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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 12, 2020
Sent via email

Governor's Office of Planning & Research

Oct 13 2020

Savat Khamphou
Interim City Engineer
City of Rialto
335 W. Rialto Avenue
Rialto, CA 92376

STATE CLEARINGHOUSE

Subject: Initial Study and Mitigated Negative Declaration
Rialto Baseline Storm Drain Project
State Clearinghouse No. 2020090296

Dear Savat Khamphou:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from City of Rialto (City) for the Rialto Baseline Storm Drain 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.

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 Rialto, San Bernardino County, California; Latitude 34.124043 N and -117.388063 W (eastern portion) and 34.121298 N, and -117.422797 W (western portion). The Project site is located at Cactus Basin No. 3 (west of Cactus Avenue and Baseline Road), connecting to Baseline Road south of Cactus Basin No. 3 and traveling west within Baseline Road to just west of Tamarind Avenue. The Project proposes the construction of a 2-mile (11,000 linear feet) storm drain system within Baseline Road that will capture flows north of Baseline Road and empty out into Cactus Basin No. 3.

COMMENTS AND RECOMMENDATIONS

The ISMND recognizes the potential for several special-status species, including San Bernardino kangaroo rat (*Dipodomys merriami parvus*), Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), burrowing owl (*Athene cunicularia*), and Riversidean Alluvial Fan Sage Scrub (RAFSS), to occur within and surrounding the Project area. CDFW is concerned regarding the adequacy of the mitigation measures proposed by the City to mitigate potentially significant impacts to these 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 finalizing the ISMND.

Burrowing Owl (*Athene cunicularia*)

CDFW appreciates that a habitat assessment was conducted for burrowing owl and the incorporation of Mitigation Measure (MM) BIO-1 and BIO-2, which considers preconstruction surveys as well as a passive relocation program, respectively. 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-1 and MM BIO-2 (edits are in ~~strikethrough~~ and **bold**):

- BIO-1 Preconstruction presence/absence surveys for burrowing owl shall be conducted ~~within 30~~ **no less than 14** days prior to any onsite ground disturbing activity **by a qualified biologist**. The burrowing owl surveys shall be conducted pursuant to the recommendations and guidelines established by the California Department of Fish and Wildlife in the **"California Department of Fish and Wildlife 2012 Staff Report on Burrowing Owl Mitigation"**. In the event this species is not identified within the project limits, no further mitigation is required, **and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to commencement of project activities**. If during the preconstruction survey, ~~the~~ burrowing owl ~~ifs~~ found to occupy the site, Mitigation Measure BIO-2 shall be required.
- BIO-2 If burrowing owls are identified during the survey period, the City shall take the following actions to offset impacts prior to ground disturbance:
- Active nests within the areas scheduled for disturbance or degradation shall be avoided ~~from February 1 through August 31,~~ **and a minimum of 250-foot buffer shall be provided until fledging has occurred, as confirmed by a qualified biologist**. Following fledging, owls may be passively relocated by a qualified biologist, **as described below**.
- If impacts on occupied burrows ~~in the non-nesting period~~ are unavoidable, onsite passive relocation techniques may be used if approved by the CDFW to encourage owls to move to alternative burrows **provided by the City** outside of the impact area.
- If relocation of the owls is approved for the site by ~~the~~ CDFW, **CDFW shall require the City to hire a qualified biologist to prepare a plan for relocating the owls to a suitable site and conduct an impact assessment. 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.

The relocation plan must include all of the following **and as indicated in Appendix E:**

- The location of the nest and owls proposed for relocation.
- The location of the proposed relocation site.
- The number of owls involved and the time of year when the relocation is proposed to take place.
- The name and credentials of the biologist who will be retained to supervise the relocation.
- The proposed method of capture and transport for the owls to the new site.
- A description of site preparation at the relocation site (e.g., enhancement of existing burrows, creation of artificial burrows, one-time or long-term vegetation control).

The applicant shall conduct an impact assessment, in accordance with the 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.

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 Rialto. 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.

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.

