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STATE CLEARINGHOUSE

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Subject: Comments on the Draft Environmental Impact Report for The Commons, SCH #2019110341, Los Angeles County

Dear Ms. Davis:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Draft Environmental Impact Report (DEIR) for The Commons (Project). The Project's supporting documentation includes *Biological Resources Assessment, The Commons Project, Cities of Claremont and Upland, Los Angeles and San Bernardino Counties, LSA Associates, Inc., March 2020* (BRA). 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's 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 & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game 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 & Game Code, § 2050 et seq.), or state-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

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Project Description and Summary

Objective: The Project would result in the development of 27 single-family homes, 20 townhomes, 15 second-story residential flats, and 5,000 square feet of retail space below the residential flats on a 6.5-acre site in the City of Claremont (in the County of Los Angeles). The development will have a 150-foot-wide avigation easement, which will be used as active and passive open space for the Project. There are three types of plans that will be built on site: single-family detached units, 2, 3, and 4-bedroom townhomes, and single-story flats. The site will be accessed by two driveways on Foothill Boulevard and one on Monte Vista Avenue. As a note, since the release of the NOP, the applicant has separately applied to the City of Upland for approval of a development project on the 3.0 acres it owns in the City of Upland pursuant to Senate Bill (SB) 35. The applicant represents that the currently proposed development within Upland will either be approved pursuant to SB 35, without CEQA review, or it will not be constructed. For this reason, and for purposes of this comment letter, the Project only comprises the 6.5 acres of land within the City of Claremont.

Location: The Project site is on approximately 6.5 acres located at the northwest corner of Foothill Boulevard and Monte Vista Avenue in the City of Claremont. The City of Claremont is bounded by unincorporated land in Los Angeles County to the north, the Cities of Pomona and Montclair to the south, the City of Upland to the east, and the City of La Verne and County of Los Angeles unincorporated land to the west. The Project site occupies Assessor's Parcel Numbers (APNs) 8307-003-066 (Los Angeles County). The parcel is primarily undeveloped apart from an Armstrong Garden Center. The nursery will remain and will become the adjacent neighboring property to the west of the planned residential/mixed-use development portion of the Project in Claremont. The nursery occupies 1.42 acres west of the 6.5-acre Project site and is part of proposed Tentative Tract Map 82135 being processed for the Project.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

Comment #1: Vegetation Community Classification

Issue #1: As stated in the DEIR, disking and grading will be required to accommodate the development. Grading a sensitive vegetation community is considered a permanent impact.

Issue #2: Section 4.2.1.1 of the DEIR states, "Vegetation occupying the majority of the Project site is best described as Riversidean Alluvial Fan Sage Scrub (RAFSS) (R.F. Holland 1986)". The Project does not utilize the Manual of California Vegetation (MCV) (Sawyer, et al., 2008) to identify vegetation associations and alliances on site.

Specific impact: CDFW considers grading a vegetation community a permanent impact unless mitigation is proposed that includes specific criteria that ensure the exact vegetation community is recreated, with consideration for the temporal loss of the habitat as well as defined success

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criteria and weed management. Revegetation or acquisition/preservation would be a mitigation measure proposed to offset impacts to a CDFW sensitive vegetation community.

Why impact would occur: CDFW considers vegetation communities, alliances, and associations with a statewide ranking of S1, S2, S3 and some S4 as sensitive and declining at the local and regional level (Sawyer et al. 2008). An S3 ranking indicates there are 21 to 80 occurrences of this community in existence in California, S2 has 6 to 20 occurrences, and S1 has less than 6 occurrences. The Project may have direct or indirect effects to these sensitive vegetation communities.

Any revegetation effort should represent the actual vegetation community being impacted. Vegetation communities are named using alliances or associations. An example is California Buckwheat Scrub Alliance. The Manual of California Vegetation (Sawyer, et al., 2008) separates the diagnostic species for the California Buckwheat Scrub Alliance into trans and cis montane stands. If some type of restoration were to occur that involved revegetation, CDFW is concerned spreading a generic seed mix that is not truly representative of the unique plant community alliances present will impact the existing habitat, introduce species that don't occur there, and ultimately change the structure of the vegetation community. Additionally, plants that aren't found in an area may not be suited to survive there, raising the rate of failure.

