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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 3, 2020
Sent via email

Governor's Office of Planning & Research

Aug 05 2020

STATE CLEARINGHOUSE

Cecily Session-Goins
City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
CSGoins@fontana.org

Subject: Draft Environmental Impact Report
Sierra Avenue and Casa Grande Avenue Warehouse Project
State Clearinghouse No. 2019070040

Dear Ms. Session-Goins:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the City of Fontana (City) for the Sierra Avenue and Casa Grande Avenue Warehouse 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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.

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 proposes the development of a 322,996 square foot (sf) distribution warehouse building on approximately 16.09-acres (referred to as 'Warehouse Site') on the northeast corner of Sierra Avenue and Casa Grande Avenue (Assessor Parcel Numbers: 0239-151-22; 0239-151-34; and 0239-151-40). The Project also includes changes to the existing zoning designations for two residential unit replacement sites: the Malaga Site - a 5.69 acre parcel located north of Malaga Street and west of Mango Street and the Palmetto Site - a 3.58-acre parcel located east of Palmetto Avenue and south of Arrow Boulevard. The Malaga Site and Palmetto Site will be "upzoned" to offset the loss of residential units/residential zoning at the proposed Warehouse Site, in compliance with the Housing Crisis Act of 2019 and provisions in Senate Bill 330. Only the Warehouse Site is proposed to undergo any construction and future CEQA analysis for the Malaga and Palmetto Sites would be needed prior to any approval of development on those sites.

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 to mitigate significant impacts to declining natural vegetation communities and species of special concern within North Fontana. CDFW comments and recommendations are presented below.

Assessment of Impacts to Biological Resources

Vegetation Communities

The DEIR identified that "*Habitat on Warehouse site consists of coastal sage scrub and chamise chaparral mixed with dense non-native grasses and native annuals and perennials. Some of the native vegetative species on-site include California buckwheat (Eriogonum fasciculatum), chamise (Adenostoma fasciculatum), deerweed (Lotus scoparius), Lupinus bicolor, Phacelia distans, Heterotheca grandiflora, Cryptantha*

intermedia, *Camissoniopsis bistorta*, and *Amsinckia menziesii*.” (DEIR, pg. 4.3-2). Based on this, the DEIR concluded that no sensitive natural communities exist within the Warehouse site. CDFW is concerned that the DEIR did not use standard vegetation classifications to identify potential sensitive natural communities and questions the accuracy of the DEIR’s conclusion that no sensitive natural communities exist onsite.

Natural Community elements were at first classified according to “Preliminary Descriptions of the Terrestrial Natural Communities of California” (Holland 1986). Since the mid-1990s CDFW and our partners, including the California Native Plant Society (CNPS), have been classifying vegetation types using the state standards embodied in the Survey of California Vegetation. The state standards for classification in California was first published as the Manual of California Vegetation in 1995, updated in the second edition of the Manual (Sawyer et al. 2009), and is now most easily accessed in the [Manual of California Vegetation Online](#). With this standardized process, Natural Communities are evaluated using NatureServe’s Heritage Methodology. Natural Communities with ranks of S1-S3 are considered Sensitive Natural Communities to be addressed in the environmental review processes of CEQA and its equivalents.

There are several vegetation associations in both the *Eriogonum fasciculatum* and *Adenostoma fasciculatum* Alliances that are recognized as Sensitive Natural Communities. Because the DEIR did not use a standardized approach to classifying Natural Communities, nor did it provide any discussion on its methods for identifying potential Sensitive Natural Communities, CDFW believes the DEIR did not provide an adequate analysis to support the finding of ‘no impact’. CDFW recommends the City classify the Natural Communities onsite, preferably using the Manual of California Vegetation or other widely accepted methodology, identify any Sensitive Natural Communities on the Project site, and formulate appropriate mitigation measures to offset the loss of any Sensitive Natural Communities prior to certifying the DEIR.

