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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**

Kim Stater  
 Assistant Community Development Director  
 City of Highland  
 27215 Base Line  
 Highland, CA 92346

**STATE CLEARINGHOUSE**

Subject: Draft Environmental Impact Report  
 Heatherglen Planned Development Project  
 State Clearinghouse No. 2019079098

Dear Ms. Stater:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from City of Highland (City; Lead Agency) for the Heatherglen Planned Development Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup> 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 City proposes to develop a tract of 203 low-density, single-family residential lots and 13 lots for open space use (entry points, public park, infiltration basin, irrigated slopes/easements, open space habitat preservation, and the East Valley Water District facilities). The Project site encompasses 59.03 acres and is 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 within San Bernardino County. Project activities include grove removal, grading, grubbing, development of internal roadways, and off-site roadway improvements and utility connections. The Project also includes two community trails along the western and southern portion of the Project site, a public park at the southwest corner of Gold Buckle Road and Street B, and 6.53 acres of open space.

## **COMMENTS AND RECOMMENDATIONS**

CDFW appreciates that some of the concerns raised by CDFW in its March 30, 2020 comment letter were addressed in the DEIR. However, CDFW is concerned regarding the adequacy of the mitigation measures proposed by the City to mitigate significant impacts to declining natural vegetation communities and special status species. CDFW offers the comments and recommendations presented below to assist the City in adequately mitigating the Project's potentially significant impacts on biological resources and requests that the City revise and/or adopt the following mitigation measures prior to adoption of the Final EIR (FEIR):

1. **Bats.** The Biological Report identifies potentially suitable foraging habitat and roost trees for special status bats (i.e. western mastiff bat, western yellow bat). Considering that: (1) the DEIR identifies 84 trees that will be impacted by the Project, including 20 Western sycamore and 3 Freemont cottonwood and (2) Western yellow bats are known to roost in Freemont cottonwood and sycamore (Mumford and Zimmerman 1963), CDFW is concerned that MM BIO-4 does not appropriately avoid impacts to tree roosting bats. CDFW appreciates that a 100-

foot avoidance buffer is considered in this measure; however as currently written, the measure lacks specificity in terms of direct impact minimization to bats. Therefore, CDFW suggests that the City implements seasonal tree removal restrictions and phasing and recommends that the following mitigation measure be adopted to reduce the level of impacts to bats:

**Bats MM BIO-15:** Mature trees and snags to be removed as part of the Project shall be closely evaluated by a CDFW-approved bat biologist for their potential to support maternity colonies of bats. Trees that are identified as suitable bat roost sites shall be removed using a two-step process that occurs over a 2-day period. On Day 1, branches and limbs that do not contain crevices or cavities shall be removed using hand tools or chainsaws. The goal is to create a disturbance sufficient to cause any bats roosting in the tree to leave that night and not return, but not at a level of intensity that will cause bats to fly out of the tree during the disturbance itself (i.e., during the daytime, when leaving the roost will likely result in predation). On Day 2, the remainder of the tree may be removed.

Tree trimming/removal activities shall be performed outside of the bat maternity season (typically April 1 through August 31), to avoid direct impacts to nonvolant (flightless) young that may roost in trees within the Project area.

If trimming or removal of trees during the bat maternity season (April 1 through August 31) cannot be avoided, all mature trees to be removed that have also been identified as containing suitable bat-roosting habitat shall be surveyed at night within one week prior to removal. Any trees confirmed during those surveys as housing bat maternity colonies and/or special-status bat species will be avoided until the end of the maternity season.