Project implementation includes grading, vegetation clearing, road construction, utilities construction, road maintenance, and other activities that may result in direct mortality, population declines, or local extirpation of sensitive vegetation communities. If sensitive areas are not correctly identified, CDFW is unable to accurately determine proper mitigation measures for that vegetation community.

Evidence impact would be significant: The DEIR determined that Project impacts are less than significant, and no mitigation measures are required for the on-site RAFSS. According to the DEIR, the habitat is highly degraded, small in size (3.01 acres), isolated from other RAFSS areas by existing residential, industrial, commercial, and roadway uses, and no longer functions as part of a fluvial system. CDFW disagrees with the conclusions made within the DEIR and believes that this sensitive plant alliance is vulnerable in the state for this very reason. Inadequate avoidance, minimization, and mitigation measures for impacts to potentially sensitive communities on site will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect. This, 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 United States Fish and Wildlife Service (USFWS). Impacts to all sensitive communities should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Using non-conforming modifications to MCV alliances may misidentify rare or sensitive vegetation communities, resulting in impacts to the species.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Vegetation Communities that do not conform to existing MCV-defined alliances might be considered rare. All data and proposed modification to existing or new alliances should be submitted to CDFW for scientific review. If a project's dominant vegetation does not fit into one of the non-native alliances or provisional alliances, then a description (scientific, including information used to determine membership for this new alliance) should be

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included to defend this conclusion. This process is imperative to maintain a rigorous scientific vetting process and defensible classification system.

Mitigation Measure #2: CDFW recommends that updated botanical surveys utilizing MCV-defined alliances be conducted to inform impact assessments, avoidance, minimization, and mitigation measures in the DEIR. Focused surveys for sensitive/rare plants on-site should be disclosed in the CEQA document. Based on the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018), a qualified biologist should “conduct botanical surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting.” CEQA documentation should provide a thorough discussion on the presence/absence of sensitive plants on-site and identify measures to protect sensitive plant communities from Project-related direct and indirect impacts.

Recommendation #3: Please note, in 2007, the State Legislature required CDFW to develop and maintain a vegetation mapping standard for the state (Fish & Game Code, § 1940). This standard complies with the National Vegetation Classification System, which utilizes alliance- and association-based classification of unique vegetation stands. CDFW utilizes vegetation descriptions found in the Manual of California Vegetation (MCV), found online at <http://vegetation.cnps.org/>. To determine the rarity ranking and mitigation ratios of vegetation communities on the Project site, the MCV alliance/association community names should be provided as CDFW only tracks rare natural communities using this classification system.

Comment #2: Impacts to Streams

Issue #1: The BRA states that the Project site contains, “Two remnant drainage features associated with two existing concrete box culverts under Foothill Boulevard... Currently, these two drainage features show no upstream connectivity to natural water conveyance features or systems.”

Issue #2: The *Drainage Report for The Commons at NW Corner Foothill Blvd & Monte Vista Ave. City of Claremont and City of Upland. Andreasen Engineering, Inc. October 16, 2018* states post developed site conditions will consist of, “off-site drainage will enter catch basins on the north property line conveyed in pipes across the subject development and connected to existing box culverts. On site drainage will enter a series of catch basins and storm drainpipes and discharge into a CONTECH underground chamber network.”

CDFW has broad regulatory authority over jurisdictional waters of the state and is concerned that the DEIR appears to conclude that because an ephemeral drainage on the Project site does not appear to characterize jurisdictional waters, that grading and construction activities within the drainage will not impact any jurisdictional waters and associated biological resources within jurisdictional waters of the state. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from, the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that “any river, stream or lake” includes those that are episodic (i.e., those that are dry for periods of

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time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes and water courses with a subsurface flow. It may also apply for work undertaken within the flood plain of a body of water.

Specific impacts: The Project may result in the loss of ephemeral streams and associated watershed function and biological diversity. Grading and construction activities will likely alter the topography, and thus the hydrology, of the Project site.

Why impacts would occur: Ground disturbing activities from grading, filling, and water diversions would physically remove or otherwise alter existing streams or their function and associated habitat on the Project site. Downstream streams and associated biological resources beyond the Project development footprint may also be impacted by Project related releases of sediment and altered watershed effects resulting from Project activities.

