



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

Jun 11 2020

STATE CLEARINGHOUSE

June 11, 2020
Sent via email

Tabbe van der Zwaag
Associate Planner
City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91729

Subject: Initial Study and Mitigated Negative Declaration
Westbury Residential Project
State Clearinghouse No. 2020050278

Dear Tabbe van der Zwaag:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from City of Rancho Cucamonga (City) for the Westbury Residential Project (Project) pursuant to 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.

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 site is in the City of Rancho Cucamonga, San Bernardino County, California; Latitude 34.108053 N and Longitude -117.516331 W. The Project site is east of East Avenue and south of East Foothill Boulevard. The Project site encompasses 11.44 acres, of which 5.74 acres is developable land unencumbered by easement and 5.7 acres are encumbered by easements. The Project proposes the development of residential and commercial units and parking and roadways on 5.74 acres. Project activities include the building of 131 residential units, 4 commercial-ready units (305 square feet [sf] each) that are attached to one-bedroom residential units, and a 1,592-sf commercial space.

COMMENTS AND RECOMMENDATIONS

The MND recognizes the potential for several special-status species, including endangered species, to occur within the Project area. CDFW is concerned that the analysis completed may have been inadequate to form a complete inventory of special-status species within the Project area and to identify the level of impacts on those species identified as potentially present.

Absent these details, and supporting documentation, it is unclear whether the Project's impacts have been adequately identified, disclosed, and mitigated. CDFW offers the comments and recommendations below to assist the City.

Special-status Wildlife

The MND identifies special-status wildlife species having the potential to occur and the potential for suitable habitat for the species to be present; however, focused surveys, habitat assessment, or other analysis were not conducted to determine if species with the potential to occur onsite are present and at what level the species would be impacted by the Project.

Absent these details, and supporting documentation, it is unclear whether the Project's impacts have been adequately identified, disclosed, and mitigated. CDFW offers the comments and recommendations below to assist the City.

Burrowing Owl (*Athene cunicularia*)

The MND recognizes the potential to impact burrowing owl individuals; however, no surveys were undertaken to determine presence/absence and the extent of impacts to the species. CDFW is concerned that without protocol burrowing owl surveys, CDFW cannot determine if the MND has adequately disclosed and mitigated impacts, including with the incorporation of Mitigation Measure (MM) BIO-2. CDFW recommends that a habitat assessment be conducted prior to the start of Project activities as outlined in Appendix C of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). Please note that habitat assessments dated more than one year prior to the construction date are considered outdated and should be updated.

If the habitat assessment determines suitable habitat for burrowing owl, protocol surveys should be conducted prior to commencement of Project activities. Surveys should be consistent with the Staff Report on Burrowing Owl Mitigation. If burrowing owls are identified on the site, the Applicant should contact CDFW and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing Project activities, to assist in the development of avoidance, minimization, and mitigation measures. Depending on the level of impacts, CDFW would likely recommend permanent conservation, enhancement, and management of existing, occupied burrowing owl habitat and measures to minimize impacts to burrowing owls on the Project site.

MM BIO-2 considers implementation of a passive relocation program. 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.

CDFW offers the following revisions to MM BIO-2 (edits are in ~~strickthrough~~ and **bold**):

MM-BIO-2 Prior to grading or any other ground-disturbing activity, a qualified biologist shall conduct a ~~survey~~ **habitat assessment** for burrowing owls to determine if ~~suitable burrows (i.e., greater than 3.5 inches in diameter)~~ **suitable burrowing owl habitat** ~~are~~ **is** present in and adjacent to the ~~area of ground disturbance~~ **Project site**. 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 protocol is four site visits per~~

~~focused survey on Project sites with suitable habitat areas and areas known to have suitable nesting burrows.~~

~~As part of these surveys, the quantity and location of nesting/migratory burrowing owls would be determined. If there is suitable habitat for burrowing owl, then focused breeding season surveys as described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012) shall be conducted by a qualified biologist. If presence of burrowing owl is determined, the applicant shall contact California Department of Fish and Wildlife (CDFW) and 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.~~

No less than 14 days prior to ground-disturbing activities, a qualified biologist shall conduct pre-construction surveys.

If no burrowing owl(s) are observed on site during the pre-construction clearance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to **CDFW and** the Director of the City of Rancho Cucamonga Planning Department, or designee, prior to issuance of any grading permits, and no further action is required. If burrowing owl(s) are observed on site during the pre-construction clearance survey, ~~consultation with the California Department of Fish and Wildlife (CDFW) shall occur to determine the next appropriate steps. Additional focused surveys may be warranted as determined by the CDFW to determine the quantity and location of nesting/migrating burrowing owls.~~ Areas currently occupied by burrowing owls shall be avoided for the duration of their on-site residency and/or nesting period. **No ground-disturbing activities shall be permitted within 500 meters of an occupied burrow. 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 cannot be avoided by the proposed Project, then ~~additional measures such as passive relocation during the nonbreeding season may be utilized to reduce any potential impacts.~~ **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.

