



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

February 18, 2021

February 18, 2021
Sent via email

STATE CLEARINGHOUSE

Mr. Mark Tomich
Development Services Manager
City of Colton
659 North La Cadena Drive
Colton, CA 92324

Subject: Draft Environmental Impact Report
Barton Road Logistics Center Project
State Clearinghouse No. 2020029049

Dear Mr. Tomich:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from City of Colton (City; Lead Agency) for the Barton Road Logistics Center Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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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 Project proposes redevelopment of two warehouses totaling 960,840 square feet on 45.52 acres in the City of Colton within San Bernardino County, west of Interstate 215 (1-215) and east of La Cadena Drive; Latitude 34.03113889 N and Longitude - 117.33166667 W. Total Project site is 54.82 acres.

Project activities include: demolition of four industrial buildings and an office building totaling 659,435 square feet and development of two industrial warehouses totaling 960,840 square feet. Additionally, the Project will consolidate 12 parcels into 2 separate parcels and allow up to 50 ft in building height versus the current 40 ft maximum height.

COMMENTS AND RECOMMENDATIONS

CDFW appreciates that recommendations provided in CDFW's March 10, 2020 comment letter on the Notice of Preparation 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 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. Rare Plants. CDFW appreciates the incorporation of Mitigation Measure (MM) BIO-1a, which proposes pre-construction rare plant surveys and soil seed bank translocation. However, CDFW is concerned with the successful regeneration of the proposed soil seed bank translocation and the lack of permanent mitigation for the potential loss of special-status plants, such as smooth tarplant (*Centromadia pungens* ssp. *laevis*), Parry's spineflower (*Chorizanthe parryi* var. *parryi*), and Plummer's mariposa-lily (*Calochortus plummerae*). Please note that CDFW does not recommend translocation of the soil seed bank as the sole means of mitigation given its experimental nature and lack of proven success. As

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such, CDFW is concerned that the approach is not appropriate for mitigation. To adequately offset impacts, CDFW recommends the City purchase mitigation credits from a mitigation bank or acquire and conserve in perpetuity lands with the target resources, if species are documented onsite during surveys. Thus, CDFW offers the following revisions to MM BIO-1a (edits are in ~~strikethrough~~ and **bold**):

MM BIO-1a: **Special-status Plant** ~~Smooth Tarplant~~ Protection

Prior to any vegetation removal or ground-disturbing activities, a qualified Biologist shall conduct a protocol-level rare plant survey **according to the 2018 *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*** at the appropriate time of year to determine if smooth tarplant **and other special-status plants** ~~is~~ **are** present on the project site in areas of suitable habitat, focusing on the vacant lot in the center of the project site and along the utility easement east of the project site. Field surveys shall be scheduled to coincide with known blooming periods of the species, and/or during periods of physiological development that are necessary to identify the plant species of concern. The rare plant surveys should be conducted between April and September to identify ~~the~~ **special-status plants** during ~~its~~ **their** blooming periods. **Reference sites (nearby accessible occurrences of the plants) shall be utilized to determine whether those special-status plants are identifiable at the times of year the botanical field surveys take place and to obtain a visual image of the special-status plants, associated habitat, and associated natural communities.** If no smooth tarplant or other special-status plant species are found within the project site, then the project will not have any impacts to the species and no additional mitigation measures are necessary.

If the qualified Biologist determines smooth tarplant **or other special-status plants** exists on-site, then a ~~smooth tarplant~~ **CDFW-approved habitat mitigation credits or occupied replacement lands shall be purchased and conserved and managed in perpetuity at a minimum 2:1 ratio (acres mitigated to acres impacted) depending on species impacted or a rare plant** mitigation plan shall be developed for review and approval by City of Colton staff **and the California Department of Fish and Wildlife (CDFW)**. The plan shall include measures to salvage seed and topsoil from the project site **at times of year when plants have gone to seed**. The plan shall also include success criteria **to ensure germination and recruitment to support a sustainable population** ~~for implementing smooth tarplant mitigation at both an on-site and or~~ off-site locations. The plan shall be implemented prior to construction. Seed or salvaged topsoil will be distributed at a suitable location on-site, as determined by a qualified Biologist. The qualified Biologist will determine whether there is a suitable location on-site that could support **translocated** smooth tarplant **or other special-status plant seed**. If a suitable location is not available on-site,

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then seeds will be distributed off-site at a nearby location with suitable habitat, as determined by the qualified Biologist in concurrence with City staff. City staff will ~~have the discretion on whether to seek input~~ **approval of the translocation site** from CDFW .