Special Status Wildlife Species

The DEIR determined that habitat conditions at the Warehouse Site: 1) are potentially suitable for California gnatcatcher (*Polioptila californica*; CAGN), a federally endangered a state sensitive species; 2) contains marginally suitable habitat with several documented occurrences to the north and south of the Project site for Los Angeles pocket mouse (*Perognathus longimembris*; LAPM), a state sensitive species; and (3) consists of approximately 15.21 acres of potentially suitable habitat with several documented occurrences in the immediate vicinity for San Bernardino kangaroo rat (*Dipodomys merriami parvus*; SBKR), a federally endangered and state candidate species. The DEIR concluded that potential impacts on all three species are considered significant and mitigation is required (DEIR, pg. 4.3-24 – 25).

The DEIR proposes offsetting project-related impacts to sensitive and special-status species and their habitat by (1) performing focused protocol surveys for CAGN, SBKR, and LAPM prior to construction (MM BIO 1 and 2); (2) if present, having a biological

monitor be present on-site during vegetation clearing activities (MM BIO-3); and (3) satisfying habitat impacts through the North Fontana Conservation Program (NFCP) (MM BIO-4). CDFW is concerned that the DEIR lacks the necessary analysis to identify the significance of the Project's impacts on sensitive species. Without adequate analysis, the DEIR cannot identify appropriate mitigation to offset the impacts, nor make the claim that the mitigation identified would reduce the impacts to less than significant.

Although a general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are, or have the potential to be, present was performed, focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, was not conducted. Courts have repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

CDFW is also concerned that the mitigation measures will be inadequate to mitigate the direct, indirect, and cumulative effects on sensitive species and that some measures are unclear and unenforceable. Mitigation Measure (MM) BIO-4 requires the Applicant provide "evidence habitat impacts have been mitigated pursuant to the City of Fontana's tiered mitigation program for the North Fontana Conservation Program (NFCP)." MM-BIO-4 continues, "The Project shall mitigate impacts to Suitable Habitat, Restorable Riversidean Alluvial Fan Sage Scrub (RAFSS) Habitat, and Unsuitable Habitat..." The DEIR does not define Suitable Habitat, Restorable Riversidean Alluvial Fan Sage Scrub (RAFSS) Habitat, and Unsuitable Habitat, nor how much of each of those categories of habitat exist on the Project site. Therefore, it is unclear what the DEIR is actually proposing to mitigate.

CDFW recommends the City complete protocol surveys to determine the presence and extent of occupation of the Project by special status wildlife species and formulate appropriate mitigation measures based on those findings prior to certifying the DEIR. However, if the City chooses to proceed without an appropriate impact assessment, CDFW recommends, at a minimum, MM-BIO-2 be updated to address CDFW's authority under CESA as it related to SBKR, as shown below.

MM-BIO-2: Prior to ground-disturbing activities, focused small mammal surveys shall be conducted by a qualified biologist on the Warehouse site. Surveys for San Bernardino Kangaroo Rat/Los Angeles Pocket Mouse (SBKR/LAPM) will follow United States Fish and Wildlife Service (USFWS) protocol for live mammal trapping by permitted biologists. Live trapping will be conducted over five (5) consecutive nights if no target species are captured. Trapping shall be terminated if a target species is trapped prior to the fifth night, **and the entire Project site shall be presumed occupied**. Trapping will be conducted under mild weather conditions, with a minimum temperature greater than 50°

Fahrenheit and atmospheric conditions relatively dry, and calm. Trapping shall not be conducted in extended periods of wind, rain or fog that may jeopardize the lives of the target species. Following the survey, the biologist shall submit **to CDFW and USFWS** all a reports and associated information required by their USFWS federal Section 10(a) permit. If no SBKR/LAPM are identified during surveys, no further action would be required. If SBKR are identified during surveys, then, occupied portions of the site would not be able to be developed until the Project Applicant can demonstrate that the appropriate authorization has been obtained from the United States Fish and Wildlife Service **and California Department of Fish and Wildlife**. If LAPM are identified then, occupied portions of the site would not be able to be developed until the Project Applicant can demonstrate that the appropriate coordination with the California Department of Fish and Wildlife (CDFW) has been completed to determine the appropriate mitigation ratio under the CDFW jurisdiction.

