



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 South Coast Region
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 www.wildlife.ca.gov

GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



February 18, 2020

Governor's Office of Planning & Research

Sergio Klotz, Assistant Director
 City of San Juan Capistrano Development Services
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 San Juan Capistrano, CA 92675
 sklotz@sanjuancapistrano.org

FEB 18 2020

STATE CLEARINGHOUSE

**Subject: Ganahl Lumber Project (PROJECT)
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
 SCH# 2019050015**

Dear Mr. Klotz:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of San Juan Capistrano for the 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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Juan Capistrano

Objective: The Project proposes to develop three separate areas that would respectively contain a lumber hardware store and yard, two drive-through restaurants, and a crushed gravel area for long-term vehicle storage. Primary Project activities include grading and excavation, utility improvements, building construction, paving, and landscape installation.

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.

Location: The proposed Project is located on an approximately 17-acre site in the City of San Juan Capistrano in Orange County, California. The Project site is generally bounded to the south by Stonehill Drive, to the west by San Juan Creek Channel and Trail, to the east by the Los Angeles – San Diego – San Luis Obispo rail corridor, and to the north by the Capistrano Valley Mobile Estates mobile home park. The parcel contains existing vegetation that may provide suitable habitat for nesting birds, including two mature red willow trees (*Salix laevigata*) that will be removed as part of project implementation.

Timeframe: May 2020 through May 2022.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of San Juan Capistrano in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT #1: Mitigation Measure BIO-1 (MM BIO-1) Pre-Construction Surveys for Nesting Birds

Section 4.3.8.2

Issue: MM BIO-1 is insufficient to reduce potential impacts to nesting birds below significant due to the proposed timing of preconstruction surveys.

Specific impact: MM BIO-1 describes pre-construction surveys for nesting birds, should activities with potential to disrupt nesting birds be scheduled during the bird breeding season (February through August for raptors and March through August for songbirds). MM BIO-1 indicates that surveys will be conducted within 14 days prior to construction activities; however, that timeframe is insufficient to identify nesting bird presence in the Project area. A two-week timeframe allows the possibility for birds to locate onsite and potentially establish nests after the survey has been conducted but before construction has started. Pre-construction surveys should be conducted as close to the time of potential disruption as possible in order to minimize the Project's impacts to nesting birds.

Why impact would occur: Special status bird species with low-to-moderate potential to occur on the Project site include white-tailed kite (*Elanus leucurus*; CDFW Fully Protected Species), burrowing owl (*Athene cunicularia*; California Species of Special Concern), California horned lark (*Eremophila alpestris actia*; CDFW Watch List), and California gnatcatcher (*Polioptila californica*; Endangered Species Act - listed- threatened). Proposed Project activities include grading and removal of vegetation that could impact potential nesting and foraging habitat for those species.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure #1:

To reduce impacts to less than significant: CDFW recommends that nesting bird surveys be conducted a maximum of 3 days prior to construction-related activities including clearing of vegetation, grubbing, or grading. If nesting birds are identified on the Project site, the mitigation measures outlined in MM BIO-1 should be followed.

As written, MM BIO-1 prescribes nesting bird surveys to be conducted within 14 days prior to construction activities during breeding season. To avoid or minimize impacts to nesting birds, CDFW recommends that MM BIO-1 be amended to read as follows:

Mitigation Measure BIO-1 (MM BIO-1): If activities with the potential to disrupt nesting birds are scheduled to occur during the bird breeding season (January 15th through September 15th for raptors and February 15th through August 31st for songbirds), a pre-construction nesting bird survey shall be conducted by a qualified biologist. The project Applicant shall hire a qualified biologist to conduct a preconstruction presence/absence survey for nesting birds no more than 3 days prior to site disturbance and submit the survey results to the Director of the City of San Juan Capistrano (City) Development Services Department, or designee. If nesting birds are not detected, no further action is necessary. The nest surveys shall include the project site and up to 500 feet in adjacent areas where project activities have the potential to cause nest failure. If no nesting birds are observed during the survey, site preparation and construction activities may begin. If nesting birds (including nesting raptors) are found to be present, then avoidance or minimization measures shall be undertaken in consultation with the California Department of Fish and Wildlife (CDFW) and prior to issuance of any grading or construction permits. Measures shall include establishment of an avoidance buffer until nesting has been completed. The width of the buffer will be determined by the project biologist. Typically, this is a minimum of 300 feet from the nest site in all directions (500 feet is typically recommended by CDFW for raptors), until the juveniles have fledged and there has been no evidence of a second attempt at nesting. The monitoring biologist will monitor the nest(s) during construction and document any findings to be confirmed by the Director of the City of San Juan Capistrano Development Services Department, or designee. A report will be made available to CDFW upon request.

Per CEQA Guidelines Section 21081.6(a)(1), the Department has provided the City of San Juan Capistrano with a suggested mitigation measure and recommendations (Comment #1).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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.

Sergio Klotz, Assistant Director
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FILING FEES

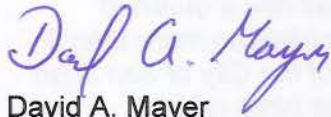
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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 appreciates the opportunity to comment on the DEIR to assist the City of San Juan Capistrano in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist at (858) 636-3159 or Jessie.Lane@wildlife.ca.gov.

Sincerely,



David A. Mayer
Acting Environmental Program Manager
South Coast Region

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

REFERENCES

City of San Juan Capistrano. 2020. Ganahl Lumber Project: Draft Environmental Impact Report. SCH# 2019050015.