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February 1, 2021

Governor's Office of Planning & Research

Feb 01 2021

Mr. Richard Greenbauer
 Development Services Department, Planning Division
 City of Oceanside
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 Oceanside, CA 92054
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STATE CLEARINGHOUSE

**Subject: CarMax Auto Superstore, Draft Environmental Impact Report (DEIR),
 SCH #2020089012, City of Oceanside**

Dear Mr. Greenbauer:

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion of a Draft EIR from the City of Oceanside for the CarMax Auto Superstore (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines (see References).

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.

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.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City of Oceanside (City) has

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participated in the NCCP program by preparing a draft Subarea Plan (SAP) under the San Diego County Multiple Habitat Conservation Plan (MHCP). However, the SAP has not been finalized and has not been adopted by the City or received permits from the Wildlife Agencies (jointly, CDFW and the U.S. Fish and Wildlife Service (USFWS)).

PROJECT DESCRIPTION SUMMARY

Proponent: CarMax Auto Superstore

Objective: The project is a request for approval of a Development Plan (019-000021) and Conditional Use Permit (CUP19-00029) to allow for the development and operation of a CarMax facility. The proposed development consists of the construction of a CarMax pre-owned automobile dealership, including a sales and administration building, service building, private carwash, associated access drives, landscaped areas, presentation area, staging area, sales display area, and a customer and employee parking lot. An additional sales display area would be provided on the northern parcel with a security gate and control island and would be developed as part of Phase II of the project. The proposed site includes two main access points off Thunder Drive. An access point would be located off Plaza Drive for test drives only and would not be accessed by the public. Off-site improvements would be required and would include the extension of the 12" polyvinyl chloride (PVC) water main along Plaza Drive across the project frontage and the Department of Motor Vehicles (DMV) property, and then to be looped to Thunder Drive. Full width improvements on Plaza Drive would construct an 80-foot curb to curb width across the project frontage. Landscaping would cover approximately 13.6 percent of the project site. A 100-foot riparian buffer would run east to west on the southern portion of the site. This would include a 50-foot biological buffer as well as a 50-foot planning buffer, consistent with the draft Oceanside SAP.

Location: The 10.54-acre CarMax Auto Superstore project site is situated on two vacant and undeveloped parcels separated by Plaza Drive within the Lake Neighborhood Planning Area. The northern parcel is bounded to the north by the east-bound lanes of State Route (SR) 78 and to the south by Plaza Drive on Assessor's Parcel Number (APN) 168-012-42-00. The southern parcel is located south of Plaza Drive and west of Thunder Drive on APN 168-012-43-00.

Biological Setting: The site is located in a primarily developed area. Commercial uses exist to the west, including a shopping center and auto repair shops. To the east are medium density residential uses as well as a DMV facility at the corner of Plaza Drive and Thunder Drive. To the north is SR 78. Immediately to the south is Buena Vista Creek and further south is residential and commercial use. The site is relatively flat and has been previously graded. The southern portion of the site slopes downward to Buena Vista Creek. The Biological Technical Report (BTR, Busby Biological Services, September 2020) states that the site is primarily disturbed habitat as defined by Oberbauer with native species interspersed. Dominant species within this habitat type include black mustard (*Brassica nigra*), tocalote (*Centaurea melitensis*), spotted spurge (*Chamaesyce maculata*), and bur clover (*Medicago polymorpha*) as well as native species: spreading goldenbush (*Isocoma menziesii* var. *menziesii*), fascicled tarplant (*Deinandra fasciculata*), coyote brush (*Baccharis pilularis*), and dove weed (*Croton setigerus*). Other vegetation and land cover types on site are ornamental, iceplant, ruderal, and developed land.

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Sensitive vegetation types on site include 0.451 acre of Diegan coastal sage scrub (DCSS), 1.386 acres of southern riparian forest (SRF), and 0.054 acre of open water. Buena Vista Creek is within the City's Preapproved Mitigation Area (PAMA) and is formerly conserved land managed by the now-dissolved The Environmental Trust. The section of Buena Vista Creek on site is also USFWS-designated critical habitat for the coastal California gnatcatcher (*Poliophtila californica californica*). Sensitive species detected on site include California gnatcatcher, least Bell's vireo (*Vireo bellii pusillus*), yellow warbler (*Dendroica petechia*), and San Diego sagewort (*Artemisia palmeri*).

