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GAVIN NEWSOM, Governor
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Sent via email

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Kim Stater
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City of Highland
Community Development Department
27215 Base Line
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Subject: Mitigated Negative Declaration Heatherglen Planned Development, Tentative Tract No. 17606, State Clearinghouse No. 2019079098

Dear Ms. Stater:

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to comment on the Mitigated Negative Declaration (MND) for the Heatherglen Planned Development Project (project) [State Clearinghouse No. 2019079098]. The CDFW is responding to the MND as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 et seq.) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).

The project is a proposed residential community encompassing approximately 59.03 acres located East of Merris Street/Club View Drive, west of Alta Vista, south of Greenspot Road and north of Abbey Way and Plunge Creek, in the City of Highland in San Bernardino County. The proposed residential community is a low density, single family residential development that includes 203 residential lots and various other lots for open space uses (entry points, public park, storm water infiltration basin, open space habitat preservation and East Valley Water District facilities. The project also includes a community trail along the western boundary.

COMMENTS AND RECOMMENDATIONS

The 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 extremely concerned about the

adequacy of the mitigation measures proposed in the MND to avoid potentially significant impacts, including cumulative impacts, and the ability of the City of Highland (City; the CEQA lead agency) to mitigate significant impacts to declining natural vegetation communities and species that rely on these habitats. The CDFW's comments and recommendations are presented below.

Assessment of Impacts to Biological Resources

The MND Section 4 Biological Resources a) *Less than Significant with Mitigation Incorporated* identifies the following biological resources within the project:

Special Status Small Mammal Species

The MND determined based on the density of San Bernardino kangaroo rat (SBKR; *Dipodomys merriami parvus*) captures, that approximately 58 individuals inhabit the project area. The MND also determined that the habitat quality within this occupied area is 'medium to low' due to the density of vegetation cover and lack of open connectivity between capture sites. It was also speculated that SBKR habitat quality would continue to degrade because *"the construction of storm drains has resulted in the alteration of sheet-flow to areas off site but adjacent to the property. As a result, stormwater flow across the property has been altered and scouring on site has been substantially reduced if not completely eliminated. The upstream construction of Seven Oaks Dam has also limited the potential for major floods occurring adjacent to the site and reduced the potential for regular scouring within the adjacent floodplain. The reduced scouring of the property is resulting in increased scrub cover as well as increased density in cover by grass and forb plant species over time which will continue to limit the available habitat for SBKR unless the vegetation is opened up through mechanical means, fire or other cataclysmic events"*.

The MND for the project proposes offsetting project-related direct, indirect, and cumulative impacts to sensitive and special-status species and sensitive natural communities through *"off-site habitat at a ratio agreed to by both United States Fish and Wildlife Service (USFWS) and CDFW. The on-site preservation of 6.53 acres (Lot L) of AFSS habitat shall be improved/enhanced as required by USFWS and CDFW and shall be protected from disturbance by humans, domestic pets, indirect noise and lighting, etc. as required by USFWS and CDFW. The proposed location, configuration, and enhancements, maintenance and long-term management of the on-site 6.53-acre preservation area (Lot L) shall be approved by USFWS and CDFW prior to the issuance of the first Project development permit from the City of Highland. Prior to disturbance of 32 acres of occupied SBKR Critical Habitat on site, a trapping and relocation plan shall be submitted to USFWS and CDFW for review and approval. SBKR shall be re-located to the on-site preserved area (Lot L) or other off-site location as approved by USFWS and CDFW"*.

The City of Highland has determined that the project could have significant environmental impacts, but believes they have incorporated mitigation measures to

lower those impacts to less than significant. Under CEQA, every agency in the state "is encouraged to develop and publish thresholds of significance" against which to compare the environmental impacts of projects. Such thresholds are to be published for public review and supported by substantial evidence before their adoption. A lead agency will normally consider the environmental impacts of a project to be significant, if and only if, they exceed established thresholds of significance. If the lead agency prepares an MND, it must demonstrate how all identified significant impacts will be mitigated to below the level of significance. CDFW would like to understand how the City of Highland concluded that the project-related impacts have been substantially lessened with implementation of the proposed mitigation and avoidance measures.

Management of SBKR and its habitat has been subject to review and approval by the USFWS under the federal Endangered Species Act (ESA). USFWS required mitigation for impacts to SBKR typically consists of:

- a) Relocation of SBKR from project impact areas to other sites;
- b) Habitat restoration; and
- c) Purchase of mitigation credits from mitigation banks, primarily in the Lytle Creek and Cajon Wash banks.

The success of each of these approaches has yet to be proven effective for conserving the subspecies. Furthermore, the limited amount of habitat available to the subspecies suggests that, despite the long-term protection of some habitat, the overall net loss of habitat has made the conservation status more precarious. Recent range-wide genetic information indicates low genetic variability and effective population size in remaining SBKR populations. Effective population sizes are an order of magnitude lower than recommendations for maintenance of genetic diversity in populations (Shier et al. 2018). Two of the three extant subpopulations (Santa Ana River and San Jacinto River) fall below the levels necessary to prevent inbreeding depression (Shier et al. 2018), where stochastic events may greatly impact the subpopulations.