Evidence impacts would be significant: The Project may substantially adversely affect the existing stream pattern on the Project site through the alteration or diversion of a stream, which absent specific mitigation, could result in substantial erosion or siltation on site or off site of the Project. In addition, the presence of vegetation such as scalebroom (*Lepidospartum squamatum*), sapphire woollystar (*Eriastrum sapphirinum*), and chaparral yucca (*Hesperoyucca whipplei*) indicates the presence of an ephemeral source of water. The areas around the Project site contains ephemeral drainages and these species are found primarily on gravelly alluvial fans or upland slopes (Clarke, O.F. et al. 2007). Alluvial fans are deposits of water-transported material, indicating that surface water flows within the Project site. Based on the foregoing, Project impacts may substantially adversely affect the existing stream pattern and associated habitat of the Project site.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: The Project as described supports CDFW jurisdictional waters of the state and should be designed to avoid impacts to this resource.

Mitigation Measure #2: If avoidance is not feasible the Project applicant (or “entity”) must provide written notification to CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSA) with the applicant is required prior to conducting the proposed activities. A notification package for a LSA may be obtained by accessing CDFW’s web site at www.wildlife.ca.gov/habcon/1600.

CDFW’s issuance of an LSA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document of the Lead Agency for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA.

Mitigation Measure #3: Any LSA Agreement issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project. The LSA may include further erosion and pollution control measures. To compensate for any on-site and off-site impacts to riparian resources, additional mitigation conditioned in any LSA may include the

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following: avoidance of resources, on-site or off-site creation, enhancement or restoration, and/or protection and management of mitigation lands in perpetuity.

Mitigation Measure #4: CDFW recommends the Project proponent actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into ephemeral stream beds during Project activities. BMPs should be monitored and repaired, if necessary, to ensure maximum erosion, sediment, and pollution control. The Project proponent shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within stream areas. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other projects without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.

Comment #3: Impacts to nesting birds

Issue: While CDFW recognizes mitigation measure 4.2.5.4 of the DEIR is near sufficient for mitigation for nesting birds, CDFW is concerned with potential for special status bird species to be on the Project site.

Specific impacts: Construction during the breeding season of nesting birds could result in the incidental loss of fertile eggs or nestlings or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. The Project could also lead to the loss of foraging habitat for sensitive bird species.

Why impact would occur: Impacts to nesting birds could result from ground disturbing activities. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable foraging habitats. Construction during the breeding season of nesting birds could result in the incidental loss of breeding success or otherwise lead to nest abandonment.

Evidence impact would be significant: The loss of occupied habitat or reductions in the number of rare bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Furthermore, nests of all native bird species are protected under state laws and regulations, including Fish and Game Code sections 3503 and 3503.5.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To protect nesting birds that may occur on site or adjacent to the Project boundary, CDFW recommends that no construction should occur from February 15 through August 31 (January 1 for raptors).

Mitigation Measure #2: If Project activities cannot be voided from February 15 through August 31 a qualified biologist should complete a survey for nesting bird activity within a 500-foot radius of the construction site. The nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. CDFW recommends the

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Lead Agency require surveys be conducted by a qualified biologist no more than 14 days prior to the beginning of any Project-related activity likely to impact raptors and migratory songbirds, for the entire Project site. If Project activities are delayed or suspended for more than 14 days during the breeding season, repeat the surveys. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests and 0.5 mile around active listed bird nests.

These buffers should be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Buffers should be increased if needed to protect active nests.

Comment #4: Impacts to Candidate Endangered Species – Crotch’s Bumble Bee

Issue: The DEIR states that the site provides low to moderately suitable habitat for several special status species, including Crotch’s bumble bee (*Bombus crotchii*).

Specific Impact: Project ground disturbing activities such as grading and grubbing may result in crushing or filling of active bee colonies, causing the death or injury of adults, eggs, and larvae. The Project may remove bee habitat by eliminating native vegetation that may support essential foraging habitat.

Why Impact would occur: Impacts to Crotch’s bumble bee could result from ground disturbing activities. Project disturbance activities could result in mortality or injury to hibernating bees, as well as temporary or long-term loss of suitable foraging habitats. Construction during the breeding season of bees could result in the incidental loss of breeding success or otherwise lead to nest abandonment.

