



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



October 26, 2020

Governor's Office of Planning & Research

Anthony De Luca
 County of San Bernardino
 Land Use Services Department
 385 N. Arrowhead Avenue, 1st Floor
 San Bernardino, CA, 92415-0187

NOV 03 2020

STATE CLEARINGHOUSE

Subject: Bloomington Center Project
 Mitigated Negative Declaration
 2020090454

Dear Mr. De Luca:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration (MND) from the County of San Bernardino Land Use Services Department (County; Lead Agency) for the Bloomington Center 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.

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.

PROJECT DESCRIPTION SUMMARY

The project is proposing to construct a commercial center to include a 9,900 square foot (sf) convenience store with eight multi-product fuel dispensers and seven diesel bays, a 3,000 sf and 2,800 sf fast-food restaurant with drive through and parking with 143 spaces for cars and 33 for trucks on a 8.9-acre parcel.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW agrees that an MND could be appropriate for the Project with the addition and implementation of specific and enforceable avoidance and minimization measures and compensatory mitigation strategies, including those CDFW recommends within the body of this letter.

CEQA requires public agencies in California to analyze and disclose potential environmental impacts associated with a project that the public agency will carry out, fund, or approve. Any potentially significant impact must be mitigated to the extent feasible.

Burrowing Owls

The MND states that the Project site has "a high potential to support" burrowing owls and includes one mitigation measure (BIO-1 Burrowing Owl Surveys). CDFW is concerned that the County determined the level of impacts the Project would have on burrowing owl without conducting an appropriate analysis of their presence and use on the site. As such, CDFW disagrees that mitigation measure BIO-1 would reduce impacts to less than significant because it only addresses a means to avoiding direct impacts to burrowing owls, but does not address the loss of habitat or appropriate mitigation if burrowing owls were to occur onsite. CDFW suggests the County complete surveys per the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) and that the following changes to the mitigation measure be included in the MND prior to adoption:

BIO-1 Burrowing Owl Surveys

The Applicant shall designate a burrowing owl biologist (Designated Biologist) that is knowledgeable about the burrowing owl, including its natural history, habitat requirements, seasonal movements and range, to survey and monitor for burrowing owls prior to Project activities. The Designated Biologist shall complete necessary burrowing owl surveys, impact assessments, and associated reports within all locations subject to Project activities. Methodology shall

follow the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation, as described below.

As the site has been determined to be suitable for burrowing owl, protocol burrowing owl surveys shall be conducted by the Designated Biologist in accordance with the Staff Report on Burrowing Owl Mitigation. As such, the Designated Biologist shall conduct four survey visits: 1) at least one site visit between 15 February and 15 April, and 2) a minimum of three survey visits, at least three weeks apart between 15 April and 15 July, with at least one visit after 15 June. If breeding season surveys confirm occupied burrowing owl habitat in or adjoining areas subject to Project activities, Applicant shall contact CDFW and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project site activities, to assist in the development of avoidance, minimization, and mitigation measures. CDFW recommends occupied habitats that will be impacted by the Project be replaced through conservation of occupied habitat at a ratio determined appropriate based on habitat quality and use, and at a minimum of a 2:1 ratio.

To avoid direct impacts to burrowing owls, a A qualified biologist(s) shall conduct a pre-construction presence/absence survey for burrowing owls at 14 days prior to ground disturbing activities and within 24 hours immediately before ground disturbing activities. If burrowing owls are documented on site, then a plan for avoidance or passive exclusion shall be made in coordination with CDFW. ~~If the survey is negative, the project may proceed without further restrictions related to burrowing owls.~~

Nesting Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: 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. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). CDFW appreciates the inclusion of MM BIO-2, but requests revisions to address

species that may nest outside of the specified nesting season. CDFW recommends BIO-2 be revised as follows:

BIO-2 Nesting Bird Surveys

Applicant shall ensure that impacts to nesting birds at the Project site are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures. Where feasible, vegetation clearing and ground disturbing activities shall be conducted outside of the **typical** nesting season (February 1 to August 31). ~~If ground disturbing activities are scheduled outside of the nesting season, a nesting bird survey will not be required.~~

- 1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species; 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.**
- 2. ~~If construction activities occur during the nesting season, a qualified biologist~~ The Designated Biologist shall conduct a nesting bird surveys at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days ~~within seven days~~ prior to any disturbance of the site, including tree and shrub removal, disking, demolition activities, and grading. 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.**

3. If active nests are identified, the biologist **Designated Biologist** shall **immediately** establish suitable **conservative avoidance** buffers around the nests **based on their best professional judgement and experience, and depending on the level of activity within the buffer and species' observed tolerance**, and ~~and~~ The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. Raptor species shall have an avoidance buffer of 500 feet and other bird species shall have an avoidance buffer of 300 feet. These buffers may be reduced **at the discretion of the Designated Biologist** ~~in consultation with the CDFW~~. **The Designated Biologist shall monitor the nest at the onset of Project activities, and at the onset of any changes in 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 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.** If active nests are not identified, vegetation clearing, and ground disturbing activities may commence.

Special-Status Plant Species

The MND states that “there are two special-status plant species with moderate or high potential to occur on the project site,” paniculate tarplant (*Deinandra paniculata*, CRPR 4.2); and smooth tarplant (*Centromadia pungens ssp. laevis*, CRPR 1B.1). The MND also states:

The general biological survey was performed outside the survey window for these species. However, given the relatively small size of the project site and high level of site disturbance, extensive populations of special-status plant species are not anticipated to occur on-site. If present, impacts to these species would be relatively small and would occur in an area surrounded by development. Therefore, impacts would be less than significant.

CDFW disagrees with this statement; the County has not provided a proper analysis or basis to support the determination that the Project would have less than significant impacts on these species. A botanical field survey to identify all plants to the taxonomic level necessary to determine rarity and listing status at the appropriate time of year was not performed. Therefore, the MND lacks analysis of potential impact, and avoidance, minimization, and mitigation measures for special-status plant species. Sensitive plant species are listed under CESA as threatened, or endangered, or proposed or

candidates for listing; designated as rare under the Native Plant Protection Act; or plants that otherwise meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085).

The County has not provided a proper analysis or basis to support the determination that the Project would have less than significant impacts on these species, therefore CDFW recommends the inclusion of the following mitigation measure:

BIO-3 Special-Status Plants

- 1. Applicant shall conduct a thorough floristic-based assessment of special status plants and natural communities during times of year when plants are evident and identifiable (i.e. flowering or fruiting), which may warrant multiple surveys during the season to capture floristic diversity. The assessment shall be performed by a qualified biologist following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW, 2018) or most recent version: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline=1>.**
- 2. Should any CESA-listed plant species be present at the Project site, the Applicant shall obtain an incidental take permit for those species prior to the start of Project activities. Should any special status plants or natural communities be present in the Project area, a qualified biologist shall, in coordination with CDFW, develop species-specific avoidance, minimization, and mitigation measures to ensure there is no net reduction in the size or viability of the local population.**

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 MND to assist the County in identifying and mitigating Project impacts on biological resources. The MND includes inadequate survey methods and mitigation measures for burrowing owls, nesting birds, and special-status plant species and thus did not provide proper analysis that the Project would have less than significant impacts. As such, CDFW recommends the County perform the necessary surveys of the Project site and adopt the recommended measures provided by CDFW prior to adopting the MND.

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

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HCPB CEQA Coordinator
Habitat Conservation Planning Branch

REFERENCES

California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. Website

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>)