Given these findings, CDFW recommends that an Environmental Impact Report (EIR) be prepared, or the MND be revised and recirculated to include a robust SBKR avoidance plan, as well as, new detailed mitigation measures that condition **specific** land acquisition/habitat enhancement requirements within the Santa Ana River to offset project-related impacts to SBKR.

Finally, the Fish and Game Commission (Commission) received a Petition to list SBKR as endangered pursuant to the California Endangered Species Act (CESA), Fish and Game Code Section 2050 et seq. On August 7, 2019, the Commission accepted the Petition for consideration and SBKR was designated as a candidate species. On August 23, 2019, publication of the Commission's acceptance of the Petition for consideration and designation of the SBKR as a candidate species was posted; therefore, take of SBKR will be prohibited unless authorization pursuant to CESA is obtained.

Because this project identifies impacts to SBKR, CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained prior to the commencement of project activities. Please note that the proposed avoidance, minimization, and mitigation measures identified in the MND must be sufficient for the CDFW to conclude that the project's impacts are fully mitigated and the measures, when taken in aggregate, must meet the full mitigation standard. Revisions to the California Fish and Game Code, effective January 1998, require that the 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.

Sensitive Plant Species

Within the MND Appendix D 2017 Updated Spring Botanical Survey prepared by L&L Environmental, Section 3.3 - *Plant Species* states: "Only one species is still identified as having a low-moderate potential to occur onsite within native habitat: Parry's spineflower (*Chorizanthe parryi* var. *parryi*). The species was not reduced to low or absent due to the presence of suitable

habitat, consecutive seasons of drought, close proximity of recorded locations, very small size of the plant and high density of grassy plants within portions of the survey area. For these reasons potential for the species to occur could not be entirely ruled out". In addition, Appendix A Table 4 - *Sensitive Plant Species Probability Table*, the occurrence probability for Parry's spineflower, a 1B plant (listed as rare, threatened, or endangered in California and elsewhere), is 'Low/Moderate' due to the survey results and heavy grasses. Conversely, a similar species, slender-horned spineflower (*Dodecahema leptoceras*), a federally and state endangered species, is listed in Table 4 as having suitable habitat within the project, with adjacent individuals being recorded; yet it was concluded to have 'low potential of occurrence'. Likewise, Table 4 included the same results for Santa Ana River woollystar (*Eriastrum densifolium* ssp. *Sanctorum*), a state endangered species, was determined to have a 'low potential of occurrence'. CDFW does not understand why slender-horned spineflower and smaller, younger Santa Ana woollystar could not share the same likelihood of occurrence as Parry's spineflower given the project contained suitable habitat, adjacent occupancy, and survey constraints.

Finally, the Updated Botanical Survey Report stated that "*the plant surveys followed protocols recommended in USFWS, CDFW (CDFG 2009), and CNPS (2001) guidelines for rare plant surveys*". CDFW recommends that the biologist(s) responsible for conducting the surveys first visit reference populations for each of the spineflower species to confirm that individuals are blooming and are easily identifiable, and these results be included. If this was not performed, CDFW requests that additional special-status plant surveys be performed following this protocol. If subsequent spineflower populations are observed, an EIR should be prepared or the MND should be revised and recirculated to include appropriate avoidance, minimization, and/or mitigation measures to address additional impacts.

Special Status Avian Species

According to the MND, focused bird surveys were performed for burrowing owl (*Athene cunicularia*), a state species of concern. In addition, it states that, "*The potential impacts to active nests of burrowing owl, Cooper's hawk, southern California rufous-crowned sparrow, Bell's sage sparrow, California horned lark and loggerhead shrike from development of the remaining 52.5 acres of the Project site requires implementation of mitigation measures to be reduced to less than significant levels. With implementation of Mitigation Measure (MM) BIO-1 and MM BIO-2, potential impacts to sensitive bird species would be less than significant*". Current known occurrences of the California gnatcatcher (CAGN; *Polioptila californica californica*), a federally listed threatened species and state species of concern, have been documented recently immediately adjacent to the project site. In addition, suitable foraging and nesting habitat for CAGN occurs within the project site. Therefore, CDFW recommends that protocol USFWS surveys be performed, and if CAGN is present, an EIR be prepared or the MND be revised and recirculated to include avoidance and minimization measures and mitigation for project impacts.

Streambed and Associated Resources

The CDFW recognizes the value of trail systems and the need for communities to have access to open space; however, when trail systems are proposed in or adjacent to natural habitats, human access should be evaluated and managed if conservation values are going to persist. CDFW requests that a revised MND include an analysis of the potential direct and indirect impacts to sensitive biological resources and natural habitats within the adjacent Plunge Creek and Santa Ana River. Where impacts are anticipated, an EIR should be prepared or the MND

should be revised and recirculated to include appropriate avoidance, minimization and mitigation measures.

CDFW Conclusions and Further Coordination

The CDFW appreciates the opportunity to comment on the MND for the Heatherglen Planned Development Project (SCH No. 20191079098) and recommends that the City address the CDFW's comments and concerns prior to recirculating the revised MND.

If you should have any questions pertaining to the comments provided in this letter, and to schedule a meeting, please contact Kim Romich at (909) 980-3818 or at Kimberly.Romich@wildlife.ca.gov

Sincerely,

 Trisha A. Moyet FOR:

Scott Wilson
Environmental Program Manager
Inland Deserts Region

ec: State Clearinghouse