Evidence Impact would be significant: On June 12, 2019, CDFW accepted a petition for Crotch’s bumble bee as a candidate species for listing under CESA. As a CESA candidate, the species is granted full protection of a threatened or endangered species under CESA. The Project’s potential to substantially reduce and adversely modify habitat for Crotch’s bumble bee, reduce and potentially seriously impair the viability of populations of Crotch’s bumble bee, and reduce the number and range of the species while taking into account the likelihood that special status species on adjacent and nearby natural lands rely upon the habitat that occurs on the proposed Project site.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure: Due to potentially suitable habitat within the Project site, within one year prior to vegetation removal and/or grading, a qualified entomologist familiar with the species behavior and life history should conduct surveys to determine the presence/absence of Crotch’s bumble bee. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). Survey results including negative findings should be submitted to CDFW prior to initiation of Project activities. If “take” or adverse impacts to Crotch’s bumble bee cannot be avoided either during Project activities or over the life of the Project, please be advised that a CESA permit must be obtained (pursuant to Fish & Game Code, § 2080 et seq.).

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Comment #5: Impacts to Special-Status Plant Species

Issue #1: The BRA identifies “marginally suitable habitat” exists on the Project site for Nevin’s barberry (*Berberis nevinii*), a CESA and Federal Endangered Species Act (ESA) listed endangered species. This plant species blooms from March to June but the field survey was conducted in October.

Issue #2: The BRA also identifies “low to moderate suitable habitat” for the mesa horkelia (*Horkelia cuneate* var. *puberula*), a species that is seriously threatened in California (over 80% of occurrences threatened and a high degree and immediacy of threat). This plant species blooms from February to July but the field survey was conducted in October.

Specific impact: The Project may cause immediate species injury or death, habitat fragmentation, alteration of soil chemical and physical makeup, increased competition with exotic invasive weeds, and reduced photosynthesis and reproductive capacity. This would result in native plant population declines or local extirpation of special status plant species. The effects of these impacts would be permanent or occur over several years.

CDFW considers plant communities, alliances, and associations with a statewide ranking of S1, S2, S3 and S4 as sensitive and declining at the local and regional level (Sawyer et al. 2008). An S3 ranking indicates there are 21 to 80 occurrences of this community in existence in California, S2 has 6 to 20 occurrences, and S1 has less than 6 occurrences.

Why impact would occur: Project implementation includes grading, vegetation clearing, road construction, road maintenance, and other activities that may result in direct mortality, population declines, or local extirpation of sensitive plant species.

Evidence impact would be significant: Impacts to special status plant species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Inadequate avoidance, minimization, and mitigation measures for impacts to these sensitive plant species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative 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 United States Fish and Wildlife Service (USFWS).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW recommends conducting focused surveys for sensitive/rare plants on-site and disclosing the results in the CEQA document. Based on the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018), a qualified biologist should “conduct botanical surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting.” The final CEQA documentation should provide a thorough discussion on the presence/absence of sensitive plants on-site and identify measures to protect sensitive plant communities from Project-related direct and indirect impacts.

Mitigation Measure #2: CDFW recommends avoiding any sensitive plant species found on the Project. If avoidance is not feasible, mitigating at a ratio of no less than 5:1 for impacts to imperiled species and 3:1 for impacts to vulnerable species. This ratio is for the acreage and the

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individual plants that comprise each unique community. All revegetation/restoration areas that will serve as mitigation should include preparation of a restoration plan, to be approved by USFWS and CDFW prior to any ground disturbance. The restoration plan should include restoration and monitoring methods; annual success criteria; contingency actions should success criteria not be met; long-term management and maintenance goals; and, a funding mechanism to assure for in perpetuity management and reporting. Areas proposed as mitigation should have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands (AB 1094; Government Code, §§ 65965-65968).

Recommendation #3: Please see Recommendation #3 in Comment #1

Comment #6: Impacts to California Species of Special Concern

Issue #1: Two reptile species that are a California Species of Special Concern, California glossy snake (*Arizona elegans occidentalis*) and coast horned lizard (*Phrynosoma blainillii*), are identified in the DEIR with a low to moderate potential to occur on site.

Issue #2: Two mammal species that are California Species of Special Concern, Northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*) and San Diego desert woodrat (*Neotoma lepida intermedia*), are identified in the DEIR with a low to moderate potential to occur on site.

Specific impact: Project ground disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, and hatchlings. The Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

Why impact would occur: Project implementation includes grading, vegetation clearing, road construction, road maintenance, and other activities that may result in direct mortality, population declines, or local extirpation of California Species of Special Concern.

