



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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August 4, 2020

Governor's Office of Planning & Research

Aug 06 2020

Savat Khamphou
City of Rialto
150 S. Palm Avenue
Rialto, CA 92376

STATE CLEARINGHOUSE

Subject: Cactus Trail Improvements
SCH# 2020070213

Dear Savat Khamphou:

The California Department of Fish and Wildlife (CDFW) received the proposed Mitigated Negative Declaration (MND) from the City of Rialto (City; the CEQA lead agency) for the Cactus Trail Improvement 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project includes the development of approximately 1.5 miles of the existing Cactus Avenue Bike Route into a multi-use trail between Baseline Avenue and Rialto Avenue. The multi-use trail will include an eight-foot wide paved bike trail and a five-foot wide paved pedestrian trail which will meander between the street and drainage channel west of Cactus Avenue. An asphalt concrete parking lot designed to accommodate approximately 35 parking spots will be constructed near the trail. The new trail will also include two-foot wide shoulders on both sides of the bike trail consisting of decomposed granite and will separate the bike trail from the landscaping. The existing curb ramps at the trail street crossing will be rebuilt and upgraded to the current Americans with Disabilities Act (ADA) standards. The trail is anticipated to drain into the proposed landscaping areas and infiltrate into the soil. The trail will also include landscaping/irrigation throughout the trail limits and trail monuments/exercise stations.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW is concerned about the exclusion of mitigation

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.

measures from the MND that were proposed in the Biological Technical Study, prepared by ECORP Consulting, Inc for the Project on August 20, 2018. CDFW has determined those, or similar, mitigation measures are necessary to avoid potentially significant impacts, including cumulative impacts, and for the City of Rialto to mitigate significant impacts to declining burrowing owl populations and nesting birds.

The Biological Technical Study states:

Although no suitable habitat for special-status wildlife species was identified on the Project site, the SBCFCD channel immediately adjacent to the Project site did contain marginally suitable habitat for burrowing owl and nesting bird species. Therefore, mitigation or avoidance measures, which could include focused surveys, pre-construction surveys, and/or construction monitoring, will be necessary to ensure that there are no indirect impacts to burrowing owl or nesting birds that may be present within the SBCFCD channel. Indirect impacts may occur in the form of ground disturbances, noise, and increased human activity on the site. Implementation of Mitigation Measures BIO-1 through BIO-2 would reduce these impacts to less than significant.

The vegetation immediately adjacent to the Project site within the SBCFCD channel could provide nesting habitat for songbirds protected by the MBTA and California Fish and Game Code. If construction of the proposed project occurs during the bird breeding season (typically February 1 through August 31), ground-disturbing construction activities could indirectly affect birds protected by the MBTA and their nests through increased noise, vibrations, and increased human activity. Impacts to nesting birds would be less than significant with the implementation of Mitigation Measure BIO-2.

This information is not discussed or included in the MND. CDFW agrees that mitigation measures are necessary to avoid potentially significant impacts to nesting birds, including burrowing owl, and therefore recommends the Lead Agency include the following mitigation measures in the MND.

BIO-1: Nesting Birds. Applicant shall ensure that impacts to nesting bird species of special concern at the project site are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures.

- **Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**
- **Surveys shall be conducted by the Designated Biologist at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. If a nest is suspected, but not confirmed, the Designated Biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. If a nest is observed, but thought to be inactive, the Designated Biologist shall monitor the nest for one hour**

(four hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The Designated Biologist shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate.

- When an active nest is confirmed, the Designated Biologist shall immediately establish a conservative avoidance buffer surrounding the nest based on their best professional judgement and experience. The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist determines that such project activities may be causing an adverse reaction, the Designated Biologist shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers.