Finally, to address the lack of specificity and clarity in MM-BIO-4, CDFW recommends the measures be updated, as follows:

MM-BIO-4: Prior to the issuance of a grading permit, or any permit allowing ground disturbance, the Project Applicant shall provide to the satisfaction of the Planning Director, evidence **that Sensitive Natural Communities and special-status species, including their associated** habitat impacts, have been mitigated pursuant to the City of Fontana's tiered mitigation program for the North Fontana Conservation Program (NFCP). ~~The Project shall mitigate impacts to Suitable Habitat, Restorable Riversidean Alluvial Fan Sage Scrub (RAFSS) Habitat, and Unsuitable Habitat through the following:~~

1. Conservation Easement/Mitigation Bank Credits. The Project Applicant shall either dedicate to a certified third-party land trust a permanent conservation easement for like habitat or purchase mitigation credits in a California Department of Fish and Wildlife (CDFW)-approved mitigation bank at a ratio of a minimum of 1:1. Proof of mitigation shall be provided to the City of Fontana Planning Division prior to the commencement of any ground disturbance activities.

Nesting Birds

DEIR Section 4.3.2 states that "The Warehouse site is suitable for use by raptors for foraging purposes. The Warehouse site and immediate surrounding areas do contain habitat suitable for nesting birds in general, including the shrubs." Although the DEIR offers MM-BIO-5 to address potential direct take of nests, CDFW offers the proposed revisions to increase the specificity of the measure:

~~MM-BIO-5: Pursuant to the Migratory Bird Treaty Act and the California Fish and Game Code,~~ Removal of any trees, shrubs, or any other potential nesting

habitat shall be conducted outside the avian nesting season, **as verified by a qualified biological monitor**. The nesting season generally extends from early February through August, but it can vary slightly from year to year based on seasonal weather conditions.

If ground disturbance and vegetation removal cannot occur outside of the **qualified biological monitor-verified** nesting season, a preconstruction clearance survey for nesting birds shall be conducted within ~~30~~ **3** days of the start of any vegetation removal or ground-disturbing activities to ensure no nesting birds will be disturbed during construction. **The Project Applicant shall ensure that the qualified biological monitor is experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/ establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures. The Project Applicant shall ensure that the qualified biological monitor conducts the surveys at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of project activities. Surveys shall: encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures; take into consideration the size of the project site; density, and complexity of the habitat, number of survey participants, survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.** The **qualified** biologist conducting the clearance survey shall document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If no active nests are found, no further action will be required.

If an active nest is discovered during the preconstruction clearance survey, construction activities shall stay outside of a 300-foot buffer around the active nest. For raptor species, this buffer is expanded to 500 feet.

A biological monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure nesting behavior is not adversely affected by the construction activity. **The qualified biologist/biological monitor shall use his/her best professional judgement and experience to determine the efficacy of the buffer and make adjustments, as needed to avoid impacts.** Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, normal ~~construction~~ activities can occur. ~~This protocol is in accordance with the Migratory Bird Treaty Act and CDFW Fish and Game Code standards.~~ **If a nest is observed, but thought to**

be inactive, the qualified biologist shall use his/her best professional judgement to monitor the nest to determine if, or when, the nest can be approached to confirm its' status.

CALIFORNIA ENDANGERED SPECIES ACT

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources, including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. SBKR became a candidate species under CESA on August 21, 2019. As a candidate species, SBKR has full protection under CESA and take must be authorized. Incidental Take Permits (ITP) are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a ITP be obtained if the project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed species, either through construction or over the life of the Project. Also, revisions to the California Fish and Game Code, effective January 1998, require that CDFW issue a separate CEQA document for the issuance of a CESA ITP unless the project CEQA document addresses all project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of a CESA permit.

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>.

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.).

Cecily Session-Goins, Assistant Planner
City of Fontana
August 3, 2020
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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR for the Sierra Avenue and Casa Grande Avenue Warehouse Project (SCH No. 2019070040). If you should have any questions pertaining to the comments provided in this letter, please contact Kim Romich at Kimberly.Romich@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

ec: HCPB CEQA Coordinator
Habitat Conservation Planning Branch

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REFERENCES

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California.
<http://vegetation.cnps.org/>