Evidence impact would be significant: CEQA provides protection not only for state and federally listed species, but for any species including but not limited to California Species of Special Concern which can be shown to meet the criteria for State listing. These Species of Special Concern meet the CEQA definition of rare, threatened or endangered species (CEQA Guidelines, § 15065). Take of Species of Special Concern could require a mandatory finding of significance by the Lead Agency, (CEQA Guidelines, § 15065).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Due to potentially suitable habitat within the Project site, prior to vegetation removal and/or grading, a qualified biologist familiar with the reptile species behavior and life history should conduct specialized surveys to determine the presence/absence of Species of Special Concern. Surveys should be conducted during active season when the reptiles are most likely to be detected. California glossy snakes are nocturnal and generally active from late February to November (depending on local weather conditions), reaching peak activity in May. Coast horned lizard are active February to November and are diurnal in the spring and crepuscular in summer and fall (Thomson, R.C. et al. 2016). Survey results, including negative findings, should be submitted to CDFW two weeks prior to initiation of Project activities.

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Mitigation Measure #2: Due to potentially suitable habitat within the Project site, prior to vegetation removal and/or grading, a qualified biologist familiar with the mammal species behavior and life history should conduct specialized surveys to determine the presence/absence of Species of Special Concern. The Northwestern San Diego pocket mouse is nocturnal and active year-round although surface activity is reduced during cold spells (Zeiner, D.C. et al., 1988-1990). The San Diego desert woodrat is active yearlong, is mainly nocturnal, but also crepuscular and occasionally diurnal (Stones and Hayward 1968, Miller and Stebbins 1964). Survey results, including negative findings, should be submitted to CDFW two weeks prior to initiation of Project activities.

Mitigation Measure #3: To further avoid direct mortality, CDFW recommends that a qualified biological monitor approved by CDFW be on-site during ground and habitat disturbing activities to move out of harm's way special status species that would be injured or killed by grubbing or Project-related grading activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the Project clearly identify that the designated entity should obtain all appropriate state and federal permits.

Comment #7: Impacts to Burrowing Owl (*Athene cunicularia*)

Issue: The BRA states, "Trees, shrubs, and other vegetation on site may provide nest sites for smaller birds, and burrowing owls may nest in ground squirrel burrows, pipes, or similar features."

Specific impact: Potential for burrowing owl habitat on site indicates that Project activities may result in direct and/or indirect burrowing owl mortality or injury; the disruption of natural burrowing owl breeding behavior; and loss of breeding, wintering and foraging habitat for the species. Project impacts would contribute to statewide population declines for burrowing owl.

Why impact would occur: Burrowing owls have been known to use highly degraded and marginal habitat where existing burrows or stem pipes are available. Nest and roost burrows of the burrowing owl are most commonly dug by ground squirrels, but they have also been known to use a variety of other species dens or holes (Gervais, J.A., Rosenberg, D.K., & Comrack, L.A., 2008). Impacts to burrowing owl could result from vegetation clearing and other ground disturbing activities. Project disturbance activities may result in crushing or filling of active owl burrows, causing the death or injury of adults, eggs, and young. In addition, the Project will remove burrowing owl foraging habitat by eliminating native vegetation that supports essential rodent, insect, and reptile that are prey for burrowing owl. Rodent control activities could result in direct and secondary poisoning of burrowing owl ingesting treated rodents.

Evidence impact would be significant: Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86 and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." Without appropriate take avoidance surveys prior to Project operations including, but not limited to, ground and vegetation disturbing activities and rodent control activities, adverse impacts to burrowing owl may occur because species presence/absence has not been verified. In addition, burrowing owl qualifies for enhanced

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consideration afforded to species under CEQA, which can be shown to meet the criteria for listing as endangered, rare or threatened (CEQA Guidelines, § 15380(d)).

Insufficient survey efforts for burrowing owl may conclude false negative results, which would not require avoidance and mitigation measure implementation. Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative 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 United States Fish and Wildlife Service (USFWS).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To reduce impacts to burrowing owl, CDFW recommends that the Project adhere to CDFW's March 7, 2012, *Staff Report on Burrowing Owl Mitigation*. All survey efforts should be conducted prior to any project activities that could result in habitat disturbance to soil, vegetation or other sheltering habitat for burrowing owl. In California, the burrowing owl breeding season extends from 1 February to 31 August with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between 15 February and 15 April, and 2) a minimum of three survey visits, at least three weeks apart, between 15 April and 15 July, with at least one visit after 15 June.