Timeframe: Approximately 15 months, beginning November 2021

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. 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).

I. Project Description, Environmental Setting, Mitigation Measure, and Related Impact Shortcoming

COMMENT #1: California Gnatcatcher Avoidance and Mitigation

Issue #1: Protocol surveys were completed for California gnatcatcher (gnatcatcher) and were negative, but a pair was detected on site during the wetland delineation survey on August 19, 2019 (page 4.5-10 of DEIR). There is insufficient mitigation for California gnatcatcher-occupied habitat. While the DEIR does include appropriate mitigation for DCSS within the PAMA, it does not specify the location of the mitigation site nor does it specify that the mitigation site be currently gnatcatcher-occupied.

Issue #2: Furthermore, due to the presence of gnatcatcher on site, it is possible that the Project may result in direct take of the species. While MM-BIO-4 of the DEIR makes provisions to address this issue (page ES-16), it does not satisfactorily address unavoidable impacts under CEQA.

Specific Impact: Construction and use of the auto superstore could have a direct, indirect and cumulative impact on any residing California gnatcatcher in the area and constrain movement of the species throughout the area. Currently, the City of Oceanside, does not have a secured stepping-stone linkage for gnatcatcher connectivity between the City of Carlsbad and Marine Corps Base Camp Pendleton. Loss of habitat for the species should be mitigated appropriately to contribute to the conservation of the species and be consistent with the City's long-term conservation goals.

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Why the impact would occur: MM-BIO-7 of the DEIR states,

“Prior to the issuance of a building permit, the Project shall mitigate impacts to disturbed Diegan coastal sage scrub within the WCPZ or within a PAMA at a 3:1 ratio. As such, the Project shall preserve 1.224 acres of Diegan coastal sage scrub at an existing mitigation bank or within a PAMA which shall be determined and approved by the City of Oceanside Planning Department.”

The DEIR does not state that this mitigation bank needs to be gnatcatcher-occupied, nor does it specify the location of the bank. MM-BIO-7 should specify that mitigation should occur within the City, within the Wildlife Corridor Planning Zone (WCPZ). Mitigation for gnatcatcher-occupied DCSS at a bank outside of the City may constitute a need for a higher mitigation ratio, as California gnatcatcher territories are larger in eastern locations and would not have an equal conservation value.

MM-BIO-4 of the DEIR states,

“Impacts to coastal California gnatcatcher shall be avoided to the extent feasible. Unavoidable impacts to this species would be considered significant and would require consultation with the USFWS under Section 10(a)(1)(B) of the ESA to develop project-specific minimization and mitigation measures (e.g., construction outside of breeding season, habitat protection, noise attenuation) in order to reduce impacts to a level below significance.”

Because the gnatcatcher pair was found on site, Project activities may result in direct take of gnatcatcher.

Evidence impact would be significant: The California gnatcatcher is ESA-listed as threatened and is a California Species of Special Concern. It is closely associated with CSS. Impact to the gnatcatcher’s limited and sensitive habitat could result in declines to the already threatened population. In addition, human activities from the auto superstore may adversely affect the gnatcatcher with increased noise and vibration from vehicles and customers, commercial property security lights, and frequent human presence.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: Mitigation for DCSS should occur at a 3:1 ratio through restoration of CSS within the City within the Wildlife Corridor Planning Zone, such as the El Corazon Property, since the Project site is gnatcatcher-occupied and contains critical habitat for California gnatcatcher. Restoration within the WCPZ would contribute to securing regional connectivity for the species.

A far less preferred alternative would be to mitigate at a 3:1 ratio at a gnatcatcher-occupied bank. Mitigation for DCSS outside of the City should occur at no less than a 3:1 ratio at a gnatcatcher-occupied bank. For the reasons we described above, mitigation within the City is much more important for the species, the City’s long-term goals, and the regional conservation objectives.