Additionally, a Worker Environmental Awareness Program (WEAP) shall be implemented to educate construction workers about the presence of special-status species or other sensitive resources, and to instruct them on proper avoidance, ~~required~~ measures and practices for protecting biological resources and contacts and procedures in case species are injured or encountered during construction.

2. Nesting Birds. CDFW appreciates the inclusion of MM BIO-1b, which proposes pre-construction nesting bird surveys to verify absence of active nests. Fish and Game Code sections 3503 and 3503.5 makes it unlawful to take, possess, or destroy the nest or eggs of any bird or birds in the orders Falconiformes or Strigiformes (birds-of-prey) except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. CDFW recommends the pre-construction surveys focus on both direct and indirect evidence of nesting to ensure all nests are identified. In addition, MM BIO-1b does not consider impacts to birds that may nest on the bare ground, burrows, cavities, or structures and instead focuses on tree nesting birds. Burrowing owls are preyed on a by a wide variety of birds including crows, ravens, kestrels, and loggerhead shrikes. Fencing, flag stakes, and poles, etc., which can support the weight of a bird and are posted as part of a buffer around a burrowing owl burrow can serve as a perch point for predatory birds to wait outside the burrow and ambush emerging owls and their fledglings. CDFW recommends amending MM BIO-1b to require use of a buffer materials that cannot support the weight of a perching bird. Thus, CDFW offers the following revisions to MM BIO-1b (edits are in ~~strikethrough~~ and **bold**):

MM BIO-1b: Nesting Bird Protection

Pursuant to Fish and Game Code sections 3503 and 3503.5, To prevent impacts to Migratory Bird Treaty Act (MBTA) protected birds and their nests by the proposed project, tree removal would shall be limited to outside the nesting season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1) or between September 1 and February 14, and will adhere to the provisions of the City's Tree Preservation Ordinance. If trees cannot be removed outside the nesting season, pPre-construction surveys will be conducted 3 days prior to tree removal **commencement of project activities in all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures, at the appropriate time of day/night, during appropriate weather conditions to verify the absence of active nests. Pre-construction surveys should focus on**

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both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors).

If an active-nest is located during pre-construction surveys, United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Wildlife (CDFW) (as appropriate) shall be notified regarding the status of the nest **and the qualified Biologist shall immediately establish a conservative buffer surrounding the nest, as indicated below.** Construction activities shall be restricted as necessary to avoid disturbance of the nest until it ~~is~~ **has been** determined by a qualified Biologist **that the juveniles have fledged or are independent of the nest.**

Restrictions ~~may~~ **shall** include the establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of ~~4~~**300** feet around an active raptor nest and a ~~5~~**100**-foot radius around an active migratory **passerine** bird nest), **or at a distance determined by the qualified Biologist that will prevent project-related disturbances** ~~to help ensure project activities do not cause nest failure and subsequent violations of the MBTA, or alter the construction schedule.~~ A qualified Biologist will delineate the buffer using **materials that will not provide perching habitat for predatory bird species that could prey on the burrowing owls.** ~~Environmentally Sensitive Area (ESA) fencing, pin flags, and/or yellow caution tape.~~ The buffer zone will be maintained around the active nest site(s) until the young have fledged and are foraging independently, **as confirmed by the qualified Biologist.**