Mitigation Measure #2: Permanent impacts to occupied owl burrows and adjacent foraging habitat should be offset by setting aside replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate non-wasting endowment to provide for the long-term management of mitigation lands. CDFW recommends that the City require a burrowing owl mitigation plan be submitted to CDFW for review and comment prior to Project implementation.

Mitigation Measure #3: For proposed preservation and/or restoration, the final environmental document should include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include, but are not limited to, restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be provided for the long-term monitoring and management of mitigation lands. CDFW recommends that mitigation occur at a state-approved bank or via an entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012), which amended Government Code sections 65965-65968. Under Government Code section 65967(c), the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

Mitigation Measure #4: Project use of rodenticides that could result in direct or secondary poisoning to burrowing owl should be avoided.

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Comment #8: California Senate Bill (SB) 35

Issue: The DEIR states, “However, since the release of the NOP, the applicant has separately applied to the City of Upland for approval of a development project on the 3.0 acres it owns in the City of Upland pursuant to Senate Bill (SB) 35. Pursuant to Government Code Section 65913.4, if that development project is within the scope of SB 35, it is not subject to CEQA review. The applicant represents that the currently proposed development within Upland will either be approved pursuant to SB 35, without CEQA review, or it will not be constructed. For this reason, and for purposes of this EIR, the Project comprises the 6.5 acres of land within Claremont, together with off-site improvements necessary to provide access and utilities to the Project. The potential development of the 3.0 acres of property owned by the applicant, which is located on the northwest corner of Foothill Boulevard and Monte Vista Avenue, will be treated as an adjacent cumulative project.”

Specific impact: SB35 streamlines development if there is a housing shortage. There are certain requirements, one of these being multi-unit housing and not single-family homes. A preliminary site plan for the Project indicates approximately 27 single-family detached homes, 68 townhomes, and 5,000 square feet of retail with 15 flats above the retail spaces and related parking in the City of Claremont and 48 townhomes in the City of Upland. It is unclear if the addition of 27 single-family detached homes within the proposed development falls within the requirements of SB35.

Why impact would occur: If the 3.0 acres in the City of Upland will be developed as an adjacent cumulative project, cumulative impacts expected to adversely affect biological resources should be discussed in the EIR with specific measures to offset such impacts.

Evidence impact would be significant: Cumulative impacts may result due to the potential approval of proposed development without CEQA review within Upland in areas that may include sensitive species and natural habitat.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure: Include a cumulative effects analysis that includes this 3.0-acre area in the City of Upland, as described under CEQA Guidelines section 15130 in the final environmental document. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats. In addition, specific measures to offset and mitigate such impacts should be included.

Filing Fees

The Project, as proposed, could 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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

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Conclusion

We appreciate the opportunity to comment on the Project to assist the City in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project. Questions regarding this letter and further coordination on these issues should be directed to Felicia Silva, Environmental Scientist, at Felicia.Silva@wildlife.ca.gov or (562) 430-0098.

Sincerely,

DocuSigned by:



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Erinn Wilson

Environmental Program Manager I

ec: CDFW

Victoria Tang – Los Alamitos
Felicia Silva – Los Alamitos
Andrew Valand – Los Alamitos
Frederic Reiman – Los Alamitos
Malinda Santonil – Los Alamitos
Susan Howell – San Diego
CEQA Program Coordinator - Sacramento

State Clearinghouse

References:

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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Biological Resources			
	Mitigation Measure	Timing	Responsible Party
MM-BIO-1- Vegetation Community Classification	Vegetation Communities that do not conform to existing MCV-defined alliances might be considered rare. All data and proposed modification to existing or new alliances shall be submitted to CDFW for scientific review. If a project's dominant vegetation does not fit into one of the non-native alliances or provisional alliances, then a description (scientific, including information used to determine membership for this new alliance) shall be included to defend this conclusion. This process is imperative to maintain a rigorous scientific vetting process and defensible classification system.	Prior to Construction	City of Claremont
MM-BIO-2- Vegetation Community Classification	Updated botanical surveys utilizing MCV-defined alliances shall be conducted to inform impact assessments, avoidance, minimization, and mitigation measures in the DEIR. Focused surveys for sensitive/rare plants on-site shall be disclosed in the CEQA document. Based on the <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</i> (CDFW, 2018), a qualified biologist shall "conduct botanical surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting." CEQA documentation shall provide a thorough discussion on the presence/absence of sensitive plants on-site and identify measures to protect	Prior to Construction	City of Claremont