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COMMENT #2: Management of Open Space Biological Buffer/Preserve

Issue: The DEIR states that the Project will include a 100-foot wetland buffer, which includes the 50-foot planning buffer and 50-foot biological buffer. This 100-foot buffer will be designated as biological open space and incorporated into the Preserve. The DEIR does not state how the Open Space biological buffer/Preserve will be maintained.

Specific Impact: The Project site will be surrounded by significant human use. Without an HMP in place and a commitment by either the City or the Project Applicant to perform active management and monitoring, the open space buffer/Preserve and thereby the sensitive natural resources therein will be subject to trespassing, invasive species, litter, etc. Additionally, part of this new Preserve is designated critical habitat for the California gnatcatcher. With no HMP in place and no active management, this area is also subject to degradation, and thus loss in value to the conservation of the gnatcatcher and its habitat.

Why the impact would occur: The construction of a large commercial auto retailer will have various anthropogenic impacts to the habitat, such as litter, increased noise and light pollution, and possible water quality issues.

Evidence impact would be significant: Page 5-18 of the draft SAP states,

*Mitigation for Unavoidable Impacts. To achieve the no net loss standard, mitigation for unavoidable impacts (e.g., wetland habitat creation) should preferably occur on site or within the affected drainage and/or watershed. Offsite mitigation may occur as long as the mitigation site contributes to the City's preserve design and has biological function and value (e.g., by adjacency to other preserve areas). **All wetland mitigation sites shall be designated as Preserve, be protected by conservation easements, and be managed in perpetuity for their biological resources and value.** (emphasis added)*

There also needs to be an assured funding source for these areas to maintain their biological value.

Furthermore, the draft SAP states,

5.1.5 Habitat Conserved in Conjunction with Private Development

*In addition to existing private mitigation banks, mitigation areas, and homeowners' association open space, implementation of this SAP will result in the conservation of other privately owned habitat (see Section 5.5). The conservation of these lands will occur through onsite avoidance and/or offsite mitigation. **These mitigation lands will be protected by conservation easements established in conjunction with the City's review and approval process for development projects and shall be managed and monitored pursuant to the SAP.** (emphasis added)*

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Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #2: A conservation easement shall be placed on the 100-foot buffer, an HMP prepared and adopted, and there needs to be a reliable funding source for the Preserve prior to initiating construction. CDFW recommends using a long-term non wasting endowment to fund management for the Preserve. Any restoration, enhancement and management activities should be delineated within these plans.

COMMENT #3: Edge Effects along the Open Space/Preserve boundary

Issue: No provisions are made for reducing edge effects along the Open Space/Preserve boundary.

Specific Impact: The Project site will have significant human use by customers, employees and visitors within the facility and the parking areas and thereby the sensitive natural resources within the adjacent open space/Preserve will be subject to trespassing, litter, and other negative effects.

Why the impact would occur: The construction of an auto superstore and the ongoing activities associated with this business will result in various anthropogenic impacts to the habitat, such as litter and noise and light pollution.

Evidence impact would be significant: Edge effects are known to result in extirpation of species from an area and facilitation of invasive species introduction. The adjacent Preserve area is critical habitat for gnatcatcher, valuable foraging habitat for least Bell's vireo, and contains San Diego sagewort.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #3: Signage and fencing shall be installed along the open space to restrict entry to the open space/Preserve. CDFW recommends fencing 6' or taller to sufficiently act as a barrier to entry.

Mitigation Measure #4: All lighting be directed away from the open space boundary. The lighting should be kept to a minimum and glare should avoid sensitive areas.

II. Editorial Comments or Suggestions

1. Landscaping: Habitat loss and invasive plants are a leading cause of native biodiversity loss. Invasive plant species spread quickly and can displace native plants, prevent native plant growth, and create monocultures. The City should not plant, seed, or otherwise introduce invasive exotic plant species to landscaped areas that are adjacent and/or near native habitat areas. CDFW recommends using native, locally appropriate plant species and drought tolerant, lawn grass alternatives to reduce water consumption. Information on alternatives for invasive, non-native, or landscaping plants may be found on the California Invasive Plant Council's, Don't Plant a Pest webpage (available here: <https://www.cal-ipc.org/solutions/prevention/landscaping/dpp/>).