2. Burrowing Owl. MM BIO-5 provides mitigation measures for impacts to burrowing owl. MM BIO-5 states, "If burrowing owls are found on the site outside of nesting season, passive relocation efforts shall be conducted in coordination with CDFW." 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). Thus, CDFW recommends that the MM BIO-5 be revised to require appropriate mitigation if burrowing owl is present. CDFW offers the following revisions to MM BIO-5 (edits are in ~~strikethrough~~ and **bold**):

A preconstruction clearance survey for burrowing owl shall be conducted by a qualified biologist within no more than 30 calendar days prior to any site disturbance, including vegetation removal or mowing, ground disturbance, fence installation, etc. **Surveys shall be conducted consistent with the procedures outlined in the “California Department of Fish and Wildlife 2012 Staff Report on Burrowing Owl Mitigation.”** The survey will be conducted as close to the actual initiation of site disturbance as possible. The survey is valid for 30 calendar days. If work does not commence within the 30 days, the survey shall be repeated. If work starts and is suspended for 30 or more calendar days, the survey shall be repeated.

If burrowing owls are found on the site during their nesting season (February 1 to August 31), an avoidance buffer shall be established ~~in coordination with CDFW~~. The buffer shall be no less than ~~3500 feet, or as required by CDFW~~. **A smaller buffer may be established if the qualified biologist determines a reduced buffer would not adversely affect the burrowing owl(s).** If burrowing owls are found on the site outside of nesting season, **a qualified biologist shall 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 onsite.** ~~efforts shall be conducted in coordination with CDFW. With approval from CDFW,~~ Passive relocation shall include installation of one-way doors in burrow openings. Burrows shall be closed or collapsed following verification that burrows are empty through monitoring and scoping. **Prior to passive relocation suitable replacement burrows site(s) no more than 100 m from the eviction burrows shall be provided at a ratio of 2:1 and conserved in perpetuity. If conservation in-perpetuity is not feasible, permanent conservation and management of burrowing owl habitat shall be provided 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.**

3. Nesting Birds. MM BIO-7 provides mitigation measures for impacts to nesting birds. MM BIO-7 states that initial site disturbance shall be scheduled outside of the nesting season of January 15 to August 31. Please note that although many species typically nest between January 15 and August 31, nesting may commence before and/or after this timeframe. Moreover, page 5.1-55 of the DEIR states, “Mitigation Measure BIO-7 (Nesting Birds) requires initial site disturbance to occur outside of the nesting season, if feasible by the qualified biological monitor. If this work cannot be scheduled outside of the nesting

season, preconstruction surveys are required 7 days prior to the start of disturbance.” CDFW recommends that to avoid impacts to nesting birds preconstruction surveys be conducted by a qualified biologist **no more than three (3) days prior to the initiation of project activities**, *at the appropriate time of day/night, during appropriate weather conditions.*

4. San Bernardino Kangaroo Rat (SBKR) and other Special-status Small Mammals. The DEIR states that SBKR-occupied habitat is confined to the eastern portion of the project site. However, Figure 12 of the Biological Report depicts SBKR captures throughout the Project site, including in the “disturbed areas” within the western portion of the Project site. Additionally, trapping results indicate that habitat requirements for SBKR are present on-site, as inferred by the capture and/ or recapture of several individuals during all surveying years, including two lactating females (average four pups per den) and one pregnant female (estimated four unborn pups) and the DEIR estimates that up to 97 SBKR may occupy the Project site. The Biological Report states, “Although four SBKR have been captured in or adjacent to the jojoba field and disturbed areas on the western portion of the property, these areas do not include native habitat” and “In the absence of adjacent native habitat, it is unlikely that the jojoba field or disturbed areas could support or sustain SBKR.” However, the western portion of the property as evident on Figure 12, does support SBKR. Please consider that the distribution of SBKR appears to be driven by soils type rather than any other habitat conditions (USFWS 2009).

The DEIR recognizes the Project site contains 32.01 acres of United States Fish and Wildlife Service (USFWS)-designated critical habitat for SBKR. The USFWS defines critical habitat as specific geographic areas that contain features essential to the conservation of an endangered or threatened species and that may require special management and protection. CDFW recognizes the Project site’s designation as critical habitat for SBKR and argues that the site functions as such, as it is able to consistently sustain several individuals and is able to support reproducing individuals as well as other small mammal species of special concern. Despite the above-mentioned, the DEIR proposes a mitigation ratio of no less than 0.5:1 for the 32.01 acres of critical habitat due to the habitat degradation from offsite development unrelated to the Project and previous mitigation associated with that development. Please note that mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). Thus, CDFW recommends no less than 5:1 mitigation to appropriately mitigate for the loss of SBKR-occupied habitat.