Special-status Small Mammals

The ISMND identified the potential for San Bernardino kangaroo rat (SBKR) and Los Angeles pocket mouse (LAPM) 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 ISMND, 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 ISMND 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 MM BIO-5 and condition MM BIO-4 and MM BIO- 6 to incorporate permanent conservation of habitat as follows (edits are in **bold** and ~~strikethrough~~):

- BIO-3 Preconstruction presence/absence surveys for SBKR shall be conducted within ~~45~~ **365** days prior to any onsite ground disturbing activity **by a permitted biologist**. SBKR surveys shall be conducted pursuant to the recommendations and guidelines established by the California Department of Fish and Wildlife and **U.S. Fish and Wildlife Service (USFWS)**. If no presence of SBKR is found during the survey, mitigation measure BIO-~~34~~ need not be enforced.
- BIO-4 In the event that the preconstruction survey determines the presence of SBKR, **and complete avoidance is not possible, the Project proponent shall acquire a CESA Incidental Take Permit (ITP) prior to any vegetation- or ground disturbing activities. Any take of SBKR without take authorization would be a violation of Fish and Game Code section 2050 et seq.** ~~the following actions shall be implemented:~~ The City shall provide compensation for ~~temporary~~ loss of habitat ~~and individual~~ to SBKR in the following manner: 4) the City shall obtain a 2081 ~~Incidental Take Permit (ITP)~~ from the CDFW; the City shall offset the loss of ~~the temporarily disturbed~~ habitat **to SBKR** by ~~purchaseing~~ **purchase** of acceptable **suitable** SBKR habitat at a **minimum 34:1 ratio depending on the habitat quality of the impact site and the location and habitat quality of the identified mitigation site**; and any conserved habitat shall be provided with an appropriate endowment to ensure permanent protection and the conserved habitat shall be managed **in perpetuity** by an agency or party considered acceptable to the CDFW. No ground disturbance within potential SBKR habitat shall occur until an ITP is obtained by the

City from **CDFW and USFWS**. Note that the final compensation package contained in the permit may differ from the above compensation package, ~~but the City finds that this compensation package shall at a minimum meet the requirements of this measure.~~

BIO-5 Preconstruction presence/absence surveys for LAPM shall be conducted **in conjunction with SBKR trapping** ~~within 30 days~~ prior to any onsite ground disturbing activity. LAPM survey shall be conducted pursuant to the recommendations and guidelines established by the California Department of Fish and Wildlife. If no presence of LAPM is found during the survey, mitigation measure BIO-~~56~~ need not be enforced.

BIO-6 In the event that the preconstruction survey determines the presence of LAPM, the following actions shall be implemented: **1) 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** **2) the City shall provide compensation for temporary loss of habitat to and individual LAPM in the following manner: 1) the City shall obtain a 2081 Incidental Take Permit (ITP) from the CDFW; the City shall offset the loss of the temporarily disturbed habitat by purchasing of acceptable suitable LAPM habitat at a 24:1 ratio; and any conserved habitat shall be provided with an appropriate endowment to ensure permanent protection and the conserved habitat shall be managed in perpetuity by an agency or party considered acceptable to the CDFW. No ground disturbance shall occur within potential LAPM habitat until CDFW approves appropriate mitigation and avoidance and minimization measures** ~~an ITP is obtained by the City. Note that the final compensation package contained in the permit may differ from the above compensation package, but the City finds that this compensation package shall at a minimum meet the requirements of this measure.~~

Nesting Birds

MM BIO-8 provides mitigation measures for impacts to nesting birds. MM BIO-8 states that site disturbance shall be scheduled outside of the nesting season of February 15 through July 31 for raptors. Please note that some species of raptors may nest as early as January through mid-September. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as

otherwise provided by Fish and Game Code or any regulation made pursuant thereto. As such, CDFW is concerned with MM BIO-8, because as worded, it only avoids migratory birds and raptors and disregards non-migratory passerine birds, which may nest as early as February. Thus, CDFW recommends that MM BIO-8 be revised to require preconstruction nesting bird surveys that account for early and late nesting among raptors and *all* passerines. CDFW offers the following revisions to MM BIO-8 (edits are in ~~strikethrough~~ and **bold**):