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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). The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data#44524420-pdf-field-survey-form>. 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 appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Melanie Burlaza, Environmental Scientist, at MelanieAnne.Burlaza@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager
South Coast Region

cc: CDFW

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Attachments:

Attachment A. Recommended Mitigation Measures

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REFERENCES

1. California Environmental Quality Act (CEQA). 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.
2. California Office of Planning and Research. 2009 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, § 21081.6 and CEQA Guidelines, § 15097, §15126.4(2)
3. Fish & Game Code §3503
4. City of Oceanside 2010. Oceanside Draft MHCP Subarea Plan. Available from: <http://www.ci.oceanside.ca.us/gov/dev/planning/subarea.asp>
5. Jepson eFlora. 2020. Available from: <https://ucjeps.berkeley.edu/eflora/>
6. California Invasive Plant Council. 2020. Don't Plant a Pest. Alternatives to invasive horticultural plants. Available from: <https://www.cal-ipc.org/solutions/prevention/landscaping/dpp/>.

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Attachment A. Recommended Mitigation Measures

Biological Resources			
Issue	Mitigation Measure	Timing	Responsible Party
<p>California Gnatcatcher Avoidance and Mitigation: Protocol surveys were completed for California gnatcatcher and were negative, but a pair was detected on site during the wetland delineation survey on August 19, 2019 (page 4.5-10 of DEIR). There is insufficient mitigation for California gnatcatcher-occupied habitat. While the DEIR does include appropriate mitigation for DCSS within the PAMA, it does not specify that mitigation occur at a gnatcatcher-occupied site. Furthermore, due to the presence of gnatcatcher on site, it is possible that the Project may result in direct take of the species. While MM-BIO-4 of the DEIR makes provisions to address this issue (page ES-16), it does not satisfactorily address unavoidable impacts under CEQA.</p>	<p>Mitigation Measure #1: Mitigation for DCSS should occur at a 3:1 through restoration of CSS within the City within the Wildlife Corridor Planning Zone, such as the El Corazon Property, since the Project site is gnatcatcher-occupied and contains critical habitat for California gnatcatcher. Restoration within the WCPZ would contribute to securing regional connectivity for the species.</p> <p>A far less preferred alternative would be to mitigate at a 3:1 ratio at a gnatcatcher-occupied bank. Mitigation for DCSS outside of the City should occur at no less than a 3:1 ratio at a gnatcatcher-occupied bank. For the reasons we described above, mitigation within the City is much more important for the species and the City's long-term goals and the regional conservation objectives.</p>	<p>Prior to Project construction and activities</p>	<p>City of Oceanside</p>

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<p>Management of Open Space Biological Buffer/Preserve: The DEIR states that the Project will include a 100-foot wetland buffer, which includes the 50-foot planning buffer and 50-foot biological buffer. This 100-foot buffer will be designated as biological open space and incorporated into the Preserve. The DEIR does not state how the Open Space biological buffer/Preserve will be maintained.</p>	<p>Mitigation Measure #2: A conservation easement shall be placed on the 100-foot buffer/Preserve, an HMP prepared and adopted, and there needs to be a reliable funding source for the Preserve prior to initiating construction. Any restoration, enhancement and management activities should be delineated within these plans.</p>	<p>Prior to Project construction and activities</p>	<p>City of Oceanside</p>
<p>Edge Effects along the Open Space/Preserve boundary: No provisions are made for reducing edge effects along the Open Space/Preserve boundary.</p>	<p>Mitigation Measure #3: Signage and fencing shall be installed along the open space to restrict entry to the open space/Preserve. CDFW recommends fencing 6' or taller to sufficiently act as a barrier to entry.</p> <p>Mitigation Measure #4: All lighting be directed away from the open space boundary. The lighting should be kept to a minimum and glare should avoid sensitive areas.</p>	<p>Prior to Project construction and activities</p>	<p>City of Oceanside</p>