3. Burrowing Owl. CDFW appreciates the incorporation of Mitigation Measure (MM) BIO-1c, which considers burrowing owl preconstruction surveys as well as a passive relocation program. Please note that 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). CDFW recommends that the City notify CDFW if owls are found to be present onsite and develop a conservation strategy in cooperation with CDFW, in accordance with CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012). CDFW offers the following revisions to MM BIO-1c (edits are in ~~strikethrough~~ and **bold**):

MM BIO-1c: Burrowing Owl Surveys

1. On the parcels where the activities ~~is~~ **are** proposed, the Biologist shall perform a series of breeding season and non-breeding season surveys of **within** the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and/or **burrowing**

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owls. The surveys shall take place near the sunrise or sunset in accordance with California Department of Fish and Wildlife's (CDFW) ~~(2012)~~ guidelines **provided in Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012)**. All burrows or burrowing owl shall be identified and mapped. During the breeding season (February 1–August 31), a series of three surveys shall document whether burrowing owl are nesting on or directly adjacent to ~~disturbance areas~~ **the Project site**. During the non-breeding season (September 1– January 31), a series of three surveys shall document whether burrowing owl are using habitat on or directly adjacent to ~~any disturbance area~~ **the Project site**. Survey results will be valid only for the season during which the survey is conducted.

2. If burrowing owl are not discovered, further mitigation is not required. If burrowing owl are observed during the breeding season or non-breeding season surveys, the applicant shall: **1) notify CDFW with seven days of burrowing owl detection and 2) conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio and** perform the following measures to limit the impact on the burrowing owl:-
3. No more than ~~30~~ **14 days and 3 days** prior to the first ground-disturbing activities, ~~the project applicant shall retain a qualified Biologist to~~ **shall** conduct a preconstruction survey of the project site. The survey shall establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW's ~~(2012)~~ survey guidelines **provided in Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012)**. **If no burrowing owls are found during the clearance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction.**
4. **If an active burrowing owl nest is discovered or signs thereof are observed during the pre-construction clearance survey, construction activities shall avoid the occupied area.** Avoidance shall include the establishment of a ~~460~~**500-foot** non-disturbance buffer zone. **If determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls.** ~~Construction may occur during the breeding season if a qualified Biologist monitors the nest and determines that the birds have not begun egg-laying and incubation, or that the juveniles from the occupied burrows have fledged. During the non-breeding season (September 1- January 31), the project applicant shall avoid the owls and the burrows they~~

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~~are using, if possible. Avoidance shall include the establishment of a 160-foot non-disturbance buffer zone.~~

5. If it is not possible to avoid occupied burrows, passive relocation shall be implemented **if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the applicant and the City, 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 CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW review/approval prior to the commencement of disturbance activities onsite. The relocation plan must include all of the following and as indicated in Appendix E:** Owls shall be excluded from burrows in the immediate impact zone and within a ~~460~~**500-foot buffer zone (or other qualified-Biologist determined buffer)** by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation **of burrows**. The project area shall be monitored **twice** daily for 1 week to confirm that the owl has abandoned the burrow. ~~Whenever possible, b~~**Burrows should be excavated using hand tools and refilled to prevent reoccupation. Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.**
6. **Prior to passive relocation, suitable replacement burrows site(s) shall be provided within adjacent open space lands at a ratio of 2:1 and permanent conservation and management of burrowing owl habitat 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 within designated adjacent conserved lands identified through coordination with CDFW and the City. A qualified biologist shall confirm the natural or artificial burrows on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted and a reporting plan shall be prepared. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years.**

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). Information can be submitted online or via completion of the CNDDDB field survey form at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

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 Barton Road Logistic Center Project (SCH No. 2020029049) and hopes our comments assist the City of Colton 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 805-712-0346 or at Cindy.Castaneda@wildlife.ca.gov.

Sincerely,

DocuSigned by:

DF423498814B441...

For
Scott Wilson
Environmental Program Manager

ec: Cindy Castaneda, Environmental Scientist
Inland Deserts Region
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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

Trulio, L.A. 1995. Passive Relocation: A Method to Preserve Burrowing Owls on Disturbed Sites. *Journal of Field Ornithology* 66:99-106