BIO-2: Burrowing Owls. Within 14 days prior to the commencement of grading activities, a qualified biologist shall conduct a survey of the planned limits of ground disturbance and make a determination regarding the presence or absence of the burrowing owl. The determination shall be documented in a report and shall be submitted, reviewed, and accepted by the City of Rialto prior to the issuance of a grading permit and subject to the following provisions:

- In the event that the pre-construction survey detects no burrowing owls in the planned limits of ground disturbance, a grading permit may be issued without restriction.
- In the event that the pre-construction survey identifies the presence of the burrowing owl on the Project Site, then prior to the commencement of ground-disturbing activities on the property:
 - Prior to disturbance of occupied burrows, natural or artificial replacement burrows shall be provided at a ratio of 2:1 within a City- and CDFW-approved relocation area. A qualified biologist shall confirm the replacement burrows are unoccupied and suitable for burrowing owl use prior to disturbance of occupied burrows.
 - No disturbance shall occur within 50 meters of occupied burrows during the nonbreeding season (September 1 through January 31) or within 300 meters of occupied burrows during the breeding season (February 1 through August 31). All occupied burrows will have a visible marker placed near them to ensure that equipment and machinery do not collapse the burrows.
 - Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the CDFW verifies through noninvasive methods that juveniles from the occupied burrows are foraging independently and are capable of independent survival.
 - If burrowing owls are present at the time occupied burrows are to be disturbed, the owls shall be excluded from the site in accordance with the California Department of Fish and Game 2012 Staff Report. CDFW shall be consulted on the development and implementation of any proposed relocation efforts.
- Prior to initiating Project activities, the Project proponent shall mitigate the loss of burrowing owl habitat through the perpetual conservation and management of occupied burrowing owl habitat, approved by CDFW, at a

minimum ratio of 1:1. The City or Project proponent shall develop a conservation strategy in cooperation with CDFW, in accordance with CDFW's Staff Report on Burrowing Owl Mitigation.

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). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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 appreciates the opportunity to comment on the DEIR to assist the City of Chino in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marina Barton, Environmental Scientist at 909-948-9632 or Marina.Barton@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

Attachment: Draft Mitigation Monitoring and Reporting Program for CDFW-proposed Mitigation Measures

ec: Office of Planning and Research, State Clearinghouse, Sacramento

HCPB CEQA Coordinator
Habitat Conservation Planning Branch

Marina Barton, Environmental Scientist, CDFW Inland Deserts Region
Marina.Barton@wildlife.ca.gov

REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. (https://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)

ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1: <u>Nesting Birds</u>. Applicant shall ensure that impacts to nesting bird species of special concern at the project site are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures.</p> <ul style="list-style-type: none"> • Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures. • Surveys shall be conducted by the Designated Biologist at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. If a nest is suspected, but not confirmed, the Designated Biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. If a nest is observed, but thought to be inactive, the Designated Biologist shall monitor the nest for one hour (four hours for raptors during the non-breeding 	<p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p>	<p>Project Proponent</p>

<p>season) prior to approaching the nest to determine status. The Designated Biologist shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate.</p> <ul style="list-style-type: none"> • When an active nest is confirmed, the Designated Biologist shall immediately establish a conservative avoidance buffer surrounding the nest based on their best professional judgement and experience. The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist determines that such project activities may be causing an adverse reaction, the Designated Biologist shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers. 		
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<p>equipment and machinery do not collapse the burrows.</p> <ul style="list-style-type: none">• Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the CDFW verifies through noninvasive methods that juveniles from the occupied burrows are foraging independently and are capable of independent survival.• If burrowing owls are present at the time occupied burrows are to be disturbed, the owls shall be excluded from the site in accordance with the California Department of Fish and Game 2012 Staff Report. CDFW shall be consulted on the development and implementation of any proposed relocation efforts.• Prior to initiating Project activities, the Project proponent shall mitigate the loss of burrowing owl habitat through the perpetual conservation and management of occupied burrowing owl habitat, approved by CDFW, at a minimum ratio of 1:1. The City or Project proponent shall develop a conservation strategy in cooperation with CDFW, in accordance with CDFW's <i>Staff Report on Burrowing Owl Mitigation</i>.		
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