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	sensitive plant communities from Project-related direct and indirect impacts.		
MM-BIO-3-Impacts to ephemeral streams	The Project as described supports CDFW jurisdictional waters of the state and shall be designed to avoid impacts to this resource. shall	Prior to Construction	City of Claremont
MM-BIO-4-Impacts to ephemeral streams	<p>If avoidance is not feasible the Project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 <i>et seq.</i> of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSA) with the applicant is required prior to conducting the proposed activities. A notification package for a LSA may be obtained by accessing CDFW's web site at www.wildlife.ca.gov/habcon/1600.</p> <p>CDFW's issuance of an LSA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document of the Lead Agency for the Project. To minimize additional requirements by CDFW pursuant to section 1600 <i>et seq.</i> and/or under CEQA, the CEQA document shall fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA.</p>	Prior to Construction	City of Claremont
MM-BIO-5-Impacts to ephemeral streams	Any LSA Agreement issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project. The LSA may include further erosion and pollution control measures. To compensate for any on-site and off-site impacts to riparian resources, additional mitigation conditioned in any LSA may include the following: avoidance of resources, on-site or off-site creation,	Prior to Construction	City of Claremont

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	enhancement or restoration, and/or protection and management of mitigation lands in perpetuity.		
MM-BIO-6-Impacts to ephemeral streams	The Project proponent shall actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into ephemeral stream beds during Project activities. BMPs shall be monitored and repaired, if necessary, to ensure maximum erosion, sediment, and pollution control. The Project proponent shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within stream areas. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other projects without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.	Prior to and During Construction	City of Claremont
MM-BIO-7-Impacts to nesting birds	To protect nesting birds that may occur on site or adjacent to the Project boundary, no construction shall occur from February 15 through August 31 (January 1 for raptors).	Prior to and During Construction	City of Claremont
MM-BIO-8-Impacts to nesting birds	If Project activities cannot be voided from February 15 through August 31, a qualified biologist shall complete a survey for nesting bird activity within a 500-foot radius of the construction site. The nesting bird surveys shall be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. The Lead Agency shall require surveys be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project-related activity likely to impact raptors and	Prior to and During Construction	City of Claremont

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	<p>migratory songbirds, for the entire Project site. If Project activities are delayed or suspended for more than 7 days during the breeding season, repeat the surveys. If nesting raptors and migratory songbirds are identified, the following minimum no-disturbance buffers be implemented: 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests and 0.5 mile around active listed bird nests.</p> <p>These buffers shall be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.</p>		
MM-BIO-9- Impacts to Candidate Endangered Species – Crotch’s Bumble Bee	<p>Due to potentially suitable habitat within the Project site, within one year prior to vegetation removal and/or grading, a qualified entomologist familiar with the species behavior and life history shall conduct surveys to determine the presence/absence of Crotch’s bumble bee. Surveys shall be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). Survey results including negative findings shall be submitted to CDFW prior to initiation of Project activities. If “take” or adverse impacts to Crotch’s bumble bee cannot be avoided either during Project activities or over the life of the Project, please be advised that a CESA permit must be obtained (pursuant to Fish & Game Code, § 2080 et seq.).</p>	Prior to Construction	City of Claremont
MM-BIO-10- Impacts to Special Status Plant Species	<p>Focused surveys shall be conducted for sensitive/rare plants on-site and disclosing the results in the CEQA document. Based on the <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</i> (CDFW,</p>	Prior to Construction	City of Claremont