BIO-8 The State of California prohibits the “take” of active bird nests. To avoid an illegal take of active bird nests, any grubbing, brushing or tree removal should be conducted outside of the ~~the State-identified~~ nesting season (**generally**, ~~R~~raptor nesting season is ~~February 15~~ **January 1** through ~~July 31~~ **September 15**; and migratory **passerine** bird nesting season is ~~March 15~~ **February 1** through September 1). ~~Alternatively~~ **Additionally**, the site shall be ~~evaluated~~ **surveyed** by a qualified biologist **3 days** prior to the initiation of ground disturbance to determine the presence or absence of nesting birds, **at the appropriate time of day/night, during appropriate weather conditions**. Active bird nests **MUST** be avoided during the nesting season. If an active nest is located in the project construction area it will be flagged and a 300-foot avoidance buffer placed around it **for passerines and a 500-foot avoidance buffer for raptors**. No activity shall occur within the 300-foot ~~or 500-foot~~ buffer until the young have fledged the nest, **as confirmed by a qualified biologist**.

Riversidean Alluvial Fan Sage Scrub

The Biological Resources Assessment (BRA) identifies degraded RAFSS present on site. Please consider that even degraded or isolated patches of alluvial scrub vegetation still retain a distinct characteristic given their relation to flood-deposited alluvia and the species associated with this habitat type. In addition, RAFSS is a distinctive and rare plant community with some species being listed as rare as G1 S1.1. CDFW considers all associations with state ranks of S1-S3 to be highly imperiled. Further, the RAFSS habitat on the Project site is critical as refugia to special-status species (i.e., LAPM, SBKR). Thus, CDFW considers the removal of any RAFSS to be a significant impact.

Based on aerial imagery and California Natural Diversity Database (CNDDDB) data and review of the Conceptual Construction Plans, CDFW identified potential impacts to RAFSS. However, the ISMND fails to consider these impacts. If Alternative 1 on the Conceptual Construction Plans is pursued, approximately 0.18 acres of RAFSS would be impacted, while Alternatives 2 and 3 would seemingly avoid RAFSS. Thus, CDFW discourages the construction of Alternative 1. However, in the case that RAFSS cannot be avoided by the Project, CDFW recommends that the City notify CDFW of total impacts and adopts appropriate mitigation. CDFW recommends the Project be mitigated

at no less than a 3:1 ratio, or as required by any overlapping CESA ITP mitigation, if applicable. Note that a higher ratio may be warranted if the proposed mitigation site is located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species.

CDFW suggests that if impacts to RAFSS are unavoidable, the City adopt the following mitigation measure:

BIO-9 **Any impacts to RAFSS shall be mitigated at a minimum 3:1 or greater depending on the location and habitat quality of the mitigation site.**

Analysis of Project Design Impacts to Biological Resources

A prior streambed alteration agreement between CDFW and San Bernardino County Flood Control District (SBCFCD) obligated mitigation within Cactus Basin No. 3. CDFW is concerned that the Project may potentially reduce the area available for the required mitigation due to construction of dissipation features, such as rip rap pad and baffle and dam embankment. CDFW encourages the City to coordinate with SBCFCD to determine if any portion of the Project would impact restored habitat and/or habitat set aside for mitigation, and to work collaboratively to avoid and minimize impacts.

CDFW encourages Project design that avoids sensitive habitat. As such, considering the City's three Alternatives for outlets at Cactus Basin No. 3, CDFW believes Alternative 3 to be the best choice, because it is the path of less resistance compared to Alternative 1, does not require an easement on private property versus Alternative 1 and 2, would avoid RAFSS versus Alternative 1, and ultimately potentially have less impacts to biological resources.

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, §

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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

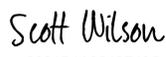
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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 recommends that the City adopt the recommended revised and new mitigation measures offered by CDFW prior to finalizing the ISMND to reduce project impacts.

CDFW appreciates the opportunity to comment on the ISMND for the Rialto Baseline Storm Drain Project (SCH No. 2020090296) and hopes our comments assist the City of Rialto 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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HCPB CEQA Coordinator
Habitat Conservation Planning Branch

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.