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Governor's Office of Planning & Research

OCT 22 2019

STATE CLEARINGHOUSE

October 22, 2019

Mr. Andy Tran
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
atran@newportbeachca.gov

Subject: Comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Superior Avenue Pedestrian and Bicycle Bridge Parking Lot Project, Newport Beach, CA (SCH# 2019099074)

Dear Mr. Tran:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Intent to Adopt a Mitigated Negative Declaration (MND) for the Superior Avenue Pedestrian and Bicycle Bridge Parking Lot, dated September 2019. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning (NCCP) program. The City of Newport Beach (City) is a participating landowner under the Central/Coastal Orange County NCCP/Habitat Conservation Plan.

The project will construct a pedestrian and bicycle bridge over Superior Avenue, connecting Sunset Ridge Park to a new asphalt parking lot located at the northeast corner of West Coast Highway, as well as create a new larger parking lot and a fenced dog park on 3.4 acres. Habitats observed on site include *Artemisia californica*-*Eriogonum fasciculatum* shrubland (0.01 acre), ornamental landscaping (1.19 acres), disturbed/ruderal (1.16 acres), and developed area (1.09 acres). Protocol surveys for coastal California gnatcatcher (*Poliioptila californica californica*; Endangered Species Act- listed threatened) were conducted.

We offer the following comments and recommendations to assist the City in avoiding or minimizing potential project impacts on biological resources.

1. With regard to burrowing owl (*Athene cunicularia*; California Species of Special Concern): The MND states that, "[d]ue to the level of disturbance in the area of the

proposed [p]roject and the high level of human activity directly adjacent to the *Artemisia californica-Eriogonum fasciculatum* shrubland, the sensitive wildlife species with a potential to occur are not expected on the proposed project footprint; therefore, no project impacts to the species are expected.” (page 57) The Department disagrees that proximity to human activity is a valid rationale for not conducting burrowing owl surveys. Tolerance to disturbance and/or human activities is highly variable amongst individual and pairs of burrowing owls. Some individuals and/or pairs are highly adapted to heavily altered habitats such as golf courses, airports, business complexes, and athletic fields (e.g., Sunset Ridge Park), particularly if there is foraging habitat in proximity (Gervais et al 2008). We recommend that the Biological Technical Report be amended to include protocol surveys as described in the Department’s 2012 Staff Report on Burrowing Owl Mitigation.

2. The Biological Technical Report associated with the MND (Chambers Group 2019) describes the disturbed/ruderal habitat within the project area as, “devoid of vegetation due to recent disturbances,” (page 15). The description of the native plants that are found within the disturbed/ruderal polygon, in addition to the polygon’s placement within the project area (Biological Technical Report; Figure 4: Superior Avenue Pedestrian and Bicycle Bridge and Parking Lot Project Vegetation Communities), the Department requests that the MND discuss in greater detail the nature of the “recent disturbance” which occurred in this area; we also request confirmation that the polygon in question was not mitigation for any previous project impacts.

We appreciate the opportunity to comment on the draft MND for this project and to assist the City in further minimizing and mitigating project impacts to biological resources. The Department requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of the forthcoming hearing date for the project (CEQA Guidelines; §15073(e)). If you have any questions or comments regarding this letter, please contact Jennifer Turner at (858-467-2717), or via email at jennifer.turner@wildlife.ca.gov.

Sincerely,



Gail K. Sevens
Environmental Program Manager

cc: Christine Medak (U.S. Fish and Wildlife Service)
Scott Morgan (State Clearinghouse)

References

CDFG (California Department of Fish and Game). 2012. Staff Report on Burrowing Owl Mitigation. Sacramento, California, USA.

Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.