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	2018), a qualified biologist shall “conduct botanical surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting.” The final CEQA documentation shall provide a thorough discussion on the presence/absence of sensitive plants on-site and identify measures to protect sensitive plant communities from Project-related direct and indirect impacts.		
MM-BIO-11- Impacts to Special Status Plant Species	CDFW recommends avoiding any sensitive plant species found on the Project. If avoidance is not feasible, mitigating at a ratio of no less than 5:1 for impacts to imperiled species and 3:1 for impacts to vulnerable species. This ratio is for the acreage and the individual plants that comprise each unique community. All revegetation/restoration areas that will serve as mitigation shall include preparation of a restoration plan, to be approved by USFWS and CDFW prior to any ground disturbance. The restoration plan shall include restoration and monitoring methods; annual success criteria; contingency actions should success criteria not be met; long-term management and maintenance goals; and, a funding mechanism to assure for in perpetuity management and reporting. Areas proposed as mitigation shall have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands (AB 1094; Government Code, §§ 65965-65968).	Prior to Construction	City of Claremont
MM-BIO-12- Impacts to California Species of Special Concern	Due to potentially suitable habitat within the Project site, prior to vegetation removal and/or grading, a qualified biologist familiar with the reptile species behavior and life history shall conduct specialized surveys to determine the presence/absence of Species of Special Concern. Surveys shall be conducted during active season when the reptiles are most likely to be detected. California	Prior to Construction	City of Claremont

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	glossy snakes are nocturnal and generally active from late February to November (depending on local weather conditions), reaching peak activity in May. Coast horned lizard are active February to November and are diurnal in the spring and crepuscular in summer and fall (Thomson, R.C. et al. 2016). Survey results, including negative findings, shall be submitted to CDFW two weeks prior to initiation of Project activities.		
MM-BIO-13- Impacts to California Species of Special Concern	Due to potentially suitable habitat within the Project site, prior to vegetation removal and/or grading, a qualified biologist familiar with the mammal species behavior and life history shall conduct specialized surveys to determine the presence/absence of Species of Special Concern. The Northwestern San Diego pocket mouse is nocturnal and active year-round although surface activity is reduced during cold spells (Zeiner, D.C. et al., 1988-1990). The San Diego desert woodrat is active yearlong, is mainly nocturnal, but also crepuscular and occasionally diurnal (Stones and Hayward 1968, Miller and Stebbins 1964). Survey results, including negative findings, shall be submitted to CDFW two weeks prior to initiation of Project activities.	Prior to Construction	City of Claremont
MM-BIO-14- Impacts to California Species of Special Concern	To further avoid direct mortality, a qualified biological monitor approved by CDFW shall be on-site during ground and habitat disturbing activities to move out of harm's way special status species that would be injured or killed by grubbing or Project-related grading activities. It shall be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the Project clearly identify that the	Prior to Construction	City of Claremont

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	designated entity shall obtain all appropriate state and federal permits.		
MM-BIO-15-Impacts to Burrowing Owls	The Project shall adhere to CDFW's March 7, 2012, <i>Staff Report on Burrowing Owl Mitigation</i> as referenced in the MND. All survey efforts shall be conducted prior to any project activities that could result in habitat disturbance to soil, vegetation or other sheltering habitat for burrowing owl. In California, the burrowing owl breeding season extends from 1 February to 31 August with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between 15 February and 15 April, and 2) a minimum of three survey visits, at least three weeks apart, between 15 April and 15 July, with at least one visit after 15 June.	Prior to Construction	City of Claremont
MM-BIO-16-Impacts to Burrowing Owls	Permanent impacts to occupied owl burrows and adjacent foraging habitat shall be offset by setting aside replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which shall include an appropriate non-wasting endowment to provide for the long-term management of mitigation lands. The City shall require a burrowing owl mitigation plan be submitted to CDFW for review and comment prior to Project implementation.	Prior to Construction	City of Claremont
MM-BIO-17-Impacts to Burrowing Owls	For proposed preservation and/or restoration, the final environmental document shall include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. The objective shall be to offset the project-induced qualitative and quantitative losses of wildlife habitat values. Issues that shall be addressed include, but are not limited to, restrictions on access, proposed land dedications, monitoring and management programs, control of illegal	Prior to Construction	City of Claremont

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	<p>dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment shall be provided for the long-term monitoring and management of mitigation lands. Mitigation shall occur at a state-approved bank or via an entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012), which amended Government Code sections 65965-65968. Under Government Code section 65967(c), the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.</p>		
MM-BIO-18-Impacts to Burrowing Owls	<p>Project use of rodenticides that could result in direct or secondary poisoning to burrowing owl shall be avoided.</p>	Prior to Construction	City of Claremont
MM-BIO-19-Cumulative Impacts	<p>Include a cumulative effects analysis that includes this 3.0-acre area in the City of Upland, as described under CEQA Guidelines section 15130 in the final environmental document. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats. In addition, specific measures to offset and mitigate such impacts shall be included.</p>	Prior to Construction	City of Claremont