submitted online or via completion of the CNDDDB field survey form at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Jay Eastman, Principal Planner
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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 recommends that the City include in the Final EIR the recommended revised mitigation measures offered by CDFW to reduce project impacts.

CDFW appreciates the opportunity to comment on the DEIR for the Northside Specific Plan Project (SCH No. 2019039168) and hopes our comments assist the City of Riverside in identifying and mitigating Project impacts on biological resources. If you should have any questions pertaining to the comments provided in this letter, please contact Cindy Castaneda, Environmental Scientist, at 909-484-3979 or at cindy.castaneda@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html

Trulio, L.A. 1995. Passive Relocation: A Method to Preserve Burrowing Owls on Disturbed Sites. *Journal of Field Ornithology* 66:99-106.