Burrow exclusion involves the installation of one-way doors in burrow openings during the nonbreeding season to temporarily or permanently exclude burrowing owls and to close burrows after verifying through site monitoring and scoping that the burrows are empty. Existing or artificial burrows situated less than 75 meters from the Project site are the ideal scenario for successful passive relocation. Additional factors for successful passive relocation are included in the CDFW 2012 Staff Report on Burrowing Owl Mitigation. **Prior to passive relocation, suitable replacement burrows site(s) shall be provided 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 of Rancho Cucamonga. 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.** When a qualified biologist ~~is able to~~ determines that burrowing owls are no longer occupying the Project site and that passive relocation ~~has been deemed successful~~ **is complete**, construction activities may continue. 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 and** the Director of the City of Rancho Cucamonga Planning Department, or designee, prior to the issuance of any grading activities.

Special-status Small Mammals

The MND identified the potential for San Bernardino kangaroo rat (SBKR) and Los Angeles pocket mouse to occur. However, the determination was based on data analysis and site review, and focused surveys (i.e., trapping) were not conducted. Because trapping was not conducted prior to the preparation of the MND, the level of impacts to SBKR and Los Angeles pocket mouse cannot be disclosed. CDFW is concerned that without this information, the analysis in the MND is incomplete and the significance of these impacts cannot be determined, nor adequate mitigation identified, as required under CEQA. Therefore, CDFW recommends that the City revise MM BIO-3

and condition the measure to incorporate permanent conservation of habitat as follows (edits are in **bold** and ~~strike through~~):

MM-BIO-3: Prior to grading or any other ground-disturbing activity, a qualified biologist (i.e., a permitted biologist allowed to handle the Los Angeles pocket mouse and the San Bernardino kangaroo rat) shall conduct a survey to identify suitable habitat for the Los Angeles pocket mouse and the San Bernardino kangaroo rat ~~during the appropriate season of these species (generally May 1 to September 15)~~. Should suitable habitat be identified on the site, the qualified biologist shall conduct **a minimum 5 nights of small mammal trapping consecutively**, in accordance with protocol established by the USFWS and the CDFW. If the Los Angeles pocket mouse is identified on the site, ~~occupied habitat shall be fenced and avoided to the extent feasible.~~ **mitigation of no less than 2:1 (replacement to impact) shall be required. Additionally, the City shall prepare and implement a set of avoidance and minimization measures aimed at protecting special-status small mammals from project-related impacts. The proposed avoidance and minimization measures shall be provided to CDFW for review and approval *no fewer than 30 days prior to the initiation of project activities.***

~~In the event that the~~ **If San Bernardino kangaroo rat is identified on the site, an incidental take permit and mitigation at no less than a 3:1 (replacement to impact) ratio for loss of habitat shall be required. Construction shall not proceed until appropriate authorization (i.e., CESA Incidental Take Permit under Fish and Game Code section 2081) is obtained.** ~~consultation with the USFWS shall occur. The USFWS shall identify measures to be taken to avoid or minimize adverse Project effects to these species and their habitat. Such measures may include, but are not limited to, the following: (1) avoidance of the occupied habitat, (2) enhancement of habitat, or (3) conservation of off-site suitable habitat, or any other measures as determined by USFWS.~~

~~A final letter report shall be prepared by the qualified biologist documenting the results of the survey and any mitigation measures that are implemented as part of the Project, if such measures are required. The letter shall be submitted to the Director of the City of Rancho Cucamonga Planning Department, or designee, prior to the issuance of any grading activities.~~

Special-status Reptiles

The MND identifies the potential for two lizards of special concern to occur: California legless lizard (*Anniella pulchra*) and coast horned lizard (*Phrynosoma blainvillii*). To address potential direct impacts, CDFW recommends the inclusion of the following mitigation measure prior to the City adopting the MND.

MM-BIO-4: **A qualified biologist shall visually survey the Project area prior to construction to identify any feature/habitats suitable to support special-status reptiles (i.e., burrows, dens, cavities, debris, dead vegetation, rocks, loose soil, leaf litter, etc.). Where an identifiable feature is present, the qualified biologist shall mark the potentially occupied feature for avoidance. If avoidance is infeasible, the qualified biologist shall carefully dismantle the feature and allow any individuals discovered to move out of harm's way.**

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), 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.

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>.

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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 recommends that the City adopt the recommended revised and new mitigation measures offered by CDFW prior to finalizing the MND to reduce project impacts.

CDFW appreciates the opportunity to comment on the MND for the Westbury Residential Project (SCH No. 2020050278) and hopes our comments assist the City of Rancho Cucamonga 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.

Sincerely,

DocuSigned by:

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Scott Wilson
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Habitat Conservation Planning Branch

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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.