During trapping surveys other special status small mammals were also trapped: Northwestern San Diego pocket mouse, Los Angeles pocket mouse, and San Diego desert woodrat. However, impacts to these species were not addressed in the DEIR. CEQA requires public agencies in California to analyze and disclose

*all* potential environmental impacts associated with a project and to mitigate any potentially significant impacts to the extent feasible.

5. Mitigation Measure BIO-10. MM BIO-10 provides mitigation measure for impacts to Riversidean Alluvial Fan Sage Scrub (RAFSS). CDFW appreciates the avoidance and conservation in perpetuity of 6.59 acres of RAFSS and requests that a copy of the Habitat Enhancement Plan (HEP) be provided to CDFW for review and comment prior to construction activities. As previously stated in CDFW's comment letter dated March 30, 2020, the HEP should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Habitat "enhancement" activities should include: removal of nonnative plant species, trash, and debris; and the installation of RAFSS species.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

## **Mitigation**

CDFW appreciates that compensatory mitigation for the loss of SBKR (MM BIO-8), RAFSS (MM BIO-10), California gnatcatcher (MM BIO-6), Santa Ana woolly star (SAWS) and slender-horned spineflower (MM BIO-11) habitat is provided in the DEIR. The DEIR proposes to purchase offsite mitigation credits to replace occupied habitat at no less than a 0.5:1 ratio from Lytle Creek Conservation Bank or Cajon Creek Conservation Bank. A ratio of 0.5:1 is proposed due to the habitat degradation from offsite development unrelated to the Project and previous mitigation associated with that development. However, even degraded or isolated patches of alluvial scrub vegetation still retain a distinct characteristic given their relation to flood-deposited alluvia and the species associated with this habitat type. In addition, RAFSS is a distinctive and rare plant community with some species being listed as rare as G1 S1.1. CDFW considers all associations with state ranks of S1-S3 to be highly imperiled. Further, the RAFSS habitat on the Project site is critical as refugia to numerous species of special concern (i.e. coastal whiptail, Los Angeles pocket mouse, Northwestern San Diego pocket mouse, San Diego black-tailed jackrabbit, and San Diego desert woodrat). Thus, CDFW considers the removal of up 32.01 acres of RAFSS to be a significant impact.

Considering this, CDFW recommends that the Project be mitigated at no less than a 5:1 ratio, or as required by a CESA ITP. Note that a higher ratio may be warranted if the proposed mitigation site is located far away from the project site (i.e., within a separate watershed) or is not occupied by or available to special status species.

CDFW requests that the City considers that Lytle Creek Conservation Bank is currently in the application stage, and thus not a CDFW-approved bank. CDFW recommends that prior to purchasing any mitigation bank credits, the applicant and/or City consult with CDFW to ensure the mitigation bank is CDFW-approved and will meet the needs of any applicable CDFW mitigation requirements.

### **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. CDFW recommends that a CESA Incidental Take Permit (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 CESA species (i.e. SBKR, SAWS, slender-horned spineflower), either through construction or over the life of the project. CESA ITPs are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. The California Fish and Game Code requires that CDFW comply with CEQA for issuance of a CESA ITP.

### **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](mailto: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.)

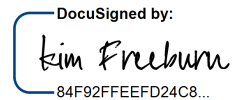
Kim Stater, Assistant Community Development Director  
City of Highland  
August 3, 2020  
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## CONCLUSION

CDFW requests that the City include in the FEIR the suggested revised mitigation measures and recommendations offered by CDFW to reduce project impacts.

CDFW appreciates the opportunity to comment on the DEIR for the Heatherglenn Planned Development Project (SCH No. 2019079098) and hopes our comments assist the City of Highland 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](mailto: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](http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)

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